

TTAB Update

Gerard F. Rogers

Chief Administrative Trademark Judge

Trademark Trial and Appeal Board

October 31, 2017

UNITED STATES
PATENT AND TRADEMARK OFFICE



FY 2017 TTAB Performance Measures

FY 2017 TTAB Performance Measures	FY 2016 EOY Results	FY 2017 Actual, Target or Projected	Through EOY FY2017	Variance
JUDGES and ATTORNEYS				
Administrative Trademark Judges	24	(actuals) 24	24	On target
Interlocutory Attorneys	14.6	14.6	13.6	
FILINGS				
Notices of Appeal	3,121		3,158	+1.2%
Extensions of Time to Oppose	19,055		18,490	-3%
Notices of Opposition	5,881		6,156	+4.7%
Petitions to Cancel	1,848		2,101	+13.7%

FY 2017 TTAB Performance Measures (cont'd.)

FY 2017 TTAB Performance Measures	FY 2016 EOY Results	FY 2017 Actual, Target or Projected	Through EOY FY2017	Variance
PRODUCTION-DECISIONS				
Cases Decided on Merits	688		649	-5.7%
Precedential Decisions Issued	35	35-40	37	On target
Contested Motions Decided	1,367	(target)	1,238	-9.4%
Uncontested Motions Processed	29,949		32,516	+8.6%
CUSTOMER SERVICE DESK				
Number of Calls Answered	8,597		10,128	+17.8%
Number of Service Requests	7,423		8,852	+19.3%
Quality of Call Responses	90.65%		95.24%	+5.1%

FY 2017 TTAB Performance Measures (cont'd.)

FY 2017 TTAB Performance Measures	FY 2016 EOY Results	FY 2017 Actual, Target or Projected	Through EOY FY2017	Variance
<p>PENDENCY- Contested Motions</p> <p>(1) Measured from ready-for decision until mailing; average of orders on contested motions, excluding precedents, issued during reporting period</p> <p>(2) Age of <u>single</u> oldest contested motion ready for decision at end of reporting period</p>	<p>8.2 weeks</p> <p>11.4 weeks</p>	<p>(targets)</p> <p>8-9 weeks (avg.)</p> <p>12 weeks or less</p>	<p>7.8 weeks</p> <p>10.7 weeks</p>	<p>Better than target</p> <p>Met goal</p>
<p>INVENTORY—Contested Motions Ready for Decision</p> <p>The number of cases with contested motions in which briefing was completed, becoming ready for decision, as of the end of the reporting period</p>	<p>117</p>	<p>Cases with Motions 145-175 (target)</p>	<p>147</p>	<p>Within target range</p>

FY 2017 TTAB Performance Measures (cont'd.)

FY 2017 TTAB Performance Measures	FY 2016 EOY Results	FY 2017 Actual, Target or Projected	Through EOY FY2017	Variance
<p>PENDENCY- Final Decisions (Cancellations, Oppositions, Ex Parte Appeals) Measured from ready for decision date until mailing for final decisions, excluding precedents, in appeals and trial cases during reporting period</p>	9.2 weeks	10-12 weeks (target)	7.8 weeks	Better than target
<p>INVENTORY—Cases Ready for Final Decision The number of pending appeals and trial cases in which briefing was completed, or in which briefing and arguments were completed, thus becoming ready for decision on the merits, as of the end of the reporting period</p>	Ex Parte Appeals 56 Oppositions 22 Cancellations 5	Total Case Inventory 130-160 (target)	Ex Parte Appeals 65 Oppositions 18 Cancellations 10	93 cases (Better than target)

FY 2017 TTAB Performance Measures (cont'd.)

FY 2017 TTAB Performance Measures	FY 2016 EOY Results	FY 2017 Actual, Target or Projected	Through EOY FY2017	Variance
<p>TOTAL PENDENCY Average total pendency, commencement to completion, excluding precedents</p> <p>Appeals (528 decided FY16; 489 in FY17)</p> <p>Trial Cases (160 decided FY16; 160 in FY17)</p> <p>ACR Trial Cases (23 decided FY16; 17 issued in FY17 and 3 assigned and in process)</p>	<p>39.7 weeks</p> <p>154.3 weeks</p> <p>98.4 weeks</p>		<p>38.8 weeks</p> <p>157.2 weeks</p> <p>119.4 weeks</p>	<p>-2.3%</p> <p>+1.9%</p> <p>+21.3%</p>

TTAB Rule Changes

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Deadline: Serving Discovery

- *Estudi Moline Dissey, S.L. v. BioUrn Inc.*, 123 USPQ2d 1268 (TTAB 2017).
- Discovery not served early enough to allow responding party full 30 days to respond prior to close of discovery.
- Objection sustained.
- Board exercised discretion to reopen discovery and granted full response period.

Deadline: Motions to Compel

- *Nautica Apparel v. Aeronautica Militare* (Opposition no. 91224037)
- Motion to compel ruled untimely. Request for recon granted, based on Board exercise of discretion in transition period to practice under new rules. Motion later denied for lack of good faith effort to resolve dispute.

Clarification in Federal Register

- Clarification Notice at 82 Fed. Reg. 33,804 (July 21, 2017).
- 37 CFR 2.120(f)(1) (*as clarified*): A motion to compel discovery must be filed before the day of the deadline for pretrial disclosures for the first testimony period as originally set or as reset

Deadline: Summary Judgment motion

- 37 CFR § 2.127(e)(1) (*as clarified*):

A motion for summary judgment must be filed before the day of the deadline for pretrial disclosures for the first testimony period, as originally set or as reset

Declaration Testimony: Cross exam

- *USPS v. RPost Commc'n Ltd.*, 124 USPQ2d 1045 (TTAB 2017) (applicant sought cross-exam of DC based declarants at office of counsel in Santa Monica; motion to quash notice of election of cross-exam granted) (notices then filed for taking cross in DC)

Notice of Reliance: State Relevance

- Indicate generally the relevance and associate with one or more issues – 37 CFR § 2.122(g)
Barclays Capital Inc. v. Tiger Lily Ventures Ltd,
124 USPQ2d 1160 (TTAB 2017) (Tiger Lily moved to strike evidence introduced by Barclays' notices of reliance)

Future Changes?

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New Cancellation Proceeding

- May establish a streamlined version of cancellation proceeding for handling abandonment and nonuse claims
- Goal to improve accuracy of the use-based register; responsive to stakeholder requests for option to clear deadwood

New Cancellation Proceeding

- Request for Comments published May 16
- 82 FR 22517 (link on TTAB web page under Stakeholder Outreach)
- Comments received from 13 individuals, firms and stakeholder organizations
- Available on TTAB web page (Stakeholder Outreach)

New Cancellation Proceeding

- Public Meeting held to review comments and take further comments
- Summary of comments, meeting agenda posted at TTAB website
- Transcript in editing, to be posted
- Comments still welcome via TTABFRNotices@uspto.gov

Comments on Protective Order?

- TTAB seeking comments and suggestions through Idea Scale (link to external site on TTAB web page) on Standard Protective Order that went into effect June 24, 2016.
- Please submit all feedback by January 31, 2018.