

Trademark Trial and Appeal Board (TTAB) update

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Chief Administrative Trademark Judge

UNITED STATES
PATENT AND TRADEMARK OFFICE



Moderating filings in FY20

- Ex parte appeals (3,487) +4.6%
- Extensions to oppose (18,893) -7.8%
- Oppositions (6,712) -3.5%
- Petitions to cancel (2,501) +3.1%

Continued moderation in FY21

- Ex parte appeals (3,531) +1.3%
- Extensions to oppose (17,200) -9%
- Oppositions (6,669) -.6%
- Petitions to cancel (2,400) -4%

Pendency goals met in FY21

- Motion decision pendency at 9.9 weeks
- Appeal decision pendency at 7.7 weeks
- Trial decision pendency at 9.8 weeks
- Aware of possible increases from “trademark surge,” TMA appeals

“End to End” processing in FY21

- Average pendency, appeals – 36.1 weeks
- Median pendency, appeals – 34 weeks
- Average pendency, trials – 150.6 weeks
- Median pendency, trials – 140 weeks
- Average pendency, ACR trials – 107.3 weeks

Pretrial Conference pilot

Pretrial conference pilot

- TTAB attorneys and judges all contributed on goals, processes
- Board has begun soliciting customer input
- Will focus on cases with indications they are likely to create large and redundant, or unfocused or unwieldy records

Benefits

- Goals are to save time and resources of parties and the TTAB, and foster effective presentation of case
- Parties will be strongly encouraged to enter into stipulations on exhibits, agreed-upon facts, presentation of evidence; subject to Board approval
- Winnow down the case with stipulations, and dispense with extraneous claims/defenses/objections

Recommendations

- Known objections to evidence should be raised and discussed in conference, particularly for documentary evidence (to encourage stipulations)
- Encourage parties to focus objections on issues they are likely to win and that are outcome determinative
- Discourage parties from asserting a whole litany of objections

Recommendations

- Parties to submit a proposed Final Pretrial Conference Order (FPCO) (complete with a trial plan and pretrial disclosures)
- Parties come to the FPC with possible amendments to their claims and defenses in their draft FPCO
- Once the claims and defenses are reflected in the FPCO approved by the Board, that limits what parties will pursue at trial

Recommendations

- Proceed with pilot, experiment, adjust over time
- An ATJ and IA should oversee each FPC
- ATJ who sits on FPC should be on panel deciding case
- The FPC should be held sometime after close of discovery but before pre-trial disclosures are due

Recommendations

- Focus on cases wherein (A) the number of claims/defenses unwarranted; (B) parties or counsel unfamiliar with TTAB practice; (C) proceedings too contentious, too many motions
- Large majorities of TTAB attorneys and judges said all three somewhat or very important signs, with (C) the most important

Input needed

- Provide feedback via TTABFeedback@uspto.gov
- **Also note** TTAB Reading Room deployed August 2020
- Search final decisions and precedential decisions/orders
- Search by date, issue involved, other criteria, or by text
- URL: <https://e-foia.uspto.gov/Foia/TTABReadingRoom.jsp>