

Chapter 200 Application Filing Date

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201 What Constitutes a Filing Date

In an application under §1 or §44 of the Trademark Act, [15 U.S.C. §1051](#) or [§1126](#), the filing date of an application is the date on which all the elements set forth in [37 C.F.R. §2.21\(a\)](#) (*see* [TMEP §202](#)) are received in the United States Patent and Trademark Office (USPTO).

In a request for an extension of protection of an international registration to the United States under §66(a) of the Trademark Act, [15 U.S.C. §1141f\(a\)](#), the filing date is: (1) the international registration date, if the request for extension of protection to the United States is made in an international application; or (2) the date that the subsequent designation was recorded by the International Bureau of the World Intellectual Property Organization (IB), if the request for extension of protection to the United States is made in a subsequent designation. [15 U.S.C. §1141f\(b\)](#); [37 C.F.R. §7.26](#). See [TMEP §§1904-1904.15\(c\)](#) for further information about §66(a) applications.

Granting a filing date to an application does not necessarily mean that all requirements for registration have been satisfied. It is possible that registration could be refused on a substantive ground. See [TMEP §818](#) for a list of potential grounds of refusal. If registration is not refused on any substantive basis (or if the applicant overcomes any substantive refusals), the applicant must comply with any procedural requirements issued by the examining attorney during examination, in accordance with applicable rules and statutes, in order to obtain a registration.

201.01 Effective Filing Date Controls for Purposes of Determining Priority for Publication or Issue

The filing date of an application (*see* [TMEP §201](#)) is the same as the *effective* filing date, *except* where: (1) the applicant is entitled to priority under [15 U.S.C. §1126\(d\)](#) or [§1141g](#) (*see* [TMEP §206.02](#)); (2) the applicant amends an intent-to-use application filed under [15 U.S.C. §1051\(b\)](#) to the Supplemental Register (*see* [TMEP §206.01](#)); or (3) the application was filed before November 16, 1989, the applicant had not used the mark in commerce for one year before the application filing date, and the applicant amends to the Supplemental Register on or after November 16, 1989 (*see* [TMEP §206.03](#)). The effective filing date is controlling for purposes of determining priority for publication or issue (*see* [TMEP §1208.01](#)) and constructive use priority (*see* [TMEP §201.02](#)).

201.02 Constructive Use Priority

Under [15 U.S.C. §1057\(c\)](#) and [§1141f\(b\)](#), filing *any* application for registration on the Principal Register, including an intent-to-use application, constitutes constructive use of the mark, provided the application matures into a registration. *See Cent. Garden & Pet Co. v. Doscocil Mfg. Co.*, 108 USPQ2d 1134 (TTAB2013). Upon registration, filing affords the applicant nationwide priority over others, except: (1) parties who used the mark before the applicant's filing date; (2) parties who filed in the USPTO before the applicant; or (3) parties who are entitled to an earlier priority filing date based on the filing of a foreign application under [15 U.S.C. §1126\(d\)](#) or [§1141g](#) (*see* [TMEP §206.02](#)). *See Zirco Corp. v. Am. Tel. & Tel. Co.*, 21 USPQ2d 1542 (TTAB1991); *Aktieselskabet AF 21. November 2001 v. Fame Jeans Inc.*, 525 F.3d 8, 86 USPQ2d 1527 (D.C. Cir. 2008).

202 Requirements for Receiving a Filing Date

The USPTO will grant a filing date to an application under Trademark Act §1 or §44 that is filed through the Trademark Electronic Application System (TEAS), is written in the English language, and contains all of the following:

- (1) The name, mailing address, and email address of each applicant (*see* [TMEP §803.05 \(b\)](#) regarding applicant's e-mail address);
- (2) If applicant is represented by a qualified U.S. attorney, the attorney's name, postal address, and email address (*see* [TMEP §811](#) regarding attorney identification information);
- (3) A clear drawing of the mark (*see* [TMEP §202.01](#));
- (4) A listing of recognizable goods or services (*see* [TMEP §202.02](#)); and
- (5) The filing fee required under [37 C.F.R. §2.6](#) for at least one class of goods or services (*see* [TMEP §202.03](#)).

