law judge and will avoid the necessity of filing contingent appeal simply to preserve rights in the event the other party files an appeal.

One comment to the rule change proposed on July 21, 1993, was received suggesting substantive changes. This second notice adopts that suggested change.

**DATES:** Written comments must be received on or before February 22, 1995 to ensure consideration. An oral hearing will not be conducted.

ADDRESSES: Address written comments to Commissioner of Patents and Trademarks, Box OED, Washington, DC 20231, marked to the attention of Harry I. Moatz. Written comments will be available for public inspection in Suite 518, on the 5th floor of Crystal Park I, located at 2011 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Harry I. Moatz by telephone at (703) 308–5273 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box OED, Washington, D.C. 20231.

**SUPPLEMENTARY INFORMATION:** A Notice of Proposed Rulemaking was published in the **Federal Register** (58 FR 38994) on July 21, 1993, and in the Official Gazette of the PTO (1153 Off. Gaz. 32) on August 10, 1993. Comments were due August 20, 1993. One comment was received. The comment suggested a substantive change to the original proposed rulemaking. The PTO has adopted the change and is now publishing a second notice requesting comments on the amended notice.

Pursuant to 37 CFR 10.132 *et seq.*, the Director of the Office of Enrollment and Discipline within the PTO may initiate a disciplinary proceeding against a practitioner. If the proceeding is contested by the practitioner and the Director continues to prosecute, an ALJ for the Department of Commerce enters an initial decision which includes findings of fact, conclusions of law and an order. 37 CFR § 10.154.

Either party to the proceeding may appeal from the initial decision of the ALJ to the Commissioner within thirty (30) days of the date of the decision. 37 CFR § 10.155(a). However, prior to this proposed rule change, § 101.155(a) did not provide for the filing of a crossappeal.

With regard to interference proceedings, 37 CFR § 1.304(a) addresses the filing of cross-appeals by stating in pertinent part that:

the time for filing a cross-appeal [to the Court of Appeals for the Federal Circuit] or crossaction [in a district court] expires (1) 14 days after service of the notice of appeal or the summons and complaint or (2) two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

The proposed rule change is similar to the cross-appeal authorized in interference proceedings.

# **Response to and Analysis of Comment**

The single comment suggested that the second sentence of the proposed §10.155(a) be modified by adding pursuant to §10.142" after "(1) 14 days after service of the appeal" to make clear that the period for filing a crossappeal or reply brief runs from service pursuant to § 10.142. The suggestion is being adopted. The comment further suggested that the fifth sentence in the rule proposed on July 21, 1993, be separated into three new sentences. The first and second new sentences make clear that "the other party to an appeal or cross-appeal may file a reply brief," and that a "reply brief by the respondent" is to be "served in duplicate with the Director." The third new sentence provides a date certain for filing any reply brief by avoiding uncertainty as to when "receipt" of an appeal, cross-appeal or copy thereof occurs, and by relying on the date of "service pursuant to §10.142" of an appeal, cross-appeal, or a copy thereof. The suggestions have been adopted in the proposed rules.

#### **Other Considerations**

This rule change conforms with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601*et set.*), Executive Orders 12612 and 12866, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* 

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of the rule change is to provide a time period to file crossappeal in a PTO disciplinary proceeding. See the original notice of proposed rulemaking published in the **Federal Register**, 58 FR at 38996.

The PTO has determined that the rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612. The Office of Management has determined that the rule change is not significant for the purposes of Executive Order 12866.

The rule change will not impose a burden under the Paperwork Reduction

Act of 1980, 44 U.S.C. 3501 *et seq.*, since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

## List of Subjects in 37 CFR Part 10

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

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. 6, the PTO proposes to amend 37 CFR part 10 as follows, wherein deletions are indicated by brackets ([]) and additions by arrows (><):

## PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR part 10 would continue to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

2. Section 10.155 is amended by revising paragraph (a) to read as follows:

#### §10.155 Appeal to the Commissioner.

(a) Within thirty (30) days from the date of the initial decision of the administrative law judge under § 10.154, either party may appeal to the Commissioner. >If an appeal is taken, the time for filing a cross-appeal expires (1) 14 days after the date of service of the appeal pursuant to §10.142 or (2) 30 days after the date of the initial decision of the administrative law judge, whichever is later.< An appeal >or cross appeal< by the respondent will be filed and served with the Director in duplicate and will include exceptions to the decisions of the administrative law judge and supporting reasons for those exceptions. If the Director files the appeal >or cross-appeal<, the Director shall serve >on the other party< a copy of the appeal >or cross-appeal <. >The other party to an appeal or cross-appeal may file a reply brief. A respondent's reply brief shall be filed and served in duplicate with the Director. The time for filing any reply brief expires< [Within] thirty (30) days after >the date of< [receipt] >service pursuant to § 10.142< of an appeal >, cross-appeal< or copy thereof[, the other party may file a reply brief, in duplicate with the Director]. If the Director files [the] >a< reply brief, the Director shall serve >on the other party< a copy of the reply brief. Upon the filing of an appeal >, cross appeal, if any,< and [a] reply brief >s<, if any, the Director shall transmit the entire record to the Commissioner.

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