

§ 2.72

37 CFR Ch. I (7-1-08 Edition)

of use under § 2.88, the applicant may not amend the statement of use to specify a date of use that is subsequent to the expiration of the deadline for filing the statement of use.

(d) The applicant may amend the application to correct the name of the applicant, if there is a mistake in the manner in which the name of the applicant is set out in the application. The amendment must be supported by an affidavit or declaration under § 2.20, signed by the applicant. However, the application cannot be amended to set forth a different entity as the applicant. An application filed in the name of an entity that did not own the mark as of the filing date of the application is void.

[64 FR 48922, Sept. 8, 1999]

§ 2.72 Amendments to description or drawing of the mark.

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

(1) The specimens originally filed, or substitute specimens filed under § 2.59(a), 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.

(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), section 44, or section 66(a) of the Act may be amended to an application for concurrent use registration, provided the application as amended satisfies the requirements of § 2.42. The trademark examining attorney 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 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, as amended at 68 FR 55764, Sept. 26, 2003]

§ 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.