

Chapter 400

Processing Documents and Fees



401 PROCESSING NEW APPLICATIONS

- 401.01 Serial Numbers and Series Codes
- 401.02 Data Entry
- 401.03 Creation and Distribution of Application Files
 - 401.03(a) Arrangement of Papers
 - 401.03(b) Application File Label
 - 401.03(c) Distribution to Law Offices
- 401.04 Processing Applications Accompanied by a Petition

402 FILING RECEIPTS

403 CORRESPONDENCE RETURNED AS UNDELIVERABLE

404 PAPERS NOT RETURNABLE

405 FEES

- 405.01 Credit Cards
 - 405.01(a) Charges Refused or Charged Back By Financial Institution
- 405.02 Checks
 - 405.02(a) Personal Checks and Checks Returned Unpaid
- 405.03 Deposit Accounts [R-2]
- 405.04 Refunds [R-2]
- 405.05 Electronic Funds Transfer [R-1]

401 Processing New Applications

Upon receipt in the United States Patent and Trademark Office (Office), materials submitted as a trademark application are labeled with a receipt date and reviewed for

TRADEMARK MANUAL OF EXAMINING PROCEDURE

compliance with the minimum requirements for receipt of a filing date (*see* TMEP §202).

If the application meets the minimum filing date requirements, it is given a filing date and serial number. *See* 37 C.F.R. §2.23.

See TMEP §§204 *et seq.* regarding the processing of application papers that are not entitled to a filing date.

401.01 Serial Numbers and Series Codes

Each application for registration is assigned a six digit serial number, preceded by a two digit series code.

As a general rule, the serial numbers of applications filed prior to the 1905 - 1920 Acts series are preceded by the series code “70.”

Applications filed under the 1905 - 1920 Acts (*i.e.*, applications filed through July 4, 1947) were preceded by the series code “71.” The last serial number was 526,346.

As of July 5, 1947, applications were filed under the 1946 Act, beginning with number 526,500 and running through number 700,943 (preceded by the series code “71”).

On January 3, 1956, a new series of serial numbers preceded by the series code “72” was started, after a change in record keeping methods. This series ran through number 467,233, issued on August 31, 1973.

A new series of serial numbers preceded by the series code “73” began with applications filed on September 4, 1973, which was the first day of receipt of mail after the adoption of the international classification of goods and services as of September 1, 1973 (*see* TMEP §1401.02).

A new series of serial numbers preceded by the series code “74” began with applications filed on November 16, 1989, the date on which the Trademark Law Revision Act of 1988 took effect.

A new series of serial numbers preceded by the series code “75” began with applications filed on October 1, 1995.

A new series of serial numbers preceded by the series code “76” began with applications filed on March 20, 2000.

A series of serial numbers preceded by the series code “78” is used for applications filed electronically using the Trademark Electronic Application System (TEAS).

A range of serial numbers, beginning with number 800,000, is used for applications that are created through the “dividing” of an application (*see* TMEP §§1110 *et seq.*).

See TMEP §1205.02 regarding series code “89.”

PROCESSING DOCUMENTS AND FEES

401.02 Data Entry

For applications filed electronically using the Trademark Electronic Application System (TEAS), the data provided by the applicant is loaded directly into the Office's automated Trademark Reporting and Monitoring (TRAM) System.

For applications filed on paper, the Pre-Examination Section enters the application data into the TRAM System. TRAM may be used by Office employees to obtain information about the location and status, prosecution history, ownership, and correspondence address for applications and registrations. This information is available to the public through the Trademark Applications and Registrations Retrieval (TARR) database, available on the Office's website at <http://tarr.uspto.gov>.

See TMEP §402 regarding filing receipts.

401.03 Creation and Distribution of Application Files

401.03(a) Arrangement of Papers

Each application to register a mark is placed in a three-fold legal-size file wrapper or jacket. The drawing page (if any) is fastened to the left-hand side; the specimen (if any) is fastened to the right-hand side; and the written application and all communications are fastened to the center in inverse order by date of receipt or mailing, so that the most recent paper is on top. For paper applications, this process is handled by the Pre-Examination Section of the Office.

TEAS applications are assembled in an e-commerce law office that handles only electronically filed applications. The e-commerce law office prints the submission(s) received from the applicant and arranges the papers as described above. TEAS prints a drawing for each electronically filed application, based on the information entered by the applicant.

