

with MARAD and USCG on the construction and operation of the Northeast Gateway LNG facility. On November 30, 2007, NMFS NER issued a revised biological opinion, reflecting the revised construction time period and including a revised ITS. This revised biological opinion concluded that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales.

#### NEPA

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Northeast Gateway Port and Pipeline Lateral. A notice of availability was published by MARAD on October 26, 2006 (71 FR 62657). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods and analysis of potential impacts on marine mammal.

NMFS was a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the Draft and Final EISs. NMFS has reviewed the Final EIS and has adopted it. Therefore, the preparation of another EIS or EA is not warranted.

#### Preliminary Determinations

NMFS has preliminarily determined that the impact of operations of the Northeast Gateway LNG Port facility may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals that may be in close proximity to the Northeast Gateway LNG facility during its operations and maintenance. These activities are expected to result in some local short term displacement and will have no more than a negligible impact on the affected species or stocks of marine mammals.

This preliminary determination is supported by proposed mitigation, monitoring, and reporting measures described in this document on this action.

As a result of the described proposed mitigation and monitoring measures, no take by injury or death would be requested, anticipated or authorized, and the potential for temporary or permanent hearing impairment is very unlikely due to the relatively low noise levels (and consequently small zone of impact).

While the number of marine mammals that may be harassed will

depend on the distribution and abundance of marine mammals in the vicinity of the LNG Port facility, the estimated numbers of marine mammals to be harassed is small relative to the affected species or stock sizes. Please see Estimate of Take by Harassment section above for the calculation of these take numbers.

#### Proposed Authorization

NMFS proposes to issue an IHA to Northeast Gateway and Algonquin for conducting LNG Port facility operations and maintenance in Massachusetts Bay, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

#### Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA and Northeast Gateway and Algonquin's application for incidental take regulations (see **ADDRESSES**). NMFS requests interested persons to submit comments, information, and suggestions concerning both the request and the structure and content of future regulations to allow this taking. NMFS will consider this information in developing proposed regulations to govern the taking.

Dated: July 13, 2010.

**Helen M. Golde,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No.: PTO-P-2010-0052]

#### Treatment of Letters Stating That the USPTO's Patent Term Adjustment Determination Is Greater Than What the Applicant or Patentee Believes Is Appropriate

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is clarifying its treatment of letters submitted by applicants and patentees stating that the USPTO's patent term adjustment determination indicated on a notice of allowance, issue notification, or patent, is greater than what the applicant or patentee believes is appropriate. The USPTO will place these letters in the file of the application or patent without further review. The USPTO will no

longer review these letters or issue certificates of correction on the basis of a review of these letters. If the applicant or patentee wants the USPTO to reconsider its patent term adjustment determination, the applicant or patentee must use the procedures set forth in 37 CFR 1.705 for requesting reconsideration of a patent term adjustment determination. A patentee may also file a terminal disclaimer disclaiming any period considered in excess of the appropriate patent term adjustment. However, the USPTO does not require an applicant or patentee to file either a request for reconsideration under 37 CFR 1.705 or a terminal disclaimer when the patent term adjustment indicated on a notice of allowance, issue notification, or patent is greater than what the applicant or patentee believes is appropriate.

**DATES:** The clarification set forth in this notice applies to all patent term adjustment letters and requests for a certificate of correction filed at any time that are pending before the USPTO on or after July 20, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Nancy E. Johnson, Office of Petitions: By telephone at 571-272-3219; or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

#### SUPPLEMENTARY INFORMATION:

The Manual of Patent Examining Procedure (MPEP) was revised in 2004 to indicate that if a notice of allowance indicates a patent term adjustment that is longer than expected, the applicant may wait until the patent issues, and if the patent issues with a value that is incorrect, request a certificate of correction. See MPEP § 2733. The MPEP does not specify what action the USPTO will take in response to such a request for a certificate of correction. The USPTO is, in this notice, clarifying when the USPTO will change the patent term adjustment determination indicated on a patent via a certificate of correction under either 35 U.S.C. 254 or 255.

The USPTO, however, has determined that it is not appropriate to provide a patent term adjustment recalculation via a certificate of correction under 35 U.S.C. 254 or 255. A certificate of correction is permissible under 35 U.S.C. 254 only for a mistake in a patent that "is clearly disclosed by the records of the Office." See 35 U.S.C. 254. While the applicable patent term adjustment is ascertainable from the records of the USPTO, a revised patent term adjustment determination requires a complex calculation and is not "clearly disclosed" by the records of the USPTO.

In addition, a certificate of correction is permissible under 35 U.S.C. 255 only for "a mistake of a clerical or typographical nature, or of minor character." See 35 U.S.C. 255.

