

LIST OF CASES
TBMP 2014 Revision, June 2014
Cases issued between March 2, 2013 and February 28, 2014
Alphabetical by Case Name

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>Akers v. Beal Bank</i>	For proposition that lack of authentication is grounds for objection as to presentation of form	528.05(e) N. 9	845 F. Supp. 2d 238, 243 (D.D.C. 2012)
<i>Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc.</i>	(“the onus is on the party making the submissions to ensure that, at a minimum, all materials are clearly readable by the adverse party and the Board”)	106.03 N. 3	107 USPQ2d 1750, 1758, n.16 (TTAB 2013)
<i>Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc.</i>	petitioner established and respondent admitted that petitioner is a competitor using the term at issue as part of its domain name	309.03(b) N. 17	107 USPQ2d 1750, 1760-61 (TTAB 2013)
<i>Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc.</i>	petitioner established and respondent admitted that petitioner is a competitor using the term at issue as part of its domain name	309.03(b) N. 17	107 USPQ2d 1750, 1760-61 (TTAB 2013)
<i>Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc.</i>	burden on petitioner to rebut presumption that mark registered under Section 2(f) has acquired distinctiveness	309.03(c) N. 7	107 USPQ2d 1750, 1764-67 (TTAB 2013)
<i>Amazon Technologies Inc. v. Wax</i>	“under Trademark Rule 2.120(i)(2), where resolution of discovery or other interlocutory issues ‘would likely be facilitated by a conference in person of the parties or their attorneys,’ the Board may ‘request that the parties or their attorneys ... meet with the Board at its offices’ for a conference. If the parties remain unwilling or unable to	502.06(b) N. 2	95 USPQ2d 1865, 1869 (TTAB 2010)

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	work together cooperatively and efficiently, the Board will not hesitate to invoke this Rule in the future.”		
<i>America’s Best Franchising Inc. v. Abbott</i>	Proposition: 2 conditions precedent to issuance of concurrent use registrations	1101.01 N. 4	106 USPQ2d 1540, 1547-48 (TTAB 2013)
<i>America’s Best Franchising Inc. v. Abbott</i>	applicant’s use of its mark prior to the filing date of defendant’s geographically unrestricted registration meets the jurisdictional requirement	1103.01(b) N. 2	106 USPQ2d 1540, 1548 (TTAB 2013)
<i>America’s Best Franchising Inc. v. Abbott</i>	applicant adopted use of its marks in good faith, in its own geographic area, and without knowledge of defendant’s prior use of its marks	1103.01(d)(2) N. 1	106 USPQ2d 1540, 1548 (TTAB 2013)
<i>America’s Best Franchising Inc. v. Abbott</i>	applicant entitled to registration for all of the United States except prior user’s area of actual use due to defendant’s inaction and because applicant was the first to seek federal registration	1103.01(d)(2) N. 3	106 USPQ2d 1540, 1554 (TTAB 2013)
<i>America’s Best Franchising Inc. v. Abbott</i>	defendant’s uninvolved geographically unrestricted application suspended pending disposition of applicant’s involved concurrent use applications	1104 N. 5	106 USPQ2d 1540, 1544 (TTAB 2013)
<i>America’s Best Franchising Inc. v. Abbott</i>	opposition proceedings dismissed after applicant amended the involved applications to ones seeking concurrent use and accepted judgment with respect to its right to unrestricted registrations	1113.01 N. 4	106 USPQ2d 1540, 1542 n.2 (TTAB 2013)

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<i>America's Best Franchising, Inc. v. Abbott</i>	applicant demonstrated likelihood of confusion is avoided by the parties' concurrent use of their marks where applicant's, the junior user, use of its mark was prior to the filing date of defendant's geographically unrestricted application and applicant is entitled to registration of the entire United States excluding defendant's territory of actual use	1108 N. 3	106 USPQ2d 1540, 1548-54 (TTAB 2013)
<i>AS Holdings, Inc. v. H & C Milcor, Inc.</i>	Parties stipulated to use of discovery depositions as trial testimony.	404.09 N. 12	107 USPQ2d 1829 (TTAB 2013)
<i>AS Holdings, Inc. v. H & C Milcor, Inc.</i>	At final decision, panel reviewed interlocutory decision but denied reversal.	518 N. 9	107 USPQ2d 1829 (TTAB 2013)
<i>Blackhorse v. Pro Football Inc.</i>	Board may order parties to appear in person at Board's offices.	413.02 N. 1	98 USPQ2d 1633 (TTAB 2011)
<i>Board of Trustees of University of Alabama v. Pitts</i>	in the event applicants ultimately prevail, the involved application will be remanded to the examining attorney for reexamination	805 N. 1	107 USPQ2d 2001 n.1 (TTAB 2013)
<i>Board of Trustees. of University of Alabama v. Pitts</i>	Board does not consider questions of infringement or unfair competition.	102.01 N. 3	107 USPQ2d 2001
<i>Caymus Vineyards v. Caymus Medical Inc.,</i>	Considering plausibility of complaint.	503.02 N. 3	107 USPQ2d 1519 (TTAB 2013)

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<i>Caymus Vineyards v. Caymus Medical Inc.</i>	Plaintiff may amend complaint once as a matter of course within 21 days after service of Rule 12(b)(6) motion.	503.03 N. 1	107 USPQ2d 1519 (TTAB 2013)
<i>Caymus Vineyards v. Caymus Medical Inc.</i>	Motion to dismiss which included evidence was not converted to a motion for summary judgment as no indication opposer had served initial disclosures.	503.04 N. 1	107 USPQ2d 1519 (TTAB 2013)
<i>Caymus Vineyards v. Caymus Medical, Inc.</i>	registration over five years old may not be challenged on a ground that is available only when the registration is less than five years old	307.01 N. 3	107 USPQ2d 1519, 1524-25 (TTAB 2013)
<i>Caymus Vineyards v. Caymus Medical, Inc.</i>	motion to dismiss denied where fraud claim sufficiently alleged	309.03(c) N. 33	107 USPQ2d 1519, 1522-24 (TTAB 2013)
<i>Caymus Vineyards v. Caymus Medical, Inc.</i>	claim that mark is geographically descriptive for a registration and is not entitled to Section 15 incontestability because of fraud in obtaining and maintaining the registration does not state a valid ground for cancellation of a registration that is more than five years old.	309.03(c) N. 8	107 USPQ2d 1519, 1524-25 (TTAB 2013)
<i>Central Garden & Pet Company v. Dorskocil Manufacturing Company, Inc.</i>	Board did not consider hypothetical question of likelihood of confusion sought by senior party	309.03(c) N. 51	108 USPQ2d 1134, 1150 (TTAB 2013)
<i>Central Garden & Pet Company v. Dorskocil Manufacturing Company, Inc.</i>	plaintiff must prove priority in cancellation and in oppositions where there is a counterclaim to cancel its pleaded registration	309.03(c) N. 45	108 USPQ2d 1134, 1139 (TTAB 2013)

