

TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: February 21, 2003

Rowland, John Marvin

1906 N. Towner Street
Santa Ana, CA 92706

Cancellation No. 92041630

Reg. No. 2105217

MARY BETH CIOCCO
MARY BETH CIOCCO LLC
22255 CENTER RIDGE RD STE 106
ROCKY RIVER, OH 44116-3950



420 Gear, Inc.

03-04-2003

U.S. Patent & TMO/c/TM Mail Rpt Dt. #7:

V.

Rowland, John Marvin

Kimberly Linton, Legal Assistant:

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as

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TRADEMARK TRIAL AND APPEAL BOARD

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well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open:	March 13, 2003
Discovery period to close:	September 09, 2003
30-day testimony period for party in position of plaintiff to close:	December 08, 2003
30-day testimony period for party in position of defendant to close:	February 06, 2004
15-day rebuttal testimony period for plaintiff to close:	March 22, 2004

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

TTAB

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration Number: 2105217

For the mark: "420" (words, letters and/or stylized form)

Date registered: October 14, 1997

420 Gear, Inc. PETITIONER vs.

John Marvin Rowland RESPONDENT

12-06-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #77

PETITION TO CANCEL REGISTRATION

The Petitioner is: 420 Gear, Inc., a corporation within the State of Maryland, whose address is P.O. Box 420, Barnesville, Maryland 20838.

To the best of the Petitioner's knowledge, the name and address of the current owner of the registration is John Marvin Rowland, 1906 N. Towner Street, Santa Ana, California 92706.

The Petitioner believes that it is or will be damaged by the above-identified registration and it thereby petitions to cancel same for the reasons set forth herein.

The grounds for cancellation are as follows:

1. The Petitioner is the applicant for the mark "420 Gear Hemp Clothes for the Future" (words, letters and stylized form) Serial Number 76/162050, filed on November 9, 2000.
2. The Petitioner's application has been refused by the examining attorney on the basis of likelihood of confusion with the Respondents mark "420". The Petition responded to this refusal with the argument that "420" is generic, but the refusal was maintained.
3. "420" is a generic. "420" is a slang word the use of hemp or marijuana. The term is used in the form of 4:20 and 4/20. The term "420" with regard to such slang has been in existence since at least the early 1970s. An internet search on www.google.com using "420" as a search term yields thousands of web sites which reference "420" as slang for hemp and marijuana. "420" has been consistently used as generic slang for hemp and marijuana from the 1970s through the present date. The web site for the magazine entitled High Times, www.hightimes.com, contains an article regarding the origins of the slang term "420". A copy of this article is attached as Exhibit A. Therefore, the Petitioner alleges that the Registrant's registered mark does not function to identify the Registrant's goods nor distinguish them from goods offered by others.

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TRADEMARK TRIAL AND APPEAL BOARD

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4. The Respondent is the owner of Registered Trademark Number 2105217, "420". Upon the Petitioner's information and belief from the products presently being offered for sale on the Respondent's web site (www.420inc.com), the Respondent is selling clothing with the mark "420" affixed, with several of the products referencing the generic meaning of "420" as described in the above-mentioned High Times article, i.e. "420 always on time", "420 on time", "420 Bakers" (bakers being slang for marijuana use), and "420 support your local pipehitters union" (pipehitters being slang for marijuana use). A copy of the printout of the Respondent's web site is attached as Exhibit B. As such, the Petitioner alleges that the Respondent is using the mark "420" in its generic context.

5. The Petitioner is likely to be damaged by the existing registration of the generic term, in that the existence of the registration is the basis of the refusal of the Petitioner's application, and that it tends to impair the Petitioner's legal right to the use of "420" on clothing. The Petitioner believes that if the Respondent's mark is declared generic and is cancelled, then its trademark application will likely be granted if it disclaims "420" and "gear", as the refusal based upon likelihood of confusion with the Respondent's mark would be moot. Further, the Petitioner has received several cease and desist notices from the Respondent, in which the Respondent threatens legal action against the Petitioner based upon its registered mark "420".