[37 C.F.R. §2.21\(a\)](#).

These filing date requirements apply to both Principal and Supplemental Register applications. *Kraft Group LLC v. Harpole*, 90 USPQ2d 1837 (TTAB 2009) (use in commerce is not required for receipt of a filing date for an application requesting registration on the Supplemental Register).

Generally, if an application does not satisfy all the above requirements, it will not be given a filing date. [37 C.F.R. §2.21\(a\)-\(b\)](#). The USPTO will notify the applicant of the reason(s) why the application was not given a filing date, and refund the application filing fee. However, if an applicant is a treaty-exempt filer (*see* [TMEP](#)

[§301.02\(a\)](#)), the applicant is not required to file through TEAS and/or provide an email address in order to receive a filing date. [37 C.F.R. §2.21\(c\)](#).

A post office box submitted as the applicant's mailing address may be sufficient for an application to receive a filing date, but will generally not be accepted as satisfying the requirement for the applicant's domicile address, which is required for a complete application. See [37 C.F.R. §§2.22\(a\), 37 C.F.R. §2.32\(a\)\(2\)](#); [TMEP §803.05\(a\)](#).

Applications that do not meet the minimum requirements for receipt of a filing date are referred to as "informal." See [TMEP §203](#) regarding review for compliance with minimum filing requirements, and [TMEP §§204-204.03](#) for information about how the USPTO handles informal applications.

Section 66(a) Applications. Compliance with the minimum filing requirements of §66(a) are determined by the IB prior to sending the application to the USPTO. See [15 U.S.C. §1141f\(b\)](#); [37 C.F.R. §7.26](#); [TMEP §1904.01](#).

202.01 Clear Drawing of the Mark

Under [37 C.F.R. §2.21\(a\)\(3\)](#), a §1 or §44 applicant must submit "a clear drawing of the mark" to receive a filing date, except in applications for registration of sound, scent, and other non-visual marks. See [TMEP §807.09](#) regarding "drawings" in applications for registration of sound, scent, or non-visual marks.

A "drawing" is a depiction of the mark for which registration is sought. [37 C.F.R. §2.52](#). A drawing that includes multiple elements that do not comprise an identifiable mark, or that consists of wording describing the mark, does not constitute a clear drawing of the mark.

An application that includes two or more drawings displaying materially different marks does not meet the requirement for a "clear drawing of the mark." Therefore, an application is denied a filing date if it includes two or more drawings displaying materially different marks. See *Humanoids Grp. v. Rogan*, 375 F.3d 301, 71 USPQ2d 1745 (4th Cir. 2004).

The drawing is provided in a TEAS application form using the "Mark Information" field. If an applicant (1) enters a standard character mark in the "Mark Information" field of an application filed through TEAS, or (2) attaches a .jpg file containing a mark to the "Mark Information" field of a TEAS application, and a different mark appears elsewhere in the application, the mark shown in the "Mark Information" field will control for purposes of determining the nature and elements of the mark. See *In re L.G. Lavorazioni Grafite S.r.l.*, 61 USPQ2d 1063, 1064 (Dir. USPTO 2001). The USPTO will grant a filing date to the application if it otherwise meets the minimum filing requirements, and disregard any other mark that appears elsewhere in the application. See *Id.* at 1064. The applicant will not be permitted to amend the mark if the amendment is a material alteration of the mark in the "Mark Information" field in a TEAS application. See [37 C.F.R. §2.72](#) and [TMEP §§807.14-807.14\(f\)](#) regarding material alteration of a mark.

A specimen showing use of the applied-for mark does not satisfy the requirement for a drawing. If the only depiction of the mark is on a specimen (e.g., an advertisement, a photograph of the goods, or the overall packaging), then there is no drawing of the mark, and the application will be denied a filing date.

