

Chapter 300

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301 Trademark Electronic Application System [R-2]

The Trademark Electronic Application System (TEAS) makes electronic filing available on the United States Patent and Trademark Office's website, at <http://www.uspto.gov>.

TEAS can be used to file (1) applications for registration of trademarks, service marks, certification marks, collective marks, and collective membership marks; (2) amendments to allege use under 15 U.S.C. §1051(c); (3) statements of use under 15 U.S.C. §1051(d); (4) requests for extensions of time to file a statement of use under 15 U.S.C. §1051(d)(2); (5) affidavits of continued use under 15 U.S.C. §1058; (6) affidavits of incontestability under 15 U.S.C. §1065; (7) combined affidavits under 15 U.S.C. §§1058 and 1065; (8) combined filings under 15 U.S.C. §§1058 and 1059; (9) responses to examining attorneys' Office actions; (10) preliminary amendments; and (11) notices of changes of correspondence address.

When a document is filed electronically, the Office receives it within seconds after filing, and immediately issues a confirmation of filing via e-mail that includes the date of receipt and a summary of the submission. This confirmation is evidence of filing should any question arise as to the filing date of the document.

Applications filed electronically are routed directly to e-commerce law offices for all initial processing and examination. These documents are examined much faster than their paper counterparts.

Under 37 C.F.R. §1.6(a)(4), trademark-related correspondence transmitted electronically using TEAS is considered filed on the date the Office receives the transmission, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia.

TEAS is available 24 hours a day, 7 days a week. However, during the hours between 12:00 a.m. to 4:00 a.m. Sunday, Eastern Time, credit card payments cannot be processed; therefore, no documents requiring fees can be filed during that time period.

In a TEAS document, the signatory does not apply a conventional signature. *See* TMEP §804.05.

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See TMEP §807.02 regarding drawings in electronically transmitted applications, and TMEP §904.02 regarding specimens in electronically transmitted applications.

302 Correspondence with the United States Patent and Trademark Office - In General [R-2]

Extract from 37 C.F.R. §1.4. Nature of correspondence and signature requirements.

(a) Correspondence with the Patent and Trademark Office comprises:

(1) Correspondence relating to services and facilities of the Office, such as general inquiries, requests for publications supplied by the Office, orders for printed copies of patents or trademark registrations, orders for copies of records, transmission of assignments for recording, and the like, and

*(2) Correspondence in and relating to a particular application or other proceeding in the Office. * * **

(b) Since each file must be complete in itself, a separate copy of every paper to be filed in a patent or trademark application, patent file, trademark registration file, or other proceeding must be furnished for each file to which the paper pertains, even though the contents of the papers filed in two or more files may be identical. The filing of duplicate copies of correspondence in the file of an application, patent, trademark registration file, or other proceeding should be avoided, except in situations in which the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence in the file of an application, patent, trademark registration file, or other proceeding.

(c) Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects.

(d)(1) Each piece of correspondence, except as provided in paragraphs (e) and (f) of this section, filed in an application, patent file, trademark registration file, or other proceeding in the Office which requires a person's signature, must:

(i) Be an original, that is, have an original signature personally signed in permanent ink by that person; or

(ii) Be a direct or indirect copy, such as a photocopy or facsimile transmission (§1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original; or

(iii) Where an electronically transmitted trademark filing is permitted, the person who signs the filing must either:

(A) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission; or

(B) Sign the verified statement using some other form of electronic signature specified by the Director.

(2) The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any paper by a party, whether a practitioner or non-practitioner, constitutes a certification under §10.18(b) of this chapter. Violations of §10.18(b)(2)

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of this chapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under §10.18(c) of this chapter. Any practitioner violating §10.18(b) may also be subject to disciplinary action. See §§10.18(d) and 10.23(c)(15).

* * *

(f) When a document that is required by statute to be certified must be filed, a copy, including a photocopy or facsimile transmission, of the certification is not acceptable.

* * * * *

The Office recommends filing electronically through TEAS whenever possible. See TMEP §301. Applications for registration of marks, and other mail or packages for the trademark section of the Office, may also be sent through the United States Postal Service (USPS), delivered by a courier service, or hand carried to the Office. Except for documents listed in TMEP §306.01, correspondence may be transmitted by facsimile (fax). (Note that a trademark application may *not* be filed by fax transmission, but it can be filed electronically through TEAS. 37 C.F.R. §§1.6(d)(3) and 1.8(a)(2)(ii)(A)). Certain documents can be sent through electronic mail.

See TMEP §§304 et seq. regarding electronic mail, TMEP §§305 et seq. for information about mailing documents to the Office, TMEP §§306 et seq. regarding fax transmission, and TMEP §307 regarding hand delivery.

302.01 Original Documents Generally Not Required [R-2]

The Office does not generally require the submission of original documents. *See* 37 C.F.R. §1.4(d). Copies (*e.g.*, photocopies or fax transmissions) may be submitted except for certified copies of court orders and certified copies of U.S. registrations, where required.

If a party files a copy of a paper related to an application or registration, the Office will normally not require the party to submit the original document. However, the party who filed the copy should retain the original in case questions arise as to the authenticity of the signature on the photocopy or faxed correspondence. 37 C.F.R. §1.4(d)(1)(ii).

Copies are *not* acceptable for trademark correspondence specified in 37 C.F.R. §1.4(f). That is, a copy is *not* acceptable when a document is required by statute to be certified (*e.g.*, a certified copy of a final court order pursuant to 15 U.S.C. §1119; or a certified copy of a U.S. trademark registration). The requirement for an original certification does not apply to certifications such as those required under 37 C.F.R. §§1.8 and 3.73(b), because these certifications are not required by statute.

302.02 Multiple Copies of Papers Should Not Be Filed

Extract from 37 C.F.R. §1.4(b).

** * * The filing of duplicate copies of correspondence in the file of an application, patent, trademark registration file, or other proceeding should be avoided, except in*

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situations in which the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence in the file of an application, patent, trademark registration file, or other proceeding.

As a general rule, only one copy of each paper should be filed, unless more than one copy is specifically required by statute or rule (*e.g.*, requirement of 37 C.F.R. §2.102(d) that requests to extend the time for filing an opposition be submitted in triplicate), or an Office employee specifically requests more than one copy.

When filing a document electronically or by fax, parties should *not* send a follow-up copy unless the Office specifically requests a follow-up copy. 37 C.F.R. §1.4(b). Submission of duplicate papers can delay processing.

302.03 Identifying the Nature of Papers Filed

302.03(a) Correspondence Pertaining to Trademark Applications

Documents filed electronically through TEAS are automatically transmitted to the appropriate location and associated with the appropriate file.

For paper documents, to ensure the timely matching of papers with files, every piece of correspondence filed in the Office pertaining to a trademark application should be identified at the beginning of the paper by a heading or caption and by the serial number of the application to which the paper pertains. 37 C.F.R. §1.5(c). Cover letters and transmittal letters should identify the material that they accompany.

To expedite processing, *all* incoming papers pertaining to an application should include the following identifying data:

- (1) Serial number;
- (2) Filing date;
- (3) Mark;
- (4) A title indicating the nature of the paper;
- (5) Law office (identified in the most recent Office action);
- (6) Name of examining attorney identified on the most recent Office action;
- (7) Mailing date of the Office action to which the paper is in response, if applicable;
- (8) The appropriate box designation and “FEE” or “NO FEE” indicator (*see* TMEP §305.01);
- (9) The name, address (including ZIP code) and telephone number of the applicant or the applicant’s attorney; and

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- (10) The applicant's or attorney's e-mail address, if the applicant has authorized e-mail communications.

To facilitate the matching of responses to Office actions with the correct files, examining attorneys' Office actions include peel-off response labels that reference the application serial number, the mark and the assigned law office. If filing paper documents, applicants are encouraged to affix this label to the upper right-hand corner of the required response.

302.03(b) Correspondence Pertaining to Trademark Registrations

Correspondence relating to a registered trademark should identify the registration by specifying the mark, the registrant's name, and the registration number. 37 C.F.R. §1.5(c)(2).

Correspondence filed under 15 U.S.C. §§1057, 1058 and 1059 should be directed to the Post Registration Section of the Office.

Petitions to cancel a registered mark should be directed to the Trademark Trial and Appeal Board.

Court orders relating to registered trademarks should be sent to the Office of the Solicitor. See TMEP §1610.

