

## Attachment B

### INDEX TO CHANGES

June 2024



<b>TBMP Section:</b>	<b>Nature of Change:</b>
	<b>THROUGHOUT MANUAL</b>
	<p>Spacing, punctuation, formatting, spelling, and typographical corrections. Corrections to order of citations where appropriate in accordance with citation and manual protocols.</p> <p>Citations to McCarthy on Trademarks &amp; Unfair Competition checked and year updated (2023). McCarthy is referenced in Chapters 300 and 600.¶</p> <p>Citations to Wright &amp; Miller Federal Practice and Procedure (FPP) checked and year updated (2023). FPP is referenced in Chapters 300, 400, 500, 700.¶</p> <p>Checked, and updated as necessary, the Trademark Rules of Practice, Federal Rules of Civil Procedure, Federal Rules of Evidence, Federal Circuit Rules, TMEP cross references; TBMP cross references; previously existing final two paragraphs deleted.</p> <p>Reference to Assignment Recordation Branch and ETAS (electronic trademark assignment system) deleted and replaced with reference to Assignment Center, throughout.</p> <p>Minor revisions for purposes of clarification and updating. E.g., remove “now” or “recently” where the passage of time makes use of the terms stale.¶</p>
	<b>CHAPTER 100</b>
101.03	<p>Para. 1: include the US Supreme Court</p> <p>Para. 3: First sentence slightly reworded; second sentence modified to clarify not all Board decisions are in the Reading Room; new [Note 3] and [Note 4]; remaining notes renumbered</p> <p>Added: new Note 3: provides information about the Reading Room</p> <p>Added: new Note 4: provides information about TTAB</p> <p>Former Notes 3 &amp; 4 renumbered</p>
101.03(a)	New: Citation to Cases
101.03(a)(1)	New: Citation to Court Cases
101.03(a)(2)	<p>New: Citation to TTAB Cases</p> <p>This new subsection makes it clear that a party before the Board may use citations to any of the three leading legal research databases when citing to TTAB cases with additional information if there is no access to those databases</p>
106.01	<p>Para. 1: First sentence – delete parenthetical; new second sentence; new second sentence capturing information about providing the serial number on an appeal of, or extension of time to oppose, an application, previously</p>

TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE

<b>TBMP Section:</b>	<b>Nature of Change:</b>
	in deleted parenthetical; new third sentence about providing the registration number on an appeal of an expungement or reexamination proceeding
106.02	Note 7: add <i>In re Dermahose Inc.</i> , 82 USPQ2d 1793, 1796 (TTAB 2007)
110.02(b)	First para.: Remove reference to .TIFF and .TXT because they are no longer acceptable attachment formats Note 1: Same
111.02(a)	First para.: Remove reference to paper assignment documents Fourth para.: Information about postal mail filing for assignments deleted; [Note 2] deleted Fifth para.: Deleted, [Note 3] deleted Notes 2 & 3 deleted
111.02(b)	First para.: Remove reference to paper assignment documents
116.01	New first para.: clarifying that where a power or attorney is in place, submissions by the applicant, registrant or party to a proceeding will not be considered until there is a revocation of the existing power of attorney
	<b>CHAPTER 200</b>
	No substantive changes
	<b>CHAPTER 300</b>
303.05(d)	Para. 1: add new [Note 2] at end Note 2: add <i>Phat Scooters, Inc. v. Fatbear Scooters, LLC</i> , 2023 USPQ2d 486, at *2-4 (TTAB 2023)
309.02(a)	Note 5: add <i>Sterling Computers Corp. v. International Business Machines Corp.</i> , 2023 USPQ2d 1050, at *3-4 (TTAB 2023)
309.03(a)(1)	New third para. explaining circumstances that the inclusion of a use-based application or registration on the ESTTA cover sheet against a §66(a) application is sufficient to satisfy notification requirement for reliance on common law rights; new [Note 5] New Note 5: add <i>Sterling Computers Corp. v. International Business Machines Corp.</i> , 2023 USPQ2d 1050, at *4 (TTAB 2023)
309.02(b)	Note 6, <i>Cf.</i> paragraph: add <i>Curtin v. United Trademark Holdings, Inc.</i> , 2023 USPQ2d 535, at *3 (TTAB 2023) Note 7: add new <i>Cf.</i> paragraph and <i>Curtin v. United Trademark Holdings, Inc.</i> , 2023 USPQ2d 535, at *3-4 (TTAB 2023) Note 12: add <i>Nkanginieme v. Appleton</i> , 2023 USPQ2d 277, at *1-2 (TTAB 2023) Note 20, <i>Cf.</i> paragraph: add <i>Curtin v. United Trademark Holdings, Inc.</i> , 2023 USPQ2d 535, at *3-4 (TTAB 2023)
309.03(c)(1)	Item (25): add that information that a claim for violation of § 10 “anti-assignment” provision is time-barred after 5 years; add new [Note 39]; renumber remaining notes Note 21: add <i>In re Duracell U.S. Operations, Inc.</i> , 2023 USPQ2d 861, at *3 (TTAB 2023) Note 22, “product packaging” para.: add <i>In re Palacio Del Rio, Inc.</i> , 2023 USPQ2d 630, at *14 (TTAB 2023); <i>In re Seminole Tribe of Florida</i> , 2023 USPQ2d 631, at*7-8 (TTAB 2023)

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<b>TBMP Section:</b>	<b>Nature of Change:</b>
	<p>Note 23, <i>Cf.</i> para.: add <i>In re Joseph A. Stallard</i>, 2023 USPQ2d 1009, at *5 (TTAB 2023); <i>But see</i> para.: add <i>In re Black Card LLC</i>, 2023 USPQ2d 1376, at *9-10 (TTAB 2023)</p> <p>Note 25: add <i>Adamson Systems Engineering, Inc. v. Peavey Electronics Corporation</i>, 2023 USPQ2d 1293, at *12-13 (TTAB 2023)</p> <p>Note 35: add <i>In re Douglas Wood</i>, 2023 USPQ2d 975, at *6 (TTAB 2023); <i>In re The New York Times Company</i>, 2023 USPQ2d 392, at *5-6 (TTAB 2023)</p> <p>New Note 39: <i>Thrive Natural Care Inc. v. Nature’s Sunshine Products, Inc.</i>, 2023 USPQ2d 953, at *3-4 (TTAB 2023); remaining notes renumbered</p> <p>Note 42: add <i>In re National Concessions Group, Inc.</i>, 2023 USPQ2d 527, at *8 (TTAB 2023)</p>
309.03(c)(2) A.	<p>Note 1: add <i>Bertini v. Apple Inc.</i>, 63 F.4th 1373, 2023 USPQ2d 407, at *4 (Fed. Cir. 2023); <i>Major League Baseball Players Association and Aaron Judge v. Chisena</i>, 2023 USPQ2d 444, *8- 17 (TTAB 2023)</p> <p>Note 5: add <i>Andrusiek v. Cosmic Crusaders LLC</i>, 2024 USPQ2d 21, at *6-10 (TTAB 2024), <i>aff’d</i> 2023 USPQ2d 1236 (Fed. Cir. 2023); <i>Cf.</i> para.: <i>Bertini v. Apple Inc.</i>, 63 F.4th 1373, 2023 USPQ2d 407, at *4*5 (Fed. Cir. 2023)</p> <p>Note 6, <i>See also</i> para.: add <i>Nkanginieme v. Appleton</i>, 2023 USPQ2d 277, at *1-2 (TTAB 2023)</p> <p>Note 7: add <i>Nkanginieme v. Appleton</i>, 2023 USPQ2d 277, at *4-5 (TTAB 2023)</p>
309.03(c)(2) B.	<p>Note 1: add <i>Naterra International, Inc. v. Samah Bensalem</i>, 92 F. 4th 1113, 2024 USPQ2d 293, at *6 (Fed. Cir. 2024); <i>Spireon, Inc. v. Flex Ltd.</i>, 71 F.4th 1355, 2023 USPQ2d 737, *4-5 (Fed. Cir. 2023); <i>KME Germany GmbH v. Zhejiang Hailiang Co., Ltd.</i>, 2023 USPQ2d 1136, at *15-17 (TTAB 2023)</p> <p>Note 2: add <i>Monster Energy Company v. Critical Role, LLC</i>, 2023 USPQ2d 1382, at *4-5 (TTAB 2023)</p>
311.02(b)(1)	<p>Note 6, <i>See also</i> para.: add <i>Advance Magazine Publishers, Inc. v. Fashion Electronics, Inc.</i>, 2023 USPQ2d 753, at *3-7 (TTAB 2023)</p>
311.02(b)(2)	<p>Note 3, <i>Cf.</i> para.: add <i>Common Sense Press Inc. dba Pocket Jacks Comics v. Sciver and Maplica</i>, 2023 USPQ2d 601, at *2-3 (TTAB 2023)</p> <p>Note 4: add <i>Advance Magazine Publishers, Inc. v. Fashion Electronics, Inc.</i>, 2023 USPQ2d 753, at *6 (TTAB 2023)</p>
303.05	<p>New second para. providing information about circumstances in which a permissive counterclaim may be severed; new [Note 6]</p> <p>New Note 6: <i>Paul Reed Smith Guitars and The Estate of Theodore M. McCarty v. Gibson Brands, Inc.</i>, 2024 USPQ2d 11 (TTAB 2023)</p>
314	<p>Note 8: add <i>Nkanginieme v. Appleton</i>, 2023 USPQ2d 277 (TTAB 2023)</p>
315	<p>Note 4: add <i>Sterling Computers Corp. v. International Business Machines Corp.</i>, 2023 USPQ2d 1050, at *5-7 (TTAB 2023)</p> <p>Note 5: add <i>Sterling Computers Corporation v. International Business Machines Corporation</i>, 2023 USPQ2d 1050 (TTAB 2023)</p>