Section 66(a) Applications. In a §66(a) application, the drawing must meet the requirements of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) and the *Regulations Under the Protocol Relating to the Madrid Agreement Concerning the International*

Registration of Marks, which are available on the IB's website at <https://www.wipo.int/madrid/en/>. The IB will determine whether the drawing meets these requirements before sending the application to the USPTO. See [TMEP §1904.02\(k\)](#) for further information.

Permitted Paper Applications. If an applicant submits a separate drawing page showing a mark and a different mark appears elsewhere in the paper application, the drawing page will control for purposes of determining the nature and elements of the mark. *In re L.G. Lavorazioni Grafite S.r.l.*, 61 USPQ2d at 1064. See [TMEP §301.02](#) regarding the limited exceptions for paper submissions.

The USPTO will grant a filing date to the application if it otherwise meets the minimum filing requirements, and disregard any other mark that appears elsewhere in the application. *In re L.G. Lavorazioni Grafite S.r.l.*, 61 USPQ2d at 1064. The applicant will not be permitted to amend the mark if the amendment is a material alteration of the mark on the drawing page. See [37 C.F.R. §2.72](#) and [TMEP §§807.14-807.14\(f\)](#) regarding material alteration of a mark.

See [TMEP §§807-807.18](#) for additional information about the examination of drawings.

See also [TMEP §204.03](#) regarding the examining attorney's handling of applications that are erroneously granted a filing date.

202.02 Listing of Recognizable Goods or Services

The USPTO will deny a filing date to an application under §1 or §44 of the Trademark Act if the application does not identify recognizable goods or services. See [TMEP §1402.02](#) for further information.

202.03 Filing Fee for at Least One Class of Goods or Services

In an application under §1 or §44 of the Trademark Act, the applicant must pay the filing fee for at least one class of goods or services before an application can be given a filing date. [37 C.F.R. §2.21\(a\)\(5\)](#). The fee can be paid by credit card, check, money order (for permitted paper filings (see [TMEP §301.01](#)), electronic funds transfer (EFT), or an authorization to charge a deposit account. [37 C.F.R. §2.207](#). See [TMEP §§405-405.06](#) for additional information about fees.

Generally, an applicant must file an application using one of the following TEAS filing options:

- The TEAS Standard option at the per class filing fee set forth in [37 C.F.R. §2.6\(a\)\(1\)\(iii\)](#); or
- The TEAS Plus option (see [TMEP §§819-819.01\(q\)](#)) at the lower per class filing fee set forth in [37 C.F.R. §2.6\(a\)\(1\)\(iv\)](#). See [TMEP §§819-819.04](#) regarding TEAS Plus.

See *Changes to the Trademark Rules of Practice to Mandate Electronic Filing*, 84 Fed. Reg. 37081 (July 31, 2019). The current fee schedule is available on the USPTO website at <https://www.uspto.gov>.

The complete fee for at least a single class must be submitted with the application as filed. Partial or piecemeal fee payments are unacceptable and will be returned.

If an application does not include a filing fee for at least a single class, the USPTO will deny a filing date. *In re Buckhead Mktg. & Distribution, Inc.*, 71 USPQ2d 1620 (Dir USPTO 2004); *In re Paulsen*, 35 USPQ2d

1638 (Comm'r Pats. 1995). If a filing date has been granted when the USPTO discovers that the applicant has not paid the filing fee for at least a single class, the filing date will be cancelled. See [TMEP §204.01](#).

See [TMEP §§202.03\(a\)](#) and [405.06](#) regarding payments that are refused or charged back by financial institutions, and [§405.03](#) regarding deposit accounts.

Section 66(a) Applications. The filing fee for a §66(a) application is sent to the USPTO by the IB, pursuant to Article 8 of the Madrid Protocol. Generally, the examining attorney should not require additional fees during examination, except where the application is divided due to a change in ownership with respect to some but not all of the goods/services. See [TMEP §810](#) for further information about application filing fees, and [§§1904-1904.15\(c\)](#) for further information about §66(a) applications.

Permitted Paper Applications. If permitted, an applicant may file a paper application at the per class filing fee set forth in [37 C.F.R. §2.6\(a\)\(1\)\(i\)](#). See [TMEP §301.02](#) regarding the limited exceptions for paper submissions.

