

Trademark Trial and Appeal Board (TTAB) update TPAC – November 4, 2022

TTAB Chief Judge Gerard Rogers



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%

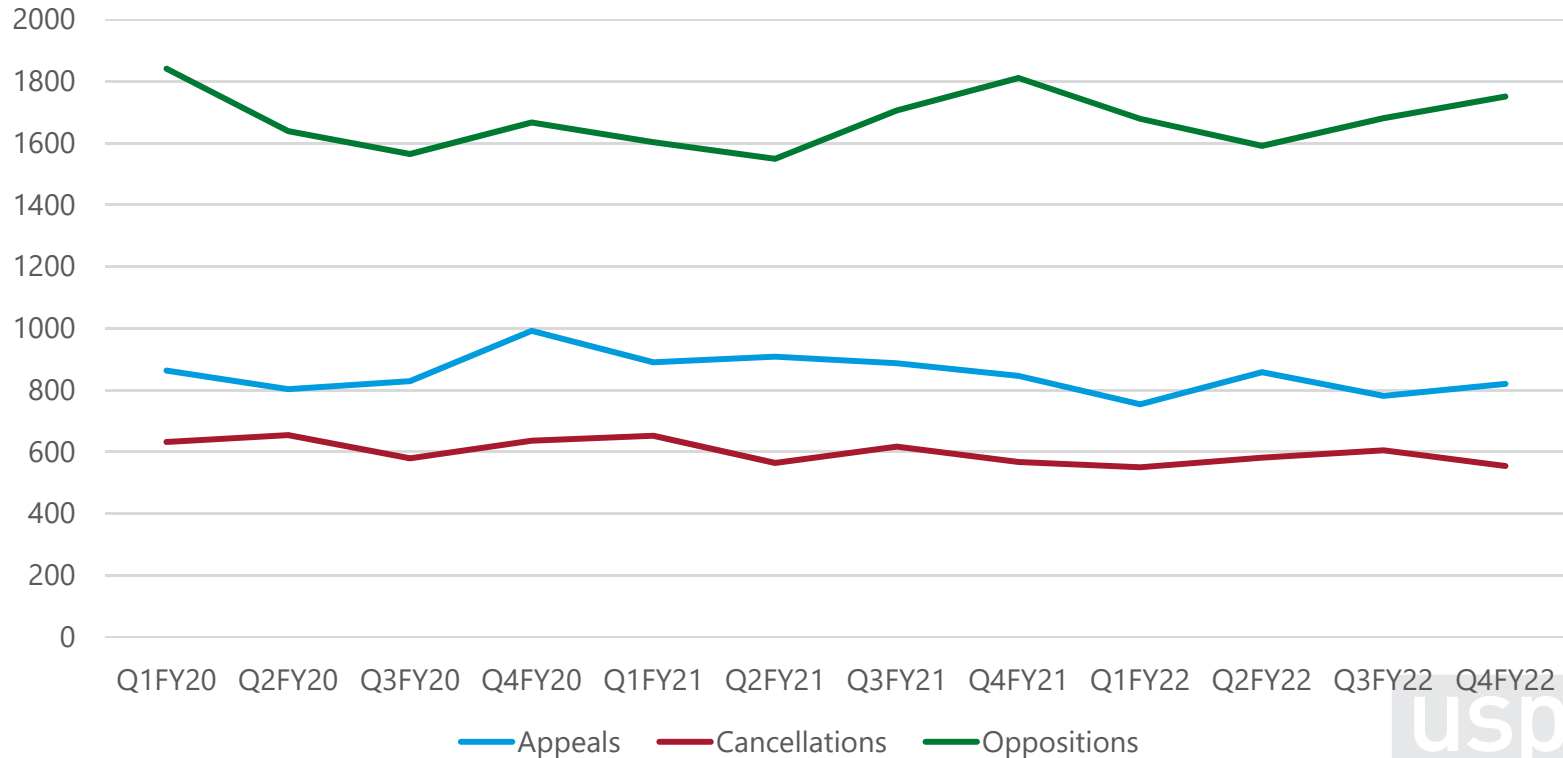
Continued moderation in FY21

- Ex parte appeals (3,531) +1.3%
- Extensions to oppose (17,200) -9%
- Oppositions (6,669) -0.6%
- Petitions to cancel (2,400) -4%

