

Attachment B

LIST OF CASES

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Cases issued between March 1, 2015 and March 4, 2016

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>3PMC, LLC v. Stacy Lee Huggins</i>	application abandoned on same day that notice of opposition was filed was not subject to opposition	218 N.2	115 USPQ2d 1488, 1489 (TTAB 2015)
<i>3PMC, LLC v. Stacy Lee Huggins</i>	following remand, granting relief from judgment by affirming Board's holding in <i>In re First Nat'l Bank of Boston</i> , 199 USPQ 296 (TTAB 1978) which held that the Board will not take cognizance of fractions of a day and will assume that an opposition and express abandonment, filed on the same day, were filed at the same instant, and therefore, concluding that application was not subject to an opposition when abandoned	544 N.2	115 USPQ2d 1488 (TTAB 2015)
<i>3PMC, LLC v. Stacy Lee Huggins</i>	reaffirming holding in <i>In re First Nat'l Bank of Boston, supra</i> , that Board “‘shall not take cognizance of fractions of a day,’ and we will assume that an opposition and an express abandonment, filed the same day, were filed at the same instant. In accordance with our precedent, we conclude that the involved application was not subject to an opposition when it was abandoned and, therefore, Trademark Rule 2.135 does not apply.”	602.01 N. 10	115 USPQ2d 1488 (TTAB 2015)
<i>3PMC, LLC v. Stacy Lee Huggins</i>	judgment entered under Trademark Rule 2.135 for abandoning application after commencement of opposition was reviewable	901.02(a) N. 3	115 USPQ2d 1488, 1489 (TTAB 2015)
<i>3PMC, LLC v. Stacy Lee Huggins</i>	moving party requesting motion for relief from judgment under Fed. R. Civ. P. 60(b) may request limited remand	901.03 N. 1	115 USPQ2d 1488, 1489 (TTAB 2015)

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<i>Anheuser-Busch, LLC v. Innvopak Systems Pty. Ltd.</i>	fame of mark proved, which weighs heavily in likelihood of confusion finding	309.03(c) new N.50	115 USPQ2d 1816, 1820-21 (TTAB 2015)
<i>B&B Hardware, Inc., v. Hargis Industries, Inc.</i>	proceedings before the TTAB are largely governed by the Federal Rules of Civil Procedure and Evidence	101.02 N.2	575 U.S. ___, 135 S.Ct. 1293, 113 USPQ3d 2045, 2049 (2015)
<i>B&B Hardware, Inc., v. Hargis Industries, Inc.</i>	Supreme Court held that issue preclusion can be based on a decision by the Trademark Trial and Appeal Board in a case in which the ordinary elements of issue preclusion are met	906.01-text	575 U.S. ___, 135 S.Ct. 1293, 113 USPQ3d 2045, 2049 (2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	requirements for concurrent use proceedings	1101.01 N. 1 & 3	115 USPQ2d 1925, 1930 (TTAB 2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	during ex parte prosecution examining attorney advised intent-to-use applicant that it could not seek concurrent use registration until it filed an acceptable allegation of use	1103.01(a) N. 1	115 USPQ2d 1925, 1927 (TTAB 2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	motion for summary judgment granted where there is no genuine dispute of material fact that applicant did not use the mark shown in the drawing in commerce prior to the filing date of the application underlying defendant's registration	1103.01(c) N. 1	115 USPQ2d 1925, 1933 (TTAB 2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	motion for summary judgment granted where there is no genuine dispute of material fact that applicant did not use the mark shown in the drawing in commerce prior to the filing date of the application underlying defendant's registration	1108 N. 3	115 USPQ2d 1925, 1933 (TTAB 2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	Fed. R. Evid. 408(a) does not preclude use of documents because they are provided during the course of compromise negotiations if the evidence is otherwise discoverable	528.05(a)(1) N.4	115 USPQ2d 1925, 1930-31 (TTAB 2015)
<i>Bad Boys Bail Bonds, Inc. v. Yowell</i>	Fed. R. Civ. P. 56(d) motion denied as moot because party filed substantive response to summary judgment motion	528.06 N.8	115 USPQ2D 1925, 1930 (TTAB 2015)
<i>Bayer Consumer Care AG v. Belmora LLC</i>	objections to written cross-examination questions sustained on ground they exceed	703.02(k) N. 2	110 USPQ2d 1623, 1628 (TTAB 2014) <i>rev'd on other</i>

