

# Trademark Trial and Appeal Board (TTAB) update

Gerard Rogers  
TTAB Chief Judge

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# New case filings – cumulative increases FY17-FY19

- Ex parte appeals Up 6.8%
- Extensions to oppose Up 7.6%
- Oppositions Up 18.3%
- Petitions to cancel Up 31.3%

# Moderating filings in FY20

- Ex parte appeals (3,487) +4.6%
- Extensions to oppose (18,893) -7.8%
- Oppositions (6,712) -3.5%
- Petitions to cancel (2,501) +3.1%

# Year to date filings in FY21

- Ex parte appeals (2,685) +2.7%
- Extensions to oppose (12,864) -9.2%
- Oppositions (4,858) -3.5%
- Petitions to cancel (1,833) -2.3%

# Surge in trial cases impacted motions

- Inventory rose almost 50% in FY19 alone
- Average pendency above goal FY18-FY20
- But inventory reduced by 12% in FY20, with none over 12 weeks old at end of fiscal year
- YTD pendency in FY21 reduced by 21.8%, down from 12.4 weeks in FY20 to 9.7 weeks

# Surge in cases maturing to RFD

- Total cases RFD in FY19 +14.5% over FY18
- Trial cases, as percentage of all cases RFD, increased to 30.9% in FY19
- FY20 stabilized: total cases RFD -8.5% and trial cases as percentage at 23.2%
- FY21 YTD decline in cases RFD only 1.8% and trial cases 26.3% of total

# Pendency goals met YTD in FY21

- Motion decision pendency at 9.7 weeks
- Appeal decision pendency at 7.7 weeks
- Trial decision pendency at 9.3 weeks
- Aware of possible increases from TM surge

**TTAB fee changes**



# Fee increases as of January 2

- Petition to cancel, notice of opposition increased by \$200 per class
- Appeal increased by \$25 per class
- Extension of time to oppose increased by \$100 per application for initial 90-day extension or second extension for 60 days; increased \$200 per application for final 60-day extension (still no fee for initial 30-day extension)

# New TTAB fees as of January 2

- Second or any subsequent extension to file appeal brief—\$100 per application
- Appeal brief—\$200 per class
- Request for oral hearing—\$500 per proceeding

# Impact of fees on filings

- Refunds in cancellation cases

Do we refund if petitioner moves for default judgment?  
(yes, but a call will do)

- Appeal brief

Appeal brief fee for supplemental brief? (no); do not use  
appeal brief form

- Request for oral hearing

# **COVID-19 Prioritized Review**

# Priority handling of applications

- For applications involved in COVID-19 prioritized examination in Trademarks
- Expedited review of any ex parte appeals
- Interlocutory attorney participation in discovery conference for oppositions
- Board monitoring these applications, but parties may call to ensure priority review

**TTAB IT** 

# TTAB IT

- Legacy enhancements and stabilization

2-year stabilization project complete; patching when necessary for security; TMA preparations

- Planning for TTAB Center

Designed and developed landing page with MyUSPTO secure logon; started work on notice of opposition form

# TTAB IT–use the Reading Room

- TTAB Reading Room replaced e-FOIA webpage August 2020
- Search final decisions and precedential decisions/orders
- Search by date, issue involved, other criteria, or by text
- URL: [TTAB Reading Room - Site Link](#)
- Provide feedback via [TTABFeedback@uspto.gov](mailto:TTABFeedback@uspto.gov) (suggestions will be considered for future releases)



**Pretrial Conference pilot**

# Pretrial conference pilot

- Survey taken of TTAB attorneys and judges on goals, processes
- Internal review of survey responses completed
- If deployed, will focus on cases with indications they are likely to create large, unfocused or unwieldy records
- Will focus parties' approach to trial and consideration of stipulations

# Survey results, recommendations

## (1 of 4)

- Q: Would it be beneficial to hold Final Pretrial Conferences (FPCs) on a pilot project basis in trial cases that could generate large, unfocused or unwieldy records?
- Proceed with pilot, experiment, adjust over time
- An ATJ and IA should oversee the FPCs
- ATJ who sits on FPC should be on final panel deciding case
- The FPC should be held sometime after close of discovery but before pre-trial disclosures are due
- Parties to submit a proposed Final Pretrial Conference Order (FPCO) (complete with a trial plan and pretrial disclosures)

# Survey results, recommendations

## (1 of 3)

- Parties come to the FPC with possible amendments to their claims and defenses in their draft FPCO
- Once the claims and defenses are reflected in the FPCO approved by the Board, that is what parties will pursue at trial
- Parties will be strongly encouraged to enter into stipulations on exhibits, agreed-upon facts, presentation of evidence, etc., subject to Board approval
- Winnow down the case with stipulations, and dispense with extraneous claims/defenses/objections

# Survey results, recommendations

## (2 of 3)

- Known objections to evidence should be raised and discussed in conference, particularly for documentary evidence (to encourage stipulations)
- Encourage parties to focus objections on issues they are likely to win and that are outcome determinative
- Discourage parties from asserting a whole litany of objections

# Survey results, recommendations

## (3 of 3)

- For each of the following indicia please specify how helpful they would be in identifying cases that should be included in the pilot: A. number of claims/defenses unwarranted; B. parties or counsel unfamiliar with TTAB practice; C. too contentious, too many motions
- Large majorities said all three somewhat or very important signs, with C. the most important

