

Chapter 37 - CFR

PART 2 RULES OF PRACTICE IN TRADEMARK CASES

AUTHORITY: 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2, Section 10 of Pub. L. 112-29, unless otherwise noted.

SOURCE: 30 FR 13193, Oct. 16, 1965, unless otherwise noted.

§2.6 Trademark fees.

The Patent and Trademark Office requires following fees and charges:

(a) Trademark process fees.

(1) Application filing fees.

- (i) For filing an application on paper, per class—~~\$375~~—\$ 600.00
- (ii) For filing an application through TEAS, per class—~~\$325~~—\$ 400.00
- (iii) For filing a TEAS Reduced Fee (RF) application through TEAS under § 2.23, per class—~~\$~~—\$ 275.00
- (iv) ~~(iv)~~ For filing a TEAS Plus application through TEAS under § 2.22, per class—~~\$~~—\$ 225.00
- ~~(v)~~ Additional processing fee under §§ ~~2.22(c)~~ ~~and/or~~ 2.23(c), per class—~~\$50~~—\$ 125.00

(2) Amendment to allege use.

- (i) For filing an amendment to allege use under section 1(c) of the Act on paper, per class--\$ 200.00
- ~~(i)~~(ii) For filing an amendment to allege use under section 1(c) of the Act through TEAS, per class—~~\$~~—\$ 100.00

(3) Statement of use.

- (i) For filing a statement of use under section 1(d)(1) of the Act on paper, per class--\$ 200.00
- ~~(i)~~(ii) For filing a statement of use under section 1(d)(1) of the Act through TEAS, per class—~~\$~~—\$ 100.00

(4) Extension of time for filing statement of use.

- (i) For filing a request under section 1(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(d)(1) of the Act on paper, per class--\$ 225.00

~~(i)(ii)~~ For filing a request under section 1(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(d)(1) of the Act through TEAS, per class ~~—\$150—~~ \$ 125.00

~~(2)(5)~~ Application for renewal of a registration fees.

(i) ~~(i)~~ For filing an application for renewal of a registration on paper, per class ~~—\$400—~~ \$ 500.00

(ii) ~~(ii)~~ For filing an application for renewal of a registration through TEAS, per class ~~—\$—~~ \$ 300.00

(6) Renewal during grace period.

(i) Additional fee for filing a renewal application during the grace period on paper, per class ~~—\$100—~~ \$ 200.00 [*72707]

(ii) ~~(7)~~ Additional fee for filing a renewal application during the grace period through TEAS, per class--\$ 100.00

(7) Publishing mark under section 12(c).

(i) For filing to publish a mark under section 12(c), on paper, per class ~~—\$100—~~ \$ 200.00

(ii) ~~(8)~~ For filing to publish a mark under section 12(c) through TEAS, per class--\$ 100.00

(8) New certificate of registration.

(i) For issuing a new certificate of registration upon request of registrant ~~—\$100,~~ request filed on paper--\$ 200.00

(ii) ~~(9)~~ For issuing a new certificate of registration upon request of registrant, request filed through TEAS--\$ 100.00

(9) Certificate of correction of ~~registrant's~~registrant's error—\$.

(i) For a certificate of correction of registrant's error, request filed on paper--\$ 200.00

~~(i)(ii)~~ For a certificate of correction of registrant's error, request filed through TEAS--\$ 100.00

(10) Disclaimer to a registration.

(i) For filing a disclaimer to a registration ~~—\$100, on paper--\$ 200.00~~

(ii) ~~(11)~~ For filing a disclaimer to a registration, through TEAS or ESTTA--\$ 100.00

(11) Amendment of registration.

(i) For filing an amendment to a registration ~~—\$, on paper--\$ 200.00~~

~~(i)(ii)~~ For filing an amendment to a registration, through TEAS or ESTTA--\$ 100.00

(12)(12) Affidavit under section 8.

- (i) For filing an affidavit under section 8 of the Act on paper, per class—~~\$100-~~\$ 225.00
- (ii) ~~(13)~~ For filing an affidavit under section ~~458~~ of the Act through TEAS, per class—~~\$200-~~\$ 125.00

(13) Affidavit under section 15.

- (i) For filing an affidavit under section 15 of the Act on paper, per class--\$ 300.00
- (ii) For filing an affidavit under section 15 of the Act through TEAS, per class--\$ 200.00

(14) Filing section 8 affidavit during grace period.

- (i) Additional fee for filing a section 8 affidavit during the grace period on paper, per class—~~\$-~~\$ 200.00
- (ii) Additional fee for filing a section 8 affidavit during the grace period through TEAS, per class--\$ 100.00

(15) ~~(15)~~ Petitions to the Director.

- (i) For petitions to the Director—~~\$100~~ filed on paper--\$ 200.00
- (ii) ~~(16)~~ For petitions to the Director filed through TEAS--\$ 100.00

(16) Petition to cancel.

- (i) For filing a petition to cancel on paper, per class—~~\$300-~~\$ 500.00
- (ii) ~~(17)~~ For filing a petition to cancel through ESTTA, per class--\$ 400.00

(17) Notice of opposition.

- (i) For filing a notice of opposition on paper, per class—~~\$300-~~\$ 500.00
- (ii) ~~(18)~~ For filing a notice of opposition through ESTTA, per class--\$ 400.00

(18) Ex parte appeal.

- (i) For ex parte appeal to the Trademark Trial and Appeal Board filed on paper, per class—~~\$100-~~\$ 300.00
- (ii) ~~(19)~~ For ex parte appeal to the Trademark Trial and Appeal Board filed through ESTTA, per class--\$ 200.00

(19) Dividing an application.

- (i) Request to divide an application filed on paper, per new application created—~~\$100-~~\$ 200.00
- (ii) ~~(20)~~ Request to divide an application filed through TEAS, per new application created--\$ 100.00

(20) Correcting deficiency in section 8 affidavit.

- (i) For correcting a deficiency in a section 8 affidavit—~~\$100~~ via paper filing--\$ 200.00

- (ii) ~~(21)~~ For correcting a deficiency in a ~~renewal application~~ ~~section 8 affidavit via TEAS filing~~--\$ 100.00

~~(21)(b)~~ Correcting deficiency in renewal application.

- (i) ~~For correcting a deficiency in a renewal application via paper filing~~--\$ 200.00
- (ii) ~~For correcting a deficiency in a renewal application via TEAS filing~~--\$ 100.00

~~(22)~~ Extension of time for filing notice of opposition under § 2.102(c)(1)(ii) or (c)(2).^{9.5} For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(1)(ii) or (c)(2) on paper--\$ 200.00

- (i) ~~For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(1)(ii) or (c)(2) through ESTTA~~--\$ 100.00

~~(23)~~ Extension of time for filing notice of opposition under § 2.102(c)(3).

- (i) ~~For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(3) on paper~~--\$ 300.00
- (ii) ~~For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(3) through ESTTA~~--\$ 200.00

(b) Trademark service fees.

(1) For printed copy of registered mark, copy only. Service includes preparation of copies by the Office within two to three business days and delivery by United States Postal Service; and preparation of copies by the Office within one business day of receipt and delivery to an Office Box or by electronic means (e.g., facsimile, electronic mail)~~)-\$)-\$ 3.00~~

(2) Certified or uncertified copy of trademark application as filed processed within seven calendar days~~)-\$)-\$ 15.00~~

(3) Certified or uncertified copy of a trademark-related official record~~)-\$)-\$ 50.00~~

(4) Certified copy of a registered mark, showing title and/or status:

- (i) ~~(i)~~ Regular service~~)-\$)-\$ 15.00~~
- (ii) ~~(ii)~~ Expedited local service~~)-\$)-\$ 30.00~~

(5) Certified or uncertified copy of trademark records, per document except as otherwise provided in this section~~)-\$)-\$ 25.00~~

(6) For recording each trademark assignment, agreement or other document relating to the property in a registration or application

- (i) First property in a document~~)-\$)-\$ 40.00~~
- (ii) For each additional property in the same document~~)-\$)-\$ 25.00~~

(7) For assignment records, abstract of title and certification, per registration~~)-\$)-\$ 25.00~~

~~(8) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using X-Search capabilities, prorated for the actual time used. The Director may waive the payment by an individual for access to X-Search upon a showing of need or hardship, and if such waiver is in the public interest—\$40.00~~

~~(9) Self-service copy charge, per page—\$0.25~~

~~(10) Labor charges for services, per hour or fraction thereof—\$40.00~~

~~(11) For items and services that the Director finds may be supplied, for which fees are not specified by statute or by this part, such charges as may be determined by the Director with respect to each such item or service—Actual Cost~~

~~(8) (12) Additional Fee for Overnight Delivery--\$ 40.00~~

~~(9) Additional Fee for Expedited Service--\$ 160.00~~

~~(8)(10) For processing each payment refused (including a check returned "unpaid") or charged back by a financial institution—\$--\$ 50.00~~

~~(13) Deposit accounts:~~

~~(i) For establishing a deposit account—\$10.00~~

~~(9)(11) (ii) Service service charge for each month when the balance at the end of the month is below \$ 1,000—\$--\$ 25.00~~

[56 FR 65155, Dec. 13, 1991; 56 FR 66670, Dec. 24, 1991, as amended at 57 FR 38196, Aug. 21, 1992; 59 FR 256, Jan. 4, 1994; 60 FR 41018, Aug. 11, 1995; 62 FR 40450, July 29, 1997; 64 FR 48900, Sept. 8, 1999, effective Oct. 30, 1999; 64 FR 67486, Dec. 2, 1999; 64 FR 67774, Dec. 10, 1999; 67 FR 79520, Dec. 30, 2002; 67 FR 70847, November 27, 2002, effective January 1, 2003; 68 FR 14332, March 25, 2003, effective May 1, 2003; 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003; 70 FR 2952, Jan. 19, 2005, effective Jan. 31, 2005; 70 FR 38768, July 6, 2005, effective July 18, 2005; 73 FR 67759, Nov. 17, 2008, effective Jan. 16, 2009; 79 FR 74633, Dec. 16, 2014, effective Jan. 17, 2015]

§2.91-§2.99 INTERFERENCES AND CONCURRENT USE PROCEEDINGS

§2.91 Declaration of interference.

(a) An interference will not be declared between two applications or between an application and a registration except upon petition to the Director. Interferences will be declared by the Director only upon a showing of extraordinary circumstances which would result in a party being unduly prejudiced without an interference. In ordinary circumstances, the availability of an opposition or cancellation proceeding to the party will be deemed to remove any undue prejudice.

(b) Registrations and applications to register on the Supplemental Register, registrations under the Act of 1920, and registrations of marks the right to use of which has become incontestable are not subject to interference.

[37 FR 2881, Feb. 9, 1972, as amended at 54 FR 34897, Aug. 22, 1989; 68 FR 14332, March 25, 2003, effective May 1, 2003]

§2.92 Preliminary to interference.

An interference which has been declared by the Director will not be instituted by the Trademark Trial and Appeal Board until the ~~Examiner of Trademarks~~[examining attorney](#) has determined that the marks which are to form the subject matter of the controversy are registrable, and all of the marks have been published in the Official Gazette for opposition.

[37 FR 2881, Feb. 9, 1972, as amended at 54 FR 34897, Aug. 22, 1989; 68 FR 14332, March 25, 2003, effective May 1, 2003]

§2.93 Institution of interference.

An interference is instituted by the issuance of a notice of interference to the parties. The notice shall be sent to each applicant, in care of the applicant's attorney or other representative of record, if any, and if one of the parties is a registrant, the notice shall be sent to the registrant or the registrant's assignee of record. The notice shall give the name and address of every adverse party and of the adverse party's attorney or other authorized representative, if any, together with the serial number and date of filing and publication of each of the applications, or the registration number and date of issuance of each of the registrations, involved.

[41 FR 759, Jan. 5, 1976, as amended at 54 FR 34897, Aug. 22, 1989; 73 FR 67759, Nov. 17, 2008, effective Jan. 16, 2009]

§2.96 Issue; burden of proof.

The issue in an interference between applications is normally priority of use, but the rights of the parties to registration may also be determined. The party whose application involved in the interference has the latest filing date is the junior party and has the burden of proof. When there are more than two parties to an interference, a party shall be a junior party to and shall have the burden of proof as against every other party whose application involved in the interference has an earlier filing date. If the involved applications of any parties have the same filing date, the application with the latest date of execution will be deemed to have the latest filing date and that applicant will be the junior party. The issue in an interference between an application and a registration shall be the same, but in the event the final decision is adverse to the registrant, a registration to the applicant will not be authorized so long as the interfering registration remains on the register.

[48 FR 23135, May 23, 1983; 48 FR 27225, June 14, 1983]

§2.98 Adding party to interference.

A party may be added to an interference only upon petition to the Director by that party. If an application which is or might be the subject of a petition for addition to an interference is not added, the ~~examiner~~[examining attorney](#) may suspend action on the application pending termination of the interference proceeding.

§2.99 Application to register as concurrent user.

(a) An application for registration as a lawful concurrent user will be examined in the same manner as other applications for registration.

(b) If it appears that the applicant is entitled to have the mark registered, subject to a concurrent use proceeding, the mark will be published in the Official Gazette as provided by § 2.80.

(c) If no opposition is filed, or if all oppositions that are filed are dismissed or withdrawn, the Trademark Trial and Appeal Board will send a [notification notice of institution](#) to the applicant for concurrent use registration (plaintiff) and to each applicant, registrant or user specified as a concurrent user in the application (defendants). The [notification notice](#) for each defendant shall state the name and address of the plaintiff and of the ~~plaintiff's~~ [plaintiff's](#) attorney or other authorized representative, if any, together with the serial number and filing date of the application. If a party has provided the Office with an [e-mail address](#), the [notification notice](#) may be transmitted via [e-mail](#).

(d)

~~(1) Within ten days from the date of the Board's notification, the applicant for concurrent use registration must serve copies of its application, specimens and drawing on each applicant, registrant or user specified as a concurrent user in the application for registration, as directed by the Board. If any service copy is returned to the concurrent use applicant as undeliverable, the concurrent use applicant must notify the Board within ten days of receipt of the returned copy.~~

~~(2) The Board's notice of institution will include a web link or web address to access the concurrent use application proceeding contained in Office records.~~

(2) An answer to the notice is not required in the case of an applicant or registrant whose application or registration is ~~specified as acknowledged by the~~ concurrent ~~use~~ [use applicant](#) in the [concurrent use](#) application, but a statement, if desired, may be filed within forty days after the issuance of the notice; in the case of any other party specified as a concurrent user in the application, an answer must be filed within forty days after the issuance of the notice.

(3) If an answer, when required, is not filed, judgment will be entered precluding the ~~specified~~ [defaulting](#) user from claiming any right more extensive than that acknowledged in the application(s) for concurrent use registration, but the ~~applicant(s) will remain with the~~ burden of proving entitlement to registration(s) [will remain with the concurrent use applicant\(s\)](#).

(e) The applicant for a concurrent use registration has the burden of proving entitlement thereto. If there are two or more applications for concurrent use registration involved in a proceeding, the party whose application has the latest filing date is the junior party. A party whose application has a filing

date between the filing dates of the earliest involved application and the latest involved application is a junior party to every party whose involved application has an earlier filing date. If any applications have the same filing date, the application with the latest date of execution will be deemed to have the latest filing date and that applicant will be the junior party. A person specified as an excepted user in a concurrent use application but who has not filed an application shall be considered a party senior to every party that has an application involved in the proceeding.

(f) When a concurrent use registration is sought on the basis that a court of competent jurisdiction has finally determined that the parties are entitled to use the same or similar marks in commerce, a concurrent use registration proceeding will not be instituted if all of the following conditions are fulfilled:

- (1) The applicant is entitled to registration subject only to the concurrent lawful use of a party to the court proceeding; and
- (2) The court decree specifies the rights of the parties; and
- (3) A true copy of the court decree is submitted to the ~~examiner~~[examining attorney](#); and
- (4) The concurrent use application complies fully and exactly with the court decree; and
- (5) The excepted use specified in the concurrent use application does not involve a registration, or any involved registration has been restricted by the Director in accordance with the court decree.

If any of the conditions specified in this paragraph is not satisfied, a concurrent use registration proceeding shall be prepared and instituted as provided in paragraphs (a) through (e) of this section.

(g) Registrations and applications to register on the Supplemental Register and registrations under the Act of 1920 are not subject to concurrent use registration proceedings. Applications under section 1(b) of the Act of 1946 are subject to concurrent use registration proceedings only after the applicant files an acceptable allegation of use under § 2.76 or § 2.88. Applications based solely on section 44 or section 66(a) of the Act are not subject to concurrent use registration proceedings.

(h) The Trademark Trial and Appeal Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding.

[48 FR 23135, May 23, 1983; 48 FR 27225, June 14, 1983, as amended at 54 FR 37596, Sept. 11, 1989; 68 FR 14332, March 25, 2003, effective May 1, 2003; 72 FR 42242, Aug. 1, 2007, effective Nov. 1, 2007; 73 FR 67759, Nov. 17, 2008, effective Jan. 16, 2009]

§2.101-§2.107 OPPOSITION

§2.101 Filing an opposition.

