

§ 2.91

still has a bona fide intention to use the mark in commerce.

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

INTERFERENCES AND CONCURRENT USE PROCEEDINGS

AUTHORITY: Secs. 2.91 to 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

§ 2.91 Declaration of interference.

(a) An interference will not be declared between two applications or between an application and a registration except upon petition to the Director. Interferences will be declared by the Director only upon a showing of extraordinary circumstances which would result in a party being unduly prejudiced without an interference. In ordinary circumstances, the availability of an opposition or cancellation proceeding to the party will be deemed to remove any undue prejudice.

(b) Registrations and applications to register on the Supplemental Register, registrations under the Act of 1920, and registrations of marks the right to use of which has become incontestable are not subject to interference.

[37 FR 2881, Feb. 9, 1972, as amended at 54 FR 34897, Aug. 22, 1989]

§ 2.92 Preliminary to interference.

An interference which has been declared by the Director will not be instituted by the Trademark Trial and Appeal Board until the Examiner of Trademarks has determined that the marks which are to form the subject matter of the controversy are registrable, and all of the marks have been published in the *Official Gazette* for opposition.

[54 FR 34897, Aug. 22, 1989]

§ 2.93 Institution of interference.

An interference is instituted by the mailing of a notice of interference to the parties. The notice shall be sent to each applicant, in care of the applicant's attorney or other representative of record, if any, and if one of the parties is a registrant, the notice shall be sent to the registrant or the reg-

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

istrant's assignee of record. The notice shall give the name and address of every adverse party and of the adverse party's attorney or other authorized representative, if any, together with the serial number and date of filing and publication of each of the applications, or the registration number and date of issuance of each of the registrations, involved.

[54 FR 34897, Aug. 22, 1989]

§§ 2.94-2.95 [Reserved]

§ 2.96 Issue; burden of proof.

The issue in an interference between applications is normally priority of use, but the rights of the parties to registration may also be determined. The party whose application involved in the interference has the latest filing date is the junior party and has the burden of proof. When there are more than two parties to an interference, a party shall be a junior party to and shall have the burden of proof as against every other party whose application involved in the interference has an earlier filing date. If the involved applications of any parties have the same filing date, the application with the latest date of execution will be deemed to have the latest filing date and that applicant will be the junior party. The issue in an interference between an application and a registration shall be the same, but in the event the final decision is adverse to the registrant, a registration to the applicant will not be authorized so long as the interfering registration remains on the register.

[48 FR 23135, May 23, 1983; 48 FR 27225, June 14, 1983]

§ 2.97 [Reserved]

§ 2.98 Adding party to interference.

A party may be added to an interference only upon petition to the Director by that party. If an application which is or might be the subject of a petition for addition to an interference is not added, the examiner may suspend action on the application pending termination of the interference proceeding.

[48 FR 23135, May 23, 1983]