6. On information and belief, the Petitioner alleges that the Registrant's registration was obtained fraudulently in that the formal application papers filed by the Respondent, under oath pursuant to 18 USC 1001, state that to the best of the Registrant's knowledge and belief no other person, firm, corporation or association as the right to use "420" in commerce. Said statement was false because the Respondent knew or should have known that the term "420" was widely-used and known, and induced the United States Patent and Trademark Office to grant said registration. Reasonably relying upon the truth of said false statements, the United States Patent and Trademark Office did register the Respondent's mark. Further, the Petitioner has been damaged by said registration, in that its own application for registration of the mark "420 Gear Hemp Clothes for the Future" has been refused, and because the Petitioner's continued and legal use of said mark is being and will be impaired by the continued registration of the Respondent's mark.

WHEREFORE, the Petitioner prays that Registration Number 2105217 be cancelled immediately, and that this Petition for Cancellation be sustained in favor of the Petitioner, with all costs and legal fees awarded, if appropriate, pursuant to the Federal Rules of Civil Procedure and the Rules of the PTO and the TTAB.

By: M. Beth C.

MARY BETH CIOCCO, L.L.C.

By: Mary Beth Ciocco

Attorney for the Petitioner 420 Gear, Inc.

22255 Center Ridge Road, Suite 106

Rocky River, Ohio 44116

(440) 333-5700

(440) 333-1519 Fax

Date: 12/10/02

EXHIBIT A



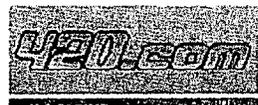
- HOME
- HEADSHOP
- NEWS
- BUZZ
- STONED ZONE
- GROW
- DRUG TEST
- ADVERTISE

- HEADLINES**
- Growing in Humboldt County
 - Welfare Recipients to Get Drug Test
 - 'NY Times' Takes Hit On Marijuana Booklet
 - Military May Ease Its War on Drugs
 - Oxford Tells Patients Where to Stick Their Pot
 - Headlines Archive



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 - HT Editors
 - History of HT
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LATEST EVENTS

Check out the official HIGH TIMES events calendar.

NEWSLETTER

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STONED ZONE

Our online lounge makes your lava lamp obsolete. Check out HIGH TIMES VIDEO, High on the Air radio, and other stony diversions.

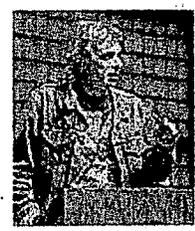
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STONER SMART, OR STONER STUPID?
 Our editor-in-chief weighs in on the origins of 420, and its lessons for responsible cannabis users.

by Steven Hager

HTV: Watch Steven Hager explain 420 on ABC Television

Do you know what 420 means? Several times over the past few years, HIGH TIMES has attributed "420" to a code used by the San Rafael police department. However, the department has always denied this and I've come to the conclusion they are telling the truth. I was recently contacted by a group known as the "Waldos," who claim to have originated 420 in San Rafael in 1971. The group began meeting every day at 4:20 PM after school and eventually began to use 420 as a code for marijuana so they could talk about pot in front of parents and teachers.



If this is true, why did 420 become so popular and spread so quickly around the world?

One reason is because San Rafael is the home to the Grateful Dead and 420 spread for many years within the Deadhead community before it appeared on the Hemp 100 in HIGH TIMES. Once it appeared in HIGH TIMES, however, the expression spread farther and faster than ever.

But why have so many cannabis users embraced the 420 concept?

I believe 420 is a ritualization of cannabis use that holds deep meaning for our subculture. It also points us in a direction for the responsible use of cannabis. Before one can understand the difference between responsible and irresponsible use of cannabis, one must come to terms with the fact there are really two cannabis cultures in America, smart stoners and stupid stoners.

The stupid stoners wake and bake on exam days. They think being high is an end in itself and strive to be stoned as often as possible. When a stupid stoner shows up at your house, they usually feel it's their duty to compulsively decimate whatever stash you have immediately and save nothing for later. I'm sure we all know a few of these people. The stupid stoners are the people Cheech and Chong made fun of when they created the most widely accepted stereotype of a pothead.

The smart stoners, on the other hand, are the ones who use cannabis as a creative tool to enhance their lives. They know cannabis can be an asset if used intelligently. Bob Marley, Willie Nelson, Louis Armstrong, Ken Kesey, and Stephen Gaskin are among the many cultural icons that fall into the smart stoner category.

But what does all this have to do with 420?