303 Receipt of Documents by the Office [R-2]

Extract from 37 C.F.R. §1.6. Receipt of correspondence.

(a) Date of receipt and Express Mail date of deposit.

Correspondence received in the Patent and Trademark Office is stamped with the date of receipt except as follows:

(1) The Patent and Trademark 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 by facsimile under paragraph (a)(3) of this section, or filed electronically under paragraph (a)(4) of this section, no correspondence is received in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia.

(2) Correspondence filed in accordance with §1.10 will be stamped with the date of deposit as "Express Mail" with the United States Postal Service.

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

(4) Trademark-related correspondence transmitted electronically will be stamped with the date on which the Office receives the transmission.

(b) [Reserved]

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(c) Correspondence delivered by hand. In addition to being mailed, correspondence may be delivered by hand during hours the Office is open to receive correspondence.

(d) Facsimile transmission. Except in the cases enumerated below, 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 Patent and Trademark Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See §1.6(a)(3). To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application or other proceeding before the Patent and Trademark Office. The application number of a patent or trademark application, the control number of a reexamination proceeding, the interference number of an interference proceeding, the patent number of a patent, or the registration number of a trademark should be entered as a part of the sender's identification on a facsimile cover sheet. Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations:

- (1) Correspondence as specified in §1.4(e), requiring an original signature;*
- (2) Certified documents as specified in §1.4(f);*
- (3) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in §1.8(a)(2)(i)(A) through (D) and (F), §1.8(a)(2)(ii)(A), and §1.8(a)(2)(iii)(A), except that a continued prosecution application under §1.53(d) may be transmitted to the Office by facsimile;*
- (4) Drawings submitted under §§1.81, 1.83 through 1.85, 1.152, 1.165, 1.174, 1.437, 2.51, 2.52, or 2.72;*
- (5) A request for reexamination under §1.510;*
- (6) Correspondence to be filed in a patent application subject to a secrecy order under §§5.1 through 5.5 of this chapter and directly related to the secrecy order content of the application;*
- (7) Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e); and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e);*
- (8) Correspondence to be filed with the Trademark Trial and Appeal Board, except the notice of ex parte appeal;*
- (9) Correspondence to be filed in an interference proceeding which consists of a preliminary statement under §1.621; a transcript of a deposition under §1.676 or of interrogatories, or cross-interrogatories; or an evidentiary record and exhibits under §1.653.*

(e) Interruptions in U.S. Postal Service. If interruptions or emergencies in the United States Postal Service which have been so designated by the Director occur, the Patent and Trademark Office will consider as filed on a particular date in the Office any correspondence which is:

- (1) Promptly filed after the ending of the designated interruption or emergency;*
- and*

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(2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service.

* * * * *

303.01 Date of Receipt [R-1]

Correspondence transmitted electronically using TEAS is considered to have been filed on the date the Office receives the transmission, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. 37 C.F.R. §1.6(a)(4).

For paper correspondence, the date of actual receipt in the Office is assigned as the filing date of all correspondence. 37 C.F.R. §1.6(a). However, under 37 C.F.R. §§1.6(a)(1) and (3), no correspondence is “received” in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia. *See* TMEP §308 regarding response periods that end on a Saturday, Sunday, or Federal holiday within the District of Columbia.

The filing date of an e-mail communication (*see* TMEP §304 *et seq.*) or fax transmission (*see* TMEP §§306 *et seq.*) is the date 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 is the next succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia. 37 C.F.R. §§1.6(a)(1) and (3). However, if the communication is properly filed using the “certificate of transmission” procedure under 37 C.F.R. §1.8, the Office looks to the date on the certificate to determine whether the filing is timely. TMEP §§304.05 and 306.05(c).

Similarly, if a document is mailed to the Office using the “certificate of mailing” procedure under 37 C.F.R. §1.8 (*see* TMEP §§305.02 *et seq.*), the filing date is the date of receipt in the Office, but the Office looks to the date on the certificate to determine whether the filing is timely. TMEP §305.02(e).

303.02 Acknowledgment of Receipt

303.02(a) Electronic Mail Confirmation of Receipt of TEAS Document

When a document is filed electronically through TEAS, the Office receives it within seconds after filing, and immediately issues a confirmation of filing via e-mail that includes the date of receipt and a summary of the submission. *See* TMEP §301 regarding TEAS. This e-mail confirmation is evidence of filing should any question arise as to the filing date of the document.

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303.02(b) “Office Date” Label Showing Receipt

The Office places a bar code label indicating the date of receipt on every application, part of an application, amendment, letter or other document submitted to the Office on paper. The label is referred to as the “Office Date” label, and it establishes the date of receipt (*i.e.*, the filing date) of any paper. Before 1998, the Office used a stamp, known as the “Office Date Stamp,” to indicate the date of receipt of incoming papers.

303.02(c) Postcard Receipt

When documents are filed electronically through TEAS, a party need not send a postcard in order to receive a confirmation of filing, because the Office immediately issues a confirmation via e-mail that includes the date of receipt and a summary of the submission.

For documents filed on paper, a party may obtain a receipt by enclosing a self-addressed, stamped postcard identifying the document. The Office will place a label indicating the receipt date on the card and return it to the party who filed the paper.

The identifying data on the postcard should be complete and specific. The nature of the paper being filed (*e.g.* application, affidavit, amendment, appeal, petition); the name of the applicant or registrant; the mark; the application filing date or registration date; and the application serial number, registration number or proceeding number should be included when that information is available. Each specific element of the filing should be listed on the postcard (*e.g.*, written application, drawing page, fee, specimen) so that the postcard can be used as evidence that the element was submitted if it is lost or disassociated from the file.

The party submitting the postcard is responsible for placing proper postage on the self-addressed postcard. *See* TMEP §303.02(c)(i) regarding the use of postage meters.

If a postcard with proper postage accompanies application papers that are mailed to the Office, the postcard will be stamped with the serial number assigned to the application.

If the postcard accompanies application papers that are hand carried, the serial number is not stamped on the postcard. Therefore, if application papers are hand carried, the applicant may submit a second postcard with proper postage so that, upon serialization, the Office may send the additional card, stamped with the serial number, to the applicant.

When papers for more than one application or registration are filed under a single cover, a return postcard should be attached to each paper for which a receipt is desired.

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303.02(c)(i) Postage on Return Receipt Postcards

The party submitting a return receipt postcard (*see* TMEP §303.02(c)) is responsible for placing proper postage on the self-addressed postcard. Proper postage means that it has a stamp (or stamps) in the correct amount or a meter stamp postmark that complies with USPS requirements.

The USPS provides in its Domestic Mail Manual that the date in a meter postmark must be the actual date of deposit, with limited exceptions, and that meter postmarks used to prepay reply postage must *not* show the date. The USPS will not accept for mailing a post card that contains a postage meter date more than ten days old. Thus, a return receipt postcard containing a dated meter postmark may not be delivered by the USPS, because the postcard will be mailed by the Office substantially after the date on which the meter postmark is printed on the card.

Therefore, to ensure the receipt of a confirmation post card, the party filing the postcard should: (1) affix postage stamps to their postcards, or purchase already stamped post cards from the USPS; or (2) if a postage meter is used, ensure that the meter postmark does not show the date, and follow the instructions in the postage meter license agreement regarding prepay reply postage. *See* notice at 1246 TMOG 42 (May 8, 2001).

304 Electronic Mail

304.01 Communications Acceptable Via Electronic Mail

Applicants and registrants may use Internet electronic mail (e-mail) to reply or respond to an examining attorney's or Post Registration paralegal's Office action, to conduct informal communications regarding a particular application or registration, or to reply or respond to a letter from a petitions attorney or paralegal in the Office of the Commissioner for Trademarks. *See Internet Usage Policy*, 64 Fed. Reg. 33056, 33062 (June 21, 1999).

The Office will accept legible attachments to Internet e-mail *in .gif or .jpg format* for such purposes as the submission of evidence, specimens, drawings, affidavits and declarations. *The Office will not accept or open attachments in any other format.*

304.02 Communications *Not* Acceptable Via Electronic Mail [R-2]

Internet e-mail may *not* be used to file applications for registration of marks, 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 or excusable nonuse 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. 64 Fed. Reg. 33056, 33062 (June 21, 1999). These documents may be filed electronically using TEAS. *See* TMEP §301 regarding TEAS.

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The Trademark Trial and Appeal Board does not accept e-mail communications.

