

Chapter 100

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TRADEMARK MANUAL OF EXAMINING PROCEDURE

101 Trademark Statute and Rules

The federal registration of trademarks is governed by the Trademark Act of 1946, 15 U.S.C. §§1051 *et seq.* (also known as the Lanham Act), and the Trademark Rules of Practice, 37 C.F.R. Part 2. The text of the Act and Rules can be accessed and downloaded from the Office's website at www.uspto.gov.

102 United States Patent and Trademark Office World Wide Web Page

The United States Patent and Trademark Office (USPTO) has a website at www.uspto.gov that provides access to a wide variety of information about patents and trademarks and offers electronic filing of trademark applications and other trademark documents.

The Trademark Electronic Business Center, on the USPTO website, contains all the information needed for the entire registration process. A customer may search the trademark database for conflicting marks using the Trademark Electronic Search System (TESS), file applications and other trademark documents online using the Trademark Electronic Application System (TEAS), and check the status of applications and registrations through the Trademark Applications and Registrations Retrieval (TARR) database. *See* TMEP §104 regarding TESS, and TMEP §108.01 regarding TARR.

TEAS allows customers to submit trademark applications over the Internet and use credit cards to pay filing fees. TEAS can also be used to file amendments to allege use under 15 U.S.C. §1051(c), statements of use under 15 U.S.C. §1051(d), requests for extensions of time to file statements of use under 15 U.S.C. §1051(d)(2), affidavits of continued use under 15 U.S.C. §1058, affidavits of incontestability under 15 U.S.C. §1065, combined affidavits under 15 U.S.C. §§1058 and 1065, or combined filings under 15 U.S.C. §§1058 and 1059. *See* TMEP §301 for further information about electronic filing.

Trademark information available for downloading from the USPTO website includes the trademark statute and rules, *Trademark Manual of Examining Procedure*, *Trademark Trial and Appeal Board Manual of Procedure*, the *Acceptable Identification of Goods and Services Manual*, *Federal Register* notices, *Official Gazette* notices, examination guides, fee schedules, and certain USPTO forms.

Certified or uncertified copies of trademark documents can be purchased over the Internet. *See* TMEP §111 for further information.

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103 Trademark Forms

The Office's Trademark Electronic Application System (TEAS) makes electronic filing available on the Office's website at www.uspto.gov. TEAS can be used to file an application for registration of a trademark or service mark, amendment to allege use under 15 U.S.C. §1051(c), statement of use under 15 U.S.C. §1051(d), request for extension of time to file a statement of use under 15 U.S.C. §1051(d)(2), affidavit of continued use under 15 U.S.C. §1058, affidavit of incontestability under 15 U.S.C. §1065, combined affidavit under 15 U.S.C. §§1058 and 1065, or combined filing under 15 U.S.C. §§1058 and 1059. *See* TMEP §301 for more information about electronic filing. Additional forms may be available online at www.uspto.gov, or through the Trademark Assistance Center (*see* TMEP §108.03).

104 Trademark Searching

X-Search, the Office's computerized searching system, contains text and images of registered marks, and marks in pending and abandoned applications. X-Search is used by examining attorneys when searching for marks during examination.

The public may conduct searches free of charge using the Trademark Electronic Search System (TESS) on the USPTO website at <http://www.uspto.gov>. Like X-Search, TESS provides access to text and images of registered marks, and marks in pending and abandoned applications. The TARR database is also available on the USPTO website. Additional information, including current status, for pending and registered trademarks can be retrieved by entering a valid trademark serial number or registration number in TARR. *See* TMEP §108.01. TESS and TARR are available in Patent and Trademark Depository Libraries (*see* TMEP §112). X-Search is also available for public use at certain Patent and Trademark Depository Libraries.

The public may also use the X-Search system and the Trademark Reporting and Monitoring (TRAM) System without charge in the Trademark Search Library. The Search Library is located at 2900 Crystal Drive (South Tower Building), Arlington, Virginia, second floor, and is open from 8:00 a.m. to 5:00 p.m. Eastern Standard Time, Monday through Friday, except on holidays. The Trademark Search Library also contains paper copies of registered marks and marks in pending applications, copies of State emblems and official signs and hallmarks of member countries of the Paris Convention for the Protection of Industrial Property, which are protected under Article 6*ter* of the Convention (*see* TMEP §1205.02), and copies of the official insignia of state and federally recognized Native American tribes.

There is a Trademark Assignment Search Room in the public Trademark Search Library that maintains records of transactions affecting the ownership of trademarks. Automated searching of trademark assignments is available to the public using the Trademark Assignment Search System or DVD-ROM products.

