

## United States Patent and Trademark Office-Trademark Trial and Appeal Board

### Accelerated Case Resolution (ACR)

Parties seeking a final determination of their opposition or cancellation proceeding quickly and without the time and expense of a full trial should consider the Trademark Trial and Appeal Board's "Accelerated Case Resolution" (ACR) procedure.

ACR is a procedure akin to summary judgment in which parties can receive a determination of the claims and defenses in their case promptly, but without the uncertainty of result and delay typically presented by standard summary judgment practice. Parties often file motions for summary judgment in the hope of avoiding a costly trial, but these motions often must be denied because there is a genuine dispute as to at least one material fact. See, e.g., *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992); and *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993). As a result, these parties spend considerable time and expense on a motion that frequently does not in any way advance the prosecution of the case. Apart from not obtaining a final, appealable decision, they also have not created a record that will save time at trial, because evidence submitted in connection with unsuccessful motions for summary judgment is of record only for consideration of those motions. To be considered at final hearing, any such evidence must be properly introduced in evidence during the appropriate trial period. See *American Meat Institute v. Horace W. Longacre, Inc.*, 211 USPQ 712, 716 n.2 (TTAB 1981).

Under changes to the Trademark Rules for inter partes Board proceedings effective November 1, 2007, parties to such proceedings must conference to discuss claims, defenses, settlement possibilities, and various alternative arrangements for disclosures, discovery and trial. When, prior to this required conference, either party concludes that resolution of the opposition or cancellation proceeding without extensive discovery or trial periods may be possible, the party should notify the Interlocutory Attorney and request the attorney's participation in the required settlement and discovery planning conference to be held within 30 days of the close of pleadings. Then, the possible use of ACR can be discussed during the conference.

However, even if the ACR option is not chosen during the conference, the parties may agree to pursue ACR after some disclosures and discovery. In such cases, the Interlocutory Attorney must be notified, preferably no later than two months from the opening of the original discovery period. The further the parties proceed into discovery, the less likely it is that resort to ACR will realize savings of time and resources. Notification is required so the Interlocutory Attorney can discuss with the parties whether the particular case is suitable for resolution by ACR and, if so, the best schedule for discovery and trial.

An ideal candidate for ACR is a case in which the parties anticipate being able to stipulate to many facts, or in which each party expects to rely on the testimony of only one or two witnesses and the overall record will not be extensive. If the Interlocutory Attorney agrees that the case is appropriate for ACR, the parties will be given a period of time to complete discovery, if necessary, and to file briefs. See TBMP §§ 528.05(a)(2) and 702.04 (3d ed. 2011). If agreement is signaled in the settlement and discovery planning conference, the Interlocutory Attorney may, in a post-conference order, tailor the disclosure and discovery schedule to facilitate ACR. If agreement is provided later, i.e., early in discovery, the Interlocutory Attorney may then issue an order delineating limits on any remaining discovery activities and the schedule for submitting briefs. The parties may include evidence with their briefs, including written disclosures and disclosed documents, and stipulate to facts for the Board to consider. After the briefs are filed, the Board will issue a decision on the merits within fifty days, which will be judicially reviewable as set out in 37 CFR § 2.145.

In order to take advantage of ACR, the parties must stipulate that, in lieu of trial, the Board can resolve any genuine disputes of material fact. If the parties have already filed cross-motions for summary judgment, they may also stipulate that the Board may resolve any genuine disputes of material fact and consider the parties' cross-motions as the parties' final briefs in the case in lieu of a full trial.

Further, where the Board finds a case a good candidate for ACR, it may so inform the parties and seek their agreement to use ACR procedures.

Parties desiring to use ACR in other situations, such as after the close of discovery, must contact the assigned Interlocutory

Attorney to discuss the efficacy of ACR. Questions about ACR should be addressed to the Interlocutory Attorney assigned to the case in which the parties are considering use of ACR. If parties agree to pursue resolution of the case through ACR, and the Board has approved the arrangement, but the parties subsequently have substantial disagreements about discovery or trial arrangements, or engage in contested motion practice related thereto, the Board may determine that the case no longer is suitable for resolution through ACR.

The parties are also referred to a listing of Frequently Asked Questions about ACR, the Board's manual of procedure, particularly TBMP §§ 528.05(a)(2) and 702.04 (3d ed. 2011), and stakeholder and Board suggestions for possible ACR schedules, all of which are available on the Board's webpage.