401.03(b) Application File Label

The Office places a label on the front of the file wrapper of each application. This label indicates: (1) whether registration is sought on the Principal or on the Supplemental Register (if the application does not specify the register on which registration is sought, the Office assumes that registration is being requested on the Principal Register); and (2) whether the application is based upon §1(b) of the Trademark Act, 15 U.S.C. §1051(b). The examining attorney should confirm that this information is current and accurate. If the examining attorney discovers an error, he or she should take the file to the legal instruments examiner for correction.

401.03(c) Distribution to Law Offices

TEAS applications are transmitted directly to e-commerce law offices that handle only electronic filings. The e-commerce law offices print the submission(s) received from the applicant.

TRADEMARK MANUAL OF EXAMINING PROCEDURE

Applications filed on paper are assembled in the Pre-Examination Section of the Office, and then delivered to the appropriate law offices for examination.

401.04 Processing Applications Accompanied by a Petition

If an application is accompanied by a petition (*e.g.*, to make “special”), the petition should not be forwarded to the Office of the Commissioner for Trademarks for consideration until the Office has given the application a serial number and processed the application filing fee. *See* TMEP §1709 regarding the delegation of authority to decide petitions.

After serialization and fee processing, both the application file and petition should be forwarded to the Office of the Commissioner for Trademarks.

402 Filing Receipts

TEAS Applications

For electronically filed applications, the Office immediately issues a confirmation of filing via e-mail that includes the serial number and date of receipt. This e-mail confirmation serves as evidence of filing should any question arise as to the filing date of the document. No paper filing receipt is generated.

The e-mail confirmation includes a summary of all the data provided by applicant in the application. The applicant or attorney should review this information for accuracy. If the information in the e-mail confirmation is inconsistent with the information transmitted by applicant, the applicant or attorney should notify the Office by replying to the e-mail confirmation.

Paper Applications

For paper applications, after an application has been given a filing date, the TRAM system generates a filing receipt and sends it to the applicant or the applicant’s attorney. The filing receipt identifies the following: (1) the application serial number and filing date; (2) the statutory basis or bases for filing, if provided at the time of filing; (3) information regarding the mark, the applicant, and the goods and/or services; (4) the international class(es); and (5) the address to be used for correspondence.

The applicant or attorney should review the information on the filing receipt for accuracy and notify the Office in writing of any discrepancy. A request for correction of a filing receipt should be directed to the Pre-Examination Section of the Office of Trademark Services, or sent via e-mail to TMfiling.receipt@uspto.gov.

An applicant should send a request for correction of a filing receipt *only* if the information on the filing receipt is inconsistent with the information in the application as filed. If the applicant made an error in the application, the applicant should file an amendment rather than a request for correction of the filing receipt.

PROCESSING DOCUMENTS AND FEES

403 Correspondence Returned as Undeliverable

If an Office action or notice (*e.g.*, a notice of allowance) is returned to the Office because the United States Postal Service has not been able to deliver it, the Office will try to ascertain the correct address and forward the correspondence. However, the remailed correspondence will not receive a new mailing date unless the Office sent the Office action to the wrong address due to an Office error.

When returned correspondence is received in the Office, it should be forwarded to the Supervisor of the office where the file is located (*e.g.*, the supervisory legal instruments examiner in the appropriate law office, or supervisor of the Intent to Use/Divisional Unit or Post Registration Section). If the application is abandoned, the returned Office action should be forwarded to the Office of the Commissioner for Trademarks.

The supervisor will review the file to determine whether the correspondence address was entered correctly, and/or whether a notice of change of address has been filed.

If the Office sent the Office action or notice to the wrong address due to an Office error, the Office action will be remailed with a new mailing date. An “Office error in sending the Office action to the wrong address” means that the Office either entered the correspondence address incorrectly or failed to properly enter a notice of change of address filed *before* the mailing date of the action. The transmittal of a response on letterhead bearing a new address is *not* a proper notice of change of address. The applicant or attorney must specifically request that the correspondence address be changed. TMEP §603.02(a).

If the Office action or notice was sent to the correspondence address of record (*see* TMEP §§603 *et seq.* regarding the correspondence address), but was returned as undeliverable, the Office will try to obtain the correct address and forward the Office action or notice. However, the Office action or notice will not be given a new mailing date, and the time for response will not be extended.

If the Office is not successful in delivering the Office action, the returned action and envelope should be placed in the file wrapper.

404 Papers Not Returnable

After an application has received a filing date, the Office will not return the papers to the applicant for any purpose, but the Office will furnish copies to the applicant upon request and payment of the fee. *See* 37 C.F.R. §§2.6 and 2.25. *See also* TMEP §111 for additional information about requests for copies of trademark documents.

