

# **AIPLA**

---

**AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION**  
241 18<sup>th</sup> Street, South, Suite 700, Arlington, VA 22202 Phone: 703.415.0780 – Fax: 703.415.0786 – [www.aipla.org](http://www.aipla.org)

September 28, 2007

The Honorable Jon Dudas  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Comments on Proposed Rule: “Rules of Practice Before the Board  
of Patent Appeals and Interferences in Ex Parte Appeals”  
72 Federal Register 41472 (July 30, 2007)

---

Dear Under Secretary Dudas:

The American Intellectual Property Law Association (AIPLA) appreciates the opportunity to offer comments regarding the rules proposed by the U.S. Patent and Trademark Office (PTO) regarding “Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals.”

AIPLA is a national bar association whose more than 16,000 members are primarily lawyers in private and corporate practice, in government service, and in the academic community. AIPLA represents a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property.

## **Introduction**

The proposed changes to rules governing practice before the Board of Patent Appeals and Interferences (“Board”) in ex parte appeals are intended to make the decision-making process more efficient and permit the Board to handle an increasing number of ex parte appeals in a timely manner. We commend the PTO and the Board for its efforts over the past decade in reducing the inventory of undecided appeals that had exceeded 9,000 just ten years ago.

We note that this reduction was accomplished without the need to impose any additional burdens on applicants or increases in the costs of filing and presenting an appeal to the Board. We support the efforts of the PTO to adopt practices and procedures that will improve the effectiveness and efficiency of the appeal process, particularly where the benefits of those practices and procedures outweigh the burdens and costs associated with them.

However, some of the proposals in the present Notice, discussed in more detail below, will have the effect of needlessly increasing the burdens and costs to applicants in pursuing an appeal rather than bringing forth information that is appropriate to facilitate

an effective and efficient resolution of issues presented to the Board. In this regard, the Notice states that “The proposed rules which change the format and content of briefs may require the appellant to spend additional time in preparing a compliant brief.” It adds that the proposed changes “do not significantly increase the cost of filing or presenting an appeal before the Board” (information associated with the Regulatory Flexibility Act at 72 Fed. Reg. 41484).

We do not agree with the latter statement. Although it may be accurate for some practitioners who specialize in ex parte appeals before the Board, the average appellant is not a specialist, and the proposed new requirements will definitely add significant costs to the preparation of an appeal brief in the overwhelming majority of cases.

Moreover, the increased costs associated with the filing of an appeal brief under the proposed rules is particularly inappropriate when one considers the number of applications in which appeal briefs are filed that never reach the Board for decision. According to a report by Deputy Commissioner John Love delivered to the AIPLA Patent Relations Committee on May 10, 2007, in at least 45% of the 9000 cases in which an appeal conference was held after an appeal brief was filed since June 2005, the PTO decided not to proceed to the Board.

We commend the PTO for its initiative in introducing a pre-appeal conference program. Again according to the statistics provided by Deputy Commissioner Love at the AIPLA May 2007 meeting, we understand that this has been effective in avoiding the filing of an appeal brief in more than 50% of the cases in which such a conference is requested. While these programs and practices demonstrate that they are effective in screening out needless appeals to the Board, they also suggest that the PTO is not taking appropriate and effective action early enough in the examination process to avoid appeals in the first place.

We recognize that the Board has neither jurisdiction nor responsibility for the work performed by patent examiners. However, until the PTO improves the work of examiners so that needless appeals to the Board are eliminated or substantially reduced, it is inappropriate to increase the burdens and costs to applicants of filing an appeal brief in an attempt to control the increasing number of ex parte appeals, particularly when more than half of the appeals never reach the Board.

## **Comments on Specific Rules**

### **Section 41.3—Petitions**

The proposed rule would delegate to the Chief Administrative Patent Judge the authority to decide certain petitions not only on matters pending before the Board, but those authorized by this part. The latter category would include petitions that seek an extension of time to file certain papers if an appeal brief is filed in an ex parte appeal, and to enlarge the page limit of an appeal brief, reply brief, supplemental reply brief or request for rehearing. As we understand the provisions of § 41.35, the jurisdiction of the Board over the appeal begins when a docket notice is entered by the Board after the application is forwarded to the Board after all briefing is completed. Thus, the proposed rule would give the Chief Administrative Patent Judge the authority to decide certain petitions on matters that are not under the jurisdiction of the Board - e.g., a petition to expand the

length of an appeal brief in an application pending before an examiner in the patent examining group.

