

Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing and distribution of ground barite at the facility of Excalibar Minerals LLC, located in New Iberia, Louisiana (Subzone 124N), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 15th day of January 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010-2062 Filed 1-29-10; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-year ("Sunset") Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping duty order listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-year Review* which covers the same order.

EFFECTIVE DATE: February 1, 2010.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution

Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty order:

| DOC Case No. | ITC Case No. | Country | Product | Department Contact |
|-----------------|--------------|---------|-----------------------|----------------------------------|
| A-570-894 | 731-TA-1070B | China | Tissue Paper Products | Brandon Farlander (202) 482-0182 |

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: "http://ia.ita.doc.gov/sunset/." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately

following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306.

Information Required from Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. See 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's

regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.¹ Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and

¹ In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: January 22, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO-P-2010-0006]

Interim Procedure for Patentees To Request a Recalculation of the Patent Term Adjustment To Comply With the Federal Circuit Decision in *Wyeth v. Kappos* Regarding the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is modifying the computer program it uses to calculate patent term adjustments in light of *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010). The USPTO expects to complete this software modification by March 2, 2010. In the meantime, the USPTO is providing patentees with the ability to request a recalculation of their patent term adjustment without a fee as an alternative to the petition and fee required by 37 CFR 1.705(d). In order to qualify, a form requesting a recalculation of the patent term adjustment must be submitted no later than 180 days after the patent has issued and the patent must be issued prior to March 2, 2010. In addition, this procedure is only available for alleged errors that are specifically identified in *Wyeth*. The USPTO is deciding pending petitions under 37 CFR 1.705 in accordance with the *Wyeth* decision. This notice also provides information concerning the Patent Application Information Retrieval (PAIR) screen that displays the patent term adjustment calculation.

DATES: *Effective Date:* The procedure set forth in this notice is effective on February 1, 2010.

Applicability Date: The procedure set forth in this notice is applicable only to patents issued prior to March 2, 2010,

in which a request for recalculation of patent term adjustment in view of *Wyeth* is filed within 180 days of the day the patent was granted.

FOR FURTHER INFORMATION CONTACT: The Office of Patent Legal Administration by telephone at (571) 272-7702, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

SUPPLEMENTARY INFORMATION: Under 35 U.S.C. 154(b)(1), an applicant is entitled (subject to certain conditions and limitations) to patent term adjustment for the following reason: (1) If the USPTO fails to take certain actions during the examination and issue process within specified time frames (35 U.S.C. 154(b)(1)(A)), which are known as the "A" delays; (2) if the USPTO fails to issue a patent within three years of the actual filing date of the application (35 U.S.C. 154(b)(1)(B)), which are known as the "B" delays; and (3) for delays due to interference, secrecy order, or successful appellate review (35 U.S.C. 154(b)(1)(C)), which are known as the "C" delays. 35 U.S.C. 154(b)(2)(A) provides that "[t]o the extent that periods of delay attributable to grounds specified in [35 U.S.C. 154(b)(1)] overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed." The USPTO interpreted this provision as covering situations in which a delay by the USPTO contributes to multiple bases for adjustment (the "pre-*Wyeth*" interpretation of 35 U.S.C. 154(b)(2)(A)). See *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 FR 34283 (June 21, 2004). The United States Court of Appeals for the Federal Circuit, however, recently held in *Wyeth* that the USPTO's interpretation of 35 U.S.C. 154(b)(2)(A) was too strict, and that periods of delay overlap under 35 U.S.C. 154(b)(2)(A) only if the periods which measure the amount of adjustment under 35 U.S.C. 154(b)(1) occur on the same calendar day.

The USPTO makes patent term adjustment determinations by a computer program that uses the information recorded in the USPTO's Patent Application Locating and Monitoring (PALM) system, except when an applicant requests reconsideration pursuant to 37 CFR 1.705. See *Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term*, 65 FR 56365, 56370, 56380-81 (Sept. 18, 2000) (final rule). The USPTO is in the process of revising the computer program it uses to

calculate patent term adjustment to calculate overlapping delays consistent with the Federal Circuit's interpretation of 35 U.S.C. 154(b)(2)(A) in *Wyeth*. The USPTO expects the revisions to the patent term adjustment computer program to be in place for use on the patents issuing on March 2, 2010.

Patentees should note that the patent term adjustment provisions of 35 U.S.C. 154(b) are complex, there are numerous types of communications that are exchanged between applicants and the USPTO during the patent application process, the PALM system was not originally designed for the purpose of calculating patent term adjustment as provided in 35 U.S.C. 154(b), and one or more of the time frames specified in 35 U.S.C. 154(b)(1)(A) and (B) are not met presently in a high percentage of the patents. In addition, revisions to the patent term adjustment computer program necessary to calculate overlapping delays consistent with the Federal Circuit's interpretation of 35 U.S.C. 154(b)(2)(A) in *Wyeth* significantly increases the complexity of the patent term adjustment computer program. Thus, for patents issuing on or after March 2, 2010, a patentee who believes that the patent term adjustment calculation for his or her patent is not correct must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the date the patent issued. The USPTO is modifying and will continue to modify the patent term adjustment computer program as it becomes aware of situations in the patent term adjustment computer program where it is not correctly calculating the applicable patent term adjustment.

Requests for Reconsideration of the Patent Term Adjustment indicated in the Patent: 37 CFR 1.705(d) provides, in part, that any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of 37 CFR 1.705(b)(1) and (b)(2). 35 U.S.C. 154(b)(4) provides that an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) shall have remedy by a civil action against the Director filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The USPTO is providing an optional procedure under which patentees seeking a revised patent term adjustment in a patent issued prior to March 2, 2010, may request that the