

ALPHABETICAL LIST OF CASES, 3/3/12 – 3/1/2013
TBMP 2013 Revision 2 of Third Edition

CASE NAME	POINT SUMMARY	TBMP §	REFERENCE
Academy of Motion Picture Arts and Sciences v. Alliance of Professionals & Consultants Inc.	For proposition that valid registration defense is a complete bar to dilution claim brought in a certain time period	311.02(b) new N. 27	104 USPQ2d 1234 (TTAB 2012)
Application of Simulations Publications, Inc.	("Statements in a brief cannot take the place of evidence.")	704.06(b) N. 1	521 F.2d 797, 187 USPQ 147, 148 (CCPA 1975)
Benedict v. Super Bakery Inc.	(Board did not abuse discretion in entering default judgment under 37 CFR § 2.132(b) against registrant who "continually failed to comply with Board orders, and had hampered reasonable procedures appropriate to resolution of this trademark conflict")	534.03 N. 6	665 F3d 1263, 101 USPQ2d 1089, 1092-92 (Fed. Cir. 2011)
ChaCha Search Inc. v. Grape Technology Group Inc.	For proposition that leave to amend a pleading shall be freely given; Board liberally grants leave to amend pleadings	507.02 N. 4	105 USPQ2d 1298, 1300 (TTAB 2012)
ChaCha Search Inc. v. Grape Technology Group Inc.	proposed alleged failure to function as a mark is a new ground, not an amplification of the existing ground that the mark is merely descriptive	507.02 N. 8	105 USPQ2d 1298, 1301 (TTAB 2012)
ChaCha Search Inc. v. Grape Technology Group Inc.	motion for leave to amend counterclaim denied on the bases of undue delay and prejudice to counterclaim defendant where brought after counterclaim plaintiff's pretrial disclosures were served, months after summary judgment motions involving the counterclaim, and months after settlement discussions ceased	507.02(a) N. 1	105 USPQ2d 1298, 1301-02 (TTAB 2012)
ChaCha Search Inc. v. Grape Technology	counterclaim plaintiff may not seek or obtain judgment	314 N. 1	105 USPQ2d 1298, 1302 (TTAB 2012)

Group Inc.	on proposed new claims because motion to amend counterclaim denied		
Conwood Corp. v. Loew's Theatres, Inc.	(denying petition to reconsider)	543 N. 5	173 USPQ 829, 830 (TTAB 1972)
Cooper Technologies Co. v. Denier Electric Co.	one cannot exceed the page limitation for a brief by combining an opposition brief and a cross-motion addressing the same issue	801.02(e) new N. 2	89 USPQ2d 1478, 1479 (TTAB 2008)
CSC Holdings LLC v. SAS Optimhome	scope of grounds against a 66(a) application governed by ESTTA cover sheet not by supporting pleading	528.07(a) N. 5	99 USPQ2d 1959, 1962-63 (TTAB 2011)
Dating DNA LLC v. Imagini Holdings Ltd.	For practice that consolidated cases may be presented on the same record and briefs.	511 N. 7	94 USPQ2d 1889, 1893 (TTAB 2010)
Edom Laboratories Inc. v. Lichter	pleaded application matured into registration prior to close of opposer's testimony period	314 N. 7	102 USPQ2d 1546, 1547 (TTAB 2012)
Edom Laboratories Inc. v. Lichter	parties filed a joint stipulation of undisputed facts and a stipulation to seek a determination through ACR	528.05(a)(2) N. 3	102 USPQ2d 1546, 1547 (TTAB 2012)
Edom Laboratories Inc. v. Lichter	parties filed a joint stipulation of undisputed facts	702.04(a) No. 2	102 USPQ2d 1546, 1547 (TTAB 2012)
Edom Laboratories Inc. v. Lichter	parties filed a joint stipulation of undisputed facts and a stipulation to seek a determination through ACR	702.04(d) N. 2	102 USPQ2d 1546, 1547 (TTAB 2012)
Edom Laboratories Inc. v. Lichter	parties filed a joint stipulation of undisputed facts	705 n. 5	102 USPQ2d 1546, 1547 (TTAB 2012)
Edom Laboratories Inc. v. Lichter	listing of third-party marks downloaded from Office database does not make registrations of record	704.03(b)(1)(B)	102 USPQ2d 1546, 1550 (TTAB 2012)
Edom Laboratories Inc. v. Lichter	web pages inadmissible for lack of URL and date accessed	704.08 N. 2	102 USPQ2d 1546, 1550 (TTAB 2012)
Edom Laboratories Inc. v. Lichter	search summary inadmissible because it merely offers links to information not otherwise of record	704.08 N. 4	102 USPQ2d 1546, 1550 (TTAB 2012)
Embarcadero Technologies Inc. v. RStudio Inc.	answer deemed amended to include a Section 18 affirmative defense	507.03(b) N. 1	105 USPQ2d 1825, 1828-29 (TTAB 2013)

