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§2.84 Jurisdiction over published applications.

(a) The examiner may exercise jurisdiction over an application up to the date the mark is published in the ''Official Gazette.'' After publication of an application under section 1(a) or 44 of the Act the examiner may, with the permission of the Commissioner, exercise jurisdiction over the application. After publication of an application under section 1(b) of the Act, the examiner may exercise jurisdiction over the application after the issuance of the notice of allowance under section 13(b)(2) of the Act. After publication, and prior to issuance of a notice of allowance in an application under section 1(b), the examiner may, with the permission of the Commissioner, exercise jurisdiction over the application.

(b) After publication, but before the printing of the certificate of registration in an application under section 1(a) or 44 of the Act, or before the printing of the notice of allowance in an application under section 1(b) of the Act, an application which is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board may be amended if the amendment does not necessitate republication of the mark or issuance of an Office action. Otherwise, an amendment to such an application may be submitted only upon petition to the Commissioner to restore jurisdiction of the application to the examiner for consideration of the amendment and further examination. The amendment of an application which is the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board is governed by §2.133.

[54 FR 37594, Sept. 11, 1989]

CLASSIFICATION

§2.85 Classification schedules.

(a) Section 6.1 of part 6 of this chapter specifies the system of classification for goods and services which applies for all statutory purposes to trademark applications filed in the Patent and Trademark Office on or after September 1, 1973, and to registrations issued on the basis of such applications. It shall not apply to applications filed on or before August 31, 1973, nor to registrations issued on the basis of such applications.

(b) With respect to applications filed on or before August 31, 1973, and registrations issued thereon, including older registrations issued prior to that date, the classification system under which the application was filed will govern for all statutory purposes, including, inter alia, the filing of petitions to revive, appeals, oppositions, petitions for cancellation, affidavits under section 8 and renewals, even though such petitions to revive, appeals, etc., are filed on or after September 1, 1973.

(c) Section 6.2 of part 6 of this chapter specifies the system of classification for goods and services which applies for all statutory purposes to all trademark applications filed in the Patent and Trademark Office on or before August 31, 1973, and to registrations issued on the basis of such applications, except when the registration may have been issued under a classification system prior to that set forth in §6.2. Moreover, this classification will also be utilized for facilitating trademark searches until all pending and registered marks in the search file are organized on the basis of the international system of classification.

(d) Renewals filed on registrations issued under a prior classification system will be processed on the basis of that system.

(e) Where the amount of the fee received on filing an appeal in connection with an application or on an application for renewal is sufficient for at least one class of goods or services but is less than the required amount because multiple classes in an application or registration are involved, the appeal or renewal application will not be refused on the ground that the amount of the fee was insufficient if the required additional amount of the fee is received in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office, or if action is sought only for the number of classes equal to the number of fees submitted.

(f) Sections 6.3 and 6.4 specify the system of classification which applies to certification marks and collective membership marks.

(g) Classification schedules shall not limit or extend the applicant's rights.

(35 U.S.C. 6; 15 U.S.C. 1113, 1123)

[38 FR 14681, June 4, 1973, as amended at 39 FR 16885, May 10, 1974; 47 FR 41282, Sept. 17, 1982; 63 FR 48097, Sept. 9, 1998]

§ 2.86 Application may include multiple classes.

(a) In a single application, an applicant may apply to register the same mark for goods and/or services in multiple classes. The applicant must:

(1) Specifically identify the goods or services in each class;

(2) Submit an application filing fee for each class; and

(3) Include either dates of use (see §§ 2.34(a)(1)(ii) and (iii)) and one specimen for each class, or a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class. The applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application.

(b) An amendment to allege use under § 2.76 or a statement of use under § 2.88 must include, for each class, the required fee, dates of use, and one specimen. The applicant may not file the amendment to allege use or statement of use until the applicant has used the mark on all the goods or services, unless the applicant files a request to divide. See § 2.87 for information regarding requests to divide.

(c) The Office will issue a single certificate of registration for the mark, unless the applicant files a request to divide. See § 2.87 for information regarding requests to divide.

[64 FR 48923, Sept. 8, 1999]

§ 2.87 Dividing an application.

(a) An application may be physically divided into two or more separate applications upon the payment of a fee for each new application created and submission by the applicant of a request in accordance with paragraph (d) of this section.

(b) In the case of a request to divide out one or more entire classes from an application, only the fee under paragraph (a) of this section will be required. However, in the case of a request to divide out some, but not all, of the goods or services in a class, an application filing fee for each new separate application to be created by the division must be submitted, together with the fee under paragraph (a) of this section. Any outstanding time period for action by the applicant in the original application at the time of the division will be applicable to each new separate application created by the division.

(c) A request to divide an application may be filed at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication; or during an opposition, concurrent use, or interference proceeding, upon motion granted by the Trademark Trial and Appeal Board. Additionally, a request to divide an application under section 1(b) of the Act may be filed with a statement of use under § 2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration.

(d) A request to divide an application should be made in a separate paper from any other amendment or response in the application. The title ''Request to divide application.'' should appear at the top of the first page of the paper.

[57 FR 38196, Aug. 21, 1992; 57 FR 40493, Sept. 3, 1992, as amended at 63 FR 48097, Sept. 9, 1998]

POST NOTICE OF ALLOWANCE

§ 2.88 Filing statement of use after notice of allowance.

(a) In an application under section 1(b) of the Act, a statement of use, required under section 1(d) of the Act, must be filed within six months after issuance of a notice of allowance under section 13(b)(2) of the Act, or within an extension of time granted under § 2.89. A statement of use that is filed prior to issuance of a notice of allowance is premature, will not be considered, and will be returned to the applicant.

(b) A complete statement of use must include:

(1) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person