

Chapter 300

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301 Electronic Filing

The Trademark Electronic Application System (“TEAS”) makes electronic filing available on the United States Patent and Trademark Office (“USPTO”) website, at <http://www.uspto.gov>. TEAS can be used to file all forms related to a domestic application or registration, or for filings under the Madrid Protocol. TEAS offers a group of specific forms that require direct data entry in designated fields, and/or the attachment of a .jpg or .pdf image file. For documents for which a specific TEAS form has not yet been developed, TEAS also offers a “global form” approach. On the global form, the filer can indicate the type of filing through the use of a pull-down menu from one of four categories: Intent-to-Use matters; Post-Registration matters; Petitions and similar matters; and a miscellaneous category. The filer then uploads a .jpg or .pdf image file that contains the complete text for the actual filing.

When a document is filed electronically, either as a specific TEAS form or through the global form approach, the USPTO generally receives it within seconds after filing. TEAS almost immediately displays a “Success” page that confirms receipt. This page is evidence of filing should any question arise as to the filing date of the document, and may be printed or copied-and-pasted into an electronic record for storage. From the “Success” page, the filer can click on a link to a PDF receipt that includes a summary of the filed information and general processing information. TEAS also separately sends an e-mail acknowledgement of receipt that includes the same information. Electronic filing creates an automatic entry of receipt of this filing into the USPTO’s automated system, which helps to avoid improper abandonment or cancellation.

Under 37 C.F.R. §2.195(a)(2), correspondence transmitted electronically using TEAS is considered filed on the date the USPTO receives the transmission, in Eastern Time, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia.

See TMEP §611.01(c) regarding signature of documents filed electronically.

See TMEP §§807.05 *et seq.* regarding drawings in electronically transmitted applications, and TMEP §904.02(a) regarding specimens in electronically transmitted applications.

Requests for recordation of assignments and other documents affecting title to an application or registration can be filed through the Electronic Trademark Assignment System (“ETAS”) on the USPTO website at <http://etas.uspto.gov>.

The Electronic System for Trademark Trials and Appeals (“ESTTA”), at <http://estta.uspto.gov>, can be used to file requests for extensions of time to oppose, notices of opposition, petitions to cancel, appeals, motions, briefs, notices of change of address, and other documents in Board proceedings.

If a document transmitted through TEAS, ETAS, or ESTTA is due on a Saturday, Sunday, or a Federal holiday within the District of Columbia, the document will be considered timely if the USPTO receives the transmission on or before the following day that is not a Saturday, Sunday, or a Federal holiday within the District of Columbia. 37 C.F.R. §2.196; TMEP §308.

See TMEP §§819 *et seq.* regarding TEAS Plus.

302 Trademark Correspondence and Signature Requirements - In General

37 C.F.R. §2.193. Trademark correspondence and signature requirements.

(a) Signature required. Each piece of correspondence that requires a signature must bear:

(1) A handwritten signature personally signed in permanent ink by the person named as the signatory, or a true copy thereof; or

(2) An electronic signature that meets the requirements of paragraph (c) of this section, personally entered by the person named as the signatory. The Office will accept an electronic signature that meets the requirements of paragraph (c) of this section on correspondence filed on paper, by facsimile transmission (§2.195(c)), or through TEAS or ESTTA.

(b) Copy of original signature. If a copy, such as a photocopy or facsimile copy of an original signature is filed, the filer should retain the original as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original.

(c) Requirements for electronic signature. A person signing a document electronically must:

(1) Personally enter any combination of letters, numbers, spaces and/or punctuation marks that he or she has adopted as a signature, placed between two forward slash (“/”) symbols in the signature block on the electronic submission; or

(2) Sign the verified statement using some other form of electronic signature specified by the Director.

(d) Signatory must be identified. The name of the person who signs a document in connection with a trademark application, registration, or proceeding before the Trademark Trial and Appeal Board must be set forth in printed or typed form immediately below or adjacent to the signature, or identified elsewhere in the filing (e.g., in a cover letter or other document that accompanies the filing).

(e) Proper person to sign. Documents filed in connection with a trademark application or registration must be signed by a proper person. Unless otherwise specified by law, the following requirements apply:

(1) Verification of facts. A verification in support of an application for registration, amendment to an application for registration, allegation of use under §2.76 or §2.88, request for extension of time to file a statement of use under §2.89, or an affidavit under section 8, 12(c), 15, or 71 of the Trademark Act must be sworn to or supported by a declaration under §2.20, signed by the owner or a person properly authorized to sign on behalf of the owner. A person who is properly authorized to verify facts on behalf of an owner is:

(i) A person with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership);

(ii) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or

(iii) An attorney as defined in §11.1 of this chapter who has an actual written or verbal power of attorney or an implied power of attorney from the owner.