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<b>TBMP Section:</b>	<b>Nature of Change:</b>
	Note 7: add <i>Sterling Computers Corp. v. International Business Machines Corp.</i> , 2023 USPQ2d 1050, at *6-7 (TTAB 2023)
317	Third para.: remove reference to TESS
	<b>CHAPTER 400</b>
401.03	Eighth para.: new final sentence that sur-sur-rebuttal expert reports are not permitted; new [Note 31] Note 30: add <i>Monster Energy Co. v. Coulter Ventures, LLC</i> , 2023 USPQ2d 916, at *3 (TTAB 2023) New Note 31: <i>Monster Energy Co. v. Coulter Ventures, LLC</i> , 2023 USPQ2d 916, at *2 (TTAB 2023)
404.03(a)(2)	Second para.: add phrase reminding reader of rules of individual courts; new [Note 4]; remaining notes renumbered Note 2: delete existing informational “Please Note” New Note 4: add 45(a)(3) and reference to advisory committee notes; <i>Cf. El Encanto, Inc. v. Hatch Chile Co., Inc.</i> , 825 F.3d 1161, 119 USPQ2d 1139, 1142 (10th Cir. 2016); remaining note renumbered
404.03(b)	Third para.: add new [Note 4]; renumber remaining notes Note 2: add <i>Instagram, LLC v. Instagoods Pty Ltd</i> , 2023 USPQ2d 1185, at *4-5 (TTAB 2023) New Note 4: <i>Instagram, LLC v. Instagoods Pty Ltd</i> , 2023 USPQ2d 1185, at *5-7 (TTAB 2023) Note 5: add <i>Xactware Solutions, Inc. v. Buildxact Software Ltd.</i> , 95 F.4th 810, 814-15, 820, 2024 USPQ2d 489, at *4-5 (4th Cir. 2024)
404.03(c)(2)	Note 3: add <i>Instagram, LLC v. Instagoods Pty Ltd</i> , 2023 USPQ2d 1185, at *6-7 (TTAB 2023)
404.09	Note 13: add <i>Major League Baseball Players Assoc. v. Chisena</i> , 2023 USPQ2d 444, at *2 (TTAB 2023)
406.02	Note 1: add <i>Adamson Sys. Eng’g, Inc. v. Peavey Elec. Corp.</i> , 2023 USPQ2d 1293, at *4 (TTAB 2023)
407.03(c)	Remove second sentence and [Note 2] Note 2: deleted
408.01(a)	Second para.: reference to scheduling the discovery conference added; new second sentence about communication between the parties Third para.: edited to clarify next steps when the Board is contacted to assist in scheduling the discovery conference Fourth para.: new second sentence emphasizing that sanctions may be imposed against a party that does not participate in scheduling the discovery conference or the conference itself
412.01(c)	Fourth para.: new ending sentence addressing the confidentiality being waived where it is put in a publicly accessible filing; new [Note 23] Note 15: add <i>Adamson Sys. Eng’g, Inc. v. Peavey Elec. Corp.</i> , 2023 USPQ2d 1293, at *6 (TTAB 2023) New Note 23: <i>Adamson Sys. Eng’g, Inc. v. Peavey Elec. Corp.</i> , 2023 USPQ2d 1293, at *8 n.37 (TTAB 2023)

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<b>TBMP Section:</b>	<b>Nature of Change:</b>
414	Note 14: add <i>Adamson Sys'ts. Eng'g, Inc. v. Peavey Elec. Corp.</i> , 2023 USPQ2d 1293, at *4-5 (TTAB 2023)
	<b>CHAPTER 500</b>
502.06(a)	Second para., second sentence: new [Note 3.], remaining notes renumbered. New Note 3 to add <i>Fifth Generation Inc. v. Titomirov Vodka LLC</i> , 2019 USPQ2d 418666, at *3 (TTAB 2019). Remaining notes renumbered
507.01	Note 6: add <i>Sterling Computers Corp. v. International Business Machines Corp.</i> , 2023 USPQ2d 1050, at *4 (TTAB 2023) Note 8: add <i>Sterling Computers Corp. v. International Business Machines Corp.</i> , 2023 USPQ2d 1050, at *4 (TTAB 2023)
507.02	Note 7: add <i>Sterling Computers Corp. v. International Business Machines Corp.</i> , 2023 USPQ2d 1050, at *4 (TTAB 2023)
509.02	Note 1: change parenthetical to <i>Boston Red Sox Baseball Club LP v. Chaveriat</i> , 87 USPQ2d 1767, 1767 n.1 (TTAB 2008)
511	Note 1: new <i>But see</i> para. <i>Paul Reed Smith Guitars v. Gibson Brands, Inc.</i> , 2024 USPQ2d 11, at *1-5 (TTAB 2023) Note 2: new <i>But see</i> para. <i>Paul Reed Smith Guitars v. Gibson Brands, Inc.</i> , 2024 USPQ2d 11, at *1-5 (TTAB 2023) Note 5: new <i>But see</i> para. <i>Paul Reed Smith Guitars v. Gibson Brands, Inc.</i> , 2024 USPQ2d 11, at *1-5 (TTAB 2023)
512.04	Note 3: add <i>Phat Scooters, Inc. v. Fatbear Scooters, LLC</i> , 2023 USPQ2d 486, at *2-4 (TTAB 2023)
514.01	Second para.: new final sentence explaining there is no fee to delete goods and services before submitting certain maintenance filings; new [Note 5]; remaining notes renumbered New Note 5: <u>37 C.F.R. § 2.6(a)(11)(iii)</u> ; <u>TMEP § 1609.03</u> (Amendment of Identification)
514.03	Note 12: add <i>Phat Scooters, Inc. v. Fatbear Scooters, LLC</i> , 2023 USPQ2d 486, at *2-4 (TTAB 2023)
519	519(a) and 519(b) restructured to 519.01 and 519.02
520	Note 2: add <i>Xactware Solutions, Inc. v. Buildxact Software Ltd.</i> , 2024 USPQ2d 489, at *4-5 (4th Cir. 2024); add a Please Note with a short summary of the Fourth Circuit's clarification of <i>Rosenruist</i> Note 3: add <i>Instagram, LLC v. Instagoods Pty Ltd</i> , 2023 USPQ2d 1185, at *2-5 (TTAB 2023) Note 6: add <i>Instagram, LLC v. Instagoods Pty Ltd</i> , 2023 USPQ2d 1185, at *2-5 (TTAB 2023)
521	Note 7: add <i>Xactware Solutions, Inc. v. Buildxact Software Ltd.</i> , 2024 USPQ2d 489, at *4-5 (4th Cir. 2024)
527.01(e)	Note 2: add <i>RLP Ventures, LLC v. Panini America, Inc.</i> , 2023 USPQ2d 1135, at *3-4 (TTAB 2023)
528.01	Note 13: add <i>Monster Energy Co. v. Critical Role, LLC</i> , 2023 USPQ2d 1382, at *3-5 (TTAB 2023)
528.05(d)	Second and third paras.: remove reference to TESS

