

Examination Guide 4-19 (Revised)

**Requirement of U.S.-Licensed Attorney for Foreign-Domiciled
Trademark Applicants and Registrants**

September 2019

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On July 2, 2019, the United States Patent and Trademark Office (USPTO) published a final rule (*Requirement of U.S. Licensed Attorney for Foreign Trademark Applicants and Registrants*, 84 FR 31498) requiring applicants, registrants, or parties to a trademark proceeding whose domicile is not located within the United States (U.S.) or its territories (hereafter foreign-domiciled applicants, registrants, or parties) to be represented by an attorney who is an active member in good standing of the bar of the highest court of a state in the U.S. (including the District of Columbia or any Commonwealth or territory of the U.S.) (hereafter U.S. attorney or U.S. counsel). In addition, the final rule requires U.S. attorneys to provide their bar information when representing applicants and registrants, whether domiciled inside or outside the U.S. It also removes the ability of foreign patent attorneys or agents to seek reciprocal recognition to practice before the USPTO in trademark matters. The changes became effective August 3, 2019 and supersede the current edition of the Trademark Manual of Examining Procedure (TMEP) to the extent any inconsistency exists.

Since issuing Examination Guide 4-19 on August 2, 2019, the USPTO has received requests for additional clarification regarding implementation of the final rule. Accordingly, the USPTO issues this revised examination guide, which supersedes all prior guidance. The USPTO continues to monitor implementation of this rule and may issue revised and/or additional guidance as needed in the future.

I. REQUIREMENT FOR REPRESENTATION

The Trademark Act has long required that the “application shall include specification of the applicant’s domicile and citizenship.” 15 U.S.C. §1051(a)(2). Under the new U.S. counsel rule, domicile dictates whether an applicant or registrant is required to have an attorney who is an active member in good standing of the bar of the highest court of a U.S. state or territory to represent the applicant or registrant at the USPTO. See 37 C.F.R. §§2.2(o), 2.11(a), 2.189.

Under this rule, the USPTO amended Rule 2.11 to require foreign-domiciled applicants, registrants, or parties to a trademark proceeding to be represented by a U.S. attorney. 37 C.F.R. §2.11(a). Further, the USPTO may require such applicants, registrants, or parties to furnish information or declarations necessary to the proper determination of whether the applicant, registrant, or party is subject to the requirement for a U.S. attorney. 37 C.F.R. §2.11(b).

All applications must include the applicant’s domicile address, and foreign-domiciled applicants must appoint a U.S. attorney to meet the requirements for a complete application. See 37 C.F.R. §§2.11(a), 2.32(a)(2), (a)(4), 2.189. Foreign-domiciled applicants submitting an application using the Trademark Electronic Application System (TEAS) Plus filing option will be required to designate a U.S. attorney in order to complete the submission of the application. 37 C.F.R. §2.22(a)(21).

A. Determining Domicile

The term “domicile” means the “permanent legal place of residence” of a natural person or the “principal place of business” of a juristic entity. 37 C.F.R. §2.2(o). Under this rule, a person’s “permanent legal place of residence” is the place the person resides and intends to be the person’s principal home. The “principal place of business” is the location of a juristic entity’s headquarters where the entity’s senior executives or officers ordinarily direct and control the entity’s activities and is usually the center from where other locations are controlled. 37 C.F.R. §2.2(p). Applicants and registrants must provide and keep current the address of their domicile. 37 C.F.R. §§2.22(a)(1), 2.32(a)(2), 2.189.

The initial determination of whether an applicant's, registrant's, or party's domicile is within or outside the U.S. is based on its street address. In most cases, a post-office box, a "care of" (c/o) address, or other similar variation cannot be a domicile address because it generally does not identify the location of the place the person resides and intends to be the person's principal home (for a natural person) or the location of a juristic entity's headquarters where the entity's senior executives or officers ordinarily direct and control the entity's activities (for a juristic entity). When necessary, the USPTO will require an applicant or registrant to confirm its domicile address.

The USPTO will implement the following procedures under this rule.

