

Chapter 400

Processing Documents and Fees

401 Processing New Applications

- 401.01 Filing Receipts
- 401.02 Serial Numbers and Series Codes
- 401.03 Data Entry
- 401.04 Creation of Application Files

402 Electronic Application and Registration Files

- 402.01 USPTO No Longer Creates Paper Copies of Certain Trademark-Related Documents

403 Correspondence Returned as Undeliverable

404 Documents Not Returnable

405 Fees

- 405.01 Credit Cards
- 405.02 Checks
 - 405.02(a) Personal Checks
- 405.03 Deposit Accounts
- 405.04 Refunds
- 405.05 Electronic Funds Transfer
- 405.06 Payments Refused or Charged Back By Financial Institutions

401 Processing New Applications

Upon receipt in the USPTO, trademark applications filed under §1 or §44 of the Trademark Act are given a date of receipt and reviewed for compliance with the minimum requirements for receipt of a filing date (see TMEP §202).

TRADEMARK MANUAL OF EXAMINING PROCEDURE

See TMEP §§201 and 1904.01(b) regarding the filing date of applications under §66(a) of the Trademark Act.

If an application meets the minimum filing date requirements, it is given a filing date and serial number. See 37 C.F.R. §2.23.

See TMEP §§204 *et seq.* regarding the processing of applications that are not entitled to a filing date.

401.01 Filing Receipts

TEAS Applications

For applications filed through the Trademark Electronic Application System (“TEAS”), the USPTO immediately issues a confirmation of filing via e-mail that includes the serial number and date of receipt. This e-mail confirmation serves as evidence of filing should any question arise as to the filing date of the application. No paper filing receipt is generated.

The e-mail confirmation includes a summary of all the data provided by applicant in the application. The applicant or attorney should review this information for accuracy. If the information in the e-mail confirmation is inconsistent with the information transmitted by applicant, the applicant or attorney should notify the USPTO by replying to the e-mail confirmation.

Applications Under §66(a)

For §66(a) applications (requests for extensions of protection of international registrations to the United States), an acknowledgment of receipt of the application will be sent to the International Bureau of the World Intellectual Property Organization (“IB”). The IB will send the acknowledgment to the applicant. See TMEP §§1904 *et seq.* for further information about §66(a) applications.

Paper Applications Under §1 or §44

For paper applications under §1 or §44 of the Trademark Act, after an application has been given a filing date, the Trademark Reporting and Monitoring (“TRAM”) System generates a filing receipt and sends it to the applicant or the applicant’s attorney. The filing receipt identifies the following: (1) the application serial number and filing date; (2) the statutory basis or bases for filing, if provided at the time of filing; (3) information regarding the mark, the applicant, and the goods and/or services; (4) the international class(es); and (5) the address to be used for correspondence.

The applicant or attorney should review the information on the filing receipt for accuracy and notify the USPTO in writing of any discrepancy. A request for correction of a filing receipt should be directed to the Pre-Examination Section

PROCESSING DOCUMENTS AND FEES

of the Office of Trademark Services, or sent via e-mail to TMfiling.receipt@uspto.gov.

An applicant should send a request for correction of a filing receipt *only* if the information on the filing receipt is inconsistent with the information in the application as filed. If the applicant made an error in the application, the applicant should file an amendment rather than a request for correction of the filing receipt.

401.02 Serial Numbers and Series Codes

Each application for registration is assigned a six digit serial number, preceded by a two digit series code.

As a general rule, the serial numbers of applications filed prior to the 1905 - 1920 Acts series are preceded by the series code "70."

Applications filed under the 1905 - 1920 Acts (*i.e.*, applications filed through July 4, 1947) were preceded by the series code "71." The last serial number was 526,346.

As of July 5, 1947, applications were filed under the 1946 Act, beginning with number 526,500 and running through number 700,943 (preceded by the series code "71").

On January 3, 1956, a new series of serial numbers preceded by the series code "72" was started, after a change in record keeping methods. This series ran through number 467,233, issued on August 31, 1973.

A new series of serial numbers preceded by the series code "73" began with applications filed on September 4, 1973, which was the first day of receipt of mail after the adoption of the international classification of goods and services as of September 1, 1973 (see TMEP §1401.02).

A new series of serial numbers preceded by the series code "74" began with applications filed on November 16, 1989, the date on which the Trademark Law Revision Act of 1988 took effect.

A new series of serial numbers preceded by the series code "75" began with applications filed on October 1, 1995.

A new series of serial numbers preceded by the series code "76" began with applications filed on March 20, 2000.

