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Chief Counsel.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2023–0054]

RIN 0651–AD73

Signature Requirements Related to Acceptance of Electronic Signatures for Patent Correspondence

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is revising the rules of practice in patent cases to update the signature rule to provide for the broader permissibility of electronic signatures using third-party document-signing software, such as DocuSign® and Acrobat® Sign, and more closely align signature requirements with the rules of practice in trademark cases. The revised rules will provide additional flexibility and convenience to patent applicants and owners, practitioners, and other parties who sign patent-related correspondence, and promote consistency by establishing signature requirements which are common to both patent and trademark matters.

DATES: This final rule is effective on March 22, 2024.

FOR FURTHER INFORMATION CONTACT: Mark Polutta, Senior Legal Advisor, at 571–272–7709; or Terry J. Dey, Legal Administrative Specialist, at 571–272–7730, both of the Office of Patent Legal Administration; or to *PatentPractice@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The regulation at 37 CFR 1.4(d) sets forth the signature requirements for patent correspondence. Section 1.4(d)(1) and (2) set forth the requirements for handwritten signatures and S-signatures, respectively. An S-signature is a signature that is inserted between forward slash marks by the signer and is not a handwritten signature. An S-signature must consist only of letters, or Arabic numerals, or both, with appropriate spaces and commas, periods, apostrophes, or hyphens for punctuation, and the signer's name must be printed or typed, preferably immediately below or adjacent to the S-signature. Section 1.4(d)(3) provides for a graphic representation of a handwritten signature or an S-signature for correspondence submitted electronically via the USPTO patent electronic filing system. The USPTO has been accepting certain electronic signatures as graphic representations pursuant to § 1.4(d)(3), if the correspondence was submitted via the USPTO patent electronic filing system. The signer must personally make their own signature, regardless of what type of signature is used.

Prior to the effective date of this final rule, the USPTO did not permit patent correspondence to be electronically signed by methods other than the electronic entry of S-signatures under § 1.4(d)(2) and the graphic representation method of § 1.4(d)(3). Furthermore, it only permitted the graphic representation method of § 1.4(d)(3) if the correspondence was being submitted via the USPTO patent electronic filing system. In recent years, however, other methods of electronic signature, such as methods using third-party software, have become more prevalent, reliable, and secure. For example, some software platforms include document-signing features with digital certificates or authenticity trails for the electronic signatures, resulting in the increased reliability and security of electronically generated signatures.

To simplify and streamline the USPTO's processes for patent applicants and owners, practitioners, and other parties who sign patent-related correspondence and to more closely align the signature requirements for patent and trademark correspondence, the USPTO is adding § 1.4(d)(4) as a new rule to provide an additional option for electronic signatures in patent correspondence. In addition, this new rule is aimed at addressing stakeholder input received, including during multilateral forums such as IP5 and Trilateral, and is directed towards increasing harmonization of practices and procedures amongst intellectual property offices globally. More information about the IP5 and Trilateral forums is available at *www.uspto.gov/ip-policy/patent-policy/ip5* and *www.uspto.gov/ip-policy/patent-policy/patent-trilateral-activities.*

Under this new rule, ''the person named as the signer'' may sign patent correspondence electronically using any form of electronic signature specified by the Director. Moreover, the electronic signature under newly added § 1.4(d)(4) may be used whether the correspondence is being submitted via the USPTO patent electronic filing system, mailed, faxed, or hand delivered. At this time, the electronic signatures specified by the Director in newly added § 1.4(d)(4) consist of electronic signatures generated via third-party document-signing software that meet the requirements outlined in section II of this preamble. Signatures created using other types of software, such as graphic editing software, are not acceptable under newly added § 1.4(d)(4).

II. Requirements for Additional Electronic Signatures

Subsection II(A) provides the requirements for third-party document-signing software, and subsection II(B) provides the USPTO procedures for determining whether electronically signed patent correspondence complies with newly added § 1.4(d)(4). Taken together, the subsections set out when patent correspondence signed using third-party document-signing software may be accepted under newly added § 1.4(d)(4). The final rule does not change any other requirements for signatures on patent correspondence, including that a signature must be personally inserted or generated by the named signer. Another person may not use document-signing software to create or generate the electronic signature of the named signer. The final rule also does not change which USPTO personnel have the responsibility for reviewing signatures on patent correspondence. This final rule is effective on publication and supersedes any previous USPTO guidance on this topic to the extent there are any conflicts.

