Trademark Trial and Appeal Board (TTAB) update

Gerard Rogers
TTAB Chief Judge

August 11, 2023
Filings by quarter – Q3 FY21 through Q3 FY23
Filings by quarter – Q3 FY21 through Q3 FY23

- Appeals
- Cancellations
- Oppositions
Increase/decrease by % - annual new filings

[Graph showing annual new filings from 2016 to Q3 2023 with categories Appeal, Opposition, and Cancellation.]

- Appeal
- Opposition
- Cancellation
Pendency goals

- Average time to disposition of contested motions – 12 weeks or less
- Average time to issuance of final decisions in appeals – 12 weeks or less
- Average time to issuance of final decisions in trial cases – 15 weeks or less
- As measured from ready for decision date
Motion processing, in weeks
Appeal processing, in weeks
Trial processing, in weeks

![Graph showing trial processing in weeks from FY20 to FY23. The graph compares the goal and actual processing times. The goal line is flat at around 14 weeks, while the actual line shows a peak in FY21 at 10 weeks, then drops to around 10 weeks, and then rises again.](image-url)
Cases ready for decision on merits

FY20 FY21 FY22 FY23 (projected)

Combined Appeals Trials
Initiatives to address current trends

• Increasing number of judges
• Commenced Final Pretrial Conference (FPC) pilot
• Focusing on efficient approaches to decision writing and case management of trials
• Looking into data analysis
Next generation IT system
TTAB Center (a)

• TTAB Center E-filing eventually will replace ESTTA
• Notice of Opposition the first form to deploy
• Will need to have and use MyUSPTO account
• TTAB Center can populate fields in filing form using MyUSPTO information and user’s role
• Sponsored support staff will be able to add sponsoring attorney as the designated contact
TTAB Center (b)

- Will be able to access TTAB records for application, extension of time to oppose, pending opposition
- User email for extension of time to oppose limits who can access extension to create opposition
- Check mark on green background signals section of form completed; completion of sections noted in real time, showing what remains for completion
TTAB Center (c)

• Your docket is protected through two-factor authentication
• Tabs allow user to maintain multiple opposition filing forms, completed or in process
• User does not need to complete and file within a single session
• Only one user at a time can work on form; form locked while in use; but others will know who to contact
• Will be able to share a draft form with other users
Oral arguments
Hearings

- In person hearing option available as of August 8, 2022
- Parties can still choose virtual option
- Parties must agree on in person option
- Most parties are choosing virtual hearings
- Even in person hearings may involve a judge appearing virtually
TTAB outreach and hearings

• PTAB and TTAB have resumed joint hearing programs held at law schools

• TTAB continuing to stream virtual hearings in conjunction with CLE conferences and USPTO Global IP Academy (GIPA) programs
Final Pretrial Conference (FPC) pilot
Final Pretrial Conference (FPC) pilot

• Trademark Alert email announced April 1 commencement of FPC pilot

• Pilot planning team has provided instruction to all TTAB Interlocutory Attorneys (IAs) and Judges (ATJs)

• Attorneys and Judges may now recommend cases for possible inclusion in pilot; recommendations reviewed by planning team
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 dispense with extraneous claims, defenses, objections; to enter into stipulations on exhibits, agreed-upon facts, presentation of evidence; trial plan subject to Board approval
Steps (a)

• Pilot planning team receives recommendation
• Assesses bases for recommendation and whether likelihood of inclusion would be successful
• Assignment order issues (after close of discovery); parties discuss dates for orientation conference with IA and ATJ
• IA and ATJ explain parties’ joint drafting of proposed FPC order and preparing for FPC
Steps (b)

- Parties exchange lists of witnesses, copies of anticipated trial exhibits, discuss trial plan
- Parties file proposed FPC order
- Board reviews and schedules FPC
- ATJ will lead discussion of edits, amendments for FPC order
- Once order is finalized, Board issues it and it governs trial
Input needed (a)

• Provide feedback via TTABFeedback@uspto.gov
Input needed (b)

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Pilots

- **Final Pretrial Conference Pilot**
  - Model Format for Final Pretrial Conference Order
- **Expeditied cancellation program concluded**
  - Comments
Input needed (c)

• Provide feedback via TTABFeedback@uspto.gov