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<b>TBMP Section:</b>	<b>Nature of Change:</b>
528.08	Note 1: add <i>Phat Scooters, Inc. v. Fatbear Scooters, LLC</i> , 2023 USPQ2d 486, at *5 (TTAB 2023)
532	Note 1: add <i>RLP Ventures, LLC v. Panini America, Inc.</i> , 2023 USPQ2d 1135, at *6 (TTAB 2023) Note 2: add <i>RLP Ventures, LLC v. Panini America, Inc.</i> , 2023 USPQ2d 1135, at *4-6 (TTAB 2023) Note 3: add <i>RLP Ventures, LLC v. Panini America, Inc.</i> , 2023 USPQ2d 1135, at *4-6 (TTAB 2023) Note 4: add <i>RLP Ventures, LLC v. Panini America, Inc.</i> , 2023 USPQ2d 1135, at *7 (TTAB 2023) Note 5: add <i>RLP Ventures, LLC v. Panini America, Inc.</i> , 2023 USPQ2d 1135, at *7 (TTAB 2023)
533.03	Note 6: add <i>RLP Ventures, LLC v. Panini America, Inc.</i> , 2023 USPQ2d 1135, at *8-9 (TTAB 2023); add a <i>But see</i> para. <i>RLP Ventures, LLC v. Panini America, Inc.</i> , 2023 USPQ2d 1135, at *3-4 (TTAB 2023)
535	Note 1: add new <i>But see Men’s Wearhouse, LLC v. WKND NYC LLC</i> , 2024 USPQ2d 86, at *3 (TTAB 2024); <i>Thomas C Taylor v. Motor Trend Group, LLC</i> , 2023 USPQ2d 1051, at *3 (TTAB 2023)
	<b>CHAPTER 600</b>
602.02(a)	Second para.: add clause to second sentence informing there is no fee to delete goods or services in association with certain maintenance filings Note 2: add TMEP § 1609.03 (Amendment of Identification)
602.02(b)	Fifth para.: after [Note 7] add information about the interplay of filing a petition to cancel in the six month grace period and the effective date of cancellation if no maintenance filing is made in the grace period; new [Note 8]; remaining notes renumbered New Note 8: <i>Men’s Wearhouse, LLC v. WKND NYC LLC</i> , 2024 USPQ2d 86, at *3 (TTAB 2024); <i>Taylor v. Motor Trend Group, LLC</i> , 2023 USPQ2d 1051, at *3 (TTAB 2023)
	<b>CHAPTER 700</b>
703.01(f)(3)	Third para.: adding content about district court subpoena authority to command a foreign witness to testify in administrative proceedings before the USPTO; new [Note 2]; remaining notes renumbered New Note 2: <i>Xactware Solutions, Inc. v. Buildxact Software Ltd</i> , 95 F.4th 810, 2024 USPQ2d 489, at *4 - 9 (4th Cir. 2023) Note 3: <i>Xactware Solutions, Inc. v. Buildxact Software Ltd</i> , 95 F.4th 810, 2024 USPQ2d 489, at * 4 (4th Cir. 2023)
703.01(i)	Seventh para.: remove references to .TIFF and .TXT
703.02(m)	Note 2: delete <i>Cf. Rosenruist-Gestao E Servicos LDA v. Virgin Enterprises Ltd.</i> , 511 F.3d 437, 85 USPQ2d 1385 (4th Cir. 2007)
704.03(b)(1)(A)	Second para.: delete references to TESS Sixth para.: delete references to TESS Note 4: add <i>Nkanginieme v. Appleton</i> , 2023 USPQ2d 277 (TTAB 2023)
704.05(a)	Third para.: delete references to TESS

TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE

<b>TBMP Section:</b>	<b>Nature of Change:</b>
707.01	Note 1: add <i>RLP Ventures, LLC v. Panini America, Inc.</i> , 2023 USPQ2d 1135 (TTAB 2023)
707.03(a)	Note 1: add <i>RLP Ventures, LLC v. Panini America, Inc.</i> , 2023 USPQ2d 1135 (TTAB 2023)
707.04	Note 3: add <i>RLP Ventures, LLC v. Panini America, Inc.</i> , 2023 USPQ2d 1135 (TTAB 2023)
	<b>CHAPTER 800</b>
801.01	Third para.: end of first sentence, add “or forfeited” Note 6, new <i>See also</i> para.: <i>In re Seminole Tribe of Florida</i> , 2023 USPQ2d 631, at *2 n.13 (TTAB 2023); <i>Schwendimann v. Neenah, Inc.</i> , 82 F.4th 1371, 1380 (Fed. Cir. 2023); <i>In re Google Tech. Holdings LLC</i> , 980 F.3d 858, 862 (Fed. Cir. 2020)
801.03	Sixth para.: including information that court cases are to be cited to the appropriate reporter and broadening the legal research databases to which TTAB cases may be cited; delete [Note 8]; renumber remaining notes Note 8: deleted; remaining notes renumbered
802.03	First para.: suggested time frame in which parties should request hearing dates changed
803	Note 3: add <i>Major League Baseball Players Association and Aaron Judge v. Michael P. Chisena</i> , 2023 USPQ2d 444, at * 21 (TTAB 2023) Note 4: add <i>Rebecca Curtin v. United Trademark Holdings, Inc.</i> , 2023 USPQ2d 535, at *1 (TTAB 2023)
	<b>CHAPTER 900</b>
Throughout	Updated to reflect amendment to 37 C.F.R. § 2.145
901	New final para.: states effective date of amendments to 37 C.F.R. § 2.145
902.01	For notice of appeal to the Federal Circuit: Throughout section: delete 37 C.F.R. § 104.2; add email and postal mail (where applicable) as provided by amended 37 C.F.R. § 2.145; delete in-person service address; delete [Note 8] Note 6: delete 37 C.F.R. § 104.2 and add 37 C.F.R. §2.145(a)(2)(i) and 37 C.F.R. 2.145(b)(2)(i) Note 8: deleted
902.02	For time For filing notice of appeal, cross-appeal, Federal Circuit Fourth and fifth paras.: updated to reflect amendment to 37 C.F.R. § 2.145
902.04	For notice of election to have review by civil action First para: updated to reflect amendment to 37 C.F.R. § 2.145
903.04	Third para: updated to reflect amendment to 37 C.F.R. § 2.145
906.01	Sixth para: after [Note 19], add tacking and new [Note 20]; remaining notes renumbered; at end of paragraph add whether a proposed mark functions as a source identifier” and new [Note 29]; remaining notes renumbered; add new ninth para. that Federal Circuit review agency procedures for compliance with the Administrative Procedure Act de nova and new [Note 34]; renumber remaining notes New Note 20: <i>Bertini v. Apple Inc.</i> , 63 F.4th 1373, 2023 USPQ2d 407, at * 2 (Fed. Cir. (2023)