1. Non-U.S. Domicile

If a foreign address (i.e., any street address that is located outside of the United States and its territories) is listed as the domicile in any submission on or after August 3, 2019, and the applicant or registrant is not represented by a U.S. attorney, the examining attorney or post-registration specialist will issue an Office action that requires the applicant or registrant to appoint a U.S. attorney as its representative. The Office action will also include any other applicable refusals and/or requirements.

If the applicant responds, but does not appoint U.S. counsel, the examining attorney will issue a final action as to the requirement for U.S. counsel and all other unresolved refusals and/or requirements, if the file is otherwise in condition for a final action. If the registrant responds in a post-registration matter, but does not appoint U.S. counsel, the post-registration specialist will issue a second action maintaining the requirement for U.S. counsel and maintaining all prior unresolved refusals and/or requirements.

If the applicant or registrant responds by appointing U.S. counsel, the examining attorney or post-registration specialist will withdraw the requirement for U.S. counsel. If the applicant or registrant responds by amending to a U.S. street address, but does not appoint U.S. counsel, the USPTO will follow the procedures in Section I.A.2. If the applicant or registrant responds by amending to a U.S. post-office box or "care of" address or other similar variation, the USPTO will follow the procedures in Section I.A.3.

2. U.S. Domicile

If a U.S. address (i.e., any street address that is located within the United States and its territories) is listed as the domicile in any submission, an applicant or registrant need not appoint a U.S. attorney as its representative.

Under some circumstances, the USPTO will require an applicant or registrant to provide documentation to support its U.S. address. For example, if the address appears incorrect, the examining attorney or post-registration specialist will issue an Office action requiring the applicant or registrant to provide documentation supporting the address as specified below. As another example, if the applicant or registrant is a foreign citizen or entity with a U.S. street address, and is **not** represented by U.S. counsel, the examining attorney or post-registration specialist will issue an Office action requiring, at the choice of the applicant or registrant, either the addition of U.S. counsel or documentation supporting the address as specified below. In such cases, the Office action will also include all other applicable refusals and/or requirements.

If the applicant or registrant responds by appointing U.S. counsel, the examining attorney or post-registration specialist will withdraw the requirement for documentation supporting the U.S. street address, unless the U.S. street address appears to be incorrect. The requirement will be reissued if the U.S. counsel withdraws or is subsequently revoked.

An applicant or registrant who provides documentation as specified below is not required to appoint U.S. counsel.

If the applicant responds but does not appoint U.S. counsel or provide the information necessary to support its U.S. street address, the examining attorney will issue a final action as to the requirements regarding domicile, U.S. counsel, and all other unresolved refusals and/or requirements, if the application is otherwise in condition for final action. If the registrant responds in a post-registration matter but does not appoint U.S. counsel or provide the information necessary to support its U.S. street address, the post-registration specialist will issue a second action maintaining the requirements regarding domicile, U.S. counsel, and all other unresolved refusals and/or requirements.

Examples of documents that can support a U.S. street address include the following:

- (a) For an individual, documentation showing the name and listed address of the individual, such as one of the following:
 - (i) a current, valid signed rental, lease, or mortgage agreement;
 - (ii) a current, valid homeowner's, renter's, or motor vehicle insurance policy; or
 - (iii) a computer-generated bill issued by a utility company dated within 60 days of the application or post-registration document filing date.
- (b) For a juristic entity, documentation showing that the address is the applicant's or registrant's business headquarters, such as one of the following:
 - (i) the most recent final annual or quarterly report or other similar report; or
 - (ii) a current certificate of good standing for the corporation or other business entity issued by a federal or state government agency.

3. Post-office box, "care of," and other lack of street address

In most cases, a post-office box address, "care of" address, or similar variation cannot be a domicile address. If an applicant or registrant lists such an address as its domicile, or lacks a street address entirely, the applicant or registrant will be required to provide a street address. Alternatively, an applicant may demonstrate that the listed address is, in fact, its domicile.

The following procedures will apply to these requirements:

If an applicant lists as its domicile a post-office box address or "care of" address or similar variation, or no street address at all, the examining attorney or post registration specialist will require the applicant's or registrant's street address. 37 C.F.R. §2.32(a).

