

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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KWM

Mailed: November 3, 2017

Opposition No. 91234269 (**Parent**)

Sarofima, LLC

v.

Atelier, Inc. DBA Chez LouLou

Opposition No. 91234536

Atelier, Inc. DBA Chez LouLou

v.

Sarofima, LLC

By the Trademark Trial and Appeal Board:

It has come to the Board's attention that the above-captioned opposition proceedings involve common questions of law and fact and the parties are the same. When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. *See* Fed. R. Civ. P. 42(a); *see also Regatta Sport, Ltd. v. Telux-Pioneer, Inc.*, 20 USPQ2d 1154, 1156 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382, 1384, n.3 (TTAB 1991). Accordingly, the Board, *sua sponte*, orders the consolidation of the above-captioned proceedings.

In view thereof, Opposition Nos. 91234269 and 91234536 are hereby consolidated. The consolidated cases may be presented on the same record and briefs. *See Hilson*

Research Inc. v. Soc’y for Human Resource Mgmt., 27 USPQ2d 1423, 1424, n.1 (TTAB 1993); *Helene Curtis Indus., Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1619 n.1 (TTAB 1989).

The Board file for these consolidated cases will be maintained in **Opposition No. 91234269** as the “**parent**” case. As a general rule, from this point on only a single copy of any paper or motion should be filed in the parent case of the consolidated proceedings, but that copy should bear both opposition proceeding numbers in its caption. The only exception is that the answer to each notice of opposition must be filed in the respective corresponding proceeding.

The parties are further advised that despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings and a copy of the final decision shall be placed in each proceeding file.¹ In accordance with Board practice, discovery, disclosure and trial dates are reset below to conform to the dates latest set in the proceedings that are being consolidated.

This case now comes up for consideration of Sarofima, LLC’s (“Applicant’s”) motion (filed June 23, 2017) to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6) in Opposition No. 91234536.² The motion is fully briefed.

¹ The parties should promptly inform the Board in writing of any other related *inter partes* proceedings. *See* Fed. R. Civ. P. 42(a).

² The Board notes that Applicant served its motion to dismiss, as well as its reply in support thereof, on Opposer via First Class Mail. Applicant is reminded that under the new rules, service must be made by email, unless the parties stipulate otherwise. *See* “Miscellaneous Changes to Trademark Trial and Appeal Board Rules of Practice,” 81 Fed. Reg. 69950 (Oct.

Background

Applicant seeks to register the mark LOULU, in standard character form (“Applicant’s Mark”), for “cosmetics, face cleansers, non-medicated skin exfoliation preparations, skin masks, skin toner, beauty serums, sun block, face oil” in International Class 3 (“Applicant’s Goods”).³ On May 9, 2017, Opposer filed a notice of opposition opposing the registration of Applicant’s mark on the ground of likelihood of confusion. In support of its standing and asserted claim, Opposer pleads ownership of the registered mark CHEZ LOULOU SALON, in standard character form (SALON disclaimed), for “beauty salon services; hair salon services; nail care salons; skin care salons” in International Class 44 (“Opposer’s Services”).⁴ Opposer further pleads ownership of two applications for the mark CHEZ LOULOU SALON and design (SALON disclaimed), as displayed below, for “beauty salon services; hair salon services; nail care salons; skin care salons” in International Class 44,⁵ and for

7, 2016); Trademark Rule 2.119(b). Strict compliance with Trademark Rule 2.119 is required by the parties in all future papers filed with the Board.

³ Application Serial No. 86543127, filed February 23, 2015 based on an assertion of a *bona fide* intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

⁴ Registration No. 4998337, registered on July 12, 2016.

⁵ Application Serial No. 87185108, filed on September 27, 2016 based on use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging January 14, 2016 as both the date of first use anywhere and the date of first use in commerce. On May 30, 2017, after Opposer filed its complaint in this case, Application Serial No. 87185108 matured into Registration No. 5212767. Inasmuch as Opposer has not yet made the registration properly of record, the Board has not taken the resulting registration into consideration in its analysis herein. *See UMG Recordings, Inc. v. O’Rourke*, 92 USPQ2d 1042, 1045-46 (TTAB 2009) (if a party pleads a pending application in the notice of opposition, it may make the resulting registration of record at trial without having to amend its pleading to assert reliance on the registration).

