

CHANGES: INDEX TO CHANGES IN TMEP May 2024

Attention is directed to the following changes in the May 2024 TMEP.

SECTION	CHANGE
TMEP	Incorporated changes in accordance with final rules issued at 88 FR 50767 (International Trademark Classification Changes) and relevant precedential decisions reported prior to February 15, 2024.
102	Replaced "Trademark Electronic Search System (TESS)" with "trademark search system."
103	Revised to indicate that TEAS forms may be submitted only after the user has established a USPTO.gov account and completed the one-time mandatory identity verification process. Replaced "Electronic Trademark Assignment System (ETAS)" with "Assignment Center." Updated link.
104	Replaced "Trademark Electronic Search System (TESS)" with "trademark search system." Added link.
109.03	Replaced "Trademark Electronic Search System (TESS)" with "trademark search system."
111	Replaced "Trademark Electronic Search System (TESS)" with "trademark search system."
112	Replaced "Trademark Electronic Search System" with "trademark search system."
206.01	Added cross reference. Miscellaneous text edits.
301.01(a)	Revised to indicate that to file documents using TEAS, the user must be logged into their USPTO.gov account and have completed the one-time mandatory identity verification process in advance of a filing deadline. Replaced "Electronic Trademark Assignment System (ETAS)" with "Assignment Center." Updated link.
305.01	Added reference to "Assignment Center." Updated link.
402	Deleted "Trademark Image Capture Retrieval System (TICRS)."
405.04	Added cross reference.
501.04	Replaced "Electronic Trademark Assignment System (ETAS)" with "Assignment Center."
502.02(b)	Miscellaneous text edits. Deleted link to eMadrid portal. Revised to indicate that if the assignee is a sole proprietorship, the U.S. state or foreign country of organization of the sole proprietorship must be provided.
503.02	Revised to clarify that an attorney lien against a trademark registration or application will not be recorded. Added case citation.
503.03(a)	Replaced "Electronic Trademark Assignment System (ETAS)" with "Assignment Center." Updated link.
503.03(b)	Replaced "ETAS" with "Assignment Center." Added file size limit for documents filed through Assignment Center.
503.03(e)	Replaced "ETAS" with "Assignment Center." Updated link. Added requirement for email address to cover sheet requirement. Revised to indicate that if the assignee is a sole proprietorship, the U.S. state or foreign country of organization of the sole proprietorship must be provided. Miscellaneous text edits.
503.05	Miscellaneous text edit.
503.06(a)	Replaced "ETAS" with "Assignment Center."
503.06(c)	Replaced "ETAS" with "Assignment Center."
504.02	Replaced "ETAS" with "Assignment Center." Updated link.
601.01(d)	Added case citation.
602.01(a)	Revised to provide additional information about the bar information fields.

