

§ 351.12

direct statement, except that the claim or the requested rate shall not have to be included if it has not changed from the written direct statement. Further proceedings at the rebuttal stage shall follow the schedule ordered by the Copyright Royalty Judges.

[70 FR 30905, May 31, 2005, as amended at 71 FR 53329, Sept. 11, 2006]

§ 351.12 Closing the record.

To close the record of a proceeding, the presiding Judge shall make an announcement that the taking of evidence has concluded.

[71 FR 53330, Sept. 11, 2006]

§ 351.13 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Copyright Royalty Judges. Anyone wishing to inspect the transcript of a hearing may do so at the offices of the Copyright Royalty Board.

(b) The transcript of testimony and written statements, except those portions to which an objection has been sustained, and all exhibits, documents and other items admitted in the course of a proceeding shall constitute the official written record. The written record, along with the Copyright Royalty Judges' final determination, shall be available at the Copyright Royalty Board's offices for public inspection and copying.

[71 FR 53330, Sept. 11, 2006]

§ 351.14 Proposed findings of fact and conclusions of law.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs or memoranda of law, or may be directed by the Copyright Royalty Judges to do so. Such filings, and any replies to them, shall take place after the record has been closed.

(b) Failure to file when directed to do so shall be considered a waiver of the right to participate further in the proceeding unless good cause for the failure is shown. A party waives any objection to a provision in the determination unless the provision conflicts with a proposed finding of fact or conclusion of law filed by the party.

37 CFR Ch. III (7–1–13 Edition)

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions, and shall contain appropriate citations to the record for each evidentiary fact. Proposed conclusions shall be stated and numbered by paragraph separately. Failure to comply with this paragraph (c) may result in the offending paragraph being stricken.

[71 FR 53330, Sept. 11, 2006]

§ 351.15 Remand.

In the event of a remand from the United States Court of Appeals for the District of Columbia Circuit of a final determination of the Copyright Royalty Judges, the parties to the proceeding shall within 45 days from the issuance of the mandate from the Court of Appeals file with the Judges written proposals for the conduct and schedule of the resolution of the remand.

[74 FR 38533, Aug. 4, 2009]

PART 352—DETERMINATIONS

Sec.

352.1 How made.

352.2 Timing.

352.3 Final determinations.

AUTHORITY: 17 U.S.C. 803.

SOURCE: 70 FR 30905, May 31, 2005, unless otherwise noted.

§ 352.1 How made.

Except for decisions authorized by law to be made by a single Copyright Royalty Judge, determinations in a proceeding will be made by a majority of the Copyright Royalty Judges. The opinion or opinions of the majority and any dissenting opinion will be included in the determination. Each determination will be transmitted to the Register of Copyrights to enable review for consistency with the Copyright Act on the day it is issued.

[70 FR 30905, May 31, 2005, as amended at 71 FR 53330, Sept. 11, 2006]

§ 352.2 Timing.

The Copyright Royalty Judges will issue their determination within 11

months of the date of the post-discovery settlement conference or 15 days before the expiration of the existing rates or terms in a proceeding to determine successors to rates or terms that will expire on a specific date, whichever date first occurs. The date the determination is “issued” refers to the date of the order.

[70 FR 30905, May 31, 2005, as amended at 71 FR 53330, Sept. 11, 2006]

§ 352.3 Final determinations.

Unless a motion for a rehearing is timely filed within 15 days, the determination by the Copyright Royalty Judges pursuant to 17 U.S.C. 803(c) in a proceeding is final when it is issued.

[71 FR 53330, Sept. 11, 2006]

PART 353—REHEARING

Sec.

353.1 When granted.

353.2 Form and content of rehearing motions.

353.3 Procedure on rehearing.

353.4 Filing deadline.

353.5 Participation not required.

AUTHORITY: 17 U.S.C. 803.

SOURCE: 70 FR 30905, May 31, 2005, unless otherwise noted.

§ 353.1 When granted.

A motion for rehearing may be filed by any participant in the relevant proceeding. The Copyright Royalty Judges may grant rehearing upon a showing that any aspect of the determination may be erroneous.

[71 FR 53330, Sept. 11, 2006]

§ 353.2 Form and content of rehearing motions.

A motion for rehearing shall not exceed 10 pages in length and must set forth, in the beginning of its text, a brief summary statement of the aspects of the determination believed by the moving participant to be without evidentiary support in the record or contrary to legal requirements.

§ 353.3 Procedure on rehearing.

Upon receipt of a motion for rehearing, the Copyright Royalty Judges will issue an appropriate order. No participant shall file a response to a rehearing

motion, unless such response is allowed by order of the Copyright Royalty Judges.

[70 FR 30905, May 31, 2005, as amended at 71 FR 53330, Sept. 11, 2006]

§ 353.4 Filing deadline.

A motion for rehearing must be filed within 15 days after the date on which the Copyright Royalty Judges issue an initial determination.

[71 FR 53330, Sept. 11, 2006]

§ 353.5 Participation not required.

In any case in which a response to a rehearing motion is allowed, or rehearing is granted, an opposing party shall not be required to participate in the rehearing. The Copyright Royalty Judges will not draw any negative inference from a lack of participation in a rehearing. Nonparticipation in rehearing proceedings may limit the scope of their participation in judicial review proceedings as set forth in 17 U.S.C. 803(d)(1).

[70 FR 30905, May 31, 2005, as amended at 71 FR 53330, Sept. 11, 2006]

PART 354—SUBMISSIONS TO THE REGISTER OF COPYRIGHTS

Sec.

354.1 Material questions of copyright law.

354.2 Novel questions.

354.3 Register of Copyrights' authority to redesignate referrals.

AUTHORITY: 17 U.S.C. 802.

SOURCE: 70 FR 30905, May 31, 2005, unless otherwise noted.

§ 354.1 Material questions of copyright law.

(a) *Discretionary referrals.* The Copyright Royalty Judges may seek guidance from the Register of Copyrights with respect to a material question of substantive law, concerning an interpretation or construction of those provisions of the Copyright Act, that arises in the course of their proceedings.

(b) *How presented.* A question of substantive law may be referred to the Register of Copyrights at the request of one or more of the Copyright Royalty Judges. A question of substantive