Embarcadero Technologies Inc. v. RStudio Inc.	Board has equitable power to restrict the goods and services under Section 18	309.03(d) N. 1	105 USPQ2d 1825, 1828 (TTAB 2013)
Embarcadero Technologies Inc. v. RStudio Inc.	Section 18 relief may be sought in the alternative	309.03(d) N. 3	105 USPQ2d 1825, 1829 (TTAB 2013)
Embarcadero Technologies Inc. v. RStudio Inc.	a defendant may assert an affirmative defense by moving to restrict its own goods and/or services in order to avoid any likelihood of confusion alleged by plaintiff	309.03(d) N. 7	105 USPQ2d 1825, 1828 (TTAB)
Embarcadero Technologies Inc. v. RStudio Inc.	a defendant may assert an affirmative defense by moving to restrict its own goods and/or services in order to avoid any likelihood of confusion alleged by plaintiff	311.02(b) N. 3	105 USPQ2d 1825, 1828 (TTAB)
Embarcadero Technologies Inc. v. RStudio Inc.	applicant moved to amend its descriptions of goods and services, requested at trial that the amendment be considered in the alternative, and the Board deemed the answer amended to include the affirmative defense under Section 18	311.02(b) N. 5	105 USPQ2d 1825, 1828-29 (TTAB)
Embarcadero Technologies Inc. v. RStudio Inc.	ideally, Section 18 affirmative defense should be made in answer to put plaintiff on notice followed by a motion to amend the application or registration	514.03 N. 4	105 USPQ2d 1825, 1828 (TTAB 2013)
Embarcadero Technologies Inc. v. RStudio Inc.	Section 18 affirmative defense, and corresponding motion to amend the application or registration, should be made early to put plaintiff on notice	514.03 N. 5	105 USPQ2d 1825, 1828-29 (TTAB 2013)
Embarcadero Technologies Inc. v. RStudio Inc.	Section 18 defense raised in alternative is relevant, motion to amend involved applications is granted, oppositions are dismissed	514.03 N. 6	105 USPQ2d 1825, 1841 (TTAB 2013)
Godin v. Schencks	("The substance of the rule has not materially changed.")	528.06 new N. 1	629 F.3d 79, 90-91 n.19 (1st Cir. 2010)

Helen Curtis Industries, Inc. v. Suave Shoe Corp	For practice that consolidate cases may be presented on the same record and briefs.	511 N. 7	13 USPQ2d 1618, 1619 n.1 (TTAB1989)
Home Products International v. U.S.	In support of procedure where a Fed. R. Civ. P. 60(b) motion is filed when there is an appeal pending	744 N. 10	633 F.3d 1369, 1378 n.9 (Fed. Cir. 2011)
Home Products International v. U.S.	In support of procedure where a Fed. R. Civ. P. 60(b) motion is filed when there is an appeal pending	901.03 N.1	633 F.3d 1369, 1378 n.9 (Fed. Cir. 2011)
In re Alappat	(Director has the authority under § 6 of the Patent Act to convene an expanded panel which includes not only BPAI administrative patent judges, but also one or more of the senior executive officers of the PTO identified in that section, including himself or herself); cf. 15 U.S.C. § 1067 (containing similar provisions for the TTAB).	802.04 N.3	33 F.3d 1526, 31 USPQ2d 1545, 1547-51 (Fed. Cir. 1994) (en banc)
In re Compania de Licores Internacionales S.A.	exhibits attached to applicant's supplemental brief not considered; noted that evidence could have been submitted during the period of further examination after remand	1203.02(e) N. 2	102 USPQ2d 1841, 1843 (TTAB 2012)
In re Compania de Licores Internacionales S.A.	mere listing of third party registrations in brief insufficient to make them of record	1208.02 N. 2	102 USPQ2d 1841, 1843 (TTAB 2012)
In re Compania de Licores Internacionales S.A.	even if copies of third-party registrations had been submitted with brief, they would have been untimely and not considered	1208.02 N.8	102 USPQ2d 1841, 1843 (TTAB 2012)
In re Compania de Licores Internacionales S.A.	applicant mentioned claim of acquired distinctiveness in original appeal brief but not again in supplemental appeal brief, because the examining attorney address the point in	1203.02(g) N. 1	102 USPQ2d 1841, 1852 n.31 (TTAB 2012)