304.03 Authorization of Electronic Mail Communications

Communication by Internet e-mail is not mandatory. E-mail communication must be authorized or initiated by the applicant or registrant, or the applicant's or registrant's attorney. The Office will *not* initiate correspondence by e-mail unless the applicant or registrant authorizes e-mail communications. 64 Fed. Reg. 33056, 33062 (June 21, 1999).

The applicant or registrant may authorize the Office to communicate by e-mail by so indicating in the initial application or in any official written communication, or by responding to an Office action or other official communication via e-mail. The authorization must include the e-mail address to which e-mail is to be sent. The Office will not send e-mail to more than one e-mail address.

The Office is not required to send Office actions or other official correspondence by e-mail whenever the applicant or registrant authorizes e-mail correspondence. The Office may send correspondence by e-mail, regular mail, fax, or other appropriate means. 64 Fed. Reg. at 33062.

304.04 Filing Date of Electronic Mail

The filing date of an e-mail communication is the date the communication 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. 37 C.F.R. §1.6(a)(1).

See TMEP §304.05 regarding certificates of transmission by e-mail.

304.05 Certificate of Transmission by Electronic Mail

Under 37 C.F.R. §1.8, e-mail correspondence will be considered to be timely filed, even if received after the due date, if the correspondence is: (1) transmitted to the Office by e-mail on or before the due date; and (2) accompanied by a certificate attesting to the date of transmission. 64 Fed. Reg. 33056, 33063 (June 21, 1999). *See* TMEP §§306.05 *et seq.* regarding the certificate of transmission procedure under 37 C.F.R. §1.8.

If e-mail correspondence is timely filed with a certificate of transmission, but is not received by or is lost within the Office, the correspondence will be considered timely based on the date of the transmission set forth on the certificate of transmission, if the party who transmitted the correspondence: (1) informs the Office in writing of the previous e-mail transmission of the correspondence promptly after becoming aware that the Office has no evidence of its receipt; (2) provides a copy of the previously transmitted correspondence, including the certificate of transmission; and (3) submits

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a statement attesting to the personal knowledge of transmission of the response. 37 C.F.R. §1.8(b). The statement attesting to the personal knowledge of transmission does not have to be verified. *See* TMEP §306.05(d) for additional information about correspondence that is transmitted with a certificate of transmission but not received by or lost within the Office.

The following wording is suggested for the certificate of transmission:

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted by electronic mail to the United States Patent and Trademark Office on the date shown below.

(Typed or Printed Name of Person Signing Certificate)

(Signature)

(Date)

See TMEP §304.08 regarding signature of electronic mail.

If e-mail correspondence that does **not** include a certificate of transmission under 37 C.F.R. §1.8 is not received by or is lost within the Office, and the application is consequently abandoned (*i.e.*, applications abandoned due to the applicant's failure to respond to an examining attorney's Office action or a notice of allowance), the applicant must file a petition to revive under 37 C.F.R. §2.66 or a petition under 37 C.F.R. §2.146. A petition under 37 C.F.R. §2.66 or 2.146 must include the petition fee required by 37 C.F.R. §2.6. *See* TMEP §§1714 *et seq.* regarding petitions to revive, TMEP §§1702 through 1707 regarding petitions under 37 C.F.R. §2.146, and TMEP §1712.01 regarding reinstatement of abandoned applications for registration of marks.

304.06 Office Procedures for Processing Incoming Electronic Mail

The Office will print a paper copy of all incoming e-mail communications, including attachments, place them in the file, and consider them part of the record. This applies to both formal and informal e-mail communications. 64 Fed. Reg. 33056, 33062 (June 21, 1999).

304.07 Outgoing Electronic Mail [R-2]

The Office will not send e-mail to an applicant or registrant unless the applicant or registrant authorizes the Office to do so. *See* TMEP §304.03.

When authorized to communicate by e-mail, the Office may send Office actions and other official correspondence to the Internet e-mail address designated by the

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applicant or registrant. The Office will not send correspondence to more than one e-mail address. *See* TMEP §304.09 regarding addresses for e-mail correspondence directed to the Office.

It is the responsibility of the applicant, registrant or attorney to notify the Office of any changes of e-mail address.

The Office is not required to send Office actions and other official correspondence by e-mail whenever the applicant or registrant authorizes e-mail correspondence. The Office may send correspondence by e-mail, regular mail, fax, or other appropriate means. 64 Fed. Reg. 33056, 33062 (June 21, 1999).

When the Office sends correspondence by e-mail, a signed, paper copy of the outgoing correspondence, including all attachments, will be placed in the file.

304.08 Signature of Electronic Mail

The Office has waived 37 C.F.R. §10.18 to the extent that it requires an original signature personally signed in permanent ink on any correspondence filed by e-mail. *See* notice at 64 Fed. Reg. 33056, 33062 (June 21, 1999).

An applicant, registrant or attorney may sign an e-mail communication by entering a “symbol” that he or she has adopted as a signature between two slashes. *See* 37 C.F.R. §§1.4(d)(1)(iii) and 2.33(d), and TMEP §§301 and 804.05 regarding signature of documents filed electronically through TEAS.

In addition, the Office will accept an e-mail communication containing the “/s/” (“/(signature)”) notation in lieu of a signature. 64 Fed. Reg. at 33062.

A scanned image of a document signed in ink is also acceptable, as long as the image is attached in .jpg or .gif format.

Under 37 C.F.R. §10.18(b), the use of an electronic signature under 37 C.F.R. §§1.4(d)(1)(iii) and 2.33(d), or an “/s/” notation, will be understood to constitute a certificate that:

- (1) The correspondence has been read by the applicant, registrant or attorney;
- (2) The filing of the correspondence is authorized;
- (3) To the best of the signatory’s knowledge, information, and belief, there is good ground to support the correspondence; and
- (4) The correspondence is not presented for purposes of delay.

64 Fed. Reg. at 33062.

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304.09 E-Mail Addresses for Correspondence With the Office

Applicants and registrants should send e-mail to the address designated by the Office on the filing receipt, Office action, or other correspondence sent by the Office. Applicants and registrants should *not* send e-mail to more than one address in the Office, and should not send courtesy copies of an e-mail message (*e.g.*, “Cc” or “Bcc”) to additional e-mail addresses within the Office.

See TMEP §304.07 regarding outgoing electronic mail.

304.10 Paper “Confirmation” Copies of E-Mail Communications Should Not Be Sent to the Office

Applicants, registrants and attorneys should *not* send paper “confirmation” copies of e-mail communications to the Office by fax, regular mail, or any other means, because this can delay processing.

305 Mailing Documents to the Office

305.01 Mailing Addresses [R-2]

Documents filed electronically through TEAS are automatically sent to the appropriate location.

For trademark-related documents filed on paper, except for documents sent to the Assignment Services Division for recordation and requests for copies of trademark documents (*see* below), all trademark-related correspondence that is mailed to the Office should be addressed to:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

The names of individual employees should *not* be placed on the *envelopes* in which official communications are sent to the Office. Envelopes may be marked “Attention: Trademark Examining Operation.” Responses to Office actions should include the name of the examining attorney in the heading.

Mailing Address for Documents to be Recorded in Assignment Services Division

Requests to record documents in the Assignment Services Division can be filed through the Office's website, at <http://etas.uspto.gov>. Paper documents and cover sheets to be recorded in the Assignment Services Division should be sent to Mail Stop Assignment Recordation 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)(i) and 3.27.

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Mailing Address for Requests for Copies of Trademark Documents

Copies of trademark documents can be ordered through the Office's website at www.uspto.gov. Requests for copies of documents can also be faxed or e-mailed to the Office, with an authorization to charge the fee to a credit card or USPTO deposit account. See TMEP §111 for additional information.

All other 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).

305.02 Certificate of Mailing Procedure [R-2]

37 C.F.R. §1.8. Certificate of mailing or transmission.

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in §1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with §1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(2) The procedure described in paragraph (a)(1) of this section does not apply to, and no benefit will be given to a Certificate of Mailing or Transmission on the following:

** * **

(ii) Relative to Trademark Registrations and Trademark Applications --

(A) The filing of a trademark application;

** * **

(iii) Relative to Disciplinary Proceedings

(A) Correspondence filed in connection with a disciplinary proceeding under part 10 of this chapter.