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Office personnel cannot conduct trademark searches for the public. Private trademark search firms will conduct searches for a fee. The USPTO cannot aid in the selection of a search firm or an attorney. 37 C.F.R. §2.11. Search firms are often listed in the yellow page section of telephone directories under the heading "Trademark Search Services" or "Patent and Trademark Search Services."

105 General Information Booklet Concerning Trademarks

The booklet entitled *Basic Facts About Trademarks* contains information and instructions for registering a trademark or service mark. The booklet can be accessed or downloaded from the Office's website at www.uspto.gov, or may be obtained by calling the Trademark Assistance Center. See TMEP §108.03 regarding the Trademark Assistance Center.

106 The Official Gazette

The *Official Gazette*, issued every Tuesday, is a publication of the USPTO. Since February 2, 1971, the *Official Gazette* has been separated into two parts, one designated the *Patent Official Gazette* and the other the *Trademark Official Gazette*.

The *Trademark Official Gazette* (TMOG) contains an illustration of each mark published for opposition on the Principal Register, marks registered on the Principal Register under 15 U.S.C. §1051(d), and marks registered on the Supplemental Register on the date of the particular issue of the *Gazette* in which the marks appear.

The *Trademark Official Gazette* also includes general information such as orders; notices of changes in rules or Office procedures; notices to parties who cannot be reached by mail; and indices of trademark registrations issued, renewed, cancelled, amended or corrected on the date of the particular issue of the *Gazette* in which the marks appear, with an index of registrants.

Annual subscriptions or single copies of the *Trademark Official Gazette* (Stock No. 703-034-00000-4) may be ordered from the United States Government Printing Office (GPO) at <http://bookstore.gpo.gov>, by fax sent to the Superintendent of Documents at (202) 512-2250, or by mail addressed to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954. Fees may be paid by credit card, or by check or money order payable to the Superintendent of Documents. GPO's general information telephone number is (202) 512-1800.

See notices at 807 TMOG 51 (October 13, 1964); 882 TMOG 33 (January 12, 1971); 921 TMOG 122 (April 16, 1974).

The pages in the *Trademark Official Gazette* are numbered as follows: The "notices" section is numbered consecutively through all the volumes that cover the period of a month preceded by the volume number for that month using the symbol TMOG (e.g., 957 TMOG 3); the "marks" section is numbered consecutively with its own sequence of numbers using the symbol TM (e.g., 957 TM 89); and the "Index of Registrants"

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section is likewise numbered consecutively with its own sequence of numbers using the symbol TMI (e.g., 957 TMI 9). See notice at 957 TMOG 2 (April 5, 1977).

107 Trademark Manuals [R-2]

The following manuals may be downloaded free of charge from the USPTO website at www.uspto.gov, or purchased in DVD-ROM format from the USPTO's Office of Electronic Information Products.

- *Trademark Manual of Examining Procedure* (TMEP)
- Trademark Trial and Appeal Board Manual of Procedure (TBMP)

The *Acceptable Identification of Goods and Services Manual* can be downloaded free of charge from the USPTO's website at www.uspto.gov, or purchased in DVD-ROM format from the USPTO's Office of Electronic Information Products. For information about purchasing DVD-ROM products, call (703) 306-2600.

108 Status Inquiries

108.01 Internet Information

The Trademark Applications and Registrations Retrieval (TARR) database on the USPTO website at <http://tarr.uspto.gov> provides detailed, up to the minute information about the status and prosecution history of trademark applications and registrations. The TARR database is available 24 hours a day, 7 days a week.

The Board Information Systems Index (BisX), available online at www.uspto.gov, provides detailed information about the status of proceedings pending before the Trademark Trial and Appeal Board.

108.02 Recorded Status Messages

The Trademark Status Line provides access, via touch-tone telephone, to the current status and location of federal trademark application and registration records. The Status Line is available at (703) 305-8747 from 6:30 a.m. until midnight, Eastern Standard Time, Monday through Friday. After the welcoming message and the tone, callers should enter the seven-digit registration number and the “#” symbol, or the eight-digit application number (*i.e.*, the two-digit series code followed by the six-digit serial number) and the “#” symbol, to obtain the current status and status date. If the serial number for an application is less than six digits, or if a registration number is less than seven digits, a sufficient number of leading zeroes must be added to the number. All calls are answered in the order received. Callers may request information for up to five application or registration records per call.

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108.03 Personal Telephone Assistance

If additional information regarding the status of an application or registration is required, callers may telephone the Trademark Assistance Center (TAC) at (703) 308-9000 or (800) 786-9199 and request a status check. TAC also provides general information about the trademark registration process. TAC is open from 8:30 a.m. to 5:00 p.m. Eastern Standard Time, Monday through Friday, except on holidays. *See* notices at 1112 TMOG 49 (March 27, 1990); 1132 TMOG 33 (November 19, 1991); and 1167 TMOG 27 (October 4, 1994).