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<b>TBMP Section:</b>	<b>Nature of Change:</b>
	New Note 29: add <i>In re Go &amp; Assocs.</i> , 90 F.4th 1354, 2024 USPQ2d 616, at *3 (TTAB 2024) New Note 34: add <i>In re Chestek PLLC</i> , 92 F.4th 1105, 2024 USPQ2d 297, at *2 (Fed. Cir. 2024)
	<b>CHAPTER 1000</b>
	No changes
	<b>CHAPTER 1100</b>
1114	Para. 3: remove reference to Section 66 registrations, delete [Note 4.], renumber remaining note. Delete Note 4, renumber remaining note
	<b>CHAPTER 1200</b>
1202.02	Sixth para. after [Note 9]: add a sentence that a notice of appeal is considered timely if it is filed with the petition to revive or in response to a petition deficiency letter
1203.01	Fourth para. after [Note 10]: update information on case citation formats Note 11: update nature of references for case citation formats
1203.02(c)	Notes 1 & 2: exchange order of information Note 5: delete reference to MISCELLANEOUS CHANGES TO TRADEMARK TRIAL AND APPEAL BOARD RULES (same information is in Note 1)
1203.02(e)	Note 3: add <i>In re ZeroSix, LLC</i> , 2023 USPQ2d 75 (TTAB 2023); <i>In re Seminole Tribe of Florida</i> , 2023 USPQ2d 631, at *2 (TTAB 2023)
1203.02(f)	Second para.: update nature of references for case citation formats Note 5: change to “Cf.”
1208.02	Note 5: add <i>In re Seminole Tribe of Florida</i> , 2023 USPQ2d 631 (TTAB 2023)
1208.04	Note 10: add <i>In re Seminole Tribe of Florida</i> , 2023 USPQ2d 631, at * 2 (TTAB 2023)
1209.01	First para., last sentence: clarified that Board, at decision on brief, does not normally remand an application if the underlying refusal had been made and withdrawn and the examining attorney, in the appeal brief, requests remand in the alternative should the Board determine the refusal is a more proper categorization of the issues than the maintained refusal
1213	New (5): applicant may request suspension of an appeal if the cited registration is the subject of an ex parte expungement or reexamination proceeding New fourth para.: examining attorney may request suspension of an appeal if the cited registration is the subject of an ex parte expungement or reexamination proceeding New tenth para.: Board may sua sponte suspend an appeal where the cited registration is the subject of an ex parte expungement or reexamination proceeding
1215	Note 2: add <i>In re Palacio Del Rio, Inc.</i> , 2023 USPQ2d 630 (TTAB 2023)



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<b>TBMP Section:</b>	<b>Nature of Change:</b>
1217	<p>Second para., second sentence: clarify that relied upon rationale does not change the thrust of the refusal; new third sentence clarifying that remand for further examination is appropriate if the Board finds the rationale is a new grounds for refusal</p> <p>New fifth para.: expectation of discussion of evidence per class refused; new [Note 7], remaining notes renumbered</p> <p>New Note 7: <i>In re OSF Healthcare System</i>, 2023 USPQ2d 1089, at *3 (TTAB 2023)</p> <p>Note 8: add <i>In re OSF Healthcare System</i>, 2023 USPQ2d 1089 (TTAB 2023)</p>
1219.02	<p>First para., second sentence: update to reflect amendments to 37 C.F.R. § 2.145; new [Note 3], remaining notes renumbered</p> <p>Note 2: update to reflect amendments to 37 C.F.R. § 2.145</p> <p>New Note 3: update to reflect amendments to 37 C.F.R. § 2.145; add reference to 89 Fed. Reg. 22084</p>
<b>CHAPTER 1300</b>	
1312.02	<p>Second para.: update to reflect amendments to 37 C.F.R. § 2.145; move [Note 4]; new [Note 5]; remaining notes renumbered</p> <p>Note 4: remove last sentence</p> <p>New Note 5: update to reflect amendments to 37 C.F.R. § 2.145; add reference to 89 Fed. Reg. 22084</p>
1314	<p>New section addressing Estoppel in ex parte expungement and reexamination proceedings, expressly indicating that the proceedings have no preclusive effect in a petition to cancel brought in a TTAB proceeding</p>

## Attachment B

### LIST OF CASES

#### LIST OF CASES

Cases issued between March 1, 2015 and March 4, 2016

<b>CASE NAME</b>	<b>POINT SUMMARY</b>	<b>TBMP §</b>	<b>REFERENCE</b>
<i>3PMC, LLC v. Stacy Lee Huggins</i>	application abandoned on same day that notice of opposition was filed was not subject to opposition	218 N.2	115 USPQ2d 1488, 1489 (TTAB 2015)
<i>3PMC, LLC v. Stacy Lee Huggins</i>	following remand, granting relief from judgment by affirming Board's holding in <i>In re First Nat'l Bank of Boston</i> , 199 USPQ 296 (TTAB 1978) which held that the Board will not take cognizance of fractions of a day and will assume that an opposition and express abandonment, filed on the same day, were filed at the same instant, and therefore, concluding that application was not subject to an opposition when abandoned	544 N.2	115 USPQ2d 1488 (TTAB 2015)
<i>3PMC, LLC v. Stacy Lee Huggins</i>	reaffirming holding in <i>In re First Nat'l Bank of Boston, supra</i> , that Board “‘shall not take cognizance of fractions of a day,’ and we will assume that an opposition and an express abandonment, filed the same day, were filed at the same instant. In accordance with our precedent, we conclude that the involved application was not subject to an opposition when it was abandoned and, therefore, Trademark Rule 2.135 does not apply.”	602.01 N. 10	115 USPQ2d 1488 (TTAB 2015)
<i>3PMC, LLC v. Stacy Lee Huggins</i>	judgment entered under Trademark Rule 2.135 for abandoning application after commencement of opposition was reviewable	901.02(a) N. 3	115 USPQ2d 1488, 1489 (TTAB 2015)
<i>3PMC, LLC v. Stacy Lee Huggins</i>	moving party requesting motion for relief from judgment under Fed. R. Civ. P. 60(b) may request limited remand	901.03 N. 1	115 USPQ2d 1488, 1489 (TTAB 2015)

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<b>CASE NAME</b>	<b>POINT SUMMARY</b>	<b>TBMP §</b>	<b>REFERENCE</b>
<i>Anheuser-Busch, LLC v. Innvopak Systems Pty. Ltd.</i>	fame of mark proved, which weighs heavily in likelihood of confusion finding	309.03(c) new N.50	115 USPQ2d 1816, 1820-21 (TTAB 2015)
<i>B&amp;B Hardware, Inc., v. Hargis Industries, Inc.</i>	proceedings before the TTAB are largely governed by the Federal Rules of Civil Procedure and Evidence	101.02 N.2	575 U.S. ___, 135 S.Ct. 1293, 113 USPQ3d 2045, 2049 (2015)
<i>B&amp;B Hardware, Inc., v. Hargis Industries, Inc.</i>	Supreme Court held that issue preclusion can be based on a decision by the Trademark Trial and Appeal Board in a case in which the ordinary elements of issue preclusion are met	906.01-text	575 U.S. ___, 135 S.Ct. 1293, 113 USPQ3d 2045, 2049 (2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	requirements for concurrent use proceedings	1101.01 N. 1 & 3	115 USPQ2d 1925, 1930 (TTAB 2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	during ex parte prosecution examining attorney advised intent-to-use applicant that it could not seek concurrent use registration until it filed an acceptable allegation of use	1103.01(a) N. 1	115 USPQ2d 1925, 1927 (TTAB 2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	motion for summary judgment granted where there is no genuine dispute of material fact that applicant did not use the mark shown in the drawing in commerce prior to the filing date of the application underlying defendant's registration	1103.01(c) N. 1	115 USPQ2d 1925, 1933 (TTAB 2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	motion for summary judgment granted where there is no genuine dispute of material fact that applicant did not use the mark shown in the drawing in commerce prior to the filing date of the application underlying defendant's registration	1108 N. 3	115 USPQ2d 1925, 1933 (TTAB 2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	Fed. R. Evid. 408(a) does not preclude use of documents because they are provided during the course of compromise negotiations if the evidence is otherwise discoverable	528.05(a)(1) N.4	115 USPQ2d 1925, 1930-31 (TTAB 2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	Fed. R. Civ. P. 56(d) motion denied as moot because party filed substantive response to summary judgment motion	528.06 N.8	115 USPQ2D 1925, 1930 (TTAB 2015)
<i>Bayer Consumer Care AG v. Belmora LLC</i>	objections to written cross-examination questions sustained on ground they exceed	703.02(k) N. 2	110 USPQ2d 1623, 1628 (TTAB 2014) <i>rev'd on other</i>

