Designation of TTAB Decisions as Precedential

An opinion or decision of the Trademark Trial and Appeal Board (TTAB) may be designated as a precedent of the Board if it:

- establishes, alters, modifies or clarifies a rule of law or a matter of agency policy;
- reinforces existing law or policy by demonstrating its application to a factual record different from those confronted previously but likely to arise again so that it would be instructive in other cases; or
- involves a legal or factual issue of significant interest or substantial importance to the public generally or to trademark owners or practitioners specifically.

In general, an opinion or decision that provides a focused discussion of matters such as these, and that does not require discussion of multiple issues/claims, or complex fact patterns, will present the best vehicle through which to announce TTAB precedent.

The TTAB engages in thorough internal review before deciding to designate an opinion addressing the merits of an appeal or trial case, or a decision addressing a contested motion in a trial case, as a precedent of the Board. On matters of agency policy and with regard to legal interpretation of the Trademark Act of 1946 (as amended) and rules promulgated pursuant to that statute, the TTAB consults with the Office of the Solicitor, USPTO, to ensure agency consistency.

A TTAB opinion or decision issued as a precedent, serves as controlling legal authority for attorneys and judges of the TTAB determining later cases involving the same issue(s). Unless modified or overruled by a later statute, regulation, or TTAB precedent or upon judicial review, the public may rely upon and cite a TTAB precedent as authority in subsequent cases involving the same issue(s).

A TTAB opinion or decision designated as not a precedent involves application by an author or panel of existing law and policy to only the factual record and issues presented in an individual case, and is not controlling legal authority for attorneys and judges of the TTAB. Such opinions or decisions do not announce new interpretations of law or agency policy and the public may not rely upon them as controlling legal authority in other cases. Unless an opinion or decision is marked as a precedent, it is not a precedent.

Prior to the publication of a notice in the USPTO Official Gazette on January 23, 2007 announcing that the Board would, from that point forward, designate opinions and decisions as “a precedent” or “not a precedent”, the Board primarily utilized the designations “citable” or “not citable.” A pre-2007 opinion or decision designated as “citable” or “for publication in full” is the equivalent of “a precedent,” and may be referenced as such. See TBMP Section 101.03.