“shampoos, hair conditioner, hair mousse, hair gel, hair pomades, hairspray, sea salt styling spray for hair, lipstick, lip liner, lip gloss, eye shadow, eyeliner, mascara, blush, skin bronzer, foundation, face powder, skin cream, body lotion, and facial masks” in International Class 3 (“Opposer’s Goods”).⁶



Opposer also asserts common law rights in the marks CHEZ LOULOU and CHEZ LOULOU SALON (collectively, the “CHEZ LOULOU Marks”) arising from prior use of the mark:

Since December 2012, Chez Loulou has sold ‘Shampoos, Hair Conditioner, Hair Mousse, Hair Gel, Hair Pomades, Hairspray, Sea salt styling spray for hair, Lipstick, Lip liner, Lip gloss, Eye shadow, Eyeliner, Mascara, Blush, Skin bronzer, Foundation, Face powder, Skin cream, Body lotion, and Facial masks products from its Chez Loulou salon, and has provided ‘Beauty salon services; Hair salon services; Nail care salons; Skin care salons” services.

Notice of opposition at ¶4. In lieu of an answer to the notice of opposition, Applicant filed the present motion to dismiss.

The Board otherwise presumes the parties’ familiarity with the pleadings and the arguments and materials submitted in connection with the subject motions. The Board has considered the parties’ briefs in connection with the subject motion, but does not repeat or discuss all of the arguments and submissions, and does not address

⁶ Application Serial No. 87185047, filed September 27, 2016 based on an assertion of a *bona fide* intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

irrelevant arguments. *Guess? IP Holder L.P. v. Knowlux LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

Procedural Issues

As a preliminary matter, the Board notes that both parties have incorporated materials outside the pleadings,⁷ as well as arguments on the merits of Opposer's asserted claim, in their briefs. The purpose of a motion to dismiss is to test the sufficiency of the complaint, not to decide the merits of the case. *See Scotch Whiskey Assoc. v. United States Distilled Prods. Co.*, 18 USPQ2d 1391, 1393 (TTAB 1991). The parties' arguments do not concern the sufficiency of Opposer's pleading, but rather concern whether Opposer can prove its asserted claim under Section 2(d) of the Trademark Act. As such, the parties' arguments are in the nature of a motion for summary judgment, which is premature at this stage of the proceeding because there is no indication that Applicant has served its initial disclosures, and Applicant's motion is not based on issue or claim preclusion or lack of Board jurisdiction.⁸ *See*

⁷ Applicant argues that because Opposer included a screen shot of its website as an exhibit to its notice of opposition, the Board should consider Applicant's exhibit displaying a different portion of Opposer's website. 4 TTABVue 11. However, Applicant's argument is based on a faulty premise inasmuch as Trademark Rule 2.122(c) is clear that other than copies of pleaded registrations, documents submitted as exhibits to the pleadings are not evidence on the filing party's behalf. Moreover, Applicant's argument concerns Opposer's proof of use of its marks, and will not be considered on a motion to dismiss. *See Covidien LP v. Masimo Corp.*, 109 USPQ2d 1696, 1697 n.3 (TTAB 2014) (whether plaintiff has carried its evidentiary burden with respect to any of its allegations is a matter considered after trial of the issues); TBMP § 503.02 (June 2017).

⁸ To the extent Applicant argues that Opposer is somehow estopped from taking a position inconsistent with that in related Proceeding No. 91234269, which is currently pending, the Board does not treat Applicant's motion as based upon issue or claim preclusion, inasmuch as Applicant has not argued, and cannot argue, that there has been an earlier final judgment on the merits of a claim in Proceeding No. 91234269. *See Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 55 USPQ2d 1854, 1857 (Fed. Cir. 2000). Moreover, a party may state as many

Trademark Rule 2.127(e)(1) (“A party may not file a motion for summary judgment until the party has made its initial disclosures ...”); TBMP § 503.04 (June 2017). Accordingly, to the extent the parties included matters outside the pleadings or arguments regarding the merits of Opposer’s claim, such matters will be excluded from consideration.⁹

Motion to Dismiss

A motion to dismiss is a test solely of the allegations set forth in a pleading. To withstand a motion under Fed. R. Civ. P. 12(b)(6), a plaintiff need only allege sufficient factual matter as would, if proved, establish that: (1) it has standing; and (2) a valid ground exists for denying registration. *Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998); *Doyle v. Al Johnson’s Swedish Rest. & Butik, Inc.*, 101 USPQ2d 1780, 1782 (TTAB 2012). More specifically, “a complaint must contain sufficient factual matter ... to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Threadbare recitals of the elements of a cause

separate claims or defenses as it has, regardless of consistency. Fed. R. Civ. P. 8(d); *see also Humana Inc. v. Humanomics, Inc.*, 3 USPQ2d 1696, 1698 (TTAB 1987); TBMP § 309.03(a)(2).