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<i>Central Garden and Pet Co. v. Doscocil Manufacturing Co.</i>	pleaded claim not argued in brief deemed waived	801.01 N. 2	108 USPQ2d 1134, 1136 (TTAB 2013)
<i>Chanel Inc. v. Makarczyk</i>	Approving parties' Accelerated Case Resolution stipulation.	501.01 new N. 5	106 USPQ2d 1774 (TTAB 2013)
<i>Chanel Inc. v. Makarczyk</i>	parties' ACR agreement provided that "the page limit for the parties' briefs shall be the page limit permitted for trial briefs pursuant to Trademark Rule 2.128(b)."	702.04(b) N. 4	106 USPQ2d 1774, 1775 (TTAB 2013)
<i>Chanel Inc. v. Makarczyk</i>	parties' ACR agreement provided that "the page limit for the parties' briefs shall be the page limit permitted for trial briefs pursuant to Trademark Rule 2.128(b)."	702.04(b) N. 5	106 USPQ2d 1774, 1775 (TTAB 2013)
<i>Chanel Inc. v. Makarczyk</i>	pursuant to their ACR stipulation, parties agreed to forgo discovery and reliance on expert testimony	702.04(b) new N. 6	106 USPQ2d 1774, 1775 (TTAB 2013)
<i>Chanel Inc. v. Makarczyk</i>	parties' ACR agreement included stipulation of undisputed facts	705 N. 5	106 USPQ2d 1774, 1775 (TTAB 2013)
<i>Chanel Inc. v. Makarczyk</i>	Approving parties' stipulation to proceed via Accelerated Case Resolution.	501.02 N. 1	106 USPQ2d 1774, 1775-76 (TTAB 2013)
<i>Christiane E, LLC v. International Expeditions, Inc.</i>	judgment entered against respondent where petitioner's written consent to voluntary surrender not of record and where respondent did not show an extraordinary situation in support of its motion to	602.02(a) N. 4	106 USPQ2d 2042, 2044 (TTAB 2013)

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	withdraw its voluntary surrender		
<i>Christiane E, LLC v. International Expeditions, Inc.</i>	Proposition that respondent cannot withdraw its voluntary surrender absent an extraordinary situation	602.02(a) new N. 6	106 USPQ2d 2042, 2043-44 (TTAB 2013)
<i>City National Bank v. OPGI Management GP Inc./Gestion OPGI Inc.</i>	Rule 30(b)(6) avoids	404.06(b) N. 1	106 USPQ2d 1668 (TTAB 2013)
<i>City National Bank v. OPGI Management GP Inc./Gestion OPGI Inc.</i>	Rule 30(b)(6) anticipates that the designated witness will offer testimony regarding information that the party should be able to provide.	404.06(b) new N. 7	106 USPQ2d 1668 (TTAB 2013)
<i>City National Bank v. OPGI Management GP Inc./Gestion OPGI Inc.</i>	abandonment of a registration under 15 U.S.C. § 1126(e) based on over three years of nonuse where respondent did not use mark with recited services since at least the issuance date of the involved registration and where the nature of the use shown by respondent did not constitute use in commerce	309.03(c) N. 26	106 USPQ2d 1668, 1676-79 (TTAB 2013)
<i>City National Bank v. OPGI Management GP Inc./Gestion OPGI Inc.</i>	testimony failed to expand the probative value of business brochure prepared by third-party; document is admissible solely for what it shows on its face and cannot be considered to prove the truth of any matter stated therein	704.08(a) N. 6	106 USPQ2d 1668, 1672 (TTAB 2013)
<i>City National Bank v. OPGI Management GP Inc./Gestion OPGI Inc.</i>	petitioner's objection to respondent's "counter-designations" of portions of respondent's Fed. R. Civ. P. 30(b)(6) discovery deposition	704.09 N. 4	106 USPQ2d 1668, 1671 (TTAB 2013)

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	overruled		
<i>City National Bank v. OPGI Management GP Inc./Gestion OPGI Inc.</i>	responses to document production requests are admissible solely for purposes of showing that a party has stated that there are no responsive documents	704.11 N. 8	106 USPQ2d 1668, 1674 n.10 (TTAB 2013)
<i>City National Bank v. OPGI Management GP Inc./Gestion OPGI Inc.</i>	petitioner's objection to respondent's submission via notice of reliance of a business brochure prepared by a third party overruled; "[a]ny shortcomings in respondent's original submission...under notice of reliance, such as its failure to identify the URL and when the document was actually accessed (either printed out or downloaded), are procedural deficiencies that were not timely raised by petitioner and thus have been waived	707.02(b) N. 3	106 USPQ2d 1668, 1672 (TTAB 2013)
<i>City National Bank v. OPGI Management GP Inc./Gestion OPGI Inc.</i>	objection sustained to testimony prior to witness' employment with respondent pursuant to Federal Rule of Evidence 602	707.03(c) N. 7	106 USPQ2d 1668, 1674-75 (TTAB 2013)
<i>Coach Services Inc. v. Triumph Learning LLC</i>	Reference to "substantial evidence" standard for review of USPTO determinations by the Federal Circuit	906.01 N. 8	668 F.3d 1356, 101 USPQ2d 1713, 1716 (Fed. Cir. 2012)
<i>Coach Services Inc. v. Triumph Learning LLC</i>	quoting <i>Consol. Edison v. Nat'l Labor Relations Bd.</i> , 305 U.S. 197, 229 (1938)	906.01 new N. 15	668 F.3d 1356, 101 USPQ2d 1713, 1716 (Fed. Cir. 2012)