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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
	scope of direct testimony on written questions		<i>grounds</i> , 84 F.Supp.3d 490 (E.D. Va. 2015), <i>vacated and remanded</i> ___ F.3d ___, Case No. 15-1335 (4th Cir. Mar. 23, 2016)
<i>Bayer Consumer Care AG v. Belmora LLC</i>	expert witness testimony stricken after party failed to timely identify and disclose the witness	707.03(b)(3) N. 1	110 USPQ2d 1623, 1628 (TTAB 2014) <i>rev'd on other grounds</i> , 84 F.Supp.3d 490 (E.D. Va. 2015), <i>vacated and remanded</i> ___ F.3d ___, Case No. 15-1335 (4th Cir. Mar. 23, 2016)
<i>Be Sport, Inc. v. Al-Jazeera Satellite Channel</i>	motion to amend answer to include affirmative defense of claim preclusion denied as futile because the mark involved in the prior opposition creates a different commercial impression than the mark involved in the instant proceeding	314 N.4	115 USPQ2d 1765, 1769 (TTAB 2015)
<i>Be Sport, Inc. v. Al-Jazeera Satellite Channel</i>	where motion to amend pleading to add defense of claim preclusion denied as futile, motion for summary judgment on such defense denied as moot	314 N.5	115 USPQ2d 1765, 1769 (TTAB 2015)
<i>Be Sport, Inc. v. Al-Jazeera Satellite Channel</i>	application of issue or claim preclusion in Board proceedings at summary judgment	528.02 N.2	115 USPQ2d 1765 (TTAB 2015)
<i>Belmora LLC v. Bayer Consumer Care AG</i>	Belmora filed notice of appeal of Board's decision to Federal Circuit; Bayer then filed a notice of election to have review by civil action	903.06 N. 2	115 USPQ2d 1032, 1036 (E.D. Va. 2015)
<i>Belmora LLC v. Bayer Consumer Care AG</i>	district court reviews the record de novo and acts as the finder of fact	906.01 N, 3	115 USPQ2d 1032, 1037 (E.D. Va 2015) <i>vacated and remanded</i> ___ F.3d ___, Case No. 15-1335 (4th Cir. Mar. 23, 2016)
<i>Cadbury UK Ltd. v. Meenaxi Enter., Inc.</i>	Board will not allow a party to avoid its discovery obligations due to an obvious typographical error in	408.01 N.1	115 USPQ2d 1404, 1407 (TTAB 2015)

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	opposing party's written discovery requests		
<i>Couture v. Playdom, Inc.</i>	service must be offered and actually provided to constitute use in commerce	309.03(c) N.24	778 F.3d 1379, 113 USPQ2d 2042, (Fed. Cir. 2015), <i>cert. denied</i> 136 S.Ct. 88 (2015)
<i>Couture v. Playdom, Inc.</i>	Federal Circuit applies "substantial evidence" standard of review for USPTO findings of fact.	906.01 N. 9	778 F.3d 1379, 113 USPQ2d 2042, 2043 (Fed. Cir. 2015), <i>cert. denied</i> 136 S.Ct. 88 (2015)
<i>Couture v. Playdom, Inc.</i>	conclusions of law are reviewed de novo	906.01 N. 24	778 F.3d 1379, 113 USPQ2d 2042, 2043 (Fed. Cir. 2015), <i>cert. denied</i> 136 S.Ct. 88 (2015)
<i>Embarcadero Technologies, Inc. v. Dephix Corp.</i>	because proposed claims are untimely and futile, motion for leave to amend denied	507.02 N.9	117 USPQ2d 1518, 1523 (TTAB 2016)
<i>Embarcadero Technologies, Inc. v. Dephix Corp.</i>	non-moving party failed to rebut moving party's evidence or raise genuine dispute of material fact	528.01 N. 8	117 USPQ2d 1518, 1523 (TTAB 2016)
<i>Emilio Pucci International BV v. Sachdev</i>	Board expects parties to take into account the principles of proportionality with regard to discovery	402.01 N.5	___ USPQ2d ___, Opp. No. 91215100 (TTAB Jan. 20, 2016)
<i>First International Services Corp. v. Chuckles Inc.</i>	in the event applicants ultimately prevail, the involved application will be remanded to the examining attorney for reexamination	805 N. 1	5 USPQ 1628, 1636 n. 6 (TTAB 1988)
<i>Guess? IP Holder LP v. Knowluxe LLC</i>	reconsideration denied because there is no requirement that Board repeat or address irrelevant arguments in entertaining a motion	518 N.7	116 USPQ2d 2018, 2019-20 (TTAB 2015)
<i>H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.</i>	two-step determination of whether a term is generic involves 1) what is the genus of the goods or services at issue and 2) is the term understood by the relevant public primarily to refer to that genus	309.03(c) new N.40	782 F.2d 987, 228 USPQ 528, 531-32 (Fed. Cir. 1986)
<i>Harry Winston, Inc. v. Bruce Winston Gem Corp</i>	judgment entered against opposers who voluntarily surrendered pleaded registration without applicant's consent where such registration was	602.02(a) N. 4	111 USPQ2d 1419, 1423 (TTAB 2014)