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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
	scope of direct testimony on written questions		<i>grounds</i> , 84 F.Supp.3d 490 (E.D. Va. 2015), <i>vacated and remanded</i> ___ F.3d ___, Case No. 15-1335 (4th Cir. Mar. 23, 2016)
<i>Bayer Consumer Care AG v. Belmora LLC</i>	expert witness testimony stricken after party failed to timely identify and disclose the witness	707.03(b)(3) N. 1	110 USPQ2d 1623, 1628 (TTAB 2014) <i>rev'd on other grounds</i> , 84 F.Supp.3d 490 (E.D. Va. 2015), <i>vacated and remanded</i> ___ F.3d ___, Case No. 15-1335 (4th Cir. Mar. 23, 2016)
<i>Be Sport, Inc. v. Al-Jazeera Satellite Channel</i>	motion to amend answer to include affirmative defense of claim preclusion denied as futile because the mark involved in the prior opposition creates a different commercial impression than the mark involved in the instant proceeding	314 N.4	115 USPQ2d 1765, 1769 (TTAB 2015)
<i>Be Sport, Inc. v. Al-Jazeera Satellite Channel</i>	where motion to amend pleading to add defense of claim preclusion denied as futile, motion for summary judgment on such defense denied as moot	314 N.5	115 USPQ2d 1765, 1769 (TTAB 2015)
<i>Be Sport, Inc. v. Al-Jazeera Satellite Channel</i>	application of issue or claim preclusion in Board proceedings at summary judgment	528.02 N.2	115 USPQ2d 1765 (TTAB 2015)
<i>Belmora LLC v. Bayer Consumer Care AG</i>	Belmora filed notice of appeal of Board's decision to Federal Circuit; Bayer then filed a notice of election to have review by civil action	903.06 N. 2	115 USPQ2d 1032, 1036 (E.D. Va. 2015)
<i>Belmora LLC v. Bayer Consumer Care AG</i>	district court reviews the record de novo and acts as the finder of fact	906.01 N, 3	115 USPQ2d 1032, 1037 (E.D. Va 2015) <i>vacated and remanded</i> ___ F.3d ___, Case No. 15-1335 (4th Cir. Mar. 23, 2016)
<i>Cadbury UK Ltd. v. Meenaxi Enter., Inc.</i>	Board will not allow a party to avoid its discovery obligations due to an obvious typographical error in	408.01 N.1	115 USPQ2d 1404, 1407 (TTAB 2015)

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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
	opposing party's written discovery requests		
<i>Couture v. Playdom, Inc.</i>	service must be offered and actually provided to constitute use in commerce	309.03(c) N.24	778 F.3d 1379, 113 USPQ2d 2042, (Fed. Cir. 2015), <i>cert. denied</i> 136 S.Ct. 88 (2015)
<i>Couture v. Playdom, Inc.</i>	Federal Circuit applies "substantial evidence" standard of review for USPTO findings of fact.	906.01 N. 9	778 F.3d 1379, 113 USPQ2d 2042, 2043 (Fed. Cir. 2015), <i>cert. denied</i> 136 S.Ct. 88 (2015)
<i>Couture v. Playdom, Inc.</i>	conclusions of law are reviewed de novo	906.01 N. 24	778 F.3d 1379, 113 USPQ2d 2042, 2043 (Fed. Cir. 2015), <i>cert. denied</i> 136 S.Ct. 88 (2015)
<i>Embarcadero Technologies, Inc. v. Dephix Corp.</i>	because proposed claims are untimely and futile, motion for leave to amend denied	507.02 N.9	117 USPQ2d 1518, 1523 (TTAB 2016)
<i>Embarcadero Technologies, Inc. v. Dephix Corp.</i>	non-moving party failed to rebut moving party's evidence or raise genuine dispute of material fact	528.01 N. 8	117 USPQ2d 1518, 1523 (TTAB 2016)
<i>Emilio Pucci International BV v. Sachdev</i>	Board expects parties to take into account the principles of proportionality with regard to discovery	402.01 N.5	___ USPQ2d ___, Opp. No. 91215100 (TTAB Jan. 20, 2016)
<i>First International Services Corp. v. Chuckles Inc.</i>	in the event applicants ultimately prevail, the involved application will be remanded to the examining attorney for reexamination	805 N. 1	5 USPQ 1628, 1636 n. 6 (TTAB 1988)
<i>Guess? IP Holder LP v. Knowluxe LLC</i>	reconsideration denied because there is no requirement that Board repeat or address irrelevant arguments in entertaining a motion	518 N.7	116 USPQ2d 2018, 2019-20 (TTAB 2015)
<i>H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.</i>	two-step determination of whether a term is generic involves 1) what is the genus of the goods or services at issue and 2) is the term understood by the relevant public primarily to refer to that genus	309.03(c) new N.40	782 F.2d 987, 228 USPQ 528, 531-32 (Fed. Cir. 1986)
<i>Harry Winston, Inc. v. Bruce Winston Gem Corp</i>	judgment entered against opposers who voluntarily surrendered pleaded registration without applicant's consent where such registration was	602.02(a) N. 4	111 USPQ2d 1419, 1423 (TTAB 2014)

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<b>CASE NAME</b>	<b>POINT SUMMARY</b>	<b>TBMP §</b>	<b>REFERENCE</b>
	the subject of a counterclaim to cancel		
<i>Hollywood Casino LLC v. Chateau Celeste, Inc.</i>	while a party may submit an errata sheet correcting typographical errors to a deposition transcript, such party may not submit or rely upon an errata sheet which substantively changes the deposition testimony	404.07(i) N.2	116 USPQ2d 1988, 1994-97 (TTAB 2015)
<i>Hollywood Casino LLC v. Chateau Celeste, Inc.</i>	on summary judgment, Board gave no consideration to a Rule 30(b)(6) deposition errata sheet because it resulted in substantive changes to witness' testimony	703.01(n) N. 2	116 USPQ2d 1988, 1996 (TTAB 2015)
<i>Holmes Oil Co. v. Myers Cruizers of Mena Inc.</i>	parties' confidential consent agreement referred to in general terms	1208.06 N. 1	101 USPQ2d 1148, 1150 n.4
<i>In re Allegiance Staffing</i>	practice of attaching to appeal brief copies of the same exhibits submitted with responses is discouraged	1203.01 N. 3	115 USPQ2d 1319, 1323 (TTAB 2015)
<i>In re Aquamar, Inc.</i>	Board took judicial notice of the August 2013 United States Census Bureau's "Language Use in the United States: 2011" report, indicating that after English, Spanish is the most commonly spoken language in the United States, and over 12% of the United States population speaks Spanish)	1208.04 N. 3	115 USPQ2d 1122, 1127 n.6 (TTAB 2015)
<i>In re Bay State Brewing Company, Inc.</i>	applicant had ample opportunity to rebut Wikipedia evidence submitted by Examining Attorney but did not	1208.03 N. 14	__USPQ2d__, n.3, Serial No. 85826258 (TTAB Feb. 25, 2016)
<i>In re Bay State Brewing Company, Inc.</i>	Board took judicial notice that beer is often relatively inexpensive, subject to impulse purchase, and often ordered orally in a bar or restaurant);	1208.04 N. 3	__USPQ2d__, Serial No. 85826258 (TTAB Feb. 25, 2016)
<i>In re Bay State Brewing Company, Inc.</i>	consent agreement, in addition to supporting registration, provides the public with notice of the basis on which the USPTO allowed registration	1208.06 N. 1	__USPQ2d__, n.3, Serial No. 85826258 (TTAB Feb. 25, 2016)
<i>In re Brack</i>	refusal affirmed on requirement to submit signed and verified application, propriety of refusal under Section 2(d) not reached	1201.04 N. 1	114 USPQ2d 1338, 1343 (TTAB 2015)