The Trademark Assistance Center will gladly answer questions about the application process. However, Office employees cannot:

- conduct trademark searches for the public (see TMEP §104 regarding trademark searches);
- comment on the validity of registered marks (see TMEP §1801);
- answer questions on whether a particular mark or type of mark is eligible for trademark registration;
- offer legal advice or opinions about common law trademark rights, state registrations, or trademark infringement claims; or
- aid in the selection of a private trademark attorney or search firm (37 C.F.R. §2.11).

See TMEP Chapter 1800 regarding public inquiries about applications and registrations.

108.04 Due Diligence: Duty to Monitor Status

Trademark applicants and registrants should monitor the status of their applications or registrations in cases where a notice or action from the Office is expected. Inquiries regarding the status of pending matters should be made, at a minimum, within one year of the filing or receipt of any document for which further action by the Office is expected.

Should the status inquiry reveal that a paper is lost, or that some other problem exists, the applicant or registrant must promptly request corrective action. Failure to act diligently and follow up with appropriate action may result in denial of the requested relief. The Office denies petitions to reactivate abandoned applications and cancelled registrations when a party fails to inquire about the status of a pending matter within a reasonable time. *See* TMEP §§1705.05 and 1714.01(d).

Written status inquiries are discouraged, because they can delay processing of an application. Whenever possible, status inquiries should be made through the TARR database or the Trademark Status Line. If additional information regarding the status

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of an application or registration is required, callers may telephone the Trademark Assistance Center at (703) 308-9000.

109 Access to Files

18 U.S.C. §2071. Concealment, removal, or mutilation generally.

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

No file or related document may be removed from the premises occupied by the Office, except as required by the issue process or other official process, unless specifically authorized by the Director. 18 U.S.C. §2071(b). If such authorization is given, the employee having custody will be responsible for conforming with the requirements of law.

Files held by examining attorneys and other Office personnel must be accessible to authorized Office personnel. Application files, registration files or related documents must not be placed in desk drawers, locked cabinets or other locations where they might easily be overlooked or not be visible.

Before a file is removed from the operating area having custody of the file, an Office employee must enter the new location of the file into the TRAM database, regardless of the length of time for which the file is expected to remain at that location.

109.01 Access by Public to Pending Unpublished Application Files

37 C.F.R. §2.27(b). Except as provided in paragraph (e) of this section, access to the file of a particular pending application will be permitted prior to publication under §2.80 upon written request.

37 C.F.R. §2.27(e). Anything ordered to be filed under seal pursuant to a protective order issued or made by any court or by the Trademark Trial and Appeal Board in any proceeding involving an application or registration shall be kept confidential and shall not be made available for public inspection or copying unless

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otherwise ordered by the court or the Board, or unless the party protected by the order voluntarily discloses the matter subject thereto. When possible, only confidential portions of filings with the Board shall be filed under seal.

In order to inspect the contents of an application file, it is not necessary to show good cause or to have a power to inspect from the applicant or the applicant's representative.

A request for access to a pending unpublished file should be directed to the office in which the file is located, as shown on TRAM. In general, there is no access to an application file before it has been assembled and delivered to the law office where the application will be examined. Amended applications that are awaiting action by an examining attorney are located with the examining attorney. Applications that have not been assigned to an examining attorney, applications that are suspended, and applications that are awaiting response by the applicant are located in the dockets of the respective law offices.

A member of the public must make a written request for access to the file. The request must include the name and phone number of the person requesting the file. Office personnel must keep a record of all files being removed. Office personnel must enter the new location of the file (*e.g.*, charged to non-Office personnel) in the TRAM database. The public must inspect the file on the premises of the Office, and nothing may be removed from the file without written authorization from the Managing Attorney or the Office of the Commissioner for Trademarks. An unmailed letter or draft is not part of the file. Office personnel should ensure that such material is removed before making the file available to a member of the public.

109.02 Access by Public to Files of Pending But Published Applications, Registrations, Abandoned Applications, and Terminated *Inter Partes* Proceedings

37 C.F.R. §2.27(d). Except as provided in paragraph (e) of this section, after a mark has been registered, or published for opposition, the file of the application and all proceedings relating thereto are available for public inspection and copies of the papers may be furnished upon paying the fee therefor.

37 C.F.R. §2.27(e). Anything ordered to be filed under seal pursuant to a protective order issued or made by any court or by the Trademark Trial and Appeal Board in any proceeding involving an application or a registration shall be kept confidential and shall not be made available for public inspection or copying unless otherwise ordered by the court or the Board, or unless the party protected by the order voluntarily discloses the matter subject thereto. When possible, only confidential portions of filings with the Board shall be filed under seal.