	supplemental brief, Board considered the claim		
In re Compania de Licores Internacionales S.A.	exhibits attached to applicant's supplemental brief not considered; noted that evidence could have been submitted during the period of further examination after remand	1207.01 N. 1	102 USPQ2d 1841, 1843 (TTAB 2012)
In re Cook Medical Technologies LLC	Wikipedia evidence considered because examining attorney had opportunity to rebut the evidence	1208.03 N. 14	105 USPQ2d 1377, 1382 n.2 (TTAB 2012)
In re E5 LLC	during prosecution, applicant argued that mark was unitary but did not maintain argument in its appeal brief	1203.02(g) N. 1	103 USPQ2d 1578, 1579 n.1 (TTAB 2012)
In re Future Ads LLC	claim of acquired distinctiveness raised for first time in reply brief should have been made in a separate request for remand	1203.01 N. 10	103 USPQ2d 1571, 1573 (TTAB 2012)
In re Future Ads LLC	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)
In re Future Ads LLC	judicial notice taken of definition from online dictionary stating it was from a specified print dictionary	1208.04 N. 1	103 USPQ2d 1571, 1572 (TTAB 2012)
In re Future Ads LLC	Board declined to take judicial notice of term from Cambridge Dictionaries Online because definition stated it was "British English"	1208.04 new N. 7	103 USPQ2d 1571, 1572 n.2 (TTAB 2012)
In re Future Ads LLC	Board did not take judicial notice of online dictionary definition because only the link to the website was	1208.04 new N. 8	103 USPQ2d 1571, 1572 n.3 (TTAB 2012)

	provided		
In re Hartz Hotel Services Inc.	Board did not consider four cancelled third-party registrations submitted by applicant	1208.02 new N. 12	102 USPQ2d 1150, 1152 n.5 (TTAB 2012)
In re HSB Solomon Associates LLC	websites references in applicant's request for reconsideration not considered because, even if examining attorney had advised applicant of the insufficiency, there was not time to cure it	1208.02 N.8	102 USPQ2d 1269, 1273-74 (TTAB 2012)
In re HSB Solomon Associates LLC	Board will not utilize web address to access site and consider whatever content appears	1208.04 new N. 8	102 USPQ2d 1269, 1274 (TTAB 2012)
In re HSB Solomon Associates LLC	printouts submitted with reply brief not considered	1207.01 N. 1	102 USPQ2d 1269, 1274 (TTAB 2012)
In re Midwest Gaming & Entertainment LLC	new evidence submitted with brief is untimely	1207.01 N. 1	___ USPQ2d ___ n.3, Serial No. 85111552 (TTAB January 28, 2013)
In re Pohl-Boskamp GmbH & Co.	two appeals involving common issues of law and fact decided in a single opinion	1214 N. 2	106 USPQ2d 1042, 1043 (TTAB 2013)
In re Premiere Distillery LLC	judicial notice taken of online dictionary reference based on Random House Dictionary	1208.04 N. 1	103 USPQ2d 1483, 1484 (TTAB 2012)
In re RiseSmart Inc.	applicant clearly consented to entry of disclaimers only in the alternative because on appeal applicant maintained that the terms were not descriptive)	1215 N. 1	104 USPQ2d 1931, 1933 (TTAB 2012)
In re RiseSmart Inc.	in request for reconsideration and on appeal, applicant clearly asserted alternative positions with respect to the disclaimer requirement	1215 N. 2	104 USPQ2d 1931, 1933 (TTAB 2012)
In re Sadoru Group Ltd.	examining attorney stated she did not object to consideration of untimely evidence accompanying applicant's brief	1207.03 N. 1	105 USPQ2d 1484, 1485, 1489 n.6 (TTAB 2012)