A series of serial numbers preceded by the series code "78" is used for applications filed through TEAS.

Effective November 2, 2003, a series of serial numbers preceded by the series code "79" is used for requests for extension of protection of

TRADEMARK MANUAL OF EXAMINING PROCEDURE

international registrations to the United States under §66(a) of the Trademark Act.

A range of serial numbers, beginning with number 800,000, is used for applications that are created through the “dividing” of an application (see TMEP §§1110 *et seq.*).

See TMEP §1205.02 regarding series code “89.”

401.03 Data Entry

For applications filed through TEAS, the data provided by the applicant is loaded directly into the USPTO’s automated TRAM System.

For applications filed on paper, the application data is scanned into the TRAM System. TRAM may be used by USPTO employees to obtain information about the location and status, prosecution history, ownership, and correspondence address for applications and registrations. This information is available to the public through the Trademark Applications and Registrations Retrieval (“TARR”) database, available on the USPTO’s website at <http://tarr.uspto.gov>.

401.04 Creation of Application Files

For TEAS applications, the USPTO maintains an electronic file containing all incoming and outgoing papers. See TMEP §402.

For paper applications, the USPTO scans all incoming papers and creates an electronic file. The USPTO also creates a paper file jacket and places all incoming papers into the file jacket. The examining attorney works from the electronic file, and outgoing communications are put into the electronic file only.

All applications are routed directly to the law offices.

402 Electronic Application and Registration Files

The USPTO maintains the Trademark Image Capture and Retrieval System (“TICRS”), which includes images of the contents of trademark application and registration files.

TICRS is available in the Trademark Search Library, free of charge, to all members of the public who visit the USPTO. Members of the public can print images of documents from TICRS for a fee.

The public may also view and print images of the contents of trademark application and registration files through the Trademark Document Retrieval (“TDR”) portal on the USPTO website at <http://www.uspto.gov/>. Electronic

PROCESSING DOCUMENTS AND FEES

images of Trademark Trial and Appeal Board proceeding files are also available on the USPTO website at <http://ttabvue.uspto.gov/ttabvue/>. TDR and TTABVUE are available 24 hours a day, seven days a week, free of charge.

402.01 USPTO No Longer Creates Paper Copies of Certain Trademark-Related Documents

Effective April 12, 2004, the USPTO no longer creates paper copies of certain trademark-related documents that are submitted to the USPTO in electronic format. Furthermore, the USPTO does not generate paper copies of certain trademark documents that the USPTO creates, except for copies that are sent to recipients by mail. See *New USPTO Policies Regarding (1) Generation of Paper Copies of Trademark-Related Documents and (2) Public Access to Existing Paper Copies of Trademark-Related Documents* (TMOG Apr. 6, 2004), at <http://www.uspto.gov/web/offices/com/sol/og/2004/week14/pattmcp.htm>.

All these documents can be viewed through TICRS and TDR.

The USPTO still provides certified paper copies of all trademark documents, upon request and payment of the appropriate fee. See TMEP §111.

403 Correspondence Returned as Undeliverable

If a paper Office action or notice (e.g., a notice of allowance) is returned to the USPTO because the United States Postal Service has not been able to deliver it, the USPTO will try to ascertain the correct address and forward the correspondence. However, the remailed correspondence will not receive a new mailing date unless the USPTO sent the Office action to the wrong address due to an Office error.

When returned correspondence is received in the USPTO, it should be forwarded to the Supervisor of the office where the file is located (e.g., the supervisory legal instruments examiner in the law office, or supervisor of the ITU/Divisional Unit or Post Registration Section). If the application is abandoned, the returned Office action should be forwarded to the Office of the Commissioner for Trademarks.

The supervisor will review the file to determine whether the correspondence address was entered correctly, and/or whether a notice of change of address has been filed.

If the USPTO sent the Office action or notice to the wrong address due to an Office error, the Office action will be remailed with a new mailing date. An "Office error in sending the Office action to the wrong address" means that the USPTO either entered the correspondence address incorrectly or failed to properly enter a notice of change of address filed *before* the mailing date of

TRADEMARK MANUAL OF EXAMINING PROCEDURE

the action. The transmittal of a response on letterhead bearing a new address is *not* a proper notice of change of address. The applicant or attorney must specifically request that the correspondence address be changed. TMEP §603.02(a).

If the Office action or notice was sent to the correspondence address of record (see TMEP §§603 *et seq.* regarding the correspondence address), but was returned as undeliverable, the USPTO will try to obtain the correct address and forward the Office action or notice. However, the Office action or notice will not be given a new mailing date, and the time for response will not be extended.