(B) [Reserved]

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

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(1) *Inform the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;*

(2) *Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and*

(3) *Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.*

(c) *The Office may require additional evidence to determine if the correspondence was timely filed.*

In 37 C.F.R. §1.8, there is a “certificate of mailing or transmission” procedure to avoid lateness due to mail delay. This procedure may be used for all trademark correspondence except applications for registration of marks. 37 C.F.R. §1.8(a)(2)(ii). Under the certificate of mailing or transmission procedure, correspondence is considered to be timely filed even if received after the due date, if the correspondence was deposited with the United States Postal Service as first class mail or transmitted to the Office by facsimile transmission before the expiration of the filing period and was accompanied by a certificate attesting to the date of deposit or transmission.

Filers must retain a copy of the correspondence, including the signed and dated certificate. *In re Sasson Licensing Corporation*, 35 USPQ2d 1510 (Comm’r Pats. 1995).

See TMEP §§305.02 *et seq.* regarding the certificate of mailing procedure, and TMEP §§306.05 *et seq.* regarding the certificate of transmission procedure.

305.02(a) When Certificate of Mailing Procedure May Be Used

The certificate of mailing procedure may be used for all trademark filings **except** the initial application to register a mark. 37 C.F.R. §1.8(a)(2)(ii)(A). (Applications for registration may be filed electronically, using TEAS (*see* TMEP §301)).

305.02(b) Mailing Requirements

Since first-class mail services of the USPS are not available in foreign countries, the certificate of mailing procedure may not be used for sending mail to the Office from a foreign country. The material must be deposited in the United States mail, properly addressed (*see* TMEP §305.01 for mailing addresses), and the envelope must have sufficient postage as first-class mail.

305.02(c) Location and Form of Certificate

The certificate of mailing must: (1) state the date of deposit in the mail, which must be a date within the set filing period (this includes the last day of the period, or the

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succeeding day that is not a Saturday, Sunday or Federal holiday within the District of Columbia when the last day of the period falls on a Saturday, Sunday or Federal holiday within the District of Columbia); and (2) be signed by a person who has a reasonable basis to expect the correspondence to be deposited in the mail on the date indicated. The signature of the certificate must be separate from any signature for the correspondence being deposited.

The best location for the certificate of mailing is at the beginning of the correspondence to which it pertains, typed in its entirety.

The certificate of mailing should be separated from contents of the correspondence that are on the same page. Several blank lines between the contents and the certificate will suffice.

If the certificate of mailing does not fit on the correspondence to which it pertains, the certificate may be placed on a separate sheet of paper that is attached securely to the correspondence. The separate sheet must exhibit or bear a complete identification of the nature of the paper or fee as well as an identification of the application, registration and/or proceeding to which the paper pertains (including serial number or registration number). The separate sheet may be a cover letter or transmittal letter, with the certificate placed at the bottom of the letter and signed separately from the letter. If there is any doubt concerning the correspondence to which a certificate of mailing on a separate sheet relates, the Office will not accept the certificate.

There must be a certificate of mailing for each piece of correspondence. When correspondence for more than one application or registration is mailed in a single envelope, each item of correspondence must have its own certificate of mailing. Similarly, when more than one type of correspondence is submitted in connection with the same application, each item of correspondence must have its own certificate of mailing.

It is suggested that the certificate be signed by the applicant or the party involved in the proceeding, or by the attorney for such person. If someone else signs, it should be a responsible person in a position to know that the mail was deposited on the date specified.

The Office accepts the date of deposit stated in the certificate of mailing on the basis of the statement of personal knowledge. The Office does not normally inspect the postmark on the envelope.

305.02(d) Wording of Certificate of Mailing [R-2]

The following wording is suggested for the certificate of mailing.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with
the United States Postal Service as first class mail in an envelope

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addressed to: Commissioner for Trademarks, 2900 Crystal Drive,
Arlington, Virginia 22202-3514 on the date shown below:

(Typed or Printed Name of Person Signing Certificate)

(Signature)

(Date)

305.02(e) Effect of Certificate of Mailing [R-1]

The date of actual receipt is the filing date of all paper correspondence. 37 C.F.R. §1.6(a). The Office does not retain the envelopes in which material is received or record the date of the postmark.

The date of deposit indicated on the certificate of mailing is used only to determine whether the correspondence was deposited with the USPS within the filing period. Therefore, if the correspondence is actually received in the Office within the filing period, the certificate of mailing is ignored. If, however, the Office receives correspondence after the filing period has expired, the Office looks to see whether a certificate of mailing was included. If no certificate is found, the correspondence is untimely.

When a paper received after the expiration of the filing period includes a signed certificate of mailing, and the date of deposit on the certificate is within the filing period, the Office considers the correspondence to be timely filed.

If the filing period ends on a Saturday, Sunday or Federal holiday within the District of Columbia, the correspondence is considered timely if the date of deposit on the certificate of mailing or transmission is the next succeeding day that is not a Saturday, Sunday or Federal holiday within the District of Columbia (*see* 37 C.F.R. §1.7 and TMEP §308).

Whenever it is necessary to change the effective filing date of an application (for example, when an application filed under §1(b) of the Trademark Act is amended to request registration on the Supplemental rather than the Principal Register after submission of an allegation of use), the date of actual receipt rather than the date on the certificate is the new effective filing date. *See* TMEP §§206 *et seq.* as to changes in the effective filing date of an application.

305.02(f) Correspondence Mailed Pursuant to 37 C.F.R. §1.8 But Not Received by Office

If correspondence filed with a certificate of mailing is not received by (or is lost within) the Office, the Office will consider the correspondence to be timely filed

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based on the date of deposit stated in the certificate of mailing if the party who filed the correspondence:

- (1) informs the Office in writing of the previous mailing of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) supplies an additional copy of the previously mailed correspondence, including a copy of the signed and dated certificate of mailing (*see In re Sasson Licensing Corporation*, 35 USPQ2d 1510 (Comm'r Pats. 1995)); and
- (3) includes a statement attesting to the previous timely mailing on the basis of the signer's personal knowledge. This statement does not have to be verified.

37 C.F.R. §1.8(b).

Under 37 C.F.R. §1.8(b)(1), a party must notify the Office of the mailing of the correspondence "promptly" after becoming aware that the Office has no evidence of receipt of the correspondence. Under 37 C.F.R. §2.146(d), "[a] petition must be filed within two months of the mailing date of the action from which relief is requested, unless a different deadline is specified elsewhere in this chapter [of the rules]."

Where no written action is generated that can be used as a starting point for measuring the petition's timeliness, the two-month standard of 37 C.F.R. §2.146(d) is applied, running from the date that the party who filed the correspondence became aware that there was a problem with the filing date of the correspondence. *See* TMEP §1705.04.

The required evidence should be sent to the area in the Office where the misplaced or lost document was intended to be filed, *e.g.*, the law office, ITU Unit, or Post Registration Section.

If *all* three criteria listed above cannot be met, the only remedy available is a petition to revive under 37 C.F.R. §2.66 or a petition under 37 C.F.R. §2.146, which must include a petition fee of \$100, and a statement that attests on a personal knowledge basis to the previous timely mailing, along with any additional evidence. *See* 37 C.F.R. §§2.66 and 2.146; TMEP §§1702 through 1707 regarding petitions under 37 C.F.R. §2.146 and TMEP §1714 *et seq.* regarding petitions to revive.

The above procedure does *not* apply to the filing of an application for registration of a mark.

Under 37 C.F.R. §1.8(c), the Office may require additional evidence relating to the mailing or transmission of correspondence in accordance with Rule 1.8(a). *See, e.g., In re Klein*, 6 USPQ2d 1547 (Comm'r Pats. 1987), *aff'd sub nom. Klein v. Peterson*, 696 F. Supp. 695, 8 USPQ2d 1434 (D.D.C. 1988), *aff'd*, 866 F.2d 412, 9 USPQ2d 1558 (Fed. Cir. 1989), *cert. denied*, 490 U.S. 1091 (1989).

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305.02(g) Correspondence Deposited as First Class Mail Pursuant to 37 C.F.R. §1.8 and Returned by the U.S. Postal Service

The USPS requires that all domestic first class mail that weighs sixteen ounces or more be presented to a retail clerk at a USPS office. All such mail that is not presented to a retail clerk at a USPS office (*e.g.*, is placed in a mailbox) will be returned by the USPS. The USPS has posted notice of this requirement on mailboxes. The “Express Mail” service of the USPS is not affected.