Thus, the USPTO has long maintained that a request for a certificate of correction under either 35 U.S.C. 254 or 255 is not an appropriate venue for seeking a change to the patent term adjustment indicated on a patent. See *Revision of Patent Term Extension and Patent Term Adjustment Provisions*, 69 FR 21704, 21707 (Apr. 22, 2004) (final rule) ("Petitions under [37 CFR] 1.182 or 1.183, or requests for a certificate of correction under either 35 U.S.C. 254 and [37 CFR] 1.323 or 35 U.S.C. 255 and [37 CFR] 1.324, are not substitute *fora* to obtain reconsideration of a patent term adjustment determination indicated in a notice of allowance if an applicant fails to submit a request for reconsideration within the time period specified in [37 CFR] 1.705(b), or to obtain reconsideration of a patent term adjustment determination indicated in a patent if a patentee fails to submit a request for reconsideration within the time period specified in [37 CFR] 1.705(d)"). The patent term adjustment provisions of 35 U.S.C. 154(b) provide for the establishment of procedures for patent term adjustment determinations, including providing the applicant one opportunity to request reconsideration of any patent term adjustment determination. See 35 U.S.C. 154(b)(3). It would render the provisions of 35 U.S.C. 154(b)(3) superfluous if patent term adjustment determinations could be revised at any time during the life of the patent via a certificate of correction under 35 U.S.C. 254 or 255. In addition, the patent term adjustment provisions of 35 U.S.C. 154(b) are designed to have patent term adjustment issues to be resolved shortly after a patent issues by providing a period of one hundred and eighty days from the grant of the patent for seeking court review of the USPTO's patent term adjustment determination (rather than the six-year statute of limitations otherwise applicable for actions under the Administrative Procedures Act). See 35 U.S.C. 154(b)(4). It would negate the purpose of the one hundred and eighty day period in 35 U.S.C. 154(b)(4) to allow patent term adjustment determinations to be revised at any time during the life of the patent via a certificate of correction under 35 U.S.C. 254 or 255. Therefore, it is not appropriate to issue a certificate of correction under 35 U.S.C. 254 or 255 to revise the patent term adjustment indicated in a patent unless it is being revised for consistency with: (1) The

patent term adjustment determined via a decision on a request for reconsideration under 37 CFR 1.705; or (2) the total patent term adjustment indicated on the Patent Application Information Retrieval (PAIR) screen that displays the patent term adjustment calculation for the patent.

Accordingly, the USPTO is clarifying that it will treat letters submitted by applicants and patentees stating that the USPTO's patent term adjustment determination indicated on a notice of allowance, issue notification, or patent is greater than what the applicant or patentee believes is appropriate by placing these letters in the file of the application or patent without comment. The USPTO will no longer review these letters or issue certificates of correction under either 35 U.S.C. 254 or 255 on the basis of a review of these letters. In addition, the USPTO will not grant a request for a certificate of correction under either 35 U.S.C. 254 or 255 to revise the patent term adjustment indicated in a patent, except in the two situations discussed previously. If a patentee submits a request for a certificate of correction under either 35 U.S.C. 254 or 255 to revise the patent term adjustment indicated in a patent that includes changes in the patent for which a certificate of correction would be appropriate, the request for a certificate of correction will not be granted unless the patentee submits a new request for a certificate of correction that does not also attempt to revise the patent term adjustment indicated in the patent.

If the applicant or patentee wants the USPTO to reconsider its patent term adjustment determination, the applicant or patentee must use the procedures set forth in 37 CFR 1.705 for requesting reconsideration of a patent term adjustment determination, whether the USPTO's patent term adjustment determination is greater than or less than the adjustment that the applicant or patentee believes to be appropriate. A patentee may also file a terminal disclaimer at any time disclaiming any period considered in excess of the appropriate patent term adjustment. See 35 U.S.C. 253 and 37 CFR 1.321. However, the USPTO does not require an applicant or patentee to file either a request for reconsideration under 37 CFR 1.705 or a terminal disclaimer when the patent term adjustment indicated on a notice of allowance, issue notification, or patent is greater than what the applicant or patentee believes is appropriate.

The appropriate sections of the MPEP will be revised in accordance with this notice in due course.

Dated: July 14, 2010.

**David J. Kappos,**

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

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## COMMODITY FUTURES TRADING COMMISSION

### Agricultural Advisory Committee Meeting

**AGENCY:** Commodity Futures Trading Commission ("CFTC").

**ACTION:** Notice of Meeting of Agricultural Advisory Committee.

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**SUMMARY:** The CFTC's Agricultural Advisory Committee will hold a public meeting on August 5, 2010, from 9 a.m. to 1 p.m., at the Commission's Washington, DC headquarters. The agenda for the meeting includes (1) the ICE Futures US Cotton Contract, (2) wheat price convergence issues, and (3) price reporting issues in the cattle and hog markets. Members of the public may file written statements with the committee. If time permits, reasonable provision will be made for oral presentations by members of the public of up to five minutes.

**DATES:** The meeting will be held on August 5, 2010 from 9 a.m. to 1 p.m.. Members of the public who wish to make oral statements should inform Commissioner Michael V. Dunn, who chairs the committee, in writing at least three business days before the meeting.

**ADDRESSES:** The meeting will take place in the first floor hearing room at the Commission's headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Written statements and requests to make oral statements should be sent to the attention of Agricultural Advisory Committee, c/o Chairman Michael V. Dunn, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Nicole McNair at (202) 418-5070.

**SUPPLEMENTARY INFORMATION:** The meeting will be webcast on the Commission's Web site, <http://www.cftc.gov>. Members of the public also can listen to the meeting by telephone. The public access call-in numbers will be announced at a later date.

**Authority:** 5 U.S.C. app. 2 § 10(a)(2) .

Dated: July 14, 2010.