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<b>CASE NAME</b>	<b>POINT SUMMARY</b>	<b>TBMP §</b>	<b>REFERENCE</b>
<i>In re Brack</i>	applicant's failure to comply with requirement to sign and verify application prior to appeal cannot be remedied after issuance of decision	1218 N. 1	114 USPQ2d 1338, 1343 (TTAB 2015)
<i>In re Driven Innovations, Inc.</i>	applicant's sole recourse to challenge a refusal that was issued during examination of a statement of use under the clear error standard is by appealing the merits of the final refusal to the Board; expressly overruled those portions of <i>In re Jump Designs LLC</i> , 80 USPQ2d 1370, 1373-74 (TTAB 2006) and <i>In re Sambado &amp; Son Inc.</i> , 45 USPQ2d 1312, 1314 (TTAB 1997) to the extent that they suggest the applicant could petition the Director for a review of a clear error determination.	1201.05 N. 13	115 USPQ2d 1261, 1264 (TTAB 2015)
<i>In re Future Ads LLC</i>	while examining attorney need not limit arguments made in appeal brief to those raised in Office actions, using the evidence for a totally different purpose not hinted at in the Office actions was unfair based on circumstances of case	1203.02 (b) N. 7	103 USPQ2d 1571, 1573 (TTAB 2012)
<i>In re Heatcon, Inc.</i>	new nonfinal action not necessary when application was refused on Principal Register as functional and application amended to Supplemental Register	1201.02 N. 6	116 USPQ2d 1366, 1370 (TTAB 2015)
<i>In re Heatcon, Inc.</i>	amendment to Supplemental Register in response to a refusal of registration on ground of functionality does not raise a new issue	1201.02 N. 7	116 USPQ2d 1366, 1370 (TTAB 2015)
<i>In re Heatcon, Inc.</i>	applicant did not make amendment to Supplemental Register in the alternative	1215 N. 2	116 USPQ2d 1366, 1369-70 (TTAB 2015)
<i>In re Heatcon, Inc.</i>	although finding that configuration was functional rendered requirement regarding drawing moot, Board addressed the drawing refusal "for completeness"	1217 N. 3	116 USPQ2d 1366, 1369-70 (TTAB 2015)
<i>In re Hinton</i>	"Board gives guarded consideration to evidence taken from Wikipedia, bearing in mind the limitations inherent in this reference work, so	1208.03 N. 14	116 USPQ2d 1051, 1053, n.10 (TTAB 2015)

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	long as the non-offering party has an opportunity to rebut the evidence by submitting other evidence that may call its accuracy into question”		
<i>In re House Beer, LLC</i>	Board does not take judicial notice of files of applications or registrations residing in the Office, including entries in file of cited registration	1208.04 N. 9	114 USPQ2d 1073, 1075 (TTAB 2015)
<i>In re House Beer, LLC</i>	once final decision issues, applicant cannot request suspension of appeal to seek cancellation of cited registration	1218 N. 1	114 USPQ2d 1073, 1077 n.15 (TTAB 2015)
<i>In re Hughes Furniture Industries, Inc.</i>	request for remand to comply with particular requirement did not give examining attorney right to submit evidence in support of refusal that was not subject of remand request	1204 N. 14	114 USPQ2d 1134, 1135-36 (TTAB 2015)
<i>In re Hughes Furniture Industries, Inc.</i>	application was remanded to consider applicant’s proposed disclaimer, it was not permissible for examining attorney to submit evidence in support of refusal that was not the subject of remand request	1205.01 N. 2	114 USPQ2d 1134, 1135-36 (TTAB 2015)
<i>In re Hughes Furniture Industries, Inc.</i>	applicant’s seeking to comply with requirement for disclaimer constituted good cause	1205.01 N. 5	114 USPQ2d 1134, 1135 (TTAB 2015)
<i>In re Hughes Furniture Industries, Inc.</i>	examining attorney’s submission of evidence on likelihood of confusion refusal unacceptable when applicant’s remand request was solely to comply with requirement for disclaimer	1209.04 N. 3	114 USPQ2d 1134, 1136 (TTAB 2015)
<i>In re Hughes Furniture Industries, Inc.</i>	“If, upon considering the request for remand the Examining Attorney wished to submit additional evidence regarding the Section 2(d) refusal (which was not affected by the disclaimer), the Examining Attorney should have filed with the Board her own request for remand for the purpose of submitting additional evidence in support of the likelihood of confusion refusal.”	1209.04 N. 4	114 USPQ2d 1134, 1136 (TTAB 2015)
<i>In re Lorillard Licensing Co.</i>	papers that are already in the application should not, as a matter of	1203.01 N. 3	99 USPQ2d 1312, 1315 (TTAB 2011)



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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
	course, be resubmitted as exhibits to the brief.		
<i>In re Louisiana Fish Fry Products, Ltd.</i>	Fed. Cir. reviews Board’s legal conclusions de novo	906.01 N. 24	797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015)
<i>In re Louisiana Fish Fry Products, Ltd.</i>	Board’s factual determinations are reviewed for substantial evidence	906.01 N. 9	797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015)
<i>In re TriVita, Inc.</i>	Federal Circuit applied the “substantial evidence” standard of review to support Board’s findings	906.01 N. 9	783 F.3d 872, 114 USPQ2d 1574, 1576 (Fed. Cir. 2015)
<i>Intex Recreation Corp. v. The Coleman Co.</i>	party may not redact portions of responsive documents on the ground that the non-disclosed information is not relevant or responsive where the information appears in a document that contains otherwise relevant or responsive information	406.04(c) N.4	117 USPQ2d 1799 (TTAB 2016)
<i>Intex Recreation Corp. v. The Coleman Co.</i>	party may not redact confidential information from documents responsive to written document requests	412.01 N. 10	117 USPQ2d 1799, 1801 (TTAB 2016)
<i>Jack Wolfskin Ausrüstung fur Draussen GmbH &amp; Co. KGaA v. New Millennium Sports, S.L.U.</i>	no abandonment found where determined that consumers would not view stylistic modifications as a different mark and result in the same continuing commercial impression	309.03(c) N.27	797 F.3d 1363, 116 USPQ2d 1129, 1133-34 (Fed. Cir. 2015), <i>cert. denied</i> , ___ U.S. ___ (Jan. 25, 2016)
<i>Jack Wolfskin Ausrüstung fur Draussen GmbH &amp; Co. KGaA v. New Millennium Sports, S.L.U.</i>	substantial evidence standard	906.01 N. 11	797 F.3d 1363, 116 USPQ2d 1129, 1133 (Fed. Cir. 2015), <i>cert. denied</i> , ___ U.S. ___ (Jan. 25, 2016)
<i>Jack Wolfskin Ausrüstung fur Draussen GmbH &amp; Co. KGaA v. New Millennium Sports, S.L.U.</i>	example of question of fact	906.01 N. 22	797 F.3d 1363, 116 USPQ2d 1129, 1133 (Fed. Cir. 2015), <i>cert. denied</i> , ___ U.S. ___ (Jan. 25, 2016)
<i>Juice Generation, Inc. v. GS Enterprises, LLC</i>	substantial evidence is more than a mere scintilla, but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion	906.01 N. 16	794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015)

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<b>CASE NAME</b>	<b>POINT SUMMARY</b>	<b>TBMP §</b>	<b>REFERENCE</b>
<i>Juice Generation, Inc. v. GS Enterprises, LLC</i>	conclusion regarding a likelihood of confusion is a question of law that the Federal Circuit reviews de novo, although underlying factual findings are reviewed for substantial evidence	906.01 N. 26	794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015)
<i>Leon V. IDX Systems Corp.</i>	duty to preserve ESI	406.04(c) new N. 11	464 F.3d 951, 956 (9th Cir. 2006)
<i>M.Z. Berger &amp; Co. v. Swatch AG</i>	lack of bona fide intent is a proper statutory grounds on which to challenge a trademark application	309.03(c) N.18	787 F.3d 1368, 114 USPQ2d 1892, 1897 (Fed. Cir. 2015)
<i>M.Z. Berger &amp; Co. v. Swatch AG</i>	Example of finding of fact	906.01 new N. 23	787 F.3d 1368, 114 USPQ2d 1892, 1893 (Fed. Cir. 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	parody defense will not be considered as part of the assessment of a dilution claim; whether an applicant's mark is registrable because it is being used in commerce to indicate source is counter to whether such use is noncommercial or fair use	309.03(c) N.30	114 USPQ2d 1497, 1509-10 (TTAB 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	parties stipulated that witness testimony would be submitted solely by declaration and without cross-examination	702.04(e) N. 1	114 USPQ2d 1497, 1500 (TTAB 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	parties stipulated that witness testimony would be submitted solely by declaration and without cross-examination	703.01(b) N. 5	114 USPQ2d 1497, 1500 (TTAB 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	parties stipulated that witness testimony would be submitted solely by declaration and without cross-examination	703.01(b) N. 6	114 USPQ2d 1497, 1501 N. 11 (TTAB 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	denials to admission requests cannot be submitted under notice of reliance	704.10 N.13	114 USPQ2d 1497, 1500 (TTAB 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	parties may stipulate that witness testimony would be submitted solely by declaration and without cross-examination	705 N. 4	114 USPQ2d 1497, 1500 (TTAB 2015)
<i>Nike, Inc. v. Palm Beach Crossfit Inc.</i>	insufficiently pled claim where no assertion that public would recognize applicant's mark as pointing uniquely to opposer	309.03(c) N. 15	116 USPQ2d 1025, 1031-32 (TTAB 2015)