Correspondence must be deposited with the USPS as first class mail in compliance with any and all applicable requirements of the USPS to be considered “[d]eposited with the U.S. Postal Service,” within the meaning of 37 C.F.R. §1.8(a)(1)(i)(A). Therefore, correspondence returned by the USPS as not mailed in compliance with USPS requirements concerning mail weighing sixteen ounces or more is not entitled to any benefit under 37 C.F.R. §1.8. *See* notice at 1192 TMOG 43 (Nov. 12, 1996).

305.02(h) Certificate of Mailing Requirements Strictly Enforced on Petition

The requirements of 37 C.F.R. §1.8 are strictly enforced, and the Office denies petitions to consider a document timely filed as of the date on the certificate if a party fails to comply with these requirements.

A party’s inadvertent failure to comply with the requirements of a rule is not considered an extraordinary situation that would warrant waiver of a rule under 37 C.F.R. §§2.146(a)(5) or 2.148. *See Honigsbaum v. Lehman*, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995), *aff’d mem.*, 95 F.3d 1166 (Fed. Cir. 1996) (Commissioner did not abuse his discretion in refusing to waive requirements of 37 C.F.R. §1.10(c) and grant filing date to patent application, when applicant failed to produce “Express Mail” customer receipt or any other evidence that application was actually deposited with USPS as “Express Mail”); *In re Sasson Licensing Corporation*, 35 USPQ2d 1510 (Comm’r Pats. 1995) (failure to retain executed hard copy of certificate of mailing under 37 C.F.R. §1.8 not extraordinary situation that would justify waiver of rule); *Gustafson v. Strange*, 227 USPQ 174 (Comm’r Pats. 1985) (counsel’s unawareness of 37 C.F.R. §1.8 not extraordinary situation warranting waiver of a rule); *In re Chicago Historical Antique Automobile Museum, Inc.*, 197 USPQ 289 (Comm’r Pats. 1978) (lateness due to mail delay not deemed to be extraordinary situation, because certificate of mailing procedure under 37 C.F.R. §1.8 was available to petitioner).

305.03 “Express Mail” [R-2]

Section 1.10 Filing of correspondence by “Express Mail.”

(a) *Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) will be considered filed with the USPTO*

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on the date of deposit with the USPS, except for documents described in the following paragraphs (a)(1)(i) and (ii) of this section:

(i) trademark applications filed under section 1 or 44 of the Trademark Act, 15 U.S.C. 1051 and 1126.

(ii) other documents for which a Trademark Electronic Application System (TEAS) form exists:

(A) amendment to allege use under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c);

(B) statement of use under section 1(d) of the Trademark Act, 15 U.S.C. 1051(d);

(C) request for extension of time to file a statement of use under section 1(d) of the Trademark Act, 15 U.S.C. 1051(d);

(D) affidavit of continued use under section 8 of the Trademark Act, 15 U.S.C. 1058;

(E) renewal request under section 9 of the Trademark Act, 15 U.S.C. 1059; and

(F) requests to change or correct addresses.

(2) The date of deposit with USPS is shown by the “date in” on the “Express Mail” label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a).

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the “Express Mail” mailing label with the “date-in” clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an “Express Mail” drop box) do so at the risk of not receiving a copy of the “Express Mail” mailing label with the desired “date-in” clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the “Express Mail” mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(c) Any person filing correspondence under this section that was received by the Office and delivered by the “Express Mail Post Office to Addressee” service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the “date-in” on the “Express Mail” mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the “Express Mail” mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by “Express Mail;” and

(3) The petition includes a true copy of the “Express Mail” mailing label showing the “date-in,” and of any other official notation by the USPS relied upon to show the date of deposit.

(d) Any person filing correspondence under this section that was received by the Office and delivered by the “Express Mail Post Office to Addressee” service of the USPS, who can show that the “date-in” on the “Express Mail” mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS,

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may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the “Express Mail” mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by “Express Mail”; and

(3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the “Express Mail Post Office to Addressee” service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the “Express Mail Post Office to Addressee” service of the USPS.

(e) Any person mailing correspondence addressed as set out in §1.1(a) to the Office with sufficient postage utilizing the “Express Mail Post Office to Addressee” service of the USPS but not received by the Office, may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the “Express Mail” mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by “Express Mail”;

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the “Express Mail” mailing label thereon, a copy of any returned postcard receipt, a copy of the “Express Mail” mailing label showing the “date-in,” a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the “date-in” on the “Express Mail” mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the “Express Mail Post Office to Addressee” service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the “Express Mail” mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original “Express Mail” mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine if the correspondence was deposited as “Express Mail” with the USPS on the date in question.

Patent and Trademark Rule 1.10, 37 C.F.R. §1.10, provides a procedure for obtaining a filing date as of the date that correspondence is deposited as “Express Mail” with the United States Postal Service (USPS). **However, effective June 24, 2002, 37**

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C.F.R. §1.10(a) has been amended. This procedure no longer applies to the following trademark documents:

- trademark applications filed under §1 or §44 of the Trademark Act, 15 U.S.C. §1051 or §1126;
- amendments to allege use under §1(c) of the Trademark Act, 15 U.S.C. §1051(c);
- statements of use under §1(d) of the Trademark Act, 15 U.S.C. §1051(d);
- requests for extension of time to file a statement of use under §1(d) of the Trademark Act, 15 U.S.C. §1051(d);
- affidavits of continued use under §8 of the Trademark Act, 15 U.S.C. §1058;
- renewal applications under §9 of the Trademark Act, 15 U.S.C. §1059;
- requests to change or correct addresses;
- combined filings under §§8 and 9 of the Trademark Act, 15 U.S.C. §§1058 and 1059; and
- combined affidavits or declarations under §§8 and 15 of the Trademark Act, 15 U.S.C. §§1058 and 1065.

See notice at 67 Fed. Reg. 36099 (May 23, 2002), available at <http://www.uspto.gov/web/offices/com/sol/notices/expmailrule2.pdf>.

If the documents listed above are filed by Express Mail, they will receive a filing date as of the date of receipt in the Office and *not* the date of deposit with USPS. 37 C.F.R. §1.6(a). Under 37 C.F.R. §§1.6(a)(1) and (3), no correspondence is “received” in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia. See TMEP §§303.01 and 308.

If the documents are filed electronically through TEAS (www.uspto.gov/teas/index.html), they will receive a filing date as of the date the Office receives the transmission (Eastern Standard Time), regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. 37 C.F.R. §1.6(a)(4). When a document is filed electronically, the Office receives it within seconds after filing, and immediately issues a confirmation of filing via e-mail that includes the date of receipt and a summary of the submission. This confirmation is evidence of filing should any question arise as to the filing date of the document. See TMEP 301 for further information about TEAS.

As the Office develops and tests additional TEAS forms, the Office will amend 37 C.F.R. §1.10(a) to specify additional documents that are excluded from the benefits of the rule. In addition to publishing such rule amendments in the Federal Register, the Office will post them on its website. Members of the public may access the Rules of

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Practice on the Office's website at <http://www.uspto.gov/web/offices/tac/tmlaw2.html> to determine which documents are excluded.

Lost Documents

If *one of the documents listed above* is sent by Express Mail but is lost within the Office, and the applicant or registrant presents proof of actual receipt in the form of evidence that an Office employee signed for or acknowledged the Express Mail package (e.g., an Express Mail mailing label that bears an Office date stamp or label or the signature of an Office employee, or evidence from the USPS website showing that the document was actually received in the Office), the Office will grant the document a filing date as of the *date of actual receipt in the Office*. The applicant or registrant must submit a request to change the filing date that includes true copies of the documents, and an affidavit or declaration under 37 C.F.R. §2.20 attesting to the contents of the Express Mail package. See TMEP §1711 regarding restoration of application filing dates, TMEP §1712.01 regarding reinstatement of applications abandoned due to Office error, and TMEP §1712.02 regarding reinstatement of registrations cancelled or expired due to Office error.

If a document is sent by Express Mail but is not received by or is lost within the Office, and the applicant does not have proof of actual receipt in the Office, the Office will not grant a filing date to the document.

