

statement of use, but that if the statement of use is found by the Patent and Trademark Office to be fatally defective, applicant will need additional time in which to file a new statement of use.

(f) The goods or services specified in a request for an extension of time for filing a statement of use must conform to those goods or services identified in the notice of allowance. Any goods or services specified in the notice of allowance which are omitted from the identification of goods or services in the request for extension of time will be presumed to be deleted and the applicant may not thereafter request that the deleted goods or services be reinserted in the application. If appropriate, an applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or "those goods or services identified in the notice of allowance except \* \* \*" followed by an identification of the goods or services to be deleted.

(g) The applicant will be notified of the grant or denial of a request for an extension of time, and of the reasons for a denial. Failure to notify the applicant of the grant or denial of the request prior to the expiration of the existing period or requested extension does not relieve the applicant of the responsibility of timely filing a statement of use under § 2.88. If, after denial of an extension request, there is time remaining in the existing six-month period for filing a statement of use, applicant may submit a substitute request for extension of time. Otherwise, the only recourse available after denial of a request for an extension of time is a petition to the Director in accordance with §§ 2.66 or 2.146. A petition from the denial of a request for an extension of time to file a statement of use shall be filed within two months of the mailing date of the denial of the request. If the petition is granted, the term of the requested six month extension that was the subject of the petition will run from the date of the expiration of the previously existing six month period for filing a statement of use.

(h) If the extension request is not filed within a reasonable time after it

is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the applicant still has a bona fide intention to use the mark in commerce.

[54 FR 37595, Sept. 11, 1989, as amended at 64 FR 48923, Sept. 8, 1999; 64 FR 51245, Sept. 22, 1999]

#### INTERFERENCES AND CONCURRENT USE PROCEEDINGS

AUTHORITY: Secs. 2.91 to 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

##### § 2.91 Declaration of interference.

(a) An interference will not be declared between two applications or between an application and a registration except upon petition to the Director. Interferences will be declared by the Director only upon a showing of extraordinary circumstances which would result in a party being unduly prejudiced without an interference. In ordinary circumstances, the availability of an opposition or cancellation proceeding to the party will be deemed to remove any undue prejudice.

(b) Registrations and applications to register on the Supplemental Register, registrations under the Act of 1920, and registrations of marks the right to use of which has become incontestable are not subject to interference.

[37 FR 2881, Feb. 9, 1972, as amended at 54 FR 34897, Aug. 22, 1989]

##### § 2.92 Preliminary to interference.

An interference which has been declared by the Director will not be instituted by the Trademark Trial and Appeal Board until the Examiner of Trademarks has determined that the marks which are to form the subject matter of the controversy are registrable, and all of the marks have been published in the Official Gazette for opposition.

[54 FR 34897, Aug. 22, 1989]

##### § 2.93 Institution of interference.

An interference is instituted by the mailing of a notice of interference to the parties. The notice shall be sent to each applicant, in care of the applicant's attorney or other representative

## §§ 2.94–2.95

of record, if any, and if one of the parties is a registrant, the notice shall be sent to the registrant or the registrant's assignee of record. The notice shall give the name and address of every adverse party and of the adverse party's attorney or other authorized representative, if any, together with the serial number and date of filing and publication of each of the applications, or the registration number and date of issuance of each of the registrations, involved.

[54 FR 34897, Aug. 22, 1989]

## §§ 2.94–2.95 [Reserved]

### § 2.96 Issue; burden of proof.

The issue in an interference between applications is normally priority of use, but the rights of the parties to registration may also be determined. The party whose application involved in the interference has the latest filing date is the junior party and has the burden of proof. When there are more than two parties to an interference, a party shall be a junior party to and shall have the burden of proof as against every other party whose application involved in the interference has an earlier filing date. If the involved applications of any parties have the same filing date, the application with the latest date of execution will be deemed to have the latest filing date and that applicant will be the junior party. The issue in an interference between an application and a registration shall be the same, but in the event the final decision is adverse to the registrant, a registration to the applicant will not be authorized so long as the interfering registration remains on the register.

[48 FR 23135, May 23, 1983; 48 FR 27225, June 14, 1983]

## § 2.97 [Reserved]

### § 2.98 Adding party to interference.

A party may be added to an interference only upon petition to the Director by that party. If an application which is or might be the subject of a petition for addition to an interference is not added, the examiner may suspend action on the application pending

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termination of the interference proceeding.

[48 FR 23135, May 23, 1983]

### § 2.99 Application to register as concurrent user.

(a) An application for registration as a lawful concurrent user will be examined in the same manner as other applications for registration.

(b) When it is determined that the mark is ready for publication, the applicant may be required to furnish as many copies of his application, specimens and drawing as may be necessary for the preparation of notices for each applicant, registrant or user specified as a concurrent user in the application for registration.

(c) Upon receipt of the copies required by paragraph (b) of this section, the examiner shall forward the application for concurrent use registration for publication in the *Official Gazette* as provided by § 2.80. If no opposition is filed, or if all oppositions that are filed are dismissed or withdrawn, the Trademark Trial and Appeal Board shall prepare a notice for the applicant for concurrent use registration and for each applicant, registrant or user specified as a concurrent user in the application. The notices for the specified parties shall state the name and address of the applicant and of the applicant's attorney or other authorized representative, if any, together with the serial number and filing date of the application.

(d)(1) The notices shall be sent to each applicant, in care of his attorney or other authorized representative, if any, to each user, and to each registrant. A copy of the application shall be forwarded with the notice to each party specified in the application.

(2) An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified as a concurrent user in the application, but a statement, if desired, may be filed within forty days after the mailing of the notice; in the case of any other party specified as a concurrent user in the application, an answer must be filed within forty days after the mailing of the notice.