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	the subject of a counterclaim to cancel		
<i>Hollywood Casino LLC v. Chateau Celeste, Inc.</i>	while a party may submit an errata sheet correcting typographical errors to a deposition transcript, such party may not submit or rely upon an errata sheet which substantively changes the deposition testimony	404.07(i) N.2	116 USPQ2d 1988, 1994-97 (TTAB 2015)
<i>Hollywood Casino LLC v. Chateau Celeste, Inc.</i>	on summary judgment, Board gave no consideration to a Rule 30(b)(6) deposition errata sheet because it resulted in substantive changes to witness' testimony	703.01(n) N. 2	116 USPQ2d 1988, 1996 (TTAB 2015)
<i>Holmes Oil Co. v. Myers Cruizers of Mena Inc.</i>	parties' confidential consent agreement referred to in general terms	1208.06 N. 1	101 USPQ2d 1148, 1150 n.4
<i>In re Allegiance Staffing</i>	practice of attaching to appeal brief copies of the same exhibits submitted with responses is discouraged	1203.01 N. 3	115 USPQ2d 1319, 1323 (TTAB 2015)
<i>In re Aquamar, Inc.</i>	Board took judicial notice of the August 2013 United States Census Bureau's "Language Use in the United States: 2011" report, indicating that after English, Spanish is the most commonly spoken language in the United States, and over 12% of the United States population speaks Spanish)	1208.04 N. 3	115 USPQ2d 1122, 1127 n.6 (TTAB 2015)
<i>In re Bay State Brewing Company, Inc.</i>	applicant had ample opportunity to rebut Wikipedia evidence submitted by Examining Attorney but did not	1208.03 N. 14	__USPQ2d__, n.3, Serial No. 85826258 (TTAB Feb. 25, 2016)
<i>In re Bay State Brewing Company, Inc.</i>	Board took judicial notice that beer is often relatively inexpensive, subject to impulse purchase, and often ordered orally in a bar or restaurant);	1208.04 N. 3	__USPQ2d__, Serial No. 85826258 (TTAB Feb. 25, 2016)
<i>In re Bay State Brewing Company, Inc.</i>	consent agreement, in addition to supporting registration, provides the public with notice of the basis on which the USPTO allowed registration	1208.06 N. 1	__USPQ2d__, n.3, Serial No. 85826258 (TTAB Feb. 25, 2016)
<i>In re Brack</i>	refusal affirmed on requirement to submit signed and verified application, propriety of refusal under Section 2(d) not reached	1201.04 N. 1	114 USPQ2d 1338, 1343 (TTAB 2015)

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<i>In re Brack</i>	applicant's failure to comply with requirement to sign and verify application prior to appeal cannot be remedied after issuance of decision	1218 N. 1	114 USPQ2d 1338, 1343 (TTAB 2015)
<i>In re Driven Innovations, Inc.</i>	applicant's sole recourse to challenge a refusal that was issued during examination of a statement of use under the clear error standard is by appealing the merits of the final refusal to the Board; expressly overruled those portions of <i>In re Jump Designs LLC</i> , 80 USPQ2d 1370, 1373-74 (TTAB 2006) and <i>In re Sambado & Son Inc.</i> , 45 USPQ2d 1312, 1314 (TTAB 1997) to the extent that they suggest the applicant could petition the Director for a review of a clear error determination.	1201.05 N. 13	115 USPQ2d 1261, 1264 (TTAB 2015)
<i>In re Future Ads LLC</i>	while examining attorney need not limit arguments made in appeal brief to those raised in Office actions, using the evidence for a totally different purpose not hinted at in the Office actions was unfair based on circumstances of case	1203.02 (b) N. 7	103 USPQ2d 1571, 1573 (TTAB 2012)
<i>In re Heatcon, Inc.</i>	new nonfinal action not necessary when application was refused on Principal Register as functional and application amended to Supplemental Register	1201.02 N. 6	116 USPQ2d 1366, 1370 (TTAB 2015)
<i>In re Heatcon, Inc.</i>	amendment to Supplemental Register in response to a refusal of registration on ground of functionality does not raise a new issue	1201.02 N. 7	116 USPQ2d 1366, 1370 (TTAB 2015)
<i>In re Heatcon, Inc.</i>	applicant did not make amendment to Supplemental Register in the alternative	1215 N. 2	116 USPQ2d 1366, 1369-70 (TTAB 2015)
<i>In re Heatcon, Inc.</i>	although finding that configuration was functional rendered requirement regarding drawing moot, Board addressed the drawing refusal "for completeness"	1217 N. 3	116 USPQ2d 1366, 1369-70 (TTAB 2015)
<i>In re Hinton</i>	"Board gives guarded consideration to evidence taken from Wikipedia, bearing in mind the limitations inherent in this reference work, so	1208.03 N. 14	116 USPQ2d 1051, 1053, n.10 (TTAB 2015)