(a) An opposition proceeding is commenced by filing in the Office a timely notice of opposition with the required fee. ~~The notice must include proof of service on the applicant, or its attorney or domestic representative of record, at the correspondence address of record in the Office, as detailed in §§ 2.101(b) and 2.119.~~

(b) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file an opposition addressed to the Trademark Trial and Appeal Board ~~and must serve a copy of the opposition, including any exhibits, on the attorney of record for the applicant or, if there is no attorney, on the applicant or on the applicant's domestic representative, if one has been appointed, at the correspondence address of record in the Office. The opposer must include with the opposition proof of service pursuant to § 2.119 at the correspondence address of record in the Office. If any service copy of the opposition is returned to the opposer as undeliverable, the opposer must notify the Board within ten days of receipt of the returned copy.~~ The opposition need not be verified, but must be signed by the opposer or the ~~opposer's~~ opposer's attorney, as specified in § 11.1 of this chapter, or other authorized representative, as specified in § 11.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c) are required for oppositions filed through ESTTA under ~~paragraphs~~ paragraph (b)(1)- or (2) of this section.

~~(1)~~ (1) An opposition to an application ~~based on~~ must be filed by the due date set forth in paragraph (c) of this section through ESTTA.

~~(1)(2)~~ (2) In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, an opposition against an application based on Section 1 or 44 of the Act may be filed in paper form. A paper opposition to an application based on Section 1 or 44 of the Act must be filed either on paper or through ESTTA by the due date set forth in paragraph (c) of this section and be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under this paragraph. Timeliness of the paper submission will be determined in accordance with §§ 2.195 through 2.198.

~~(2)(3)~~ (3) An opposition to an application based on ~~section~~ Section 66(a) of the Act must be filed through ESTTA and may not under any circumstances be filed in paper form.

~~(c)~~ The opposition must be filed within thirty days after publication (§ 2.80) of the application being opposed or within an extension of time (§ 2.102) for filing an opposition.

~~(d)~~

(c) ~~(1)~~ (1) The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (see § 2.6).

(d) ~~(2)~~ (2) An otherwise timely opposition ~~will not~~ cannot be ~~accepted~~ filed via ESTTA unless the opposition is accompanied by a fee that is sufficient to pay in full for each named party opposer to oppose the registration of a mark in each class specified in the opposition. A paper opposition that is not accompanied by the required fee sufficient to pay in full for each named party opposer for each class in the application for which registration is opposed may not be instituted. If time remains in the

opposition period as originally set or as extended by the Board, the potential opposer may resubmit the opposition with the required fee.

~~(3) If an otherwise timely opposition is submitted on paper, the following is applicable if less than all required fees are submitted:~~

~~(i) If the opposition is accompanied by no fee or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, the opposition will be refused.~~

~~(ii) If the opposition is accompanied by fees sufficient to pay for one person to oppose registration in at least one class, but fees are insufficient to oppose registration in all the classes in the application, and the particular class or classes against which the opposition is filed is not specified, the opposition will be presumed to be against the class or classes in ascending numerical order, including only the number of classes in the application for which sufficient fees have been submitted.~~

~~(iii) If persons are joined as party opposers, each must submit a fee for each class for which opposition is sought. If the fees submitted are sufficient to pay for one person to oppose registration in at least one class, but are insufficient for each named party opposer, the first-named party will be presumed to be the party opposer. Additional parties will be deemed to be party opposers only to the extent that the fees submitted are sufficient to pay the fee due for each party opposer. If persons are joined as party opposers against a multiple class application, the fees submitted are insufficient, and no specification of opposers and classes is made at the time the party is joined, the fees submitted will be applied first on behalf of the first-named opposer against as many of the classes in the application as the submitted fees are sufficient to pay. Any excess will be applied on behalf of the second-named party to the opposition against the classes in the application in ascending numerical order.~~

(e) ~~(4)~~The filing date of an opposition is the date of electronic receipt in the Office of the notice of opposition, ~~with proof of service on the applicant, or its attorney or domestic representative of record, if one has been appointed, at the correspondence address of record in the Office, and the required fee, unless the notice is filed and required fee. In the rare instances that filing by paper is permitted under these rules,~~ the filing date will be determined in accordance with ~~§-§§ 2.195 through 2.198.~~

[48 FR 3976, Jan. 28, 1983, as amended at 51 FR 28709, Aug. 11, 1986; 54 FR 37596, Sept. 11, 1989; 63 FR 48081, Sept. 9, 1998, effective Oct. 9, 1998; 64 FR 48900, Sept. 8, 1999, effective Oct. 30, 1999; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 72 FR 42242, Aug. 1, 2007, effective Nov. 1, 2007; 73 FR 47650, Aug 14. 2008, effective Sept. 15, 2008; 74 FR 54898, Oct. 26, 2009, effective Dec. 28, 2009]

§2.102 Extension of time for filing an opposition.

(a) ~~(a)~~ Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file ~~in the Office~~ a ~~written~~ request, ~~addressed to with~~ the Trademark Trial and Appeal Board, to extend the time for filing an opposition. The ~~written~~ request need not be verified, but must be signed by the potential opposer or by the potential opposer's attorney, as specified in §_11.1 of this chapter, or authorized representative, as specified in §_11.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c) are required for electronically filed extension requests.

~~(1)~~ A ~~written~~ request to extend the time for filing an opposition to an application ~~filed under section 1 or 44 of the Act~~ must be filed ~~either on paper or~~ through ESTTA.

(b) ~~(2)~~ A ~~written by the opposition due date set forth in § 2.101(c). In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, a~~ request to extend the ~~time~~ ~~opposition period~~ for ~~filing an opposition to an application based on Section 1 or 44 of the Act~~ may be filed in paper form ~~by the opposition due date set forth in § 2.101(c). A request to extend the opposition period for~~ an application ~~filed under section~~ ~~based on Section~~ 66(a) of the Act must be filed through ESTTA ~~and may not under any circumstances be filed in paper form.~~

~~(c)~~ ~~(b)~~ A ~~written~~ A paper request to extend the opposition period for an application based on Section 1 or 44 of the Act must be filed by the due date set forth in § 2.101(c) and be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under paragraph (a)(1) of this section. Timeliness of the paper submission will be determined in accordance with §§ 2.195 through 2.198.

~~(e)~~(d) A request to extend the time for filing an opposition must identify the potential opposer with reasonable certainty. Any opposition filed during an extension of time ~~should~~ ~~must~~ be in the name of the person to whom the extension was granted. ~~An, except that an~~ opposition may be accepted if the person in whose name the extension was requested was misidentified through mistake or if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time.

~~(d)~~(e) (c) The time for filing an opposition shall not be extended beyond 180 days from the date of publication. Any request to extend the time for filing an opposition must be filed before thirty days have expired from the date of publication or before the expiration of a previously granted extension of time, as appropriate. Requests to extend the time for filing an opposition must be filed as follows:

(i) A person may file a first request for ~~either~~:

(ii) ~~Either~~ a thirty-day extension of time, which will be granted upon request; ~~or a~~

~~(i)~~(iii) A ninety-day extension of time, which will be granted only for good cause shown. ~~A sixty-day extension is not available as a first extension of time to oppose.~~

~~(ii)~~(iv) ~~(2)~~ If a person was granted ~~an initial~~ thirty-day extension of time, that person may file a request for an additional sixty-day extension of time, which will be granted only for good cause shown.

~~(iii)~~(v) ~~(3)~~ After receiving one or two extensions of time totaling ninety days, a person may file one final request for an extension of time for an additional sixty days. The Board will grant

this request only upon written consent or stipulation signed by the applicant or its authorized representative, or a written request by the potential opposer or its authorized representative stating that the applicant or its authorized representative has consented to the request, or a showing of extraordinary circumstances. No ~~further extensions of other time to file an period will be allowed for a final extension of the~~ opposition ~~will be granted under any circumstances period.~~

(f) The filing date of a request to extend the time for filing an opposition is the date of electronic receipt in the Office of the request. In the rare instance that filing by paper is permitted under these rules, the filing date will be determined in accordance with §§ 2.195 through 2.198.

[48 FR 3976, Jan. 28, 1983, as amended at 61 FR 36825, July 15, 1996; 63 FR 48081, Sept. 9, 1998, effective Oct. 9, 1998; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 73 FR 47650, Aug 14, 2008, effective Sept. 15, 2008; 74 FR 54898, Oct. 26, 2009, effective Dec. 28, 2009]

§2.104 Contents of opposition.

(a) ~~(a)~~ The opposition must set forth a short and plain statement showing why the opposer believes he, she or it would be damaged by the registration of the opposed mark and state the grounds for opposition. ESTTA requires the opposer to select relevant grounds for opposition. The required accompanying statement supports and explains the grounds.

(b) ~~(b)~~ Oppositions to different applications owned by the same party may be joined in a consolidated opposition when appropriate, but the required fee must be included for each party joined as opposer for each class in which registration is opposed in each application against which the opposition is filed.

(c) Oppositions to applications filed under Section 66(a) of the Act are limited to the goods, services and grounds set forth in the ESTTA cover sheet.

[51 FR 28709, Aug. 11, 1986, as amended at 54 FR 34897, Aug. 22, 1989; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003]

§2.105 Notification to parties of opposition proceeding(s).

(a) When an opposition in proper form (see §§ ~~2.101 and 2.104~~), ~~with proof of service in accordance with § 2.101(b),~~ has been filed ~~and with~~ the correct fee ~~(s), and the opposition~~ has been ~~submitted~~ determined to be timely and complete, the Trademark Trial and Appeal Board shall prepare a ~~notification~~ notice of institution, which shall identify the ~~title and proceeding as an opposition~~, number of the proceeding, and the application(s) involved; and the notice shall designate a time, not less than thirty days from the mailing date of the ~~notification~~ notice, within which an answer must be filed. ~~If a party has provided the Office with an e-mail~~ The notice, which will include a Web link or Web address, ~~the notification may be transmitted via e-mail to access the electronic proceeding record, constitutes~~ service of the notice of opposition to the applicant.

(b) ~~(b)~~ The Board shall forward a copy of the ~~notification~~ notice to opposer, as follows:

- (1) If the opposition is transmitted by an attorney, or a written power of [\[*69973\]](#) attorney is filed, the Board will send the [notification notice](#) to the attorney transmitting the opposition or to the attorney designated in the power of attorney, provided that the person is an "attorney" as defined in §-11.1 of this chapter, [at the email or correspondence address for the attorney](#).
 - (2) If opposer is not represented by an attorney in the opposition, but opposer has appointed a domestic representative, the Board will send the [notification notice to the domestic representative, at the email or correspondence address of record for](#) the domestic representative, unless opposer designates in writing another correspondence address.
 - (3) If opposer is not represented by an attorney in the opposition, and no domestic representative has been appointed, the Board will send the [notification notice](#) directly to [opposer at the email or correspondence address of record for](#) opposer, unless opposer designates in writing another correspondence address
- (c) The Board shall forward a copy of the [notification notice](#) to applicant, as follows:
- (1) ~~(1)~~ If the opposed application contains a clear indication that the application is being prosecuted by an attorney, as defined in §-11.1 of this chapter, the Board shall send the [documents notice](#) described in this section to [applicant's applicant's attorney at the email or correspondence address of record for the](#) attorney.
 - (2) ~~(2)~~ If the opposed application is not being prosecuted by an attorney but a domestic representative has been appointed, the Board will send the [documents notice](#) described in this section to [the domestic representative, at the email or correspondence address of record for](#) the domestic representative, unless applicant designates in writing another correspondence address.
 - (3) ~~(3)~~ If the opposed application is not being prosecuted by an attorney, and no domestic representative has been appointed, the Board will send the [documents notice](#) described in this section directly to applicant, [at the email or correspondence address of record for the applicant](#), unless applicant designates in writing another correspondence address.

[48 FR 23136, May 23, 1983; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 72 FR 42242, Aug. 1, 2007, effective Nov. 1, 2007; 73 FR 47650, Aug 14. 2008, effective Sept. 15, 2008]

§2.106 Answer.

(a) If no answer is filed within the time [set initially set, or as may later be reset by the Board](#), the opposition may be decided as in case of default. [The failure to file a timely answer tolls all deadlines, including the discovery conference, until the issue of default is resolved.](#)

(b)

[\(1\) An answer must be filed through ESTTA. In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, an answer may be filed in paper form. An answer filed in paper form must be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under this paragraph \(b\).](#)

~~(1)~~(2) An answer shall state in short and plain terms the ~~applicant's~~ applicant's defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies. If the applicant is without knowledge or information sufficient to form a belief as to the truth of an averment, applicant shall so state and this will have the effect of a denial. Denials may take any of the forms specified in Rule 8(b) of the Federal Rules of Civil Procedure. An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. When pleading special matters, the Federal Rules of Civil Procedure shall be followed. A reply to an affirmative defense ~~need shall~~ not be filed. When a defense attacks the validity of a registration pleaded in the opposition, paragraph (b)(~~23~~) of this section shall govern. A pleaded registration is a registration identified by number ~~and date by the party in the position of issuance~~ plaintiff in an original notice of opposition or in any amendment thereto made under Rule 15, of the Federal Rules of Civil Procedure.

(12)

(i) A defense attacking the validity of any one or more of the registrations pleaded in the opposition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed. If grounds for a counterclaim are known to the applicant when the answer to the opposition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the opposition proceeding, the counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if ~~the claim~~ is the subject of another proceeding between the same parties or anyone in privity therewith; but the applicant must promptly inform the Board, in the context of the opposition proceeding, of the filing of the other proceeding.

(ii) ~~(ii)~~ An attack on the validity of a registration pleaded by an opposer will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.

(iii) ~~(iii)~~ The provisions of §§ ~~2.111 through 2.115~~, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated by the Board within which an answer to the counterclaim must be filed.

(iv) ~~(iv)~~ The times for pleading, discovery, testimony, briefs or oral argument ~~will may~~ be reset or extended when necessary, upon motion by a party, or as the Board may deem necessary, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

(c) The opposition may be withdrawn without prejudice before the answer is filed. After the answer is filed, the opposition may not be withdrawn without prejudice except with the written consent of the applicant or the applicant's attorney or other authorized representative.

§2.107 Amendment of pleadings in an opposition proceeding.

(a) Pleadings in an opposition proceeding against an application filed under section 1 or 44 of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court, except that, after the close of the time period for filing an opposition including any extension of time for filing an opposition, an opposition may not be amended to add to the goods or services opposed, or to add a joint opposer.

(b) Pleadings in an opposition proceeding against an application filed under section 66(a) of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court, except that, once filed, the opposition may not be amended to add ~~to the~~ grounds for opposition or goods or services beyond those identified in the notice of opposition, or to add ~~to a~~ joint opposer. The grounds for opposition, the goods or services ~~subject to opposition~~ opposed, and the named opposers are limited to those identified in the ESTTA cover sheet regardless of what is contained in any attached statement.

[48 FR 23136, May 1983; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003]

§2.111-§2.115 CANCELLATION

§2.111 Filing petition for cancellation.

(a) A cancellation proceeding is commenced by filing in the Office a timely petition for cancellation with the required fee. ~~The petition must include proof of service on the owner of record for the registration, or the owner's domestic representative of record, at the correspondence address of record in the Office, as detailed in §§ 2.111(b) and 2.119.~~

(b) Any person who believes that he, she or it is or will be damaged by a registration may file a petition, addressed to the Trademark Trial and Appeal Board, for cancellation of the registration in whole or in part. ~~Petitioner must serve a copy of the petition, including any exhibits, on the owner of record for the registration, or on the owner's domestic representative of record, if one has been appointed, at the correspondence address of record in the Office. The petitioner must include with the petition for cancellation proof of service, pursuant to § 2.119, on the owner of record, or on the owner's domestic representative of record, if one has been appointed, at the correspondence address of record in the Office. If any service copy of the petition for cancellation is returned to the petitioner as undeliverable, the petitioner must notify the Board within ten days of receipt of the returned copy.~~ The petition for cancellation need not be verified, but must be signed by the petitioner or the petitioner's attorney, as specified in § 11.1 of this chapter, or other authorized representative, as specified in § 11.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c) are required for petitions submitted electronically via ESTTA. [*69974] The petition for cancellation may be filed at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act, or on any ground specified in section 14(3) or (5) of the Act. In all other cases,

the petition for cancellation and the required fee must be filed within five years from the date of registration of the mark under the Act or from the date of publication under section 12(c) of the Act.

(c)

(1) A petition to cancel a registration must be filed through ESTTA.

(2) In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, a petition to cancel may be filed in paper form. A paper petition to cancel a registration must be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under this paragraph (c). Timeliness of the paper submission, if relevant to a ground asserted in the petition to cancel, will be determined in accordance with §§ 2.195 through 2.198.