405 Fees

37 C.F.R. §1.23 Methods of payment.

(a) All payments of money required for United States Patent and Trademark Office fees, including fees for the processing of international applications (§1.445), shall be

TRADEMARK MANUAL OF EXAMINING PROCEDURE

made in U.S. dollars and in the form of a cashier's or certified check, Treasury note, national bank notes, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made. Checks and money orders must be made payable to the Director of the United States Patent and Trademark Office. (Checks made payable to the Commissioner of Patents and Trademarks will continue to be accepted.) Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent to the Office by mail will be at the risk of the sender, and letters containing money should be registered with the United States Postal Service.

(b) Payments of money required for United States Patent and Trademark Office fees may also be made by credit card. Payment of a fee by credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge, and is subject to collection of the fee. The Office will not accept a general authorization to charge fees to a credit card. If credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number becomes public knowledge.

See 37 C.F.R. §2.6(a)(i) and TMEP §§810 et seq. regarding the fee for filing an application for registration.

405.01 Credit Cards

Under 37 C.F.R. §1.23, the Office accepts payment of fees by credit card, subject to actual collection of the fee.

Any payment of a fee by credit card must be in writing. *See* 37 C.F.R. §1.2. A form for authorizing charges to a credit card can be accessed through TEAS for all filings for which a filing fee is required. Parties who file on paper can download a Credit Card Payment Form (PTO-2038) from the Office's website at www.uspto.gov. The Office does not put the Credit Card Payment Form in application or registration files.

A party is not required to use the Office's Credit Card Payment Form when paying a fee by credit card. However, if a party provides a credit card charge authorization in another form or document (e.g., in the body of an application, cover letter, response to an Office action, or other correspondence relating to a trademark application or registration), the credit card information risks becoming part of the record that is open to public inspection. If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the credit card number becomes public knowledge. 37 C.F.R. §1.23(b).

All credit card authorizations must include: (1) a valid credit card number; (2) a valid expiration date; (3) the name of the cardholder with the cardholder's signature and the date; (4) a billing address, including zip code; (5) a description and purpose of the payment; and (6) a specific payment amount. *See* TMEP §804.05 regarding signature of documents filed electronically.

PROCESSING DOCUMENTS AND FEES

If a Credit Card Payment Form or other document authorizing the Office to charge a fee to a credit card does not contain the information necessary to charge the fee to the credit card, the form will be returned and the fee will not be processed. Office employees will not accept oral instructions to complete the Credit Card Payment Form or otherwise charge a fee to a credit card.

The Office will only accept an authorization to charge a fee in a specific dollar amount to a credit card.

The Office currently accepts charges to the following credit cards: AMERICAN EXPRESS®, DISCOVER®, MASTER CARD®, and VISA®.

Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged. 37 C.F.R. §1.26(a). The Office will not refund a fee paid by credit card by Treasury check, electronic funds transfer, or credit to a deposit account.

See notice at 65 Fed. Reg. 33452 (May 24, 2000) and 1235 TMOG 38 (June 13, 2000).

See TMEP §405.01(a) regarding credit card authorizations that are refused or charged back by a financial institution.

405.01(a) Charges Refused or Charged Back By Financial Institution

If a fee is charged to a credit card and refused or charged back by a financial institution, the paper that accompanied the credit card authorization is processed as though the fee had been omitted. If the paper included an authorization to charge deficient fees to a deposit account (37 C.F.R. §1.25), the Office charges the fee in question, together with a \$50 fee for processing the payment that was refused, to the deposit account.

If the paper was not accompanied by an authorization to charge fees to a deposit account, the Office notifies the party who filed the paper of the fee deficiency in a written action. If the deadline for filing the fee is not set by statute, the fee may be resubmitted within the period set for response to the Office action. If the fee in question is statutory (*e.g.*, a filing fee for an appeal, statement of use, or request for extension of time to file a statement of use), the fee must be resubmitted before the expiration of the statutory filing period.

See TMEP §§202.03(a) and 202.03(a)(i) regarding the processing of an application in which an application filing fee is charged to a credit card and refused by a financial institution.

Under 37 C.F.R. §1.21(m), there is a \$50.00 fee for processing any payment that is refused or charged back by a financial institution. This fee covers the work done by Office personnel in processing the payment that is refused or charged back. The requirement for submission of the processing fee is strictly enforced. The Office will not approve a pending application for publication or registration, nor will the Office

TRADEMARK MANUAL OF EXAMINING PROCEDURE

take any other requested action in an application or registration until all outstanding fees, including the processing fee, have been paid. Any request for waiver of this processing fee should be referred to the Office of the Commissioner for Trademarks.