202.03(a) Fee Payment Refused or Charged Back by Financial Institution

Where an EFT or credit-card payment is refused or charged back by a financial institution, the application is treated as though the fee had never been paid.

If the original application was accompanied by an authorization to charge fee deficiencies to a deposit account (37 C.F.R. §2.208), then the application filing fee and the processing fee required by [37 C.F.R. §2.6\(b\)\(10\)](#) (see [TMEP §§202.03\(a\)\(i\)](#), [405.06](#)) are charged to the deposit account, and the original filing date remains unchanged.

However, if the original application was not accompanied by an authorization to charge deficient fees to a deposit account that has sufficient funds to cover the fee, and the applicant has not paid the filing fee for at least one class of goods or services, the filing date is void and will be cancelled. *In re Paulsen*, 35 USPQ2d 1638 (Comm'r Pats. 1995).

In some cases, the applicant will have resubmitted the fee before the USPTO discovers that the payment was refused. In these cases, the USPTO will change the filing date to the date when the fee for a single class of goods or services was resubmitted.

In a multiple-class application, if the fee for at least a single class has been paid, but the payment of the filing fee for additional class(es) is refused, the filing date of the application is not affected. The applicant must: (1) resubmit the fee for the additional class(es), or delete the additional class(es); and (2) pay the processing fee required by [37 C.F.R. §2.6\(b\)\(10\)](#). The applicant must pay the processing fee even if the applicant chooses to delete the additional class(es).

Permitted Paper Applications. If an applicant is permitted to file a paper application (see [TMEP §301.01](#)), and a check submitted as payment of an application filing fee is returned to the USPTO unpaid, the application is treated as though the fee had never been paid unless the original application was accompanied by an authorization to charge fee deficiencies to a deposit account ([37 C.F.R. §2.208](#)). Then the application filing fee and the processing fee required by [37 C.F.R. §2.6\(b\)\(10\)](#) (see [TMEP §§202.03\(a\)\(i\)](#), [405.06](#)) are charged to the deposit account, and the original filing date remains unchanged.

See [TMEP §202.03\(a\)\(i\)](#) and [§405.06](#) regarding payments refused by financial institutions, and [§204.03](#) regarding the examining attorney's handling of applications that are erroneously granted a filing date.

202.03(a)(i) Processing Fee for Payment Refused or Charged Back by Financial Institution

There is a fee for processing any payment refused (including a check returned unpaid for a permitted paper filing (*see* [TMEP §301.01](#)) or charged back by a financial institution. [37 C.F.R. §2.6\(b\)\(10\)](#)); *see* [TMEP §405.06](#). However, payment of the processing fee is not a filing date requirement. If an applicant resubmits the filing fee without paying the processing fee, the USPTO will give the application a filing date as of the date of resubmission, and the examining attorney will require submission of the processing fee during examination.

203 Review for Compliance with Minimum Requirements

In applications under §66(a) of the Trademark Act, [15 U.S.C. §1141f\(a\)](#), the IB will determine whether the application complies with §66(a) prior to sending the request for extension of protection of an international registration to the USPTO. See [TMEP §§1904-1904.15\(c\)](#) for further information about §66(a) applications.

Applications under §1 or §44 of the Act are given a receipt date (*see* [TMEP §303.01](#)) and then reviewed for compliance with the minimum requirements for granting a filing date (*see* [37 C.F.R. §2.21\(a\)](#) and [TMEP §202](#) for a list of these requirements).

If the minimum requirements of [37 C.F.R. §2.21\(a\)](#) have been met, the USPTO assigns a filing date as of the date of receipt in the USPTO. See [TMEP §§401-401.03](#) regarding the processing of new applications that meet the minimum requirements for receipt of a filing date, and [§§204-204.03](#) regarding the processing of applications that do not meet these minimum requirements.

