

Chapter 100

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101 Trademark Statute and Rules

The federal registration of trademarks is governed by the Trademark Act of 1946, 15 U.S.C. §§1051 *et seq.* (also known as the Lanham Act), and 37 C.F.R. Parts 2, 3, 6, 7, 10, and 11. The text of the Act and rules can be accessed and downloaded from the United States Patent and Trademark Office (“USPTO”) website at <http://www.uspto.gov>.

The USPTO website <http://www.uspto.gov> provides access to a wide variety of information about patents and trademarks, and offers electronic filing of trademark documents.

The Trademark Electronic Business Center on the USPTO website contains all the information needed for the entire registration process. A customer may search the trademark database for conflicting marks using the Trademark Electronic Search System ("TESS"), file applications and other trademark documents online using the Trademark Electronic Application System ("TEAS"), check the status of applications and registrations through the Trademark Applications and Registrations Retrieval ("TARR") database, or view and print images of the contents of trademark application and registration records through the Trademark Document Retrieval ("TDR") portal at <http://www.uspto.gov>. See TMEP §104 regarding TESS, TMEP §108.01 regarding TARR, TMEP §109.01 regarding electronic image records, and TMEP §301 for further information about electronic filing.

Trademark information available for downloading from the USPTO website includes the trademark statute and rules, *Trademark Manual of Examining Procedure*, *Trademark Trial and Appeal Board Manual of Procedure*, *Acceptable Identification of Goods and Services Manual*, *Federal Register* notices, *Official Gazette* notices, examination guides, and fee schedules.

Certified or uncertified copies of trademark documents can also be purchased over the Internet. See TMEP §111 for further information.

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Trademark Forms

Trademark documents can be filed electronically through TEAS, on the USPTO website at <http://www.uspto.gov>. See TMEP §301 regarding TEAS. Additional forms may be available online at <http://www.uspto.gov>, or through the Trademark Assistance Center ("TAC") (see TMEP §108.02).

Requests for recordation of assignments and other documents affecting title to an application or registration can be filed through the Electronic Trademark Assignment System ("ETAS") at <http://etas.uspto.gov>.

The Electronic System for Trademark Trials and Appeals ("ESTTA"), at <http://estta.uspto.gov/>, can be used to file requests for extensions of time to oppose, notices of opposition, petitions to cancel, appeals, motions, briefs, notices of change of address, and other documents in Trademark Trial and Appeal Board ("Board") proceedings.

X-Search, the USPTO's computerized search system, contains text and images of registered marks, and marks in pending and abandoned applications. X-Search is used by examining attorneys when searching for conflicting marks during examination.

The public may conduct searches free of charge using TESS, on the USPTO website at <http://www.uspto.gov>. Like X-Search, TESS provides access to text and images of registered marks and marks in pending and abandoned applications. Additional information, including current status, for pending trademark applications and registered trademarks can be obtained by entering the trademark serial number or registration number in the TARR database. See TMEP §108.01. TESS and TARR are available in Patent and Trademark Depository Libraries ("PTDLs") (see TMEP §112).

The public may use the X-Search system and the Trademark Reporting and Monitoring ("TRAM") System without charge in the Public Search Facility, which is located on the first floor of the James Madison Building - East Wing, 600 Dulany Street, Alexandria, Virginia, and is open from 8:00 a.m. to 8:00 p.m. Eastern Time, Monday through Friday, except on Federal holidays within the District of Columbia. The Public Search Facility also contains copies of State emblems and official signs and hallmarks of member countries of the Paris Convention for the Protection of Industrial Property, which are protected under Article 6~~ter~~ of the Convention (see TMEP §1205.02). The Public Search Facility does not contain copies of the official insignia of state- and federally recognized Native American tribes. X-Search or TESS can be used to search for these insignia.

If a mark includes a design element, it can be searched by using a design code. To locate the proper design code(s), the public can use the *Design Search Code Manual* on the USPTO website at <http://www.uspto.gov>.

For some marks, the USPTO has added a pseudo mark to the search data to assist users in identifying relevant marks related to their search term. The "pseudo mark" field, which is not displayed, often contains spellings that are very similar or phonetically equivalent to the word mark. For example, if "4U" appears in the mark, the term "for you" would be added to the pseudo-mark field. This provides an additional search tool for locating marks that contain an alternative or intentionally corrupted spelling for a normal English word. Pseudo mark entries are not displayed or printed in the search results and are not part of the official application or registration.

USPTO personnel cannot conduct trademark searches for the public. A private trademark attorney will obtain a search and provide an opinion on the availability of a proposed mark, for a fee, prior to filing a trademark application. To find the names of private attorneys who handle trademark matters, consult telephone listings or the attorney referral service of a state

bar or local bar association (see American Bar Association Lawyer Referral Directory). The USPTO cannot aid in the selection of an attorney, nor can the Trademark Assistance Center provide any legal advice. See 37 C.F.R. §2.11.