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<i>Coach Services Inc. v. Triumph Learning LLC</i>	("We review the Board's legal conclusions de novo ...") (citing <i>In re Pacer Tech.</i> , 338 F.3d 1348, 1349, 67 USPQ2d 1629 (Fed. Cir. 2003))	906.01 N. 20	668 F.3d 1356, 101 USPQ2d 1713, 1716 (Fed. Cir. 2012)
<i>Covidien LP v. Masimo Corp.</i>	sufficient to allege that a feature of the description of the mark renders the description not specific to the mark as actually used and that the proposed amendment of the description to the color actually used would avoid a likelihood of confusion	309.03(d) N. 13	109 USPQ2d 1696, 1699 (TTAB 2014)
<i>Covidien LP v. Masimo Corp.</i>	Motion to dismiss tests legal sufficiency of complaint.	503.02 N. 1	109 USPQ2d 1696 (TTAB 2014)
<i>Covidien LP v. Masimo Corp.</i>	Whether plaintiff can prove allegations in complaint is left for trial.	503.02 N. 4	109 USPQ2d 1696 (TTAB 2014)
<i>Covidien LP v. Masimo Corp.</i>	Board required petitioner to provide a more definite statement of its Section 18 restriction.	505.01 N. 1	109 USPQ2d 1696 (TTAB 2014)
<i>Covidien LP v. Masimo Corp.</i>	Board required more definite Section 18 statement, failing which petition to cancel would be dismissed.	505.03 N. 1	109 USPQ2d 1696 (TTAB 2014)
<i>Dan Foam ApS v. Sleep Innovations Inc.</i>	Board cannot modify or quash subpoena issued by district court	404.03(a)(2) N. 6	106 USPQ2d 1939 (TTAB 2013)

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<i>Dan Foam ApS v. Sleep Innovations Inc.</i>	Discussing notice requirement under Fed. R. Civ. P. 45(b)(1) for a subpoena duces tecum issued to non-party and respondent's option to serve its own subpoena duces tecum on the non-party.	406.01 N. 5	106 USPQ2d 1939 (TTAB 2013)
<i>Dan Foam ApS v. Sleep Innovations Inc.</i>	Board does not entertain motions in limine.	527.01(f) N. 2	106 USPQ2d 1939 (TTAB 2013)
<i>Delaware Quarries, Inc. v. PlayCore IP Sub, Inc.</i>	standing assessed at time the counterclaim is filed and Board's dismissal of the main claim does not render counterclaim moot	309.03(b) N. 15	108 USPQ2d 1331, 1332 (TTAB 2013)
<i>Edwards Lifesciences Corp. v. VigiLanz Corp.</i>	Discussing improper designation of confidential information.	412.04 N. 3	94 USPQ2d 1399 (TTAB 2010)
<i>Ferro Corp. v. SCM Corp.</i>	For determining where a motion to compel in connection with a subpoena	411.04 N. 1	219 USPQ 346, 351 (TTAB 1983)
<i>Folwell v. Hernandez</i>	Rule 30(b)(6) deposition preferred method for deposing a corporation.	404.06(b) N. 1	210 F.R.D. 169 (M.D.N.C. 2002)
<i>Folwell v. Hernandez</i>	Only the organization selects the persons who will testify under Rule 30(b)(6).	404.06(b) new N. 4	210 F.R.D. 169 (M.D.N.C. 2002)
<i>Frito-Lay N. Am., Inc. v. Princeton Vanguard, LLC</i>	Parties stipulated that evidence on summary judgment would be of record for trial.	528.05 N. 10	109 USPQ2d 1949 (TTAB 2014)

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<i>Frito-Lay North America Inc. v. Princeton Vanguard LLC</i>	Principles of proportionality applied by the Board to electronic discovery.	402.01 N. 4	100 USPQ2d 1904 (TTAB 2011)
<i>Frito-Lay North America, Inc. v. Princeton Vanguard</i>	cancelled and expired registrations are not probative	704.03(b)(1)(A) N. 24	109 USPQ2d 1949, 1956 n.9 (TTAB 2014)
<i>Frito-Lay North America, Inc. v. Princeton Vanguard</i>	“The applications are not evidence of anything except that they were filed.”	704.03(b)(2) N. 2	109 USPQ2d 1949, 1956 n.9 (TTAB 2014)
<i>General Mills Inc. v. Fage Dairy Processing Indus. SA</i>	“Due to the absence of evidence submitted during trial with regard to applicant's goods in International Class 30, and the absence of argument in opposers’ brief as to anything other than yogurt, to the extent opposers’ pleading alleged a claim against the goods in Class 30, we deem that opposers have waived their likelihood of confusion and dilution claims as to the goods in this class...”	801.01 N. 2	100 USPQ2d 1584, 1588 n.1 (TTAB 2011)
<i>General Mills Inc. v. Fage Dairy Processing Industry SA</i>	Board may order parties to appear in person at Board’s offices.	413.02 N. 1	100 USPQ2d 1584 (TTABA 2011)
<i>Giant Food, Inc. v. Standard Terry Mills, Inc.</i>	Board’s adoption of practice of permitting amendments to identification of goods even when opposer’s objection if amendment is limiting and applicant consents to judgment.	514.01 N. 1	229 USPQ 955 (TTAB 1986)