In re Teledyne Indus.	(in absence of evidence in the record, mere argument of counsel cannot rebut prima facie case of functionality)	704.06(b) N. 1	696 F.2d 968, 971, 217 USPQ 9, 11 (Fed. Cir. 1982)
In re Tennis Industry Association	if applicant believes assertion of a refusal is procedurally deficient, appropriate action is to file a petition to the Commissioner	1201.05 N. 13	102 USPQ2d 1671, 1674 n.6
In re the Procter & Gamble Company	citation to non-precedential opinions permitted but not encouraged; non-precedential decisions not binding on the Board	1203.02(f) N. 2	105 USPQ2d 1120-21 (TTAB 2012)
In re the Procter & Gamble Company	applicant withdrew references in brief to third-party registrations it inadvertently failed to attach to responses during examination; applicant's footnote reference to a journal not considered because it was being offered for its evidentiary value on evidence not properly introduced	1203.02(e) new N. 3	105 USPQ2d 1119, 1120 (TTAB 2012)
In re Thomas White Int'l Ltd	judicial notice taken from dictionary existing in print format	1208.04 N. 1	___ USPQ2d ___ n.1, Serial No. 77080379 (TTAB February 28, 2013)
In re Thomas White Int'l Ltd	"at this late juncture applicant would not be able to show good cause" for a proposed amendment to expand goods and services	1205.01 new N. 4	___ USPQ2d ___ n.2, Serial No. 77080379 (TTAB February 28, 2013)
Information System and Networks Corp. v. United States	("Rule 60(b) is applied most liberally to judgments in default.")	312.03 N. 6	994 F.2d 792, 795 (Fed. Cir. 1993)
Information System and Networks Corp. v. United States	("Rule 60(b) is applied most liberally to judgments in default.")	544 New N. 7	994 F.2d 792, 795 (Fed. Cir. 1993)
Jacques Moret Inc. v. Speedo Holdings B.V.	law firm that filed motion to dismiss recognized as counsel of record for respondent	114.03 N. 2	102 USPQ2d 1212, 1216 (TTAB 2012)
Jacques Moret Inc. v. Speedo Holdings B.V.	petition to be served either on the owner or the domestic representative, if appointed	309.02(c)(2) N. 2	102 USPQ2d 1212, 1215 (TTAB 2012)

Jacques Moret Inc. v. Speedo Holdings B.V.	petition to be served either on the owner or the domestic representative, if appointed	309.02(c)(2) N. 3	102 USPQ2d 1212, 1215 (TTAB 2012)
Jacques Moret Inc. v. Speedo Holdings B.V.	the rules require petitioner to serve a copy of the petition to cancel either on the owner at the correspondence address of record or a domestic representative, if appointed, at the correspondence address of record	309.02(c)(2) N. 5	102 USPQ2d 1212, 1215 (TTAB 2012)
Jacques Moret Inc. v. Speedo Holdings B.V.	plaintiff to consult Office's TSDR database to determine correspondence address of record	309.02(c)(2) N. 6	102 USPQ2d 1212, 1215 (TTAB 2012)
Jacques Moret Inc. v. Speedo Holdings B.V.	duration of power of attorney in ex parte prosecution is considered limited	309.02(c)(2) N. 10	102 USPQ2d 1212, 1216 n.8 (TTAB 2012)
Jacques Moret Inc. v. Speedo Holdings B.V.	petitioner must serve either the owner of record or the domestic representative, if appointed, at address of record and may forward a courtesy copy to an attorney it believes is representing respondent	309.02(c)(2) N. 13	102 USPQ2d 1212, 1216 (TTAB 2012)
Jacques Moret Inc. v. Speedo Holdings B.V.	motion to dismiss for lack of proper service is granted, but law firm that filed motion is recognized as counsel of record for respondent, respondent is on notice of the proceeding, and proceedings resumed	309.02(c)(2) N. 13	102 USPQ2d 1212, 1216 (TTAB 2012)
Jacques Moret Inc. v. Speedo Holdings B.V.	ESTTA requires petitioner to affirmatively represent it has served a copy of the petition to cancel on respondent	309.02(c)(2) N. 15	102 USPQ2d 1212, 1214 (TTAB 2012)
Jacques Moret Inc. v. Speedo Holdings B.V.	a statement confirming services appears on the ESTTA-generated filing form as part of the complaint	309.02(c)(2) N. 16	102 USPQ2d 1212, 1214 (TTAB 2012)
Jacques Moret Inc. v. Speedo Holdings B.V.	("Attesting to proof of service of an ESTTA filing without actually effecting service in accordance with the rules is	309.02(c)(2) new N. 20	102 USPQ2d 1212, 1214 (TTAB 2012)