If the applicant or registrant adds a non-U.S. street address as its domicile, the USPTO will follow the procedures in Section I.A.1. If the applicant or registrant adds a U.S. street address as its domicile, the USPTO will follow the procedures in Section I.A.2.

If the applicant does not amend the listed domicile to a street address, and fails to demonstrate that the listed address is the domicile, the examining attorney will issue a final

action as to the requirements regarding domicile and all other unresolved refusals and/or requirements, if the application is otherwise in condition for final action. If the registrant does not amend the listed domicile to a street address, and fails to demonstrate that the listed address is the domicile, the post-registration specialist will issue a second action maintaining the requirements regarding domicile and all other unresolved refusals and/or requirements.

4. Waiver of requirement to make domicile public

In an extraordinary situation, an individual applicant or registrant may seek a waiver of the requirement to make public their domicile address by filing a Petition to the Director. See 37 C.F.R. §2.146(a)(5) and TMEP §1708. In such cases, when filing the application or registration maintenance document, the applicant or registrant may enter "Petition" in the street address field of the TEAS form and separately file a petition to waive the requirement to make public their domicile address. If a petition is granted, the applicant or registrant must also provide an address where mail can be received. Contact the Petitions Office by email at TMPetitionQuestion@uspto.gov or by phone at 571-272-8950 for more information. Filing a petition does not extend the time for responding to an outstanding Office action or other statutory deadline.

5. Multiple owners

If there are multiple owners, and one of the owners is U.S.-domiciled, a U.S. attorney is not required, unless the U.S. address appears to be incorrect.

6. U.S. Government entities or federally recognized American Indian and Alaska Native tribes with U.S. street address or U.S. post-office box address

No further inquiry regarding domicile is required.

B. Submissions that are Subject to the Requirements of the Rule

1. Documents Filed Before August 3, 2019

If a new application, or an application- or registration-related document, was submitted prior to August 3, 2019, but was not examined until on or after that date, the rule requirements for domicile, U.S. attorney, and bar information will be applied as follows:

a. Application and Registration Documents

- If the document requires no further action by the applicant or registrant, the examining attorney or post-registration specialist will approve it without making any requirements for domicile, U.S. attorney, and/or bar information, including a statement of good standing, ***as to that filing***.
- If the examining attorney or post-registration specialist must issue a first or supplemental Office action, ***and there is already a qualified U.S. attorney of record who was appointed before August 3, 2019***, the examining attorney or post-registration specialist will not require bar information or a statement of good standing.
- If the examining attorney or post-registration specialist must issue a first or supplemental Office action, ***and there is no qualified U.S. attorney of record***, the Office action will include the requirements regarding domicile and appointment of U.S. counsel, when appropriate, per Section I.A. 37 C.F.R. §§2.11, 2.32(a)(2),

2.189. If the requirement is made in a supplemental Office action, it raises a new issue that requires a nonfinal action.

b. Petitions, Requests for Reinstatement, or Post-publication Amendments

If a petition, request for reinstatement, or post-publication amendment was submitted prior to August 3, 2019, but is not decided or examined until on or after August 3, 2019, the USPTO will not require appointment of a U.S. attorney as to those filings.

c. Examiner's Amendment without Prior Authorization

If an application filed prior to August 3, 2019 is otherwise in condition for publication on first action, or a submission filed prior to August 3, 2019 resolves all outstanding issues, but it is necessary to issue an examiner's amendment without prior authorization, the examining attorney may issue the examiner's amendment and approve for publication or issue without requiring domicile, U.S. counsel, and/or bar information. See TMEP §707.02.

d. Partial Abandonment

If a partial abandonment advisory was issued prior to August 3, 2019 and no response is received, the examining attorney may issue an examiner's amendment without prior authorization deleting the goods, services, and/or classes to which the refusal or requirement pertained and then approve the application for publication without requiring domicile, U.S. counsel, and/or bar information. See TMEP §707.02.

