Trademark Trial and Appeal Board (TTAB) update

Gerard Rogers
Chief Administrative Trademark Judge
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)  -.6%
• Petitions to cancel (2,400)  -4%
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
• Aware of possible increases from “trademark surge,” TMA appeals
“End to End” processing in FY21

- Average pendency, appeals – 36.1 weeks
- Median pendency, appeals – 34 weeks
- Average pendency, trials – 150.6 weeks
- Median pendency, trials – 140 weeks
- Average pendency, ACR trials – 107.3 weeks
Pretrial Conference pilot
Pretrial conference pilot

- TTAB attorneys and judges all contributed on goals, processes
- Board has begun soliciting customer input
- Will 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 will 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

• 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
Recommendations

- Parties to submit a proposed Final Pretrial Conference Order (FPCO) (complete with a trial plan and pretrial disclosures)
- 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 limits what parties will pursue at trial
Recommendations

• Proceed with pilot, experiment, adjust over time
• An ATJ and IA should oversee each FPC
• ATJ who sits on FPC should be on panel deciding case
• The FPC should be held sometime after close of discovery but before pre-trial disclosures are due
Recommendations

• Focus on cases wherein (A) the number of claims/defenses unwarranted; (B) parties or counsel unfamiliar with TTAB practice; (C) proceedings too contentious, too many motions

• Large majorities of TTAB attorneys and judges said all three somewhat or very important signs, with (C) the most important
Input needed

• Provide feedback via TTABFeedback@uspto.gov

• Also note TTAB Reading Room deployed August 2020

• Search final decisions and precedential decisions/orders

• Search by date, issue involved, other criteria, or by text

• URL: https://e-foia.uspto.gov/Foia/TTABReadingRoom.jsp