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First, it means it's better to wait to start smoking pot until 4:20 PM—unless, of course, you have a medical reason for starting sooner. The people who roll out of bed and immediately start smoking, and continue smoking throughout the day, don't get as high as the people who wait until 4:20. The late afternoon is the time to step back and review the day's events. It's the time to brainstorm. Cannabis, sunsets and brainstorms just seem to naturally go together. The people who use cannabis sparingly get more impact than those who use it continuously. The more you smoke, the less high you get. Smoke less, and you get higher. This has always been my experience.

Second, 420 is a model for how cannabis should be portrayed to children, which is the most important issue as far as many prohibitionists are concerned. We have to convince these people the use of cannabis by children will not go up after legalization. We have to convince them we are not interested in recruiting their children to join our cannabis society.

Ever since the Partnership for a Drug-Free America began putting ads on television targeting the use of cannabis by children, more kids have been using marijuana. Obviously, the more you talk about marijuana in front of children, the more curious they are going to be about it. Telling them that it's bad is not going to be much of a deterrent. In fact, many kids just naturally enjoy the outlaw thrill of breaking rules set by adults. Right now, it's easier for kids to buy marijuana than it is for them to buy a six-pack of beer because the cannabis is sold out on the streets, while the beer is sold in licensed and regulated outlets.

The solution is not to put more negative advertising on television, but to stop talking about pot in front of children. All that's needed to accomplish this is for the adults to establish a code for cannabis, one that the children don't understand.

We also have to ritualize the use of cannabis and turn it into a rite of passage. That way, when our teenagers reach the proper age, they can be inducted into adulthood by being awarded with the keys to the cannabis code.

And what is the "right age?"

That varies considerably. I like the standard set by Stephen Gaskin in his book *Cannabis Spirituality*. "...there's a ceremonial place," writes Gaskin, "when a teenager takes up as much space as a grownup, eats as much food as a grownup and works as much as a grownup. They participate in creating the adult community vibe. It isn't fair at that point to treat them as children. I think some teenagers can be damaged by being excluded from important ceremonies."

Stupid stoners may feel part of the hemp revolution, but they are, in fact, part of the problem. If we want to convince the straight world cannabis is not a dangerous plant, we must use the plant wisely, not irresponsibly. We have to be stoner smart, not stoner stupid. So, which side of the coin do you want to be on? The same side as Bob Marley, Louis Armstrong and Willie Nelson? Or do you want to be stoner stupid?

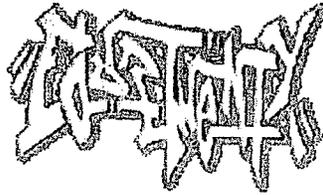
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EXHIBIT B

420 Girls

Pic of the Month



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Employment Opportunities

More Than A Brand ... A State of Mind.

Home

- Sunglasses
- Men's Shirts
- Welded Tees
- Printed Tees
- Accessories:
 - Wallets
 - Stickers
- Skate Decks

420 Links



You Know What Time It Is...

Welcome to the Official Web Site of 420 Inc., the *only* federally trademark user of the 420 name. Beware of immitators, and accept no substitutes!!

Our site is designed with your lifestyle in mind, offering the latest in 420 Fashion, our full line of 420 Eyewear, and even the same skateboards abused by Team 420. We've also got you covered on the music front, with sound clips from and links to some of our favorite local 420 Bands. You can also submit photos that capture you and your friends in all of your 420 glory, so check out our Pic Of The Month page. You could upgrade your wardrobe by winning some Free Stuff!!

Okay, so we've also got pictures of lovely (and uniquely talented) 420 Girls, too, but we know you're here to load up on stickers, right?

Thanks for dropping in. Stay and hang a while....

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FEDERALLY TRADEMARKED CLASS OF 420

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Sign In

Mens - Welded Tees

- Mens - Welded Tees
- Mens - Printed Tees
- Sunglasses
- Wallets
- Caps
- Skateboard Decks
- Stickers
- Mens - Dickies Workshirts



Welded Tee - Lenticular Refl
 Code: **WT-01**
 Price: **\$20.00**
 Quantity in Basket: *none*

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Welded Tee - 2 Color Weld
 Code: **WT-02**
 Price: **\$20.00**
 Quantity in Basket: *none*

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Black Welded Tee - Chrome
 Code: **WT-03**
 Price: **\$20.00**
 Quantity in Basket: *none*

