

§2.86

(g) Classification schedules shall not limit or extend the applicant's rights.

(35 U.S.C. 6; 15 U.S.C. 1113, 1123)

[38 FR 14681, June 4, 1973, as amended at 39 FR 16885, May 10, 1974; 47 FR 41282, Sept. 17, 1982; 63 FR 48097, Sept. 9, 1998]

§2.86 Application may include multiple classes.

(a) In a single application, an applicant may apply to register the same mark for goods and/or services in multiple classes. The applicant must:

(1) Specifically identify the goods or services in each class;

(2) Submit an application filing fee for each class; and

(3) Include either dates of use (see §§2.34(a)(1)(ii) and (iii)) and one specimen for each class, or a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class. The applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application.

(b) An amendment to allege use under §2.76 or a statement of use under §2.88 must include, for each class, the required fee, dates of use, and one specimen. The applicant may not file the amendment to allege use or statement of use until the applicant has used the mark on all the goods or services, unless the applicant files a request to divide. See §2.87 for information regarding requests to divide.

(c) The Office will issue a single certificate of registration for the mark, unless the applicant files a request to divide. See §2.87 for information regarding requests to divide.

[64 FR 48923, Sept. 8, 1999]

§2.87 Dividing an application.

(a) An application may be physically divided into two or more separate applications upon the payment of a fee for each new application created and submission by the applicant of a request in accordance with paragraph (d) of this section.

(b) In the case of a request to divide out one or more entire classes from an application, only the fee under paragraph (a) of this section will be re-

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quired. However, in the case of a request to divide out some, but not all, of the goods or services in a class, an application filing fee for each new separate application to be created by the division must be submitted, together with the fee under paragraph (a) of this section. Any outstanding time period for action by the applicant in the original application at the time of the division will be applicable to each new separate application created by the division.

(c) A request to divide an application may be filed at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication; or during an opposition, concurrent use, or interference proceeding, upon motion granted by the Trademark Trial and Appeal Board. Additionally, a request to divide an application under section 1(b) of the Act may be filed with a statement of use under §2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration.

(d) A request to divide an application should be made in a separate paper from any other amendment or response in the application. The title "Request to divide application." should appear at the top of the first page of the paper.

[57 FR 38196, Aug. 21, 1992; 57 FR 40493, Sept. 3, 1992, as amended at 63 FR 48097, Sept. 9, 1998]

POST NOTICE OF ALLOWANCE

§2.88 Filing statement of use after notice of allowance.

(a) In an application under section 1(b) of the Act, a statement of use, required under section 1(d) of the Act, must be filed within six months after issuance of a notice of allowance under section 13(b)(2) of the Act, or within an extension of time granted under §2.89. A statement of use that is filed prior to issuance of a notice of allowance is premature, will not be considered, and will be returned to the applicant.

(b) A complete statement of 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 notice of allowance 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) The statement of 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 notice of allowance, for which applicant will seek registration in that application, unless the statement of use is accompanied by a request in accordance with § 2.87 to divide out from the application the goods or services to which the statement of use pertains. If more than one item of goods or services is specified in the statement of 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 "Statement of use under § 2.88." should appear at the top of the first page of the paper.

(e) The Office will review a timely filed statement of use to determine whether it meets the following minimum requirements:

(1) The fee for at least a single class, required by § 2.6;

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

(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. If the verification or declaration is unsigned or signed by the wrong party, the applicant must submit a substitute verification on or before the statutory deadline for filing the statement of use.

(f) A timely filed statement of use which meets the minimum require-

ments 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 statement of use, applicant is found not entitled to registration, applicant will be notified and advised of the reasons and of any formal requirements or refusals. The statement of use may be amended in accordance with §§ 2.59 and 2.71 through 2.75. If the statement of use is acceptable in all respects, the applicant will be notified of its acceptance.

(g) If the statement of use does not meet the minimum requirements specified in paragraph (e) of this section, applicant will be notified of the deficiency. If the time permitted for applicant to file a statement of use has not expired, applicant may correct the deficiency. After the filing of a statement of use during a permitted time period for such filing, the applicant may not withdraw the statement to return to the previous status of awaiting submission of a statement of use, regardless of whether it is in compliance with paragraph (e) of this section.

(h) The failure to timely file a statement of use which meets the minimum requirements specified in paragraph (e) of this section shall result in the abandonment of the application.

(i)(1) The goods or services specified in a statement of use must conform to those goods or services identified in the notice of allowance. An applicant may specify the goods or services by stating "those goods or services identified in the notice of allowance" or, if appropriate, "those goods or services identified in the notice of allowance except * * *" followed by an identification of the goods or services to be deleted.

(2) If any goods or services specified in the notice of allowance are omitted from the identification of goods or services in the statement of use, the Trademark Examining Attorney shall inquire about the discrepancy and permit the applicant to amend the statement of use to include any omitted goods or services, provided that the amendment is supported by a verification that the mark was in use in commerce, on or in connection with each of the goods or services sought to be included, prior to the expiration of

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the time allowed to applicant for filing a statement of use.

(3) The statement of use may be accompanied by a separate request to amend the identification of goods or services in the application, as stated in the notice of allowance, in accordance with §2.71(b).

(j) The statement of use may be accompanied by a separate request to amend the drawing in the application, in accordance with §§2.51 and 2.72.

(k) If the statement of use is not filed within a reasonable time after the date 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.

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

[54 FR 37595, Sept. 11, 1989, as amended at 64 FR 48923, Sept. 8, 1999; 64 FR 51245, Sept. 22, 1999]

§2.89 Extensions of time for filing a statement of use.

(a) The applicant may request a six-month extension of time to file the statement of use required by §2.88. The extension request must be filed within six months of the mailing date of the notice of allowance under section 13(b)(2) of the Act and must include the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by §2.6; 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 (see §2.33(a)) that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services. If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification within six months of the mailing date of the notice of allowance.

(b) Before the expiration of the previously granted extension of time, the applicant may request further six month extensions of time to file the statement of use by submitting the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by §2.6;

(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 (see §2.33(a)) that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services. If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the previously granted extension; and

(4) A showing of good cause, as specified in paragraph (d) of this section.

(c) Extensions of time under paragraph (b) of this section will be granted only in six-month increments and may not aggregate more than 24 months.

(d) The showing of good cause must include a statement of the applicant's ongoing efforts to make use of the mark in commerce on or in connection with each of the relevant goods or services. Those efforts may include product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain governmental approval, or other similar activities. In the alternative, the applicant must submit a satisfactory explanation for the failure to make efforts to use the mark in commerce.

(e)(1) At the time of the filing of a statement of use, or during any time remaining in the existing six-month period in which a statement of use is filed, applicant may file one request, in accordance with paragraph (a) or (b) of this section, for a six-month extension of time for filing a statement of use, provided that the time requested would not extend beyond 36 months from the issuance of the notice of allowance. Thereafter, applicant may not request any further extensions of time.

(2) A request for an extension of time that is filed at the time of the filing of a statement of use, or during any time remaining in the existing six-month period in which a statement of use is filed, must comply with all the requirements of paragraph (a) of this section, if it is applicant's first extension request, or paragraph (b) of this section, if it is a second or subsequent extension request. However, in a request