



**MARQUES’ response to the United States Patent and Trademark Office’s Request for Comments Regarding Amending the First Filing Deadline for Affidavits or Declarations of Use or Excusable Non-use.**

**MARQUES** is the European association representing brand owners' interests. Its mission is to be the trusted voice for brand owners.

**MARQUES** wishes to respond to the consultation undertaken by the United States Patent and Trademark Office regarding a potential legislative change to amend the first filing deadline for Affidavits or Declarations of Use or Excusable Nonuse under Sections 8 and 71 of the Trademark Act.

The following are the **MARQUES’** answers to the four considered questions:

**(1) Is “deadwood” on the trademark register a concern of yours, and what impact do you believe it has?**

“Deadwood” is generally of concern. As Trademark Registers get more densely populated with an ever increasing number of trademark registrations, the clearing of a new brand is getting more time consuming and requires higher expenditures.

However, the wording for goods/services in the US is much more restricted and precise than in most other countries, such as European countries. Hence the deadwood argument has lesser impact in the US when compared to the clutter and “deadwood” on e.g. the CTM register.

**(2) Do you favor or oppose an amendment to shorten the first filing deadline for Affidavits or Declarations of Use or Excusable Nonuse under Sections 8 and 71 as a means of ensuring the accuracy of the trademark register? (Please explain why.)**

No, we do not favour any type of shortening of the deadlines as it increases the workload of outside counsel and also in-house counsel and clients to collect evidence of use and to have the affidavits signed and sworn.

**(3) If you favor shortening the deadline, what time period do you believe would be most appropriate for the first filing deadline?**

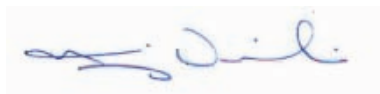
We do not favour shortening the deadline.

**(4) Are you concerned that an amendment to the first Section 8 and 71 affidavit deadline would foreclose the ability to combine the filing with the filing of an Affidavit or Declaration of Incontestability under Section 15? What impact do you believe separating these filings would have?**

Yes. Section 15 Declaration of Incontestability (evidence of the conclusive validity of the registered mark) can only be filed after 5 years of registration and currently synchronizes well with the S.8 affidavit of use. If the date for the S.8 affidavit is changed, it is a large concern if the applicant must be approached and act twice in a relatively short period of time after the registration date of the application in order to have the documents signed and sworn. This further unnecessarily increases the burden and workload on counsel, both in-house and outside, and the burden on the applicant.

Respectfully submitted,

2 November 2012



Nunzia Varricchio  
Chair of **MARQUES** Council



Jochen Hoehfeld  
Chair of **MARQUES** TM Law and Practice Team



## About **MARQUES**

**MARQUES** is a European association of pan-industry brand owners worldwide. Its mission is to be the trusted voice for brand owners.

Established in 1986 and later incorporated in the United Kingdom as a not-for-profit company limited by guarantee, **MARQUES** unites European and international brand owners across all product sectors to address issues associated with the use, protection and value of IP rights, as these are vital to innovation, growth and job creation, which ultimately enhance internal markets. Its membership crosses all industry lines and includes brand owners and IP professionals in more than 80 countries. The trade mark owners represented in the Association together own more than two million trade marks which are relied upon by consumers as signposts of genuine goods and services.

**MARQUES** is an accredited organisation before the Office for Harmonisation in the Internal Market (OHIM), appointed observer at the OHIM Administrative Board and Budget Committee, an official non-governmental observer at the World Intellectual Property Organisation and a registered interest representative organisation (ID 97131823590-44) in the Transparency Register set up by the European Parliament and the European Commission, which extends and replaces the former Register of Interest Representatives, opened by the commission in 2008.

An important objective of **MARQUES** is to safeguard the public interest by ensuring the proper protection of trade marks and to preserve the interests of trade mark proprietors with regard to the regime of trade mark protection. **MARQUES** attempts to achieve these objectives by advancing the cause of trade mark laws which protect the public from deception and confusion. Intellectual property rights are a crucial aspect of the global economy and trade marks play a significant role in free trade and competition in the marketplace.

More information about **MARQUES** and its initiatives is available at [www.marques.org](http://www.marques.org).