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	long as the non-offering party has an opportunity to rebut the evidence by submitting other evidence that may call its accuracy into question”		
<i>In re House Beer, LLC</i>	Board does not take judicial notice of files of applications or registrations residing in the Office, including entries in file of cited registration	1208.04 N. 9	114 USPQ2d 1073, 1075 (TTAB 2015)
<i>In re House Beer, LLC</i>	once final decision issues, applicant cannot request suspension of appeal to seek cancellation of cited registration	1218 N. 1	114 USPQ2d 1073, 1077 n.15 (TTAB 2015)
<i>In re Hughes Furniture Industries, Inc.</i>	request for remand to comply with particular requirement did not give examining attorney right to submit evidence in support of refusal that was not subject of remand request	1204 N. 14	114 USPQ2d 1134, 1135-36 (TTAB 2015)
<i>In re Hughes Furniture Industries, Inc.</i>	application was remanded to consider applicant’s proposed disclaimer, it was not permissible for examining attorney to submit evidence in support of refusal that was not the subject of remand request	1205.01 N. 2	114 USPQ2d 1134, 1135-36 (TTAB 2015)
<i>In re Hughes Furniture Industries, Inc.</i>	applicant’s seeking to comply with requirement for disclaimer constituted good cause	1205.01 N. 5	114 USPQ2d 1134, 1135 (TTAB 2015)
<i>In re Hughes Furniture Industries, Inc.</i>	examining attorney’s submission of evidence on likelihood of confusion refusal unacceptable when applicant’s remand request was solely to comply with requirement for disclaimer	1209.04 N. 3	114 USPQ2d 1134, 1136 (TTAB 2015)
<i>In re Hughes Furniture Industries, Inc.</i>	“If, upon considering the request for remand the Examining Attorney wished to submit additional evidence regarding the Section 2(d) refusal (which was not affected by the disclaimer), the Examining Attorney should have filed with the Board her own request for remand for the purpose of submitting additional evidence in support of the likelihood of confusion refusal.”	1209.04 N. 4	114 USPQ2d 1134, 1136 (TTAB 2015)
<i>In re Lorillard Licensing Co.</i>	papers that are already in the application should not, as a matter of	1203.01 N. 3	99 USPQ2d 1312, 1315 (TTAB 2011)

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	course, be resubmitted as exhibits to the brief.		
<i>In re Louisiana Fish Fry Products, Ltd.</i>	Fed. Cir. reviews Board’s legal conclusions de novo	906.01 N. 24	797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015)
<i>In re Louisiana Fish Fry Products, Ltd.</i>	Board’s factual determinations are reviewed for substantial evidence	906.01 N. 9	797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015)
<i>In re TriVita, Inc.</i>	Federal Circuit applied the “substantial evidence” standard of review to support Board’s findings	906.01 N. 9	783 F.3d 872, 114 USPQ2d 1574, 1576 (Fed. Cir. 2015)
<i>Intex Recreation Corp. v. The Coleman Co.</i>	party may not redact portions of responsive documents on the ground that the non-disclosed information is not relevant or responsive where the information appears in a document that contains otherwise relevant or responsive information	406.04(c) N.4	117 USPQ2d 1799 (TTAB 2016)
<i>Intex Recreation Corp. v. The Coleman Co.</i>	party may not redact confidential information from documents responsive to written document requests	412.01 N. 10	117 USPQ2d 1799, 1801 (TTAB 2016)
<i>Jack Wolfskin Ausrüstung fur Draussen GmbH & Co. KGaA v. New Millennium Sports, S.L.U.</i>	no abandonment found where determined that consumers would not view stylistic modifications as a different mark and result in the same continuing commercial impression	309.03(c) N.27	797 F.3d 1363, 116 USPQ2d 1129, 1133-34 (Fed. Cir. 2015), <i>cert. denied</i> , ___ U.S. ___ (Jan. 25, 2016)
<i>Jack Wolfskin Ausrüstung fur Draussen GmbH & Co. KGaA v. New Millennium Sports, S.L.U.</i>	substantial evidence standard	906.01 N. 11	797 F.3d 1363, 116 USPQ2d 1129, 1133 (Fed. Cir. 2015), <i>cert. denied</i> , ___ U.S. ___ (Jan. 25, 2016)
<i>Jack Wolfskin Ausrüstung fur Draussen GmbH & Co. KGaA v. New Millennium Sports, S.L.U.</i>	example of question of fact	906.01 N. 22	797 F.3d 1363, 116 USPQ2d 1129, 1133 (Fed. Cir. 2015), <i>cert. denied</i> , ___ U.S. ___ (Jan. 25, 2016)
<i>Juice Generation, Inc. v. GS Enterprises, LLC</i>	substantial evidence is more than a mere scintilla, but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion	906.01 N. 16	794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015)

