

## §2.88

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apply to each separate new application created by the division, except as follows:

(1) If an Office action pertaining to less than all the classes in a multiple-class application is outstanding, and the applicant files a request to divide out the goods, services, and/or class(es) to which the Office action does not pertain before the response deadline, a response to the Office action is not due in the new (child) application(s) created by the division of the application;

(2) If an Office action pertaining to less than all the bases in a multiple-basis application is outstanding, and the applicant files a request to divide out the goods/services having the basis or bases to which the Office action does not pertain before the response deadline, a response to the Office action is not due in the new (child) application(s) created by the division of the application; or

(3) In a multiple-basis application in which a notice of allowance has issued, if the applicant files a request to divide out the goods/services having the basis or bases to which the notice of allowance does not pertain before the deadline for filing the statement of use, the new (child) applications created by the division are not affected by the notice of allowance.

(f) *Signature.* The request to divide 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 who meets the requirements of §11.14, in accordance with the requirements of §2.193(e)(2).

(g) *Section 66(a) applications—change of ownership with respect to some but not all of the goods or services.* (1) When the International Bureau of the World Intellectual Property Organization notifies the Office that an international registration has been divided as the result of a change of ownership with respect to some but not all of the goods or services, the Office will construe the International Bureau's notice as a request to divide. The Office will record the partial change of ownership in the Assignment Services Branch, and divide out the assigned goods/services from the original (parent) application. The Office will create a new (child) ap-

plication serial number, and enter the information about the new application in its automated records.

(2) To obtain a certificate of registration in the name of the new owner for the goods/services that have been divided out, the new owner must pay the fee(s) for the request to divide, as required by §2.6 and paragraph (b) of this section. The examining attorney will issue an Office action in the child application requiring the new owner to pay the required fee(s). If the owner of the child application fails to respond, the child application will be abandoned. It is not necessary for the new owner to file a separate request to divide.

(3) The Office will not divide a section 66(a) application based upon a change of ownership unless the International Bureau notifies the Office that the international registration has been divided.

[73 FR 67771, Nov. 17, 2008, as amended at 74 FR 54908, Oct. 26, 2009]

### POST NOTICE OF ALLOWANCE

#### §2.88 Filing statement of use after notice of allowance.

(a) In an application under section 1(b) of the Act, a statement of use, required under section 1(d) of the Act, must be filed within six months after issuance of a notice of allowance under section 13(b)(2) of the Act, or within an extension of time granted under §2.89. A statement of use that is filed prior to issuance of a notice of allowance is premature, will not be considered, and will be returned to the applicant.

(b) A complete statement of 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 on or in connection with the goods or services identified in the notice of allowance, and setting forth or incorporating by reference those goods/services identified

in the notice of allowance on or in connection with which the mark is in use in commerce. Where an applicant claims section 1(a) of the Act for some goods/services in a class and section 1(b) of the Act for other goods/services in the same class, the statement of use must include dates for the section 1(b) of the Act goods/services;

(2) One specimen of the mark as actually used in commerce. When requested by the Office, additional specimens must be provided. See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6. The applicant must pay a filing fee sufficient to cover at least one class within the statutory time for filing the statement of use, or the application will be abandoned. If the applicant submits a fee insufficient to cover all the classes in a multiple-class application, the applicant must specify the classes to be abandoned. If the applicant submits a fee sufficient to pay for at least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to be abandoned, the Office will issue a notice granting the applicant additional time to submit the fee(s) for the remaining class(es), or specify the class(es) to be abandoned. If the applicant does not submit the required fee(s) or specify the class(es) to be abandoned within the set time period, the Office will apply the fees paid, beginning with the lowest numbered class(es), in ascending order. The Office will delete the goods/services in the remaining class(es) not covered by the fees submitted.

(c) The statement of 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 notice of allowance, for which applicant will seek registration in that application, unless the statement of use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the statement of use pertains. If more than one item of goods or services is specified in the statement of 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 first page of the document.

(e) The Office will review a timely filed statement of use to determine whether it meets the following minimum requirements:

(1) The fee for at least a single class, required by § 2.6;

(2) One specimen of the mark as used in commerce;

(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. If the verification or declaration is unsigned or signed by the wrong party, the applicant must submit a substitute verification on or before the statutory deadline for filing the statement of use.

(f) A timely filed statement of 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 statement of use, applicant is found not entitled to registration, applicant will be notified and advised of the reasons and of any formal requirements or refusals. The statement of use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the statement of use is acceptable in all respects, the applicant will be notified of its acceptance.

(g) If the statement of use does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. If the time permitted for applicant to file a statement of use has not expired, applicant may correct the deficiency. After the filing of a statement of use during a permitted time period for such filing, the applicant may not withdraw the statement to return to the previous status of awaiting submission of a statement of use, regardless of whether it is in compliance with paragraph (e) of this section.

(h) The failure to timely file a statement of use which meets the minimum requirements specified in paragraph (e) of this section shall result in the abandonment of the application.

## §2.89

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(i)(1) The goods or services specified in a statement of use must conform to those goods or services identified in the notice of allowance. An applicant may specify the goods or services by stating “those goods or services identified in the notice of allowance” or, if appropriate, “those goods or services identified in the notice of allowance except \* \* \*” followed by an identification of the goods or services to be deleted.

(2) If any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the Office will delete the omitted goods/services from the application. The applicant may not thereafter reinsert these goods/services.

(3) The statement of use may be accompanied by a separate request to amend the identification of goods or services in the application, as stated in the notice of allowance, in accordance with §2.71(a).

(j) The statement of use may be accompanied by a separate request to amend the drawing in the application, in accordance with §§2.51 and 2.72.

(k) If the statement of use is not filed within a reasonable time after the date 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.

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

[54 FR 37595, Sept. 11, 1989, as amended at 64 FR 48923, Sept. 8, 1999; 64 FR 51245, Sept. 22, 1999; 68 FR 55765, Sept. 26, 2003; 73 FR 67771, Nov. 17, 2008; 74 FR 54908, Oct. 26, 2009; 77 FR 30207, May 22, 2012]

### **§2.89 Extensions of time for filing a statement of use.**

(a) The applicant may request a six-month extension of time to file the statement of use required by §2.88. The extension request must be filed within six months of the date of issuance of the notice of allowance under section 13(b)(2) of the Act and must include the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by §2.6. The applicant must pay a filing fee sufficient to cover at least one class with-

in the statutory time for filing the extension request, or the request will be denied. If the applicant timely submits a fee sufficient to pay for at least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to which the fee applies, the Office will issue a notice granting the applicant additional time to submit the fee(s) for the remaining classes, or specify the class(es) to be abandoned. If the applicant does not submit the required fee(s) or specify the class(es) to be abandoned within the set time period, the Office will apply the fees paid, beginning with the lowest numbered class(es), in ascending order. The Office will delete the goods/services in the remaining classes not covered by the fees submitted; and

(3) A statement that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services, 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)). If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification within six months of the date of issuance of the notice of allowance.

(b) Before the expiration of the previously granted extension of time, the applicant may request further six month extensions of time to file the statement of use by submitting the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by §2.6. The applicant must pay a filing fee sufficient to cover at least one class within the statutory time for filing the extension request, or the request will be denied. If the applicant submits a fee insufficient to cover all the classes in a multiple-class application, the applicant must specify the classes to be abandoned. If the applicant submits a fee sufficient to pay for at least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to which the fee applies, the Office will issue a notice granting the applicant additional time to submit the fee(s) for the remaining classes, or specify the class(es) to be