

§2.86

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

though such petitions to revive, appeals, etc., are filed on or after September 1, 1973.

(c) Section 6.2 of part 6 of this chapter specifies the system of classification for goods and services which applies for all statutory purposes to all trademark applications filed in the Patent and Trademark Office on or before August 31, 1973, and to registrations issued on the basis of such applications, except when the registration may have been issued under a classification system prior to that set forth in §6.2. Moreover, this classification will also be utilized for facilitating trademark searches until all pending and registered marks in the search file are organized on the basis of the international system of classification.

(d) Renewals filed on registrations issued under a prior classification system will be processed on the basis of that system.

(e) Where the amount of the fee received on filing an appeal in connection with an application or on an application for renewal is sufficient for at least one class of goods or services but is less than the required amount because multiple classes in an application or registration are involved, the appeal or renewal application will not be refused on the ground that the amount of the fee was insufficient if the required additional amount of the fee is received in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office, or if action is sought only for the number of classes equal to the number of fees submitted.

(f) Sections 6.3 and 6.4 specify the system of classification which applies to certification marks and collective membership marks.

(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, as set forth in §2.6(a)(1).

(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, as amended at 70 FR 2953, Jan. 19, 2005]

§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 for dividing an application under paragraph (a) of this section, as set forth in §2.6(a)(19), will be required. However, in the case of a request to divide out some, but not all, of the goods or services in a class, the application filing fee, as set forth in §2.6(a)(1), for each new separate application to be created by the division must be submitted, together with the fee for dividing an application under paragraph (a) of this section, as set forth in §2.6(a)(19).

(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; 70 FR 2953, Jan. 19, 2005]

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 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 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.