	insufficient to commence the proceeding.”		
Jacques Moret Inc. v. Speedo Holdings B.V.	discussing difference between an attorney designated solely as domestic representative and an attorney appointed as counsel of record	114.07 N. 1	102 USPQ2d 1212, 1214 n.4 (TTAB 2012)
Jacques Moret Inc. v. Speedo Holdings B.V.	rule governs service of notices or process in applications during ex parte prosecution, not service of complaints and other papers in cancellation proceedings	114.07 new N. 3	102 USPQ2d 1212, 1216 (TTAB 2012)
Johnson & Johnson v. Obschestvo s Ogranitchennoy	counterclaim seeking partial cancellation as to only three of the items identified in the class based on abandonment due to nonuse without an intent to resume use is a counterclaim of abandonment sufficiently stated notwithstanding reference to Section 18	309.03(d) N. 5	104 USPQ2d 2037, 2038 n.2, 2039 (TTAB 2012)
Johnson & Johnson v. Obschestvo s Ogranitchennoy	counterclaim seeking partial cancellation as to only three of the items identified in the class based on abandonment due to nonuse without an intent to resume use is a counterclaim of abandonment sufficiently stated notwithstanding reference to Section 18	313.01 N. 10	104 USPQ2d 2037, 2038 n.2, 2039 (TTAB 2012)
Kappa Books Inc. v. Herbko Int’l Inc.	(“While there is no provision in the Trademark Rules of Practice for the submission of a reply brief in connection with a request for reconsideration (see Trademark Rule 2.127(b)), we have exercised our discretion and considered the reply brief in this case.”)	543 N. 3	60 USPQ2d 1765, 1766 n.2 (TTAB 2001)
L’Oreal S.A. v. Marcon	parties stipulated to testimony by declaration	703.01(b) N. 5	102 USPQ2d 1434, 1435 n.2 (TTAB 2012)

L'Oreal S.A. v. Marcon	parties stipulated to testimony by declaration	705 N. 4	102 USPQ2d 1434, 1435 n.2 (TTAB 2012)
L'Oreal S.A. v. Marcon	opposer did not object to applicant's improper introduction of responses to interrogatories and requests for admission but instead treated as matter as being of record	704.10 N. 10	102 USPQ2d 1434, 1435 n.3 (TTAB 2012)
L'Oreal S.A. v. Marcon	there can be no priority dispute when an opposer properly introduces its registrations into the record and there is no counterclaim	309.03(c) N. 44	102 USPQ2d 1434, 1436 n.7 (TTAB 2012)
L'Oreal S.A. v. Marcon	lack of a bona fide intent to use found where there was no documentary evidence, affirmative statement that no documents exist, no industry experience, no development or business plan, vague allusions to using the mark through licensing or outsourcing, and applicant's demonstrated pattern of filing intent-to-use applications for disparate goods under the well-know and famous marks of others	309.03(c) No. 18	102 USPQ2d 1434, 1443 (TTAB 2012)
Lens.com Inc. v. 1-800 Contacts Inc.	software that is merely a conduit through which online retail services are rendered is not "in use in commerce" in association with software	309.03(c) N. 17	686 F.3d 1376, 103 USPQ2d 1672, 1676-77 (Fed. Cir. 2012)
Luster Products Inc. v. Van Zandt	motion to compel is available remedy for failure to serve, or insufficient, initial disclosures	401.02 N. 15	104 USPQ2d 1877, 1878-79 (TTAB 2012)
Luster Products Inc. v. Van Zandt	For proposition that purpose of disclosure and discovery model is to promote fairness and avoid surprise	401 N. 4	104 USPQ2d 1877, 1879-80 n.5 (TTAB 2012)
Luster Products Inc. v. Van Zandt	initial disclosures may be served concurrently with discovery requests	403.02 new N. 2	104 USPQ2d 1877, 1879 n.2 (TTAB 2012)

