

## **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 at least one material fact in dispute. *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 alternatives for disclosures, discovery and trial. When either party to a Board case concludes that resolution of the opposition or cancellation proceeding without extensive discovery or trial periods may be desired, the party should notify the interlocutory attorney. Preferably such notice would be provided during the required settlement and discovery 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 should be notified 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.

A typical ACR case is anticipated to be one in which the parties are 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 is not 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. If agreement is signaled in the settlement and discovery planning conference, the interlocutory may then tailor the disclosure and discovery schedule to facilitate ACR. If agreement is provided later, i.e., early in discovery, the interlocutory 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 issues of material fact. If the parties have already filed cross-motions for summary judgment, they may also stipulate that the Board may resolve any issues 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 will 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, should contact the assigned interlocutory attorney. Questions about ACR should be addressed to the Board interlocutory attorney assigned to the case in which the parties are considering use of ACR.