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Black Welded Tee - Color C
Lenticular Logo
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Quantity in Basket: *none*

Add One To Basket



Navy Blue Welded Tee - Glo
Logo
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Quantity in Basket: *none*

Add One To Basket



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Navy Blue Welded Tee - 2 C
Code: **WT-07**



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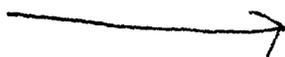
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Orange Glitter
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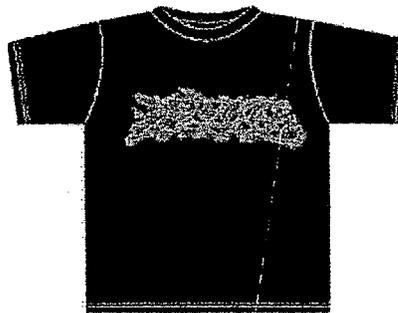


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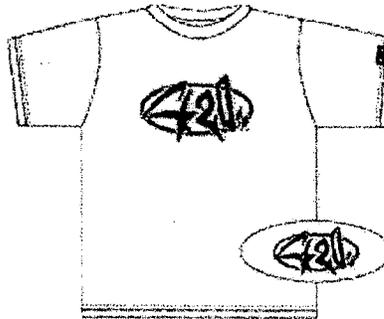
Mens - Printed Tees

- Mens - Welded Tees
- Mens - Printed Tees
- Sunglasses
- Wallets
- Caps
- Skateboard Decks
- Stickers
- Mens - Dickies Workshirts



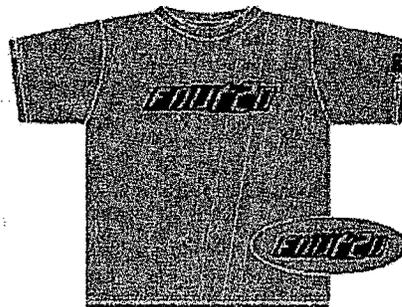
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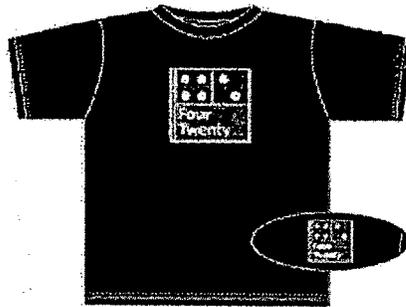
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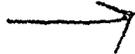
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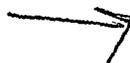
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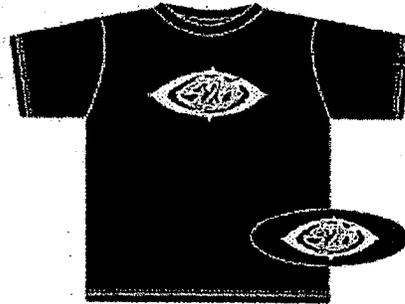
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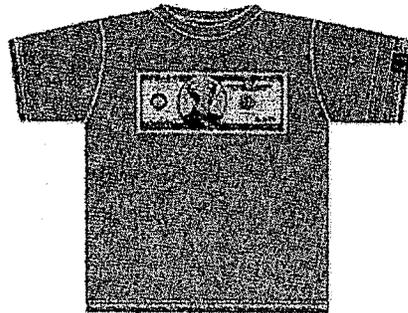
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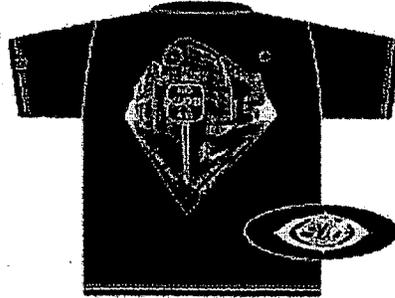
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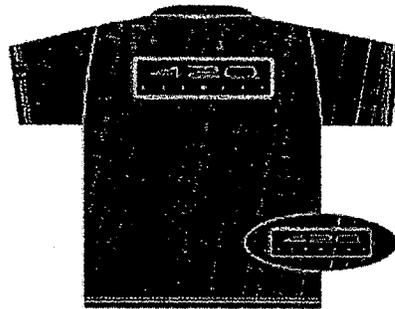
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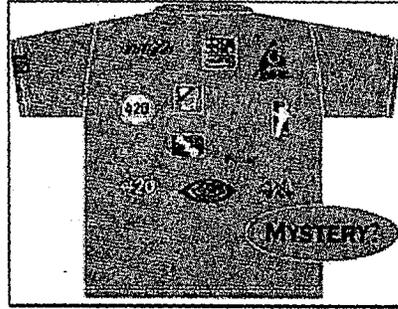
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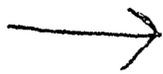
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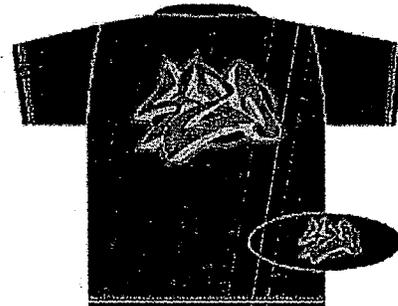