The minimum requirements for receipt of a filing date under [37 C.F.R. §2.21\(a\)](#) apply to all applications filed under §1 and §44 of the Act. TEAS will not validate an application if the fields corresponding to the minimum filing requirements are not filled in. However, if these fields are filled in with incomplete or inappropriate information, the TEAS system will accept the transmission, but the USPTO will later deny the application a filing date upon review for compliance with minimum filing requirements. For example, if the services were identified as "miscellaneous services," TEAS would validate the application and permit the transmission to the USPTO, but the USPTO would ultimately not give the application a filing date (*see* [TMEP §§202.02, 1402.02](#)).

204 Defective or Informal Applications

If an application filed under Trademark Act §1 or §44 does not meet the minimum requirements for receipt of a filing date set forth in [37 C.F.R. §2.21\(a\)](#) (*see* [TMEP §202](#)), the application is void. These applications are also referred to as "incomplete" or "informal."

204.01 Filing Date Cancelled if Minimum Filing Requirements Not Met

Applications filed under Trademark Act §1 or §44 are initially assigned a filing date and serial number and then reviewed for compliance with the minimum requirements for receipt of a filing date set forth in [37 C.F.R. §2.21\(a\)](#). If the minimum filing requirements have not been met, the USPTO cancels the filing date and serial number, refunds any filing fee submitted, and sends a notice to the applicant explaining why the application is defective.

See [TMEP §204.02](#) regarding the procedures for requesting review of the denial of a filing date by the Office of the Deputy Commissioner for Trademark Examination Policy.

204.02 Resubmission of Applications and Request to Restore Filing Date

If the applicant believes that the USPTO committed an error in denying the application a filing date, the applicant may submit a request to restore the filing date. See [TMEP §1711](#). Prior to making the request, the applicant must file a new TEAS application. After the applicant receives a new serial number, the applicant must submit a TEAS Request to Restore Filing Date form that can be accessed by clicking on the link entitled “Petition Forms.”

The request should: (1) include the new serial number; (2) state the reason(s) why the applicant believes the filing date was denied in error; and (3) include a copy of any Notice of Incomplete Trademark Application received from the USPTO. Although applicants have two (2) months from the issuance date of a Notice of Incomplete Trademark Application to file a request to restore the original filing date ([37 C.F.R. §2.146\(d\)](#)), it is recommended that the applicant file the request immediately upon receipt of the new serial number, to expedite processing.

Permitted Paper Applications. If the USPTO denies a filing date in a permitted paper application (see [TMEP §301.01](#)), the applicant may resubmit the original papers or a copy of the original papers, together with the item(s) necessary to correct the defect(s), and a new filing fee. The applicant should cross off the cancelled serial number. *A filing fee for at least a single class of goods or services must be included when the applicant resubmits an application, even if the applicant has not yet received a refund of the fee previously submitted.*

The filing date will be the date on which a complete application, including all elements required by [37 C.F.R. §2.21\(a\)](#), was received in the USPTO. Applications claiming priority under §44(d) of the Trademark Act must meet all filing date requirements within six months of the filing date of the foreign application to retain the priority claim. [37 C.F.R. §2.34\(a\)\(4\)\(i\)](#); [TMEP §§806.01\(c\)](#), [1003.02](#).

204.03 Examining Attorney’s Handling of Applications that Are Erroneously Accorded a Filing Date

In rare situations, an application under §1 or §44 that does not meet the minimum requirements of [37 C.F.R. §2.21\(a\)](#) for receipt of a filing date may be inadvertently referred to an examining attorney for examination.

Examining Attorney Discovers Error Before Taking Action. If the examining attorney discovers the error *before* issuing an action in the case, then the examining attorney should have the application declared informal. See [TMEP §204](#). The USPTO will cancel the filing date and serial number, refund any filing fee submitted, and send a notice to the applicant explaining why the application is defective. See [TMEP §204.01](#).