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<b>CASE NAME</b>	<b>POINT SUMMARY</b>	<b>TBMP §</b>	<b>REFERENCE</b>
<i>Nike, Inc. v. Palm Beach Crossfit Inc.</i>	claim insufficiently pled where no assertion that licensing relationship gave opposer a proprietary right to assert the claim on behalf of third party	309.03(c) N. 28	116 USPQ2d 1025, 1032-33 (TTAB 2015)
<i>Nike, Inc. v. Palm Beach Crossfit Inc.</i>	Motion to dismiss that included matters outside the pleadings not considered as motion for summary judgment because motion was filed before the parties' initial disclosures were due and initial disclosures had not been served.	503.04 N.3	116 USPQ2d 1025, 1028 (TTAB 2015)
<i>Nike, Inc. v. Palm Beach Crossfit Inc.</i>	example of decision concerning whether particular facts are appropriate subject matter for judicial notice by the Board	704.12(a)N.2	116 USPQ2d 1025, 1029 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	The purpose of <u>37 CFR § 2.134(b)</u> , and the policy underlying the issuance of a show cause order, is to prevent a cancellation proceeding respondent whose subject registration comes due, during the course of the proceeding, for a § 8 or § 9 affidavit, or in the case of a § 66(a) registration, a § 71 affidavit or § 70 renewal, from being able to moot the proceeding, and avoid judgment, by deliberately failing to file the required affidavits or renewal applications.	602.02(b) N. 8	116 USPQ2d 1102, 1110 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	<u>37 CFR § 2.134(b)</u> governs what happens when an entire class in a multi-class registration is cancelled or not renewed	602.02(b) new N. 4	116 USPQ2d 1102, 1110 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	where the deletions requested by respondent of the involved goods from the Section 8 declarations was deliberate, and not the result of mistake or inadvertence, and respondent mistakenly believed that such deletion would moot or partially moot the subject actions, Board exercised discretion not to issue an order to show cause	602.02(b) new N. 7	116 USPQ2d 1102, 1110 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	In a cancellation proceeding against any registration having multiple goods and/or services within a single	602.02(b) text and N. 5	116 USPQ2d 1102, 1110 (TTAB 2015)

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	class, if the respondent permits one or some of the goods or services which is the subject of the cancellation proceeding to be cancelled under Trademark Act §§ 8 or 71 by failing to include a statement of continuing use, or fails to renew the registration under Trademark Act §§ 9 or 70 with respect to that particular good(s) or service(s), the cancellation or failure to renew with respect to that good(s) or service(s) is governed by <u>37 CFR § 2.134(b)</u> .		
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	plaintiff’s pleaded registration is of record by operation of Trademark Rule 2.122(b)(1) and defendant’s objection thereto is overruled	704.03(a) N. 1	116 USPQ2d 1102, 1107 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	examples of cases concerning the admissibility of specific documents, by notice of reliance, as “official records” under <u>37 CFR § 2.122(e)</u>	704.07 N.5	116 USPQ2d 1102, 1108 n.14 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	Materials improperly offered under <u>37 CFR § 2.122(e)</u> may nevertheless be considered by the Board if the adverse party (parties) does not object to their introduction or itself treats the materials as being of record.	704.08(a) N.9	116 USPQ2d 1102, 1108 n. 14 (TTAB 2015)
<i>Princeton Vanguard, LLC v. Frito-Lay North America, Inc.</i>	there is only one legal standard for genericness	309.03(c) new N. 40	786 F.3d 960, 114 USPQ2d 1827, 1830-31 (Fed. Cir. 2015)
<i>Princeton Vanguard, LLC v. Frito-Lay North America, Inc.</i>	standard of review of Board decision	906.01 N. 16	786 F.3d 960, 114 USPQ2d 1827, 1829 (Fed. Cir. 2015)
<i>Princeton Vanguard, LLC v. Frito-Lay North America, Inc.</i>	example of question of fact	906.01 N. 21	786 F.3d 960, 114 USPQ2d 1827, 1829 (Fed. Cir. 2015)
<i>Princeton Vanguard, LLC v. Frito-Lay North America, Inc.</i>	whether correct legal standard was applied	906.01 N. 24	786 F.3d 960, 114 USPQ2d 1827, 1829 (Fed. Cir. 2015)
<i>Product Source International, LLC v. Nahshin</i>	applicant who is dissatisfied with final decision of TTAB has choice of appealing the decision to the Court of Appeals for the Federal Circuit or	901.01 N. 1	112 F.Supp.3d 383 (E.D. Va. 2015)

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	a remedy by civil action in district court		
<i>ProMark Brands Inc. v. GFA Brands, Inc.</i>	party allowed time to resubmit deposition transcript separating the confidential testimony separating confidential from nonconfidential testimony	120.02 N.4	114 USPQ2d 1232, 1238 n.24 (TTAB 2015), <i>on appeal</i> , No. 15-0681 (W.D. Pa. May 26, 2015)
<i>ProMark Brands Inc. v. GFA Brands, Inc.</i>	Rule 26(e) does not allow an expert to bolster previously disclosed opinions or to add new opinions.	401.03 N.26	114 USPQ2d 1232, 1241 (TTAB 2015), <i>on appeal</i> , No. 15-0681 (W.D. Pa. May 26, 2015)
<i>ProMark Brands Inc. v. GFA Brands, Inc.</i>	copy of the submission with the confidential portions redacted must also be submitted	703.01(p) N. 1	114 USPQ2d 1232, 1237-1238 n.4 (TTAB 2015), <i>on appeal</i> , No. 15-0681 (W.D. Pa. May 26, 2015)
<i>Shammas v. Focarino</i>	dissatisfied trademark applicant may seek review of an adverse ruling on his trademark application either by appealing the ruling to the Court of Appeals for the Federal Circuit or by commencing a de novo action in a federal district court)	901.01 N. 1	784 F.3d 219, 114 USPQ2d 1489, 1490 (4th Cir. 2015), <i>cert. denied</i> ___ S. Ct. ___ (Mar. 7, 2016)
<i>Silvestri v. General Motors Corp.</i>	duty to preserve ESI	406.04(c) new N. 11	271 F.3d 583, 591 (4th Cir. 2001)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	concurrent use proceedings in general	1101.01 N. 1	115 USPQ2d 1007 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	requirements for issuance of a concurrent use registration in Board proceeding	1101.01 N. 3	115 USPQ2d 1007, 1020 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	concurrent use applicant must show that a concurrent use registration will not result in a likelihood of confusion	1101.01 N. 4	115 USPQ2d 1007, 1020 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	requirements for concurrent use proceeding	1103.01(d)(2) N. 1	115 USPQ2d 1007, 1020 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	examining attorney suspended action on defendants' pending applications seeking unrestricted registration filed after applicant's application	1104 N. 5	115 USPQ2d 1007, 1020 n.73 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	applicant seeking exclusive right to use "Delmonico's" mark for restaurant services throughout United States except in designated geographic areas in and around New	1108 N. 2	115 USPQ2d 1007 (TTAB 2015)