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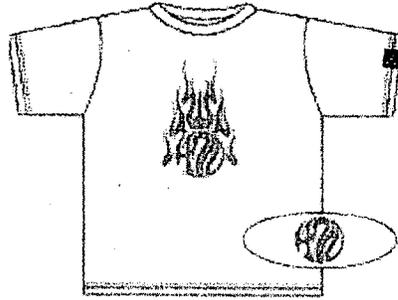
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Men's Printed Tee - Logo on
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Price: **\$17.00**
Quantity in Basket: *none*



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Men's Printed Tee - Logo on
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Price: **\$17.00**
Quantity in Basket: *none*

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**TTAB NOTICE CONCERNING CORRESPONDENCE ADDRESS
(TRADEMARK RULE 2.18)**

The Trademark Trial and Appeal Board will mail correspondence to only one address for each party.

If a party is located in the U.S., correspondence will be sent to the party's own address, unless (1) papers filed with the Board are filed by a party's attorney, (2) a written power of attorney is filed, (3) a written authorization of some other person entitled to be recognized is filed, or (4) the party requests in writing that correspondence be sent to another address. In these situations, correspondence will be sent, respectively, to (1) the attorney filing papers, (2) the attorney named in the power of attorney, (3) the other person designated in the written authorization, or (4) the other address specified by the party.

When one attorney or other authorized representative makes an appearance on behalf of a party, his address is noted on the proceeding file as the correspondence address. If a second attorney or other authorized representative makes an appearance on behalf of the party, and requests that correspondence be directed to him, the correspondence address on the proceeding file will be changed, and future correspondence will be sent to the second attorney or other authorized representative, rather than to the first one. If the second attorney or other authorized representative does not request that correspondence be sent to him, the Board will continue to send correspondence to the first attorney or authorized representative.

If a power of attorney from a party to one attorney has been filed, and thereafter another attorney or authorized representative makes an appearance on behalf of the party and asks that correspondence be sent to him, the second attorney or authorized representative will be required to submit authorization, from the party or from the first attorney, for the requested change in correspondence address.

If a power of attorney from a party to one attorney has been filed, and thereafter a power of attorney from the party to another attorney is filed, the second power of attorney will be construed as a written request to change the correspondence address from the first attorney to the second one, even if there is no revocation of the first power, unless the party or the first attorney directs otherwise. Likewise, if an attorney makes an appearance on behalf of a party, and thereafter the party files a written power of attorney to another attorney, the Board will send subsequent correspondence to the appointed attorney.

If a power of attorney from a party to one attorney has been filed, and thereafter that attorney files an "associated power of attorney" to another attorney, the correspondence address will remain unchanged, and the Board will continue to send correspondence to the first attorney, unless the first attorney or the party directs otherwise.

In the case of a party whose application is the subject of a Board proceeding, any appearance or power of attorney (or designation of other authorized representative) of record in the application file at the time of the commencement of the Board proceeding is considered to be effective for purposes of the proceeding, and correspondence will be sent initially to that address. Thereafter, the correspondence address may be changed as described in Trademark Rule 2.18.

In the case of a party whose registration is the subject of a Board proceeding, any representative which may be of record in the registration file at the time of the commencement of the Board proceeding is not considered to be effective for purposes of the Board proceeding. Rather, correspondence is sent to the registrant itself unless and until another correspondence address is established in the manner described in Trademark Rule 2.18.