A. Requirements for Third-Party Document-Signing Software

Parties using third-party document-signing software must ensure that the underlying software meets the following requirements:

(1) The software must be specifically designed to generate an electronic signature and preserve signature data for later inspection in the form of a digital certificate, token, or audit trail. USPTO personnel may presume that the document-signing software preserves signature data for later inspection in the required form, unless the Office of the Deputy Commissioner for Patents (Legal) notifies USPTO personnel otherwise.

(2) The software must result in the signature page or electronic submission form bearing an indication that the page or form was generated or electronically signed using document-signing software.

The USPTO recommends that the software generate the date on which the signature was applied. While providing a date is not generally required in patent matters, the date is required for electronic signatures signed using document-signing software in trademark matters before the USPTO. Using software that generates the date will benefit practitioners that work in both patent and trademark matters, as the signatures will be acceptable in both patents and trademarks at the USPTO. Regardless of the date the correspondence was signed, the date of receipt will be based on §§ 1.6 through 1.10.

B. USPTO Procedures

When reviewing a signature on a document that was generated using document-signing software, USPTO personnel must first determine compliance with other signature requirements, such as whether it was signed by a proper person (*e.g.,* § 1.33(b)). The Manual of Patent Examining Procedure (MPEP) (9th Edition, Rev. 07.2022, February 2023) provides more information on signatures by proper parties at section 714.01. Submissions must be personally signed by the individual identified in the signer name field. A person may not use document-signing software to enter or electronically generate someone else's signature. See newly added § 1.4(d)(4), redesignated § 1.4(d)(5)(ii), and MPEP 502.02. The electronic signatures of newly added § 1.4(d)(4) do not require the forward slashes of § 1.4(d)(2).

USPTO personnel must ensure that the signature block for a signature under newly added § 1.4(d)(4) meets the following requirements:

(1) Name. The name of each person who signed the document must be presented in printed or typed form, preferably immediately below or adjacent to the signer's adopted signature. The signer's name must be reasonably specific enough so that the identity of the signer can be readily recognized.

(2) Practitioner registration number. The registration number of each patent practitioner (§ 1.32(a)(1)) who signed the document pursuant to § 1.33(b)(1) or (2), must be supplied, either as part of the signature or immediately below or adjacent to the signature. The design patent practitioner status of each design patent practitioner must be indicated by placing the word ''design'' (in any format) adjacent to the signature.

(3) Acceptable software type. The software used by the signer must meet the requirements for third-party document-signing software listed in Section II(A).

If the submission is signed by a proper party and all the elements listed above are satisfied, USPTO personnel may presume the signature meets the requirements of newly added § 1.4(d)(4) for an acceptable electronic signature, unless directed otherwise by the Office of the Deputy Commissioner for Patents (Legal). If one or more of these requirements are not met, the signature block is noncompliant.

Notwithstanding the provisions above, USPTO personnel retain the discretion to inquire about the acceptability of a signature on a submission or require ratification, confirmation, or evidence of authenticity of such signature, where the USPTO has reasonable doubt as to the authenticity (veracity) of the signature.

The MPEP will be updated in due course to incorporate these requirements.

Discussion of Specific Rules

The following is a discussion of the amendments to 37 CFR part 1.

Section 1.4: The introductory text of § 1.4(d)(1) is revised to provide to a reference to redesignated § 1.4(d)(5) and delete a reference to § 1.4(e), which was reserved in a prior rulemaking.

New § 1.4(d)(4) provides an additional option for electronic signatures in patent correspondence. The electronic signatures of newly added § 1.4(d)(4) must be of a form specified by the Director and personally entered by the person named as the signer on the correspondence being filed for a patent application, patent or other patent proceeding in the USPTO. Newly added § 1.4(d)(4)(i) requires a patent practitioner (§ 1.32(a)(1)), signing pursuant to § 1.33(b)(1) or (2), to supply their registration number either as part of the electronic signature or immediately below or adjacent to the electronic signature. Newly added § 1.4(d)(4)(i) also requires a design patent practitioner to additionally indicate their design patent practitioner status by placing the word ''design'' (in any format) adjacent to the electronic signature. Newly added § 1.4(d)(4)(ii)(A) requires the signer's name to be presented in printed or typed form, preferably immediately below or adjacent to the electronic signature. Newly added § 1.4(d)(4)(ii)(B) requires the signer's name to be reasonably specific enough so that the identity of the signer can be readily recognized.