Luster Products Inc. v. Van Zandt	motion to compel for failure to serve initial disclosures is to be filed prior to the close of the discovery period	411.01 N. 2	104 USPQ2d 1877, 1878-79 (TTAB 2012)
Luster Products Inc. v. Van Zandt	motion to compel is available remedy for failure to serve, or insufficient, initial disclosures	411.01 N. 1	104 USPQ2d 1877, 1879 (TTAB 2012)
Luster Products Inc. v. Van Zandt	applicant made a calculated strategic decision, within its control, not to take discovery in the hope opposer had lost interest in the case, even though the parties held settlement discussions and opposer requested an extension of the discovery period before it closed	509.01(b)(1) N. 3	104 USPQ2d 1877, 1879 (TTAB 2012)
MicroStrategy, Inc. v. Business Objects, S.A.	applying Southern States factors in excluding non-expert damages evidence as a sanction for late disclosure	533.02(b) Renumbered N. 9	429 F.3d 1344, 1357, 77 USPQ2d 1001, 1009-10 (Fed. Cir. 2005)
Midwestern Pet Foods Inc. v. Societe des Produits Nestle S.A.	pre-2007 procedures did not call for disclosures	401 N.2	685 F.3d 1046, 103 USPQ2d 1435, 1437-38 (Fed. Cir. 2012)
Midwestern Pet Foods Inc. v. Societe des Produits Nestle S.A.	Board did not abuse its discretion by refusing to strike plaintiff's evidence where defendant failed to follow up on plaintiff's offer to produce the evidence at a mutually agreeable time and place and in view of defendant's failure to file a motion to compel	402.02 N. 2	685 F.3d 1046, 103 USPQ2d 1435, 1439 (Fed. Cir. 2012)
Midwestern Pet Foods Inc. v. Societe des Produits Nestle S.A.	Board did not abuse its discretion by refusing to strike plaintiff's evidence where defendant failed to follow up on plaintiff's offer to produce the evidence at a mutually agreeable time and place and in view of defendant's failure to file a motion to compel	523.04 N. 1	685 F.3d 1046, 103 USPQ2d 1435, 1439 (Fed. Cir. 2012)

Midwestern Pet Foods Inc. v. Societe des Produits Nestle S.A.	Board did not abuse its discretion by refusing to strike plaintiff's evidence where plaintiff objection to production, did not represent that responsive documents did not exist but defendant failed to follow up on plaintiff's offer to produce the evidence at a mutually agreeable time and place and in view of defendant's failure to file a motion to compel	527.01(e) N. 4	685 F.3d 1046, 103 USPQ2d 1435, 1439 (Fed. Cir. 2012)
Midwestern Pet Foods Inc. v. Societe des Produits Nestle S.A.	For proposition that application of estoppel sanction is in Board's discretion	527.01(e) new N. 5	685 F.3d 1046, 103 USPQ2d 1435, 1439 (Fed. Cir. 2012)
Miller v. Miller	opposer established it has a commercial interest in using MILLER LAW GROUP	309.03(b) renumbered N. 17	105 USPQ2d 1615, 1618-19 (TTAB 2013)
Miller v. Miller	parties stipulated to testimony by affidavit and provided a stipulation of undisputed facts	702.04(e) N. 1	105 USPQ2d 1615, 1617 n.6 (TTAB 2013)
Miller v. Miller	parties stipulated to testimony by affidavit and provided a stipulation of undisputed facts	705 N. 4	105 USPQ2d 1615, 1617 n.6 (TTAB 2013)
Miller v. Miller	search results summary introduced by testimony have probative weight to the extent the results include sufficient information surrounding the term searched to show context, that Miller is a surname, and have been supplemented by other testimony	704.08(b) N. 4	105 USPQ2d 1615, 1617-18 (TTAB 2013)
Musical Directions v. McHugh	opposer should have notified Board that service copy of complaint was returned as undeliverable even though the address was correct and opposer knew applicant was aware of opposition	309.02(c)(1) N. 15	104 USPQ2d 1157, 1159 n.3 (TTAB 2012)
Musical Directions v.	effective date of institution	309.02(c)(1) N.	104 USPQ2d 1157,