⁹ Applicant also argues that the Board may take judicial notice of certain adjudicative facts in the motion. 4 TTABVUE 7-10, 14-15. Website evidence as well as allegations made in an application are not, however, a fit subject for judicial notice, are made in support of Applicant’s improper arguments on the merits, and therefore are not considered by the Board in its determination of the present motion. *See, e.g., Nike, Inc. v. Palm Beach Crossfit Inc.*, 116 USPQ2d 1025, 1029 (TTAB 2015) (matters used to argue merits of claims as opposed to sufficiency of claims excluded); *UMG Recordings, Inc. v. Mattel, Inc.*, 100 USPQ2d 1868, 1874 (TTAB 2011) (Board declined to take judicial notice of website evidence); *Compagnie Gervais Danone v. Precision Formulations, LLC*, 89 USPQ2d 1251, 1256, n.8 (TTAB 2009) (“allegations made in an application, for example, dates of first use and first use in commerce, . . . are not objective facts but are subject to proof in an inter partes proceeding.”).

of action, supported by mere conclusory statements, do not suffice” and are not accepted as true. *Ashcroft*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). All of the plaintiff’s well-pleaded allegations must be accepted as true, and the complaint must be construed in the light most favorable to the non-moving party. *See Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1042-43 (Fed. Cir. 1993).

Applicant argues that inasmuch as Opposer’s pleaded registration and applications were all filed after the subject application’s constructive use date, Opposer has not alleged priority of use. 4 TTABVUE 16-17. Moreover, Applicant contends, Opposer has not alleged use of its CHEZ LOULOU Marks in connection with its pleaded goods prior to Applicant’s constructive use date. *Id.* at 16, 21. According to Applicant, Opposer also has not alleged that its services are similar to Applicant’s goods, and even if it did, “such an allegation would be insufficient as a matter of law because the applicable comparison is between [Applicant’s] goods and Opposer’s goods.” *Id.* at 20.

A. Standing

Our primary reviewing court has enunciated a liberal threshold for determining standing, namely that a plaintiff must demonstrate that it possesses a “real interest” in a proceeding beyond that of a mere intermeddler, and “a reasonable basis for his belief of damage.” *Empresa Cubana Del Tabaco v. Gen. Cigar Co., Inc.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014) (quotation omitted), *cert. denied*, 135 S. Ct. 1401 (2015). A “real interest” is a “direct and personal stake” in the outcome of the

proceeding. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1026 (Fed. Cir. 1999). A claim of likelihood of confusion that “is not wholly without merit,” including prior use of a confusingly similar mark, may be sufficient. *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982). However, a plaintiff does not bear the burden of proving its case in its complaint. *Enbridge, Inc. v. Excelerate Energy Ltd. P’ship*, 92 USPQ2d 1537, 1543 n. 10 (TTAB 2009).

Although Applicant does not contest that Opposer has failed to plead sufficiently its standing to pursue this case, the Board, after reviewing Opposer’s pleading, finds that Opposer has sufficiently alleged a “real interest” and a “direct and personal stake” in the outcome of this proceeding. Specifically, Opposer has pleaded prior use of the CHEZ LOULOU Marks at least in connection with beauty salon services, hair salon services, nail care salons, and skin care salons since December 2012 (*see* Notice of opposition at ¶¶2-4), as well as ownership of a registration for the mark CHEZ LOULOU SALON (*see id.* at ¶3) in connection with Opposer’s Services, thus alleging that it has a direct and personal stake in the outcome of this proceeding, and that it believes it will be damaged by the registration of Applicant’s marks (*see id.* at ¶9).¹⁰ *See, e.g., Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (registration sufficient to establish standing); *Lipton Indus., Inc.*, 213 USPQ at 189 (citing *King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974)); *Giersch v. Scripps Networks Inc.*, 90 USPQ2d 1020,

¹⁰ Additionally, Opposer has alleged that Applicant has filed a notice of opposition opposing registration of one of Opposer’s pleaded marks. Notice of opposition at ¶10. This allegation also constitutes a sufficient pleading of Opposer’s standing. *See Tonka Corp. v. Tonka Tools, Inc.*, 229 USPQ 857, 859 (TTAB 1986); TBMP § 309.03(b).

1022 (TTAB 2009) (common-law use sufficient to establish standing); *see also* TBMP § 309.03(b).

