

ACCELERATED CASE RESOLUTION (ACR)

In response to requests for expedited determination of inter partes proceedings, the Trademark Trial and Appeal Board (TTAB) offers both pre-trial final disposition on the merits, or abbreviated trial on the merits, of inter partes cases via Accelerated Case Resolution (ACR).

ACR is a TTAB initiative that provides parties to Board inter partes proceedings the opportunity to stipulate to final determination on the merits of cases at the pre-trial phase without the time or expense of a full trial.¹ ACR operates seamlessly in cases brought prior to the November 1, 2007 amendments to the Trademark Rules of Practice as well as those brought under the current Trademark Rules. ACR is most suitable for cases in which the issues are relatively straightforward and the evidentiary record is not extensive. For example, an opposition or cancellation brought on the ground of priority and likelihood of confusion where priority is not at issue and the parties do not rely upon extensive testimony and documentary evidence would be an excellent candidate for accelerated case resolution.²

Parties requesting ACR may stipulate to a variety of matters to accelerate disposition of the proceeding, including the following:

Abbreviating the length of the discovery, testimony, and briefing periods as well as the time between them;

Limiting the number and types of discovery requests and/or the subject matter thereof;

¹ In that regard, ACR expands upon earlier TTAB practice allowing parties to stipulate that their summary judgment motions and accompanying evidence be treated as the final record and briefs in a case. See, for example, *Freeman v. National Association of Realtors*, 64 USPQ2d 1700 (TTAB 2002); and *Miller Brewing Co. v. Coy International Corp.*, 230 USPQ 675 (TTAB 1986). See also TBMP §528.05(a).

² ACR is also available in concurrent use proceedings. However, as a practical matter, many concurrent use cases are settled or resolved based upon an “ex parte” type of showing of entitlement to registration by applicant after default by common law excepted user(s) for failure to answer. As a result, most concurrent use cases do not go through a standard trial.

Limiting the subject matter for testimony, and/or agreeing to limit the number of witnesses, and/or agreeing to streamline the method of introduction of evidence, for example, stipulating to facts and introduction of evidence by affidavit; and

Permitting the TTAB to resolve issues of fact at summary judgment and treat the parties' summary judgment motion papers and evidence as the final record and briefs on the merits of the case.

Unlike summary judgment decisions that are interlocutory in nature, such ACR decisions would be judicially reviewable as set forth in Trademark Rule 2.145.

ACR provides parties with great flexibility in agreeing to streamline their inter partes proceedings before the TTAB within the framework of the Trademark Rules. Parties availing themselves of ACR may greatly reduce the time and expense of a full trial, and further obtain either a pre-trial final disposition in lieu of summary judgment or a final disposition after an abbreviated trial schedule.³ The Board is flexible and willing to work with parties to arrange a more expeditious alternative to the traditional discovery and trial schedule. All that is required is that the parties be willing to work with each other and the Board to reach agreement on an alternative.

Parties may stipulate to ACR at any time during the pre-trial phase of the proceeding. Thus, parties that have been in contact prior to commencement may stipulate to ACR as early as the filing and service of their pleadings. Parties that have not been in prior contact may stipulate to ACR during their discovery conference, or at any time prior to the opening of testimony. Thereafter, parties still may agree to abbreviating trial and briefing schedules, limiting the types and methods of introduction of evidence, and stipulating to facts. See *Target Brands, Inc. v. Shaun N.G. Hughes*, 85 USPQ2d 1676 (TTAB 2007).

Expediting TTAB proceedings via ACR saves time and money for parties, in-house counsel, and trademark practitioners. In addition, in most cases it is anticipated that decisions on ACR cases will be rendered within fifty days of briefing or hearing.

Parties may stipulate to ACR by telephone conference with the interlocutory attorney assigned to their case or by filing a stipulation by ESTTA or mail. In any event, parties must telephone the assigned interlocutory attorney to alert the TTAB that the parties are seeking ACR. Failure to do so may result in delays in implementing ACR and the disposition of the proceeding.

Information regarding ACR is contained in the institution and scheduling order of all TTAB inter partes proceedings. For more information on ACR, visit the TTAB website at <http://www.uspto.gov/web/offices/dcom/ttab/index.html>

³ Oral hearings are available in ACR cases in accordance with Trademark Rule 2.129(a). See also generally TBMP §802.