The public can search the trademark assignment records of the Assignment Services Branch on the USPTO website at <http://assignments.uspto.gov/assignments>. Assignment records can also be searched in the Public Search Facility. See TMEP §503.08 for further information about the accessibility of assignment records.

105 General Information Booklet Concerning Trademarks

The booklet entitled *Basic Facts About Trademarks* contains information and instructions for registering a trademark or service mark. The booklet can be accessed or downloaded from the USPTO website at <http://www.uspto.gov/>, or may be obtained by calling TAC. See TMEP §108.02 regarding TAC.

106 The Official Gazette

The *Official Gazette* (“OG”), issued every Tuesday, is a publication of the USPTO, which is available free of charge on the USPTO website.

Trademark Official Gazette (“TMOG”). The TMOG, posted at <http://www.uspto.gov/news/og/tindex.jsp>, contains an illustration of each mark published for opposition on the Principal Register, marks registered on the Principal Register under 15 U.S.C. §1051(d), and marks registered on the Supplemental Register on the date of the particular issue in which the marks appear. Effective July 15, 2003, the USPTO publishes the TMOG only in electronic form. See notice at [68 Fed. Reg. 37803](#) (June 25, 2003).

USPTO Notices. The TMOG does not contain USPTO Notices. Such notices are posted separately in the general information section of the *Official Gazette*, at <http://www.uspto.gov/news/og/index.jsp>. This section includes such general information as notices of changes in rules or Office procedures for both patents and trademarks; notices to parties who cannot be reached by mail; and indices of trademark registrations issued, renewed, cancelled, amended, or corrected on the date of the particular issue in which the marks appear.

Effective January 1, 2008, the USPTO discontinued the separate weekly publication of USPTO notices in paper form. See notice at [72 Fed. Reg. 72999](#) (Dec. 26, 2007).

107 Trademark Manuals

The following manuals may be downloaded free of charge from the USPTO website at <http://www.uspto.gov/trademarks/index.jsp>:

- [Trademark Manual of Examining Procedure](#) (“TMEP”)
- [Trademark Trial and Appeal Board Manual of Procedure](#) (“TBMP”)
- [Acceptable Identification of Goods and Services Manual](#)

The TMEP may also be purchased from the Government Printing Office (“GPO”) at <http://bookstore.gpo.gov/>. GPO’s general information telephone numbers are (202) 512-1800 and (866) 512-1800.

108 Status Inquiries

108.01 Internet Information

The TARR database on the USPTO website at <http://tarr.uspto.gov> provides detailed information about the status and prosecution history of trademark applications and registrations. The TARR database is available 24 hours a day, 7 days a week.

The TARR database is normally updated daily from 1:00 to 2:00 p.m. Eastern Time and does not include any newly filed applications, nor amendments thereto, entered into the USPTO’s internal trademark database after the last TARR update. For example, the TARR database shows applications that registered after its last update as pending applications rather than registrations, and does not include edits made to individual records after its last update.

In addition, the TARR database may not reflect changes in ownership that have been recorded in the Assignment Services Branch. There are circumstances in which the Trademark Database (i.e., TRAM and TARR) will be updated automatically upon the recordation of a change of ownership. See TMEP §§504 and 504.01. In all other cases, the new owner must separately notify the Trademark Operation in writing of the recordation of a document, and request that the Trademark Database be updated manually. See TMEP §§503.01(a) and 505 *et seq.*

Information about documents recorded with the Assignment Services Branch can be obtained through ETAS, at <http://etas.uspto.gov>.

See *also* TMEP §109.01 regarding public access to electronic images of the contents of trademark application and registration and Board proceeding records.

108.02 Personal Telephone Assistance

If additional information regarding the status of an application or registration is required, callers may telephone TAC at (571) 272-9250 or (800) 786-9199 and request a status check. TAC also provides general information about the

trademark registration process. Telephone assistance is available from 8:30 a.m. to 8:00 p.m., Eastern Time, Monday through Friday, except on Federal holidays within the District of Columbia. Walk-in service is available from 8:30 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, except on Federal holidays within the District of Columbia.

The Trademark Assistance Center will gladly answer questions about the application process. However, USPTO employees cannot:

- conduct trademark searches for the public (see TMEP §104);
- comment on the validity of registered marks (see TMEP §1801);
- answer questions as to whether a particular mark or type of mark is eligible for registration;
- offer legal advice or opinions about common-law trademark rights, state registrations, or trademark infringement claims; or
- aid in the selection of a private trademark attorney or search firm (37 C.F.R. §2.11).