The provisions pertaining to certifications of prior § 1.4(d)(4) have been redesignated as § 1.4(d)(5). Redesignated § 1.4(d)(5)(ii) has been revised to include references to newly added § 1.4(d)(4) and gender specificity has been removed.

The provisions pertaining to forms of prior § 1.4(d)(5) have been redesignated as § 1.4(d)(6).

Rulemaking Considerations

A. Administrative Procedure Act: The changes proposed by this rulemaking involve rules of agency practice and procedure, and/or interpretive rules, and do not require notice-and-comment rulemaking. See *Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 97, 101 (2015) (explaining that interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers'' and do not require notice and comment when issued or amended); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice''); and *JEM Broadcasting Co.* v. *F.C.C.,* 22 F.3d 320, 328 (D.C. Cir. 1994) (explaining that rules are not legislative because they do not ''foreclose effective opportunity to make one's case on the merits'').

In addition, the Office finds good cause pursuant to authority at 5 U.S.C. 553(b)(B), to adopt the change to § 1.4 without prior notice and an opportunity for public comment, as such procedures would be unnecessary and contrary to the public interest. This final rule provides another means for patent applicants and owners, practitioners, and other parties who sign patent-related correspondence to provide a signature. It merely involves rules of agency procedure or practice within the meaning of 5 U.S.C. 553(b)(A) and is a non-substantive change to the regulations. Accordingly, this final rule is adopted without prior notice and opportunity for public comment. Furthermore, the Office finds good cause to waive the 30-day delay in effectiveness period, as provided by 5 U.S.C. 553(d)(3), because this final rule would promote harmonization of signature requirements to reduce confusion and increase convenience for impacted parties as set forth here.

B. 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. 605(b).

C. 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), as amended by E.O. 14094 (April 6, 2023).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (January 18, 2011). Specifically, and as discussed above, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule 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) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online 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.

E. Executive Order 13132 (Federalism): This rulemaking pertains strictly to federal agency procedures and does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a Tribal Summary Impact Statement is not required under Executive Order 13175 (November 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (April 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not a ''major rule'' as defined in 5 U.S.C. 804(2).

L. 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 (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 (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.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking does not involve any new information collection requirements, or impact any existing information collection requirements, that 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.*).

Notwithstanding any other provision of 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 Paperwork Reduction Act unless that collection of information has a valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, the USPTO amends 37 CFR part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Amend § 1.4 by:
■ a. Revising paragraph (d)(1) introductory text;
■ b. Redesignating paragraphs (d)(4) and (5) as paragraphs (d)(5) and (6);
■ c. Adding new paragraph (d)(4);
■ d. Revising newly redesignated paragraph (d)(5)(ii); and
■ e. Removing the parenthetical authority citation at the end of the section.

The revisions and addition read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d)(1) *Handwritten signature.* A design patent practitioner must indicate their design patent practitioner status by placing the word ''design'' (in any format) adjacent to their handwritten signature. Each piece of correspondence, except as provided in paragraphs (d)(2) through (5) and (f) of this section, filed in an application, patent file, or other proceeding in the Office that requires a person's signature, must:

* * * * *

(4) *Additional electronic signatures.* Correspondence being filed in the USPTO for a patent application, patent, or other patent proceeding at the USPTO which requires a signature may be signed using an electronic signature that is personally entered by the person named as the signer and of a form specified by the Director.

(i) A patent practitioner (§ 1.32(a)(1)), signing pursuant to § 1.33(b)(1) or (2), must supply their registration number either as part of the electronic signature or immediately below or adjacent to the electronic signature. A design patent practitioner must additionally indicate their design patent practitioner status by placing the word ''design'' (in any format) adjacent to the electronic signature.

(ii) The signer's name must be:

(A) Presented in printed or typed form preferably immediately below or adjacent to the electronic signature; and

(B) Reasonably specific enough so that the identity of the signer can be readily recognized.