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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>Juice Generation, Inc. v. GS Enterprises, LLC</i>	conclusion regarding a likelihood of confusion is a question of law that the Federal Circuit reviews de novo, although underlying factual findings are reviewed for substantial evidence	906.01 N. 26	794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015)
<i>Leon V. IDX Systems Corp.</i>	duty to preserve ESI	406.04(c) new N. 11	464 F.3d 951, 956 (9th Cir. 2006)
<i>M.Z. Berger & Co. v. Swatch AG</i>	lack of bona fide intent is a proper statutory grounds on which to challenge a trademark application	309.03(c) N.18	787 F.3d 1368, 114 USPQ2d 1892, 1897 (Fed. Cir. 2015)
<i>M.Z. Berger & Co. v. Swatch AG</i>	Example of finding of fact	906.01 new N. 23	787 F.3d 1368, 114 USPQ2d 1892, 1893 (Fed. Cir. 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	parody defense will not be considered as part of the assessment of a dilution claim; whether an applicant's mark is registrable because it is being used in commerce to indicate source is counter to whether such use is noncommercial or fair use	309.03(c) N.30	114 USPQ2d 1497, 1509-10 (TTAB 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	parties stipulated that witness testimony would be submitted solely by declaration and without cross-examination	702.04(e) N. 1	114 USPQ2d 1497, 1500 (TTAB 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	parties stipulated that witness testimony would be submitted solely by declaration and without cross-examination	703.01(b) N. 5	114 USPQ2d 1497, 1500 (TTAB 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	parties stipulated that witness testimony would be submitted solely by declaration and without cross-examination	703.01(b) N. 6	114 USPQ2d 1497, 1501 N. 11 (TTAB 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	denials to admission requests cannot be submitted under notice of reliance	704.10 N.13	114 USPQ2d 1497, 1500 (TTAB 2015)
<i>New York Yankees Partnership v. IET Products and Services, Inc.</i>	parties may stipulate that witness testimony would be submitted solely by declaration and without cross-examination	705 N. 4	114 USPQ2d 1497, 1500 (TTAB 2015)
<i>Nike, Inc. v. Palm Beach Crossfit Inc.</i>	insufficiently pled claim where no assertion that public would recognize applicant's mark as pointing uniquely to opposer	309.03(c) N. 15	116 USPQ2d 1025, 1031-32 (TTAB 2015)

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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>Nike, Inc. v. Palm Beach Crossfit Inc.</i>	claim insufficiently pled where no assertion that licensing relationship gave opposer a proprietary right to assert the claim on behalf of third party	309.03(c) N. 28	116 USPQ2d 1025, 1032-33 (TTAB 2015)
<i>Nike, Inc. v. Palm Beach Crossfit Inc.</i>	Motion to dismiss that included matters outside the pleadings not considered as motion for summary judgment because motion was filed before the parties' initial disclosures were due and initial disclosures had not been served.	503.04 N.3	116 USPQ2d 1025, 1028 (TTAB 2015)
<i>Nike, Inc. v. Palm Beach Crossfit Inc.</i>	example of decision concerning whether particular facts are appropriate subject matter for judicial notice by the Board	704.12(a)N.2	116 USPQ2d 1025, 1029 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	The purpose of <u>37 CFR § 2.134(b)</u> , and the policy underlying the issuance of a show cause order, is to prevent a cancellation proceeding respondent whose subject registration comes due, during the course of the proceeding, for a § 8 or § 9 affidavit, or in the case of a § 66(a) registration, a § 71 affidavit or § 70 renewal, from being able to moot the proceeding, and avoid judgment, by deliberately failing to file the required affidavits or renewal applications.	602.02(b) N. 8	116 USPQ2d 1102, 1110 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	<u>37 CFR § 2.134(b)</u> governs what happens when an entire class in a multi-class registration is cancelled or not renewed	602.02(b) new N. 4	116 USPQ2d 1102, 1110 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	where the deletions requested by respondent of the involved goods from the Section 8 declarations was deliberate, and not the result of mistake or inadvertence, and respondent mistakenly believed that such deletion would moot or partially moot the subject actions, Board exercised discretion not to issue an order to show cause	602.02(b) new N. 7	116 USPQ2d 1102, 1110 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	In a cancellation proceeding against any registration having multiple goods and/or services within a single	602.02(b) text and N. 5	116 USPQ2d 1102, 1110 (TTAB 2015)

