

**§ 251.45**

**37 CFR Ch. II (7-1-02 Edition)**

is in a language other than English shall be accompanied by an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified.

(d) *Affidavits.* The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony.

(e) *Subscription and verification.* (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney's address and telephone number. All copies shall be conformed. Except for English-language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that to the best of his or her knowledge and belief there is good ground to support the document, and that it has not been interposed for purposes of delay.

(2) The original of all documents filed by a party not represented by counsel shall be signed by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with the intent to defeat the purpose of this section, may be stricken as sham and false, and the matter shall proceed as though the document had not been filed.

(f) *Service.* The Librarian of Congress shall compile and distribute to those parties who have filed a notice of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the proceeding. In all filings, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing. Parties shall notify the Librarian of any change in the name or address to which service shall be made, and shall

serve a copy of such notification on all parties and the CARP.

(g) *Oppositions and replies.* Except as otherwise provided in this part or by the Librarian of Congress or a CARP, oppositions to motions shall be filed within seven business days of the filing of the motion, and replies to oppositions shall be filed within five business days of the filing of the opposition. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

[59 FR 23981, May 9, 1994, as amended at 60 FR 8197, Feb. 13, 1995; 61 FR 63717, Dec. 2, 1996; 65 FR 39820, June 28, 2000]

**§ 251.45 Discovery and prehearing motions.**

(a) *Request for comment, notice of intention to participate.* In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the time period for filing claims, publish in the FEDERAL REGISTER a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate. In the case of a rate adjustment proceeding, the Librarian of Congress shall, after receiving a petition for rate adjustment filed under § 251.62, or, in the case of non-commercial educational broadcasting and satellite carrier, prior to the commencement of proceedings, publish in the FEDERAL REGISTER a notice requesting interested parties to comment on the petition for rate adjustment. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

(b) *Precontroversy discovery, filing of written cases, scheduling.* (1)(i) In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the filing of comments and

notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, any party to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under §251.41(b) and objections to arbitrators appearing on the arbitrator list under §251.4. Responses to motions, petitions, and objections must be filed with the Librarian within seven business days from the filing of such motions, petitions, and objections. Replies to the responses shall be filed within five business days from the filing of such responses with the Librarian. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

(ii) Subject to §251.72, the Librarian shall establish, prior to the commencement of the 45-day period, the date on which arbitration proceedings will be initiated.

(2)(i) In the case of a rate adjustment proceeding, the Librarian of Congress shall, after the filing of comments and notices described in paragraph (a) of this section, designate a 45-day period for precontroversy discovery and exchange of documents. The period will begin with the exchange of written direct cases among the parties to the proceeding. Each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the 45-day period. At any time during the 45-day period, any party to the proceeding may file with the Librarian prehearing motions and objections, including petitions to dispense with formal hearings under §251.41(b) and objections to arbitrators appearing on the arbitrator list under §251.4. Re-

sponses to motions, petitions, and objections must be filed with the Librarian within seven business days from the filing of such motions, petitions, and objections. Replies to the responses shall be filed within five business days from the filing of such responses with the Librarian. Each party must serve all motions, petitions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed.

(ii) Subject to §251.64, the Librarian shall establish, prior to the commencement of the 45-day period, the date on which arbitration proceedings will be initiated.

(c) *Discovery and motions filed with a Copyright Arbitration Royalty Panel.* (1) A Copyright Arbitration Royalty Panel shall designate a period following the filing of written direct and rebuttal cases with it in which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

(2) After the filing of written cases with a CARP, any party may file with a CARP objections to any portion of another party's written case on any proper ground including, without limitation, relevance, competency, and failure to provide underlying documents. If an objection is apparent from the face of a written case, that objection must be raised or the party may thereafter be precluded from raising such an objection.

(d) *Amended filings and discovery.* In the case of objections filed with either the Librarian of Congress or a CARP, each party may amend its claim, petition, written case, or direct evidence to respond to the objections raised by other parties, or to the requests of either the Librarian or a panel. Such amendments must be properly filed with the Librarian or the CARP, wherever appropriate, and exchanged with all parties. All parties shall be given a reasonable opportunity to conduct discovery on the amended filings.

[59 FR 23981, May 9, 1994, as amended at 59 FR 63041, Dec. 7, 1994; 61 FR 63718, Dec. 2, 1996]