B. Valid Ground: Opposer's Section 2(d) Claim

In order to properly state a claim of likelihood of confusion, an opposer must plead (and later prove) that (1) applicant's mark, as applied to its goods or services, so resembles opposer's mark or trade name as to be likely to cause confusion, mistake, or deception; and (2) it has priority of use. *See* Fed. R. Civ. P. 8; 15 U.S.C. § 1052(d); *King Candy Co., Inc.*, 182 USPQ at 110.

With regard to pleading properly the claim of priority, Opposer relies on its ownership of its registration for the CHEZ LOULOU SALON mark, as well as its prior use in commerce. Notice of opposition at ¶¶2-4. Priority is not in issue in an opposition where, as in this case, opposer pleads (and later proves) that it owns a registration for its pleaded mark, and there is no counterclaim or separate petition to cancel the pleaded registration. *King Candy Co.*, 182 USPQ at 110; *B.V.D. Licensing Corp. v. Rodriguez*, 83 U.S.P.Q.2d 1500, 1506 (TTAB 2007). “[P]rior use need not be shown by an opposer relying on a registered mark unless the applicant counterclaims for cancellation.” *Massey Junior College, Inc. v. Fashion Institute of Technology*, 492 F.2d 1399, 181 USPQ 272, 275, n.6 (CCPA 1974); *see also* Trademark Rule 2.106(b)(3)(ii); J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 20:18 (4th ed. 2017) (applicant cannot attack the validity of opposer's pleaded registration by making a claim of priority over the registered mark in the absence of a counterclaim for cancellation). Accordingly, Opposer has pleaded

properly its claim of priority with respect to Opposer's Services.¹¹ *See Research in Motion Ltd. v. Defining Presence Mktg. Grp., Inc.*, 102 USPQ2d 1187, 1191 (TTAB 2012) (priority not at issue for goods and services recited in pleaded registrations).

In further support of its claim of likelihood of confusion, Opposer claims that one word of its CHEZ LOULOU Marks "sounds identical to Applicant's Mark and the parties have similar goods, such that there is an appreciable likelihood of confusion among potential consumers." Notice of Opposition at ¶9. Opposer has not alleged, either directly or hypothetically, that its CHEZ LOULOU Marks, as applied to Opposer's Services for which it has priority, so resemble Applicant's Mark as applied to Applicant's Goods as to be likely to cause confusion or mistake. *See Intersat Corp. v. Int'l Telecomm. Satellite Org.*, 226 USPQ 154, 156 (TTAB 1985); *Research in Motion Ltd.*, 102 USPQ2d at 1196. Accordingly, Opposer has failed to properly plead its claim of likelihood of confusion.¹²

¹¹ Inasmuch as Opposer claims it has sold Opposer's Goods from its Chez Loulou salon since December 2012, but it has not alleged prior use in commerce of its CHEZ LOULOU Marks as source indicators for Opposer's Goods, Opposer has failed to properly plead priority with respect to Opposer's Goods. *See Internet, Inc. v. Internet Society and Corp. for Nat'l Research Initiatives*, 38 USPQ2d 1435, 1438 (TTAB 1996).

¹² However, to the extent Applicant argues that for the purposes of pleading likelihood of confusion, the applicable comparison is only between Applicant's Goods and Opposer's Goods, Applicant is mistaken. *See* 4 TTABVUE 20. It is not necessary that Applicant's Goods and Opposer's Goods or Services be identical or even competitive in order to support a finding of likelihood of confusion. "Rather, it is sufficient that the goods and services be related in some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods or services." *In re Opus One, Inc.*, 60 USPQ2d 1812, 1814-1815 (TTAB 2001); *see also In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984); *Hilson Research Inc.*, 27 USPQ2d at 1432.

Conclusion

In view of the foregoing, Applicant's motion to dismiss Opposer's claim under Section 2(d) of the Trademark Act is **granted**. Notwithstanding, the Board generally grants leave to amend pleadings that have been found insufficient upon challenge under Fed. R. Civ. P. 12(b)(6). *See* TBMP § 503.03. If, in connection with the Section 2(d) claim, Opposer intends to rely on prior use of its CHEZ LOULOU Marks in connection with Opposer's Goods, it must amend the notice of opposition to expressly allege prior use of the specific marks that function as a source indicator for specific goods. Likewise, if Opposer intends to rely on prior use of its CHEZ LOULOU Marks in connection with Opposer's Services, it must amend the notice of opposition to expressly allege that its CHEZ LOULOU Marks as applied to Opposer's Services so resemble Applicant's Mark as applied to Applicant's Goods as to be likely to cause confusion or mistake.