e. Suspension

If an application filed prior to August 3, 2019 is in condition for suspension, or a response filed prior to August 3, 2019 puts an application in condition for suspension, the examining attorney should suspend the application. If it is necessary to issue another Office action when the application is removed from suspension, the requirements for domicile, U.S. counsel, and/or bar information will be made, if appropriate, at that time. If the application is in condition for approval for publication when removed from suspension, the examining attorney will approve it for publication without making the additional requirements.

f. TEAS Plus Status

If the application was filed prior to August 3, 2019, it does not lose TEAS Plus status for failure to provide attorney representation and/or bar information. If the application was filed on or after August 3, 2019, and the applicant has a foreign address, the TEAS Plus form will require designation of a U.S. attorney and provision of bar information in order to meet the filing requirements for TEAS Plus. The form will also require the bar information when filed by a U.S. attorney who is representing a U.S.-domiciled applicant, because bar information is required for any TEAS Plus applicant who designates an attorney. The relevant fields require the entering of information in order to validate the TEAS Plus application. However, if the application includes clearly invalid bar information, or the bar information is later determined to be invalid, the application will lose TEAS Plus status and be subject to the processing fee.

2. Application and Registration Documents Filed on or after August 3, 2019

a. Trademark Act Section 1 and/or Section 44

If the USPTO receives a trademark application filed on or after August 3, 2019 by a foreign-domiciled applicant that does not include appointment of U.S. counsel, with a filing basis under Section 1 and/or Section 44, 15 U.S.C. §§1051, 1126, the examining attorney will conduct a complete review of the application and issue an Office action that includes the requirement for U.S. counsel, as well as any other refusals and/or requirements.

If, after a complete review of an application filed by a foreign-domiciled applicant, the examining attorney determines that it would otherwise be in condition for publication upon first action, the examining attorney must nevertheless issue an Office action requiring the applicant to appoint a U.S. attorney. The applicant will have six months to respond to the Office action. 37 C.F.R. §2.65(a).

To appoint or designate a U.S. attorney, or add bar information, the applicant should (1) submit a TEAS Revocation, Appointment, and/or Change of Address of Attorney/Domestic Representative form and (2) submit a TEAS response to Office action form indicating that the attorney appointment form has been submitted. Note that if the applicant is represented by a recognized Canadian trademark attorney or agent, the U.S. attorney appointment is still necessary, but the U.S. attorney cannot appear by signing a response to the Office action and must first be appointed using the TEAS Revocation, Appointment, and/or Change of Address of Attorney/Domestic Representative form *before* submitting a response to the Office action. See Section III below.

b. Trademark Act Section 66(a)

Foreign-domiciled applicants who submit an application based on Section 66(a) (Madrid application), 15 U.S.C. §1141f, are also subject to the requirement to appoint a U.S. attorney. Madrid applications are initially filed with the International Bureau (IB) of the World Intellectual Property Organization and subsequently transmitted to the USPTO. There is currently no provision for designating a U.S. or any other local attorney in an application filed with the IB. Therefore, until an application submitted to the IB provides for such designation, the USPTO will not enforce the requirement to appoint a U.S. attorney prior to publication for those Madrid applications that comply with all formalities and statutory requirements when received by the USPTO, such that the application is in condition for publication upon first action.

However, if the examining attorney issues an Office action that includes any substantive refusals and/or requirements, the examining attorney will also include a requirement to appoint a U.S. attorney or otherwise follow the procedures in Sections I.A.1-I.A.5, as appropriate.

c. Statements of Use

Statements of use are reviewed by the ITU/Divisional Unit to determine whether they are timely and in compliance with the minimum filing requirements listed in Rule 2.88(c). 37 C.F.R. §2.88(c); TMEP §1109.02. The USPTO will follow its current procedures regarding statements of use that are untimely. TMEP §1109.02. A statement of use filed by a foreign-domiciled applicant that does not include appointment of U.S. counsel and that is timely and meets the minimum filing requirements under Rule 2.88(c) will be referred to the examining attorney for examination on the merits. The examining attorney will conduct a complete

review of the statement of use and issue an Office action that includes the requirements regarding appointment of U.S. counsel discussed in Section I.A, as well as any other refusals and/or requirements. 37 C.F.R. §§2.11, 2.32(a)(2), 2.189.