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<i>HighBeam Marketing LLC v. Highbeam Research LLC</i>	Expert witness who is in employ of opposer is not an officer, director or managing agent and is technically a non-party witness.	404.06(a) new N. 5	85 USPQ2d 1902 (TTAB 2008)
<i>HighBeam Marketing LLC v. Highbeam Research LLC</i>	Expert witness who is in employ of opposer is subject to subpoena as she is not an officer, director or managing agent and is technically a non-party witness.	404.06(b) new N. 5	85 USPQ2d 1902 (TTAB 2008)
<i>In re Faucher Industries Inc.</i>	For proposition that issue of proper classification is procedural and only reviewable on a petition	1201.05	107 USPQ2d 1355, 1357 (TTAB 2013)
<i>In re Faucher Industries Inc.</i>	("the Board cannot re-write the application to reinstate an identification previously discarded by the applicant, nor can it re-open the application for amendment of the identification by applicant.")	1218 N. 1	107 USPQ2d 1355, 1357 (TTAB 2013)
<i>In re Faucher Industries Inc.</i>	("the Board cannot re-write the application to reinstate an identification previously discarded by the applicant, nor can it re-open the application for amendment of the identification by applicant.")	1218 N. 3	107 USPQ2d 1355, 1357 (TTAB 2013)
<i>In re Fiat Group Marketing & Corporate Communications S.p.A.</i>	Non-precedential decisions are not binding on Board.	101.03 N. 1	109 USPQ2d 1593 (TTAB 2014)
<i>In re Fiat Group Marketing & Corporate Communications S.p.A.</i>	examining attorney's objection to applicant's submission of registrations with appeal brief sustained	1203.02(e) N. 2	109 USPQ2d 1593, 1596 (TTAB 2014)

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<i>In re Fiat Group Marketing & Corporate Communications S.p.A.</i>	examining attorney's objection to applicant's submission of registrations with appeal brief sustained	1207.01 N. 1	109 USPQ2d 1593, 1596 (TTAB 2014)
<i>In re Fiat Group Marketing & Corporate Communications S.p.A.</i>	examining attorney's objection to applicant's submission of third-party registration with appeal brief sustained	1208.02 N. 4	109 USPQ2d 1593, 1596 (TTAB 2014)
<i>In re Florists' Transworld Delivery Inc.</i>	applicant's relevancy objection to evidence submitted by the examining attorney obtained from foreign web sites overruled because evidence regarding the significance of the color black on floral packaging "would N. 4 be difficult to locate"	1208.03 N. 4	106 USPQ2d 1784, 1786 (TTAB 2013)
<i>In re Pedersen</i>	copies of documents pertaining to district court litigation submitted with applicant's appeal brief not considered	1203.02(e) N. 2	109 USPQ2d 1185, 1188 (TTAB 2013)
<i>In re Pedersen</i>	copies of documents pertaining to district court litigation submitted with applicant's appeal brief not considered	1207.01 N. 1	109 USPQ2d 1185, 1188 (TTAB 2013)
<i>In re Sela Prods., LLC</i>	examining attorney appeal brief complied with page limitation	1203.01 N. 1	107 USPQ2d 1580, 1585 (TTAB 2013)
<i>In re Sela Prods., LLC</i>	("It is of far more utility to the Board for the applicant and examining attorney to provide citations directly to the record and, when there are a large number of attachments to an Office action or response, to the specific page number where the attachment may be found.")	1203.01 N. 3	107 USPQ2d 1580, 1584 (TTAB 2013)

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<i>In re Sela Prods., LLC</i>	“...the Board does not, in ex parte appeals, strictly apply the Federal Rules of Evidence, as it does in inter partes proceedings.”	1208 new N. 1	107 USPQ2d 1580, 1584 (TTAB 2013)
<i>In re Sela Prods., LLC</i>	“there is no equivalent rule for ex parte proceedings that makes the file of a cited registration of record”	1208.02 new N. 1	107 USPQ2d 1580, 1583 (TTAB 2013)
<i>In re Sela Prods., LLC</i>	had applicant submitted the registration file during the prosecution of the involved application the Board would have considered it	1208.02 new N. 2	107 USPQ2d 1580, 1583 (TTAB 2013)
<i>In re Sela Prods., LLC</i>	Papers, whether filed in paper form or electronically appear the same way that they look when they are submitted.	110.09(c)(2) N. 2	107 USPQ2d 1580 (TTAB 2013)
<i>In re Star Belly Stitcher, Inc.</i>	in determining whether proposed mark was “scandalous” within the meaning of Section 2(a), Board considered entries obtained from the online Urban Dictionary because they were submitted early enough to afford applicant an opportunity to submit any alternative meanings or otherwise question the reliability of the definitions	1208.03 new N. 15	107 USPQ2d 2059, 2062 n.3 (TTAB 2013)
<i>In re Star Belly Stitcher, Inc.</i>	while Google search engine retrieved over 100,000 results, evidence was of “limited probative value”	1208.03 N. 7	107 USPQ2d 2059, 2062 n.3 (TTAB 2013)
<i>In re the Procter & Gamble Co.</i>	No prohibition against non-precedential decisions, but not encouraged.	101.03 N. 1	105 USPQ2d 1119 (TTAB 2012)

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<i>In re White Jasmine LLC</i>	Board may take judicial notice of online dictionaries that exist in printed format or have regular fixed editions	1208.04 N. 1	106 USPQ2d 1385, 1392 n.23 (TTAB 2013)
<i>In re White Jasmine LLC</i>	judicial notice taken of entry for “tea” from Encyclopedia Britannica	1208.04 N. 3	106 USPQ2d 1385, 1392 n.24 (TTAB 2013)
<i>In re White Jasmine LLC</i>	judicial notice taken of definition from Merriam-Webster Online Dictionary and Thesaurus	1208.04 N. 5	106 USPQ2d 1385, 1392 n.23 (TTAB 2013)
<i>Jacques Moret Inc. v. Speedo Holdings B.V.</i>	Courtesy copy does not substitute for proper service under applicable rules.	113.05 new N. 3	102 USPQ2d 1212 (TTAB 2012)
<i>Joel Gott Wines LLC v. Rehobeth Von Gott, Inc.</i>	opposer’s motion to strike declaration of applicant’s corporate secretary and accompanying exhibits granted; parties did not stipulate to the submission of testimony via declaration or affidavit	703.01(b)	107 USPQ2d 1424, 1427 (TTAB 2013)
<i>Joel Gott Wines LLC v. Rehobeth Von Gott, Inc.</i>	(“It is true that Fed. R. Civ. P. 26(e)(1) charges parties with a duty to supplement their discovery responses. But this does not make whatever supplemental material is produced of record in the case.”)	704.10 new N. 15	107 USPQ2d 1424, 1427-28 (TTAB 2013)
<i>Joel Gott Wines LLC v. Rehobeth Von Gott Inc.</i>	Documents obtained through disclosure may be offered into evidence as exhibits to adverse party’s deposition.	401.04 N. 2	107 USPQ2d 1424 (TTAB 2013)