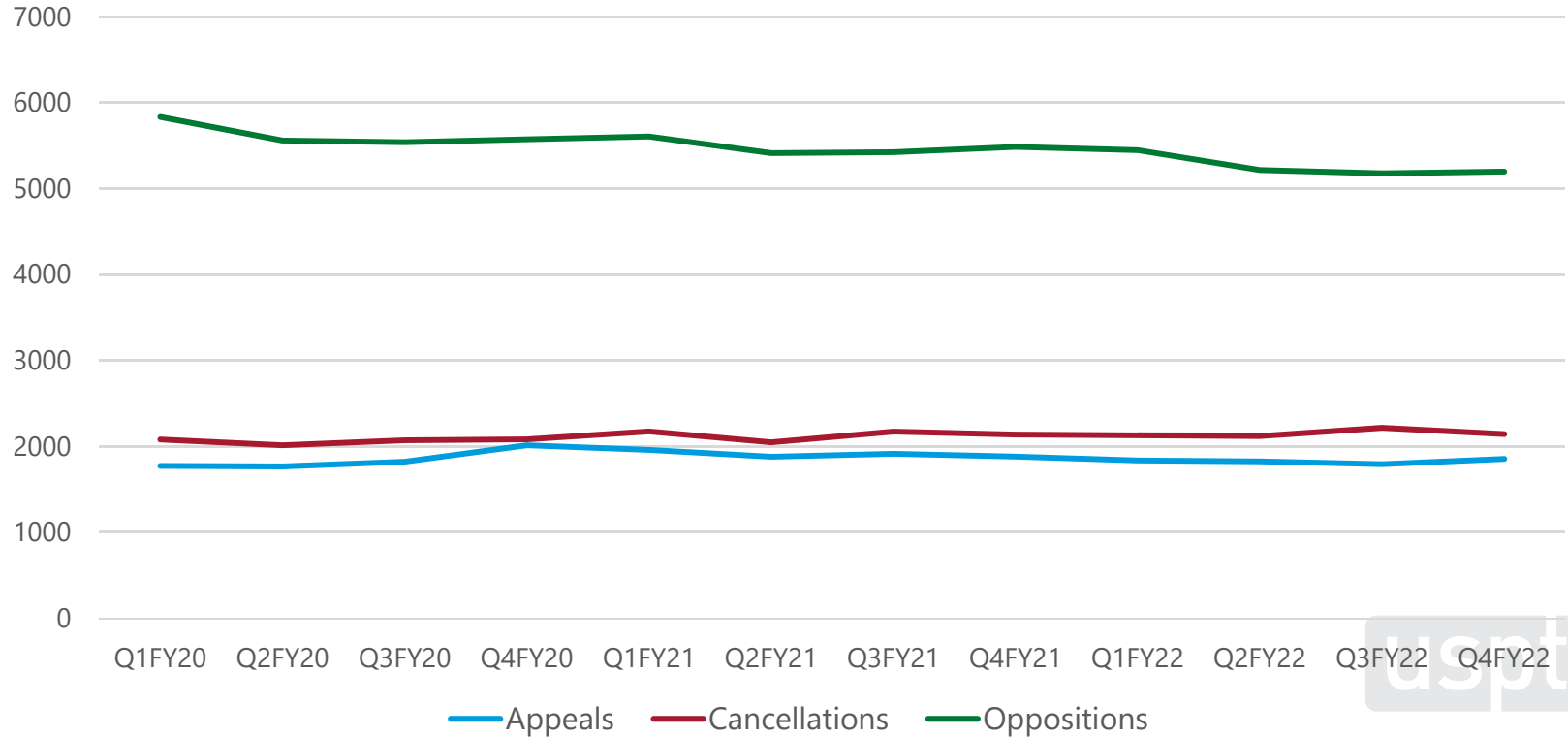
FY22 returns

- Ex parte appeals (3,213) -9%
- Extensions to oppose (16,814) -2.2%
- Oppositions (6,702) +0.4%
- Petitions to cancel (2,290) -4.6%

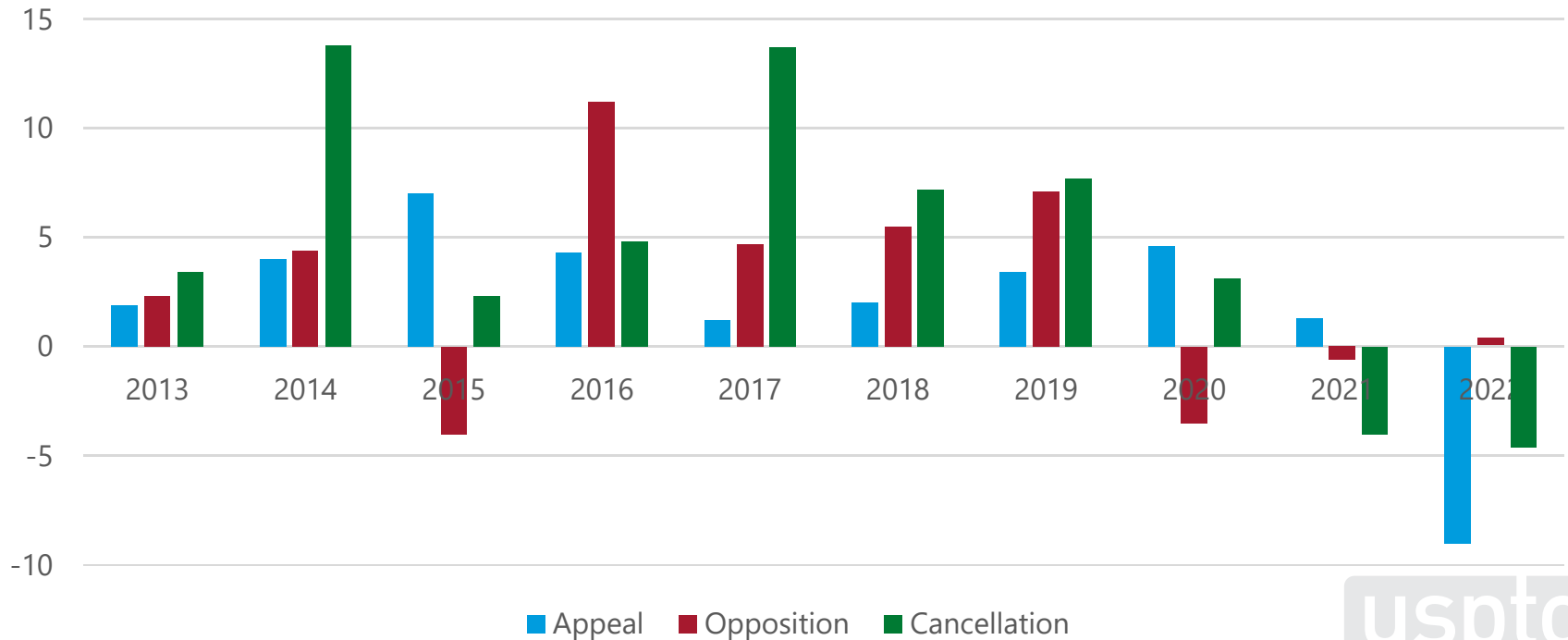
Filings by quarter – Q1FY20 through Q4FY22



