

TTAB Proposed Rule Changes

Some major areas of concern with respect to the proposed new rule changes are:

- 1) The option to submit testimony by declaration or affidavit subject to cross-examination puts the burden on the party seeking cross-examination to pay the costs for traveling to the adversary's place of business. This also makes the TTAB proceeding less like a district court proceeding insofar as the application of preclusion under the Supreme Court *B&B Hardware* decision is concerned.
- 2) The shortening of the discovery period designed to lead to a quicker determination may not have the desired result. A party can thwart the objective by refusing to answer, thus forcing the adversary to bring a motion to compel.
- 3) It is questionable whether speeding up proceedings is an advantage. As previous statistics show, well over 90% of TTAB cases are withdrawn, defaulted, or settled and do not require a final decision. A major advantage of the slower paced proceedings is the time provided to permit resolution of the dispute without significant financial investment. With this in mind, the proposed rules designed to speed up the process are of questionable value.

Hope these comments are helpful,

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