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<i>Joel Gott Wines LLC v. Rehoboth Von Gott Inc.</i>	Disclosures may be made of record during adverse party's discovery deposition and submitted under a notice of reliance.	403.05(b) new N. 3	107 USPQ2d 1424 (TTAB 2013)
<i>Joel Gott Wines LLC v. Rehoboth Von Gott Inc.</i>	Supplemental discovery responses should only be filed under circumstances set forth in Trademark Rule 2.120(j)(8).	409 N. 1	107 USPQ2d 1424 (TTAB 2013)
<i>Joel Gott Wines LLC v. Rehoboth Von Gott Inc.</i>	opposer's pleaded descriptiveness claim not argued in brief deemed waived	801.01 N. 2	107 USPQ2d 1424, 1426 n.3 (TTAB 2013)
<i>Johnson & Johnson v. Obschestvo s ogranitchennoy; otvetstvennostiu "WDS"</i>	Party relying on business records in foreign language must provide translation.	104 N. 2	95 USPQ2d 1567 (TTAB 2010)
<i>Johnson & Johnson v. Stryker Corp</i>	Contested motion to amend granted identification of goods where applicant agreed to entry of judgment with respect to broader identification of goods.	514.01 N. 1	109 USPQ2d 1077 (TTAB 2013)
<i>Johnson & Johnson v. Stryker Corp</i>	Contested motion to amend granted identification of goods where applicant agreed to entry of judgment with respect to broader identification of goods.	514.03 N. 1	109 USPQ2d 1077 (TTAB 2013)
<i>JSC Foreign Economic Association Technostroyexport v. International Development and Trade Services, Inc.</i>	Employee who does not qualify as an officer director or managing agent of corporation is not subject to deposition by notice under Fed. R. Civ. P. 30(b)(1).	404.06(a) new N. 4	220 F.R.D. 235 (S.D.N.Y. 2004)
<i>JSC Foreign Economic Association Technostroyexport v. International</i>	Employee who is not officer, director or managing agent must be treated as nonparty witness.	404.06(a) new N. 5	220 F.R.D. 235 (S.D.N.Y. 2004)

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<i>Development and Trade Services, Inc.</i>			
<i>JSC Foreign Economic Association Technostroyexport v. International Development and Trade Services, Inc.</i>	Corporate officer, director or managing agent may be subject to deposition by notice under Fed. R. Civ. P. 30(b)(1) but an employee or agent who does not qualify as such is not subject to deposition by notice under Fed. R. Civ. P. 30(b)(1).	404.06(b) new N. 5	220 F.R.D. 235 (S.D.N.Y. 2004)
<i>Kairos Institute of Sound Healing LLC v. Doolittle Gardens LLC</i>	Motion to compel available remedy for failure of adverse party to serve initial or expert disclosures.	523.01 N. 1	88 USPQ2d 1541 (TTAB 2008)
<i>Kappos v. Hyatt</i>	Interpreting 35 U.S.C. § 145 concerning the standard of review on questions of fact upon review by civil action	906.01 N. 3	132 S. Ct. 1690, 1701 (2012), 102 USPQ2d 1337
<i>Leeds Technologies Ltd. v. Topaz Communications Ltd.</i>	motion to amend to substitute a basis deferred to final hearing	514.03 N. 3	65 USPQ2d 1303, 1307 (TTAB 2002)
<i>Life Zone Inc. v. Middleman Group Inc.</i>	denials to requests for admission inadmissible	704.10 new N. 13	87 USPQ2d 1953, 1957 (TTAB 2008)
<i>Life Zone Inc. v. Middleman Group Inc.</i>	For proposition that denial of a request for admission does not establish the truth or falsity of the assertion	704.10 new N. 14	87 USPQ2d 1953, 1957 n.10 (TTAB 2008)

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<i>McDonald's Corp. v. Cambridge Overseas Development Inc</i>	If parties stipulate to e-mail service, they may not take advantage of five additional days for service provided under Trademark Rule 2.119(c).	113.05 N. 2	106 USPQ2d 1339
<i>McDonald's Corp. v. Cambridge Overseas Development Inc.</i>	Extensions prohibited for Rule 56(d) motions under Trademark Rule 2.127(e)(1).	502.02(b) N. 6	106 USPQ2d 1339 (TTAB 2013)
<i>McDonald's Corp. v. Cambridge Overseas Development Inc.</i>	Noting that parties' stipulation to provide for additional five days with respect to e-mail service would violate Trademark Rule 2.127(a) with respect to extending time for reply briefs.	502.02(b) N. 8	106 USPQ2d 1339 (TTAB 2013)
<i>McDonald's Corp. v. Cambridge Overseas Development Inc.</i>	Parties' stipulation to add five days to e-mail service was an improper agreement to extend time to file reply briefs and Rule 56(d) motion.	509.01(a) N. 7	106 USPQ2d 1339 (TTAB 2013)
<i>Melwani v. Allegiance Corp.</i>	Party may call Board during business hours to inquire regarding status of Board proceeding.	105 N 1	97 USPQ2d 1537 (TTAB 2010)
<i>Melwani v. Allegiance Corp.</i>	Status information can be obtained from the Board during business hours.	123 new N. 2	97 USPQ2d 1537 (TTAB 2010)
<i>Melwani v. Allegiance Corp.</i>	citing 37 CFR § 2.127(a)	502.02(b) N. 1	97 USPQ2d 1537, 1541 n.15 (TTAB 2010)
<i>Melwani v. Allegiance Corp.</i>	Board will generally treat unopposed motion as conceded	502.04 N. 1	97 USPQ2d 1537, 1541 n.16 (TTAB 2010)
<i>Multisorb Tech., Inc. v. Pactiv Corp.</i>	Registrability determination does not require in every instance decision on every	102.01 new N. 2	109 USPQ2d 1170 (TTAB 2013)

