Trademark Trial and Appeal Board (TTAB) update

Gerard Rogers
TTAB Chief Judge
New case filings – cumulative increases FY17-FY19

• Ex parte appeals Up 6.8%
• Extensions to oppose Up 7.6%
• Oppositions Up 18.3%
• Petitions to cancel Up 31.3%
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%
Year to date filings in FY21

• Ex parte appeals (2,685) +2.7%
• Extensions to oppose (12,864) -9.2%
• Oppositions (4,858) -3.5%
• Petitions to cancel (1,833) -2.3%
Surge in trial cases impacted motions

- Inventory rose almost 50% in FY19 alone
- Average pendency above goal FY18-FY20
- But inventory reduced by 12% in FY20, with none over 12 weeks old at end of fiscal year
- YTD pendency in FY21 reduced by 21.8%, down from 12.4 weeks in FY20 to 9.7 weeks
Surge in cases maturing to RFD

- Total cases RFD in FY19 +14.5% over FY18
- Trial cases, as percentage of all cases RFD, increased to 30.9% in FY19
- FY20 stabilized: total cases RFD -8.5% and trial cases as percentage at 23.2%
- FY21 YTD decline in cases RFD only 1.8% and trial cases 26.3% of total
Pendency goals met YTD in FY21

• Motion decision pendency at 9.7 weeks
• Appeal decision pendency at 7.7 weeks
• Trial decision pendency at 9.3 weeks
• Aware of possible increases from TM surge
TTAB fee changes
Fee increases as of January 2

• Petition to cancel, notice of opposition increased by $200 per class

• Appeal increased by $25 per class

• Extension of time to oppose increased by $100 per application for initial 90-day extension or second extension for 60 days; increased $200 per application for final 60-day extension (still no fee for initial 30-day extension)
New TTAB fees as of January 2

- Second or any subsequent extension to file appeal brief—$100 per application
- Appeal brief—$200 per class
- Request for oral hearing—$500 per proceeding
Impact of fees on filings

• Refunds in cancellation cases
  Do we refund if petitioner moves for default judgment? (yes, but a call will do)

• Appeal brief
  Appeal brief fee for supplemental brief? (no); do not use appeal brief form

• Request for oral hearing
COVID-19 Prioritized Review
Priority handling of applications

• For applications involved in COVID-19 prioritized examination in Trademarks
• Expedited review of any ex parte appeals
• Interlocutory attorney participation in discovery conference for oppositions
• Board monitoring these applications, but parties may call to ensure priority review
TTAB IT

• Legacy enhancements and stabilization
  2-year stabilization project complete; patching when necessary for security; TMA preparations

• Planning for TTAB Center
  Designed and developed landing page with MyUSPTO secure logon; started work on notice of opposition form
TTAB IT–use the Reading Room

- TTAB Reading Room replaced e-FOIA webpage August 2020
- Search final decisions and precedential decisions/orders
- Search by date, issue involved, other criteria, or by text
- URL: TTAB Reading Room - Site Link
- Prove feedback via TTABFeedback@uspto.gov (suggestions will be considered for future releases)
Pretrial Conference pilot
Pretrial conference pilot

• Survey taken of TTAB attorneys and judges on goals, processes

• Internal review of survey responses completed

• If deployed, will focus on cases with indications they are likely to create large, unfocused or unwieldy records

• Will focus parties’ approach to trial and consideration of stipulations
Survey results, recommendations

1 of 4

• Q: Would it be beneficial to hold Final Pretrial Conferences (FPCs) on a pilot project basis in trial cases that could generate large, unfocused or unwieldy records?

• Proceed with pilot, experiment, adjust over time

• An ATJ and IA should oversee the FPCs

• ATJ who sits on FPC should be on final panel deciding case

• The FPC should be held sometime after close of discovery but before pre-trial disclosures are due

• Parties to submit a proposed Final Pretrial Conference Order (FPCO) (complete with a trial plan and pretrial disclosures)
Survey results, recommendations
(1 of 3)

- 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 is what parties will pursue at trial
- Parties will be strongly encouraged to enter into stipulations on exhibits, agreed-upon facts, presentation of evidence, etc., subject to Board approval
- Winnow down the case with stipulations, and dispense with extraneous claims/defenses/objections
Survey results, recommendations (2 of 3)

• 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
Survey results, recommendations (3 of 3)

- For each of the following indicia please specify how helpful they would be in identifying cases that should be included in the pilot: A. number of claims/defenses unwarranted; B. parties or counsel unfamiliar with TTAB practice; C. too contentious, too many motions

- Large majorities said all three somewhat or very important signs, with C. the most important