McHugh	amended to date of actual service by first-class mail, which was made during an existing extension of time to oppose	18	1160 (TTAB 2012)
Musical Directions v. McHugh	opposer required to provide proof of service, not proof of receipt; return of complaint as undeliverable does not negate opposer's compliance with the service requirement	309.02(c)(1) N. 1	104 USPQ2d 1157, 1159 (TTAB 2012)
Musical Directions v. McHugh	service by fax or email improper where parties did not previously agree to these service methods	309.02(c)(1) N. 6	104 USPQ2d 1157, 1159 (TTAB 2012)
O.C. Seacrets, Inc. v. Hotelplan Italia S.p.A.	cannot amend notice of opposition to add a claim against a § 66(a) application	528.07(a) N. 5	95 USPQ2d 1327, 1329-30 (TTAB 2010)
Order of Sons of Italy in America v. Profumi Fratelli Nostra AG	motion to strike third affirmative defense denied because it was an amplification of a denial, giving fuller notice of the claim	311.02(d)	36 USPQ2d 1221, 1223 (TTAB 1995)
Otter Products LLC v. BaseOneLabs LLC	opposer's Supplemental Registration sufficient to establish opposer's real interest in proceeding	309.03(b) new No. 10	105 USPQ2d 1252, 1254 (TTAB 2012)
Otter Products LLC v. BaseOneLabs LLC	priority not at issue in opposition where pleaded registration of record resides on Supplemental Register	309.03(c) N. 44	105 USPQ2d 1252, 1254-55 (TTAB 2012)
Otter Products LLC v. BaseOneLabs LLC	reliance solely on a Supplemental Registration insufficient to establish proprietary rights	309.03(c) N. 40	105 USPQ2d 1252, 1256 (TTAB 2012)
Otter Products LLC v. BaseOneLabs LLC	Supplemental Registration of record is evidence of record such that a motion under 37 CFR § 2.132(a) is not available, though a motion under 37 CFR § 2.132(b) may be available	534.02 N. 7	105 USPQ2d 1252, 1254 (TTAB 2012)
Otter Products LLC v. BaseOneLabs LLC	Supplemental Registration insufficient to establish that opposer owns a proprietary	534.03 N. 6	105 USPQ2d 1252, 1256 (TTAB 2012)

	right		
Pramil S.R.L. v. Farah	In support of procedure where a Fed. R. Civ. P. 60(b) motion is filed when there is an appeal pending	744 N. 10	93 USPQ2d 1093, 1095 (TTAB 2009)
Pramil S.R.L. v. Farah	In support of procedure where a Fed. R. Civ. P. 60(b) motion is filed when there is an appeal pending	901.03 N. 1	93 USPQ2d 1093, 1095 (TTAB 2009)
Ruiz v. Quarterman	("[T]his lesser standard of review has been applied most liberally to motions to re-open default judgments [.]").	312.03 N. 6	504 F.3d 523, 532 (5th Cir. 2007)
Ruiz v. Quarterman	("[T]his lesser standard of review has been applied most liberally to motions to re-open default judgments [.]").	544 New N. 7	504 F.3d 523, 532 (5th Cir. 2007)
Saddlesprings Inc. v Mad Croc Brands Inc.	standing adequately alleged by allegation that petitioner's intent-to-use application has been refused based on respondent's registrations	309.03(b) N. 10	104 USPQ2d 1948, 1950 (TTAB 2012)
Saddlesprings Inc. v Mad Croc Brands Inc.	claim of abandonment is available with respect to a claim against a 66(a) registration, which is a registered extension of protection under 15 U.S.C. § 1141f(a).	309.03(c) N. 26	104 USPQ2d 1948, 1950-52 (TTAB 2012)
Seven Elves, Inc. v. Eskenazi	For liberal standard on reopening default judgments	312.03 N. 6	635 F.2d 396, 403 (5th Cir. 1981)
Seven Elves, Inc. v. Eskenazi	For liberal standard on reopening default judgments	544 New N. 7	635 F.2d 396, 403 (5th Cir. 1981)
Societe Des Produits Marnier Lapostolle v. Distillerie Moccia S.R.L.	For practice that identity of the parties is a factor considered by the Board in determining whether to consolidate.	511 N. 3	10 USPQ2d 1241, 1242 (TTAB 1989)
Southern States Rack & Fixture, Inc. v. Sherwin-Williams Co.	For five-factor guidelines	533.02(b) Renumbered N. 9	318 F.3d 592, 597 (4th Cir. 2003)
Spier Wines (PTY) Ltd. v. Shepher	witness first identified in pretrial disclosure not previously identified in initial disclosures, discovery	521 new N. 9	105 USPQ2d 1239 (TTAB 2012)