(2) Responses, amendments to applications, requests for express abandonment, requests for reconsideration of final actions, and requests to divide. Responses to Office actions, amendments to applications, requests for express abandonment, requests for reconsideration of final actions, and requests to divide must be signed by the owner of the application or registration, someone with legal authority to bind the owner (e.g. a corporate officer or general partner of a partnership), or a practitioner qualified to practice under §11.14 of this chapter, in accordance with the following guidelines:

(i) If the owner is represented by a practitioner qualified to practice before the Office under §11.14 of this chapter, the practitioner must sign, except where the owner is required to sign the correspondence; or

(ii) If the owner is not represented by a practitioner qualified to practice under §11.14 of this chapter, the individual owner or someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership) must sign. In the case of joint owners who are not represented by a qualified practitioner, all must sign.

(3) Powers of attorney and revocations of powers of attorney. Powers of attorney and revocations of powers of attorney must be signed by the individual applicant, registrant or party to a proceeding pending before the Office, or by someone with legal authority to bind the applicant, registrant, or party (e.g., a corporate officer or general partner of a partnership). In the case of joint applicants, registrants, or parties, all must sign. Once the

applicant, registrant or party has designated a qualified practitioner(s), the named practitioner may sign an associate power of attorney appointing another qualified practitioner(s) as an additional person(s) authorized to prosecute the application or registration. If the applicant, registrant, or party revokes the original power of attorney, the revocation discharges any associate power signed by the practitioner whose power has been revoked. If the practitioner who signed an associate power withdraws, the withdrawal discharges any associate power signed by the withdrawing practitioner upon acceptance of the request for withdrawal by the Office.

(4) Petitions to revive under §2.66. A petition to revive under §2.66 must be signed by someone with firsthand knowledge of the facts regarding unintentional delay.

(5) Petitions to Director under §2.146. A petition to the Director under §2.146 must be signed by the petitioner, someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under §11.14 of this chapter, in accordance with the following guidelines:

(i) If the petitioner is represented by a practitioner qualified to practice before the Office under §11.14 of this chapter, the practitioner must sign; or

(ii) If the petitioner is not represented by a practitioner authorized to practice before the Office under §11.14 of this chapter, the individual petitioner or someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership) must sign. In the case of joint petitioners, all must sign.

(6) Requests for correction, amendment or surrender of registrations. A request for correction, amendment or surrender of a registration must be signed by the owner of the registration, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice before the Office under §11.14 of this chapter. In the case of joint owners who are not represented by a qualified practitioner, all must sign.

(7) Renewal applications. A renewal application must be signed by the registrant or the registrant's representative.

(8) Designations and revocations of domestic representative. A designation or revocation of a domestic representative must be signed by the applicant or registrant, someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under §11.14 of this chapter. In the case of joint applicants or registrants, all must sign.

(9) Requests to change correspondence address in an application or registration. A notice of change of correspondence address in an application or registration must be signed by the applicant or registrant, someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under §11.14 of this chapter, in accordance with the following guidelines:

(i) If the applicant or registrant is represented by a practitioner qualified to practice before the Office under §11.14 of this chapter, the practitioner must sign; or

(ii) If the applicant or registrant is not represented by a practitioner qualified to practice before the Office under §11.14, the individual applicant or registrant or someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership) must sign. In the case of joint applicants or joint registrants, all must sign.

(10) Cover letters. A person transmitting paper documents to the Office may sign a cover letter or transmittal letter. The Office neither requires cover letters nor questions the authority of a person who signs a communication that merely transmits paper documents.

(f) Signature as certification. The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any document by any person, whether a practitioner or non-practitioner, constitutes a certification under §11.18(b) of this chapter. Violations of §11.18(b) of this chapter may jeopardize the validity of the application or registration, and may result in the imposition of sanctions under §11.18(c) of this chapter. Any practitioner violating §11.18(b) of this chapter may also be subject to disciplinary action. See §§10.23(c)(15) and 11.18(d) of this chapter.

(g) Separate copies for separate files. (1) Since each file must be complete in itself, a separate copy of every document to be filed in connection with a trademark application, registration, or inter partes proceeding must be furnished for each file to which the document pertains, even though the contents of the documents filed in multiple files may be identical.

(2) Parties should not file duplicate copies of correspondence in a single application, registration, or proceeding file, unless the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence.

(h) Separate documents for separate branches of the Office. Since different branches or sections of the Office may consider different matters, each distinct subject, inquiry or order must be contained in a separate document to avoid confusion and delay in answering correspondence.

(i) Certified documents required by statute. When a statute requires that a document be certified, a copy or facsimile transmission of the certification is not acceptable.

The USPTO recommends filing through TEAS whenever possible. See TMEP §301. Trademark documents may also be sent through the United States Postal Service (“USPS”), delivered by a courier service, or hand carried to the USPTO. Except for documents listed in TMEP §306.01, correspondence may be transmitted by facsimile (“fax”). (Note that an application for registration of a mark may *not* be filed by fax, but can be filed through TEAS. 37 C.F.R. §§2.195(d)(1) and 2.197(a)(2)). Certain documents can be sent through e-mail (see TMEP §304).

See TMEP §§304 *et seq.* regarding e-mail, TMEP §§305 *et seq.* regarding mailing documents to the USPTO, TMEP §§306 *et seq.* regarding fax transmission, and TMEP §307 regarding hand delivery.