d. Post-Registration Documents

If the USPTO receives a post-registration document under Sections 7, 8, 9, 15, or 71, 15 U.S.C. §§1057, 1058, 1059, 1065, 1141(k), filed by a foreign-domiciled registrant that does not include appointment of U.S. counsel, the post-registration specialist will examine the filing in accordance with current examination guidelines by conducting a complete review of the document and issuing an Office action that includes the requirement for domicile, and for U.S. counsel, when appropriate, as well as any other refusals and/or requirements. 37 C.F.R. §2.11(b).

e. Petitions to the Director, Requests for Reinstatement, and Post-Publication Amendments

If the USPTO receives a petition to the Director, a request for reinstatement, or a post-publication amendment filed by a foreign domiciliary, an attorney or paralegal in the Office of the Deputy Commissioner for Trademark Examination Policy will notify the petitioner that appointment of U.S. counsel is required and of any other deficiencies. The applicant or registrant will be granted 60 days to appoint U.S. counsel and to supplement the petition or request for reinstatement, as appropriate. If the applicant or registrant does not appoint U.S. counsel and submit any additional necessary information within the time allowed, the petition or request for reinstatement will be denied or the amendment will not be entered. Filing a petition does not extend the time for responding to an outstanding Office action or other statutory deadline.

3. Trademark Trial and Appeal Board (TTAB) Proceedings

Regarding proceedings before the TTAB, if it is necessary to require a foreign-domiciled party to obtain a U.S. attorney, generally the TTAB will suspend the proceedings and inform the party of the time frame within which it must obtain a U.S. attorney.

4. Review on Petition of Requirement for a U.S. Attorney

If the USPTO issues an Office action that (1) maintains only a requirement for U.S. counsel and/or additional information under Rule 2.11 (a), (b), and/or (c), or (2) maintains only the requirement for the TEAS Plus processing fee under Rule 2.22(c) in addition to one or all of those requirements, an applicant's or registrant's recourse for seeking review is limited to a petition to the Director under Rule 2.146. 37 C.F.R. §§2.11(f), 2.146, 2.165, 2.186, 7.40.

II. RECOGNITION OF REPRESENTATIVES AND REQUIREMENT FOR BAR INFORMATION

Under amended Rules 2.22(a)(21) and 2.32(a)(4), a U.S. attorney must provide the attorney's name, postal address, email address, and bar information as a requirement for a TEAS Plus application or a complete trademark application. 37 C.F.R. §§2.22(a)(21), 2.32(a)(4). Moreover, amended Rule 2.17(b)(3) makes the requirement for bar information applicable to recognized attorneys in all trademark filings. 37 C.F.R. §2.17(b)(3). The requirement for bar information is not tied to the domicile of the applicant and is required of all attorneys representing applicants at the USPTO, except as discussed above in Section I.B.1. Bar information includes (1) the applicable U.S. state, Commonwealth, or territory,

(2) the year of admission, (3) the bar number, if applicable, and (4) a statement that the attorney is a registered and active member in good standing of the bar of the listed U.S. state, Commonwealth, or territory.

As of August 3, 2019, the majority of the TEAS forms include specific fields to enter attorney bar information for the attorney of record. The information will not be required for other appointed attorneys. If attorney bar information and/or the statement that the attorney is an active member in good standing of the referenced bar is omitted or incomplete, the examining attorney will issue an Office action requiring the bar information and/or statement of active bar membership in good standing.

In cases where bar information is required and all other outstanding issues may be resolved by examiner's amendment, the examining attorney may email or call the U.S. attorney about the outstanding issues, obtain the bar information, and ask that he or she agree to a statement of good standing, if it is not already in the record.

If bar information is obtained by examiner's amendment, the amendment will indicate only that the bar information has been completed and provided. The USPTO will not display it in the public record. Bar information entered on a TEAS form will be hidden only if it is entered in the bar information fields on the attorney information page of the form.