THE TRADEMARK TRIAL AND APPEAL BOARD WOULD LIKE YOU TO KNOW:

The TTAB Customer Service Center is available to

- *answer telephone inquiries
- *explain pertinent legal provisions and related administrative practices as they apply to specific cases
- *provide status information on pending cases
- *provide access to the files of pending cases
- *resolve problems

The telephone number for the TTAB Customer Service Center is (703) 308-9300, extension 0 [zero].

The Patent and Trademark Office has two special boxes for expedited processing and distribution of documents filed with the TTAB. Envelopes and transmittal letters for TTAB should be addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202, followed by one of the following designations

"Box TTAB Fee": for papers filed with the TTAB that include filing fees, such as notices of opposition, petitions to cancel, and notices of ex parte appeal
and

"Box TTAB": for all non-fee papers filed with the TTAB, such as requests for extensions of time to file notices of opposition and motions.

The TTAB Customer Service Center makes every effort to provide public access to application files, opposition files, cancellation files and concurrent use files immediately upon request for access. Files located will be made available in a central storage area accessible to the public. You can also access information about TTAB proceeding files online. Go to <http://www.uspto.gov/web/offices/dcom/ttab/> and click the "BISX LINK".

Any questions, comments, or suggestions concerning TTAB service should be directed to Jean Brown, TTAB Technical Program Manager, at (703) 308-9300, extension 123 or Afendi Ziad, Supervisory Legal Assistant at (703) 308-9300, extension 205.

NOTICE CONCERNING ALTERNATIVE DISPUTE RESOLUTION (ADR)

The Trademark Trial and Appeal Board encourages you to consider alternative dispute resolution as a means of settling the issues raised in this opposition or cancellation proceeding. Although more than 95% of Board proceedings are decided prior to trial (by settlement or by entry of pre-trial judgment), alternative dispute resolution techniques might produce an earlier, mutually agreeable resolution of your dispute or might, at least, narrow the scope of discovery or the issues for trial. In either case, alternative dispute resolution might save you time and money.

Many non-profit organizations, both inside and outside the intellectual property field, offer alternative dispute resolution services. Listed below are the names and addresses of organizations that have indicated that they can make arrangements for alternative dispute resolution. The listings are given for your convenience; the Board does not sponsor nor endorse any particular organization's alternative dispute resolution services.

International Trademark Association Telephone: (212) 642-1726 Fax: (212) 768-7796 www.inta.org/adr/index.shtml e-mail: lstigliano@inta.org	CPR Institute for Dispute Resolution Telephone: (212) 949-6490 Fax: (212) 949-8859 www.cpradr.org e-mail: info@cpradr.org
American Intellectual Property Law Association (AIPLA) 2001 Jefferson Davis Highway Suite 203 Arlington, Virginia 22202 Telephone: (703) 415-0780 Fax: (703) 415-0786	
American Arbitration Association (AAA) Headquarters 140 West 51 st Street New York, New York 10020-1203 Telephone: (212) 484-3266 Fax: (212) 307-4387	

Finally, if the parties consider using alternative dispute resolution in this proceeding, the Board would like to know; and if the parties actually engage in alternative dispute resolution, the Board would be interested to learn what mechanism (e.g., arbitration, mediation, etc.) was used and with what general result. Such a statement from the parties is not required but would be helpful to the Board in assessing the value of alternative dispute resolution in Trademark Trial and Appeal Board proceedings.

PROCEEDING SYNOPSIS

United States Patent and Trademark Office - Trademark Trial and Appeal Board
Trademark Opposition and Cancellation Proceedings Under 15 USC 1063, 1064; 37 CFR 2.101 et seq.

FILING OPPOSITION/CANCELLATION

Any person (Opposer) may file a Notice of Opposition within 30 days against any mark published under 15 USC 1062(a) in Official Gazette; may oppose in whole or part.¹

Time for filing Notice may be extended by written request to TTAB. A first extension for not more than 30 days will be granted upon request. Further extensions may be granted for good cause. Extensions aggregating more than 120 days from pub. date not granted unless consented to by applicant or extraordinary circumstances. 37 CFR 2.102(c). Request should be in triplicate. 37 CFR 2.102(d).

Any person (Petitioner) may file a Petition to cancel a registration in whole or in part, but only under conditions set forth in 15 USC 1064.² Geographic limitation will be considered by TTAB only in concurrent use proceeding. 37 CFR 2.99(h), 2.133(c).

