§ 2.56 Specimens.

(a) An application under section 1(a) of the Act, an amendment to allege use under §2.76, and a statement of use under §2.88 must each include one specimen showing the mark as used on or in connection with the goods, or in the sale or advertising of the services in commerce.

(b)(1) A trademark specimen is a label, tag, or container for the goods, or a display associated with the goods. The Office may accept another document related to the goods or the sale of the goods when it is impracticable to place the mark on the goods, packaging for the goods, or displays associated with the goods.

(2) A service mark specimen must show the mark as actually used in the sale or advertising of the services.

(3) A collective trademark or collective service mark specimen must show how a member uses the mark on the member’s goods or in the sale or advertising of the member’s services.

(4) A collective membership mark specimen must show use by members to indicate membership in the collective organization.

(5) A certification mark specimen must show how a person other than the owner uses the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of that person’s goods or services; or that members of a union or other organization performed the work or labor on the goods or services.

(c) A photocopy or other reproduction of a specimen of the mark as actually used on or in connection with the goods, or in the sale or advertising of the services, is acceptable. However, a photocopy of the drawing required by §2.51 is not a proper specimen.

(d)(1) The specimen should be flat, and not larger than 8 1/2 inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen of this size is not available, the applicant may substitute a suitable photograph or other facsimile.

(2) If the applicant files a specimen exceeding these size requirements (a “bulky specimen”), the Office will create a digital facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8 1/2 inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the record. The Office may destroy the original bulky specimen.

(3) In the absence of non-bulky alternatives, the Office may accept an audio or video cassette tape recording, CD-ROM, or other appropriate medium.

(4) For a TEAS submission, the specimen must be a digitized image in .jpg or .pdf format.

§ 2.59 Filing substitute specimen(s).

(a) In an application under section 1(a) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. The applicant must verify by affidavit or declaration under §2.20 that the substitute specimens were in use in commerce at least as early as the filing date of the application. Verification is not required if the specimen is a duplicate or facsimile of a specimen already of record in the application.

(b) In an application under section 1(b) of the Act, after filing either an amendment to allege use under §2.76 or a statement of use under §2.88, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. If the applicant submits substitute specimen(s), the applicant must:

(1) For an amendment to allege use under §2.76, verify by affidavit or declaration under §2.20 that the applicant used the substitute specimen(s) in commerce prior to filing the amendment to allege use.

(2) For a statement of use under §2.88, verify by affidavit or declaration under §2.20 that the applicant used the substitute specimen(s) in commerce either prior to filing the statement of use or prior to the expiration of the
deadline for filing the statement of use.

§ 2.64 Final action.

(a) On the first or any subsequent reexamination or reconsideration the refusal of the registration or the insistence upon a requirement may be stated to be final, whereupon applicant’s response is limited to an appeal, or to a compliance with any requirement, or to a petition to the Director if permitted by §2.63(b).

(b) During the period between a final action and expiration of the time for filing an appeal, the applicant may request the examiner to reconsider the final action. The request must be signed by the applicant, someone with legal authority to bind the applicant (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under §11.14 of this chapter, in accordance with the requirements of §2.193(e)(2).

§ 2.65 Reexamination.

(a) After response by the applicant, the application will be reexamined or reconsidered. If registration is again refused or any formal requirement is repeated, but the examiner’s action is not stated to be final, the applicant may respond again.

(b) After reexamination the applicant may respond by filing a timely petition to the Director for relief from a formal requirement if: (1) The requirement is repeated, but the examiner’s action is not made final, and the subject matter of the requirement is appropriate for petition to the Director (see §2.146(b)); or (2) the examiner’s action is made final and such action is limited to subject matter appropriate for petition to the Director. If the petition is denied, the applicant shall have until six months from the date of the Office action which repeated the requirement or made it final or thirty days from the date of the decision on the petition, whichever date is later, to comply with the requirement. A formal requirement which is the subject of a petition decided by the Director may not subsequently be the subject of an appeal to the Trademark Trial and Appeal Board.

[48 FR 23134, May 23, 1983]