Pending cases by type – Q1FY20 through Q4FY22



Increase/decrease by % — annual new filings



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
- 186 cases left with pending motions
- 93 cases left as ready for merits decision

Pendency goals met in FY22

- Motion decision pendency at 10.5 weeks
- Appeal decision pendency at 8.6 weeks
- Trial decision pendency at 10.6 weeks
- Trademark filing surge, Trademark Modernization Act (TMA) appeals may cause pendency measures to increase

“End to End” processing in FY22

- Average pendency, appeals – 38.7 weeks
- Median pendency, appeals – 36 weeks
- Average pendency, trials – 136 weeks
- Median pendency, trials – 121 weeks
- Average pendency, accelerated case resolution (ACR) trials – 93.5 weeks

Oral Arguments

TTAB resumed in-person hearings

- Beginning August 8, 2022
- Parties can still choose virtual option
- Parties must agree on in person option
- Many panels for in person hearings will still have a judge appear virtually

TTAB outreach and hearings

- PTAB and TTAB resumed joint hearing programs held at law schools, September 16 at University of Oregon in Portland
- ABA-IPL Trademark Day included hearing
- New Mexico State Bar IP Section and USPTO Texas Regional Office program included live streamed TTAB hearing

Final Pretrial Conference pilot

Pretrial conference pilot (FPC)

- TTAB attorneys (IAs) and judges (ATJs) all contributed on goals, processes
- Board has begun receiving customer input on material posted on TTAB web page
- Would 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 would 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

- Proceed with pilot, experiment, adjust over time
- An ATJ and IA should oversee each FPC
- ATJ who sits on FPC should **not** be on panel deciding case
- The FPC should be held sometime after close of discovery but before pre-trial disclosures are due

Input needed

- Provide feedback via TTABFeedback@uspto.gov

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Trademark Trial and Appeal Board

The Trademark Trial and Appeal Board (TTAB) handles appeals involving applications to register marks, appeals from expungement or reexamination proceedings involving registrations, and trial cases of various types involving applications or registrations.

- Filing assistance**
 - > New to TTAB?
 - > Filing with TTAB
 - > Pre-filing and technical requirements
 - > Forms
 - > Fees
 - > Systems status
 - > Contact us
- Practice and procedure**
 - > Trademark Trial and Appeal Board Manual of Procedure (TBMP)
 - > **Final rules and pilots**
 - > Policy and guidance resources
 - > Automatic Standard Protective Order (SPO)
 - > Acknowledgement form for SPO
 - > Alternative Dispute Resolution
- Proceedings**
 - > Preparing for hearings
 - > TTAB by the numbers
 - > Search final and precedential decisions
 - > Frequently asked questions

Input needed

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Pilots

- [Final Pretrial Conference Pilot](#)
 - [Model Format for Final Pretrial Conference Order](#)
- [Expedited cancellation program concluded](#)
 - [Comments](#)

Input needed

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Final Pretrial Conference Pilot

The United States Patent and Trademark Office (USPTO), Trademark Trial and Appeal Board (TTAB) is implementing a pilot program of holding Final Pretrial Conferences in certain *inter partes* (trial) cases to better manage opposition and cancellation proceedings that proceed to trial.

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- > Background
- > How the Pilot Will Work
- > Pilot Goals and Duration
- > Final Pretrial Conference Order (Template)
- > Request for Input

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