SECTION	CHANGE
602.01(b)	Updated guidance for when a submission includes clearly invalid attorney identification information.
604.01	Clarified guidance on how a qualified U.S. attorney may satisfy the appearance requirements of 37 C.F.R. §2.17(b)(1)(iii).
604.03	Deleted the third paragraph.
609.01	Added "if an attorney is not currently recognized."
609.02(e)	Added "if an attorney is not currently recognized."
611.01(c)(ii)	Clarified that the USPTO-generated pdf signature page is also available when using the Change Address or Representation (CAR) form and that verified statements submitted to support a claim of acquired distinctiveness under Section 2(f) are documents that must be signed in accordance with Rule 2.193(e).
705.05	Updated guidance on citation to precedential and non-precedential decisions.
707.02	Miscellaneous text edit. Revised to add not publishing a translation statement as a situation where the examining attorney has discretion to amend the application by examiner's amendment without prior approval.
710.01(b)	Miscellaneous text edits. Updated to indicate that information obtained from the online dictionary of slang terms should be treated as having limited probative value and, if made of record, then additional supportive and corroborative evidence from others sources should also be made of record. Added case citation.
710.03	Revised to indicate that the Trademark Trial and Appeal Board does not take judicial notice of the contents of application and registration files. Added case citations. Deleted case citations. Updated guidance for making a third-party registration of record. Added cross reference. Miscellaneous stylistic edits.
711.03	Added third paragraph regarding when the USPTO will refund the fee for an extension of time to respond to the previous Office action.
715.04(b)	Clarified that if an applicant does not respond to a new nonfinal action issued after remand of an application by the Trademark Trial and Appeal Board, then the application will be abandoned for failure to respond. Added cross reference.
716.02	Revised to indicate that the USPTO will not suspend an application when the record of a cited registration includes a show-cause order or an order for sanctions.
718.03(b)	Deleted last paragraph.
803.03	Added sole proprietorship as an example in the first sentence.
803.03(a)	Deleted references to the Trademark Image Capture and Retrieval System (TICRS). Revised to indicate that if an applicant identifies itself as a sole proprietorship, the U.S. state or foreign country of organization of the sole proprietorship must be provided.
803.03(i)	Clarified that foreign sole proprietorships must indicate the foreign country of organization of the sole proprietorship and specify the name and national citizenship of the sole proprietor.
803.04	Revised to indicate that for a sole proprietorship, the U.S. state or foreign country of organization of the sole proprietorship must be provided. Deleted reference to TICRS.
803.05	Added case citation.
803.05(a)	Added case citation.
803.05(b)	Revised to provide additional information about the owner email address field.
807	Replaced "Trademark Electronic Search System" with "trademark search system."
807.01	Updated guidance regarding filing a petition requesting a waiver of the requirement to depict the mark in a single rendition.

SECTION	CHANGE
807.10	Updated guidance regarding filing a petition requesting a waiver of the requirement to depict the mark in a single rendition.
811.01	Clarified that if an attorney's U.S. state, Commonwealth, or territory does not issue a bar number, then the application must provide the numbers used by the U.S. state, Commonwealth, or territory that licenses the attorney. Updated cross references. Revised to provide additional information about the bar information fields.
815.02	Miscellaneous text edits. Added cross references. Updated guidance regarding when the effective filing date of an application based solely on Trademark Act §1(b) and based on both §1(b) and §44 will or will not change when the applicant subsequently amends the application to the Supplemental Register.
815.03	Added second sentence.
816.02	Updated guidance regarding when the effective filing date of an application based solely on Trademark Act §1(b) and based on both §1(b) and §44 will or will not change when the applicant subsequently amends the application to the Supplemental Register. Miscellaneous text edits.
816.05	Added rule citation.
818	Revised to indicate that if an applicant is a sole proprietorship, the U.S. state or foreign country of its organization and the name and citizenship of the sole proprietor must be provided.
819.01(b)	Added case citation.
901.02	Revised to indicate sporadic, casual, and nominal use does not meet the standard for bona fide use of the mark in the ordinary course of trade. Added case citations.
901.03	Deleted sixth paragraph and case citation.
904.03(f)	Miscellaneous stylistic edits. Added cross reference.
907	Added case citations. Miscellaneous stylistic edits.
1014	Revised section title: Section 44 Applications and the Supplemental Register. Revised section to update guidance for when the application also has a §1(b) filing basis.
1102.03	Clarified examination procedures for applications with §1(b) and §44 bases that request amendment to the Supplemental Register. Miscellaneous text edits.
1108.02(a)	Replaced "Electronic Trademark Assignment System (ETAS)" with "Assignment Center." Updated link.
1110.04	Deleted "Trademark Image Capture Retrieval System (TICRS)."
1201.02(c)	Miscellaneous stylistic edits. Added case citation.
1202	Miscellaneous text edits. Added case citation.
1202.02(b)(ii)	Miscellaneous text edits. Added case citations. Added cross reference.
1202.04	Miscellaneous text edits. Added case citations.
1202.04(b)	Added case citations.
1202.04(c)	Miscellaneous text edit.
1202.04(d)	Miscellaneous text edit.
1202.05(a)	Added case citation. Miscellaneous stylistic edits.
1202.08(a)	Miscellaneous text edits. Revised to indicate that a creative work that is merely translated into a different language is still considered a single creative work. Added case citations.
1202.09(a)	Miscellaneous text edits. Added case citation.
1202.09(a)(I)	Added additional examples of evidence that shows the mark appears on at least two different works. Added case citation.