	responses, or any disclosure or discovery supplements		
Spier Wines (PTY) Ltd. v. Shepher	judicial economy served by promptly filing a motion to quash	521 renumbered N. 12	105 USPQ2d 1239, 1240 (TTAB 2012)
Spier Wines (PTY) Ltd. v. Shepher	judicial economy served by promptly filing a motion to quash or to strike the pretrial disclosures as insufficient before the deposition takes place	533.02(b) New N. 8	105 USPQ2d 1239, 1240 (TTAB 2012)
Spier Wines (PTY) Ltd. v. Shepher	after conducting analysis, the Board concluded that opposer's failure to identify witness prior to pretrial disclosure was neither harmless nor substantially justified; combined motion to strike pretrial disclosure and to quash notice of testimony granted	533.02(b) Renumbered N. 9	105 USPQ2d 1239, 1246 (TTAB 2012)
Spier Wines (PTY) Ltd. v. Shepher	party that fails to provide information via disclosure or discovery or supplements may be precluded from using that information or witness at trial unless failure was substantially justified or harmless; opposer's failure to identify witness prior to pretrial disclosure was neither harmless nor substantially justified	527.01(e)	105 USPQ2d 1239, 1242, 1246 (TTAB 2012)
Spier Wines (PTY) Ltd. v. Shepher	witness first identified in pretrial disclosure and not previously identified in initial disclosures, discovery responses or supplements resulted in unfair surprise and was neither harmless nor substantially justified	702.01 N. 2	105 USPQ2d 1239, 1246 (TTAB 2012)
Spier Wines (PTY) Ltd. v. Shepher	witness first identified in pretrial disclosure could have been identified in supplementary initial disclosures, discovery	408.03 N.2	105 USPQ2d 1239, 1242-43 (TTAB 2012)

	responses or supplemental discovery responses		
Spier Wines (PTY) Ltd. v. Shepher	estoppel sanction imposed where witness first identified in pretrial disclosure	408.03 N.5	105 USPQ2d 1239, 1246 (TTAB 2012)
Spier Wines (PTY) Ltd. v. Shepher	plaintiff not faulted for not originally identifying witness in response to an interrogatory because it is unclear from witness's title whether she was an "officer or managing agent," which was the information sought by discovery request	414 N. 20	105 USPQ2d 1239, 1243 n.10 (TTAB 2012)
Spier Wines (PTY) Ltd. v. Shepher	disclosures, from initial through pretrial, and discovery responses should be viewed as a continuum of communication designed to avoid unfair surprise and facilitate a fair adjudication of the case on the merits	401 N. 4	105 USPQ2d 1239, 1246 (TTAB 2012)
Swatch S.A. v. Beehive Wholesale LLC	appellate review limited to record before TTAB; civil action in district court allows litigants to introduce new evidence in a trial court	901.01 N. 1	___ F. Supp. 2d ___, ___ USPQ2d ___, Case No. 1:11-cv-434 (E.D. Va. August 16, 2012)
Swatch S.A. v. Beehive Wholesale LLC	appellate review limited to record before TTAB; civil action in district court allows litigants to introduce new evidence in a trial court	906.01 N. 2	___ F. Supp. 2d ___, ___ USPQ2d ___, Case No. 1:11-cv-434 (E.D. Va. August 16, 2012)
Swatch S.A. v. Beehive Wholesale LLC	trial court employs a "unique" standard of review as appellate reviewer of facts found by TTAB and as fact-finder on newly introduced trial evidence	906.01 N. 3	___ F. Supp. 2d ___, ___ USPQ2d ___, Case No. 1:11-cv-434 (E.D. Va. August 16, 2012)
Swatch S.A. v. Beehive Wholesale LLC	Fourth Circuit law applies to an appeal of this action	906.01 new N. 24	___ F. Supp. 2d ___, ___ USPQ2d ___, Case No. 1:11-cv-434 (E.D. Va. August 16, 2012)
Threshold.TV Inc. v. Metronome Enterprises Inc.	For point that Board has construed the term "testimony" to mean trial	530 N. 4	96 USPQ2d 1301, 1035 n.8 (TTAB 2010)

	testimony or a discovery deposition as “trial testimony in the other proceeding”		
Threshold.TV Inc. v. Metronome Enterprises Inc.	the term “testimony,” as used in Trademark Rule 2.122(f) has been construed to mean only trial testimony, or a discovery deposition which was used, by agreement of the parties, as trial testimony in the other proceeding	704.13 N. 2	96 USPQ2d 1301, 1035 n. 8 (TTAB 2010)
Threshold.TV Inc. v. Metronome Enterprises Inc.	For purpose of rule stated before [Note 3.]	704.13 new N. 3	96 USPQ2d 1031, 1035 (TTAB 2010)
W.R. Grace & Co. v. Red Owl Stores, Inc.	Defendant who sought judgment under 2.132(a) is not precluded from later seeking judgment under 2.132(b).	534.03 N. 8	181 USPQ 118, 119-20 (TTAB 1973)