

Inlet channel, between Lighted Buoy #10 at approximate latitude 38.19.30N, longitude 75.05.30W and Lighted Buoy #11 at approximate latitude 38.19.16N, longitude 75.09.0W

(ii) *Chincoteague Bay*: PWC may operate, transit or launch in waters between the established Park boundary and the western shore of Assateague Island, from Assateague Point north to that portion of Horse Marsh located due east of the Memorial Park boat ramp on Chincoteague Island.

(iii) *Oceanside*: PWC are allowed to beach along the ocean side of the island only in the case of personal injury or mechanical failure.

(2) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: May 27, 2003.

**Craig Manson,**

*Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. 03-13578 Filed 5-29-03; 8:45 am]

BILLING CODE 4312-60-P

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

RIN 0651-AB37

#### Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The American Inventors Protection Act of 1999 (AIPA) enacted provisions for the continued examination of a utility or plant application at the request of the applicant (request for continued examination or RCE practice). Since continued prosecution application (CPA) practice is largely redundant in view of RCE practice, the Office is eliminating CPA practice as to utility and plant applications. An applicant for a utility or plant patent may also continue to effectively obtain further examination of the application by filing a continuing application. Since RCE practice does not apply to design applications, CPA practice will remain in place for design applications.

**EFFECTIVE DATE:** July 14, 2003.

#### FOR FURTHER INFORMATION CONTACT:

Eugenia A. Jones, by telephone at (703) 306-5586, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872-9404, marked to the attention of Eugenia A. Jones.

**SUPPLEMENTARY INFORMATION:** The AIPA was enacted into law on November 29, 1999. See Pub. L. 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999). Among other things, the AIPA amended title 35 of the United States Code to provide for a request for continued examination (RCE) practice. See 35 U.S.C. 132(b). RCE practice is applicable to any utility or plant application filed on or after June 8, 1995. See 113 Stat. at 1501A-560 through 1501A-561. The Office amended the rules of practice in title 37 of the Code of Federal Regulations to implement the RCE provisions of the AIPA by an interim rule published in March of 2000 and a final rule published in August of 2000. See *Changes to Application Examination and Provisional Application Practice*, 65 FR 14865 (Mar. 20, 2000), 1233 *Off. Gaz. Pat. Office* 47 (Apr. 11, 2000) (interim rule), and *Request for Continued Examination Practice and Changes to Provisional Application Practice*, 65 FR 50091 (Aug. 16, 2000), 1238 *Off. Gaz. Pat. Office* 13 (Sept. 5, 2000) (final rule).

The AIPA also amended title 35 of the United States Code to provide, with certain exceptions, for the publication of pending patent applications (other than design applications) eighteen months after the earliest claimed filing date. See 35 U.S.C. 122(b). The eighteen-month publication provisions of the AIPA apply to utility and plant applications filed on or after November 29, 2000, including any CPA filed on or after November 29, 2000. The Office amended the rules of practice in title 37 of the Code of Federal Regulations to implement the eighteen-month publication provisions of the AIPA by a final rule published in September of 2000. See *Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR 57023 (Sept. 20, 2000), 1239 *Off. Gaz. Pat. Office* 63 (Oct. 10, 2000) (final rule). That notice indicated that the Office must create a patent application publication of a CPA using the copy of the prior application that is contained in the Office's Patent Application Capture and Review (PACR) system database or microfilm records. See *Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR at 57047, 1239 *Off. Gaz. Pat. Office* at 84 (comment 58 and response). The PACR system database or

microfilm records for applications filed before November 29, 2000, however, are often inadequate for eighteen-month publication purposes. For example, the copy of the specification or drawings contained in the Office's PACR system database or microfilm records for applications filed before November 29, 2000, is often of too poor a quality for use in the eighteen-month publication process. Since the eighteen-month publication of a CPA often requires special handling, the Office has been obliged to create a special eighteen-month publication process for CPAs, which makes the eighteen-month publication of CPAs both costly and inefficient.

The Office revised the rules of practice in December of 1997 to permit applicants to effectively obtain continued examination of an application using a streamlined continuing application practice (*i.e.*, CPA practice). See 37 CFR 1.53(d). CPA practice was a regulatory substitute for statutory authority to provide continued examination of an application for a fee. See *Changes to Patent Practice and Procedures*, 62 FR 53131, 53142 (Oct. 10, 1997), 1203 *Off. Gaz. Pat. Office* 63, 72 (Oct. 21, 1997) (final rule) (comment 17 and response). As a convenience to applicants, the Office did not eliminate CPA practice as to utility and plant applications when RCE practice was implemented. The Office, however, did make CPA practice a transitional practice as to utility and plant applications, by requiring that the prior application have been filed before May 29, 2000. See *Request for Continued Examination Practice and Changes to Provisional Application Practice*, 65 FR at 50100, 1238 *Off. Gaz. Pat. Office* at 20. This change to CPA practice was designed to cause CPA filings to phase out over time in utility or plant applications. See *Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR at 57047, 1239 *Off. Gaz. Pat. Office* at 84 (comment 58 and response). Thus, CPA practice was retained only as a temporary transitional practice as to utility and plant applications after RCE practice was implemented.

CPA filings are in the process of being phased out, but the phasing out of CPA filings is resulting in an ever increasing percentage of requests for a CPA being improper because the prior application was not filed before May 29, 2000. Continuing to permit the filing of a CPA in utility or plant applications (filed before May 29, 2000) requires the Office to: (1) check every request for a CPA to determine whether it is a proper CPA; and (2) maintain a special eighteen-