The USPTO scans the returned action and envelope into TIGRS.

If outgoing electronic mail (“e-mail”) is returned as undeliverable, the USPTO will mail a paper copy to the correspondence address of record. See TMEP §§304 *et seq.* regarding e-mail.

404 Documents Not Returnable

After an application has received a filing date, the application will not be returned to the applicant for any purpose. 37 C.F.R. §2.25. Furthermore, once any document has been filed with respect to an application or registration, it becomes part of the public record and will not be returned.

The USPTO will furnish copies of the contents of trademark application, registration, and TTAB proceeding files upon request and payment of the required fee. See TMEP §111.

405 Fees

37 C.F.R. §2.207. Methods of payment.

(a) All payments of money required in trademark cases, including fees for the processing of international trademark applications and registrations that are paid through the Office, shall be made in U.S. dollars and in the form of a cashier's or certified check, Treasury note, national bank note, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made. Checks and money orders must be made payable to the Director of the United States Patent and Trademark Office. (Checks made payable to the Commissioner of Patents and Trademarks will continue to be accepted.) Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent to the Office by mail will be at the risk of the sender, and letters containing money should be registered with the United States Postal Service.

(b) Payments of money required for trademark fees may also be made by credit card, except for replenishing a deposit account. Payment of a fee by

PROCESSING DOCUMENTS AND FEES

credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge, and is subject to collection of the fee. The Office will not accept a general authorization to charge fees to a credit card. If credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number becomes public knowledge.

See 37 C.F.R. §2.6(a)(i) and TMEP §§810 *et seq.* regarding the fee for filing an application for registration.

See TMEP §1903 regarding payment of fees to the IB through the USPTO.

405.01 Credit Cards

Under 37 C.F.R. §2.207, the USPTO accepts payment of fees by credit card, subject to actual collection of the fee.

Any payment of a fee by credit card must be in writing. 37 C.F.R. §2.191. A form for authorizing charges to a credit card can be accessed through TEAS for all filings for which a filing fee is required. Parties who file on paper can download a Credit Card Payment Form (PTO-2038) from the USPTO's website at <http://www.uspto.gov/>. The USPTO does not put the Credit Card Payment Form in application or registration files.

A party is not required to use the Office's Credit Card Payment Form when paying a fee by credit card. However, if a party provides a credit card charge authorization in another form or document (*e.g.*, in the body of an application, cover letter, response to an Office action, or other correspondence relating to a trademark application or registration), the credit card information becomes part of the public record. 37 C.F.R. §2.207(b).

All credit card authorizations must include: (1) a valid credit card number; (2) a valid expiration date; (3) the name of the cardholder with the cardholder's signature and the date; (4) a billing address, including zip code; (5) a description and purpose of the payment; and (6) a specific payment amount. See TMEP §804.05 regarding signature of documents filed electronically.

If a Credit Card Payment Form or other document authorizing the USPTO to charge a fee to a credit card does not contain the information necessary to charge the fee to the credit card, the form will be returned and the fee will not be processed. USPTO employees will not accept oral instructions to complete the Credit Card Payment Form or otherwise charge a fee to a credit card.

TRADEMARK MANUAL OF EXAMINING PROCEDURE

The USPTO will only accept an authorization to charge a fee in a specific dollar amount to a credit card.

The USPTO currently accepts charges to the following credit cards: AMERICAN EXPRESS®, DISCOVER®, MASTER CARD®, and VISA®.

Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged. 37 C.F.R. §2.209(a). The USPTO will not refund a fee paid by credit card by Treasury check, electronic funds transfer, or credit to a deposit account.

See notice at 65 Fed. Reg. 33452 (May 24, 2000) and 1235 TMOG 38 (June 13, 2000).

See TMEP §405.06 regarding credit card authorizations that are refused or charged back by a financial institution.

405.02 Checks

Trademark Rule 2.207(a), 37 C.F.R. §2.207(a), provides that:

All payments of money required in trademark cases, including fees for the processing of international trademark applications and registrations that are paid through the Office, shall be made in U.S. dollars and in the form of a cashier's or certified check, Treasury note, national bank note, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made....

405.02(a) Personal Checks

It is the practice of the USPTO to accept, as "conditional" payment of a fee, a signed uncertified check (e.g., a personal check). If an uncertified check clears, then the USPTO considers the fee paid as of the date it received the check.

