

mark filed with the original application.

[64 FR 48922, Sept. 8, 1999]

**§ 2.73 Amendment to recite concurrent use.**

An application that includes section 1(a) of the Trademark Act as a filing basis, or for which an acceptable allegation of use under § 2.76 or § 2.88 has been filed, may be amended to an application for concurrent use registration, provided that the application as amended meets the requirements of § 2.42. The trademark examining attorney will determine whether the application, as amended, is acceptable.

[73 FR 67770, Nov. 17, 2008]

**§ 2.74 Form and signature of amendment.**

(a) *Form of Amendment.* Amendments should be set forth clearly and completely. Applicant should either set forth the entire wording, including the proposed changes, or, if it would be more efficient, indicate which words should be added and which words should be deleted. The examining attorney may require the applicant to rewrite the entire amendment, if necessary for clarification of the record.

(b) *Signature.* A request for amendment of an application 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). If the amendment requires verification, the verification must be sworn to or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant under § 2.193(e)(1).

[73 FR 67770, Nov. 17, 2008, as amended at 74 FR 54908, Oct. 26, 2009]

**§ 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 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* § 2.193(e)(1)) 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 goods or services specified in the application on or in connection with which the applicant uses the mark in commerce.

(2) One specimen per class showing the mark as actually used in commerce. When requested by the Office, additional specimens must be provided.

## § 2.77

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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 “Allegation of Use” should appear at the top of the document.

(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 amended in accordance with §§ 2.59 and 2.71 through 2.75. If the amendment to allege use is acceptable in all respects, the applicant will be notified of its acceptance. The filing of such an amend-

ment shall not constitute a response to any outstanding action by the Trademark Examining Attorney.

(g) If the amendment to allege use is filed within the permitted time period but does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. The deficiency may be corrected provided the mark has not been approved for publication. If an acceptable amendment to correct the deficiency is not filed prior to approval of the mark for publication, the amendment will not be examined.

(h) An amendment to allege use may be withdrawn for any reason prior to approval of a mark for publication.

(i) If the applicant does not file the amendment to allege use within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(j) For the requirements for a multiple class application, see § 2.86.

[54 FR 37593, Sept. 11, 1989, as amended at 63 FR 48097, Sept. 9, 1998; 64 FR 48922, Sept. 8, 1999; 64 FR 51245, Sept. 22, 1999; 73 FR 67770, Nov. 17, 2008; 74 FR 54908, Oct. 26, 2009; 77 FR 30207, May 22, 2012]

### § 2.77 Amendments between notice of allowance and statement of use.

(a) The only amendments that can be entered in an application between the issuance of the notice of allowance and the submission of a statement of use are:

(1) The deletion of specified goods or services from the identification of goods/services;

(2) The deletion of a basis in a multiple-basis application; and

(3) A change of attorney or change of address.

(b) Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined.

[73 FR 67770, Nov. 17, 2008]

### PUBLICATION AND POST PUBLICATION

#### § 2.80 Publication for opposition.

If, on examination or reexamination of an application for registration on the Principal Register, it appears that