Requests for access to files of pending but published applications must be made in the Publication and Issue Section or, for those §1(b) applications for which a notice of allowance has issued, in the Intent-to-Use/Divisional Unit. Requests for access to

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registration files that are located in the Post Registration Section may be made in that section.

A member of the public must make a written request for access to the file. The request must include the name and phone number of the person requesting the file, and Office personnel must keep a record of all files being removed. Office personnel must enter the new location of the file in the TRAM system. Inspection of the file must be made on the premises of the Office. Nothing may be removed from the file without written authorization from the Office of the Commissioner for Trademarks, the Supervisor of the ITU/Divisional Unit, or the Supervisor of the Post Registration Section.

Abandoned application files are stored in the warehouse for two years after the date of abandonment, and then destroyed. *See* TMEP §718.07. Cancelled and expired registration files are stored in the warehouse for two years after the date of cancellation or expiration, and then destroyed. *See* notice at 980 TMOG 16, reprinted at 1232 TMOG 625 (March 21, 2000).

A member of the public may request access to files that are stored in the warehouse (*i.e.*, files of registrations, abandoned applications or terminated *inter partes* proceedings) in the Trademark Search Library. Office personnel will obtain these files from the warehouse, and the file will usually be available to the requester in the Search Library within a few days.

109.03 Making Copies of Materials in Files

Photocopiers are available to the public on the premises of the Office for a fee.

See TMEP §111 for information about requesting that the Office provide copies of trademark documents.

110 Decisions Available to the Public [R-2]

37 C.F.R. §2.27(c). Decisions of the Director and the Trademark Trial and Appeal Board in applications and proceedings relating thereto are published or available for inspection or publication.

Precedential decisions of the Director and the Trademark Trial and Appeal Board are noted as such and published in the United States Patents Quarterly (cited as USPQ or USPQ2d), which is a periodical reporting service of a non-governmental publishing company. The Office does not print these decisions in its own publications. Non-precedential decisions of the Director and the Trademark Trial and Appeal Board are not published.

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A weekly summary of final decisions issued by the Trademark Trial and Appeal Board appears on the Office's website at www.uspto.gov and in each issue of the *Trademark Official Gazette*.

See TMEP §1803 regarding decisions that are available under the Freedom of Information Act.

111 Requests for Copies of Trademark Documents [R-2]

The public can view and print an electronic copy of an application or registration through TESS (*see* TMEP §104). The public can print the prosecution history of an application or registration through TARR (*see* TMEP §108.01). There is no charge for use of these databases.

The public may purchase certified or uncertified copies of trademark documents (*i.e.*, application files, file wrappers, trademark title and status reports, registrations, etc.). Fee schedules are posted on the Office's website. Requests for copies of trademark documents are handled by the Certification Division of the Office of Public Records.

Copies of trademark documents can be ordered through the Office's website at www.uspto.gov, for delivery by the United States Postal Service. The fee must be paid by credit card or deposit account authorization. Requests for copies of trademark documents may also be faxed to (703) 305-8759, or e-mailed to dsd@uspto.gov, with an authorization to charge the fee to a credit card or deposit account.

All requests for certified or uncertified copies of trademark documents should be sent to : Mail Stop Document Services, Director of the United States Patent and Trademark Office, P. O. Box 1450, Alexandria VA 22313-1450. 37 C.F.R. §1.1(a)(4)(ii).

Requests for copies of trademark documents (certified or uncertified) can be hand delivered to Crystal Gateway 4, Suite 300, 1213 Jefferson Davis Highway, Arlington, Virginia 22202.

General inquiries may be made to the Certification Division at (703) 308-9726 or (800) 972-6382. *See* notice at 1165 TMOG 13 (August 2, 1994).

112 Patent and Trademark Depository Libraries

There is a network of Patent and Trademark Depository Libraries (PTDLs) throughout the United States that provides access to many of the same products and services offered at the USPTO. A list of the PTDLs and their telephone numbers appears on the USPTO website at www.uspto.gov and is printed in each issue of the *Trademark Official Gazette*.

Information available free of charge at the PTDLs includes the text of the trademark statute and rules (*see* TMEP §101), the *Trademark Manual of Examining Procedure*;

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Trademark Trial and Appeal Board Manual of Procedure; Acceptable Identification of Goods and Services Manual (TMEP §1402.04); and the Trademark Electronic Search System (TESS). Photocopiers are generally provided for a fee.

The scope of PTDL collections, hours of operation, services and fees (where applicable) may vary from one library to another.