While having such petitions decided by the Chief APJ rather than one of 24 group directors has some attraction, we wonder whether having divided jurisdiction of matters pertaining to an appeal might lead to unforeseen problems. Not only may this divided jurisdiction cause confusion among practitioners, but experience has shown that petitions properly addressed to the deciding official often are not forwarded within the PTO to the proper official in a timely manner. Moreover, if the goal is to facilitate the work of the Board, it would seem that delegating the Board more responsibility for petitions on matters that are not yet under its jurisdiction would have the opposite effect.

Finally, with respect to delegating to the Board the question of whether an extension of time to file certain papers after an appeal brief is filed, it would appear that the Board might not be the most appropriate place to resolve such a request. At least one factor that should be considered in evaluating a petition for an extension of time is the availability of examining resources to act upon whatever paper is the subject of the request for extension of time. For example, should an extension of time for two weeks be denied when the examiner who will act on the paper when it is filed is going to be on vacation for the next month? Such information is not likely to be taken into consideration by the Board, but someone in the examining group could take this fact into consideration. Accordingly, on balance, we consider it more appropriate to retain the authority to decide petitions under the authority of the patent examining group until jurisdiction of the appeal is transferred to the Board.

### **Section 41.30—Definitions**

This section proposes to define the “record on appeal” as consisting of certain parts of the application file wrapper. As we understand this proposed definition, it appears to be too broad and inclusive of documents that would not be necessary for consideration by the Board or any reviewing authority. Specifically, the record on appeal is proposed to include U.S. patent documents, including published applications, if cited by the examiner or appellant. This would appear to include any document cited by either the examiner or applicant for any reason, including an IDS, even when that document has not been relied upon either by the examiner in any rejection or by the appellant in making an argument for patentability or describing the content of the prior art.

A better definition would include only those documents that would be identified in the proposed evidence section, and be limited to the evidence relied upon by the examiner to support a rejection or by the appellant in support of arguments for patentability. In the absence of any justification for including all U.S. patents or U.S. published applications in the record on appeal, it is respectfully suggested that the definition of the record on appeal be modified to focus on those documents that have been relied upon by either the examiner or the appellant in addressing the rejections on appeal.

### **Section 41.33—Amendments and Evidence after Appeal**

Proposed §41.33(b) would give the examiner discretion to enter an amendment filed with or after an appeal brief is filed under only two limited circumstances. This would,

on its face, preclude the entry of an amendment that is suggested or approved by the examiner.

Clearly the examiner should retain discretion, at the time of filing or after an appeal brief is filed, whether to enter any amendments. Considering the number of appeals that are derailed by an appeals conference, or the cases in which a simple error overlooked by both applicants and the examiner during the examination process could be cured by a simple amendment, we submit that it would be unwise to tie the hands of the PTO by precluding amendments that could eliminate the necessity for appeal or any further examination, or put the application in better form for appeal by allowing amendments that are authorized by the examiner. Accordingly, it is suggested that paragraph (b) be amended to include a third possibility that amendments suggested or approved by the examiner may be entered at the discretion of the examiner.

Proposed § 41.33(d) is amended to provide that evidence filed after a notice of appeal is filed and before an appeal brief is filed may be admitted if the examiner determines that the evidence overcomes some or all rejections under appeal and appellant also shows good cause why the evidence was not earlier presented.

If we understand this proposal correctly, we regard it as positive since it no longer requires the evidence to overcome all rejections under appeal as under the current regulation. We are not certain of our understanding, however, given the commentary on this proposed change (72 Fed. Reg. at 41473). We find the commentary confusing in that it describes this proposal as requiring that the evidence overcome all rejections. We urge the PTO to adopt the language of the proposed § 41.33(d), rather than the commentary. We would appreciate some clarification.

Proposed § 41.33(e) also adopts the very restrictive policy that any evidence that does not meet the standard of § 41.33(d) would not be admitted except in very limited circumstances.