See TMEP Chapter 1800 regarding public inquiries about applications and registrations.

108.03 Due Diligence: Duty to Monitor Status

Trademark applicants and registrants should monitor the status of their applications or registrations in cases where a notice or action from the USPTO is expected. Inquiries regarding the status of pending matters should be made during the following time periods:

- (1) During the pendency of an application, an applicant should check the status of the application every six months between the filing date of the application and issuance of a registration; and
- (2) After filing an affidavit of use or excusable nonuse under §8 or §71 of the Trademark Act, or a renewal application under §9 of the Act, a registrant should check the status of the registration every six months until the registrant receives notice that the affidavit or renewal application has been accepted.

Should the status inquiry reveal that a document is lost, that no action has been taken regarding correspondence that was submitted, or that some other problem exists, the applicant or registrant must promptly request corrective action. 37 C.F.R. §2.146(i). Failure to act diligently and follow up with appropriate action may result in denial of the requested relief. The USPTO may deny petitions to reactivate abandoned applications and cancelled

registrations when a party fails to inquire about the status of a pending matter within a reasonable time. See TMEP §§1705.05 and 1714.01(d).

Written status inquiries are discouraged, because they can delay processing. Whenever possible, status inquiries should be made through the TARR database. If additional information regarding the status of an application or registration is required, callers may telephone TAC at (571) 272-9250 or (800) 786-9199.

109 Access to Records

18 U.S.C. §2071. Concealment, removal, or mutilation generally.

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

37 C.F.R. §2.27(b). Except as provided in paragraph (e) of this section, access to the file of a particular pending application will be permitted prior to publication under §2.80 upon written request.

37 C.F.R. §2.27(d). Except as provided in paragraph (e) of this section, the official records of applications and all proceedings relating thereto are available for public inspection and copies of the documents may be furnished upon payment of the fee required by § 2.6.

37 C.F.R. §2.27(e). Anything ordered to be filed under seal pursuant to a protective order issued or made by any court or by the Trademark Trial and Appeal Board in any proceeding involving an application or registration shall be kept confidential and shall not be made available for public inspection or copying unless otherwise ordered by the court or the Board, or unless the party protected by the order voluntarily discloses the matter subject thereto. When possible, only confidential portions of filings with the Board shall be filed under seal.

In order to inspect the contents of a trademark application or registration record, it is not necessary to show good cause or to have a power to inspect from the applicant or registrant.

109.01 Electronic Image Records

The public may view and print images of the contents of trademark application and registration records through the TDR portal on the USPTO website at <http://www.uspto.gov>. Electronic images of Board proceeding records are also available on the USPTO website at <http://ttabvue.uspto.gov/ttabvue/>. TDR and TTABVUE are available 24 hours a day, seven days a week, free of charge.

The public may also view and print images of the contents of trademark application and registration records through the Trademark Image Capture and Retrieval System ("TICRS"), available in the Public Search Facility on the USPTO premises. See TMEP §402.

109.02 Paper Files

Effective April 12, 2004, the USPTO no longer creates paper files for all trademark applications or paper copies of certain trademark-related documents that are submitted to the USPTO in electronic format. Furthermore, the USPTO does not generate paper copies of certain trademark documents that the USPTO creates, except for copies that are sent to recipients by mail. See *New USPTO Policies Regarding (1) Generation of Paper Copies of Trademark-Related Documents and (2) Public Access to Existing Paper Copies of Trademark-Related Documents* (TMOG Apr. 6, 2004), at <http://www.uspto.gov/web/offices/com/sol/og/2004/week14/pattmcp.htm>. All these documents can be viewed through TICRS and TDR.

Procedure for Requesting Paper Files. A member of the public must make a request for access to the file. The request must include the name and phone number of the person requesting the file. USPTO personnel must keep a record of all files being removed, and enter the new location of the file (e.g., charged to non-USPTO personnel) in the TRAM database. The public must inspect the file on the premises of the USPTO, and nothing may be removed from the file without written authorization from the Office of the Commissioner for Trademarks. Requests for files should be made at the following locations:

- *Files Located Within the Trademark Operation or at the Board.* A request for access to a paper file that is located within the Trademark Operation or at the Board should be directed to TAC, located in the James Madison Building - East Wing, Concourse Level, 600 Dulany Street, Alexandria, VA, between 8:30 a.m. and 5:00 p.m. This includes files located in the law offices, Pre-Examination Section, ITU Unit, and

Post Registration Section. See *Official Gazette* noticed dated April 6, 2004, posted at http://www.uspto.gov/web/trademarks/notice_paperfiles.htm. The file will usually be available to the requester within a few days.

