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

TTAB Chief Judge Gerard Rogers
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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Pilots

• Final Pretrial Conference Pilot
  ○ Model Format for Final Pretrial Conference Order
• Expedited cancellation program concluded
  ○ Comments
Input needed

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