

§ 2.73

with the description or drawing of the mark filed with the original application.

(b) In an application based on a bona fide intention to use a mark in commerce under section 1(b) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The specimens filed with an amendment to allege use or statement of use, or substitute specimens filed under § 2.59(b), support the proposed amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

(c) In an application based on a claim of priority under section 44(d) of the Act, or on a mark duly registered in the country of origin of the foreign applicant under section 44(e) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The description or drawing of the mark in the foreign registration certificate supports the amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

[64 FR 48922, Sept. 8, 1999]

§ 2.73 Amendment to recite concurrent use.

(a) An application under section 1(a) of the Act may be amended so as to be treated as an application for a concurrent registration, provided the application as amended satisfies the requirements of § 2.42. The examiner will determine whether the application, as amended, is acceptable.

(b) An application under section 1(b) of the Act may not be amended so as to be treated as an application for a concurrent registration until an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88 has been filed in the application, after which time such an amendment may be

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made, provided the application as amended satisfies the requirements of § 2.42. The examiner will determine whether the application, as amended, is acceptable.

[54 FR 37593, Sept. 11, 1989]

§ 2.74 Form of amendment.

(a) In every amendment the exact word or words to be stricken out or inserted in the application must be specified and the precise point indicated where the deletion or insertion is to be made. Erasures, additions, insertions, or mutilations of the papers and records must not be made by the applicant or his attorney or agent.

(b) When an amendatory clause is amended, it must be wholly rewritten so that no interlineation or erasure will appear in the clause, as finally amended, when the application is passed to registration. If the number or nature of the amendments shall render it otherwise difficult to consider the case or to arrange the papers for printing or copying, or when otherwise desired to clarify the record, the examiner may require the entire statement to be rewritten.

§ 2.75 Amendment to change application to different register.

(a) An application for registration on the Principal Register under section 1(a) or 44 of the Act may be changed to an application for registration on the Supplemental Register and vice versa by amending the application to comply with the rules relating to the appropriate register, as the case may be.

(b) An application under section 1(b) of the Act may be amended to change the application to a different register only after submission of an acceptable amendment to allege use under § 2.76 or statement of use under § 2.88. When such an application is changed from the Principal Register to the Supplemental Register, the effective filing date of the application is the date of the filing of the allegation of use under section 1(c) or 1(d) of the Act.

[54 FR 37593, Sept. 11, 1989]

§ 2.76 Amendment to allege use.

(a) An application under section 1(b) of the Act may be amended to allege

use of the mark in commerce under section 1(c) of the Act at any time between the filing of the application and the date the examiner approves the mark for publication. Thereafter, an allegation of use may be submitted only as a statement of use under § 2.88 after the issuance of a notice of allowance under section 13(b)(2) of the Act. If an amendment to allege use is filed outside the time period specified in this paragraph, it will be returned to the applicant.

(b) A complete amendment to allege 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 § 2.33(a)) 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, and those goods or services specified in the application on or in connection with which the applicant uses the mark in commerce.

(2) One specimen of the mark as actually used in commerce. See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6.

(c) An amendment to allege 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 application, for which applicant will seek registration in that application unless the amendment to allege use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the amendment pertains. If more than one item of goods or services is specified in the amendment to allege 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 "Amendment to allege use under § 2.76" should appear at the top of the first page of the paper.

(e) The Office will review a timely filed amendment to allege use to deter-

mine whether it meets the following minimum requirements:

(1) The fee prescribed in § 2.6;

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

(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.

(f) A timely filed amendment to allege 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 amendment to allege use, applicant is found not entitled to registration for any reason not previously stated, applicant will be so notified and advised of the reasons and of any formal requirements or refusals. The notification shall restate or incorporate by reference all unresolved refusals or requirements previously stated. The amendment to allege use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the amendment to allege use is acceptable in all respects, the applicant will be notified of its acceptance. The filing of such an amendment shall not constitute a response to any outstanding action by the Trademark Examining Attorney.

(g) If the amendment to allege use is filed within the permitted time period but does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. The deficiency may be corrected provided the mark has not been approved for publication. If an acceptable amendment to correct the deficiency is not filed prior to approval of the mark for publication, the amendment will not be examined.

(h) An amendment to allege use may be withdrawn for any reason prior to approval of a mark for publication.

(i) If the applicant does not file the amendment to allege use within a reasonable time after 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.

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

[54 FR 37593, Sept. 11, 1989, as amended at 63 FR 48097, Sept. 9, 1998; 64 FR 48922, Sept. 8, 1999; 64 FR 51245, Sept. 22, 1999]

§ 2.77 Amendments between notice of allowance and statement of use.

An application under section 1(b) of the Act may not be amended during the period between the issuance of the notice of allowance under section 13(b)(2) of the Act and the filing of a statement of use under § 2.88, except to delete specified goods or services. Other amendments filed during this period will be placed in the application file and considered when the statement of use is examined.

[54 FR 37594, Sept. 11, 1989]

PUBLICATION AND POST PUBLICATION

§ 2.80 Publication for opposition.

If, on examination or reexamination of an application for registration on the Principal Register, it appears that the applicant is entitled to have his mark registered, the mark will be published in the *Official Gazette* for opposition. The mark will also be published in the case of an application to be placed in interference or concurrent use proceedings, if otherwise registrable.

[41 FR 758, Jan. 5, 1976]

§ 2.81 Post publication.

(a) Except in an application under section 1(b) of the Act for which no amendment to allege use under § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared and no concurrent use proceeding is instituted, the application will be prepared for issuance of the certificate of registration as provided in § 2.151.

(b) In an application under section 1(b) of the Act for which no amendment to allege use under § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared, a notice of allowance will issue. The notice of al-

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lowance will state the serial number of the application, the name of the applicant, the correspondence address, the mark, the identification of goods or services, and the issue date of the notice of allowance. The mailing date that appears on the notice of allowance will be the issue date of the notice of allowance. Thereafter, the applicant shall submit a statement of use as provided in § 2.88.

[54 FR 37594, Sept. 11, 1989]

§ 2.82 Marks on Supplemental Register published only upon registration.

In the case of an application for registration on the Supplemental Register the mark will not be published for opposition but if it appears, after examination or reexamination, that the applicant is entitled to have the mark registered, a certificate of registration will issue as provided in § 2.151. The mark will be published in the “Official Gazette” when registered.

[54 FR 37594, Sept. 11, 1989]

§ 2.83 Conflicting marks.

(a) Whenever an application is made for registration of a mark which so resembles another mark or marks pending registration as to be likely to cause confusion or mistake or to deceive, the mark with the earliest effective filing date will be published in the “Official Gazette” for opposition if eligible for the Principal Register, or issued a certificate of registration if eligible for the Supplemental Register.

(b) In situations in which conflicting applications have the same effective filing date, the application with the earliest date of execution will be published in the “Official Gazette” for opposition or issued on the Supplemental Register.

(c) Action on the conflicting application which is not published in the *Official Gazette* for opposition or not issued on the Supplemental Register will be suspended by the Examiner of Trademarks until the published or issued application is registered or abandoned.

[37 FR 2880, Feb. 9, 1972, as amended at 54 FR 37594, Sept. 11, 1989]