

§ 2.75

case or to arrange the papers for printing or copying, or when otherwise desired to clarify the record, the examiner may require the entire statement to be rewritten.

§ 2.75 Amendment to change application to different register.

(a) An application for registration on the Principal Register under section 1(a) or 44 of the Act may be changed to an application for registration on the Supplemental Register and vice versa by amending the application to comply with the rules relating to the appropriate register, as the case may be.

(b) An application under section 1(b) of the Act may be amended to change the application to a different register only after submission of an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88. When such an application is changed from the Principal Register to the Supplemental Register, the effective filing date of the application is the date of the filing of the allegation of use under section 1(c) or 1(d) of the Act.

[54 FR 37593, Sept. 11, 1989]

§ 2.76 Amendment to allege use.

(a) An application under section 1(b) of the Act may be amended to allege use of the mark in commerce under section 1(c) of the Act at any time between the filing of the application and the date the examiner approves the mark for publication. Thereafter, an allegation of use may be submitted only as a statement of use under § 2.88 after the issuance of a notice of allowance under section 13(b)(2) of the Act. If an amendment to allege use is filed outside the time period specified in this paragraph, it will be returned to the applicant.

(b) A complete amendment to allege use must include:

(1) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)) that:

(i) The applicant believes it is the owner of the mark; and

(ii) The mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, and those

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goods or services specified in the application on or in connection with which the applicant uses the mark in commerce.

(2) One specimen of the mark as actually used in commerce. See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6.

(c) An amendment to allege use may be filed only when the applicant has made use of the mark in commerce on or in connection with all of the goods or services, as specified in the application, for which applicant will seek registration in that application unless the amendment to allege use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the amendment pertains. If more than one item of goods or services is specified in the amendment to allege use, the dates of use required in paragraph (b)(1) of this section need be for only one of the items specified in each class, provided the particular item to which the dates apply is designated.

(d) The title "Amendment to allege use under § 2.76" should appear at the top of the first page of the paper.

(e) The Office will review a timely filed amendment to allege use to determine whether it meets the following minimum requirements:

(1) The fee prescribed in § 2.6;

(2) One specimen or facsimile of the mark as used in commerce; and

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant that the mark is in use in commerce.

(f) A timely filed amendment to allege use which meets the minimum requirements specified in paragraph (e) of this section will be examined in accordance with §§ 2.61 through 2.69. If, as a result of the examination of the amendment to allege use, applicant is found not entitled to registration for any reason not previously stated, applicant will be so notified and advised of the reasons and of any formal requirements or refusals. The notification shall restate or incorporate by reference all unresolved refusals or requirements previously stated. The amendment to allege use may be