Opposer/Petitioner is in position of Plaintiff and Applicant/Respondent is Defendant. 37 CFR 2.116(b).

Notice/Petition corresponds to complaint in civil action. 37 CFR 2.116(c).

Amendment to pleadings in accord with Rule 15, Fed. Rules of Civil Procedure (FRCP). 37 CFR 2.107, 2.115.

MAILING PROCEDURES

Certificate of Mailing or Transmission and Express Mail procedures effective for all papers. 37 CFR 1.8, 1.10.

INSTITUTION OF PROCEEDING; WITHDRAWAL

TTAB examines Notice/Petition for formal requirements and sends notification to Defendant, generally within few weeks of filing date. Duplicate copy of Notice/Petition and Exhibits sent to Defendant. 37 CFR 2.105, 2.113.

Notice/Petition may be withdrawn without prejudice before Defendant files Answer. 37 CFR 2.106(c), 2.114(c). With written consent of Defendant, later withdrawal may be without prejudice.

Defendant may not abandon application or surrender registration without prejudice except with written consent of Plaintiff. 37 CFR 2.135, 2.134.

ANSWER; MOTIONS

Time for Answer set by TTAB for 40 days from Notification mailing date.³ Counterclaim should be filed with answer or promptly upon discovery of information supporting Counterclaim. 37 CFR 2.106(b), 2.114(b).

Time for reply to Counterclaim set by TTAB for not less than 30 days from TTAB action mailing date. 37 CFR 2.106(b), 2.114(b).

Motions may be brought before TTAB in writing and with Brief in support. Brief in opposition thereto, 15 days (30 days for summary judgment motion). Briefs limited to 25 pages. Reply Brief, if filed, 15 days, limited to 10 pages. Reconsideration 30 days after decision; Opposition Brief, 15 days. 37 CFR 2.127. Most motions used in Federal practice are applicable.

Motions for Summary Judgment, to Compel, and to Test Sufficiency of Responses to Requests for Admissions, if filed, due before Plaintiff testimony period opens. 37 CFR 2.127(e), 2.120(e), 2.120(h).

TRIAL DATES

TTAB issues Order setting opening and close of Discovery and Trial dates. Discovery set for period of 180 days; 30-day Pl. Testimony period closes 90 days after close of Discovery period; 30-day Def. Test. period closes 60 days after Pl. Test. period; 15-day Pl. Rebuttal Test. period closes 45 days after Def. Test. period. 37 CFR 2.120(a), 2.121.

In cases where Counterclaim filed, TTAB sets additional time periods for testimony and briefing.

DISCOVERY PERIOD

Interrogatories, Reqs. for Prod. Of Docs. & Things, and Reqs. for Adm., if served, must be served by last day of Discovery period. Written Responses within 30 days from date of service of Disc. Reqs. FRCP apply except as otherwise provided. 37 CFR 2.116, 2.120(a). Extension of Time to respond to discovery granted upon cause or by stipulation.⁴

Interrogatories limited to proceeding total of 75, counting subparts; additional interrogatories allowed upon motion for good cause or by stipulation. 37 CFR 2.120(d)(1).

Discovery Depositions (noticed and taken within Disc. Period) in District where deponent resides or is employed. 37 CFR 2.120(a), 2.120(b). Either party may request designation of witnesses under FRCP 30(b)(6), 31(a).

PLAINTIFF'S TRIAL PERIOD

Plaintiff's Testimony-In-Chief. Opens 60 days after Discovery Period closes, and runs for 30 days (refer to Order).

Testimony taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124.

Plaintiff serves Transcript of testimony and copies of documentary exhibits on adverse party within 30 days after completion of taking testimony. Certified transcript and exhibits filed with TTAB. 37 CFR 2.125.

Notice of Reliance as appropriate Discovery Deps., Adms. and Int. Answers, with copies of same, due before close of Test. 37 CFR 2.120.⁵

Involved app. or reg. files are in evidence for relevant and competent purposes. Publications in gen. Circ. or in libraries, and official records, may be received if appropriate Notice of Reliance is filed and copies submitted within Test. period. 37 CFR 2.122.

Motion under 37 CFR 2.132, if filed due after close of Pl.'s Test. period & before opening of Def.'s.