Certificate of Mailing Under 37 C.F.R. §1.8

For documents other than applications for registration of marks, the certificate of mailing procedure of 37 C.F.R. §1.8 may be used for documents mailed by Express Mail as well as documents sent by first class mail. The certificate of mailing procedure may *not* be used for applications for registration of marks. 37 C.F.R. §1.8(a)(2)(ii). Under the certificate of mailing procedure, correspondence is considered to be timely filed even if received after the due date, if the correspondence is deposited with the USPS with sufficient postage as first class mail before the expiration of the filing period and accompanied by a certificate attesting to the date of deposit. Correspondence sent by Express Mail is deemed to meet the requirements of 37 C.F.R. §1.8(a)(1)(i)(A) for postage as first class mail, because the postage for Express Mail exceeds the postage required for first class mail. However, to use the certificate of mailing procedure for documents mailed by Express Mail, a certificate attesting to the date of deposit and meeting the requirements of 37 CFR §1.8(a)(ii) must be placed on the document prior to mailing. See TMEP §§305.02 *et seq.* for further information about the certificate of mailing procedure.

The following wording is suggested for a certificate of mailing when correspondence is sent by Express Mail:

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail in an envelope

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addressed to: Commissioner for Trademarks, 2900 Crystal Drive,
Arlington, Virginia 22202-3514 on the date shown below:

(Typed or Printed Name of Person Signing Certificate)

(Signature)

(Date)

Documents Not Excluded From 37 C.F.R. §1.10

The procedures for filing documents by Express Mail under 37 C.F.R. §1.10 may be used for documents *not expressly excluded by 37 C.F.R. §1.10(a)*, e.g., responses to Office actions, and documents filed with the Trademark Trial and Appeal Board or the Assignment Services Division of the Office. These documents are entitled to a filing date as of the date of deposit with USPS if the filer meets the requirements of 37 C.F.R. §1.10. The rule requires: (1) the document must be sent through the “Post Office to Addressee” service of the USPS; (2) it must be deposited prior to the last scheduled pickup on the relevant date; (3) it must be properly addressed in accordance with the requirements of 37 C.F.R. §1.1; and (4) the number of the “Express Mail” mailing label must be placed on the document prior to mailing.

If a document not specified in 37 C.F.R. §1.10(a) is filed in accordance with the requirements of 37 C.F.R. §1.10, but the document is not given a filing date as of the date of deposit as Express Mail, the filer may request the Office to change the filing date of the document, pursuant to 37 C.F.R. §1.10(c), (d) or (e). Rule 1.10(c) applies when there is a discrepancy between the filing date assigned by the Office and the “date-in” entered by the USPS on the “Express Mail” mailing label; Rule 1.10(d) applies when the “date-in” is incorrectly entered or omitted by the USPS; and Rule 1.10(e) applies when correspondence deposited with the USPS as “Express Mail” is not received by (or is lost within) the Office. A petition to change the filing date of a document pursuant to 37 C.F.R. §1.10 must:

- (1) be filed promptly, *i.e.*, within two months of the mailing date of the action from which relief is requested, or, if there is no “mailing of an action,” within two months of the date that the party who filed the correspondence became aware that there was a problem with the Office’s receipt of the correspondence (37 C.F.R. §§1.10(c)(1), 1.10(d)(1), 1.10(e)(1) and 2.146(d); TMEP §1705.04);
- (2) include a showing that the number of the “Express Mail” mailing label was placed on the correspondence prior to the original mailing (37 C.F.R. §§1.10(c)(2), 1.10(d)(2) and 1.10(e)(2));
- (3) include a true copy of the “Express Mail” mailing label with the “date in” clearly marked (37 C.F.R. §§1.10(c)(3), 1.10(d)(3) and 1.10(e)(3));

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- (4) if the filer contends that the “date in” was entered incorrectly by the USPS, include: (a) a showing that the correspondence was deposited as Express Mail prior to the last scheduled pickup on the requested filing date; and (b) evidence from the USPS or evidence that came into being *after* deposit and within one business day of the deposit of the correspondence as “Express Mail” (37 C.F.R. §1.10(d)(3)); and
- (5) if the correspondence is lost within or never received by the Office, include: (a) a true copy of the originally deposited correspondence showing the number of the “Express Mail” mailing label; and (b) a statement, signed by the person who deposited the documents as “Express Mail” with the USPS, setting forth the date and time of deposit, and stating that the copies of the correspondence and “Express Mail” mailing label accompanying the petition are true copies of those originally sent (37 C.F.R. §§1.10(e)(3) and 1.10(e)(4)).

When correspondence not excluded by 37 C.F.R. §1.10(a) is placed in an “Express Mail” drop box after the box has been cleared for the last time on a given day, it is considered to have been deposited as of the date of receipt indicated on the “Express Mail” mailing label by the USPS employee. *See* notice at 61 Fed. Reg. 56439 (Nov. 1, 1996) and 1192 TMOG 95 (Nov. 26, 1996).

306 Facsimile Transmission (Fax)

Extract from 37 C.F.R. §1.6. Receipt of correspondence.

(a) Date of receipt and Express Mail date of deposit.

Correspondence received in the Patent and Trademark Office is stamped with the date of receipt except as follows:

** * **

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

** * **

(d) Facsimile transmission. Except in the cases enumerated below, 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 Patent and Trademark Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See §1.6(a)(3). To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application or other proceeding before the Patent and Trademark Office. The application number of a patent or trademark application, the control number of a reexamination proceeding, the interference number of an interference proceeding, the patent number of a patent, or the registration number of a trademark should be entered as a part of

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the sender's identification on a facsimile cover sheet. Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations:

- (1) Correspondence as specified in §1.4(e), requiring an original signature;*
- (2) Certified documents as specified in §1.4(f);*
- (3) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in §1.8(a)(2)(i)(A) through (D) and (F), §1.8(a)(2)(ii)(A), and §1.8(a)(2)(iii)(A), except that a continued prosecution application under §1.53(d) may be transmitted to the Office by facsimile;*
- (4) Drawings submitted under §§1.81, 1.83 through 1.85, 1.152, 1.165, 1.174, 1.437, 2.51, 2.52, or 2.72;*

* * *

(7) Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e); and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act, 15 U.S.C. 1057(e);

(8) Correspondence to be filed with the Trademark Trial and Appeal Board, except the notice of ex parte appeal.

* * * * *

The Office permits the filing of certain correspondence by facsimile transmission (fax). See TMEP §306.03 regarding the date of receipt of correspondence that is filed by fax.

See TMEP §306.01 for information about documents that may be filed by fax.

A certificate of transmission may be used to establish timely filing in the event that the correspondence is transmitted within the response period but is received in the Office after expiration of the response period, or is not received by or lost within the Office. See TMEP §§306.05 *et seq.* regarding the requirements for the certificate of transmission procedure.

306.01 Documents That May Be Filed by Facsimile Transmission [R-2]

All trademark documents ***except the documents listed below*** may be filed by fax, and are eligible for the benefits of the certificate of transmission provided for in 37 C.F.R. §1.8.

The following types of trademark correspondence may *not* be filed by facsimile transmission and, if submitted by fax, will not be given a filing date:

- (1) Trademark applications;
- (2) Drawings submitted under 37 C.F.R. §§2.51, 2.52 or 2.72;
- (3) Requests for cancellation or amendment of a registration under 15 U.S.C. §1057(e);

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- (4) Certificates of registration surrendered for cancellation or amendment under 15 U.S.C. §1057(e);
- (5) Correspondence to be filed with the Trademark Trial and Appeal Board, except a notice of *ex parte* appeal; and
- (6) Documents that are required by statute to be certified (*e.g.*, certified copies of court orders).

37 C.F.R. §§1.6(d)(2) through (4), (7), and (8). Applications for registration of marks may be filed electronically using TEAS (*see* TMEP §301).

When any trademark document specifically excluded from the fax transmission procedure is received in the Office by fax, the document will not be accepted. As a courtesy, the Office will attempt to notify senders whenever correspondence that falls within one of these prohibitions is sent to the Office by fax.

306.02 Fax Machines Designated to Accept Relevant Trademark Documents

The fax machines that are designated to accept trademark documents are attended between the business hours of 8:30 a.m. and 5:00 p.m., Eastern Standard Time, Monday through Friday, excluding holidays.

Submissions by fax should be transmitted to the location for which they are intended. A United States Patent and Trademark Office Contacts List, which includes fax numbers, is available on the Office's website at www.uspto.gov, and appears periodically in the *Official Gazette*. In addition, questions about fax numbers may be directed to the Trademark Assistance Center at (703) 308-9000.

The Office does not formally acknowledge receipt of documents transmitted by fax, but Office fax machines will usually confirm to the sending unit that the transmission is complete.