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	class, if the respondent permits one or some of the goods or services which is the subject of the cancellation proceeding to be cancelled under Trademark Act §§ 8 or 71 by failing to include a statement of continuing use, or fails to renew the registration under Trademark Act §§ 9 or 70 with respect to that particular good(s) or service(s), the cancellation or failure to renew with respect to that good(s) or service(s) is governed by <u>37 CFR § 2.134(b)</u> .		
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	plaintiff’s pleaded registration is of record by operation of Trademark Rule 2.122(b)(1) and defendant’s objection thereto is overruled	704.03(a) N. 1	116 USPQ2d 1102, 1107 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	examples of cases concerning the admissibility of specific documents, by notice of reliance, as “official records” under <u>37 CFR § 2.122(e)</u>	704.07 N.5	116 USPQ2d 1102, 1108 n.14 (TTAB 2015)
<i>Orange Bang, Inc. v. Ole Mexican Foods, Inc.</i>	Materials improperly offered under <u>37 CFR § 2.122(e)</u> may nevertheless be considered by the Board if the adverse party (parties) does not object to their introduction or itself treats the materials as being of record.	704.08(a) N.9	116 USPQ2d 1102, 1108 n. 14 (TTAB 2015)
<i>Princeton Vanguard, LLC v. Frito-Lay North America, Inc.</i>	there is only one legal standard for genericness	309.03(c) new N. 40	786 F.3d 960, 114 USPQ2d 1827, 1830-31 (Fed. Cir. 2015)
<i>Princeton Vanguard, LLC v. Frito-Lay North America, Inc.</i>	standard of review of Board decision	906.01 N. 16	786 F.3d 960, 114 USPQ2d 1827, 1829 (Fed. Cir. 2015)
<i>Princeton Vanguard, LLC v. Frito-Lay North America, Inc.</i>	example of question of fact	906.01 N. 21	786 F.3d 960, 114 USPQ2d 1827, 1829 (Fed. Cir. 2015)
<i>Princeton Vanguard, LLC v. Frito-Lay North America, Inc.</i>	whether correct legal standard was applied	906.01 N. 24	786 F.3d 960, 114 USPQ2d 1827, 1829 (Fed. Cir. 2015)
<i>Product Source International, LLC v. Nahshin</i>	applicant who is dissatisfied with final decision of TTAB has choice of appealing the decision to the Court of Appeals for the Federal Circuit or	901.01 N. 1	112 F.Supp.3d 383 (E.D. Va. 2015)

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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
	a remedy by civil action in district court		
<i>ProMark Brands Inc. v. GFA Brands, Inc.</i>	party allowed time to resubmit deposition transcript separating the confidential testimony separating confidential from nonconfidential testimony	120.02 N.4	114 USPQ2d 1232, 1238 n.24 (TTAB 2015), <i>on appeal</i> , No. 15-0681 (W.D. Pa. May 26, 2015)
<i>ProMark Brands Inc. v. GFA Brands, Inc.</i>	Rule 26(e) does not allow an expert to bolster previously disclosed opinions or to add new opinions.	401.03 N.26	114 USPQ2d 1232, 1241 (TTAB 2015), <i>on appeal</i> , No. 15-0681 (W.D. Pa. May 26, 2015)
<i>ProMark Brands Inc. v. GFA Brands, Inc.</i>	copy of the submission with the confidential portions redacted must also be submitted	703.01(p) N. 1	114 USPQ2d 1232, 1237-1238 n.4 (TTAB 2015), <i>on appeal</i> , No. 15-0681 (W.D. Pa. May 26, 2015)
<i>Shammas v. Focarino</i>	dissatisfied trademark applicant may seek review of an adverse ruling on his trademark application either by appealing the ruling to the Court of Appeals for the Federal Circuit or by commencing a de novo action in a federal district court)	901.01 N. 1	784 F.3d 219, 114 USPQ2d 1489, 1490 (4th Cir. 2015), <i>cert. denied</i> ___ S. Ct. ___ (Mar. 7, 2016)
<i>Silvestri v. General Motors Corp.</i>	duty to preserve ESI	406.04(c) new N. 11	271 F.3d 583, 591 (4th Cir. 2001)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	concurrent use proceedings in general	1101.01 N. 1	115 USPQ2d 1007 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	requirements for issuance of a concurrent use registration in Board proceeding	1101.01 N. 3	115 USPQ2d 1007, 1020 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	concurrent use applicant must show that a concurrent use registration will not result in a likelihood of confusion	1101.01 N. 4	115 USPQ2d 1007, 1020 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	requirements for concurrent use proceeding	1103.01(d)(2) N. 1	115 USPQ2d 1007, 1020 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	examining attorney suspended action on defendants' pending applications seeking unrestricted registration filed after applicant's application	1104 N. 5	115 USPQ2d 1007, 1020 n.73 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	applicant seeking exclusive right to use "Delmonico's" mark for restaurant services throughout United States except in designated geographic areas in and around New	1108 N. 2	115 USPQ2d 1007 (TTAB 2015)

