

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# Introduction to the Trademark Trial and Appeal Board (TTAB): Part 2 and Updates

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# Roadmap

- Updates – fiscal year (FY) 2025 statistics
- Fictitious citations and use of Artificial Intelligence (AI)
- Accelerated Case Resolution (ACR)
- Pretrial Conference Pilot Program
- Questions on trial proceedings from May 28, 2025

**Updates**

# TTAB workload: FY 2025

- Appeals: 3,701
- Extensions of time to oppose: 19,130
- Oppositions: 7,650
- Cancellations: 2,897
- Concurrent Use: 13

# Ex parte appeals

- Fiscal year ending September 30, 2025
  - New appeals filed: 3,701
  - Appeals terminated without formal decision: 3,337
  - Final decisions issued: 405
  - Appeals pending at end of Q4 FY 2025: 1,901

# Oppositions and cancellations

- Fiscal year ending September 30, 2025
  - New proceedings filed
    - Oppositions: 7,650
    - Cancellations: 2,897
  - Proceedings terminated
    - Without decisions: 9,642
    - Final decisions issued: 190
  - Proceedings pending at end of Q4 FY 2025: 7,781

**Fictitious citations and use of AI**

# Fictitious/hallucinated citations

- Issue: Attorneys and pro se parties filing motions and briefs with case names, citations, and quotes that do not exist
- USPTO Rule 11.18 – signature and corresponding certifications – applies to everyone
  - Reasonable inquiry that the legal contentions are warranted by law
  - Any paper submitted to the USPTO must be reviewed by the party or parties presenting the paper
- TTAB sanction authority: The TTAB may impose sanctions under 37 CFR 11.18(c), 18 USC 1001, Fed R. Civ. P. 11, or its inherent authority to manage its docket. Sanctions may include:
  - Striking the filing
  - Entry of judgment



# Example consequences

- *Hamlett v. Bronx Native*, Can. No. 92077944 (Feb. 7, 2024) (non-precedential)
  - Case law cited by respondent in its trial brief was either nonexistent, misquoted, or did not support respondent's arguments
  - Attorney admitted he did not read the decisions cited in the brief or attempt to look them up
  - Sanction: Brief stricken
- OED discipline
  - Public reprimand
  - Required to attend continuing legal education (CLE) on generative AI in legal practice
  - Actions violated 37 CFR 11.101, 11.103, 11.301, 11.804(c), and 11.804(d), of the USPTO Rules of Professional Conduct
- Reciprocal discipline by state bar



# Use of AI

- Ultimate responsibility for the truth and accuracy of a submission to the TTAB rests with the attorney or party filing it
- Avoid missteps
  - Verify AI-generated content against primary sources
  - Read the cases cited in your submission
- Notify the TTAB interlocutory attorney if you discover fictitious case law in a party's submission
- Do not invite virtual assistants or notetakers to discovery conferences with the TTAB
  - Conferences are not recorded and parties may not record them
  - 37 CFR 2.120(j)(3)



# **Accelerated Case Resolution (ACR)**

# ACR (1 of 2)

- Alternative to typical Board inter partes (trial) proceedings
- Both parties must agree
- ACR stipulations may save time and money by avoiding or limiting the need to hash out peripheral evidentiary issues of authenticity, foundation, and the like
- ACR stipulations, particularly as to facts, may reduce the size of records and force counsel to focus on only that evidence that is needed to resolve genuine factual disputes
- Parties can request a conference with the Interlocutory Attorney to discuss ACR



# ACR (2 of 2)

- Process approximates a summary bench trial or cross motions for summary judgment
  - Summary judgment model includes:
    - A joint stipulation of undisputed facts
    - Providing a stipulation that the Board may resolve any genuine disputes of material fact
- **Other approaches available**
  - Use of fact stipulations
  - Stipulations regarding the admissibility of certain evidence
  - Limitations on discovery

# **Pretrial Conference Pilot Program**

# Pretrial Conference Pilot Program

- Commenced April 1, 2023
- Not intended for use in all (or even most) cases
- Cases are selected for inclusion in the program based on various factors, including overly large or unfocused records, unclear pleadings, complicated procedural history, etc.
- After an initial orientation conference, parties prepare/submit a proposed final pretrial conference order using a model template provided by the Board.
- Parties participate in final pretrial conferences before a Board judge and attorney.
- The Board issues a final pretrial conference order governing trial.