Accordingly, Opposer is allowed until **December 1, 2017** by which to file and serve an amended notice of opposition that properly alleges any available ground, if Opposer has a reasonable basis for doing so, failing which this proceeding will be dismissed with prejudice.¹³ In turn, Applicant is allowed until **December 29, 2017** in which to file and serve an answer or otherwise respond to the amended pleading, if an amended pleading is filed.¹⁴

¹³ To the extent Opposer files an amended pleading pursuant to this order, it should re-allege its allegations supporting its standing. Opposer should file its amended pleading **only in Opposition No. 91234536**.

¹⁴ Applicant should file its answer to Opposer's amended pleading, if filed, **only in Opposition No. 91234536**.

Trial Schedule

Although the Board, by this order, has consolidated Opposition Nos. 91234269 and 91234536, Opposition No. 91234269 is nonetheless **suspended** until the deadline for initial disclosures in Opposition No. 91234536, as set forth below, at which time both cases consolidated herein will proceed simultaneously pursuant to the trial schedule provided below.

Amended Complaint in Opposition No. 91234536 Due	December 1, 2017
Answer to Amended Complaint in Opposition No. 91234536 Due	December 29, 2017
Deadline for Discovery Conference in Opposition No. 91234536	January 28, 2018
Discovery Opens in Opposition No. 91234536	January 28, 2018
Initial Disclosures Due in Opposition No. 91234536	February 27, 2018
Expert Disclosures Due for both proceedings	June 27, 2018
Discovery Closes for both proceedings	July 27, 2018
Sarofima’s Pretrial Disclosures, as plaintiff in Opposition No. 91234269, Due	September 10, 2018
30-day Testimony Period for Sarofima, as plaintiff in Opposition No. 91234269, to close	October 25, 2018
Atelier’s Pretrial Disclosures, as defendant in Opposition No. 91234269 and as plaintiff in Opposition No. 91234536, Due	November 9, 2018
30-day Testimony Period for Atelier, as defendant in Opposition No. 91234269 and as plaintiff in Opposition No. 91234536, to close	December 24, 2018

Sarofima’s Rebuttal Disclosures, as defendant in Opposition No. 91234536 and as plaintiff in Opposition No. 91234269, Due	January 8, 2019
30-day Testimony Period for Sarofima, as defendant in Opposition No. 91234536 and rebuttal testimony, as plaintiff in Opposition No. 91234269, to close	February 22, 2019
Atelier’s Rebuttal Disclosures, as plaintiff in Opposition No. 91234536, Due	March 9, 2019
15-day Rebuttal Period for Atelier, as plaintiff in Opposition No. 91234536, to close	April 8, 2019
BRIEFS SHALL BE DUE AS FOLLOWS:	
Brief for Sarofima, as plaintiff in Opposition No. 91234269, due	June 7, 2019
Brief for Atelier, as defendant in Opposition No. 91234269 and as plaintiff in Opposition No. 91234536, due	July 7, 2019
Brief for Sarofima, as defendant in Opposition No. 91234536, and reply brief, if any, as plaintiff in Opposition No. 91234269, due	August 6, 2019
Reply brief, if any, for Atelier, as plaintiff in Opposition No. 91234536, due	August 21, 2019

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits,

declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

Recent Rules Change

CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD RULES OF PRACTICE BECAME EFFECTIVE JANUARY 14, 2017

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7, 2016, at 81 Fed. Reg. 69950. It sets forth several amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and *ex parte* appeal proceedings. A correction to the final rule was published on December 12, 2016, at 81 Fed. Reg. 89382.

For complete information, the parties are referred to:

- The Board's home page on the uspto.gov website:
<http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule:
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>
- The correction to the final rule:
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2089382.pdf>
- The clarification to the final rule:
<https://www.uspto.gov/sites/default/files/documents/82%20FR%2033804%20%28Final%20rule%29.pdf>
- A chart summarizing the affected rules and changes:
<http://www.uspto.gov/sites/default/files/documents/Chart%20Summarizing%20Rule%20Changes%2012-9-16.pdf>

For all proceedings, including those already in progress on January 14, 2017, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190, and 2.191.
- Service of all papers must be made by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by first-class mail, Priority Mail Express®, or overnight courier. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary

judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.

- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123, and 2.125.
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.

This is only a summary of the significant content of the Final Rule. All parties involved in a Board proceeding should read the entire Final Rule.