



DEPARTMENT OF COMMERCE

[3510-16]

United States Patent and Trademark Office

37 CFR Part 6

[Docket No. PTO-T-2016-0038]

RIN 0651-AD12

International Trademark Classification Changes

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) issues a final rule to incorporate classification changes adopted by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement). These changes are effective January 1, 2017, and are listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (11th ed., ver. 2017), which is published by the World Intellectual Property Organization (WIPO).

DATES: This rule is effective on January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademark Examination Policy, at (571) 272-8946 or TMFRNotices@uspto.gov.

SUPPLEMENTARY INFORMATION:

Purpose: As noted above, this final rule incorporates classification changes adopted by the Nice Agreement that will become effective on January 1, 2017. This rule benefits the public by providing notice regarding these changes.

Summary of Major Provisions: The USPTO is revising § 6.1 in part 6 of title 37 of the Code of Federal Regulations to incorporate classification changes and modifications that will become effective January 1, 2017, as listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (11th ed., 2017) (Nice Classification), published by WIPO.

The Nice Agreement is a multilateral treaty, administered by WIPO, which establishes the international classification of goods and services for the purposes of registering trademarks and service marks. As of September 1, 1973, this international classification system is the controlling system used by the United States, and it applies to all applications filed on or after September 1, 1973, and their resulting registrations, for all statutory purposes. See 37 CFR 2.85(a). Every signatory to the Nice Agreement must utilize the international classification system.

Each state party to the Nice Agreement is represented in the Committee of Experts of the Nice Union (Committee of Experts), which meets annually to vote on proposed changes to the Nice Classification. Any state that is a party to the Nice Agreement may submit proposals for consideration by the other members in accordance with agreed-upon rules of procedure. Proposals are currently submitted on an annual basis to an electronic forum on the WIPO website, commented upon, modified, and compiled by WIPO for further discussion and voting at the annual Committee of Experts meeting.

In 2013, the Committee of Experts began annual revisions to the Nice Classification. The annual revisions, which are published electronically and enter into force on January 1 each year, are referred to as versions and identified by edition number and year of the effective date (e.g., “Nice Classification, 10th edition, version 2013” or “NCL 10-2013”). Each annual version includes all changes adopted by the Committee of Experts since the adoption of the previous version. The changes consist of the addition of new goods and services to, and deletion of goods and services from, the Alphabetical List, and any modifications to the wording in the Alphabetical List, the class headings, and the explanatory notes that do not involve the transfer of goods or services from one class to another. New editions of the Nice Classification continue to be published electronically and include all changes adopted annually since the previous version, as well as goods or services transferred from one class to another or new classes that are created.

The annual revisions contained in this final rule consist of modifications to the class headings that have been incorporated into the Nice Agreement by the Committee of

Experts. Under the Nice Classification, there are 34 classes of goods and 11 classes of services, each with a class heading. Class headings generally indicate the fields to which goods and services belong. Specifically, this rule adds new, or deletes existing, goods and services from 15 class headings and revises spelling in one class heading. The changes to the class headings further define the types of goods and/or services appropriate to the class. As a signatory to the Nice Agreement, the United States adopts these revisions pursuant to Article 1.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

Discussion of Regulatory Changes

The USPTO is revising § 6.1 as follows:

In Class 3, the wording “soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices” is amended to “non-medicated soaps; perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions; non-medicated dentifrices.”

In Class 6, the wording “Common metals and their alloys” is amended to “Common metals and their alloys, ores,” and the separate clause “ores” at the end of the class heading is deleted. The wording “metal building materials” is amended to “metal materials for building and construction.” The wording “materials of metal for railway tracks,” “ironmongery,” and “pipes and tubes of metal” is deleted. The wording “metal containers for storage or transport” is inserted before “safes.”

In Class 10, the spelling of “orthopedic” is amended to “orthopaedic.” A semi-colon is added after the wording “suture materials,” and the following wording is added:

“therapeutic and assistive devices adapted for the disabled; massage apparatus; apparatus, devices and articles for nursing infants; sexual activity apparatus, devices and articles.”

The wording “precious stones” is amended to “precious and semi-precious stones” in Class 14.

In Class 16, the wording “and office requisites, except furniture” is added after the term “stationery. The wording “artists’ materials” is amended to “artists’ and drawing materials.” The wording “typewriters and office requisites (except furniture)” is deleted. The wording “instructional and teaching material (except apparatus)” is changed to “instructional and teaching materials,” and the wording “plastic materials for packaging” is amended to “plastic sheets, films and bags for wrapping and packaging.” The semi-colon after “printers’ type” is replaced with a comma.

In Class 17, the wording “plastics in extruded form for use in manufacture” is amended to “plastics and resins in extruded form for use in manufacture.” The wording “flexible pipes, not of metal” is changed to “flexible pipes, tubes and hoses, not of metal.”

In Class 18, “animal skins, hides” is amended to “animal skins and hides,” and “trunks and travelling bags” is amended to “luggage and carrying bags.” A semi-colon is added after the term “saddlery,” and the wording “collars, leashes and clothing for animals” is added thereafter.