- *Files Located at the Warehouse.* Requests for access to paper files located at the warehouse should be directed either (1) to TAC, located in the James Madison Building - East Wing, Concourse Level, 600 Dulany Street, Alexandria, VA, between 8:30 a.m. and 5:00 p.m. or (2) to the File Information Unit, located on the third floor of the Randolph Square Building, 2800 South Randolph Street, Arlington, VA, between 7:00 a.m. and 6:00 p.m. This includes files for abandoned applications, cancelled and expired registrations, and terminated Trademark Trial and Appeal Board proceedings. The file will usually be available to the requester within a few days.

The public can check TRAM or TARR to determine where a file is located.

Paper files for abandoned applications and cancelled and expired registrations are stored in the warehouse for two years after the date of abandonment, cancellation, or expiration, and then destroyed. See notice at 980 TMOG 16, reprinted at 1232 TMOG 625 (March 21, 2000). See TBMP §120.03 regarding the retention schedule for the files of terminated Board proceedings.

No file or related document may be removed from the premises occupied by the USPTO, except as required by the issue process or other official process, unless specifically authorized by the Director. 18 U.S.C. §2071(b). If such authorization is given, the employee having custody will be responsible for complying with the requirements of law.

See TMEP §503.08 regarding the accessibility of assignment records.

109.03 Making Copies of Materials in Records

The public may print images of the contents of trademark application, registration, and Board proceeding records through TDR or TTABVUE on the USPTO website at <http://www.uspto.gov>. See TMEP §109.01. The public can also print electronic copies of records pertaining to applications or registrations through TESS (see TMEP §104), and prosecution histories through TARR (see TMEP §108.01) on the USPTO website. There is no charge for use of these databases.

The public may also print trademark documents from TICRS, TTABVUE, TARR, or X-Search in the Public Search Facility on the USPTO premises. There is a fee for printing images of documents in the Public Search Facility. See TMEP §104.

Photocopiers for making copies of paper files are available to the public on the premises of the USPTO for a fee.

See TMEP §111 regarding requests that the USPTO provide copies of trademark documents.

110 Decisions Available to the Public

37 C.F.R. §2.27(c). Decisions of the Director and the Trademark Trial and Appeal Board in applications and proceedings relating thereto are published or available for inspection or publication.

Precedential decisions of the Director and the Board are noted as such and published in the United States Patents Quarterly (cited as USPQ or USPQ2d), which is a periodical reporting service of a non-governmental publishing company. The USPTO does not print these decisions in its own publications. Non-precedential decisions of the Director and the Board are not published.

Both precedential and non-precedential decisions are available for viewing, downloading, and printing via TTABVue.

A weekly summary of final decisions issued by the Board appears on the USPTO website at <http://www.uspto.gov> and in each issue of the *Official Gazette*.

See TMEP §1803 regarding decisions that are available under the Freedom of Information Act.

111 Requests for Copies of Trademark Documents

The public may print images of the contents of trademark application, registration, and Board proceeding records through TDR or TTABVue on the USPTO website at <http://www.uspto.gov>. See TMEP §109.01. The public can also print electronic copies of records pertaining to applications or registrations through TESS (see TMEP §104), and prosecution histories through TARR (see TMEP §108.01) on the USPTO website. There is no charge for use of these databases.

The public may purchase certified or uncertified copies of trademark documents (e.g., application or registration records, trademark title and status reports, etc.). Fee schedules are posted on the USPTO website. Requests for copies of trademark documents are handled by the Document Services Branch of the Public Records Division of the USPTO.

Copies of trademark documents can be ordered through the USPTO website at <http://www.uspto.gov>, for delivery by the United States Postal Service. The

fee must be paid by credit card, EFT, or deposit account authorization. Requests for copies of trademark documents may also be e-mailed to dsd@uspto.gov, with an authorization to charge the fee to a credit card or deposit account.

Requests for certified or uncertified copies of trademark documents may be mailed to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, P. O. Box 1450, Alexandria VA 22313-1450.
37 C.F.R. §2.190(d).

112 Patent and Trademark Depository Libraries

There is a network of PTDLs throughout the United States that provides access to many of the same products and services offered at the USPTO. A list of the PTDLs and their telephone numbers appears on the USPTO website at <http://www.uspto.gov> and in each issue of the *Official Gazette*.

Information available free of charge at the PTDLs includes the text of the trademark statute and rules (see TMEP §101); the *Trademark Manual of Examining Procedure*; *Trademark Trial and Appeal Board Manual of Procedure*; *Acceptable Identification of Goods and Services Manual*; and the Trademark Electronic Search System. Photocopiers are generally provided for a fee.

The scope of PTDL collections, hours of operation, services, and fees (where applicable) may vary from one library to another.