If a submission includes clearly invalid attorney identification information,¹ the examining attorney or post-registration specialist must send an email to the TM Policy mailbox. The USPTO will notify the applicant or registrant that the listed attorney does not appear to be a qualified practitioner. In such cases, correspondence must be sent directly to the applicant or registrant at the address specified in the initial application or post-registration maintenance document. Therefore, the examining attorney or post-registration specialist may be instructed to remove the attorney identification information from the correspondence section of the Trademark database and enter the applicant's or registrant's address, or the examining attorney may send a request to a legal instruments examiner to do so. In addition, for a foreign-domiciled applicant, any Office action issued must make requirements for appointment of U.S. Counsel and domicile, if applicable.

If the bar information appears valid on its face, but circumstances calling into question the veracity of the information arise, the examining attorney or post-registration specialist must (1) proceed as discussed above regarding correcting the correspondence address to that of the applicant or registrant, and (2) issue an Office action notifying the applicant or registrant that the listed attorney does not appear to be a qualified practitioner or has not consented to represent the applicant or registrant. In addition, the Office action must include a requirement for the attorney's identification information (including bar credentials) if appropriate, and a domicile requirement, as applicable.

III. RECIPROCAL RECOGNITION

Foreign attorneys and agents must be granted reciprocal recognition by the USPTO pursuant to Rule 11.14(c) and (f) in order to practice before the USPTO in trademark matters. The final rule removes reciprocal recognition of foreign patent attorneys and agents to practice before the USPTO in trademark matters. 37 C.F.R. §11.14(c)(1). Additionally, the rule requires in any trademark matter where a reciprocally recognized foreign trademark

¹ "Clearly invalid attorney identification information" includes, e.g., John Doe, a series of question marks or letters/numerals, a single name, the word "test," or the listed attorney does not appear to be a qualified practitioner, or the listed attorney has not consented to represent the applicant.

attorney or agent is representing an applicant, registrant, or party to a proceeding whose domicile is not in the U.S., a qualified U.S. attorney must also be appointed as the applicant's or registrant's representative who will file documents with the USPTO and with whom the USPTO will correspond. 37 C.F.R. §11.14(c)(2).

Currently, only Canadian attorneys and agents are reciprocally recognized under Rule 11.14(c)(1) and their representation is limited to applicants, registrants, and parties located in Canada (Canadians). On or after August 3, 2019, Canadian trademark attorneys and agents continue to be authorized to represent Canadian parties in trademark matters before the USPTO as additionally appointed practitioners, so long as they remain registered and in good standing in Canada and are formally reciprocally recognized by the USPTO's Office of Enrollment and Discipline (OED). Currently reciprocally recognized Canadian patent attorneys and agents may complete prosecution of an application or post-registration maintenance filing (for which they are listed as the representative) which was pending with the USPTO before August 3, 2019, but may not handle new trademark matters.

With regard to documents filed before August 3, 2019 by a reciprocally recognized Canadian trademark or patent attorney or agent in a matter for a Canadian applicant or registrant, the USPTO will follow the same procedures as those discussed above in Section I. For example:

- If the document requires no further action by the applicant or registrant, the USPTO will not require appointment of a U.S. attorney ***as to that filing***.
- If a first or supplemental Office action must be issued, the Office action will include the requirement for appointment of a U.S. attorney. If the requirement is made in a supplemental Office action, it raises a new issue that requires a nonfinal action.

With regard to trademark documents filed with the USPTO on or after August 3, 2019, Canadian applicants and registrants must appoint U.S. counsel and may also appoint a Canadian trademark attorney or agent who is formally reciprocally recognized by OED as an additional practitioner. On or after August 3, 2019, reciprocally recognized Canadian trademark attorneys and agents may:

- Prepare, sign, and file new applications (TEAS Plus applications require designation of a U.S. attorney).
- Prepare and sign other application- and registration-related submissions, including responses and other formal communications; a U.S. attorney must file the submissions with the USPTO and authorize any examiner's amendments.
- Contact the assigned examining attorney by phone or email to discuss the application status, the contents of the examining attorney's Office action, and possible responses to the Office action.
- Receive courtesy copies of USPTO communications.