See TMEP §1104.09(g) regarding fee deficiencies in amendments to allege use, TMEP §1108.02(c) regarding fee deficiencies in requests for extensions of time to file a statement of use, TMEP §1109.15(a) regarding fee deficiencies in statements of use, TMEP §1604.06(c) regarding fee deficiencies in affidavits under §8 of the Act, and TMEP §1606.05(c) regarding fee deficiencies in renewal applications.

405.02 Checks

Rule 1.23(a), 37 C.F.R. §1.23(a), which is applicable to trademark cases under 37 C.F.R. §2.1, provides that:

All payments of money required for United States Patent and Trademark Office fees, including fees for the processing of international applications (§1.445), shall be made in U.S. dollars and in the form of a cashier's or certified check, Treasury note, national bank notes, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made....

405.02(a) Personal Checks and Checks Returned Unpaid

It is the practice of the Office to accept, as “conditional” payment of a fee, a signed uncertified check (*e.g.*, a personal check). If an uncertified check clears, then the Office considers the fee paid as of the date it received the check. However, if such a check is returned unpaid, then the fee remains unpaid, and the paper that included the returned check is processed as though the fee had been omitted. *See In re Paulsen*, 35 USPQ2d 1638 (Comm’r Pats. 1995).

If the returned check was accompanied by an authorization to charge deficient fees to a deposit account (37 C.F.R. §1.25), the fee in question, together with a \$50 fee for processing the returned check, is charged to the deposit account, and the original filing date remains unchanged.

If the returned check was not accompanied by an authorization to charge fees to a deposit account, the Office notifies the party who filed the check of the fee deficiency in a written action. If the deadline for filing the fee is not set by statute, the fee may be resubmitted within the set period for response to the Office action. If the fee in question is statutory (*e.g.*, a filing fee for an appeal, statement of use, or request for extension of time to file a statement of use), the fee must be repaid before the expiration of the statutory filing period.

See TMEP §§202.03(a) and 202.03(a)(i) regarding the processing of applications in which the check for the application filing fee is returned unpaid.

PROCESSING DOCUMENTS AND FEES

Under 37 C.F.R. §1.21(m), there is a processing fee for any check returned to the Office unpaid. This fee covers the work done by Office personnel in processing the returned check. The requirement for submission of the processing fee is strictly enforced. The Office will not approve a pending application for publication or registration, nor will the Office take any other requested action in an application or registration until all outstanding fees, including the processing fee, have been paid. Any request for waiver of this processing fee should be referred to the Office of the Commissioner for Trademarks.

See TMEP §1104.09(g) regarding fee deficiencies in amendments to allege use, TMEP §1108.02(c) regarding fee deficiencies in requests for extensions of time to file a statement of use, TMEP §1109.15(a) regarding fee deficiencies in statements of use, TMEP §1604.06(c) regarding fee deficiencies in affidavits under §8 of the Act, and TMEP §1606.05(c) regarding fee deficiencies in renewal applications.

405.03 Deposit Accounts [R-2]

Extract from 37 C.F.R. §1.25

(a) For the convenience of attorneys, and the general public in paying any fees due, in ordering services offered by the Office, copies of records, etc., deposit accounts may be established in the Patent and Trademark Office upon payment of the fee for establishing a deposit account (§1.21(b)(1)). A minimum deposit of \$1,000 is required for paying any fees due or in ordering any services offered by the Office. However, a minimum deposit of \$300 may be paid to establish a restricted subscription deposit account used exclusively for subscription order of patent copies as issued. At the end of each month, a deposit account statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit. An amount sufficient to cover all fees, services, copies, etc., requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted. A service charge (§1.21(b)(2)) will be assessed for each month that the balance at the end of the month is below \$1,000. For restricted subscription deposit accounts, a service charge (§1.21(b)(3)) will be assessed for each month that the balance at the end of the month is below \$300.

(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in §1.16 to §1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with respect to a particular paper filed. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee....

(c) A deposit account holder may replenish the deposit account by submitting a payment to the United States Patent and Trademark Office. A payment to replenish a

TRADEMARK MANUAL OF EXAMINING PROCEDURE

deposit account must be submitted by one of the methods set forth in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section.

(1) A payment to replenish a deposit account may be submitted by electronic funds transfer through the Federal Reserve Fedwire System, which requires that the following information be provided to the deposit account holder's bank or financial institution:

(i) Name of the Bank, which is Treas NYC (Treasury New York City);

(ii) Bank Routing Code, which is 021030004;

(iii) United States Patent and Trademark Office account number with the Department of the Treasury, which is 13100001; and

(iv) The deposit account holder's company name and deposit account number.