Again, we question the wisdom of precluding an examiner, at his or her discretion, from entering evidence that would clarify or remove issues that will be placed before the Board for review. The declared purpose of the proposed rules is making the decision-making process more efficient, a purpose not served by precluding evidence that may facilitate this desirable goal.

## **Section 41.37—Appeal Brief**

**(a) Requirement for appeal brief.** This proposed section provides that upon the failure to file an appeal brief, “the proceedings on the appeal are terminated without further action on the part of the Office.” In the commentary related to this proposal (72 Fed. Reg. at 41474), it is stated that “Upon a failure to timely file an appeal brief, proceedings on the appeal process would be considered terminated.” Further, it is stated that the language “proceedings are considered terminated” would provide notice that when no appeal brief is filed, the time for filing a continuing application under 35 U.S.C. § 120 would be before the time expires for filing an appeal brief.

We are concerned that this language is confusing and is unclear as to how current practice would be affected by this proposed change. Under current practice, as

described in MPEP 1205.01, the failure to file an appeal brief within the permissible time will result in dismissal of the appeal. If any claims stand allowed, the application does not become abandoned by a dismissal, but is returned to the examiner for action on the allowed claims. Under this practice, any continuing application would not have to be filed during the time period in which the appeal brief was due. If, on the other hand, there are no allowed claims, the application would be regarded as abandoned as of the date the appeal brief was due. It is not clear whether the proposed language is intended to change current practice, or how it would be altered with the proposed language.

In addition, use of the language “proceedings are considered terminated” may result in the application not being regarded as abandoned where the appeal brief was not timely filed and there are no allowed claims. If the application is not regarded as abandoned, it may not be subject to revival based on unavoidable or unintentional delay in filing the appeal brief in appropriate circumstances. As noted in MPEP 711.02(c), the phrase “termination of proceedings” is not viewed as an equivalent of abandonment.

Accordingly, we request that the PTO clarify the practice that is intended to be adopted by the change proposed in § 41.37(a), and to retain the ability of an applicant to reinstate an appeal where the failure to file a timely appeal brief was due to unavoidable or unintentional delay.

**(e) Content of appeal brief.** The proposed rules expand the requirements for an appeal brief in many respects.

Some of these new requirements, such as a jurisdictional statement, table of contents and table of authorities, do not appear to address any specific problem being experienced by the Board, and would simply add additional formal requirements that would increase the burden and costs of preparing an appeal brief, and lead to even more disputes over compliance of an appeal brief with the many formalities already required. Further, we question the need for a table of contents since there is a page limit and each section of the brief must be presented under a separate heading. Although these added requirements might conceivably assist the Board in unique circumstances, the addition of these requirements for all appeal briefs is a situation where the costs far outweigh the potential benefits.

Accordingly, to the extent these items are retained, we suggest that they be made optional with appellant.

**(n) Statement of facts.** The proposed section on statement of facts is required to set out in an objective and non-argumentative manner the material facts relevant to the rejections on appeal. Each stated fact must be supported by a reference to a specific page number and, where applicable, a specific line or drawing numeral in the record on appeal. The PTO offers additional guidance as to when a statement of fact would be proper, and when it would not be proper as where a compound statement of fact is used.

These requirements exalt form over substance and will provide further opportunities for disputes over whether the appeal brief meets the formal requirements intended to be imposed by the proposed rules. The PTO states that the proposed statement of facts is necessary because an appellant should not expect the examiner or the Board to search the record to determine whether a statement of fact is supported by

the evidence. The cases cited by the PTO in support of this proposition clearly show that courts have no difficulty in dealing with cases where an appeal brief does not support the position advocated by the appellant.

It is respectfully submitted that the Board also should not have any difficulty in those circumstances. To impose additional requirements as to the form or style in which an appellant presents the material facts relevant to rejections on appeal should be left to the discretion of the appellant. While practitioners appreciate the guidance relative to the manner in which at least some members of the Board would prefer to see material facts presented in an appeal brief, this guidance should remain in a form of guidelines rather than a mandate for the formal content of an appeal brief.

**(o) Argument.** This proposed section is particularly objectionable from several standpoints. First, the proposal states that “each rejection shall be separately argued under a separate heading.” Does this mean that, for example, if an examiner rejected a claim as being unpatentable over A or B, each in view of C or D, the Board would expect the appeal brief to address, under a separate heading, each of the rejections based on A plus C, A plus D, B plus C, and B plus D?