The petition for cancellation must be accompanied by the required fee for each party joined as petitioner for each class in the registration(s) for which cancellation is sought (see §-2.6).

(2) An otherwise timely A petition for cancellation will notcannot be acceptedfiled via ESTTA unless the petition for cancellation is accompanied by a fee that is sufficient to pay in full for each named party petitioner to petition forseek cancellation of the registration of a markthe registration(s) in each class specified in the petition for cancellation.

(3) If an otherwise timely petition for cancellation is submitted on paper, the following is applicable if less than all required fees are submitted:

(i) If the petition for cancellation is accompanied by no fee or a fee insufficient to pay for one person to petition for cancellation against at least one class in the registration, the A petition for cancellation will be refused.

(ii) If the petition for cancellation is filed in paper form that is not accompanied by feesa fee sufficient to pay for one person to petition for cancellation against at least one class in the registration, but fees are insufficient for a petition for cancellation against all the classes in full for each named petitioner for each class in the registration, and the particular class or classes against which the petition for cancellation is filed is not specified, the petition for cancellation will be presumed to be against the class or classes in ascending numerical order, including only the number of classes in the registration for which sufficient fees have been submitted.

(1)(3) (iii) If persons are joined as party petitioners, each must submit a fee for each class (s) for which cancellation is sought. If the fees submitted are sufficient to pay for one person to petition for cancellation of the registration in at least one class but are insufficient for each named party petitioner, the first named party will be presumed to may not be the party petitioner. Additional parties will be deemed to be party petitioners only to the extent that the fees submitted are sufficient to pay the fee due for each party petitioner. If persons are joined as party petitioners against a multiple class registration, the fees submitted are insufficient, and no specification of parties and classes is made at the time the party is joined, the fees

~~submitted will be applied first on behalf of the first-named petitioner against as many of the classes in the registration as the submitted fees are sufficient to pay. Any excess will be applied on behalf of the second-named party to the cancellation against the classes in the registration in ascending numerical order instituted.~~

~~(4) The filing date of a petition for cancellation is the date of electronic receipt in the Office of the petition ~~for cancellation, with proof of service on the owner of record, or on the owner's domestic representative, if one has been appointed, at the correspondence address of record in the Office, and with the required fee, unless the petition is filed in~~ and required fee. In the rare instances that filing by paper is permitted under these *rules*, the filing date of a petition for cancellation will be determined in accordance with ~~§-§§ 2.195 through~~ 2.198.~~

[48 FR 3976, Jan. 28, 1983; 54 FR 37596, Sept. 11, 1989; 63 FR 48081, Sept. 9, 1998, effective Oct. 9, 1998; 64 FR 48900, Sept. 8, 1999, effective Oct. 30, 1999; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 72 FR 42242, Aug. 1, 2007, effective Nov. 1, 2007; 73 FR 47650, Aug 14. 2008, effective Sept. 15, 2008; 74 FR 54898, Oct. 26, 2009, effective Dec. 28, 2009]

§2.112 Contents of petition for cancellation.

(a) The petition for cancellation must set forth a short and plain statement showing why the petitioner believes he, she or it is or will be damaged by the registration, state the ground for cancellation, and indicate, to the best of petitioner's knowledge, the name and address, and a current email address(es), of the current owner of the registration. ESTTA requires the petitioner to select relevant grounds for petition to cancel. The required accompanying statement supports and explains the grounds.

(b) When appropriate, petitions for cancellation of different registrations owned by the same party may be joined in a consolidated petition for cancellation. The required fee must be included for each party joined as a petitioner for each class sought to be cancelled in each registration against which the petition for cancellation is has been filed.

[48 FR 3997, Jan. 28, 1983, as amended at 51 FR 28710, Aug. 11, 1986; 54 FR 34897, Aug. 22, 1989; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003]

§2.113 Notification of cancellation proceeding.

(a) When a petition for cancellation in proper form (see §§ ~~2.111 and 2.112~~, ~~with proof of service in accordance with § 2.111(b)~~,) has been filed and the correct fee has been submitted, the Trademark Trial and Appeal Board shall prepare a ~~notification~~ notice of institution which shall identify the ~~title and proceeding as a cancellation~~, number of the proceeding and the registration(s) involved; and shall designate a time, not less than thirty days from the mailing date of the ~~notification~~ notice, within which an answer must be filed. ~~If a party has provided the Office with an e-mail~~ The notice, which will include a Web link or Web address, to access the electronic proceeding record, constitutes service to the ~~notification may be transmitted via e-mail~~ registrant of the petition to cancel.

(b) The Board shall forward a copy of the [notification notice](#) to petitioner, as follows:

(1) ~~(1)~~ If the petition for cancellation is transmitted by an attorney, or a written power of attorney is filed, the Board will send the [notification notice](#) to the attorney transmitting the petition for cancellation or to the attorney designated in the power of attorney, provided that person is an "attorney" as defined in § 11.1 of this chapter, [to the attorney's email or correspondence address of record for the attorney](#).

(2) ~~(2)~~ If petitioner is not represented by an attorney in the cancellation proceeding, but petitioner has appointed a domestic representative, the Board will send the [notification notice to the domestic representative, at the email or correspondence address of record for the domestic representative, unless petitioner designates in writing another correspondence address](#).

(3) ~~(3)~~ If petitioner is not represented by an attorney in the cancellation proceeding, and no domestic representative has been appointed, the Board will send the [notification notice](#) directly to [petitioner, at the email or correspondence address of record for](#) petitioner, unless petitioner designates in writing another correspondence address.

~~(e)~~

(c) The Board shall forward a copy of the [notification notice](#) ~~to the respondent (see § 2.118). The respondent shall be~~ the party shown by the records of the Office to be the current owner of the registration(s) sought to be cancelled [at the email or address of record for the current owner](#), except that the Board, in its discretion, may join or substitute as respondent a party who makes a showing of a current ownership interest in such registration(s).

(1) ~~(d)~~ [If the respondent has appointed a domestic representative, and such appointment is reflected in the Office's records, the Board will send the notice only to the domestic representative at the email or correspondence address of record for the domestic representative.](#)

(d) When the party alleged by the petitioner, pursuant to § 2.112(a), as the current owner of the registration(s) is not the record owner, a courtesy copy of the [petition for cancellation notice with a Web link or Web address to access the electronic proceeding record](#) shall be forwarded ~~with a copy of the notification to~~ the alleged current owner. The alleged current owner may file a motion to be joined or substituted as respondent.

[48 FR 23136, May 23, 1983; 48 FR 27225, June 14, 1983, as amended at 54 FR 34897, Aug. 22, 1989; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 72 FR 42242, Aug. 1, 2007, effective Nov. 1, 2007; 73 FR 47650, Aug 14. 2008, effective Sept. 15, 2008]

§2.114 Answer.

(a) If no answer is filed within the time [set initially set, or as may later be reset by the Board](#), the petition may be decided as in case of default. [The failure to file a timely answer tolls all deadlines, including the discovery conference, until the issue of default is resolved.](#)

(b)

(1) An answer must be filed through ESTTA. In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, an answer may be filed in paper form. An answer filed in paper form must be accompanied by a Petition to the Director under § 2.146, with the fees therefor and the showing required under this paragraph (b).

~~(1)~~(2) An answer shall state in short and plain terms the ~~respondent's~~respondent's defenses to each claim asserted and shall admit or deny the averments upon which the petitioner relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, respondent shall so state and this will have the effect of a denial. Denials may take any of the forms specified in **Rule** 8(b) of the Federal **Rules** of Civil Procedure. An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. When pleading special matters, the Federal **Rules** of Civil Procedure [*69975] shall be followed. A reply to an affirmative defense ~~need shall~~ not be filed. When a defense attacks the validity of a registration pleaded in the petition, paragraph (b)(~~2~~3) of this section shall govern. A pleaded registration is a registration identified by number ~~and date by the party in position~~ of ~~issuance~~plaintiff in an original petition for cancellation, or a counterclaim petition for cancellation, or in any amendment thereto made under **Rule** ~~15~~7 of the Federal **Rules** of Civil Procedure.

(3)

(i) A defense attacking the validity of any one or more of the registrations pleaded in the petition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed. If grounds for a counterclaim are known to respondent when the answer to the petition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the cancellation proceeding, the counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if ~~the claim~~ is the subject of another proceeding between the same parties or anyone in privity therewith; but the party in position of respondent and counterclaim plaintiff must promptly inform the Board, in the context of the primary cancellation proceeding, of the filing of the other proceeding.

(ii) An attack on the validity of a registration pleaded by a petitioner for cancellation will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.

(iii) The provisions of §§ ~~2.111~~ through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated by the Board within which an answer to the counterclaim must be filed. Such response period may be reset as necessary by the Board, for a time period to be determined by the Board.

(iv) The times for pleading, discovery, testimony, briefs, or oral argument ~~will~~may be reset or extended when necessary, upon motion by a party, or as the Board may

[deem necessary](#), to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

(c) [The petition for cancellation or counterclaim](#) petition for cancellation may be withdrawn without prejudice before the answer is filed. After the answer is filed, ~~the~~[such petition or counterclaim](#) petition may not be withdrawn without prejudice except with the written consent of the registrant or the ~~registrant's~~[registrant's](#) attorney or other authorized representative.

[30 FR 13193, Oct. 16, 1965, as amended at 46 FR 6940, Jan. 22, 1981; 46 FR 11548, Feb. 9, 1981; 51 FR 28710, Aug. 11, 1986; 54 FR 34898, Aug. 22, 1989]

§2.115 Amendment of pleadings in a cancellation proceeding.

Pleadings in a cancellation proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court.

[48 FR 23136, May 23, 1983]

§2.116-§2.136 PROCEDURE IN INTER PARTES PROCEEDINGS

§2.116 Federal Rules of Civil Procedure.

(a) Except as otherwise provided, and wherever applicable and appropriate, procedure and practice in inter partes proceedings shall be governed by the Federal Rules of Civil Procedure.

(b) The opposer in an opposition proceeding or the petitioner in a cancellation proceeding shall be in the position of plaintiff, and the applicant in an opposition proceeding or the respondent in a cancellation proceeding shall be in the position of defendant. A party that is a junior party in an interference proceeding or in a concurrent use registration proceeding shall be in the position of plaintiff against every party that is senior, and the party that is a senior party in an interference proceeding or in a concurrent use registration proceeding shall be a defendant against every party that is junior.

(c) The [notice of](#) opposition or the petition for cancellation and the answer correspond to the complaint and answer in a court proceeding.

(d) The assignment of testimony periods corresponds to setting a case for trial in court proceedings.

(e) The [submission of notices of reliance, declarations and affidavits, as well as the](#) taking of depositions, during the assigned testimony periods ~~corresponds~~[correspond](#) to the trial in court proceedings.

(f) Oral hearing, [if requested, of arguments on the record and merits](#) corresponds to oral summation in court proceedings.

~~(g)~~—The Trademark Trial and Appeal ~~Board's~~Board's standard protective order is ~~applicable during disclosure, discovery and at trial~~automatically imposed in all ~~opposition, cancellation, interference and concurrent use registration~~inter partes proceedings, unless the parties, by stipulation approved by the Board, agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board. The standard protective order is available at the ~~Office's~~Office's Web site, ~~or upon request, a copy will be provided~~. No material disclosed or produced by a party, presented at trial, or filed with the Board, including motions or briefs which discuss such material, shall be treated as confidential or shielded from public view unless designated as protected under the ~~Board's~~Board's standard protective order, or under an alternative order stipulated to by the parties and approved by the Board, or under an order submitted by motion of a party granted by the Board. The Board may treat as not confidential that material which cannot reasonably be considered confidential, notwithstanding a designation as such by a party.

[30 FR 13193, Oct. 16, 1965. Redesignated and amended at 37 FR 7606, Apr. 18, 1972, as amended at 48 FR 23136, May 23, 1983; 72 FR 42242, Aug. 1, 2007, effective Aug. 31, 2007]

§2.117 Suspension of proceedings.

(a) Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

(b) Whenever there is pending before the Board both a motion to suspend and a motion which is potentially dispositive of the case, the potentially dispositive motion may be decided before the question of suspension is considered regardless of the order in which the motions were filed.

(c) Proceedings may also be suspended sua sponte by the Board, or, for good cause, upon motion or a stipulation of the parties approved by the Board. Many consented or stipulated motions to suspend are suitable for automatic approval by ESTTA, but the Board retains discretion to condition approval on the party or parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate.

[48 FR 23136, May 23, 1983; 63 FR 48081, Sept. 9, 1998, effective Oct. 9, 1998]

§2.118 Undelivered Office notices.

When a notice sent by the Office to any registrant or applicant is returned to the Office undelivered, including notification to the Office of non-delivery in paper or electronic form, additional notice may be given by publication in the Official Gazette ~~for the period of time prescribed by the Director.~~

[68 FR 14332, March 25, 2003, effective May 1, 2003; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 72 FR 42242, Aug. 1, 2007, effective Aug. 31, 2007]

§2.119 Service and signing of papers.

(a) ~~(a) Every paper~~ Except for the notice of opposition or the petition to cancel, every submission filed in the ~~United States Patent and Trademark~~ Office in inter partes cases, including notices of appeal ~~to the courts~~, must be served upon the other ~~party or~~ parties. Proof of such service must be made before the ~~papers~~ submission will be considered by the Office. A statement signed by the attorney or other authorized representative, attached to or appearing on the original ~~papers~~ submission when filed, clearly stating the date and manner in which service was made will be accepted as prima facie proof of service.

(b) ~~(b) Service of papers~~ Service of submissions filed with the Board and any other papers served on a ~~party not required to be filed with the Board~~, must be on the attorney or other authorized representative of the party if there be such or on the party if there is no attorney or other authorized representative, and ~~may be made in any of the following ways:~~ must be made by email, unless otherwise stipulated, or if the serving party can show by written explanation accompanying the submission or paper, or in a subsequent amended certificate of service, that service by email was attempted but could not be made due to technical problems or extraordinary circumstances, then service may be made in any of the following ways:

- (1) By delivering a copy of the ~~submission or~~ paper to the person served;
- (2) By leaving a copy at the usual place of business of the person served, with someone in the ~~person's~~ person's employment;
- (3) When the person served has no usual place of business, by leaving a copy at the ~~person's~~ person's residence, with a ~~member~~ some person of ~~the person's family over 14 years of~~ suitable age and ~~of~~ discretion ~~who resides there~~;
- (4) Transmission by the Priority Mail Express[®](R) Post Office to Addressee service of the United States Postal Service or by first-class mail, which may also be certified or registered;
- (5) Transmission by overnight courier; ~~or~~
- (6) ~~(6) Electronic~~ Other forms of electronic transmission ~~when mutually agreed upon by the parties~~.

~~Whenever it shall be satisfactorily shown to the Director that none of the above modes of obtaining service or serving the paper is practicable, service may be by notice published in the Official Gazette.~~

(7) ~~(c)~~ When service is made by first-class mail, Priority Mail Express[®](R), or overnight courier, the date of mailing or ~~of~~ delivery to the overnight courier will be considered the date of service. ~~Whenever a party is required to take some action within a prescribed period after the service of a paper upon the party by another party and the paper is served by first-class mail, Priority Mail Express[®], or overnight courier, 5 days shall be added to the prescribed period.~~

(8) ~~(d)~~ If a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, none of the parties to the proceeding is eligible to use the service option under paragraph (b)(4) of this section. The party not domiciled in the United States may designate by documentsubmission filed in the ~~United States Patent and Trademark~~ Office the name and address of a person residing in the United States on whom may be served notices or process in the proceeding. If the party has appointed a domestic representative, official communications of the ~~United States Patent and Trademark~~ Office will be addressed to the domestic representative unless the proceeding is being prosecuted by an attorney at law or other qualified person duly authorized under §-11.14(c) of this ~~subchapter~~chapter. If the party has not appointed a domestic representative and the proceeding is not being prosecuted by an attorney at law or other qualified person, the Office will send correspondence directly to the party, unless the party designates in writing another address to which correspondence is to be sent. The mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding unless qualified under §-11.14(a-), of this chapter, or qualified under §-11.14(b) of this chapter and authorized under §-2.17(f).

(9) ~~(e)~~ Every papersubmission filed in an inter partes proceeding, and every request for an extension of time to file an opposition, must be signed by the party filing it, or by the party's attorney or other authorized representative, but an unsigned papersubmission will not be refused consideration if a signed copy is submitted to the ~~Patent and Trademark~~ Office within the time limit set in the notification of this defect by the Office.

[37 FR 7606, Apr. 18, 1972, as amended at 41 FR 760, Jan. 5, 1976; 54 FR 34898, Aug. 22, 1989; 63 FR 48081, Sept. 9, 1998, effective Oct. 9, 1998; 67 FR 79520, Dec. 30, 2002; 68 FR 14332, March 25, 2003, effective May 1, 2003; 72 FR 42242, Aug. 1, 2007, effective Nov. 1, 2007; 73 FR 47650, Aug 14, 2008, effective Sept. 15, 2008; 74 FR 54898, Oct. 26, 2009, effective Dec. 28, 2009; 79 FR 63036, Oct. 22, 2014]

§2.120 Discovery.