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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
	York City, New Orleans and Las Vegas failed to prove that, with appropriate geographic restriction, there would be no likelihood of confusion, mistake or deception in marketplace		
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	examples of cases concerning the admissibility of specific documents, by notice of reliance, as “official records” under <u>37 CFR § 2.122(e)</u>	704.07 N.5	115 USPQ2d 1007, 1013 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	discovery deposition offered by stipulation of the parties	704.09 N.2	115 USPQ2d 1007, 1013 n.6 (TTAB 2015)
<i>Swatch AG (Swatch SA) (Swatch Ltd.) v. M. Z. Berger &amp; Co.</i>	certain printed publications qualify for submission by notice of reliance under <u>37 CFR § 2.122(e)</u> because they are considered essentially self-authenticating	704.08(c) N. 1	108 USPQ2d 1463, 1466 (TTAB 2013)
<i>Swiss Grill Ltd. v. Wolf Steel Ltd.</i>	lack of bona fide intent to use found where no documentary evidence predated application filing date	309.03(c) N. 18	115 USPQ2d 2001, 2008-09 (TTAB 2015)
<i>Swiss Grill Ltd. v. Wolf Steel Ltd.</i>	parties may stipulate to waive the requirement for pretrial disclosures in ACR cases	702.01 N.19	115 USPQ2d 2001, 2002 n.5 (TTAB 2015)
<i>Swiss Grill Ltd. v. Wolf Steel Ltd.</i>	form of ACR can vary, but the process generally approximates a summary bench trial or cross-motions for summary judgment and accompanying evidentiary submissions that the parties agree to submit in lieu of creating a traditional trial record	702.04(a) N.1	115 USPQ2d 2001, 2002 (TTAB 2015)
<i>Swiss Grill Ltd. v. Wolf Steel Ltd.</i>	other approaches to accelerating resolution of a case include simplifying proceedings through the use of fact stipulations and stipulations regarding the admissibility of certain evidence	702.04(a) N.2	115 USPQ2d 2001, 2002 (TTAB 2015)
<i>Swiss Grill Ltd. v. Wolf Steel Ltd.</i>	if an ACR stipulation is silent on the issue of pretrial disclosures and no pretrial disclosures were in fact filed by either party, the Board will interpret the stipulation as waiving this requirement	702.04(a) N.6	115 USPQ2d 2001, 2002 n.5 (TTAB 2015)

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<b>CASE NAME</b>	<b>POINT SUMMARY</b>	<b>TBMP §</b>	<b>REFERENCE</b>
<i>The North Face Apparel Corp. v. Sanyang Industry Co., Ltd.</i>	no context provided for figures in support of fame; burden of proving fame not met	309.03(c) new N.50	116 USPQ2d 1217, 1225 (TTAB 2015)
<i>The North Face Apparel Corp. v. Sanyang Industry Co., Ltd.</i>	motion for leave to amend answer to add affirmative defense that if the Board should find applicant not entitled to registration of the opposed mark with respect to some but not all goods or services listed in applications, then Applicant should be allowed to amend applications to conform to Board's findings denied for failure to identify goods or services to be deleted)	507.02 N.9	116 USPQ2d 1217, 1225 (TTAB 2015)
<i>Turtle Wax, Inc. v. Blue Coral, Inc.</i>	Statement that a registration on Supplemental Register always subject to claim that the term is generic	309.03(c) new N. 41	2 USPQ2d 1534, 1536 (TTAB 1987)
<i>Unrock Network, LLC v. Sulpasso</i>	motion to dismiss considered as one for summary judgment where it asserts claim preclusion	528.02 N.2	115 USPQ2d 1409 (TTAB 2015)
<i>Urock Network, LLC v. Umberto Sulpasso</i>	claim preclusion bars cancellation proceeding in view of earlier opposition proceeding which was dismissed for failure of plaintiff to submit any evidence in support of its case; and where plaintiff in cancellation concedes it is same as plaintiff in opposition	309.03(c) N.35	115 USPQ2d 1409, 1411-13 (TTAB 2015)
<i>Uveritech, Inc. v. Amax Lighting, Inc.</i>	presumption that a manufacturer is the owner of a disputed mark may be rebutted	309.03(c) N.21	115 USPQ2d 1242, 1249(TTAB 2015)
<i>Uveritech, Inc. v. Amax Lighting, Inc.</i>	unpleaded allegations relating to fraud, acquiescence and laches will not be heard	314 N.1	115 USPQ2d 1242, 1244 (TTAB 2015)
<i>UVeritech, Inc. v. Amax Lighting, Inc.</i>	by failing to preserve the objection in its brief on the case, or in an appendix to the brief on the case or in a separate statement of objections filed with the brief on the case, a party may waive an objection that was seasonably raised at trial	707.04 N.5	115 USPQ2d 1242, 1244 n.3 (TTAB 2015)
<i>Warren Distribution, Inc. v. Royal Purple, LLC</i>	no misidentification through mistake between employee who filed extension request as individual and employer who filed notice of opposition	206.01 N.6	115 USPQ2d 1667, 1669-70 (TTAB 2015)

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<b>CASE NAME</b>	<b>POINT SUMMARY</b>	<b>TBMP §</b>	<b>REFERENCE</b>
<i>Warren Distribution, Inc. v. Royal Purple, LLC</i>	notice of opposition untimely where opposer was not in privity with employee who filed extension request in individual name	206.02 N. 2	115 USPQ2d 1667, 1670-71 (TTAB 2015)
<i>Warren Distribution, Inc. v. Royal Purple, LLC</i>	no misidentification through mistake between employee who filed extension request as individual and employer who filed notice of opposition	206.03 N.2	115 USPQ2d 1667, 1670-71 (TTAB 2015)
<i>Warren Distribution, Inc. v. Royal Purple, LLC</i>	individual employee that filed extension request not in privity with employer who filed notice of opposition	303.05(b) N. 2	115 USPQ2d 1667, 1669-70 (TTAB 2015)
<i>Warren Distribution, Inc. v. Royal Purple, LLC</i>	individual employee who filed extension request a different legal entity than employer who filed notice of opposition and, thus, cannot be considered identified through mistake	303.05(c) N. 2	115 USPQ2d 1667, 1670-71 (TTAB 2015)
<i>Wonderbread 5 v. Gilles</i>	facts inconsistent with individual former band member's claim that he was the owner the mark	309.03(c) N.21	115 USPQ2d 1296, 1304-07 (TTAB 2015)
<i>Wonderbread 5 v. Gilles</i>	exhibits attached to respondent's testimony deposition, as well as portions of testimony that refer to the exhibits, stricken since respondent failed to identify properly, in his pretrial disclosures, the types of documents he intended to introduce as exhibits	533.02(b) N.7	115 USPQ2d 1296, 1298-1300 (TTAB 2015)
<i>Wonderbread 5 v. Gilles</i>	party need not disclose, prior to its testimony period, any notices of reliance it intends to file during its testimony period	702.01 N. 12	115 USPQ2d 1296, 1300 n.4 (TTAB 2015)
<i>Wonderbread 5 v. Gilles</i>	motion to strike the testimony of a witness for lack of proper or adequate pretrial disclosure may seek exclusion of the entire testimony, when there was no pretrial disclosure, or may seek exclusion of that portion of the testimony that was not adequately disclosed in accordance with <u>37 CFR § 2.121(e)</u>	702.01 N. 16	115 USPQ2d 1296, 1300 (TTAB 2015)
<i>Wonderbread 5 v. Gilles</i>	respondent's pretrial disclosures defective to the extent that they fail to summarize the types of documents and things respondent intended to	702.01 N.6	115 USPQ2d 1296, 1300 (TTAB 2015)



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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
	introduce as exhibits to his testimony; all forty-six exhibits attached thereto and all portions of respondent's testimony referring to the attached exhibits not considered		
<i>Wonderbread 5 v. Gilles</i>	evidence not obtained and filed in compliance with the rules of practice governing inter partes proceedings before the Board will not be considered by the Board	706 N. 1	115 USPQ2d 1296, 1300 (TTAB 2015)
<i>Zubulake v. UBS Warburg LLC</i>	discussing the obligation to preserve electronically stored information	406.04(c) new N. 10	220 FRD 212, 216-18 (SDNY 2003)