SECTION	CHANGE
1202.09(a)(ii)(A)	Added case citation. Deleted case citation.
1202.10	Revised section title: Characters in Creative Works. Added case citation. Miscellaneous text edits.
1202.10(a)	Revised section title: Characters in Creative Works in §1(b), §44, or §66(a) Applications.
1202.12	Miscellaneous text edits. Added case citation.
1203.03(b)(i)	Added case citations.
1203.03(b)(iii)	Miscellaneous text edits. Added statutory citation. Added case citation.
1204.04(b)(i)	Miscellaneous text edits. Deleted link. Deleted reference to TESS.
1205.01	Miscellaneous text edits. Deleted certain examples of statutes that may be a criminal offense. Added subheadings. Clarified that removal of a non-registration record does not indicate a refusal is not warranted under the Trademark Act. Deleted last example of statutorily protected matter.
1205.01(a)(i)	Revised cross reference.
1205.01(a)(iv)	Deleted cross reference.
1205.01(b)(ii)	Revised cross reference.
1205.01(c)(i)	Revised cross reference.
1205.01(c)(iii)	Deleted cross reference.
1205.01(d)	Deleted statutory citation. Updated access dates for links. Revised to delete references to a refusal under Trademark Act Sections 1 and 45 because the mark is not in lawful use in commerce. Miscellaneous text edits. Added last sentence.
1205.01(d)(i)	Renumbered 1205.01(d)(ii) as 1205.01(d)(i).
1205.01(d)(i)(A)	Deleted previous section. Renumbered 1205.01(d)(ii)(A) as 1205.01(d)(i)(A). Updated access dates for links. Deleted last paragraph.
1205.01(d)(i)(B)	Deleted previous section. Renumbered 1205.01(d)(ii)(B) as 1205.01(d)(i)(B).
1205.01(d)(i)(C)	Deleted previous section. Renumbered 1205.01(d)(ii)(C) as 1205.01(d)(i)(C).
1205.01(d)(i)(D)	Deleted previous section. Renumbered 1205.01(d)(ii)(D) as 1205.01(d)(i)(D).
1205.01(d)(i)(E)	Deleted section.
1205.01(d)(ii)	Renumbered 1205.01(d)(iii) as 1205.01(d)(ii). Deleted reference to a refusal under Trademark Act Sections 1 and 45.
1205.01(d)(iii)	Renumbered 1205.01(d)(iv) as 1205.01(d)(iii). Deleted references to a refusal under Trademark Act Sections 1 and 45.
1205.02	Revised cross references.
1206.01	Miscellaneous text and stylistic edits. Added statutory citation. Added case citation.
1206.02	Miscellaneous text and stylistic edits. Added statutory citation. Added case citation.
1206.03	Deleted example for when no inquiry is necessary.
1207.01(a)(iii)	Miscellaneous text and stylistic edits. Added case citation. Deleted case citations.
1207.01(b)(i)	Added case citations.
1207.01(d)(iii)	Miscellaneous text and stylistic edits. Added case citations. Deleted case citations.
1207.01(d)(vii)	Added case citations. Miscellaneous stylistic edits.
1207.01(d)(ix)	Miscellaneous stylistic edit.
1209.03(q)	Miscellaneous text edits.
1212.04(b)	Added case parenthetical.
1212.06(a)	Miscellaneous stylistic edits. Added case citation.