(a) In general-

(1) ~~(1) Wherever~~ Except as otherwise provided in this section, and wherever appropriate, the provisions of the Federal **Rules** of Civil Procedure relating to disclosure and discovery shall apply in opposition, cancellation, interference and concurrent use registration proceedings except as otherwise provided in this section. The provisions of Rule 26 of the Federal Rules of Civil Procedure ~~26~~ relating to required disclosures, the conference of the parties to discuss settlement and to develop a disclosure and discovery plan, the scope, proportionality, timing and sequence of discovery, protective orders, signing of disclosures and discovery responses, and supplementation of disclosures and discovery responses, are applicable to Board proceedings in modified form, as noted in these **rules** and as may be detailed in any order instituting an inter partes proceeding or subsequent scheduling order. The Board will specify the deadline for a discovery conference, the opening and closing dates for the taking of discovery, and the deadlines within the discovery period for making initial

disclosures and expert disclosure. The trial order setting these deadlines and dates will be included ~~with~~within the notice of institution of the proceeding.

(2) The discovery conference shall occur no later than the opening of the discovery period, and the parties must discuss the subjects set forth in Rule 26(f) of the Federal ~~Rule~~Rules of Civil Procedure ~~26(f)~~ and any subjects set forth in the ~~Board's~~Board's institution order. A Board Interlocutory Attorney or Administrative Trademark Judge will participate in the conference upon request of any party made after answer but no later than ten days prior to the deadline for the conference, or when the Board deems it useful for the parties to have Board involvement. The participating attorney or judge may expand or reduce the number or nature of subjects to be discussed in the conference as may be deemed appropriate. The discovery period will be set for a period of 180 days.

(3) Initial disclosures must be made no later than thirty days after the opening of the discovery period.

(4) Disclosure of expert testimony must occur in the manner and sequence provided in Rule 26(a)(2) of the Federal ~~Rule~~Rules of Civil Procedure ~~26(a)(2),~~ unless alternate directions have been provided by the Board in an institution order or any subsequent order resetting disclosure, discovery or trial dates. If the expert is retained after the deadline for disclosure of expert testimony, the party must promptly file a motion for leave to use expert testimony. Upon disclosure by any party of plans to use expert testimony, whether before or after the deadline for disclosing expert testimony, the Board, either on its own initiative or on notice from either party of the disclosure of expert testimony, may issue an order regarding expert discovery and/or set a deadline for any other party to disclose plans to use a rebuttal expert.

(5) The parties may stipulate to a shortening of the discovery period. ~~The, that there will be no discovery, that the number of discovery requests or depositions be limited, or that reciprocal disclosures be used in place of discovery.~~ Limited extensions of the discovery period may be ~~extended~~granted upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. If a motion for an extension is denied, the discovery period may remain as originally set or as reset. Disclosure deadlines and obligations may be modified upon written stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board, but the expert disclosure deadline must always be scheduled prior to the close of discovery. If a stipulation or motion for modification is denied, discovery disclosure deadlines may remain as originally set or reset and obligations may remain unaltered.

~~(2)(6)~~ (6) The parties are not required to prepare or transmit to the Board a written report outlining their discovery conference discussions, unless the parties have agreed to alter disclosure or discovery obligations set forth by these rules or applicable Federal Rules of Civil Procedure, or unless directed to file such a report by a participating Board Interlocutory Attorney or Administrative Trademark Judge.

~~(3), (7)~~ ~~(3)~~—A party must make its initial disclosures prior to seeking discovery, absent modification of this requirement by a stipulation of the parties approved by the Board, or a motion granted by the Board, or by order of the Board. Discovery depositions must be ~~taken, and interrogatories~~ properly noticed and taken during the discovery period. Interrogatories, requests for production of documents and things, and requests for admission must be served, ~~on or before the closing date of~~ early enough in the discovery period, as originally set or as ~~may have been~~ reset by the Board, so that responses will be due no later than the close of discovery. Responses to interrogatories, requests for production of documents and things, and requests for admission must be served within thirty days from the date of service of such discovery requests. The time to respond may be extended upon stipulation of the parties, or upon motion granted by the Board, or by order of the Board, ~~but the response may not be due later than the close of discovery.~~ The resetting of a ~~party's~~ party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods; such dates will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board.³

Discovery deposition within the United States. ~~—~~The deposition of a natural person shall be taken in the Federal judicial district where the person resides or is regularly employed or at any place on which the parties agree ~~by stipulation~~ in writing. The responsibility rests wholly with the party taking discovery to secure the attendance of a proposed deponent other than a party or anyone who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party, or a person designated under **Rule** 30(b)(6) or **Rule** 31(a) of the Federal **Rules** of Civil Procedure. ~~(See 35 U.S.C. 24.)~~ (See 35 U.S.C. 24.)

Discovery deposition in foreign countries; or of foreign party within jurisdiction of the United States.

(1) The discovery deposition of a natural person residing in a foreign country who is a party or who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party, or a person designated under **Rule** 30(b)(6) or **Rule** 31(a) of the Federal **Rules** of Civil Procedure, shall, if taken in a foreign country, be taken in the manner prescribed by § 2.124 unless the Trademark Trial and Appeal Board, upon motion for good cause, orders ~~or the parties stipulate,~~ that the deposition be taken by oral examination, or the parties so stipulate.

(2) ~~(2)~~—Whenever a foreign party is or will be, during a time set for discovery, present within the United States or any territory which is under the control and jurisdiction of the United States, such party may be deposed by oral examination upon notice by the party seeking discovery. Whenever a foreign party has or will have, during a time set for discovery, an officer, director, managing agent, or other person who consents to testify on its behalf, present within the United States or any territory which is under the control and jurisdiction of the United States, such officer, director, managing agent, or other person who consents to testify in its behalf may be deposed by oral examination upon notice by the party seeking discovery. The party seeking discovery may have one or more officers, directors, managing agents, or

other persons who consent to testify on behalf of the adverse party, designated under **Rule** 30(b)(6) of the Federal **Rules** of Civil Procedure. The deposition of a person under this paragraph shall be taken in the Federal judicial district where the witness resides or is regularly employed, or, if the witness neither resides nor is regularly employed in a Federal judicial district, where the witness is at the time of the deposition. This paragraph (c)(2) does not preclude the taking of a discovery deposition of a foreign party by any other procedure provided by paragraph (c)(1) of this section.

~~(d) Interrogatories; request for production.~~

Interrogatories. ~~(1)~~ The total number of written interrogatories which a party may serve upon another party pursuant to **Rule** 33 of the Federal **Rules** of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories upon motion therefor showing good cause, or upon stipulation of the parties, approved by the Board. A motion for leave to serve additional interrogatories must be filed and granted prior to the service of the proposed additional interrogatories and must be accompanied by a copy of the interrogatories, if any, which have already been served by the moving party, and by a copy of the interrogatories proposed to be served. If a party upon which interrogatories have been served believes that the number of interrogatories exceeds the limitation specified in this paragraph, (d), and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of the interrogatories which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (e) of this section.

~~(2) The production of documents and things under the provisions of Rule 34 of the Federal Rules of Civil Procedure will be made at the place where the documents and things are usually kept, or where the parties agree, or where and in the manner which the Trademark Trial and Appeal Board, upon motion, orders.~~

Requests for production. ~~(e) Motion for an order to compel.~~ The total number of requests for production which a party may serve upon another party pursuant to **Rule** 34 of the Federal **Rules** of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional requests upon motion therefor showing good cause, or upon stipulation of the parties, approved by the Board. A motion for leave to serve additional requests must be filed and granted prior to the service of the proposed additional requests and must be accompanied by a copy of the requests, if any, which have already been served by the moving party, and by a copy of the requests proposed to be served. If a party upon which requests have been served believes that the number of requests exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving responses and specific objections to the requests, serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of the requests which together are

said to exceed the limitation, and must otherwise comply with the requirements of paragraph (f) of this section. The time, place, and manner for production of documents, electronically stored information, and tangible things shall comport with the provisions of **Rule 34** of the Federal **Rules** of Civil Procedure, or be made pursuant to agreement of the parties, or where and in the manner which the Trademark Trial and Appeal Board, upon motion, orders.

Motion for an order to compel disclosure or discovery.

(1) ~~(4)~~ If a party fails to make required initial disclosures or expert testimony disclosure, or fails to designate a person pursuant to **Rule 30(b)(6)** or **Rule 31(a)** of the Federal **Rules** of Civil Procedure, or if a party, or such designated person, or an officer, director or managing agent of a party fails to attend a deposition or fails to answer any question propounded in a discovery deposition, or any interrogatory, or fails to produce and permit the inspection and copying of any document ~~or, electronically stored information, or tangible~~ thing, the party entitled to disclosure or seeking discovery may file a motion to compel disclosure, a designation, or attendance at a deposition, or an answer, or production and an opportunity to inspect and copy. A motion to compel initial disclosures ~~or~~ must be filed within thirty days after the deadline therefor and include a copy of the disclosure(s), if any, and a motion to compel an expert testimony disclosure must be filed prior to the close of the discovery period. A motion to compel discovery must be filed prior to the ~~commencement of deadline for pretrial disclosures for~~ the first testimony period as originally set or as reset. A motion to compel discovery shall include a copy of the request for designation of a witness or of the relevant portion of the discovery deposition; or a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents ~~or,~~ electronically stored information, or tangible things that were not produced for inspection and copying. A motion to compel initial disclosures, expert testimony disclosure, or discovery must be supported by a written statements showing from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in [*699781] the motion but the parties were unable to resolve their differences. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.

(2) When a party files a motion for an order to compel initial disclosures, expert testimony disclosure, or discovery, the case will be suspended by the Board with respect to all matters not germane to the motion. After the motion to compel is filed and served, no party should file any paper that is not germane to the motion, except as otherwise specified in the ~~Board's~~ Board's suspension order. Nor may any party serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of a motion to compel any disclosure or discovery shall not toll the time for a party to comply with any disclosure requirement or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. If discovery has closed, however, the parties need not make pretrial disclosures until directed to do so by the Board.

Motion for a protective order. ~~(f) Motion for a protective order.~~ Upon motion by a party obligated to make initial disclosures or expert testimony disclosure or from whom discovery is sought, and for good cause, the Trademark Trial and Appeal Board may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the types of orders provided by clauses ~~(4A)~~ through ~~(8H)~~, inclusive, of **Rule 26(c)(1)** of the Federal **Rules** of Civil Procedure. If the motion for a protective order is denied in whole or in part, the Board may, on such conditions (other than an award of expenses to the party prevailing on the motion) as are just, order that any party comply with disclosure obligations or provide or permit discovery.

~~(g) Sanctions.~~

Sanctions. ~~(4)~~

(1) If a party fails to participate in the required discovery conference, or if a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery, including a protective order, the Board may make any appropriate order, including those provided in **Rule 37(b)(2)** of the Federal **Rules** of Civil Procedure, except that the Board will not hold any person in contempt or award expenses to any party. The Board may impose against a party any of the sanctions provided in **Rule 37(b)(2)** in the event that said party or any attorney, agent, or designated witness of that party fails to comply with a protective order made pursuant to **Rule 26(c)** of the Federal **Rules** of Civil Procedure. A motion for sanctions against a party for its failure to participate in the required discovery conference must be filed prior to the deadline for any party to make initial disclosures.

(2) ~~(2)~~ If a party fails to make required initial disclosures or expert testimony disclosure, and such party or the ~~party's~~ attorney or other authorized representative informs the party or parties entitled to receive disclosures that required disclosures will not be made, the Board may make any appropriate order, as specified in paragraph ~~(gh)~~(1) of this section. If a party, or an officer, director, or managing agent of a party, or a person designated under **Rule 30(b)(6)** or **31(a)** of the Federal **Rules** of Civil Procedure to testify on behalf of a party, fails to attend the ~~party's~~ or ~~person's~~ discovery deposition, after being served with proper notice, or fails to provide any response to a set of interrogatories or to a set of requests for production of documents and things, and such party or the ~~party's~~ attorney or other authorized representative informs the party seeking discovery that no response will be made thereto, the Board may make any appropriate order, as specified in paragraph ~~(gh)~~(1) of this section.

~~(h) Request for admissions.~~

Requests for admission. ~~(4)~~ The total number of requests for admission which a party may serve upon another party pursuant to **Rule 36** of the Federal **Rules** of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional requests upon motion therefor showing good cause, or upon stipulation of the parties, approved by the Board. A motion for leave to serve additional

requests must be filed and granted prior to the service of the proposed additional requests and must be accompanied by a copy of the requests, if any, which have already been served by the moving party, and by a copy of the requests proposed to be served. If a party upon which requests for admission have been served believes that the number of requests for admission exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the requests for admission, serve a general objection on the ground of their excessive number. However, independent of this limit, a party may make one comprehensive request for admission of any adverse party that has produced documents for an admission authenticating specific documents, or specifying which of those documents cannot be authenticated.

(1) Any motion by a party to determine the sufficiency of an answer or objection, including testing the sufficiency of a general objection on the ground of excessive number, to a request made by that party for an admission must be filed prior to the commencement of the deadline for pretrial disclosures for the first testimony period, as originally set or as reset. The motion shall include a copy of the request for admission and any exhibits thereto and of the answer or objection. The motion must be supported by a written statement from the moving party showing that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.

(2) ~~(2)~~ When a party files a motion to determine the sufficiency of an answer or objection to a request for an admission, the case will be suspended by the Board with respect to all matters not germane to the motion. After ~~filing and service of~~ the motion is filed and served, no party should file any paper that is not germane to the motion, except as otherwise specified in the ~~Board's~~ Board's suspension order. Nor may any party ~~thereafter~~ serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of a motion to determine the sufficiency of an answer or objection to a request for admission shall not toll the time for a party to comply with any disclosure requirement or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. If discovery has closed, however, the parties need not make pretrial disclosures until directed to do so by the Board.

~~(i) Telephone and pretrial conferences.~~

Telephone and pretrial conferences.

(1) Whenever it appears to the Trademark Trial and Appeal Board that a stipulation or motion filed in an inter partes proceeding is of such nature that ~~its approval or resolution by correspondence is not practical~~ a telephone conference would be beneficial, the Board may, upon its own initiative or upon request made by one or both of the parties, ~~address the stipulation or resolve the motion by~~ schedule a telephone conference.

(2) ~~(2)~~ Whenever it appears to the Trademark Trial and Appeal Board that questions or issues arising during the [\[*69979\]](#) interlocutory phase of an inter partes proceeding have become so complex that their resolution by correspondence or telephone conference is not practical and that resolution would likely be facilitated by a conference in person of the parties or their attorneys with an Administrative Trademark Judge or an Interlocutory Attorney of the Board, the Board may, upon its own initiative ~~or upon motion made by one or both of the parties, request, direct~~ that the parties ~~and/or~~ their attorneys, ~~under circumstances which will not result in undue hardship for any party,~~ meet with the Board ~~at its offices~~ for a disclosure, discovery or pretrial conference ~~on such terms as the Board may order.~~

~~(3) (j) Use~~ Parties may not make a recording of ~~discovery deposition, answer~~ the conferences referenced in paragraphs ~~(j)(1) and (2) of this section.~~

Use of discovery deposition, [answer](#) to interrogatory, admission or written disclosure.

(1) ~~(1)~~ The discovery deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent of a party, or a person designated by a party pursuant to **Rule** 30(b)(6) or **Rule** 31(a) of the Federal **Rules** of Civil Procedure, may be offered in evidence by an adverse party.

(2) ~~(2)~~ Except as provided in paragraph ~~(jk)(1)~~ of this section, the discovery deposition of a witness, whether or not a party, shall not be offered in evidence unless the person whose deposition was taken is, during the testimony period of the party offering the deposition, dead; or out of the United States (unless it appears that the absence of the witness was procured by the party offering the deposition); or unable to testify because of age, illness, infirmity, or imprisonment; or cannot be served with a subpoena to compel attendance at a testimonial deposition; or there is a stipulation by the parties; or upon a showing that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used. The use of a discovery deposition by any party under this paragraph will be allowed only by stipulation of the parties approved by the Trademark Trial and Appeal Board, or by order of the Board on motion, which shall be filed ~~at the time of the purported offer of the deposition in evidence when the party makes its pretrial disclosures,~~ unless the motion is based upon a claim that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used, ~~even though such deadline has passed,~~ in which case the motion shall be filed promptly after the circumstances claimed to justify use of the deposition became known.