However, if such a check is returned unpaid, then the fee remains unpaid, and the paper that included the returned check is processed as though the fee had been omitted. See *In re Paulsen*, 35 USPQ2d 1638 (Comm'r Pats. 1995). See TMEP §405.06 for further information about processing checks that are returned unpaid.

Under 37 C.F.R. §2.6(b)(12), there is a processing fee for any check returned to the Office unpaid.

PROCESSING DOCUMENTS AND FEES

405.03 Deposit Accounts

Extract from 37 C.F.R. §2.208.

(a) For the convenience of attorneys, and the general public in paying any fees due, in ordering copies of records, or services offered by the Office, deposit accounts may be established in the Office upon payment of the fee for establishing a deposit account (§2.6(b)(13)). A minimum deposit of \$1,000 is required for paying any fees due or in ordering any services offered by the Office. The Office will issue a deposit account statement at the end of each month. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit. An amount sufficient to cover all fees, copies, or services requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted. A service charge (§2.6(b)(13)) will be assessed for each month that the balance at the end of the month is below \$1,000.

(b) A general authorization to charge all fees, or only certain fees to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with respect to a particular document filed. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

(c) A deposit account holder may replenish the deposit account by submitting a payment to the Office. A payment to replenish a deposit account must be submitted by one of the methods set forth in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section.

(1) A payment to replenish a deposit account may be submitted by electronic funds transfer through the Federal Reserve Fedwire System, which requires that the following information be provided to the deposit account holder's bank or financial institution:

(i) Name of the Bank, which is Treas NYC (Treasury New York City);

(ii) Bank Routing Code, which is 021030004;

(iii) United States Patent and Trademark Office account number with the Department of the Treasury, which is 13100001; and

(iv) The deposit account holder's company name and deposit account number.

(2) A payment to replenish a deposit account may be submitted by electronic funds transfer over the Office's Internet Web site (<http://www.uspto.gov>).

TRADEMARK MANUAL OF EXAMINING PROCEDURE

(3) A payment to replenish a deposit account may be submitted by mail with the USPS to: Director of the United States Patent and Trademark Office, P.O. Box 70541, Chicago, Illinois 60673.

(4) A payment to replenish a deposit account may be submitted by mail with a private delivery service or hand-carrying the payment to: Director of the United States Patent and Trademark Office, Deposit Accounts, One Crystal Park, Suite 307, 2011 Crystal Drive, Arlington, Virginia 22202.

A party cannot charge a fee to a deposit account unless he or she has prior authorization to do so. The Office of Finance maintains a list of persons authorized to request transactions by deposit account. The USPTO will not charge a fee to a deposit account unless the person requesting the charge appears on the authorized list or files a proper request to have his or her name added to the authorized list.

If an applicant submits an authorization to charge a filing fee to a deposit account that has insufficient funds to cover the fee, the applicant has not paid the fee.

If a deposit account has insufficient funds to cover an authorization to charge the initial filing fee for an application for registration, the filing date will be cancelled. 37 C.F.R. §2.21(a)(5). See TMEP §204.01.

When a deposit account contains insufficient funds to cover a fee that has been authorized, the USPTO notifies the party who filed the authorization of the fee deficiency. If the fee in question is statutory (e.g., the filing fee for a notice of appeal, statement of use, or request for extension of time to file a statement of use), the fee deficiency must be cured before the expiration of the statutory filing period. If the deadline for filing the fee is not set by statute, the party who filed the authorization may cure the fee deficiency within the set period for response to the Office action.

A showing that the deposit account contained sufficient funds on the date the authorization was first filed, as opposed to the date USPTO personnel attempted to charge the fee, will not cure the fee deficiency. Trademark Rule 2.208 clearly requires that sufficient funds to cover all outstanding charge authorizations be on deposit at all times. The funds must be available in the account at the time the authorization is presented for debiting.

See TMEP §1104.09(g) regarding fee deficiencies in amendments to allege use, TMEP §1108.02(c) regarding fee deficiencies in requests for extensions of time to file a statement of use, TMEP §1109.15(a) regarding fee deficiencies in statements of use, TMEP §1604.06(c) regarding fee deficiencies in affidavits under §8 of the Act, and TMEP §1606.05(c) regarding fee deficiencies in renewal applications.

PROCESSING DOCUMENTS AND FEES

405.04 Refunds

Extract from 37 C.F.R. §2.209.