Each fax machine location in the Office maintains a log comprising a collection of daily activity sheets recording all fax transmissions received. These logs can be used as evidence of receipt in the Office, and may be used to reinstate applications and registrations. The individual activity report that pertains to a particular transmission received in the Office is kept with the correspondence.

306.03 Effect of Filing by Fax

The filing date of correspondence received in the Office by fax, regardless of whether it contains a certificate of transmission, is the date that the complete transmission is received by an Office fax machine, unless the transmission is completed on a Saturday, Sunday or Federal holiday within the District of Columbia. Correspondence for which transmission is completed on a Saturday, Sunday or Federal holiday within the District of Columbia is given a filing date as of the next

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succeeding day that is not a Saturday, Sunday or Federal holiday within the District of Columbia. 37 C.F.R. §1.6(a)(3) and (d).

For example, a 20-minute fax transmission to the Office from California starting on a Friday at 8:45 p.m. Pacific Standard Time would be completed at 9:05 p.m. Pacific Standard Time. The complete transmission would be received in the Office at approximately 12:05 a.m. Eastern Standard Time on Saturday. The filing date accorded to the correspondence is the date of the following business day, which in this case would be Monday (assuming that Monday is not a Federal holiday within the District of Columbia).

The phrase “complete transmission” means that the transmission was received in its entirety. For example, if page one of a ten-page fax transmission is received in the Office at 11:55 p.m. on a Tuesday and page ten of that transmission is received at 12:05 a.m. Wednesday, the filing date accorded to that correspondence will be the date of that Wednesday (assuming that Wednesday is not a Federal holiday within the District of Columbia).

If the sender wants the correspondence to be considered timely filed as of the date that the transmission began, the correspondence must include a certificate of transmission under 37 C.F.R. §1.8(a). *See* TMEP §§303.01 and 306.05(c) regarding the effect of a certificate of transmission.

306.04 Procedure for Filing by Fax

Each transmission session should be limited to correspondence to be filed in a single application or other proceeding before the Office. The application serial number or registration number should be entered as a part of the sender’s identification on a facsimile cover sheet. 37 C.F.R. §1.6(d). Applicants should wait until an application serial number is assigned before filing any document related to a new application by fax. *See* 37 C.F.R. §1.5(a).

It is recommended that each transmission include a cover sheet that, in addition to stating the application serial number or registration number, specifies the mark, the number of pages being transmitted, and the name, address, fax number and telephone number of the transmitting party.

Each facsimile-transmitted document must be legible. The preferred size of the document being submitted is 8½ inches by 11 inches, letter size or A4 paper. Because equipment used by the Office cannot print a document larger than 8½ inches by 11 inches, correspondence should not be transmitted on larger sized paper.

When correspondence is filed by facsimile transmission, it is recommended that the sending facsimile machine generate a report confirming transmission for each transmission session. This report should be retained by the applicant, along with the original correspondence, as evidence of content and date of transmission.

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Unless specifically requested to do so by the Office, parties should **not** mail follow up copies of documents transmitted by fax. 37 C.F.R. §1.4(b). This can delay processing.

306.05 Certificate of Transmission Procedure [R-2]

Extract from 37 C.F.R. §1.8. Certificate of mailing or transmission.

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in §1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with §1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(2) The procedure described in paragraph (a)(1) of this section does not apply to, and no benefit will be given to a Certificate of Mailing or Transmission on the following:

** * **

(ii) Relative to Trademark Registrations and Trademark Applications --

(A) The filing of a trademark application;

** * **

(iii) Relative to Disciplinary Proceedings

(A) Correspondence filed in connection with a disciplinary proceeding under part 10 of this chapter.

(B) [Reserved]

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the

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correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

Rule 1.8, 37 C.F.R. §1.8, provides a certificate of transmission procedure to avoid lateness when correspondence is faxed within the response period but is received in the Office after expiration of the response period, or not received, or lost within the Office. The certificate of transmission procedure can be used for any correspondence that can be filed by fax. *See* TMEP §306.01 regarding documents that can be filed by fax.

Under the certificate of transmission procedure, certain correspondence will be considered to be timely filed even if received after the end of the filing period, if the correspondence is transmitted by fax to the Office before the expiration of the filing period and accompanied by a certificate attesting to the date of transmission. The person signing the certificate certifies the expectation that the transmission would be initiated before midnight, local time, on the date specified.

Filers must retain a copy of the correspondence, including the signed and dated certificate. *See In re Sasson Licensing Corporation*, 35 USPQ2d 1510 (Comm'r Pats. 1995).

See TMEP §306.05(d) regarding the procedure for establishing the timely filing of correspondence that was faxed to the Office with a certificate of transmission under 37 C.F.R. §1.8, but was lost or misplaced.

See TMEP §304.05 regarding certificates of transmission by e-mail.

306.05(a) Location and Form of Certificate of Transmission

The certificate of transmission should be clearly labeled as such and should include a reference to the registration number or application serial number, the date of transmission, and the signature of the person attesting that the document is being transmitted on a certain date.

When possible, the certificate should appear on the paper being transmitted, rather than on a separate sheet of paper. *See* notices at 58 Fed. Reg. 54494 (Oct. 22, 1993) and 1157 TMOG 87, 92-93 (Dec. 28, 1993).

If the certificate of facsimile transmission is presented on a separate paper, it *must* identify the paper, and the application or registration to which it relates.

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306.05(b) Wording of Certificate of Transmission

The following wording is suggested for the certificate of transmission:

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on the date shown below.

(Typed or Printed Name of Person Signing Certificate)

(Signature)

(Date)

306.05(c) Effect of Certificate of Transmission

As noted in TMEP §306.03, the filing date given to correspondence received by fax transmission is the date that the complete transmission is received by an Office fax machine, unless the transmission is completed on a Saturday, Sunday or Federal holiday within the District of Columbia, in which case the filing date is the next succeeding day that is not a Saturday, Sunday or Federal holiday within the District of Columbia.

The date of transmission on the certificate is used only to determine whether the correspondence was transmitted to the Office within the filing period. Therefore, if the complete transmission is actually received in the Office within the filing period, the certificate of transmission is ignored. If the transmission is completed after the expiration of the filing period, the Office looks at the correspondence to see if a certificate of transmission was included. If no certificate is found, the correspondence is untimely.

If the correspondence includes a signed certificate of transmission, and the date of transmission on the certificate is within the filing period, the correspondence is considered to be timely.

For example, if a West Coast applicant transmitted correspondence by fax on the last day of the response period, beginning before 9:00 p.m. Pacific Standard Time (midnight Eastern time) but completed after 9:00 p.m. Pacific Standard Time, the Office would give the correspondence a filing date as of the next business day, because that is the date on which the Office received the complete transmission. However, if the practitioner affixed a certificate of transmission to the faxed correspondence indicating that the correspondence was being transmitted on the last day of the response period, then the correspondence would be considered timely filed, even though the transmission completed after 9:00 p.m. Pacific Standard Time

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(midnight Eastern time) was received in the Office the day after the deadline for response.

If the filing period ends on a Saturday, Sunday or Federal holiday within the District of Columbia, the correspondence will be considered to be timely if the date of transmission on the certificate is the next succeeding day that is not a Saturday, Sunday or Federal holiday within the District of Columbia (*see* 37 C.F.R. §1.7 and TMEP §308).

Whenever it is necessary to change the effective filing date of an application (for example, when an application filed under §1(b) of the Trademark Act is amended to request registration on the Supplemental rather than the Principal Register after submission of an allegation of use) and the correspondence included a certificate of transmission under 37 C.F.R. §1.8, the date of actual receipt (as stamped or labeled on the relevant correspondence) rather than the date on the certificate is used as the new effective filing date. See TMEP §§206 *et seq.* as to changes in the effective filing date of an application.

306.05(d) Correspondence Transmitted by Fax Pursuant to 37 C.F.R. §1.8 But Not Received by Office

Rule 1.8(b) sets forth procedures for requesting that correspondence be considered timely when the correspondence is filed with a certificate of transmission, but is not received by or is lost within the Office. Such correspondence will be considered timely based on the date of transmission set forth on the certificate of transmission, if the party who transmitted the correspondence:

- (1) informs the Office in writing of the previous fax transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) supplies an additional copy of the previously transmitted correspondence, including a copy of the signed and dated certificate of transmission (*see In re Sasson Licensing Corporation*, 35 USPQ2d 1510 (Comm'r Pats. 1995)); and
- (3) includes a statement attesting to the previous timely transmission on the basis of the signer's personal knowledge. A copy of the sending unit's report confirming transmission may be used to support this statement. The statement does not have to be verified.