(i) A discovery deposition, an answer to an interrogatory, an admission to a request for admission, or a written [initial](#) disclosure ~~(but not a disclosed document),~~ which may be offered in evidence under the provisions of paragraph ~~(jk)~~ of this section, may be made of record in the case by filing the deposition or any part thereof with any exhibit to the part that is filed, or a copy of the interrogatory and answer thereto with any exhibit made part of the answer, or a copy of the request for admission and any exhibit thereto and the admission (or a statement that the party from which an admission was requested failed to respond thereto), or a copy of the written [initial](#)

disclosure, together with a notice of reliance ~~in accordance with § 2.122(g)~~. The notice of reliance and the material submitted thereunder should be filed during the testimony period of the party that files the notice of reliance. An objection made at a discovery deposition by a party answering a question subject to the objection will be considered at final hearing.

(ii) ~~(ii)~~ A party that has obtained documents from another party through disclosure or under **Rule** 34 of the Federal **Rules** of Civil Procedure may not make the documents of record by notice of reliance alone, except to the extent that they are admissible by notice of reliance under the provisions of ~~§ 2.122(e)~~ 2.122(e), or the party has obtained an admission or stipulation from the producing party that authenticates the documents.

(3) ~~(4)~~ If only part of a discovery deposition is submitted and made part of the record by a party, an adverse party may introduce under a notice of reliance any other part of the deposition which should in fairness be considered so as to make not misleading what was offered by the submitting party. A notice of reliance filed by an adverse party must be supported by a written statement explaining why the adverse party needs to rely upon each additional part listed in the adverse ~~party's~~ party's notice, failing which the Board, in its discretion, may refuse to consider the additional parts.

(4) ~~(5)~~ Written disclosures, an answer to an interrogatory, or an admission to a request for admission, may be submitted and made part of the record only by the receiving or inquiring party except that, if fewer than all of the written disclosures, answers to interrogatories, or fewer than all of the admissions, are offered in evidence by the receiving or inquiring party, the disclosing or responding party may introduce under a notice of reliance any other written disclosures, answers to interrogatories, or any other admissions, which should in fairness be considered so as to make not misleading what was offered by the receiving or inquiring party. The notice of reliance filed by the disclosing or responding party must be supported by a written statement explaining why the disclosing or responding party needs to rely upon each of the additional written disclosures or discovery responses listed in the disclosing or responding ~~party's~~ party's notice, and absent such statement, the Board, in its discretion, may refuse to consider the additional written disclosures or responses.

(5) ~~(6)~~ Paragraph ~~(j)~~ of this section will not be interpreted to preclude reading or use of written disclosures or documents, a discovery deposition, or answer to an interrogatory, or admission as part of the examination or cross-examination of any witness during the testimony period of any party.

(6) ~~(7)~~ When a written disclosure, a discovery deposition, or a part thereof, or an answer to an interrogatory, or an admission, or an authenticated produced document has been made of record by one party in accordance with the provisions of paragraph ~~(j)~~ (3) of this section, it may be referred to by any party for any purpose permitted by the Federal **Rules** of Evidence.

(7) ~~(8)~~ Written disclosures or disclosed documents, requests for discovery, responses thereto, and materials or depositions obtained through the disclosure or discovery process

should not be filed with the Board, except when submitted with a motion relating to disclosure or discovery, or in support of or in response to a motion for summary judgment, or under a notice of reliance, when permitted, during a [party's](#) testimony period.

[48 FR 23136, May 23, 1983, as amended at 54 FR 34899, Aug. 22, 1989; 54 FR 38041, Sept. 14, 1989; 56 FR 46376, Sept. 12, 1991; 63 FR 48081, Sept. 9, 1998; 63 FR 52158, Sept. 30, 1998; 72 FR 42242, Aug. 1, 2007, effective Nov. 1, 2007]

§2.121 Assignment of times for taking testimony and presenting evidence.

(a) ~~(a)~~ The Trademark Trial and Appeal Board will issue a trial order setting a deadline for each [party's](#) required pretrial disclosures and assigning to each party its time for taking testimony ~~and presenting evidence ("testimony period").~~ No testimony shall be taken ~~or evidence presented~~ except during the times assigned, unless by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. The deadlines for pretrial disclosures and the testimony periods may be rescheduled by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. If a motion to reschedule any pretrial disclosure deadline and/or testimony period is denied, the pretrial disclosure deadline or testimony period and any subsequent remaining periods may remain as set. The resetting of the [\[*69980\]](#) closing date for discovery will result in the rescheduling of pretrial disclosure deadlines and testimony periods without action by any party. [The resetting of a party's testimony period will result in the rescheduling of the remaining pretrial disclosure deadlines without action by any party.](#)

~~(b)~~

(1) The Trademark Trial and Appeal Board will schedule a testimony period for the plaintiff to present its case in chief, a testimony period for the defendant to present its case and to meet the case of the plaintiff, and a testimony period for the plaintiff to present evidence in rebuttal.

(2) When there is a counterclaim, or when proceedings have been consolidated and one party is in the position of plaintiff in one of the involved proceedings and in the position of defendant in another of the involved proceedings, or when there is an interference or a concurrent use registration proceeding involving more than two parties, the Board will schedule testimony periods so that each party in the position of plaintiff will have a period for presenting its case in chief against each party in the position of defendant, each party in the position of defendant will have a period for presenting its case and meeting the case of each plaintiff, and each party in the position of plaintiff will have a period for presenting evidence in rebuttal.

(c) ~~(c)~~ A testimony period which is solely for rebuttal will be set for fifteen days. All other testimony periods will be set for thirty days. The periods may be [shortened or](#) extended by stipulation of the parties approved by the Trademark Trial and Appeal Board, or [may be extended](#) upon motion granted by the Board, or by order of the Board. If a motion for an extension is denied, the testimony periods [and their associated pretrial disclosure deadlines](#) may remain as set.

(I) ~~(d)~~ When parties stipulate to the rescheduling of a deadline for pretrial disclosures and subsequent testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of subsequent deadlines for pretrial disclosures and testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed thereto, shall be submitted to the Board [through ESTTA, with the relevant dates set forth and an express statement that all parties agree to the new dates.](#)

(II) ~~(e)~~ A party need not disclose, prior to its testimony period, any notices of reliance it intends to file during its testimony period. However, no later than fifteen days prior to the opening of each testimony period, or on such alternate schedule as may be provided by order of the Board, the party scheduled to present evidence must disclose the name and, if not previously provided, the telephone number and address of each witness from whom it intends to take testimony, or may take testimony if the need arises, general identifying information about the witness, such as relationship to any party, including job title if employed by a party, or, if neither a party nor related to a party, occupation and job title, a general summary or list of subjects on which the witness is expected to testify, and a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witness. [The testimony of a witness may be taken upon oral examination and transcribed, or presented in the form of an affidavit or declaration, as provided in § 2.123.](#) Pretrial disclosure of a witness under this ~~subsection~~[paragraph \(e\)](#) does not substitute for issuance of a proper notice of examination under ~~§ 2.123(c)~~ or ~~§ 2.124(b)~~. If a party does not plan to take testimony from any witnesses, it must so state in its pretrial disclosure. When a party fails to make required pretrial disclosures, any adverse party or parties may have remedy by way of a motion to the Board to delay or reset any subsequent pretrial disclosure deadlines and/or testimony periods. [A party may move to quash a noticed testimony deposition of a witness not identified or improperly identified in pretrial disclosures before the deposition. When testimony has been presented by affidavit or declaration, but was not covered by an earlier pretrial disclosure, the remedy for any adverse party is the prompt filing of a motion to strike, as provided in §§ 2.123 and 2.124.](#)

[48 FR 23138, May 23, 1983; 48 FR 27225, June 14, 1983, as amended at 54 FR 34899, Aug. 22, 1989; 63 FR 48081, Sept. 9, 1998, effective Oct. 9, 1998; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 72 FR 42242, Aug. 1, 2007, effective Nov. 1, 2007]

§2.122 Matters in evidence.

~~(a) Rules of evidence. The~~[\(a\) Matters in Evidence. Unless the parties otherwise stipulate, the **rules** of evidence for proceedings before the Trademark Trial and Appeal Board are the Federal **Rules** of Evidence, the relevant provisions of the Federal **Rules** of Civil Procedure, the relevant provisions of Title 28 of the United States Code, and the provisions of this ~~Part of Title 37 of the Code of Federal Regulations~~\[part. When evidence has been made of record by one party in accordance with these **rules**, it may be referred to by any party for any purpose permitted by the Federal **Rules** of Evidence.\]\(#\)](#)

(b) *Application and registration files.*

(1) ~~(1)~~ The file of each application or registration specified in a notice of interference, of each application or registration specified in the notice of a concurrent use registration proceeding, of the application against which a notice of opposition is filed, or of each registration against which a petition or counterclaim for cancellation is filed forms part of the record of the proceeding without any action by the parties and reference may be made to the file for any relevant and competent purpose in accordance with paragraph (b)(2) of this section.

(2) ~~(2)~~ The allegation in an application for registration, or in a registration, of a date of use is not evidence on behalf of the applicant or registrant; a date of use of a mark must be established by competent evidence. Specimens in the file of an application for registration, or in the file of a registration, are not evidence on behalf of the applicant or registrant unless identified and introduced in evidence as exhibits during the period for the taking of testimony. Statements made in an affidavit or declaration in the file of an application for registration, or in the file of a registration, are not testimony on behalf of the applicant or registrant. Establishing the truth of these or any other matters asserted in the files of these applications and registrations shall be governed by the Federal **Rules** of Evidence, the relevant provisions of the Federal **Rules** of Civil Procedure, the relevant provisions of Title 28 of the United States Code, and the provisions of this part.

(c) Exhibits to pleadings. Except as provided in paragraph (d)(1) of this section, an exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached ~~unless, and~~ must be identified and introduced in evidence as an exhibit during the period for the taking of testimony.

(d) *Registrations.*

(1) ~~(1)~~ A registration of the opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if the opposition or petition is accompanied by an original or photocopy of the registration prepared and issued by the ~~United States Patent and Trademark~~ Office showing both the current status of and current title to the registration, or by a current printout copy of information from the electronic database records of the USPTO Office showing the current status and title of the registration. For the cost of a copy of a registration showing status and title, see § 2.6(b)(4).

(2) ~~(2)~~ A registration owned by any party to a proceeding may be made of record in the proceeding by that party by appropriate identification and introduction during the taking of testimony or by filing a notice of reliance in accordance with paragraph (g) of this section, which shall be accompanied by a copy (original or photocopy) of the registration prepared and issued by the ~~Patent and Trademark~~ Office showing both the current status of and current title to the registration, or by a current copy of information from the electronic database records of the Office showing the current status and title of the registration. The notice of reliance shall be filed during the testimony period of the party that files the notice.

~~(e) Printed publications and official records.~~

(1) Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant ~~under an issue~~ in a particular proceeding, and official records, if the publication or official record is competent evidence and relevant to an [*69981] issue, may be introduced in evidence by filing a notice of reliance on the material being offered. ~~in accordance with paragraph (g) of this section.~~ The notice of reliance shall specify the printed publication (including information sufficient to identify the source and the date of the publication) or the official record and the pages to be read; ~~indicate generally the relevance of the material being offered;~~ and be accompanied by the official record or a copy thereof whose authenticity is established under the Federal **Rules** of Evidence, or by the printed publication or a copy of the relevant portion thereof. A copy of an official record of the Patent and Trademark Office need not be certified to be offered in evidence. ~~The~~

(2) Internet materials may be admitted into evidence under a notice of reliance ~~shall be filed during~~ in accordance with paragraph (g) of this section, in the ~~testimony period of same manner as a printed publication in general circulation, so long as the party that files~~ date the notice; internet materials were accessed and their source (e.g., URL) are provided.

(f) *Testimony from other proceedings.* By order of the Trademark Trial and Appeal Board, on motion, testimony taken in another proceeding, or testimony taken in a suit or action in a court, between the same parties or those in privity may be used in a proceeding, so far as relevant and material, subject, however, to the right of any adverse party to recall or demand the recall for examination or cross-examination of any witness whose prior testimony has been offered and to rebut the testimony.

(g) Notices of Reliance. The types of evidence admissible by notice of reliance are identified in paragraphs (d)(2) and (e)(1) and (2) of this section and § 2.120(k). A notice of reliance shall be filed during the testimony period of the party that files the notice. For all evidence offered by notice of reliance, the notice must indicate generally the relevance of the evidence and associate it with one or more issues in the proceeding. Failure to identify the relevance of the evidence, or associate it with issues in the proceeding, with sufficient specificity is a procedural defect that can be cured by the offering party within the time set by Board order.

[48 FR 23138, May 23, 1983, as amended at 54 FR 34899, Aug. 22, 1989; 63 FR 48081, Sept. 9, 1998, effective Oct. 9, 1998; 72 FR 42242, Aug. 1, 2007, effective Aug. 31, 2007]

§2.123 Trial testimony in inter partes cases.

(a)

(1) The testimony of witnesses in inter partes cases may be submitted in the form of an affidavit or a declaration pursuant to § 2.20 and in conformance with the Federal Rules of Evidence, filed during the proffering party's testimony period, subject to the right of any adverse party to elect to take and bear the expense of oral cross-examination of that witness as provided under paragraph (c) of this section if such witness is within the jurisdiction of the United States, or conduct cross-examination by written questions as provided in § 2.124 if

such witness is outside the jurisdiction of the United States, and the offering party must make that witness available; or taken by ~~depositions~~deposition upon oral examination as provided by this section; or by ~~depositions~~deposition upon written questions as provided by §-2.124.

~~(1)(2)~~ A testimonial deposition taken in a foreign country shall be taken by deposition upon written questions as provided by § 2.124, unless the Board, upon motion for good cause, orders that the deposition be taken by oral examination or by affidavit or declaration, subject to the right of any adverse party to elect to take and bear the expense of cross-examination by written questions of that witness, or the parties so stipulate. If a party serves notice of the taking of a testimonial deposition upon written questions of a witness who is, or will be at the time of the deposition, present within the United States or any territory which is under the control and jurisdiction of the United States, any adverse party may, within ~~fifteen~~twenty days from the date of service of the notice, file a motion with the Trademark Trial and Appeal Board, for good cause, for an order that the deposition be taken by oral examination.

~~(2) A testimonial deposition taken in a foreign country shall be taken by deposition upon written questions as provided by § 2.124, unless the Board, upon motion for good cause, orders that the deposition be taken by oral examination, or the parties so stipulate.~~

~~(b) Stipulations.~~ If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions. ~~By written agreement of the parties, the testimony of any witness or witnesses of any party, may be submitted in the form of an affidavit by such witness or witnesses.~~ The parties may stipulate in writing what a particular witness would testify to if called; ~~or the any relevant~~ facts in the case ~~of any party~~ may be stipulated in writing.

~~(c) Notice of examination of witnesses.~~ Before the oral depositions of witnesses shall be taken by a party, due notice in writing shall be given to the ~~opposing~~adverse party or parties, as provided in §-2.119(b), of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and the name and address of each witness to be examined; ~~if the name of a witness is not known, a general description sufficient to identify the witness or the particular class or group to which the witness belongs, together with a satisfactory explanation, may be given instead.~~ Depositions may be noticed for any reasonable time and place in the United States. A deposition may not be noticed for a place in a foreign country except as provided in paragraph (a)(2) of this section. No party shall take depositions in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other is not available. When a party elects to take oral cross-examination of an affiant or declarant, the notice of such election must be served on the adverse party and a copy filed with the Board within 20 days from the date of service of the affidavit or declaration and completed within 30 days from the date of service of the notice of election. Upon motion for good cause by any party, or upon its own initiative, the Board may extend the periods for electing and taking oral cross-examination. When such election has been made but cannot be completed within that testimony period, the Board, after the close of that testimony

period, shall suspend or reschedule other proceedings in the matter to allow for the orderly completion of the oral cross-examination(s).

(d) *Persons before whom depositions may be taken.* Depositions may be taken before persons designated by Rule 28 of the Federal Rules of Civil Procedure.

(e) *Examination of witnesses.*

~~(1)~~ Each witness before ~~testifying~~providing oral testimony shall be duly sworn according to law by the officer before whom ~~his~~the deposition is to be taken.

~~(1)~~ Where oral depositions are taken, every adverse party shall have a full opportunity to cross-examine each witness. When testimony is proffered by affidavit or declaration, every adverse party will have the right to elect oral cross-examination of any witness within the jurisdiction of the United States. For examination of witnesses outside the jurisdiction of the United States, see § 2-124.

~~(1)(2)~~ The deposition shall be taken in answer to questions, with the questions and answers recorded in their regular order by the officer, or by some other person (who shall be subject to the provisions of **Rule** 28 of the Federal **Rules** of Civil Procedure) in the presence of the officer except when the ~~officer's~~officer's presence is waived on the record by agreement of the parties. The testimony shall be ~~taken stenographically~~recorded and transcribed, unless the parties present agree otherwise. ~~In the absence of all opposing parties and their attorneys or other authorized representatives, depositions may be taken in longhand, typewriting, or stenographically.~~ Exhibits which are marked and identified at the deposition will be deemed to have been offered into evidence, without any formal offer thereof, unless the intention of the party marking the exhibits is clearly expressed to the contrary.