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
	pleaded claim.		
<i>Multisorb Technologies, Inc. v. Pactiv Corp.</i>	where respondent consented to entry of judgment on one claim which resulted in cancellation of the registration, Board did not enter judgment on remaining claim which related specifically to procurement of the involved registration and which would not bar a new application or form a basis of preclusion to challenge any new such registration	604 new N. 1	109 USPQ2d 1170, 1172 (TTAB 2013)
<i>Multisorb Technology Inc. v. Pactiv Corp.</i>	Board follows federal rules of civil procedure and generally follows settled federal practice in applying the federal rules.	101.02 N. 1	109 USPQ2d 1170 (TTAB 2013)
<i>Musical Directions v. McHugh</i>	Absent agreement to electronic service, papers must be served in compliance with Trademark Rule 2.119.	113.04 N. 2	104 USPQ2d 1157 (TTAB 2012)
<i>Nahshin v. Product Source International LLC</i>	Discussing procedure for deposition on written questions under Trademark Rule 2.124(d).	404.07(e) N. 2	107 USPQ2d 1257 (TTAB 2013)
<i>Nahshin v. Product Source International LLC</i>	Discussing objections for deposition on written questions under Trademark Rule 2.124(d).	404.07(f) N. 2	107 USPQ2d 1257 (TTAB 2013)
<i>Nahshin v. Product Source International LLC</i>	Waiver of objections in unusual circumstance where adverse party had opportunity to review answers to deposition on written questions prior to service of cross-questions and failed to raise objections at time of service of cross-questions.	404.08(c) N. 1	107 USPQ2d 1257 (TTAB 2013)

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>Nahshin v. Product Source International LLC</i>	objections to portions of depositions on written questions deemed waived	703.02(k) N. 2	107 USPQ2d 1257, 1259 (TTAB 2013)
<i>Nahshin v. Product Source International LLC</i>	objections to portions of depositions on written questions deemed waived	707.03(a) new N. 1	107 USPQ2d 1257, 1259 (TTAB 2013)
<i>Nahshin v. Product Source International LLC</i>	“We note that respondent, in stating that it has asserted its various affirmative defenses, made the statement in its brief, ‘Respondent pursues these defenses and does not waive these defenses.’ It is not sufficient to simply make this statement. Respondent was under a burden to take some affirmative action if it actually wished to pursue them. To the extent that they have not been waived, we find that respondent has failed to prove them.”	801.01 new N. 3	107 USPQ2d 1257, 1264 n.13 (TTAB 2013)
<i>Nahshin v. Product Source International, LLC</i>	For proposition that defendant is not and was not at filing the owner of the registered mark	309.03(c) N. 21	107 USPQ2d 1257 (TTAB 2013)
<i>Neville Chemical Co. v. Lubrizol Corp.</i>	For determining where a motion to compel in connection with a subpoena	411.04 N. 1	183 USPQ 184, 189 (TTAB 1974)
<i>Orouba Agrifoods Processing Co. v. United Food Import</i>	dismissal of opposition for failure to file brief and take testimony operates as res judicata in cancellation against the now-registered mark where the cancellation claims are based on the same transactional facts as those asserted in the	601.01 N. 2	97 USPQ2d 1310, 1313-15 (TTAB 2010)

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
	opposition		
<i>Orouba Agrifoods Processing Co. v. United Food Import</i>	dismissal of opposition for failure to file brief and take testimony operates as res judicata in cancellation against the now-registered mark where the cancellation claims are based on the same transactional facts as those asserted in the opposition	601.02 N. 2	97 USPQ2d 1310, 1313-15 (TTAB 2010)
<i>Pioneer Drive, LLC v. Nissan Diesel America, Inc.</i>	Rule 30(b)(6) designee speaks for the organization as a whole.	404.06(b) new N. 2	262 F.R.D. 552 (D. Mont. 2009)
<i>Promgirl Inc. v. JPC Co., Ltd.</i>	sanction for failure to comply with discovery conference rules should relate to that failure	527.01(a) N. 4	94 USPQ2d 1759, 1762 n.8 (TTAB 2009)
<i>Renaissance Rialto Inc. v. Boyd</i>	acquisition of another's right to oppose, independent of a transfer of rights to a trademark and its associated goodwill, is an insufficient basis upon which to claim the benefit of the transferor's personal privilege in an extension of time to oppose	206.01 N. 4	107 USPQ2d 1083, 1086-87 (TTAB 2013)
<i>Renaissance Rialto Inc. v. Boyd</i>	notice of opposition untimely where opposer not a successor to any proprietary interest in the mark where transferor had no rights to transfer	206.02 N. 2	107 USPQ2d 1083, 1086-87 (TTAB 2013)
<i>Rolex Watch USA Inc. v. AFP Imaging Corp.</i>	Relief from judgment after unilateral action of prevailing party moots appeal.	544 N. 2	107 USPQ2d 1626 (TTAB 2013)

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>Rolex Watch USA Inc. v. AFP Imaging Corp.</i>	judgment entered against applicant under 37 C.F.R. § 2.135 where it filed an abandonment without opposer's written consent while opposer's appeal was pending even though appeal was rendered moot	602.01 N. 3	107 USPQ2d 1626, 1628 (TTAB 2013)
<i>RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.</i>	Describing use of expert in Board proceeding.	401.03 new N. 1	106 USPQ2d 1494 (TTAB 2013)
<i>RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.</i>	Expert obligation largely governed by Fed. R. Civ. P. 26(a)(2).	401.03 N. 3	106 USPQ2d 1494 (TTAB 2013)
<i>RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.</i>	Party must notify Board required planned use of expert.	401.03 new N. 11	106 USPQ2d 1494 (TTAB 2013)
<i>RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.</i>	Motion to compel available for inadequate expert disclosures.	401.04 N. 4	106 USPQ2d 1494 (TTAB 2013)
<i>RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.</i>	Motion to compel available for inadequate expert disclosures.	411.01 N. 1	106 USPQ2d 1492 (TTAB 2013)
<i>RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.</i>	Motion to compel available for inadequate expert disclosures.	523.01 N. 3	106 USPQ2d 1492 (TTAB 2013)
<i>RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.</i>	Defining a retained expert.	401.03 new N. 6	106 USPQ2d 1494 (TTAB 2013)