In this regard, were such rejections made, separately responding to each would unnecessarily lengthen the appeal brief and have an adverse effect on the efficiency of the Board. If rejections of this nature were made (in apparent violation of the policies set forth in MPEP 706.02(I) and 904.03 requiring that rejections be based on the best prior art), would it be the position of the PTO that appropriate relief would be available via petition?

Second, this proposed section indicates that the argument shall explain why the examiner is believed to have erred as to each rejection to be reviewed, and that appellant must identify where the argument was made in the first instance to the examiner or state that the argument has not previously been made to the examiner.

It is respectfully submitted that the latter requirements of identifying whether and where an argument has been made are unnecessary, and needlessly add to the burdens and costs of preparing an appeal brief. The argument is either persuasive or it's not. It is not understood why this information would be relevant to either a patent examiner in preparing an examiner's answer or the Board in deciding the issues on appeal. Rather, it simply introduces another formality requirement that bears no connection to the issue on appeal or the decision-making process.

In addition to the highly questionable necessity or importance of this information in the decision-making process, it may be very difficult in some instances to determine whether or not a specific argument had been made in the past. For example, how different would an argument have to be in order to qualify as an argument not previously made to the examiner? We see very little value in this information to the decision-making process of the Board, and also see it as a potentially rich source of irrelevant disputes about whether an argument had been made previously. Accordingly, we respectfully request that the requirements to identify whether and where an argument was made in the first instance or state that the argument was not previously made not be adopted in any final rule.

In paragraph 2 of this section, it is noted that only arguments presented in the argument section of the appeal brief and that address claims set out in the claim support section will be considered. It is further stated that “appellant waives all other arguments.”

It is not clear what was intended by this waiver statement. In the current rule, §41.37(c)(1)(vii), it is stated that any arguments or authorities not included in a brief or a reply brief will be refused consideration by the Board, unless good cause is shown. It is not understood why this current statement of policy and practice is not sufficient and appropriate under the proposed rules. It would appear that the waiver statement suggests that an appellant may waive forever any argument that is not addressed, regardless of whether a similar issue is raised in a different context, in a different appeal, or even in a different application. Further, the PTO has cited no authority for the presumed correctness of any statement made by the examiner. It is respectfully submitted that the current practice and policy that the Board will not consider any argument not included in the briefs, unless good cause is shown, adequately serves the interests of both appellant and the PTO. Accordingly, we request the PTO to retain its current policy and practice and not adopt any reference to a waiver.

In paragraph 3 of this proposed section, requirements are identified for responding to a point made in an examiner’s rejection. Specifically, the appeal brief is required to “specifically identify the point made by the examiner” and indicate where appellant previously responded to the point or state that appellant has not previously responded to the point.

First, it is not entirely clear what is intended by the term “point.” Second, for the reasons set forth above, the requirement to identify whether and where appellant previously responded to a point made by the examiner is unnecessary, and serves no useful purpose for either the examiner or the Board in resolving the issues on appeal. The question before both the examiner and the Board is whether, in the first instance, the examiner has established a *prima facie* case of unpatentability when considering the evidence and arguments made by the examiner, and if so, has that case been rebutted when considering that evidence and arguments in conjunction with the evidence and arguments made by the appellant. Information related to whether and where an argument has been previously made is not relevant to the consideration of those issues. Accordingly, it is respectfully requested that this requirement for identification of whether and where an argument has previously been made not be included in any final rule.

In paragraphs 4-7 of this section, the appeal brief is required to not only specify the errors in a rejection made by the examiner, but also identify how the rejected claims comply with the statutory requirements that were the basis for the examiner’s rejections.

It is respectfully submitted that this latter requirement is both improper and inappropriate, and should not be necessary to supply in an appeal brief. As recognized by the Federal Circuit, “[i]f the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent.” *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1990). Accordingly, it is appropriate for the argument in the appeal brief to specify why the examiner has failed to establish a *prima facie* case of unpatentability to support any rejection, and if those arguments are persuasive, appellant should not have to separately

justify compliance with the statutory requirements to be entitled to a patent. Further, it is not clear what would be required for such a justification. Should it be limited to the evidentiary record on appeal? Accordingly, it is requested that the proposed requirements in paragraphs 4-7 to provide arguments that justify how the rejected claims comply with the statutory requirements not be incorporated into any final rule.