~~(3)~~ ~~(3) Every adverse party shall have full opportunity to cross-examine each witness.~~ If pretrial disclosures or the notice of examination of witnesses served pursuant to paragraph (c) of this section are improper or inadequate with respect to any witness, an adverse party may cross-examine that witness under protest while reserving the right to object to the receipt of the testimony in evidence. Promptly after the testimony is completed, the adverse party, to preserve the objection, shall move to strike the testimony from the record, which motion will be decided on the basis of all the relevant circumstances.

(i) A motion to strike the testimony of a witness for lack of proper or adequate pretrial disclosure may seek exclusion of the entire testimony, when there was no pretrial disclosure, or may seek exclusion of that portion of the testimony that was not adequately disclosed in accordance with §-2.121(e). [*699821]

(ii) A motion to strike the testimony of a witness for lack of proper or adequate notice of examination must request the exclusion of the entire testimony of that witness and not only a part of that testimony.

~~(2)~~(4) ~~(4)~~ All objections made at the time of ~~the~~ oral examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

~~(3)~~(5) ~~(5)~~ When the oral deposition has been transcribed, the deposition transcript shall be carefully read over by the witness or by the officer to ~~him~~ the witness, and shall then be signed by the witness in the presence of any officer authorized to administer oaths unless the reading and the signature be waived on the record by agreement of all parties.

(f) Certification and filing of deposition.

(1) ~~(1)~~ The officer shall annex to the deposition his or her certificate showing:

- (i) ~~(i)~~ Due administration of the oath by the officer to the witness before the commencement of his or her deposition;
- (ii) ~~(ii)~~ The name of the person by whom the deposition was taken down, and whether, if not taken down by the officer, it was taken down in his or her presence;
- (iii) ~~(iii)~~ The presence or absence of the adverse party;
- (iv) ~~(iv)~~ The place, day, and hour of commencing and taking the deposition;
- (v) ~~(v)~~ The fact that the officer was not disqualified as specified in **Rule** 28 of the Federal **Rules** of Civil Procedure.

(2) ~~(2)~~ If any of the foregoing requirements in paragraph (f)(1) of this section are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his seal of office, if he has such a seal. ~~Unless waived on the record by an agreement, he shall then securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing. The officer or the~~ or her seal of office, if he or she has such a seal. The party taking the deposition, or its attorney or other authorized representative, shall then promptly forward file the package to the address set out transcript and exhibits in § 2.190 electronic form using ESTTA. If the weight or bulk nature of an exhibit precludes electronic transmission via ESTTA, it shall exclude it from the envelope, it shall, unless waived on the record be submitted by agreement of all parties, be authenticated by the officer and transmitted by the officer or mail by the party taking the deposition, or its attorney or other authorized representative, in a separate package marked and addressed as provided in this section.

(g) Form of deposition.

(1) ~~(1)~~ The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. A deposition must be in written form. The questions propounded to each witness must be consecutively numbered unless the pages have numbered lines. Each question must be followed by its answer. The

deposition transcript must be submitted in full-sized format (one page per sheet), not condensed (multiple pages per sheet).

(2) ~~(2)~~ Exhibits must be numbered or lettered consecutively and each must be marked with the number and title of the case and the name of the party offering the exhibit. Entry and consideration may be refused to improperly marked exhibits.

(3) ~~(3)~~ Each deposition must contain a word index and an index of the names of the witnesses, giving the pages where ~~the~~the words appear in the deposition and where witness examination and cross-examination begin, and an index of the exhibits, briefly describing their nature and giving the pages at which they are introduced and offered in evidence.

~~(h)~~ *Depositions must be filed.* All depositions which are taken must be duly filed in the Patent and Trademark Office. On refusal to file, the Office at its discretion will not further hear or consider the contestant with whom the refusal lies; and the Office may, at its discretion, receive and consider a copy of the withheld deposition, attested by such evidence as is procurable.

(i) Inspection of depositions. After the depositions are filed in the Office, they may be inspected by any party to the case, but they cannot be withdrawn for the purpose of printing. They may be printed by someone specially designated by the Office for that purpose, under proper restrictions.

(j) Effect of errors and irregularities in depositions: **Rule** 32(d)(1), (2), and (3)(A) and (B) of the Federal **Rules** of Civil Procedure shall apply to errors and irregularities in depositions. Notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that the objection was raised at the time specified in said **rule**.

(k) Objections to admissibility: Subject to the provisions of paragraph ~~(j)~~ of this section, objection may be made to receiving in evidence any declaration, affidavit, or deposition, or part thereof, or any other evidence, for any reason which would require the exclusion of the evidence from consideration. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony must be raised at the time specified in **Rule** 32(d)(3)(A) of the Federal **Rules** of Civil Procedure. Such objections ~~will~~may not be considered until final hearing.

(l) Evidence not considered. Evidence not obtained and filed in compliance with these sections will not be considered.

[27 FR 7606, Apr. 18, 1972, as amended at 41 FR 760, Jan. 5 1976; 48 FR 23139, May 23, 1983; 54 FR 34899, Aug. 22, 1989; 63 FR 48081, Sept. 9, 1998, effective Oct. 9, 1998; 68 FR 14332, March 25, 2003, effective May 1, 2003; 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 72 FR 42242, Aug. 1, 2007, effective Nov. 1, 2007]

§2.124 Depositions upon written questions.

(a) A deposition upon written questions may be taken before any person before whom depositions may be taken as provided by Rule 28 of the Federal Rules of Civil Procedure.

(b)

- (1) A party desiring to take a testimonial deposition upon written questions shall serve notice thereof upon each adverse party within ten days from the opening date of the testimony period of the party who serves the notice. The notice shall state the name and address of the witness. A copy of the notice, but not copies of the questions, shall be filed with the Trademark Trial and Appeal Board.
- (2) A party desiring to take a discovery deposition upon written questions shall serve notice thereof upon each adverse party and shall file a copy of the notice, but not copies of the questions, with the Board. The notice shall state the name and address, if known, of the person whose deposition is to be taken. If the name of the person is not known, a general description sufficient to identify the witness or the particular class or group to which he or she belongs shall be stated in the notice, and the party from whom the discovery deposition is to be taken shall designate one or more persons to be deposed in the same manner as is provided by **Rule** 30(b)(6) of the Federal **Rules** of Civil Procedure.

(3) A party desiring to take cross-examination, by written questions, of a witness who has provided testimony by affidavit or declaration shall serve notice thereof upon each adverse party and shall file a copy of the notice, but not copies of the questions, with the Board.

(c) Every notice given under the provisions of paragraph (b) of this section shall be accompanied by the name or descriptive title of the officer before whom the deposition is to be taken.

(d)

(1) ~~(1)~~ Every notice served on any adverse party under the provisions of paragraph (b) of this section, for the taking of direct testimony, shall be accompanied by the written questions to be propounded on behalf of the party who proposes to take the deposition. Every notice served on any adverse party under the provisions of paragraph (b)(3) of this section, for the taking of cross-examination, shall be accompanied by the written questions to be propounded on behalf of the party who proposes to take the cross-examination. Within twenty days from the date of service of the notice of taking direct testimony, any adverse party may serve cross questions upon the party who proposes to take the deposition; ~~any.~~ Any party who serves cross questions, whether in response to direct examination questions or under paragraph (b)(3) of this section, shall also serve every other adverse party. Within ten days from the date of service of the cross questions, the party who proposes to take the deposition, or who earlier offered testimony of the witness by affidavit or declaration, may serve redirect questions on every adverse party. Within ten days from the date of service of the redirect questions, any party who served cross questions may serve recross questions upon the party who proposes to take the deposition; any party who serves recross questions [*69983] shall also serve every other adverse party. Written objections to questions may be served on a party propounding questions; any party who objects shall serve a copy of the objections on every other adverse party. In response to objections, substitute questions may be served on the

objecting party within ten days of the date of service of the objections; substitute questions shall be served on every other adverse party.

(2) ~~(2)~~ Upon motion for good cause by any party, or upon its own initiative, the Trademark Trial and Appeal Board may extend any of the time periods provided by paragraph (d)(1) of this section. Upon receipt of written notice that one or more testimonial depositions are to be taken upon written questions, the Trademark Trial and Appeal Board shall suspend or reschedule other proceedings in the matter to allow for the orderly completion of the depositions upon written questions.

(3) Service of written questions, responses, and cross-examination questions shall be in accordance with § 2.119(b).

(e) Within ten days after the last date when questions, objections, or substitute questions may be served, the party who proposes to take the deposition shall mail a copy of the notice and copies of all the questions to the officer designated in the notice; a copy of the notice and of all the questions mailed to the officer shall be served on every adverse party. The officer designated in the notice shall take the testimony of the witness in response to the questions and shall record each answer immediately after the corresponding question. The officer shall then certify the transcript and mail the transcript and exhibits to the party who took the deposition.

(f) The party who took the deposition shall promptly serve a copy of the transcript, copies of documentary exhibits, and duplicates or photographs of physical exhibits on every adverse party. It is the responsibility of the party who takes the deposition to assure that the transcript is correct (see §_2.125(b)). If the deposition is a discovery deposition, it may be made of record as provided by §_2.120(jk). If the deposition is a testimonial deposition, the original, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be filed promptly with the Trademark Trial and Appeal Board.

(g) Objections to questions and answers in depositions upon written questions may be considered at final hearing.

[48 FR 23139, May 23, 1983]

§2.125 Filing and service of testimony.

(a) ~~(a)~~ One copy of the ~~transcript of testimony taken~~ declaration or affidavit prepared in accordance with §_2.123, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be served on each adverse party at the time the declaration or affidavit is submitted to the Trademark Trial and Appeal Board during the assigned testimony period.

~~(a)(b)~~ One copy of the transcript of each testimony deposition taken in accordance with § 2.123 or § 2.124, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be served on each adverse party within thirty days after completion of the taking of that testimony. If the transcript with exhibits is not served on each adverse party within thirty days or within an extension of time for the purpose, any adverse party which was not served may have remedy by

way of a motion to the Trademark Trial and Appeal Board to reset such adverse ~~party's~~ party's testimony and/or briefing periods, as may be appropriate. If the deposing party fails to serve a copy of the transcript with exhibits on an adverse party after having been ordered to do so by the Board, the Board, in its discretion, may strike the deposition, or enter judgment as by default against the deposing party, or take any such other action as may be deemed appropriate.

~~(b)(c)~~ ~~(b)~~ The party who takes testimony is responsible for having all typographical errors in the transcript and all errors of arrangement, indexing and form of the transcript corrected, on notice to each adverse party, prior to the filing of one certified transcript with the Trademark Trial and Appeal Board. The party who takes testimony is responsible for serving on each adverse party one copy of the corrected transcript or, if reasonably feasible, corrected pages to be inserted into the transcript previously served.

~~(e)(d)~~ ~~(e)~~ One certified transcript and exhibits shall be filed with the Trademark Trial and Appeal Board. Notice of such filing shall be served on each adverse party and a copy of each notice shall be filed with the Board.

~~(d)(e)~~ ~~(d)~~ Each transcript shall comply with §-2.123(g) with respect to arrangement, indexing and form.

~~(e)(f)~~ ~~(e)~~ Upon motion by any party, for good cause, the Trademark Trial and Appeal Board may order that any part of [an affidavit or declaration or](#) a deposition transcript or any exhibits that directly disclose any trade secret or other confidential research, development, or commercial information may be filed under seal and kept confidential under the provisions of §-2.27(e). If any party or any attorney or agent of a party fails to comply with an order made under this paragraph, the Board may impose any of the sanctions authorized by §-2.120(~~gh~~).

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[48 FR 23410, May 23, 1983, as amended at 54 FR 34900, Aug. 22, 1989; 63 FR 48081, Sept. 9, 1998, effective Oct. 9, 1998]

§2.126 Form of submissions to the Trademark Trial and Appeal Board.

~~(a)~~ ~~(a)~~ Submissions ~~may~~ must be made to the Trademark Trial and Appeal Board ~~en~~ via ESTTA.

(1) Text in an electronic submission must be filed in at least 11-point type and double-spaced.

(2) Exhibits pertaining to an electronic submission must be made electronically as an attachment to the submission and must be clear and legible.

~~(a)(b)~~ In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, submissions may be filed in paper ~~where Board practice or the rules in~~ form. All submissions in paper form, except the extensions of time to file a notice of opposition, the notice of opposition, the petition to cancel, or answers thereto (See §§ 2.101(b)(2), 2.102(a)(2), 2.106(b)(1), 2.111(c)(2), and 2.114(b)(1)), must include a written explanation of such technical problems or extraordinary circumstances. Paper submissions that do not meet the showing required

~~under this part permit paragraph (b) will not be considered.~~ A paper submission, including exhibits and depositions, must meet the following requirements:

- (1) ~~(1)~~ A paper submission must be printed in at least 11-point type and double-spaced, with text on one side only of each sheet;
- (2) ~~(2)~~ A paper submission must be 8 to 8.5 inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long, and contain no tabs or other such devices extending beyond the edges of the paper;
- (3) ~~(3)~~ If a paper submission contains dividers, the dividers must not have any extruding tabs or other devices, and must be on the same size and weight paper as the submission;
- (4) ~~(4)~~ A paper submission must not be stapled or bound;
- (5) ~~(5)~~ All pages of a paper submission must be numbered and exhibits shall be identified in the manner prescribed in §_2.123(g)(2);
- (6) ~~(6)~~ Exhibits pertaining to a paper submission must be filed on paper and comply with the requirements for a paper submission.

~~(b) Submissions may be made to the Trademark Trial and Appeal Board electronically via the Internet where the rules in this part or Board practice permit, according to the parameters established by the Board and published on the web site of the Office. Text in an electronic submission must be in at least 11-point type and double-spaced. Exhibits pertaining to an electronic submission must be made electronically as an attachment to the submission.~~

~~(c) (e)~~ To be handled as confidential, submissions to the Trademark Trial and Appeal Board that are confidential in whole or part pursuant to §_2.125(e) must be submitted using the "Confidential" selection available in ESTTA or, where appropriate, under a separate paper cover. Both the submission and its cover must be marked confidential and must identify the case number and the parties. A copy of the submission for public viewing with the confidential portions redacted must be submitted concurrently.

[Added 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 72 FR 42242, effective Aug. 31, 2007]

§2.127 Motions.

(a) ~~(a)~~ Every motion must be submitted in written form and must meet the requirements prescribed in §_2.126. It shall contain a full statement of the grounds, and shall embody or be accompanied by a brief. Except as provided in paragraph (e)(1) of this section, a brief in response to a motion shall be filed within fifteen days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board, or the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board. If a motion for an extension is denied, the time for [*69984] responding to the motion remains as specified under this section, unless otherwise ordered. Except as provided in paragraph (e)(1) of this section, a reply brief,

if filed, shall be filed within ~~fifteen~~twenty days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended or reopened. The Board will consider no further papers in support of or in opposition to a motion. Neither the brief in support of a motion nor the brief in response to a motion shall exceed twenty-five pages in length in its entirety, including table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary. A reply brief shall not exceed ten pages in length in its entirety. Exhibits submitted in support of or in opposition to a motion are not considered part of the brief for purposes of determining the length of the brief. When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. An oral hearing will not be held on a motion except on order by the Board.

(b) ~~(b)~~ Any request for reconsideration or modification of an order or decision issued on a motion must be filed within one month from the date thereof. A brief in response must be filed within ~~45~~twenty days from the date of service of the request.

(c) ~~(c)~~ Interlocutory motions, requests, conceded matters, and other matters not actually or potentially dispositive of a proceeding may be acted upon by a single Administrative Trademark Judge of the Trademark Trial and Appeal Board, or by an Interlocutory Attorney or Paralegal of the Board to whom authority ~~so~~ to act has been delegated, or by ESTTA. Motions disposed of by orders entitled "By the Trademark Trial and Appeal Board" have the same legal effect as orders by a panel of three Administrative Trademark Judges of the Board.

(d) ~~(d)~~ When any party timely files a potentially dispositive motion, including, but not limited to, a motion to dismiss, ~~or~~ a motion for judgment on the pleadings, or a motion for summary judgment, ~~or any other motion which is potentially dispositive of a proceeding,~~ the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion except as otherwise may be specified in ~~the Board's suspension~~ a Board order. If the case is not disposed of as a result of the motion, proceedings will be resumed pursuant to an order of the Board when the motion is decided.

~~(e)~~

~~(e)~~ (1)

(1) A party may not file a motion for summary judgment until the party has made its initial disclosures, except for a motion asserting claim or issue preclusion or lack of jurisdiction by the Trademark Trial and Appeal Board. A motion for summary judgment, ~~if filed, should must~~ be filed prior to the commencement of deadline for pretrial disclosures for the first testimony period, as originally set or as reset, ~~and the Board, in its discretion, may deny as untimely any motion for summary judgment filed thereafter.~~ A motion under **Rule** 56(~~fd~~) of the Federal **Rules** of Civil Procedure, if filed in response to a motion for summary judgment, shall be filed within thirty days from the date of service of the summary judgment motion. The time for filing a motion under **Rule** 56(~~fd~~) will not be extended or reopened. If no motion under **Rule** 56(~~fd~~) is filed, a brief in response to the motion for summary judgment shall be filed within thirty days from the date of service of the motion unless the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board. If a

motion for an extension is denied, the time for responding to the motion for summary judgment may remain as specified under this section. A reply brief, if filed, shall be filed within ~~fifteen~~twenty days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended or reopened. The Board will consider no further papers in support of or in opposition to a motion for summary judgment.