Examining Attorney Discovers Error After Taking Action. However, if the examining attorney discovers that the application as filed did not meet the minimum requirements for receipt of a filing date *after* issuing an action, the examining attorney must issue a supplemental Office action refusing registration on the ground that the application was not eligible to receive a filing date. Any outstanding refusals and requirements must be maintained and incorporated into the supplemental Office action. The applicant will be given three months to respond to the Office action, with an option for applicant to extend the deadline by requesting one three-month extension of the time to respond. See [TMEP §§711-711.03](#) regarding the deadline for response to an Office action. If the applicant fails to perfect the filing-date requirements within the response period,

the application is void. If a filing fee was submitted with the original application, the examining attorney must have the filing fee refunded and update the USPTO's automated records to indicate that the application is abandoned.

If the applicant complies with the filing-date requirements within the response period, the application will receive a new filing date as of the date on which the applicant satisfied all minimum filing-date requirements. In such a case, the examining attorney must conduct a new search of the USPTO records for conflicting marks, and issue another Office action if necessary.

If the supplemental Office action was issued because the EFT or credit-card payment was refused or charged back by a financial institution, the examining attorney must treat a response that addresses any outstanding refusals and requirements, but does not include the required fee, as an incomplete response, and must issue a notice of incomplete response granting the applicant 30 days, or to the end of the response period for the previous Office action, whichever is longer, to perfect the response. To issue a notice of incomplete response, the examining attorney must use the "Notice of Non-Responsive Amendment." If the applicant does not respond, or responds but does not submit the required fee, the application must be abandoned for incomplete response.

Permitted Paper Applications. If the supplemental Office action was issued because the check or money order submitted as payment of an application filing fee was returned to the USPTO unpaid, the examining attorney must treat a response that addresses any outstanding refusals and requirements, but does not include the required fee, as an incomplete response, and must issue a notice of incomplete response granting the applicant 30 days, or to the end of the response period for the previous Office action, whichever is longer, to perfect the response. See [TMEP §301.01](#) regarding the limited exceptions for paper submissions. To issue a notice of incomplete response, the examining attorney must use the "Notice of Non-Responsive Amendment." If the applicant does not respond, or responds but does not submit the required fee, the application must be abandoned for incomplete response.

205 Filing Date Is Not Normally Changed

After an application has been given a filing date, the USPTO will normally not vacate the filing date or alter the designation of the original filing date in the Trademark database unless the application as originally filed was erroneously accorded a filing date (*see* [TMEP §204.03](#)) or where the USPTO grants restoration of a filing date (*see* [TMEP §§204.02, 1711](#)).

In an application under Trademark Act §1 or §44, if the application met the minimum requirements for receipt of a filing date (*see* [TMEP §202](#)) when originally filed, but during examination it is discovered that the applicant did not have a right to apply on the assigned filing date (e.g., because the applicant did not own the mark), the application is *void*, because a valid application was never filed. *See* [TMEP §§803.06, 1201.02\(b\)](#). The USPTO will *not* refund the filing fee in such a case. If, subsequent to the assigned filing date, the applicant became eligible to apply, the applicant may file a new application (including a filing fee).

206 Effective Filing Date

The filing date of an application (*see* [TMEP §201](#)) is also the *effective* filing date, *except* in the situations described in the subsections below. In these situations, the USPTO does not alter the original filing date in the Trademark database.

206.01 Amendment of §1(b) Application from Principal Register to Supplemental Register upon Filing of Allegation of Use

An applicant relying on a bona fide intention to use the mark in commerce under [15 U.S.C. §1051\(b\)](#) is not eligible for registration on the Supplemental Register until the applicant has submitted an acceptable amendment to allege use under [15 U.S.C. §1051\(c\)](#) or statement of use under [15 U.S.C. §1051\(d\)](#). [37 C.F.R. §§2.47\(d\)](#), [2.75\(b\)](#).

If an application is based solely on §1(b), and the applicant files an acceptable amendment to allege use or statement of use *and* an acceptable amendment to the Supplemental Register, the USPTO will consider the filing date of the amendment to allege use or statement of use to be the effective filing date of the application. [37 C.F.R. §2.75\(b\)](#). The examining attorney must conduct a new search of USPTO records for conflicting marks. See [TMEP §206.04](#) regarding examining attorney's action after conducting a new search.