**(p) Claims section.** This section would require a claims section of the appendix that would consist of an accurate copy of all claims pending in the application or reexamination proceeding on appeal.

The change introduced by this proposal would expand the current claims appendix that requires a copy of only the claims involved in the appeal to also include claims that are withdrawn, objected to, and allowed. It is not clear why this proposed expansion is being made, particularly if the focus of the proposed rulemaking is to make the decision-making process more efficient. While we are not questioning or challenging the authority of the Board under § 41.50(b) to make a rejection against any pending claim, it seems both unnecessary and unwise to change the focus of the appeal brief away from the Board's statutory mandate to review adverse decisions of examiners upon applications for patents. 35 U.S.C. § 6(b). Accordingly, we suggest that the claims section of the appendix be restricted to claims that are subject to any rejection before the Board for resolution.

**(q) Claim support section.** This new requirement for a claim support section of the appendix calls for an annotated copy of each claim argued separately, indicating after each limitation, the page and line where the limitation is described in the specification as filed.

While the requirements of this section may be largely duplicative of the relevant information presented in the argument for patentability, we also recognize that it may serve a useful purpose in cases where claim construction is an issue. If adopted in the final rule, we suggest that the claim support section include support in both the specification and drawings, and that a separate drawing analysis section as called for in § 41.37(r) not be required. The support for a claim limitation is better understood in the context of the application as a whole, rather than as separate sections directed to the specification or drawing.

**(t) Evidence section.** This extensive new proposal would add significantly to the cost and complexity of preparing an appeal brief. Unlike the current evidence appendix according to § 41.37(c)(1)(ix) that is limited to declarations or any other evidence relied upon by appellant in the appeal, the proposed evidence section would be substantially expanded to include Office actions, responses by applicant, evidence relied upon by the examiner in support of a rejection on appeal, and a table of contents, most of which are already available and accessible to the Board by way of the image file wrapper (IFW) of the PTO.

While we understand the need for the Board to have access to evidence and arguments relied upon by either the examiner or the appellant in the appeal, the requirement for Office actions and arguments made during the course of examination and prosecution appear unnecessary, and would simply add to the burden and costs of preparing appeal briefs. Accordingly, extensive expansion of the evidence appendix

should not be adopted, but, if any form of it is, we request that it be limited to only the evidence relied upon by either the examiner or the appellant that is relevant to the issues on appeal.

**(v) Appeal brief format requirements.** The new format requirements proposed in this section create several new and burdensome requirements different from those normally associated with submission of papers to the PTO. For example, this section calls for: the lines on each page of the appeal brief, and where practical the appendix, to be consecutively numbered; double spacing except in certain specified instances; margins that are inconsistent with the provisions of § 1.52(a)(1)(ii); a font size not required for most other PTO papers; and, a limit on the length of an appeal brief.

These new requirements create new burdens and costs for appellants, and will certainly provide new opportunities to object to briefs because of some informality that has nothing to do with the merits of the appeal or the ease with which the examiner and the Board can address the issues. While the information provided in the Notice of Proposed Rulemaking indicates that some of these features have been used for some time in interference cases, there is no indication how each one of these exceptional requirements is expected to facilitate the efficiency of either the examiner or the Board, or do anything other than cause unnecessary costs and delay to appellants. Although no information is provided about the average length of an appeal brief, we can well imagine there are instances where briefs may be excessively long. However, if the PTO is going to adopt a page limit, it is encouraged to adopt a limit that is both practical and that will reduce the number of petitions to extend the length to a minimum. It also is suggested that any adopted rule allow for single-spacing of indented block quotations.

In preparing an appeal brief, it is often desirable to include drawings or comparison of figures representing the invention with prior art figures. Appellants should be encouraged to present arguments for patentability in a manner that is both clear and concise. It is often difficult to judge the length of an appeal brief in sufficient time to determine whether a petition is necessary or desirable. Accordingly, if the PTO is going to set a page limit, it is encouraged to adopt a limit that is normally not exceeded in most appeals to provide appellants with the maximum flexibility in presenting arguments on appeal.