(2) ~~(2)~~ For purposes of summary judgment only, the Board will consider any of the following, if a copy is provided with the ~~party's~~party's brief on the summary judgment motion: ~~written~~Written disclosures or disclosed documents, a discovery deposition or any part thereof with any exhibit to the part that is filed, an interrogatory and answer thereto with any exhibit made part of the answer, a request for production and the documents or things produced in response thereto, or a request for admission and any exhibit thereto and the admission (or a statement that the party from which an admission was requested failed to respond thereto). If any motion for summary judgment is denied, the parties may stipulate that the materials submitted with briefs on the motion be considered at trial as trial evidence, which may be supplemented by additional evidence during trial.

(f) The Board will not hold any person in contempt, or award attorneys' fees or other expenses to any party.

[48 FR 23140, May 23, 1983, as amended at 54 FR 34900, Aug. 22, 1989; 63 FR 48081, Sept. 9, 1998; 63 FR 52158, Sept. 30, 1998; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 72 FR 42242, Aug. 1, 2007, effective Nov. 1, 2007]

§2.128 Briefs at final hearing.

(a)

(1) The brief of the party in the position of plaintiff shall be due not later than sixty days after the date set for the close of rebuttal testimony. The brief of the party in the position of defendant, if filed, shall be due not later than thirty days after the due date of the first brief. A reply brief by the party in the position of plaintiff, if filed, shall be due not later than fifteen days after the due date of the defendant's brief.

(2) When there is a counterclaim, or when proceedings have been consolidated and one party is in the position of plaintiff in one of the involved proceedings and in the position of defendant in another of the involved proceedings, or when there is an interference or a concurrent use registration proceeding involving more than two parties, the Trademark Trial and Appeal Board will set the due dates for the filing of the main brief, and the answering brief, and the rebuttal brief by the parties.

(3) When a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than fifteen days, in which to show cause why the Board should not treat such failure as a concession of the case. If plaintiff fails to file a

response to the order, or files a response indicating that ~~he~~plaintiff has lost interest in the case, judgment may be entered against plaintiff. If a plaintiff files a response to the order showing good cause, but does not have any evidence of record and does not move to reopen its testimony period and make a showing of excusable neglect sufficient to support such reopening, judgment may be entered against plaintiff for failure to take testimony or submit any other evidence.

~~(b)~~

(b) Briefs must be submitted in written form and must meet the requirements prescribed in § 2.126. Each brief shall contain an alphabetical index of cited cases. Without prior leave of the Trademark Trial and Appeal Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary; and a reply brief shall not exceed twenty-five pages in its entirety. Evidentiary objections that may properly be raised in a party's brief on the case may instead be raised in an appendix or by way of a separate statement of objections. The appendix or separate statement is not included within the page limit. Any brief beyond the page limits and any brief with attachments outside the stated requirements may not be considered by the Board.

[48 FR 23140, May 23, 1983; 48 FR 27225, June 14, 1983, as amended at 54 34900, Aug. 22, 1989; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003]

§2.129 Oral argument; reconsideration.

(a) ~~(a)~~ If a party desires to have an oral argument at final hearing, the party shall request such argument by a separate notice filed not later than ten days after the due date for the filing of the last reply brief in the proceeding. Oral arguments will be heard by at least three Administrative Trademark Judges or other statutory members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing. If any party appears at the specified time, that party will be heard. Parties and members of the Board may attend in person or, at the discretion of the Board, remotely. If the Board is prevented from hearing the case at the specified time, a new hearing date will be set. Unless otherwise permitted, oral arguments in an inter partes case will be limited to thirty minutes for each party. A party in the position of plaintiff may [*69985] reserve part of the time allowed for oral argument to present a rebuttal argument.

(b) ~~(b)~~ The date or time of a hearing may be reset, so far as is convenient and proper, to meet the wishes of the parties and their attorneys or other authorized representatives. The Board may, however, deny a request to reset a hearing date for lack of good cause or if multiple requests for rescheduling have been filed.

(c) ~~(c)~~ Any request for rehearing or reconsideration or modification of a decision issued after final hearing must be filed within one month from the date of the decision. A brief in response must be filed within fifteen days from the date of service of the request. The times specified may be extended by order of the Trademark Trial and Appeal Board on motion for good cause.

(d) When a party to an inter partes proceeding before the Trademark Trial and Appeal Board cannot prevail without establishing constructive use pursuant to section 7(c) of the Act in an application under section 1(b) of the Act, the Trademark Trial and Appeal Board will enter a judgment in favor of that party, subject to the party's establishment of constructive use. The time for filing an appeal or for commencing a civil action under section 21 of the Act shall run from the date of the entry of the judgment.

[48 FR 23141, May 23, 1983, as amended at 54 FR 29554, July 13, 1989; 54 FR 34900, Aug. 22, 1989; 54 FR 37597, Sept. 11, 1989; 72 FR 42242, Aug. 1, 2007, effective Aug. 31, 2007]

§2.130 New matter suggested by the trademark examining attorney.

If, while an inter partes proceeding involving an application under section 1 or 44 of the Act is pending, facts appear which, in the opinion of the ~~trademark~~-examining attorney, render the mark in the application unregistrable, the ~~facts~~-~~examining attorney~~ should ~~be called to request that the attention of the Trademark Trial and Appeal Board~~ remand the application. The Board may suspend the proceeding and referremand the application to the trademark examining attorney for an ex-parte determination of the question of registrability. A copy of the trademark examining attorney's final action will be furnished to the parties to the inter partes proceeding following the final determination of registrability by the trademark examining attorney or the Board on appeal. The Board will consider the application for such further inter partes action as may be appropriate.

[Amended 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003]

§2.131 Remand after decision in inter partes proceeding.

If, during an inter partes proceeding involving an application under section 1 or 44 of the Act, facts are disclosed which appear to render the mark unregistrable, but such matter has not been tried under the pleadings as filed by the parties or as they might be deemed to be amended under **Rule** 15(b) of the Federal **Rules** of Civil Procedure to conform to the evidence, the Trademark Trial and Appeal Board, in lieu of determining the matter in the decision on the proceeding, may remand the application to the trademark examining attorney for reexamination in the event the applicant ultimately prevails in the inter partes proceeding. Upon remand, the trademark examining attorney shall reexamine the application in light of the referencematter referenced by the Board. If, upon reexamination, the trademark examining attorney finally refuses registration to the applicant, an appeal may be taken as provided by §§-2.141 and 2.142.

[48 FR 23141, May 23, 1983; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003]

§2.132 Involuntary dismissal for failure to take testimony.

(a) ~~(a)~~-If the time for taking testimony by any party in the position of plaintiff has expired and that it is clear to the Board from the proceeding record that such party has not taken testimony or offered any other evidence, the Board may grant judgment for the defendant. Also, any party in the position of

defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute. The party in the position of plaintiff shall have ~~fifteen~~twenty days from the date of service of the motion to show cause why judgment should not be rendered ~~against him dismissing the case~~. In the absence of a showing of ~~good and sufficient cause~~excusable neglect, judgment may be rendered against the party in the position of plaintiff. If the motion is denied, testimony periods will be reset for the party in the position of defendant and for rebuttal.

(b) ~~(b)~~ If no evidence other than ~~a copy or copies of Patent and Trademark~~ Office records showing the current status and title of plaintiff's pleaded registration(s) is offered by any party in the position of plaintiff, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground that upon the law and the facts the party in the position of plaintiff has shown no right to relief. The party in the position of plaintiff shall have ~~fifteen~~twenty days from the date of service of the motion to file a brief in response to the motion. The Trademark Trial and Appeal Board may render judgment against the party in the position of plaintiff, or the Board may decline to render judgment until all ~~of the evidence is in the record~~testimony periods have passed. If judgment is not rendered on the motion to dismiss, testimony periods will be reset for the party in the position of defendant and for rebuttal.

(c) A motion filed under paragraph (a) or (b) of this section must be filed before the opening of the testimony period of the moving party, except that the Trademark Trial and Appeal Board may in its discretion grant a motion under paragraph (a) even if the motion was filed after the opening of the testimony period of the moving party.

[48 FR 23141, May 23, 1983, as amended at 51 FR 28710, Aug. 11, 1986]

§2.133 Amendment of application or registration during proceedings.

(a) An application subject to an opposition may not be amended in substance nor may a registration subject to a cancellation be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or upon motion granted by the Board.

(b) If, in an inter partes proceeding, the Trademark Trial and Appeal Board finds that a party whose application or registration is the subject of the proceeding is not entitled to registration in the absence of a specified restriction to the application or registration, the Board will allow the party time in which to file a motion that the application or registration be amended to conform to the findings of the Board, failing which judgment will be entered against the party.

(c) Geographic limitations will be considered and determined by the Trademark Trial and Appeal Board only in the context of a concurrent use registration proceeding.

(d) A plaintiff's pleaded registration will not be restricted in the absence of a counterclaim to cancel the registration in whole or in part, except that a counterclaim need not be filed if the registration is the subject of another proceeding between the same parties or anyone in privity therewith.

[30 FR 13193, Oct. 16, 1965, as amended at 54 FR 37597, Sept. 11, 1989; 72 FR 42242, Aug. 1, 2007, effective Aug. 31, 2007]

§2.134 Surrender or voluntary cancellation of registration.

(a) After the commencement of a cancellation proceeding, if the respondent applies for cancellation of the involved registration under section 7(e) of the Act of 1946 without the written consent of every adverse party to the proceeding, judgment shall be entered against the respondent. The written consent of an adverse party may be signed by the adverse party or by the adverse party's attorney or other authorized representative.

(b) ~~(b)~~ After the commencement of a cancellation proceeding, if it comes to the attention of the Trademark Trial and Appeal Board that the respondent has permitted ~~his~~ involved registration to be cancelled under section 8 or section 71 of the Act of 1946, or has failed to renew ~~his~~ involved registration under section 9 of the Act of 1946, or has allowed its registered extension of protection to expire under section 70(b) of the Act of 1946, an order may be issued allowing respondent until a set time, not less than fifteen days, in which to show cause why such cancellation ~~or~~ failure to renew or expiration should not be deemed to be the equivalent of a cancellation by request of respondent without the consent of the adverse party and should not result in entry of judgment against respondent as provided by paragraph (a) of this section. In the absence of a showing of good and sufficient cause, judgment may be entered against respondent as provided by paragraph (a) of this section.

[48 FR 23141, May 23, 1983, as amended at 54 FR 34900, Aug. 22, 1989; 63 FR 48081, Sept. 9, 1998, effective Oct. 9, 1998]

§2.135 Abandonment of application or mark.

After the commencement of an opposition, concurrent use, or interference proceeding, if the applicant files a written abandonment of the application or of the mark without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant. The written consent of an adverse party may be signed by the adverse party or by the adverse party's attorney or other authorized representative.

[48 FR 23141, May 23, 1983, as amended at 54 FR 34900, Aug. 22, 1989]

§2.136 Status of application on termination of proceeding.

After the Board has issued its decision in an opposition, cancellation or concurrent use proceeding, and after the time for filing any appeal of the decision has expired, or any appeal that was filed has been decided and the Board's decision affirmed, the proceeding will be terminated by the Board. On termination of an opposition, cancellation or concurrent use proceeding ~~involving an application, the application,~~ if the judgment is not adverse, to the applicant or registrant, the subject application returns

to the status it had before the institution of the [proceedings-proceeding and the otherwise appropriate status of the subject registration is unaffected by the proceeding](#). If the judgment is adverse to the applicant [or registrant](#), the application stands refused [or the registration will be cancelled in whole or in part](#) without further action and all proceedings thereon are considered terminated.

§2.141-§2.145 APPEALS

§2.141 Ex parte appeals from action of trademark examining attorney.

(a) An applicant may, upon final refusal by the trademark examining attorney, appeal to the Trademark Trial and Appeal Board upon payment of the prescribed fee for each class in the application for which an appeal is taken, within six months of the date of issuance of the final action. A second refusal on the same grounds may be considered as final by the applicant for purpose of appeal.

(b) The applicant must pay an appeal fee for each class from which the appeal is taken. If the applicant does not pay an appeal fee for at least one class of goods or services before expiration of the six-month statutory filing period, the application will be abandoned. In a multiple-class application, if an appeal fee is submitted for fewer than all classes, the applicant must specify the class(es) in which the appeal is taken. If the applicant timely submits a fee sufficient to pay for an appeal in at least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to which the fee applies, the Board will issue a written notice setting a time limit in which the applicant may either pay the additional fees or specify the class(es) being appealed. If the applicant does not submit the required fee or specify the class(es) being appealed within the set time period, the Board will apply the fee(s) to the class(es) in ascending order, beginning with the lowest numbered class.

[41 FR 760, Jan. 5, 1976; amended 73 FR 67759, Nov. 17, 2008, effective Jan. 16, 2009]

§2.142 Time and manner of ex parte appeals.

~~(a) Any appeal filed under the provisions of § 2.141 must be filed within six months from the date of the final refusal or the date of the action from which the appeal is taken. An appeal is taken by filing a notice of appeal in written form, as prescribed in § 2.126, and paying the appeal fee.~~

~~(b)~~

(1) ~~(1)~~ The brief of appellant shall be filed within sixty days from the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The ~~examiner~~[examining attorney](#) shall, within sixty days after the brief of appellant is sent to the ~~examiner~~[examining \[*69986\] attorney](#), file with the Trademark Trial and Appeal Board a written brief answering the brief of appellant and shall [email or](#) mail a copy of the brief to the appellant. The appellant may file a reply brief within twenty days from the date of mailing of the brief of the ~~examiner~~[examining attorney](#).

(2) ~~(2)~~ Briefs must ~~be submitted in written form and must~~ meet the requirements prescribed in § 2.126. ~~Each brief shall contain an alphabetical index of cited cases, except examining attorney submissions need not be filed through ESTTA.~~ Without prior leave of the Trademark Trial and Appeal Board, a brief shall not exceed twenty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary. A reply brief from the appellant, if any, shall not exceed ten pages in length in its entirety. Unless authorized by the Board, no further briefs are permitted.

(3) ~~(e)~~ Citation to evidence in briefs should be to the documents in the electronic application record by date, the name of the paper under which the evidence was submitted, and the page number in the electronic record.

(b) All requirements made by the ~~examiner~~ examining attorney and not the subject of appeal shall be complied with prior to the filing of an appeal, and the statement of issues in the brief should note such compliance.

(c) ~~(d)~~ The record in the application should be complete prior to the filing of an appeal. ~~The Trademark Trial and Appeal Board will ordinarily~~ Evidence should not ~~consider additional evidence be~~ filed with the Board ~~by~~ after the filing of a notice of appeal. If the appellant or ~~by the examiner~~ examining attorney desires to introduce additional evidence after the appeal is filed. After an appeal is filed, ~~if the appellant or the examiner desires to introduce additional evidence, the appellant or the examiner may~~ examining attorney should submit a request to the Board to suspend the appeal and to remand the application for further examination.

~~(e)~~

(d) (1)

(1) If the appellant desires an oral hearing, a request should be made by a separate notice filed not later than ten days after the due date for a reply brief. Oral argument will be heard by at least three Administrative Trademark Judges or other statutory members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing, which may be reset if the Board is prevented from hearing the argument at the specified time or, so far as is convenient and proper, to meet the wish of the appellant or the ~~appellant's~~ appellant's attorney or other authorized representative. Appellants, examining attorneys, and members of the Board may attend in person or, at the discretion of the Board, remotely.

(2) ~~(2)~~ If the appellant requests an oral argument, the ~~examiner~~ examining attorney who issued the refusal of registration or the requirement from which the appeal is taken, or in lieu thereof another ~~examiner from the same~~ examining ~~division~~ attorney as designated by ~~the~~ supervisory or managing attorney ~~thereof~~, shall present an oral argument. If no request for an oral hearing is made by the appellant, the appeal will be decided on the record and briefs.

(3) ~~(3)~~ Oral argument will be limited to twenty minutes by the appellant and ten minutes by the ~~examiner~~ examining attorney. The appellant may reserve part of the time allowed for oral argument to present a rebuttal argument.

(f)

(e) (1)

(1) If, during an appeal from a refusal of registration, it appears to the Trademark Trial and Appeal Board that an issue not previously raised may render the mark of the appellant unregistrable, the Board may suspend the appeal and remand the application to the [examiner/examining attorney](#) for further examination to be completed within ~~thirty days~~ the time set by the Board.

