

take into account a company's modified and improved current practices.

Response: It is the USPTO's intent that complaints will be removed from its Internet home page three (3) years from the date of their publication. However, to the extent that the USPTO is required to make such documents publicly available under other statutory authority, the documents shall be retained.

Section 4.4: Invention Promotion Reply Section

Commentator suggests extending the proposed thirty (30) day response time to sixty (60) days to allow invention promoters sufficient time to investigate and respond to a complaint.

Response: Presently invention promoters respond to letters of complaint within the thirty (30) day time frame and additional time does not appear to be necessary. A response can include a statement that further investigation into the complaint is being done by the invention promoter. A second response will be accepted and published upon receipt as is provided in this section of the proposed rule. Furthermore, the USPTO will publish an invention promoter's response, even if it is received after the 30-day response period.

Section 4.5: Notice of Publication Section

Commentator feels that the word "complaint" at the end of the sentence, "The invention promoter will be given 30 days from such notice to submit a reply to the complaint" should read "notice which reply includes name and address information where the complaint can be served by mail."

Response: The final rule is modified because only a "Notice of Complaint" will have been reviewed by the invention promoter.

Commentators believe the Office's Internet home page should be the primary source of publication of the Notice of Complaint because inventors and the public at large do not have access to the Official Gazette or **Federal Register**.

Response: Change will be made in the final rule to specify that Notice of Complaints will be posted on the USPTO Internet home page only: <http://www.uspto.gov>.

In Commentator's experience only a small percentage of inventors use the Internet and, thus, publication of complaint and reply should be by paper publication, *i.e.*, the Official Gazette or **Federal Register**.

Response: With today's knowledge-based economy and the move toward e-

business it would be ineffective to use the print media to publish the complaints. By using USPTO's Internet web page, no further change to the rules would be needed in the future.

Commentators believe that the Office should forward a copy of a Notice of Complaint to the Federal Communications Commission ("FCC") since the complaint discloses the name of the mass media entity that ran the advertisement for the invention promoter.

Response: Name of mass media may not reflect actual vendor or station where advertisements were placed. The FCC may access the Notice of Complaints through publicly available means.

With regard to the language: "If the Office does not receive a reply from the invention promoter within 30 days, the complaint alone will become publicly available." Commentators believe that publicly available should include (1) publication on the Office's Internet home page, (2) sending a copy of the complaint and reply to the mass media entity, and (3) sending a copy of the complaint to the FCC. Commentators assert that mass media entities cannot do anything unless complaints are brought to their attention, and if so, these entities will take steps to check the credibility of the invention promoters.

Response: For reasons discussed above, complaints will be published on the USPTO Internet home page.

Commentator believes that to require invention promoters to monitor the Official Gazette, **Federal Register**, or Office's Internet home page for notice of complaints places an unfair burden on invention promoters in situations where a complaint has been returned undeliverable. Commentator does not, however, offer an alternative notice scheme.

Response: The source of publication will be the USPTO's Internet home page, thereby making the Notices of Complaint searchable and available at the earliest possible date.

Section 4.6: Attorneys and Agents Section

Commentator believes that § 4.6 (in conjunction with § 4.3(c)) should be modified so that complaints are not required or permitted to include information about patent attorneys, unless the attorneys are engaged in invention promotion services, and these services are the basis for the complaint. Without this modification, commentator believes the Office is soliciting complaints concerning attorneys, regardless of whether the attorney's

work is the basis for complaint. Commentator asserts that it is not improper or unethical for attorneys to accept referrals from invention promoters and that attorney complaints should be handled by the Office of Enrollment and Discipline (OED).

Response: The Act provides which attorneys or agents may be identified in a complaint. Any other complaint specifically addressing an attorney or agent is forwarded to OED or returned to complainant. A preliminary review of the complaint is conducted to determine the proper place for the complaint prior to any complaints being forwarded to an invention promoter, OED or returned to the complainant.

Paperwork Reduction Act

Commentators state that if their suggestions were adopted, they would "enhance the quality, utility, and clarity of information to be collected."

Response: See above comments.

Rulemaking Requirements

As prior notice and opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(3)(A), or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132.

This rule has been determined to be not significant for purposes of Executive Order 12866.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and which OMB has approved under control number 0651-0044. Public reporting burden for this collection is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering information, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 37 CFR Part 4

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements.

Accordingly, the USPTO adopts the interim rule promulgating 37 CFR part 4 that was published in the **Federal**