### **Section 41.39—Examiner’s Answer**

This proposed section indicates simply that if the examiner determines that the appeal should go forward, an examiner’s answer responding to the appeal brief will be prepared. The supplementary information indicates that the specific requirements of what would be required in an examiner’s answer would appear in the Manual of Patent Examining Procedure.

The PTO should adopt guidelines for the preparation of an examiner’s answer that are as rigorous as those adopted for the appeal brief. It is also requested that examiner’s answers be reviewed before they are mailed to ensure compliance with the guidelines adopted by the PTO. Indeed, many practitioners believe that a significant number of appeals would be unnecessary if examiners were required to apply greater rigor in writing Office actions.

## **Section 41.41—Reply Brief**

Some of the proposals made in this section are subject to the same comments and suggestions made above with respect to appeal briefs. Specifically, we incorporate by reference the comments related to the need to file a table of contents, table of authorities, statement of timeliness, statement of facts, and the supplemental appendix. In addition, the commentary suggests that the provisions of Rule 136(a) will no longer apply to extensions of time to file a reply brief. It is our understanding from § 41.41(c), that such a policy and practice is already in place.

Under paragraph (g) of this section, the reply brief is expected to be limited to responding to points made in the examiner's answer, and arguments generally restating the case will not be permitted in a reply brief.

It is respectfully submitted that vague statements about what will and will not be permitted in the reply brief only create uncertainty and generate issues about what is or is not an appropriate content for the reply brief. It would seem that the imposition of a reasonable page limit for a reply brief would appropriately limit the content of most reply briefs to responding to points made in the examiner's answer. The PTO is urged not to create another source of administrative delay in resolving issues on appeal other than the general guidance provided by the first sentence of this paragraph.

The guidance provided in the commentary state that an argument that could have been made in the appeal brief cannot be made in the reply brief seems both unreasonable and unnecessary. An appellant should be able to raise a new argument that addresses an argument raised for the first time in the Examiner's Answer or even before, particularly where the importance of the argument was not appreciated until considering the Answer. The proposed limitation raises unnecessary procedural roadblocks to a full and fair consideration of the issues on appeal.

## **Section 41.44—Supplemental Reply Brief**

This new section addresses the requirements for a supplemental reply brief that may be filed in response to a supplemental examiner's answer.

The requirements for the content of a supplemental reply brief are subject to the same comments and suggestions that are made above with respect to the appeal brief and reply brief. Accordingly, we request that they be considered also in the context of the requirements for a supplemental reply brief.

## **Section 41.52—Rehearing**

This section proposes to address the content of a request for rehearing. As noted above in the context of our comments and suggestions for the appeal brief and reply brief, we have the same concerns relative to the requirements for the content of a request for rehearing.

In addition, we note the limited provisions that provide for a new argument in a request for rehearing. Specifically, a new argument cannot be made unless it is a response to a new rejection or to call the Board's attention to a recent new development.

It is respectfully submitted that this may be an inappropriate limitation where a statement by the Board to support its decision raises a question that had not been raised by the examiner. Appellant should not be precluded from submitting a new argument to address a statement or rationale adopted by the Board that had not been addressed by the examiner.

### **Section 41.56—Sanctions**

This proposed new section would provide that sanctions could be imposed against an appellant for misconduct.

The need for this authority is not apparent, nor has the PTO offered any justification for this authority in conducting the business before the Board. In addition, the alleged acts of misconduct would include “a misleading or frivolous request for relief or argument” and “[e]ngaging in dilatory tactics.” As stated, these “acts” are vague and will be subject to disparate application by various panels by the Board. The PTO has cited no specific mischief or other practice, or any other need in conducting its business that would justify the creation of this authority, nor has it explained why the Office of Enrollment and Discipline, in exercising its authority under 37 C.F.R. Part 10, could not adequately address any perceived problem that may occur. Accordingly, we find this proposal highly objectionable and unnecessary, and strongly encourage the PTO to withdraw it in any final rule.

We appreciate the opportunity to provide comments on the proposed rule and are available to assist the PTO in further developing patent practice and procedures.

Sincerely,



Michael K. Kirk  
Executive Director  
AIPLA