

(2) An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified as a concurrent user in the application, but a statement, if desired, may be filed within forty days after the mailing of the notice; in the case of any other party specified as a concurrent user in the application, an answer must be filed within forty days after the mailing of the notice.

(3) If an answer, when required, is not filed, judgment will be entered precluding the specified user from claiming any right more extensive than that acknowledged in the application(s) for concurrent use registration, but the applicant(s) will remain with the burden of proving entitlement to registration(s).

(e) The applicant for a concurrent use registration has the burden of proving entitlement thereto. If there are two or more applications for concurrent use registration involved in a proceeding, the party whose application has the latest filing date is the junior party. A party whose application has a filing date between the filing dates of the earliest involved application and the latest involved application is a junior party to every party whose involved application has an earlier filing date. If any applications have the same filing date, the application with the latest date of execution will be deemed to have the latest filing date and that applicant will be the junior party. A person specified as an excepted user in a concurrent use application but who has not filed an application shall be considered a party senior to every party that has an application involved in the proceeding.

(f) When a concurrent use registration is sought on the basis that a court of competent jurisdiction has finally determined that the parties are entitled to use the same or similar marks in commerce, a concurrent use registration proceeding will not be instituted if all of the following conditions are fulfilled:

(1) The applicant is entitled to registration subject only to the concurrent lawful use of a party to the court proceeding; and

(2) The court decree specifies the rights of the parties; and

(3) A true copy of the court decree is submitted to the examiner; and

(4) The concurrent use application complies fully and exactly with the court decree; and

(5) The excepted use specified in the concurrent use application does not involve a registration, or any involved registration has been restricted by the Commissioner in accordance with the court decree.

If any of the conditions specified in this paragraph is not satisfied, a concurrent use registration proceeding shall be prepared and instituted as provided in paragraphs (a) through (e) of this section.

(g) Registrations and applications to register on the Supplemental Register and registrations under the Act of 1920 are not subject to concurrent use registration proceedings. Applications to register under section 1(b) of the Act of 1946 are subject to concurrent use registration proceedings only after an acceptable amendment to allege use under §2.76 or statement of use under §2.88 has been filed.

(h) The Trademark Trial and Appeal Board will consider and determine concurrent use rights only in the context of a concurrent use registration proceeding.

[48 FR 23135, May 23, 1983; 48 FR 27225, 27226, June 14, 1983, as amended at 54 FR 37596, Sept. 11, 1989]

OPPOSITION

AUTHORITY: Secs. 2.101 to 2.106 also issued under secs. 13, 17, 60 Stat. 433, 434; 15 U.S.C. 1063, 1067.

§2.101 Filing an opposition.

(a) An opposition proceeding is commenced by the filing of an opposition in the Patent and Trademark Office.

(b) Any entity which believes that it would be damaged by the registration of a mark on the Principal Register may oppose the same by filing an opposition, which should be addressed to the Trademark Trial and Appeal Board. The opposition need not be verified, and may be signed by the opposer or the opposer's attorney or other authorized representative.

(c) The opposition must be filed within thirty days after publication (§2.80) of the application being opposed or within an extension of time (§2.102) for filing an opposition.

(d)(1) The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (see §2.6). If no fee, or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, is submitted within thirty days after publication of the mark to be opposed or within an extension of time for filing an opposition, the opposition will not be refused if the required fee(s) is submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office.

(2) If the fees submitted are sufficient to pay for one person to oppose registration in at least one class but are insufficient for an opposition against all of the classes in the application, and the particular class or classes against which the opposition is filed are not specified, the Office will issue a written notice allowing opposer until a set time in which to submit the required fee(s) or to specify the class or classes opposed. If the required fee(s) is not submitted, or the specification made, within the time set in the notice, the opposition will be presumed to be against the class or classes in ascending order, beginning with the lowest numbered class and including the number of classes in the application for which the fees submitted are sufficient to pay the fee due for each class.

(3) If persons are joined as party opposers, and the fees submitted are sufficient to pay for one person to oppose registration in at least one class but are insufficient for each named party opposer, the Office will issue a written notice allowing the named party opposers until a set time in which to submit the required fee(s) or to specify the opposer(s) to which the submitted fees apply. If the required fee(s) is not submitted, or the specification made, within the time set in the notice, the first named party will be presumed to be the party opposer and additional parties will be deemed to be party opposers to the extent that the fees sub-

mitted are sufficient to pay the fee due for each party opposer. If persons are joined as party opposers against the registration of a mark in more than one class, the fees submitted are insufficient, and no specification of opposers and classes is made within the time set in the written notice issued by the Office, the fees submitted will be applied first on behalf of the first-named opposer against as many of the classes in the application as the submitted fees are sufficient to pay, and any excess will be applied on behalf of the second-named party to the opposition against the classes in the application in ascending order.

[48 FR 3976, Jan. 28, 1983, as amended at 51 FR 28709, Aug. 11, 1986; 54 FR 37596, Sept. 11, 1989; 63 FR 48097, Sept. 9, 1998; 64 FR 48924, Sept. 8, 1999]

§ 2.102 Extension of time for filing an opposition.

(a) Any person who believes that he would be damaged by the registration of a mark on the Principal Register may file a written request to extend the time for filing an opposition. The written request may be signed by the potential opposer or by an attorney at law or other person authorized, in accordance with §2.12 (b) and (c) and §2.17(b), to represent the potential opposer.

(b) The written request to extend the time for filing an opposition must identify the potential opposer with reasonable certainty. Any opposition filed during an extension of time should be in the name of the person to whom the extension was granted, but an opposition may be accepted if the person in whose name the extension was requested was misidentified through mistake or if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time.

(c) The written request to extend the time for filing an opposition must be filed in the Patent and Trademark Office before the expiration of thirty days from the date of publication or within any extension of time previously granted, should specify the period of extension desired, and should be addressed to the Trademark Trial and Appeal Board. A first extension of time for not more