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.</i>	Parties should inform board of expert disclosure but not file disclosures with the Board.	408.01(b) N. 7	106 USPQ2d 1492 (TTAB 2013)
<i>RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.</i>	Motion in limine not available.	527.01(f) N. 2	106 USPQ2d 1492 (TTAB 2013)
<i>Sheetz of Del., Inc. v. Doctor's Associates Inc.</i>	Pretrial disclosures waived by parties.	401.04 N. 3	108 USPQ2d 1341 (TTAB 2013)
<i>Sheetz of Delaware Inc. v. Doctor's Associates Inc.</i>	parties stipulated under ACR that they could rely on the materials submitted in support of and against opposer's previously filed motion for summary judgment, that testimony could be submitted by declaration, that pretrial disclosures were not required, and that all evidence may be submitted through declarations or notices of reliance	702.04(a) N. 2	108 USPQ2d 1341, 1344 (TTAB 2013)
<i>Sheetz of Delaware Inc. v. Doctor's Associates Inc.</i>	“While we commend the parties for agreeing to efficiencies intended to facilitate the introduction of evidence at trial, ideally, [ACR] cases do not merely facilitate introduction of more evidence, but should also limit the amount of evidence placed before the Board.”	702.05 N. 1	108 USPQ2d 1341, 1344 n.5 (TTAB 2013)
<i>Sheetz of Delaware Inc. v. Doctor's Associates Inc.</i>	“A larger record is not necessarily a better record.”	702.05 N. 2	108 USPQ2d 1341, 1344 n.5 (TTAB 2013)

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>Sheetz of Delaware, Inc. v. Doctor's Associates Inc.</i>	No duty to investigate third party use to respond to discovery requests	414 N. 16	108 USPQ2d 1341 (TTAB 2013)
<i>Sheetz of Delaware, Inc. v. Doctor's Associates Inc.</i>	Applying Great Seats factors, opposer's failure to supplement discovery responses and initial disclosures found harmless.	527.01(e) N. 3	108 USPQ2d 1341 (TTAB 2013)
<i>Sheetz of Delaware, Inc. v. Doctor's Associates Inc.</i>	Party not required to supplement initial disclosures regarding witness if information made known in writing or during discovery.	408.03 N. 3	108 USPQ2d 1341 (TTAB 2013)
<i>Skincode AG v. Skin Concept AG</i>	absent a counterclaim, applicant's argument regarding the possible connotation of the Swiss flag is an impermissible collateral attack on opposer's pleaded registration	313 N. 1	109 USPQ2d 1325, 1329 n.5 (TTAB 2013)
<i>Skincode AG v. Skin Concept AG</i>	Trademark Rule 2.132(b) motion granted in part and denied in part.	543.03 N. 4	109 USPQ2d 1325 (TTAB 2013)
<i>Swatch AG (Swatch SA) (Swatch Ltd.) v. M.Z. Berger & Co.</i>	magazine article explaining the results of a consumer brand awareness survey – yes	704.08(a) N. 5	108 USPQ2d 1463, 1466 (TTAB 2013)
<i>Swatch AG (Swatch SA) (Swatch Ltd.) v. M.Z. Berger & Co.</i>	opposer's objections to applicant's offer in evidence of portions of the Fed. R. Civ. P. 30(b)(6) discovery depositions of applicant's own witnesses sustained in part, overruled in part	704.09 N. 4	108 USPQ2d 1463, 1466 (TTAB 2013)
<i>Swatch AG (Swatch SA) (Swatch Ltd.) v. M.Z. Berger & Co.</i>	opposer's pleaded claims not argued in its brief deemed waived	801.01 N. 2	108 USPQ2d 1463, 1465 n.3 (TTAB 2013)

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>Swatch AG (Swatch SA) (Swatch Ltd.) v. M.Z. Berger & Co., Inc.</i>	documentary evidence, testimony and other record evidence do not support applicant's claimed bona fide intent to use	309.03(c) N. 18	108 USPQ2d 1331, 1332 (TTAB 2013)
<i>Syndicat Des Proprietaires Viticulteurs De Chateauneuf v. Pasquier DesVignes</i>	affirmative defenses neither pursued at trial nor argued in brief deemed waived	801.01 N. 2	107 USPQ2d 1930, 1931 n. 6 (TTAB 2013)
<i>Syndicat Des Proprietaires Viticulteurs De Chateauneuf-Du-Pape v. Pasquier DesVignes</i>	opposer's objection sustained; applicant's mere listing of third-party applications in brief not properly made of record	704.03(b)(2) N. 1	107 USPQ2d 1930, 1933 (TTAB 2013)
<i>Syndicat Des Proprietaires Viticulteurs De Chateauneuf-Du-Pape v. Pasquier DesVignes</i>	documents produced in response to a request for production of documents may not be introduced under notice of reliance	704.11 N. 2	107 USPQ2d 1930, 1932 n.7 (TTAB 2013)
<i>The Board of Trustees of The University of Alabama v. Pitts</i>	standing established by past use of houndstooth pattern on apparel, ownership of an unregistered mark incorporating a person wearing a patterned fedora, and arrangement with co-plaintiff	309.03(b) N. 9	107 USPQ2d 2001, 2011 (TTAB 2013)
<i>The Board of Trustees of The University of Alabama v. Pitts</i>	opposers must show they have proprietary rights in the alleged houndstooth marks and whether the pattern is inherently distinctive or has acquired distinctiveness	309.03(c) N. 40	107 USPQ2d 2001, 2012-20 (TTAB 2013)
<i>The Clorox Co. v. Chemical Bank</i>	For proposition that a cancellation or opposition may be granted on grounds that an assignment occurred in contravention of Trademark Act § 10.	309.03(c) new N. 39	40 USPQ2d 1098 (TTAB 1996)