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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
	York City, New Orleans and Las Vegas failed to prove that, with appropriate geographic restriction, there would be no likelihood of confusion, mistake or deception in marketplace		
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	examples of cases concerning the admissibility of specific documents, by notice of reliance, as “official records” under <u>37 CFR § 2.122(e)</u>	704.07 N.5	115 USPQ2d 1007, 1013 (TTAB 2015)
<i>Southwestern Management, Inc. v. Ocinomled, Ltd.</i>	discovery deposition offered by stipulation of the parties	704.09 N.2	115 USPQ2d 1007, 1013 n.6 (TTAB 2015)
<i>Swatch AG (Swatch SA) (Swatch Ltd.) v. M. Z. Berger & Co.</i>	certain printed publications qualify for submission by notice of reliance under <u>37 CFR § 2.122(e)</u> because they are considered essentially self-authenticating	704.08(c) N. 1	108 USPQ2d 1463, 1466 (TTAB 2013)
<i>Swiss Grill Ltd. v. Wolf Steel Ltd.</i>	lack of bona fide intent to use found where no documentary evidence predated application filing date	309.03(c) N. 18	115 USPQ2d 2001, 2008-09 (TTAB 2015)
<i>Swiss Grill Ltd. v. Wolf Steel Ltd.</i>	parties may stipulate to waive the requirement for pretrial disclosures in ACR cases	702.01 N.19	115 USPQ2d 2001, 2002 n.5 (TTAB 2015)
<i>Swiss Grill Ltd. v. Wolf Steel Ltd.</i>	form of ACR can vary, but the process generally approximates a summary bench trial or cross-motions for summary judgment and accompanying evidentiary submissions that the parties agree to submit in lieu of creating a traditional trial record	702.04(a) N.1	115 USPQ2d 2001, 2002 (TTAB 2015)
<i>Swiss Grill Ltd. v. Wolf Steel Ltd.</i>	other approaches to accelerating resolution of a case include simplifying proceedings through the use of fact stipulations and stipulations regarding the admissibility of certain evidence	702.04(a) N.2	115 USPQ2d 2001, 2002 (TTAB 2015)
<i>Swiss Grill Ltd. v. Wolf Steel Ltd.</i>	if an ACR stipulation is silent on the issue of pretrial disclosures and no pretrial disclosures were in fact filed by either party, the Board will interpret the stipulation as waiving this requirement	702.04(a) N.6	115 USPQ2d 2001, 2002 n.5 (TTAB 2015)