SECTION	CHANGE
1212.06(b)	Replaced "secondary meaning" with "acquired distinctiveness." Miscellaneous text edits. Added case citation. Deleted case citations.
1212.06(c)	Added case citation.
1213.10	Added case citation. Deleted case citations.
1301.02(c)	Revised section title: Three-Dimensional Trade Dress Service Marks. Miscellaneous text edits. Added case citations. Deleted case citations. Added the <i>Seabrook</i> factors for determining whether service mark trade dress is inherently distinctive. Added cross references.
1303.01	Revised to indicate that for a sole proprietorship, the U.S. state or foreign country of its organization and the name and citizenship of the sole proprietor must be provided.
1304.02(a)(i)	Miscellaneous text edits. Added case citation.
1304.02(a)(i)(C)	Added case citation. Miscellaneous stylistic edits.
1306.01(c)	Revised to indicate that for a sole proprietorship, the U.S. state or foreign country of its organization and the name and citizenship of the sole proprietor must be provided.
1401.02(a)	Updated references to current version of Nice Agreement. Miscellaneous text edits. Updated General Remarks and information regarding indications of goods or services appearing in the headings of Classes 2, 3, 9, 17, 21, 22, and 28.
1401.05(b)	Clarified that equivalent wording to "for medical use" is also not sufficient to justify classification of certain items in Class 10.
1401.07	Deleted "solutions."
1401.10	Added last two sentences and cross reference to first paragraph.
1401.14(e)	Added information regarding replacement of the wording "personal and social services rendered by others to meet the needs of individuals" in the Class 45 Heading in the 12th edition of the Nice Classification. Miscellaneous stylistic edit.
1401.15(b)	Revised section title: Non-fungible Tokens (NFTs). Revised section to clarify examination procedures regarding identifications that include NFTs.
1401.15(c)	New section: Virtual Services.
1402.01	Added case citations.
1402.01(d)	Added case citation. Miscellaneous stylistic edits.
1402.03(a)	Added additional information regarding classification of parts.
1402.05(a)	Edited example to include the term "upholstery."
1402.06	Added case citation. Miscellaneous stylistic edits.
1402.06(b)	Added case citation. Miscellaneous stylistic edits.
1402.09	Clarified that marks registered to an entity other than the applicant should not be used in an identification regardless of the effective date of an ID manual. Added last paragraph.
1402.11	Revised to indicate that "sales" cannot be listed as a service in the identification and that the wording "retail sales" and "wholesale sales" are unacceptable identifications that cannot be classified under the Nice Classification. Added cross reference.
1402.11(a)(vi)	Revised section title: Retail Services. Clarified that the type of goods featured by the services must be limited to items that are goods in trade and added examples. Added cross references. Miscellaneous stylistic edits. Revised to indicate that "sales" cannot be classified under the Nice Classification.
1402.11(a)(vii)	Added cross references.
1402.11(a)(x)	Revised to add "in a §1 or §44 application" in the last paragraph.
1402.11(b)	Miscellaneous text edits.

SECTION	CHANGE
1402.11(e)	Miscellaneous text edits.
1501.02(b)	Miscellaneous text edits. Added case citation.
1503.01	Added cross reference.
1505.01(b)(i)	Updated procedure for when an amendment is acceptable and republication is required.
1604.16	Deleted third sentence in second paragraph.
1605	Miscellaneous text and stylistic edits. Added case citation.
1605.04	Miscellaneous stylistic edits. Added case citation.
1605.06	Miscellaneous text edits. Added case citation.
1606.12	Deleted third sentence in second paragraph.
1609.10(a)	Revised to add "including the period of time since registration." Miscellaneous text edits.
1612.01	Added case citation.
1612.01(a)	Revised to add information about the owner email address field. Miscellaneous text edits.
1612.01(b)	Added case citation.
1613.16	Deleted third sentence in second paragraph.
1615.01	Deleted reference to TICRS.
1708	Deleted last sentence of second paragraph.
1714.01(f)(ii)(D)	Deleted last sentence in third paragraph.
1715.05(a)	Replaced "TESS" with "trademark search system." Miscellaneous text edits.
1716.04(c)	Added paragraph indicating that registrant's use of the mark must be bona fide use in the ordinary course of trade and not merely to reserve a right in a mark. Added statutory citation. Added cross reference.
1902.02(c)	Replaced "Electronic Trademark Assignment System (ETAS)" and "ETAS" with "Assignment Center." Updated link.
1902.03(a)	Revised to indicate information that must be provided in a petition to review the denial of certification of an international application.
1902.03(b)	New section: Petition for an International Application or Registration.
1904.02(c)(i)	Miscellaneous text edits. Added example.
Appendix B	Updated term of registration for Canada.
Appendix C	Updated list of matter protected by statute.