(2) A payment to replenish a deposit account may be submitted by credit card or electronic funds transfer over the Office's Internet Web site (www.uspto.gov).

(3) A payment to replenish a deposit account may be submitted by mail with the USPS to: Director of the United States Patent and Trademark Office, P.O. Box 70541, Chicago, Illinois 60673.

(4) A payment to replenish a deposit account may be submitted by mail with a private delivery service or hand-carrying the payment to: Director of the United States Patent and Trademark Office, Deposit Accounts, One Crystal Park, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

A party cannot charge a fee to a deposit account unless he or she has prior authorization to do so. The Office of Finance maintains a list of persons authorized to request transactions by deposit account. The Office will not charge a fee to a deposit account unless the person requesting the charge appears on the authorized list or files a request to have his or her name added to the authorized list.

If an applicant submits an authorization to charge a filing fee to a deposit account that has insufficient funds to cover the fee, the applicant has not paid the fee.

If a deposit account has insufficient funds to cover an authorization to charge the initial filing fee for an application for registration, the filing date will be cancelled. 37 C.F.R. §2.21(a)(5). *See* TMEP §204.01.

When a deposit account contains insufficient funds to cover a fee that has been authorized, the Office notifies the party who filed the authorization of the fee deficiency. If the fee in question is statutory (*e.g.*, the filing fee for a notice of appeal, statement of use, or request for extension of time to file a statement of use), the fee deficiency must be cured before the expiration of the statutory filing period. If the deadline for filing the fee is not set by statute, the party who filed the authorization may cure the fee deficiency within the set period for response to the Office action.

PROCESSING DOCUMENTS AND FEES

A showing that the deposit account contained sufficient funds on the date the authorization was first filed, as opposed to the date Office personnel attempted to charge the fee, will not cure the fee deficiency. Rule 1.25 clearly requires that sufficient funds to cover all outstanding charge authorizations be on deposit at all times. The funds must be available in the account at the time the authorization is presented for debiting.

See TMEP §1104.09(g) regarding fee deficiencies in amendments to allege use, TMEP §1108.02(c) regarding fee deficiencies in requests for extensions of time to file a statement of use, TMEP §1109.15(a) regarding fee deficiencies in statements of use, TMEP §1604.06(c) regarding fee deficiencies in affidavits under §8 of the Act, and TMEP §1606.05(c) regarding fee deficiencies in renewal applications.

405.04 Refunds [R-2]

Extract from 37 C.F.R. §1.26.

(a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent or trademark filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Director may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged.

(b) Any request for refund must be filed within two years from the date the fee was paid, except as otherwise provided in this paragraph or in §1.28(a). If the Office charges a deposit account by an amount other than an amount specifically indicated in an authorization (§1.25(b)), any request for refund based upon such charge must be filed within two years from the date of the deposit account statement indicating such charge, and include a copy of that deposit account statement. The time periods set forth in this paragraph are not extendable.

Under 35 U.S.C. §42(d) and 37 C.F.R. §1.26, only money paid by mistake or in excess (when a fee is not required by statute or rules, or is not required in the amount paid) may be refunded. A mere change of purpose after the payment of money does not entitle a party to a refund. For example, if a party deletes a class from an application, or withdraws an application or appeal, the party is not entitled to a refund.

If an examining attorney or other Office employee erroneously requires a fee, the Office will refund the fee submitted in response to the erroneous requirement.

TRADEMARK MANUAL OF EXAMINING PROCEDURE

The Office will refund the filing fee for an application that is denied a filing date, or a filing fee that is untimely (*e.g.*, the fee for a statement of use or request for an extension of time to file a statement of use filed after expiration of the statutory filing period). However, after the Office has processed an application or other document, the Office normally will not refund the filing fee.

Refunds are processed by the 4th Floor Customer Service Window in the South Tower Building at 2900 Crystal Drive, Arlington, Virginia. When an Office employee determines that a refund is appropriate, the employee should complete a form with the information necessary for processing the refund, and send it to the Fee Processing Office.

405.05 Electronic Funds Transfer [R-1]

The Electronic Funds Transfer (EFT) payment method allows customers to send a payment over the Internet as easily as writing a check. In general, the Automated Clearing House performs EFT transactions through the Federal Reserve system. The customer must establish a User ID and Password. For further information, see <http://www.uspto.gov/teas/payment.htm>.