

§2.73

will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

(c) In an application based on a claim of priority under section 44(d) of the Act, or on a mark duly registered in the country of origin of the foreign applicant under section 44(e) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The description or drawing of the mark in the foreign registration certificate supports the amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

[64 FR 48922, Sept. 8, 1999]

§2.73 Amendment to recite concurrent use.

(a) An application under section 1(a), section 44, or section 66(a) of the Act may be amended to an application for concurrent use registration, provided the application as amended satisfies the requirements of §2.42. The trademark examining attorney will determine whether the application, as amended, is acceptable.

(b) An application under section 1(b) of the Act may not be amended so as to be treated as an application for a concurrent registration until an acceptable amendment to allege use under §2.76 or statement of use under §2.88 has been filed in the application, after which time such an amendment may be made, provided the application as amended satisfies the requirements of §2.42. The examiner will determine whether the application, as amended, is acceptable.

[54 FR 37593, Sept. 11, 1989, as amended at 68 FR 55764, Sept. 26, 2003]

§2.74 Form of amendment.

(a) In every amendment the exact word or words to be stricken out or inserted in the application must be specified and the precise point indicated

37 CFR Ch. I (7-1-05 Edition)

where the deletion or insertion is to be made. Erasures, additions, insertions, or mutilations of the papers and records must not be made by the applicant or his attorney or agent.

(b) When an amendatory clause is amended, it must be wholly rewritten so that no interlineation or erasure will appear in the clause, as finally amended, when the application is passed to registration. If the number or nature of the amendments shall render it otherwise difficult to consider the 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.

(c) In an application under section 66(a) of the Act, the applicant may not amend the application to the Supplemental Register.

[54 FR 37593, Sept. 11, 1989, as amended at 68 FR 55765, Sept. 26, 2003]

§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