The wording “containers, not of metal, for storage or transport” is added in Class 20 after “Furniture, mirrors, picture frames.” The term “ivory” is deleted.

“[B]rushes (except paintbrushes)” is amended to “brushes, except paintbrushes” in Class 21. The term “steelwool” is deleted. The wording “unworked or semi-worked

glass (except glass used in building)” is amended to “unworked or semi-worked glass, except building glass.”

In Class 22, “tents, awnings, and tarpaulins” is amended to “tents and tarpaulins; awnings of textile or synthetic materials.” The wording “sacks” is amended to “sacks for the transport and storage of materials in bulk,” and “padding and stuffing materials (except of paper, cardboard, rubber or plastics)” is changed to “padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics.” The wording “and substitutes therefor” is inserted after “raw fibrous textile materials.”

The wording “bed covers; table covers” is deleted, and the wording “household linen; curtains of textile or plastic” is inserted after “Textiles and substitutes for textiles” in Class 24.

In Class 26, the wording “hair decorations; false hair” is added.

“Games and playthings” in Class 28 is changed to “Games, toys and playthings,” and the wording “video game apparatus” is added.

In Class 31, the wording “Agricultural, horticultural and forestry products” is amended to “Raw and unprocessed agricultural, aquacultural, horticultural and forestry products,” and “fresh fruits and vegetables” is amended to “fresh fruits and vegetables, fresh herbs.” The wording “bulbs, seedlings and seeds for planting” is inserted after “natural plants and flowers.” “[F]oodstuffs for animals” is amended to “foodstuffs and beverages for animals.”

“[S]ecurity services for the protection of property and individuals” is amended to “security services for the physical protection of tangible property and individuals” in Class 45.

Rulemaking Requirements

Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See Perez v. Mortg. Bankers Ass'n, 135 S. Ct. 1199, 1204 (2015) (Interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers.” (citation and internal quotation marks omitted)); Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); Bachow Commc’ns Inc. v. FCC, 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); Inova Alexandria Hosp. v. Shalala, 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See Perez, 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency “issue[s] an initial interpretive rule” nor “when it amends or repeals that interpretive rule.”); Cooper Techs. Co. v. Dudas, 536 F.3d 1330, 1336-37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))).

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory

Flexibility Act analysis, nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), is required. See 5 U.S.C. 603.

Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule changes; (2) tailored the rules to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 et seq.

Paperwork Reduction Act: This final rule does not involve information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 37 CFR Part 6

Administrative practice and procedure, Classification, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1112, 1123 and 35 U.S.C. 2, as amended, the USPTO is amending part 6 of title 37 as follows:

PART 6– CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

1. The authority citation for 37 CFR part 6 continues to read as follows:

Authority: Secs. 30, 41, 60 Stat. 436, 440; 15 U.S.C. 1112, 1123; 35 U.S.C. 2, unless otherwise noted.

2. Revise § 6.1 to read as follows:

§ 6.1 International schedule of classes of goods and services.

GOODS

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for use in painting, decorating, printing and art.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; non-medicated soaps; perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions; non-medicated dentifrices.

4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting.

5. Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical use or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys, ores; metal materials for building and construction; transportable buildings of metal; non-electric cables and wires of common metal; small items of metal hardware; metal containers for storage or transport; safes.

7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs; automatic vending machines.

8. Hand tools and implements (hand-operated); cutlery; side arms; razors.

9. Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software; fire-extinguishing apparatus.

10. Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopaedic articles; suture materials; therapeutic and assistive devices adapted for the disabled; massage apparatus; apparatus, devices and articles for nursing infants; sexual activity apparatus, devices and articles.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys; jewellery, precious and semi-precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; artists' and drawing materials; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packaging; printers' type, printing blocks.

17. Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics and resins in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes and hoses, not of metal.

18. Leather and imitations of leather; animal skins and hides; luggage and carrying bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; collars, leashes and clothing for animals.

19. Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.

20. Furniture, mirrors, picture frames; containers, not of metal, for storage or transport; unworked or semi-worked bone, horn, whalebone or mother-of-pearl; shells; meerschaum; yellow amber.

21. Household or kitchen utensils and containers; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

22. Ropes and string; nets; tents and tarpaulins; awnings of textile or synthetic materials; sails; sacks for the transport and storage of materials in bulk; padding,

cushioning and stuffing materials, except of paper, cardboard, rubber or plastics; raw fibrous textile materials and substitutes therefor.

23. Yarns and threads, for textile use.

24. Textiles and substitutes for textiles; household linen; curtains of textile or plastic.

25. Clothing, footwear, headgear.

26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).

28. Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats.

30. Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; edible ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice.

31. Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

32. Beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages.

33. Alcoholic beverages (except beers).

34. Tobacco; smokers' articles; matches.

SERVICES

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction; repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.

43. Services for providing food and drink; temporary accommodation.

44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

45. Legal services; security services for the physical protection of tangible property and individuals; personal and social services rendered by others to meet the needs of individuals.

_ October 31, 2016 _____

Date

Michelle K. Lee

Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

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