

**§§ 2.57-2.58**

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

of manufacture, quality, accuracy, or other characteristics of that person's goods or services; or that members of a union or other organization performed the work or labor on the goods or services.

(c) A photocopy or other reproduction of a specimen of the mark as actually used on or in connection with the goods, or in the sale or advertising of the services, is acceptable. However, a photocopy of the drawing required by § 2.51 is not a proper specimen.

(d)(1) The specimen should be flat, and not larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen of this size is not available, the applicant may substitute a suitable photograph or other facsimile.

(2) If the applicant files a specimen exceeding these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper.

(3) In the absence of non-bulky alternatives, the Office may accept an audio or video cassette tape recording, CD-ROM, or other appropriate medium.

(4) For an electronically transmitted application, or other electronic submission, the specimen must be submitted as a digitized image.

[64 FR 48921, Sept. 8, 1999]

**§§ 2.57-2.58 [Reserved]**

**§ 2.59 Filing substitute specimen(s).**

(a) In an application under section 1(a) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. The applicant must verify by an affidavit or declaration under § 2.20 that the substitute specimens were in use in commerce at least as early as the filing date of the application. Verification is not required if the specimen is a duplicate or facsimile of a specimen already of record in the application.

(b) In an application under section 1(b) of the Act, after filing either an amendment to allege use under § 2.76 or a statement of use under § 2.88, the applicant may submit substitute speci-

mens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. If the applicant submits substitute specimen(s), the applicant must:

(1) For an amendment to allege use under § 2.76, verify by affidavit or declaration under § 2.20 that the applicant used the substitute specimen(s) in commerce prior to filing the amendment to allege use.

(2) For a statement of use under § 2.88, verify by affidavit or declaration under § 2.20 that the applicant used the substitute specimen(s) in commerce either prior to filing the statement of use or prior to the expiration of the deadline for filing the statement of use.

[64 FR 48921, Sept. 8, 1999]

**EXAMINATION OF APPLICATION AND ACTION BY APPLICANTS**

**AUTHORITY:** Secs. 2.61 to 2.69 also issued under sec. 12, 60 Stat. 432; 15 U.S.C. 1062.

**§ 2.61 Action by examiner.**

(a) Applications for registration, including amendments to allege use under section 1(c) of the Act, and statements of use under section 1(d) of the Act, will be examined and, if the applicant is found not entitled to registration for any reason, applicant will be notified and advised of the reasons therefor and of any formal requirements or objections.

(b) The examiner may require the applicant to furnish such information and exhibits as may be reasonably necessary to the proper examination of the application.

(c) Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, each party and also the attorney shall be notified of this fact.

[30 FR 13193, Oct. 16, 1965, as amended at 37 FR 2880, Feb. 9, 1972; 54 FR 37592, Sept. 11, 1989]

**§ 2.62 Period for response.**

The applicant has six months from the date of mailing of any action by the examiner to respond thereto. Such response may be made with or without amendment and must include such proper action by the applicant as the