(2) ~~(2)~~ If the further examination does not result in an additional ground for refusal of registration, the [examiner/examining attorney](#) shall promptly return the application to the Board, for resumption of the appeal, with a written statement that further examination did not result in an additional ground for refusal of registration.

(3) ~~(3)~~ If the further examination does result in an additional ground for refusal of registration, the [examiner/examining attorney](#) and appellant shall proceed as provided by §§ 2.61, 2.62, and 2.63. If the ground for refusal is made final, the [examiner/examining attorney](#) shall return the application to the Board, which shall thereupon issue an order allowing the appellant sixty days from the date of the order to file a supplemental brief limited to the additional ground for the refusal of registration. If the supplemental brief is not filed by the appellant within the time allowed, the appeal may be dismissed.

(4) ~~(4)~~ If the supplemental brief of the appellant is filed, the [examiner/examining attorney](#) shall, within sixty days after the supplemental brief of the appellant is sent to the [examiner/examining attorney](#), file with the Board a written brief answering the supplemental brief of appellant and shall email or mail a copy of the brief to the appellant. The appellant may file a reply brief within twenty days from the date of mailing of the brief of the [examiner/examining attorney](#).

~~(5)~~ If an oral hearing on the appeal had been requested prior to the remand of the application but not yet held, an oral hearing will be set and heard as provided in paragraph (e) of this section. If an oral hearing had been held prior to the remand or had not been previously requested by the appellant, an oral hearing may be requested by the appellant by a separate notice filed not later than ten days after the due date for a reply brief on the additional ground for refusal of registration. If the appellant files a request for an oral hearing, one will be set and heard as provided in paragraph (e) of this section.

(6) If, during an appeal from a refusal of registration, it appears to the [examiner/examining attorney](#) that an issue not involved in the appeal may render the mark of the appellant unregistrable, the [examiner/examining attorney](#) may, by written request, ask the Board to suspend the appeal and to remand the application to the [examiner/examining attorney](#) for further examination. If the request is granted, the [examiner/examining attorney](#) and appellant shall proceed as provided by §§ 2.61, 2.62, and 2.63. After the additional ground for refusal of registration has been withdrawn or made final, the [examiner/examining attorney](#) shall return

the application to the Board, which shall resume proceedings in the appeal and take further appropriate action with respect thereto.

(g) An application which has been considered and decided on appeal will not be reopened except for the entry of a disclaimer under section 6 of the Act of 1946 or upon order of the Director, but a petition to the Director to reopen an application will be considered only upon a showing of sufficient cause for consideration of any matter not already adjudicated.

[48 FR 23141, May 23, 1983, as amended at 54 FR 34901, Aug. 22, 1989; 68 FR 14332, March 25, 2003, effective May 1, 2003; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 72 FR 42242, Aug. 1, 2007, effective Aug. 31, 2007; 80 FR 2303, Jan. 16, 2015, effective Feb. 17, 2015]

§2.144 Reconsideration of decision on ex parte appeal.

Any request for rehearing or reconsideration, or modification of the decision, must be filed within one month from the date of the decision. Such time may be extended by the Trademark Trial and Appeal Board upon a showing of sufficient cause.

[41 FR 760, Jan. 5, 1976, as amended at 54 FR 29554, July 13, 1989]

§2.145 Appeal to court and civil action.

~~(a) Appeal to U.S.~~

~~**For an Appeal to the United States Court of Appeals for the Federal Circuit— under section 21(a) of the Act.**~~

~~(1) An applicant for registration, or any party to an interference, opposition, or cancellation proceeding, or any party to an application to register as a concurrent user, hereinafter referred to as inter partes proceedings, who is dissatisfied with the decision of the Trademark Trial and Appeal Board, and any registrant who has filed an affidavit or declaration under section 8 or section 71 of the Act or who has filed an application for renewal and is dissatisfied with the decision of the Director (§§ 2.165 ~~and~~ 2.184), may appeal to the U.S. United States Court of Appeals for the Federal Circuit. ~~The appellant must take~~ it is unnecessary to request reconsideration by the following steps in Board before filing any such ~~an~~ appeal; however, a party requesting reconsideration must do so before filing a notice of appeal.~~

~~(2) (1) In the Patent and Trademark Office give written all appeals under section 21(a), the appellant must take the following steps:~~

~~(i) File the notice of appeal towith the Director ~~(see paragraphs (b) and (d), addressed to the Office of the General Counsel, as provided in § 104.2 of this section);~~chapter;~~

~~(ii) (2) In the court, file~~File a copy of the notice of appeal with the Trademark Trial and Appeal Board via ESTTA; and

~~Comply with the requirements of the Federal **Rules of Appellate Procedure** and pay the fee for appeal, as provided by the rules of the Court.~~

~~(b) Notice of appeal.~~

~~(iii) (1) When an appeal is taken to the U.S. **Rules** for the United States Court of Appeals for the Federal Circuit, the appellant shall give notice thereof in writing to the Director, which notice shall be filed in the Patent and Trademark Office, within the time specified in paragraph (d) of this section, including serving the requisite number of copies on the Court and paying the requisite fee for the appeal.~~

Additional requirements.

(i) The notice of appeal shall specify the party or parties taking the appeal and shall designate the decision or part thereof appealed from.

(ii) ~~(2)~~ In inter partes proceedings, the notice of appeal must be served as provided in § 2.119. [*699871]

For a notice of election under ~~(3) Notices of appeal directed section 21(a)(1) to proceed under section 21(b) of the Act.~~

(1) Any applicant or registrant in an ex parte case who takes an appeal to the United States Court of Appeals for the Federal Circuit waives any right to proceed under section 21(b) of the Act.

(2) If an adverse party to an appeal taken to the United States Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding elects to have all further review proceedings conducted under section 21(b) of the Act, that party must take the following steps:

(i) File a notice of election with the Director ~~shall be mailed to or served by hand on~~, addressed to the Office of the General Counsel, ~~according to paras provided in § 104.2 of this chapter, with;~~

(ii) File a ~~duplicate~~ copy ~~mailed or served by hand on~~ of the notice of election with the Trademark Trial and Appeal Board, via ESTTA; and

~~(c) Civil action.~~

(iii) ~~(1)~~ Serve the notice of election as provided in § 2.119.

For a civil action under section 21(b) of the Act.

(1) Any person who may appeal to the U.S. United States Court of Appeals for the Federal Circuit (paragraph (a) of this section), may have remedy by civil action under section 21(b) of the Act. Such civil action must be commenced within the time specified in paragraph (d) of this section. It is unnecessary to request reconsideration by the Board before filing any such civil action; however, a party requesting reconsideration must do so before filing a civil action.

~~(2)~~ Any applicant or registrant in an ex parte case who ~~takes an appeal to the U.S. Court of Appeals for the Federal Circuit waives any right to proceed~~ seeks remedy by civil action under section 21(b) of the Act.

(2) ~~(3) Any adverse party to an appeal taken to the U.S. Court must serve the summons and complaint pursuant to **Rule 4(i)** of the Federal **Rules** of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding may file a notice~~Civil Procedure with the Office, copy to the Director addressed to the Office of the General Counsel, ~~according to part 104 of this chapter, within twenty days after the filing of the defeated party's notice of appeal to the court (paragraph (b) of this section), electing to have all further proceedings conducted as provided in section 21(b) of the Act. The notice of election must be served as provided in § 2.119 as provided in § 104.2 of this chapter. A copy of the complaint must also be filed with the Trademark Trial and Appeal Board via ESTTA.~~

~~(4) In order to avoid premature termination of a proceeding, a~~The party who commences a civil initiating an action, ~~pursuant to~~ for review of a Board decision in an inter partes case under section 21(b) of the Act, must file ~~written~~ notice thereof ~~at~~with the Trademark Trial and Appeal Board.

~~(d) Time for appeal or civil action.~~

~~(3) (1) The time for~~ via ESTTA no later than five business days after filing the ~~complaint in the district court. The notice must identify the civil action with particularity by providing the case name, case number, and court in which it was filed. A copy of~~ appeal to the U.S. Court of Appeals for the Federal Circuit ~~(paragraph (b) of this section), or the complaint may be filed with the notice. Failure to file the required notice can result in termination of the Board proceeding and further action within the United States Patent and Trademark Office consistent with the final Board decision.~~

~~-- n~~

For an appeal under section 21(a).~~The notice of appeal filed pursuant to section 21(a) of the Act must be filed with the Director no later than sixty-three (63) days from the date of the final decision of the Trademark Trial and Appeal Board or the Director. Any notice of cross-appeal is controlled by **Rule 4(a)(3)** of the Federal **Rules** of Appellate Procedure, and any other requirement imposed by the **Rules** of the United States Court of Appeals for the Federal Circuit.~~

For a notice of election under 21(a)(1) and a civil action pursuant to such notice of election.~~The times for filing a notice of election under section 21(a)(1) and for commencing a civil action (paragraph (c) pursuant to a notice of this election are governed by section), is two months from 21(a)(1) of the Act.~~

For a civil action under section 21(b).~~A civil action must be commenced no later than sixty-three (63) days after the date of the final decision of the Trademark Trial and Appeal Board or the Director, as the case may be.~~

Time computation.

(i) If a request for rehearing or reconsideration or modification of the ~~Board~~ decision is filed within the time specified in ~~§§~~ ~~§~~ 2.127(b), ~~§~~ 2.129(c), or ~~§~~ 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall

expire ~~two months~~ no later than sixty-three (63) days after action on the request. ~~In inter partes cases, the time for filing a cross-action or a notice of a cross-appeal expires.~~

~~(i) 14 days after service of the notice of appeal or the summons and complaint; or~~

~~(ii) Two months from the date of the decision of the Trademark Trial and Appeal Board or the Director, whichever is later.~~

Holidays. ~~(2)~~ The times specified in this section in days are calendar days. ~~The times specified herein in months are calendar months except that one day shall be added to any two-month period which includes February 28.~~ If the last day of time specified for an appeal, notice of election, or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday in the District of Columbia pursuant to § 2.196.

~~(3) If a party to an inter partes proceeding has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under section 21(a)(1) of the Act electing to have all further proceedings conducted under section 21(b) of the Act, the time for filing a civil action thereafter is specified in section 21(a)(1) of the Act. The time for filing a cross-action expires 14 days after service of the summons and complaint.~~

Extension of time. ~~(e) Extensions of time to commence judicial review.~~

~~(1) The Director, or the Director's designee, may extend the time for filing an appeal, or commencing a civil action~~ ~~(1) for good cause shown, upon written request if requested in writing;~~

~~(i) Requested before the expiration of the period for filing an appeal or commencing a civil action, or (2) and upon written request a showing of good cause; or~~

~~(ii) Requested after the expiration of the period for filing an appeal or commencing a civil action, and upon a showing that the failure to act was the result of excusable neglect.~~

~~(2) The request must be filed as provided in § 104.2 of this chapter and addressed to the attention of the Office of the Solicitor. A copy of the request should also be filed with the Trademark Trial and Appeal Board via ESTTA.~~

[47 FR 47382, Oct. 26, 1982, as amended at 53 FR 16414, May 9, 1988; 54 FR 29554, July 13, 1989; 54 FR 34901, Aug. 22, 1989; 58 FR 54503, Oct. 22, 1993; 68 FR 14332, March 25, 2003, effective May 1, 2003; 68 FR 55748, Sept. 26, 2003, effective Nov. 2, 2003; 80 FR 2303, Jan. 16, 2015, effective Feb. 17, 2015]

§2.188-§2.199 GENERAL INFORMATION AND CORRESPONDENCE IN TRADEMARK CASES

§2.188 [Reserved]

§2.189 [Reserved]

§2.190 Addresses for trademark correspondence with the United States Patent and Trademark Office.

(a) *Trademark correspondence. In general.* All trademark-related documents filed on paper, except documents sent to the Assignment [Services Division Recordation Branch](#) for recordation; requests for copies of trademark documents; and certain documents filed under the Madrid Protocol as specified in paragraph (e) of this section, should be addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451. All trademark-related documents may be delivered by hand, during the hours the Office is open to receive correspondence, to the Trademark Assistance Center, James Madison Building--East Wing, Concourse Level, 600 Dulany Street, Alexandria, Virginia 22314.

(b) *Electronic trademark documents.* An applicant may transmit a trademark document through TEAS, at <http://www.uspto.gov>. <http://www.uspto.gov>. Documents that relate to proceedings before the Trademark Trial and Appeal Board shall be filed directly with the Board electronically through ESTTA, at <http://estta.uspto.gov>.

(c) *Trademark Assignments.* Requests to record documents in the Assignment [Services Division Recordation Branch](#) may be filed through the Office's [web Web](#) site, at <http://www.uspto.gov>. Paper documents and cover sheets to be recorded in the Assignment [Services Division Recordation Branch](#) should be addressed to: Mail Stop Assignment Recordation [Services Branch](#), Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450. See § 3.27 of this chapter.

(d) *Requests for Copies of Trademark Documents.* Copies of trademark documents can be ordered through the Office's web site at <http://www.uspto.gov>. Paper requests for certified or uncertified copies of trademark documents should be addressed to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450.

(e) *Certain Documents Relating to International Applications and Registrations.* International applications under § 7.11, subsequent designations under § 7.21, responses to notices of irregularity under § 7.14, requests to record changes in the International Register under § 7.23 and § 7.24, requests to note replacements under § 7.28, requests for transformation under § 7.31, and petitions to the Director to review an action of the Office's Madrid Processing Unit, when filed by mail, must be mailed to: Madrid Processing Unit, 600 Dulany Street, MDE-7B87, Alexandria, VA 22314-5793.

[Added 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003; amended 69 FR 57181, Sept. 24, 2004, effective Oct. 4, 2004; 69 FR 63320, Nov. 1, 2004; 72 FR 18907, April 16, 2007]

§2.191 Business to be transacted in writing.

All business with the Office should be transacted in writing. The personal appearance of applicants or their representatives at the Office is unnecessary. The action of the Office will be based exclusively on

the written record. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt. The Office encourages parties to file documents through TEAS wherever possible, [and mandates that documents in proceedings before the Trademark Trial and Appeal Board be filed through ESTTA.](#)

[Added 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003]

§2.195 Receipt of trademark correspondence.

(a) *Date of receipt and Priority Mail Express® date of deposit.* Trademark correspondence received in the Office is given a filing date as of the date of receipt except as follows:

(1) The Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia. Except for correspondence transmitted electronically under paragraph (a)(2) of this section or transmitted by facsimile under paragraph (a)(3) of this section, no correspondence is received in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia.

(2) Trademark-related correspondence transmitted electronically will be given a filing date as of the date on which the Office receives the transmission.

(3) Correspondence transmitted by facsimile will be given a filing date as of the date on which the complete transmission is received in the Office unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the filing date will be the next succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

(4) Correspondence filed in accordance with § 2.198 will be given a filing date as of the date of deposit as Priority Mail Express® with the United States Postal Service.

(b) *Correspondence delivered by hand.* Correspondence may be delivered by hand during hours the Office is open to receive correspondence.

(c) *Facsimile transmission.* Except in the cases enumerated in paragraph (d) of this section, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is received in the Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See § 2.196. To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application, registration or proceeding before the Office. The application serial number, registration number, or proceeding number should be entered as a part of the sender's identification on a facsimile cover sheet.

(d) Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations:

- (1) Applications for registration of marks;
- (2) Drawings submitted under § 2.51, § 2.52, § 2.72, or § 2.173;
- (3) Correspondence to be filed with the Trademark Trial and Appeal Board, ~~except notices of ex parte appeal;~~
- (4) Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act; and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act; and
- (5) Madrid-related correspondence submitted under § 7.11, § 7.21, § 7.14, § 7.23, § 7.24, or § 7.31.

(e) *Interruptions in U.S. Postal Service.* (1) If the Director designates a postal service interruption or emergency within the meaning of 35 U.S.C. 21(a), any person attempting to file correspondence by Priority Mail Express® Post Office to Addressee service who was unable to deposit the correspondence with the United States Postal Service due to the interruption or emergency may petition the Director to consider such correspondence as filed on a particular date in the Office.

(1) The petition must:

- (i) Be filed promptly after the ending of the designated interruption or emergency;
- (ii) Include the original correspondence or a copy of the original correspondence; and
- (iii) Include a statement that the correspondence would have been deposited with the United States Postal Service on the requested filing date but for the designated interruption or emergency in Priority Mail Express® service; and that the correspondence attached to the petition is the original correspondence or a true copy of the correspondence originally attempted to be deposited as Priority Mail Express® on the requested filing date.

(2) Paragraphs (e)(1) and (e)(2) of this section do not apply to correspondence that is excluded from the Priority Mail Express® procedure pursuant to § 2.198(a)(1).

[Added 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003; amended 69 FR 57181, Sept. 24, 2004, effective Oct. 4, 2004; 73 FR 67759, Nov. 17, 2008, effective Jan. 16, 2009; 79 FR 63036, Oct. 22, 2014]