(a) The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a trademark application, appeal or other trademark filing for which a fee was paid, will not entitle a party to a refund of such fee. The Office will not refund amounts of twenty-five dollars or less unless a refund is specifically requested, and will not notify the payor of such amounts. If a party paying a fee or requesting a refund does not provide the banking information necessary for making refunds by electronic funds transfer (31 U.S.C. 3332 and 31 CFR part 208), or instruct the Office that refunds are to be credited to a deposit account, the Director may require such information, or use the banking information on the payment instrument to make a refund. Any refund of a fee paid by credit card will be by a credit to the credit card account to which the fee was charged.

(b) Any request for refund must be filed within two years from the date the fee was paid, except as otherwise provided in this paragraph. If the Office charges a deposit account by an amount other than an amount specifically indicated in an authorization (§2.208(b)), any request for refund based upon such charge must be filed within two years from the date of the deposit account statement indicating such charge, and include a copy of that deposit account statement. The time periods set forth in this paragraph are not extendable.

Under 35 U.S.C. §42(d) and 37 C.F.R. §2.209, only money paid by mistake or in excess (when a fee is not required by statute or rule, or is not required in the amount paid) may be refunded. A mere change of purpose after the payment of money does not entitle a party to a refund. For example, if a party deletes a class from an application, or withdraws an application or appeal, the party is not entitled to a refund.

If an examining attorney or other USPTO employee erroneously requires a fee, the USPTO will refund the fee submitted in response to the erroneous requirement.

The USPTO will refund the filing fee for an application that is denied a filing date, or a filing fee that is untimely (e.g., the fee for a statement of use or request for an extension of time to file a statement of use filed after expiration of the statutory filing period). However, after the USPTO has processed an application or other document, the USPTO normally will not refund the filing fee. The USPTO will not refund an application filing fee when registration is refused, nor will it refund a fee when a timely filed document (such as a statement of use or §8 affidavit of use or excusable nonuse) is rejected for failure to meet the requirements of the statute and rules.

TRADEMARK MANUAL OF EXAMINING PROCEDURE

Refunds are processed at the Customer Service Window located in the Trademark Assistance Center, James Madison Building - East Wing, Concourse Level, 600 Dulany Street, Alexandria, Virginia. When a USPTO employee determines that a refund is appropriate, the employee should complete a form with the information necessary for processing the refund, and send it to the Fee Processing Office.

405.05 Electronic Funds Transfer

The Electronic Funds Transfer (“EFT”) payment method allows customers to send a payment over the Internet as easily as writing a check. In general, the Automated Clearing House performs EFT transactions through the Federal Reserve system. The customer must establish a User ID and Password. For further information, see <http://www.uspto.gov/teas/payment.htm>.

405.06 Payments Refused or Charged Back By Financial Institutions

If a check is returned unpaid, or an EFT or credit card is refused or charged back by a financial institution, the paper that accompanied the payment is processed as though the fee had been omitted. *See In re Paulsen*, 35 USPQ2d 1638 (Comm’r Pats. 1995). If the paper included an authorization to charge deficient fees to a deposit account (37 C.F.R. §2.208), the USPTO charges the fee in question, together with a \$50 fee for processing the payment that was refused, to the deposit account.

If the paper was not accompanied by an authorization to charge fees to a deposit account, the USPTO notifies the party who filed the paper of the fee deficiency in a written action. If the deadline for filing the fee is not set by statute, the fee may be resubmitted within the period set for response to the Office action. If the fee in question is statutory (*e.g.*, a filing fee for an appeal, statement of use, or request for extension of time to file a statement of use), the fee must be resubmitted before the expiration of the statutory filing period.

Under 37 C.F.R. §2.6(b)(12), there is a \$50.00 fee for processing any payment that is refused or charged back by a financial institution. This fee covers the work done by USPTO personnel in processing the payment that is refused or charged back. The requirement for submission of the processing fee is strictly enforced. The USPTO will not approve a pending application for publication or registration, nor take any other requested action in an application or registration, until all outstanding fees, including the processing fee, have been paid. Any request for waiver of this processing fee should be referred to the Office of the Commissioner for Trademarks.

See TMEP §§202.03(a) and 202.03(a)(i) regarding the processing of an application in which the application filing fee payment is refused or charged back by a financial institution, TMEP §1104.09(g) regarding fee deficiencies in

PROCESSING DOCUMENTS AND FEES

amendments to allege use, TMEP §1108.02(c) regarding fee deficiencies in requests for extensions of time to file a statement of use, TMEP §1109.15(a) regarding fee deficiencies in statements of use, TMEP §1604.06(c) regarding fee deficiencies in affidavits under §8 of the Act, and TMEP §1606.05(c) regarding fee deficiencies in renewal applications.