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Sent: Sunday, February 26, 2006 4:15 PM  
To: AB56Comments  
Subject: Neill A. Levy's comments on proposed changes to TTAB rules 1/17/06

Comment on proposed section 2.111(a), Filing petition for cancellation:

#### SERVE PETITION FOR CANCELLATION ON ATTORNEY

Under this new amendment a petitioner who files a petition for cancellation of a registered mark is obliged to serve a copy of the petition on the owner of record or, if a foreign owner, its domestic representative of record.

Section 2.111(a) should be further amended to provide that the petitioner should also serve a copy of the petition and supporting documents on the attorney of record and provide proof of service thereof. This simple action will prevent many registrants from losing their registrations without their knowledge.

In a perfect world each registrant would promptly file a notice of change of address with the USPTO when its correspondence address changes. However in my experience with small companies and individuals that possess trademark registrations, they do not notify the USPTO of changes of address. There is a danger that many registrants whose registrations are attacked by third parties will find that their registrations have been cancelled without their knowledge.

Compulsory service on the attorney of record will go a long way to prevent such defaults.

USPTO policy has in recent years tried to make its procedures more user friendly. This minor amendment would assist in making USPTO procedures easier and simpler for registrants who are small companies or individuals.

Of course, registrants change attorneys and attorneys change their own addresses. For the former, an attorney who previously represented a client shall usually forward a petition to the new attorney or to the ex-client's last known address. For the latter, the attorney shall usually timely notify the USPTO of his or her change of address.

A safeguard against non-service is already in proposed section 2.111(b), namely, the petitioner is obliged to serve an extra copy of the petition at any further address where the petitioner believes the registrant or its assignee is located. This requirement comes into play if the petitioner believes that the address of record is not accurate or current.

However this safeguard against non-service depends largely on the subjective belief (and the ethical standards) of the petitioner and its attorney. In my view this safeguard does not go far enough. It is a simple matter to require service

on the attorney of record. After all it is already a requirement for notices of opposition.

The safeguard of service by publication in the Official Gazette as provided in section 2.118 is useless as a practical method of notice. Everyone knows that a registrant who does not tell the USPTO that its address has changed is hardly likely to read the Official Gazette.

Of course where a registrant filed in pro se without an attorney my suggested rule would not apply. In that instance the registrant is on its own and there is no attorney to serve.

Comment on proposed section 2.129(a), oral argument

#### ORAL ARGUMENT BY TELEPHONE CONFERENCE CALL

When one party is represented by an attorney located in the Washington DC area this proposed rule places an unfair financial burden on the other side if its attorney is located outside the DC area. This is especially so if the attorney located outside the DC area represents a small company with a limited budget.

It is unfair to place a distant party at a disadvantage because it cannot afford to send its attorney to the USPTO offices to present oral argument.

The proposed rule should be amended to provide as follows. If the attorney for one party is located within a radius of one hundred miles of the location for the hearing of oral argument and the attorney for the opposing party is not, the latter attorney may elect that both parties shall present oral argument by telephone conference call. Such election shall be made by notice filed not later than fifteen days after the former party has filed a notice requesting oral argument.

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