Under 37 C.F.R. §1.8(b)(1), a party must notify the Office of the transmission of the correspondence "promptly" after becoming aware that the Office has no evidence of receipt of the correspondence. Under 37 C.F.R. §2.146(d), "[a] petition must be filed within two months of the mailing date of the action from which relief is requested, unless a different deadline is specified elsewhere in this chapter [of the rules]."

Where no written action is generated that can be used as a starting point for measuring the petition's timeliness, the two-month standard of 37 C.F.R. §2.146(d) is

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applied, running from the date that the party who filed the correspondence became aware that there was a problem with the filing date. *See* TMEP §1705.04.

The required evidence should be directed to the area in the Office where the misplaced or lost document was intended to be filed, *e.g.*, the law office, ITU Unit or Post Registration Section.

If *all* the above criteria cannot be met, the only remedy available is a petition to revive under 37 C.F.R. §2.66, or a petition under 37 C.F.R. §2.146, which must include a petition fee of \$100, and a statement that attests on a personal knowledge basis to the previous timely transmission, along with any additional evidence. *See* 37 C.F.R. §§2.66 and 2.146; TMEP §§1702 through 1707, and TMEP §1714 *et seq.* regarding petitions.

The above procedure does *not* apply to submissions that are excluded from the certificate of mailing or transmission procedures under 37 C.F.R. §1.6(d) or §1.8(a)(2). *See* TMEP §306.01.

Under 37 C.F.R. §1.8(c), the Office may require evidence relating to the transmission of correspondence under 37 C.F.R. §1.8(a), to establish an actual date of transmission. *See, e.g., In re Klein*, 6 USPQ2d 1547 (Comm'r Pats. 1987), *aff'd sub nom. Klein v. Peterson*, 696 F. Supp. 695, 8 USPQ2d 1434 (D.D.C. 1988), *aff'd*, 866 F.2d 412, 9 USPQ2d 1558 (Fed. Cir. 1989), *cert. denied*, 490 U.S. 1091 (1989).

306.06 Requirements for Certificate of Transmission Strictly Enforced on Petition

The requirements of 37 C.F.R. §1.8 are strictly enforced, and petitions to consider a document timely filed as of the date on the certificate are denied when a party fails to comply with these requirements. A party's inadvertent failure to comply with the requirements of a rule is not considered an extraordinary situation that would warrant waiver of the rule under 37 C.F.R. §§2.146(a)(5) or 2.148. *See* TMEP §305.02(h) and cases cited therein.

307 Hand Delivery [R-2]

Correspondence may be hand delivered to the Office between 8:00 a.m. and 5:00 p.m., Eastern Time, Monday through Friday, except Federal holidays within the District of Columbia. 37 C.F.R. §1.6(c). Correspondence that is hand-carried or sent by courier or delivery service must be delivered to the following location:

4th Floor Customer Service Window
2900 Crystal Drive (South Tower Building)
Arlington, Virginia 22202-3514

Trademark examining attorneys *will not* accept papers for filing (either with or without fees).

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If the filer wants a receipt, he or she should provide a card, which will be date-labelled and handed back to the person delivering the paper.

When a card is used for receipt, it should include the applicant's name, the application serial number or registration number, the mark, and the title or a description of the paper being filed. The card should also specify the items submitted (*e.g.*, drawing, specimen, fee). *See* TMEP §303.02(c).

Only papers to be handled by the Trademark Trial and Appeal Board (such as notices of opposition or briefs) may be hand delivered to that office.

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. Copies of trademark documents can also be ordered through the Office's website at www.uspto.gov, and requests for copies of documents can be faxed or e-mailed to the Office, with an authorization to charge the fee to a credit card or USPTO deposit account. *See* TMEP §111 for additional information about requests for copies of trademark documents.

The Office strongly encourages parties who are hand delivering trademark correspondence to bring it directly to the South Tower Building address listed above. However, correspondence may also be filed at the Customers' Window located in Room 1B03 of Crystal Plaza Building 2, in Arlington, Virginia. *See* notices at 61 Fed. Reg. 56439, 56440 (Nov. 1, 1996) and 1192 TMOG 95, 96 (Nov. 26, 1996). The Office will stamp postcard-type receipts to acknowledge the receipt of correspondence filed at the Customers' Window. The Customers' Window in Room 1B03 of Crystal Plaza Building 2 is open from 8:30 a.m. until 12:00 midnight, Monday through Friday, except holidays.

See TMEP §309 regarding unscheduled closings of the Office.

308 Period Ending on Saturday, Sunday or Federal Holiday

35 U.S.C. §21(b) When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding secular or business day.

37 C.F.R. §1.7. Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or by or under this part for taking any action or paying any fee in the Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day which is not a Saturday, Sunday, or a Federal holiday. See §1.304 for time for appeal or for commencing civil action.

(See also 37 C.F.R. §2.145 for time for appeal to court and civil action.)

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Any action or fee that is due on a date falling on a Saturday, Sunday, or a Federal holiday within the District of Columbia is considered timely if the action is received, or the fee paid, on the following day that is not a Saturday, Sunday or a Federal holiday within the District of Columbia.

The following days are Federal holidays in the District of Columbia, under 5 U.S.C. §6103:

- New Year's Day, January 1.
- Birthday of Martin Luther King, Jr., the third Monday in January.
- Washington's Birthday, the third Monday in February.
- Memorial Day, the last Monday in May.
- Independence Day, July 4.
- Labor Day, the first Monday in September.
- Columbus Day, the second Monday in October.
- Veterans Day, November 11.
- Thanksgiving Day, the fourth Thursday in November.
- Christmas Day, December 25.
- Inauguration Day (January 20 of each fourth year after 1965), *except* when it falls on a Saturday (*see* Note below).

As to the observance of holidays that fall on Saturday, 5 U.S.C. §6103 also provides:

(b)(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal public holiday....

NOTE: If Inauguration Day (January 20 of each fourth year after 1965) falls on a Saturday, the preceding Friday is *not* a legal public holiday for purposes of 35 U.S.C. §21. When Inauguration Day falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday. 5 U.S.C. §6103(c).

309 Unscheduled Closings of the United States Patent and Trademark Office [R-1]

When the Office is officially closed by executive order of the President or by the Office of Personnel Management for an entire day because of some unscheduled event, such as adverse weather conditions, the Office will consider that day to be a "Federal holiday within the District of Columbia" under 35 U.S.C. §21. 37 C.F.R.

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§1.9(h). Any action or fee due that day is considered timely if the action is taken, or the fee paid, on the next succeeding business day that the Office is open.

However, when the Office is open for business during any *part* of a business day between 8:30 a.m. and 5:00 p.m., papers are due on that day even though the Office may be officially closed for some period of time during the business day because of an unscheduled event. TEAS, or the procedures of 37 C.F.R. §1.8, may be used, as appropriate, for the filing of papers during unscheduled closings of the Office.

310 Computing Period for Response to Office Action or Notice

The deadline for responding to an examiner's Office action, notice of allowance, or other notice issued by the Office is computed from the mailing date stamped on the action or notice to the date the response is received in the Office. *See* TMEP §303.01 regarding the date of receipt in the Office.

For example, a response to an examining attorney's Office action dated August 31 is due on the following February 28 (or 29 if it is a leap year); a response to an Office action dated February 28 is due on August 28 and not on the last day of August. *Ex parte Messick*, 1930 C.D. 6 (Comm'r Pats. 1930).

Under 37 C.F.R. §1.8, correspondence is considered to be timely filed even if it is received after the expiration of the filing period, if the correspondence was deposited with the USPS as first class mail or transmitted to the Office by facsimile transmission before the expiration of the filing period and accompanied by a certificate attesting to the date of mailing or transmission. *See* TMEP §§305.02 *et seq.* regarding the certificate of mailing procedure, and TMEP §§306.05 *et seq.* regarding the certificate of transmission procedure.

If a response or fee is due on a Saturday, Sunday, or a Federal holiday within the District of Columbia, the response or fee is considered timely if it is received on the following day that is not a Saturday, Sunday or a Federal holiday within the District of Columbia. 35 U.S.C. §21(b); 37 C.F.R. §1.7; TMEP §308.

See TMEP §309 regarding unscheduled closings of the United States Patent and Trademark Office.