# Pretrial conference pilot steps

- Assignment order issues (typically after close of discovery); Board schedules orientation conference with parties, interlocutory attorney (IA), and administrative trademark judge (judge).
- IA and judge explain the pilot program and the requirements for drafting the joint, proposed final pretrial conference order.
- Parties exchange lists of witnesses, copies of anticipated trial exhibits, discuss trial plan.
- Parties file a proposed final pretrial conference order.
- Board reviews and schedules a final pretrial conference.
- Once order is finalized, Board issues it and it governs trial.



# Results (FY 2025)

- Two pilot cases involving large consolidated oppositions were resolved by way of settlement since 10/1/24
  - In one case, the parties agreed to suspend for mediation following their pilot orientation conference and ultimately settled
  - In one case, following their pretrial conference with the Board to discuss their proposed pretrial order, the parties agreed to a withdrawal of all claims and counterclaims
- **Nine active cases are currently in the pilot at different stages of proceedings: five oppositions and four cancellations**
  - Four new cases brought into the pilot since 10/1/24
  - Two cases are in or have concluded the briefing period
  - One case remains suspended for civil action



# Benefits

- Goals are to save time and resources of parties and the TTAB, and foster effective presentation of case.
- Parties will be 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.

**Questions about trial proceedings  
from May 28, 2025**

# Motions to strike pleadings

- At what point can a motion to strike be filed - is it only after an answer or counterclaim or are there other points where it can be filed?

# Granted extension and suspension requests

- If the Board grants an extension or suspension of the trial schedule, does this automatically extend the deadlines to respond to outstanding discovery requests or do those still have to be agreed upon by the parties?

# Effect of suspension

- When a TTAB proceeding is suspended, should we continue to wait for the new schedule and don't need to serve for example the initial disclosures?

# Resources

# Useful resources

- Trademark Statute and Rules
  - <https://tfsr.uspto.gov/RDMS/TFSR/current>
    - Trademark Act of 1946 (as amended) — 15 USC § 1051, et seq.
    - Rules of Practice in Trademark Cases — 35 CFR § 2.1, et seq.
    - Representation of Others Before the USPTO — 35 CFR Parts 10 & 11
- Trademark Manual of Examining Procedure (TMEP)
  - [www.uspto.gov/TMEP](http://www.uspto.gov/TMEP)
- Trademark Trial and Appeal Board Manual of Procedure (TBMP)
  - <https://tbmp.uspto.gov/RDMS/TBMP/current>
- TTABVUE (TTAB electronic dockets and case files)
  - <https://ttabvue.uspto.gov/ttabvue/>
- TTAB decisions and summaries at TTAB Reading Room
  - <https://ttab-reading-room.uspto.gov/efoia/efoia-ui/#/search/decisions>
- Official Gazette of the USPTO
  - [www.uspto.gov/OfficialGazette](http://www.uspto.gov/OfficialGazette)

# Resources on TTAB precedents

- Designation of TTAB Decisions as Precedential

[Designation Precedential Public Nov2018 Final.pdf](#)

An opinion or decision of the TTAB may be designated as a precedent of the Board if it:

- Establishes, alters, modifies or clarifies a rule of law or a matter of agency policy;
- Reinforces existing law or policy by demonstrating its application to a factual record different from those confronted previously but likely to arise again so that it would be instructive in other cases; or
- Involves a legal or factual issue of significant interest or substantial importance to the public generally or to trademark owners or practitioners specifically.

- TTAB Decision Nomination Form

<https://www.uspto.gov/trademarks/trademark-trial-and-appeal-board/ttab-decision-nomination>



# Other USPTO resource links

- USPTO home page
  - [www.uspto.gov](http://www.uspto.gov)
- Trademark Examining Operations
  - [www.uspto.gov/trademarks](http://www.uspto.gov/trademarks)
    - Search pending and registered trademarks (Trademark search).
    - File trademark applications and documents (TM Center & TEAS).
    - Check status and view trademark files (TSDR).
- Trademark Trial and Appeal Board
  - [www.uspto.gov/ttab](http://www.uspto.gov/ttab)
    - File TTAB documents (TTAB Center & ESTTA).
    - View TTAB dockets and files (TTABVUE).
    - Statute and Rules
    - TTAB Manual (TBMP)





# Thank you!



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