

if the conditions set forth in section 706.07(b) of the *Manual of Patent Examining Procedure* for making a first action final in a continuing application (such as a CPA) are met. See *Request for Continued Examination Practice and Changes to Provisional Application Practice*, 65 FR at 50096, 1238 *Off. Gaz. Pat. Office* at 17.

Comment 10: Several comments opposed the proposed change to eliminate CPA practice (as to utility and plant applications) on the basis that a continuing application under § 1.53(b) (non-CPA) requires the applicant to copy and file papers to generate a new file and this is burdensome when compared with the single paper necessary to file a CPA (which the Office recognized when implementing CPA practice). One comment also argued that continuing applications under § 1.53(b) place a greater burden on the Office than do CPAs because CPAs do not require any pre-examination processing and will be picked up by the examiner for action in a more timely fashion than continuing applications under § 1.53(b). One comment noted that applicants with "deep pockets" will be able to file a continuing application under § 1.53(b) but that small entities will be more severely impacted.

Response: While a continuing application under § 1.53(b) requires the applicant to copy and file papers to generate a new file, the Office must now publish applications (including CPAs) at eighteen months from its earliest claimed filing date and the application papers (specification, drawings, oath or declaration) are required for the eighteen-month publication process. In most situations in which an applicant would formerly have filed a CPA, the applicant will still be able to avoid filing the application papers necessary for a continuing application under § 1.53(b) by filing an RCE.

Comment 11: One comment opposing the elimination of CPA practice suggested that a substantial number of unnecessary CPAs are filed because the Office has failed to adequately warn the patent bar and its clients that a CPA can be more expensive for the client than an RCE. The comment stated that fewer CPAs would be filed if the Office were to better educate the public on that cost difference.

Response: The Office has a Web page (<http://www.uspto.gov/web/offices/dcom/olia/aipa/index.htm>) devoted to information concerning the AIPA and the Office's implementation of the AIPA. The Web page contains (among other information) a chart explaining the various differences (including fees)

between a CPA, an RCE, and a submission under § 1.129(a) (http://www.uspto.gov/web/offices/dcom/olia/aipa/comparison_of_cpa_practice.htm). The Office also provided numerous presentations during fiscal years 2000 and 2001 (including a series of road show presentations) to educate the patent bar and general public about the AIPA and the Office's implementation of the AIPA (including RCE practice). Nevertheless, the elimination of CPA practice (as to utility and plant applications) will moot the issue of unnecessary CPAs being filed.

Comment 12: One comment opposing the elimination of CPA practice suggested that a substantial number of unnecessary CPAs are filed because the Office does not allow an applicant to voluntarily publish an application filed before but pending on November 29, 2000, unless a copy of the application is submitted under the new electronic filing system (EFS), and that EFS is impossible or extremely burdensome for many applicants, or for applications with many formulae or symbols, or for companies with "firewall" problems for transmissions of very large documents by electronic mail message. The comment stated that the filing of a CPA is by far the best way to obtain voluntary publications (and fully accurate reproductions) of most applications filed before November 29, 2000.

Response: Any applicant wishing to file a CPA to effectively obtain publication of an application filed before November 29, 2000, would have filed a CPA for this purpose shortly after November 29, 2000. Nevertheless, the Office has received approximately 470 EFS submissions of a copy of an application for eighteen-month publication purposes (for publication of an application as-amended under § 1.215(c), for publication of an application as-redacted under § 1.217, for voluntary publication under § 1.221(a), and for republication of an application under § 1.221(a)). The Office has also received approximately 7,600 EFS submissions of new application filings. The Office has a Patent Electronic Business Center (EBC) to assist applicants who find EFS burdensome or have other problems using EFS. The Patent EBC Web page is located at (<http://www.uspto.gov/ebc/index.html>), and the EBC Customer Support Center can be reached by telephone at (703) 305-3028.

Comment 13: One comment opposing the elimination of CPA practice suggested that the Office could reduce the number of CPAs by changing the current Office practice of refusing to

consider even the most minor of amendments under § 1.116 (not requiring any new art search).

Response: The Office did not propose to change the practice concerning amendments after final action or appeal under § 1.116. Section 1.116(c) permits entry of an amendment after final rejection or appeal upon a showing of good and sufficient reasons why the amendment is necessary and was not presented earlier. An applicant may file an RCE under § 1.114 to obtain entry of an amendment that was refused entry under § 1.116.

Rule Making Considerations

Regulatory Flexibility Act

The Deputy General Counsel for General Law, United States Patent and Trademark Office certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this final rule do not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This final rule eliminates CPA practice as to utility and plant applications. This change does not have a significant economic impact on any business because: (1) Any applicant (including small entities) in a utility or plant application filed before June 8, 1995, can obtain further examination of the application by filing either a continuing application under § 1.53(b) or a submission under § 1.129(a) (if the application is eligible for § 1.129(a) practice); (2) any applicant (including small entities) in a utility or plant application filed on or after June 8, 1995, can obtain further examination of the application by filing either an RCE under 35 U.S.C. 132(b) and § 1.114 or a continuing application under § 1.53(b); and (3) any applicant (including small entities) in a design application can continue to obtain further examination of the application by filing either a CPA under § 1.53(d) or a continuing application under § 1.53(b).

Executive Order 13132

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

Executive Order 12866

This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under