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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>The North Face Apparel Corp. v. Sanyang Industry Co., Ltd.</i>	no context provided for figures in support of fame; burden of proving fame not met	309.03(c) new N.50	116 USPQ2d 1217, 1225 (TTAB 2015)
<i>The North Face Apparel Corp. v. Sanyang Industry Co., Ltd.</i>	motion for leave to amend answer to add affirmative defense that if the Board should find applicant not entitled to registration of the opposed mark with respect to some but not all goods or services listed in applications, then Applicant should be allowed to amend applications to conform to Board's findings denied for failure to identify goods or services to be deleted)	507.02 N.9	116 USPQ2d 1217, 1225 (TTAB 2015)
<i>Turtle Wax, Inc. v. Blue Coral, Inc.</i>	Statement that a registration on Supplemental Register always subject to claim that the term is generic	309.03(c) new N. 41	2 USPQ2d 1534, 1536 (TTAB 1987)
<i>Unrock Network, LLC v. Sulpasso</i>	motion to dismiss considered as one for summary judgment where it asserts claim preclusion	528.02 N.2	115 USPQ2d 1409 (TTAB 2015)
<i>Urock Network, LLC v. Umberto Sulpasso</i>	claim preclusion bars cancellation proceeding in view of earlier opposition proceeding which was dismissed for failure of plaintiff to submit any evidence in support of its case; and where plaintiff in cancellation concedes it is same as plaintiff in opposition	309.03(c) N.35	115 USPQ2d 1409, 1411-13 (TTAB 2015)
<i>Uveritech, Inc. v. Amax Lighting, Inc.</i>	presumption that a manufacturer is the owner of a disputed mark may be rebutted	309.03(c) N.21	115 USPQ2d 1242, 1249(TTAB 2015)
<i>Uveritech, Inc. v. Amax Lighting, Inc.</i>	unpleaded allegations relating to fraud, acquiescence and laches will not be heard	314 N.1	115 USPQ2d 1242, 1244 (TTAB 2015)
<i>UVeritech, Inc. v. Amax Lighting, Inc.</i>	by failing to preserve the objection in its brief on the case, or in an appendix to the brief on the case or in a separate statement of objections filed with the brief on the case, a party may waive an objection that was seasonably raised at trial	707.04 N.5	115 USPQ2d 1242, 1244 n.3 (TTAB 2015)
<i>Warren Distribution, Inc. v. Royal Purple, LLC</i>	no misidentification through mistake between employee who filed extension request as individual and employer who filed notice of opposition	206.01 N.6	115 USPQ2d 1667, 1669-70 (TTAB 2015)

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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>Warren Distribution, Inc. v. Royal Purple, LLC</i>	notice of opposition untimely where opposer was not in privity with employee who filed extension request in individual name	206.02 N. 2	115 USPQ2d 1667, 1670-71 (TTAB 2015)
<i>Warren Distribution, Inc. v. Royal Purple, LLC</i>	no misidentification through mistake between employee who filed extension request as individual and employer who filed notice of opposition	206.03 N.2	115 USPQ2d 1667, 1670-71 (TTAB 2015)
<i>Warren Distribution, Inc. v. Royal Purple, LLC</i>	individual employee that filed extension request not in privity with employer who filed notice of opposition	303.05(b) N. 2	115 USPQ2d 1667, 1669-70 (TTAB 2015)
<i>Warren Distribution, Inc. v. Royal Purple, LLC</i>	individual employee who filed extension request a different legal entity than employer who filed notice of opposition and, thus, cannot be considered identified through mistake	303.05(c) N. 2	115 USPQ2d 1667, 1670-71 (TTAB 2015)
<i>Wonderbread 5 v. Gilles</i>	facts inconsistent with individual former band member's claim that he was the owner the mark	309.03(c) N.21	115 USPQ2d 1296, 1304-07 (TTAB 2015)
<i>Wonderbread 5 v. Gilles</i>	exhibits attached to respondent's testimony deposition, as well as portions of testimony that refer to the exhibits, stricken since respondent failed to identify properly, in his pretrial disclosures, the types of documents he intended to introduce as exhibits	533.02(b) N.7	115 USPQ2d 1296, 1298-1300 (TTAB 2015)
<i>Wonderbread 5 v. Gilles</i>	party need not disclose, prior to its testimony period, any notices of reliance it intends to file during its testimony period	702.01 N. 12	115 USPQ2d 1296, 1300 n.4 (TTAB 2015)
<i>Wonderbread 5 v. Gilles</i>	motion to strike the testimony of a witness for lack of proper or adequate pretrial disclosure may seek exclusion of the entire testimony, when there was no pretrial disclosure, or may seek exclusion of that portion of the testimony that was not adequately disclosed in accordance with <u>37 CFR § 2.121(e)</u>	702.01 N. 16	115 USPQ2d 1296, 1300 (TTAB 2015)
<i>Wonderbread 5 v. Gilles</i>	respondent's pretrial disclosures defective to the extent that they fail to summarize the types of documents and things respondent intended to	702.01 N.6	115 USPQ2d 1296, 1300 (TTAB 2015)

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CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
	introduce as exhibits to his testimony; all forty-six exhibits attached thereto and all portions of respondent's testimony referring to the attached exhibits not considered		
<i>Wonderbread 5 v. Gilles</i>	evidence not obtained and filed in compliance with the rules of practice governing inter partes proceedings before the Board will not be considered by the Board	706 N. 1	115 USPQ2d 1296, 1300 (TTAB 2015)
<i>Zubulake v. UBS Warburg LLC</i>	discussing the obligation to preserve electronically stored information	406.04(c) new N. 10	220 FRD 212, 216-18 (SDNY 2003)