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October 28, 2022

Hon. Gerard F. Rogers
Chief Administrative Trademark Judge
United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Re: **TTAB Final Pretrial Conference Pilot Proposal**

Dear Chief Judge Rogers:

We write on behalf of the American Bar Association Section of Intellectual Property Law (the “Section”) to comment on and support the United States Patent and Trademark Office’s (“USPTO”) proposal to implement a pilot program studying the introducing of a Final Pretrial Conference into certain Trademark Trial and Appeal Board (“TTAB”) opposition and cancellation proceedings. The views expressed herein have not been reviewed or approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association. These comments do not represent the policy or views of any government employee who is a member of the Section, its Council, or its Interest Groups.

The Section supports the introduction of a pilot program, and believes that studying the impact that such conferences would have on TTAB matters before fully implementing is critically important. It agrees that the introduction of Final Pretrial Conference into certain opposition and cancellation proceedings offers the TTAB a useful opportunity to determine whether doing so will streamline matters, especially those with large, unfocused and/or unwieldy records. Mandating that the parties set out and discuss the claims remaining after discovery, witness lists, exhibits and disputed and undisputed facts may allow the parties to more efficiently litigate and potentially even resolve certain claims before proceeding to trial. Such procedures could significantly lessen the burden on the parties and the TTAB Administrative Judges alike, as well as lessen the cost of the trial, which the Section views as a positive development. While introducing a Final Pretrial Conference may be beneficial, it is also possible that it would negatively impact parties by making TTAB proceedings more

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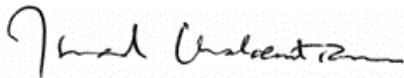
expensive, more akin to federal litigation, and less efficient due to the significant time and resources that parties will need to dedicate to completing the pre-trial memorandum, including drafting of both statements of the case and findings of fact.

To better understand the potential impacts, the Section is interested in learning more about the criteria for the pilot program, such as who will be selected to participate, at what stage of the proceedings the participants will be notified to better assess potential benefits and disadvantages, whether parties could opt out of the pilot program, and the effect the pretrial conference will have on timing for the trial schedule and the eventual decision on the merits from the Board. The Section also suggests that the USPTO consider making participation in the pilot program optional, so only parties who consent will be able to participate in the pilot. That may lessen the burden of the pilot for those parties who are not quite ready to engage in a Final Pretrial Conference as part of their TTAB proceedings.

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The Section appreciates the USPTO's attention to this matter, and looks forward to continued conversation with the USPTO and TTAB on this important issue. If there are any further questions, or it would be helpful to hold additional meetings to address these issues, please feel free to contact me. Either I or another Section leader will gladly respond and participate.

Sincerely,



Thad Chalomentiarana, Chair
ABA Section of Intellectual Property Law