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>The Phillies v. Philadelphia . Consolidated Holding Corp.</i>	Principles of proportionality should be applied to requests for admissions.	402.01 N. 4	107 USPQ2d 2149 (TTAB 2013)
<i>The Phillies v. Philadelphia Consolidated Holding Corp.</i>	Parties entitled to seek discovery as they deem necessary but not to point of harassment	402.01 N. 8	107 USPQ2d 2149 (TTAB 2013)
<i>The Phillies v. Philadelphia Consolidated Holding Corp.</i>	Party may file for protective order with respect to harassing and oppressive requests for admissions.	410 N. 9	107 USPQ2d 2149 (TTAB 2013)
<i>The Phillies v. Philadelphia Consolidated Holding Corp.</i>	To establish good cause for protective order, moving party must submit particular and specific demonstration of fact.	412.01 N. 14	107 USPQ2d 2149 (TTAB 2013)
<i>The Phillies v. Philadelphia Consolidated Holding Corp.</i>	To establish good cause for protective order, moving party must submit particular and specific demonstration of fact.	412.06 N. 3	107 USPQ2d 2149 (TTAB 2013)
<i>The Phillies v. Philadelphia Consolidated Holding Corp.</i>	For proposition that movant must demonstrate ability to litigate is prejudiced	412.06 N. 4	107 USPQ2d 2149, 2153 (TTAB 2013)
<i>The Phillies v. Philadelphia Consolidated Holding Corp.</i>	Parties must confer in good faith prior to seeking a protective order.	412.06 N. 6	107 USPQ2d 2149 (TTAB 2013)
<i>The Phillies v. Philadelphia Consolidated Holding Corp.</i>	Denying motion for protective order for 507 requests for admission.	412.06(b) N. 6	107 USPQ2d 2149 (TTAB 2013)

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>The Phillies v. Philadelphia Consolidated Holding Corp.</i>	Party should not presume Board will automatically reset discovery when it determines a pending motion.	509.02 N. 10	107 USPQ2d 2149 (TTAB 2013)
<i>The Phillies v. Philadelphia Consolidated Holding Corp.</i>	Protective order granted with respect to duplicative requests for admissions.	526 N. 3	107 USPQ2d 2149 (TTAB 2013)
<i>The Phillies v. Philadelphia Consolidated Holding Corp.</i>	Moving party bears burden of showing good cause for protective order.	412.01 N. 15	107 USPQ2d 2149 (TTAB 2013)
<i>Turdin v. Trilobite, Ltd.</i>	concurrent-use defendant's objection to plaintiff's submission of initial answer to interrogatory with notice of reliance, on ground that answer did not include defendant's supplemental response, is overruled, since 37 C.F.R. §2.120(j)(5) provides in relevant part that inquiring party may make answer to interrogatory of record by notice of reliance, and that, if fewer than all answers to interrogatories are offered in evidence, responding party may introduce, under notice of reliance, any other answers to interrogatories which should in fairness be considered so as to render inquiring party's submission not misleading, and since defendant remedied any perceived unfairness by submitting supplemental answer and documents it produced under Fed. R. Civ. P. 33(d)	704.10 N. 2	109 USPQ2d 1473, 1476-7 (TTAB 2014)

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>Turdin v. Trilobite, Ltd.</i>	concurrent use defendant's objection to submission of denial to admission request sustained; "rule does not extend to denials"	704.10 new N. 13	109 USPQ2d 1473, 1477 (TTAB 2014)
<i>Turdin v. Trilobite, Ltd.</i>	Board considered documents responsive to interrogatory under Fed. R. Civ. P. 33(d) submitted under notice of reliance	704.11 N. 1	109 USPQ2d 1473, 1476-7 (TTAB 2014)
<i>Turdin v. Trilobite, Ltd.</i>	evidence submitted concurrently with concurrent use applicant's rebuttal disclosures not considered	704.11 N. 2	109 USPQ2d 1473, 1477 (TTAB 2014)
<i>Turdin v. Trilobite, Ltd.</i>	Board primarily uses TTABVUE to review evidence.	110.09(c)(2) new N. 3	109 USPQ2d 1473 (TTAB 2014)
<i>Turdin v. Trilobite, Ltd.</i>	Rebuttal disclosures not a means for filing evidence.	409 N. 1	109 USPQ2d 1473 (TTAB 2014)
<i>Turdin v. Trilobite, Ltd.</i>	Proposition: 2 conditions precedent to issuance of concurrent use registrations	1101.01 N. 4	109 USPQ2d 1473, 1478 (TTAB 2014)
<i>Turdin v. Trilobite, Ltd.</i>	applicant's evidence that he used his mark prior to the earliest filing date of the involved applications met the jurisdictional requirement	1103.01(b) N. 2	109 USPQ2d 1473, 1478 (TTAB 2014)
<i>Turdin v. Trilobite, Ltd.</i>	concurrent use applicant did not carry his burden of establishing there would be no likelihood of confusion with respect to adjacent territories	1108 N. 2	109 USPQ2d 1473, 1484 (TTAB 2014)

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
<i>Turdin v. Trilobite, Ltd.</i>	concurrent use applicant not entitled to registration because there is a likelihood of confusion in the area where both parties are using their mark	1108 N. 3	109 USPQ2d 1473, 1483-84 (TTAB 2014)
<i>United States v. One Parcel of Real Estate at 5860 North Bay Road, Miami Beach, Fla.</i>	Fed. R. Civ. P. 30(b)(1) allows a party to notice the deposition of a particular officer, director or managing agent.	404.06(a) new N. 1	121 F.R.D. 439 (S.D. Fla. 1988)
<i>United States v. One Parcel of Real Estate at 5860 North Bay Road, Miami Beach, Fla.</i>	A deposition of named officer, director or managing agent of the corporation in his or her corporate capacity may be used by the adverse party at trial for any purpose.	404.06(a) new N. 3	121 F.R.D. 439 (S.D. Fla. 1988)
<i>Vibe Records Inc. v. Vibe Media Group LLC</i>	Fax transmission of notice of opposition not acceptable under any circumstances.	109 new N. 4	88 USPQ2d 1280 (TTAB 2008)
<i>Victor Stanley, Inc. v. Creative Pipe, Inc.</i>	Form of privilege logs under Fed. R. Civ. P. 26(b)(5)	406.04(c) new N. 10	250 F.R.D. 251 (D. Md. 2008)
<i>Weatherford/Lamb Inc. v. C&J Energy Services Inc.</i>	noting that during discovery and prior to service of petitioner's discovery responses, the Board granted motion for protective order that petitioner need only produce limited or representative samples of responsive documents	412.06(b) N. 6	96 USPQ2d 1834, 1836 n.3 (TTAB 2010)