Amendment of an application from the Supplemental to the Principal Register does not change the effective filing date of an application. *Kraft Grp. LLC v. Harpole*, 90 USPQ2d 1837 (TTAB 2009) (filing date did not change when applicant who originally sought registration on the Supplemental Register without alleging use in commerce amended to seek registration on the Principal Register under §1(b)).

See [TMEP §816.02](#) and [§1102.03](#) for additional information about examination of intent-to-use applications on the Supplemental Register.

206.02 Application Claiming Priority under §44(d) or §67

When an applicant is entitled to priority based on a foreign application, the effective filing date is the date on which the foreign application was first filed in the foreign country. [15 U.S.C. §§1126\(d\)\(1\)](#), [1141g](#); [37 C.F.R. §§2.34\(a\)\(4\)\(i\)](#), [7.27\(c\)](#); [TMEP §§1003.02](#), [1904.01\(e\)](#).

In an application under §44(d) of the Trademark Act, the priority claim for the U.S. application must be filed within six months after the filing date of the foreign application. The applicant may submit a priority claim after the filing date of the U.S. application if: (1) the applicant submits the priority claim within the six-month priority period ([37 C.F.R. §2.35\(b\)\(5\)](#)); and (2) the applicant was entitled to priority on the filing date of the U.S. application.

In an application under §66(a) of the Act, the priority claim must be submitted with the international application or subsequent designation filed with the IB within six months after the filing date of the foreign application. The priority claim will be part of the request for extension of protection sent to the USPTO by the IB. In some situations, however, the USPTO may receive a priority claim or a corrected priority claim after receipt of the §66(a) application via a notice of correction from the IB.

If the priority date is included in the original §44(d) or §66(a) application, the examining attorney must determine, while conducting a search of USPTO records for conflicting marks, whether there are any applications for conflicting marks that would be deemed later filed. The examining attorney must also notify the examining attorney assigned to any later-filed application so that the application may be suspended pending disposition of the §44(d) or §66(a) application with the earlier effective filing date.

If the priority claim in a §44(d) or §66(a) application is submitted after the examining attorney has conducted a search of USPTO records for conflicting marks, the examining attorney must conduct a new search to determine whether, in view of the new earlier effective filing date, there are any applications for conflicting

marks that would now be deemed later filed. The examining attorney must also notify the examining attorney assigned to any now later-filed application so that the application may be suspended pending disposition of the application with the earlier effective filing date.

See [TMEP §1003.05](#) regarding the procedures when an application filed after a §44(d) application's priority date proceeds to publication or registration because the §44(d) application was not yet filed with the USPTO when the examining attorney searched for conflicting marks. See [TMEP §1904.01\(e\)](#) regarding the procedures when an application filed after a §66(a) application's priority date proceeds to publication or registration because the request for extension of protection for the §66(a) application was not yet of record with the USPTO when the examining attorney searched for conflicting marks.

206.03 Applications Filed before November 16, 1989 that Are Amended to the Supplemental Register on or after November 16, 1989

In an application filed before November 16, 1989, the date of the amendment to the Supplemental Register becomes the effective filing date of the application if: (1) the applicant had not used the mark in commerce for one year before the application filing date; and (2) the applicant amends to the Supplemental Register on or after November 16, 1989. See [TMEP §816.02](#).

206.04 Examining Attorney's Action after Conducting New Search When the Effective Filing Date Changes to a Later Date

When the effective filing date changes to a later date, the examining attorney must conduct a new search of USPTO records for conflicting marks. If the search shows that because of the new, later effective filing date, there is a later-filed conflicting application that now has an earlier filing date, the examining attorney must suspend action of the subject application pending disposition of the other application, if the application is otherwise in condition for suspension. In addition, the examining attorney must notify the examining attorney assigned to the other application of the change in the effective filing date of the subject application, so that the other examining attorney may withdraw the application from suspension and either approve it for publication or take action on any other outstanding issues.

See [TMEP §206.02](#) regarding the procedures when the effective filing date changes to an earlier date and [§§1208–1208.02\(f\)](#) regarding conflicting marks in pending applications.