

§2.167

AFFIDAVIT OR DECLARATION UNDER SECTION 15

§2.167 Affidavit or declaration under section 15.

The affidavit or declaration in accordance with §2.20 provided by section 15 of the Act for acquiring incontestability for a mark registered on the Principal Register or a mark registered under the Act of 1881 or 1905 and published under section 12(c) of the Act (§2.153) must:

- (a) Be signed by the registrant;
- (b) Identify the certificate of registration by the certificate number and date of registration;
- (c) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years after the date of registration or date of publication under section 12(c) of the Act, and is still in use in commerce;
- (d) Specify that there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register;
- (e) Specify that there is no proceeding involving said rights pending in the Patent and Trademark Office or in a court and not finally disposed of;
- (f) Be filed within one year after the expiration of any five-year period of continuous use following registration or publication under section 12(c).

The registrant will be notified of the receipt of the affidavit or declaration.

- (g) Include the required fee for each class to which the affidavit or declaration pertains in the registration. If no fee, or a fee insufficient to cover at least one class, is filed at an appropriate time, the affidavit or declaration will not be refused if the required fee(s) (see §2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. If insufficient fees are included to cover all classes in the registration, the particular class or

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classes to which the affidavit or declaration pertains should be specified.

(Sec. 15, 60 Stat. 433; 15 U.S.C. 1065; 35 U.S.C. 6; 15 U.S.C. 1113, 1123)

[30 FR 13193, Oct. 16, 1965, as amended at 47 FR 41282, Sept. 17, 1982; 64 FR 48925, Sept. 8, 1999]

§2.168 Affidavit or declaration under section 15 combined with affidavit or declaration under section 8, or with renewal application.

(a) The affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 8, if the affidavit or declaration meets the requirements of both sections 8 and 15.

(b) The affidavit or declaration filed under section 15 of the Act may be combined with an application for renewal of a registration under section 9 of the Act, if the requirements of both sections 9 and 15 are met.

[64 FR 48925, Sept. 8, 1999]

CORRECTION, DISCLAIMER, SURRENDER,
ETC.

§2.171 New certificate on change of ownership.

In case of change of ownership of a registered mark, upon request of the assignee, a new certificate of registration may be issued in the name of the assignee for the unexpired part of the original period. The assignment must be recorded in the Patent and Trademark Office, and the request for the new certificate must be signed by the assignee and accompanied by the required fee. The original certificate of registration, if available, must also be submitted.

(Sec. 7, 60 Stat. 430 as amended; 15 U.S.C. 1057)

[31 FR 5262, Apr. 1, 1966]

§2.172 Surrender for cancellation.

Upon application by the registrant, the Commissioner may permit any registration to be surrendered for cancellation. Application for such action must be signed by the registrant and must be accompanied by the original

certificate of registration, if not lost or destroyed. When there is more than one class in a registration, one or more entire class but less than the total number of classes may be surrendered as to the specified class or classes. Deletion of less than all of the goods or services in a single class constitutes amendment of registration as to that class (see §2.173).

(Sec. 7, 60 Stat. 430 as amended; 15 U.S.C. 1057)

[41 FR 761, Jan. 5, 1976]

§2.173 Amendment of registration.

(a) The registrant may apply to amend the registration or to disclaim part of the mark in the registration. A written request specifying the amendment or disclaimer must be submitted. The request must be signed by the registrant and verified or supported by a declaration under §2.20, and accompanied by the required fee. If the amendment involves a change in the mark, a new specimen showing the mark as used on or in connection with the goods or services, and a new drawing of the amended mark, must be submitted. The certificate of registration or, if the certificate is lost or destroyed, a certified copy of the certificate, must also be submitted. The registration as amended must still contain registrable matter, and the mark as amended must be registrable as a whole. An amendment or disclaimer must not materially alter the character of the mark.

(b) No amendment in the identification of goods or services in a registration will be permitted except to restrict the identification or otherwise to change it in ways that would not require republication of the mark. No amendment seeking the elimination of a disclaimer will be permitted.

(c) A printed copy of the amendment or disclaimer shall be attached to each printed copy of the registration.

(Sec. 7, 60 Stat. 430, as amended; 15 U.S.C. 1057)

[30 FR 13193, Oct. 16, 1965, as amended at 31 FR 5262, Apr. 1, 1966; 48 FR 23143, May 23, 1983; 64 FR 48926, Sept. 8, 1999]

§2.174 Correction of Office mistake.

Whenever a material mistake in a registration, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office, a certificate stating the fact and nature of such mistake, signed by the Commissioner or by an employee designated by the Commissioner and sealed with the seal of the Patent and Trademark Office, shall be issued without charge and recorded, and a printed copy thereof shall be attached to each printed copy of the registration certificate. Such corrected certificate shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Commissioner a new certificate of registration may be issued without charge. The certificate of registration or, if said certificate is lost or destroyed, a certified copy thereof, must be submitted in order that the Commissioner may make appropriate entry thereon.

(Sec. 7, 60 Stat. 430, as amended; 15 U.S.C. 1057)

§2.175 Correction of mistake by registrant.

(a) Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Commissioner may issue a certificate of correction, or in his discretion, a new certificate upon the payment of the required fee, provided that the correction does not involve such changes in the registration as to require republication of the mark.

(b) Application for such action must specify the mistake for which correction is sought and the manner in which it arose, show that it occurred in good faith, be signed by the applicant and verified or include a declaration in accordance with §2.20, and be accompanied by the required fee. The certificate of registration or, if said certificate is lost or destroyed, a certified copy thereof, must also be submitted in order that the Commissioner may make appropriate entry thereon.