DEFENDANT'S TRIAL PERIOD

Opens 30 days after close of Pl.'s Test. period. Runs for 30 days.

Test. taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124.

Notice of Reliance on Discovery responses also due within Test. period, if filed. 37 CFR 2.120.

Notice of Reliance on gen. circ. publ. and official records due within Test. period, if filed. 37 CFR 2.122.

Def. serves Test. transcript on Pl within 30 days and files certified transcript and exhibits with TTAB. 37 CFR 2.125.

PLAINTIFF'S REBUTTAL PERIOD

Rebuttal Test. period for Pl. opens 30 days after close of Def.'s Test. period and runs for 15 days.

Pl. may file Notice of Reliance under 37 CFR 2.120, 2.122, with matter relied on, and take Test. rebut Def. Test. and other evidence.

Pl. serves and files Transcript of Rebuttal Test. and exhibits in accordance with 37 CFR 2.125.

BRIEFS; ORAL HEARING

Pl. Brief due 60 days after Rebuttal period closing.⁶

Def. Brief, if filed, due 30 days after Pl. Brief due.

Pl. Reply Brief, if filed, due 15 days after Def. Brief due. 37 CFR 2.128.

Separate Request for Oral Hearing, if filed, due not later than 10 days after Reply Brief due. . 37 CFR 2.129.

TTAB Notice of Oral Hearing sent to all parties.

❖ Oral Hearing before panel of at least three TTAB judges. 30 minutes for each party. 37 CFR 2.129.

❖ DECISION; RECONSIDERATION; APPEAL
TTAB Deliberation. Writing of Opinion and Decision in due course.

❖ Request for rehearing, reconsideration or modification, if filed, due within one month. Brief

in opposition due within 15 days. 37 CFR 2.129(c).

❖ Any Appeal from TTAB Decision due within two months of Decision or two months after denial of req. for recon. See especially 37 CFR 2.129(d).

NOTE: Footnotes and TTAB addresses and telephone number appear on the back of this sheet

FOOTNOTES

- (1) Opposer may be any legal entity including a corporation. Opposer must believe that opposer would be **damaged by registration of the mark** and state the reasons. 15 USC 1063 and 37 CFR 2.101. Notice of Opposition need not be verified. \$200 required fee for each class for each person opposing. 37 CFR 2.6, 2.101(b). May be signed by attorney. 37 CFR 2.101(b). Duplicate copy including exhibits required. Order status and title copies of pleaded registrations in advance and attach to Notice/Petition or introduce as evidence during Testimony-in-Chief period. 37 CFR 2.122.
- (2) Action, grounds and requirements (Footnote 1) for initiation of Cancellation proceeding are similar to those for an Opposition proceeding and are covered in 15 USC 1064, 1092 and 37 CFR 2.111, 2.112. \$200 required fee per class, per person. Duplicate copy required.
- (3) Except Notice/Petition, each paper must be served on opponent. Statement of service (date and manner) is required. Period to respond to Motions and Discovery Requests is extended 5 days when service is by first-class mail, "Express Mail," or overnight courier. 37 CFR 2.119. Action due on weekend or D.C. holiday can be taken on next business day. 37 CFR 1.7.
- (4) Resetting of time to respond to Discovery Request does not result in extension of Discovery period and subsequent testimony periods unless requested. 37 CFR 2.120(a). All consented extensions of time should be filed in triplicate and list specific dates for all subsequent periods affected.
- (5) Except for 37 CFR 2.122(e) documents, documents produced in response to Requests for Production cannot be made of record by Notice of Reliance alone. 37 CFR 2.120(j)(1).
- (6) Briefs should be typewritten or printed, double-spaced, in at least pica or eleven-point type, on letter paper (8 1/2 x 11). Three copies of briefs required. Alphabetical index of cases required. Length limit of 55 pages, including table of contents, index of cases, description of record, statement of issues, recitation of facts, argument, and summary. Reply brief 25 pages total. 37 CFR 2.128(b).

ADDRESSES AND TELEPHONE

All papers not requiring a fee should be mailed to:

**Box TTAB No Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513**

NOTE: For papers with fee, use "Box TTAB Fee"

TTAB Office Location and Telephone Number

**2900 Crystal Drive
South Tower, Suite 9B40
Arlington, Virginia 22202-3513**

Telephone: (703) 308-9300

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