(5) * * *

(ii) *Certification as to the signature.* The person inserting a signature under paragraph (d)(2), (3), or (4) of this section in a document submitted to the Office certifies that the inserted signature appearing in the document is the person's own signature. A person submitting a document signed by another under paragraph (d)(2), (3), or (4) is obligated to have a reasonable basis to believe that the person whose signature is present on the document was actually inserted by that person, and should retain evidence of authenticity of the signature. Violations of the certification as to the signature of another or a person's own signature as set forth in this paragraph (d)(5)(ii) may result in the imposition of sanctions under § 11.18(c) and (d) of this chapter.

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Katherine K. Vidal,

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

[FR Doc. 2024–06126 Filed 3–21–24; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–3, and 51–5

RIN 3037–AA14

Supporting Competition in the AbilityOne Program

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), operating as the U.S. AbilityOne Commission (Commission), is publishing a final rule that clarifies the Commission's authority to consider different pricing methodologies to establish the initial Fair Market Price (FMP) for Procurement List (PL) additions and changes to the FMP. The final rule also permits the central nonprofit agency (CNA) to distribute certain high-dollar services orders on a competitive basis to the authorized nonprofit agency (NPA) after considering price and non-price factors. Lastly, the final rule further clarifies the Commission's authority to authorize and deauthorize NPAs as mandatory sources and require all NPAs to provide the right of first refusal of employment to the current employees of an incumbent NPA who are blind or have other significant disabilities for positions for which they are qualified.

DATES: This final rule is effective April 22, 2024.

FOR FURTHER INFORMATION CONTACT: Cassandra Assefa, Regulatory and Policy Attorney, Office of General Counsel, U.S. AbilityOne Commission, 355 E Street SW, Suite 325, Washington, DC 20024; telephone: (202) 430–9886; email: *cassefa@abilityone.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Javits-Wagner-O'Day (JWOD) Act and the Commission

The JWOD Act, 41 U.S.C. 8501, *et seq.,* leverages the purchasing power of the Federal Government to create employment opportunities through the AbilityOne Program for individuals who are blind or have significant disabilities. The Program is administered by the 15-member, presidentially appointed Commission that, as an independent Federal agency, maintains a PL of products and services that Federal agencies must purchase from participating NPAs who employ individuals who are blind or have significant disabilities. *See* 41 U.S.C.8503 and 8504. CNAs are responsible for distributing orders to Commission-approved NPAs to provide products and services to Federal agencies. *See* 41 CFR parts 51–2.4(a)(3) & 51–3.4. NPAs must meet initial qualification requirements and maintain those qualifications throughout their participation in the AbilityOne Program. *See* 41 CFR parts 51–4.2 and 51–4.3.

The Commission has five roles stated in the JWOD Act. First, the Commission decides on the addition or removal of products and services on the PL. *See* 41 U.S.C. 8503(a). Second, the Commission sets the FMP that the Federal Government will pay for the products or services. *See* 41 U.S.C. 8503(b). Third, the Commission designates nonprofit agencies to serve as CNAs, who are responsible for ''facilitating the distribution of orders'' for products or services among participating NPAs. *See* 41 U.S.C. 8503(c). Fourth, the Commission promulgates regulations ''on other matters as necessary'' to carry out the JWOD Act. *See* 41 U.S.C. 8503(d)(1). Fifth, the Commission engages in a ''continuing study and evaluation of its activities'' to ensure effective administration of the JWOD Act. *See* 41 U.S.C. 8503(e).

At present, pursuant to the JWOD Act, the Commission has designated National Industries for the Blind (NIB) and SourceAmerica as the CNAs responsible for distributing orders to participating NPAs. *See* 41 CFR 51–1.3 (definition of CNA); *see* also 41 CFR 51–3.2 (describing duties of a CNA). The CNAs provide information to the Commission as needed and otherwise assist the Commission in implementing the Commission's regulations. NPAs associated with NIB primarily employ individuals who are blind or visually impaired; NPAs associated with SourceAmerica primarily employ individuals with other significant disabilities, including intellectual and developmental disabilities (IDD). As of September 30, 2023, NIB represents 58 NPAs participating in the AbilityOne Program, and SourceAmerica represents 355 NPAs.

In making its determination on whether to add a product or service to the PL, the Commission assesses four suitability criteria. *See* 41 CFR 51–2.4. First, the Commission considers whether there is the potential for the NPA to employ enough individuals who are blind or have significant disabilities as needed to carry out the contract.