302.01 Original Documents Generally Not Required

When a party files a copy of a document related to an application or registration, the USPTO will normally not require the party to submit the original document. Copies (e.g., photocopies or fax transmissions) are acceptable unless a document is required by statute to be certified (e.g., a certified copy of a final court order pursuant to 15 U.S.C. §1119). However, the party who filed the copy should retain the original in case questions arise as to the authenticity of the signature on the photocopy or faxed correspondence. See 37 C.F.R. §2.193(b).

Original certificates of registration are not required for requests for amendment or correction of a registration under §7 of the Trademark Act, and owners are strongly discouraged from submitting them. See TMEP §§1609.01(b) and 1609.10.

302.02 Multiple Copies of Documents Should Not Be Filed

37 C.F.R. §2.193(g)(2). Parties should not file duplicate copies of correspondence in a single application, registration, or proceeding file, unless the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence.

As a general rule, only one copy of each document should be filed, unless more than one copy is specifically required by statute or rule, or a USPTO employee specifically requests more than one copy.

When filing a document electronically or by fax, a party should *not* send a follow-up copy unless the USPTO specifically requests a follow-up copy. 37 C.F.R. §2.193(g)(2). Submission of duplicate documents can delay processing.

302.03 Identifying the Nature of Documents Filed

302.03(a) Correspondence Pertaining to Trademark Applications

Documents filed through TEAS or ESTTA are automatically transmitted to the appropriate location and entered into the record of the appropriate application or Trademark Trial and Appeal Board (“Board”) proceeding.

For paper documents, to ensure the timely entry into the official record, every piece of correspondence filed in the USPTO pertaining to a trademark application should be identified at the beginning by a heading or caption and

by the serial number of the application to which the document pertains. 37 C.F.R. §2.194(b)(1). Cover letters and transmittal letters should identify the material that they accompany.

To expedite processing, **all** incoming documents pertaining to an application should include the following identifying data:

- (1) Serial number;
- (2) Filing date;
- (3) Mark;
- (4) A title indicating the nature of the document;
- (5) Law office (identified in the most recent Office action);
- (6) Name of examining attorney identified on the most recent Office action;
- (7) Issuance date of the Office action to which the document is in response, if applicable;
- (8) The name, address (including ZIP code), and telephone number of the applicant or the applicant's attorney; and
- (9) The applicant's or attorney's e-mail address.

To facilitate the matching of responses to Office actions with the correct records, examining attorneys' Office actions issued on paper include peel-off response labels that reference the application serial number, the mark and the assigned law office. If filing a response on paper, the applicant is encouraged to affix this label to the upper right-hand corner of the response.

302.03(b) Correspondence Pertaining to Trademark Registrations

Documents filed through TEAS or ESTTA are automatically transmitted to the appropriate location and entered into the record of the appropriate registration or Board proceeding.

For paper filings, correspondence relating to a registered trademark should identify the registration by specifying the mark, the registrant's name, and the registration number. 37 C.F.R. §2.194(b)(2).

Paper correspondence filed under 15 U.S.C. §§1057, 1058, 1059, and 1141k should be directed to the Post Registration Section of the Office.

Paper petitions to cancel a registered mark should be directed to the Board.

Court orders relating to registered trademarks should be sent to the Office of the Solicitor. See TMEP §1610.

37 C.F.R. §2.195. *Receipt of trademark correspondence.*

(a) *Date of receipt and Express Mail date of deposit. Trademark correspondence received in the Office is given a filing date as of the date of receipt except as follows:*

(1) *The Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia. Except for correspondence transmitted electronically under paragraph (a)(2) of this section or transmitted by facsimile under paragraph (a)(3) of this section, no correspondence is received in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia.*

(2) *Trademark-related correspondence transmitted electronically will be given a filing date as of the date on which the Office receives the transmission.*

(3) *Correspondence transmitted by facsimile will be given a filing date as of the date on which the complete transmission is received in the Office unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the filing date will be the next succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia.*

(4) *Correspondence filed in accordance with §2.198 will be given a filing date as of the date of deposit as "Express Mail" with the United States Postal Service.*

(b) *Correspondence delivered by hand. Correspondence may be delivered by hand during hours the Office is open to receive correspondence.*

(c) *Facsimile transmission. Except in the cases enumerated in paragraph (d) of this section, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is received in the Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See §2.196. To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application, registration or proceeding before the Office. The application serial number, registration number, or proceeding number should be entered as a part of the sender's identification on a facsimile cover sheet.*

(d) *Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations:*

(1) *Applications for registration of marks;*

(2) *Drawings submitted under §2.51, §2.52, §2.72, or §2.173;*

(3) *Correspondence to be filed with the Trademark Trial and Appeal Board, except notices of ex parte appeal;*

(4) *Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act; and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act; and*

(5) *Madrid-related correspondence submitted under §7.11, §7.21, §7.14, §7.23, §7.24, or §7.31.*

(e) *Interruptions in U.S. Postal Service.*

(1) *If the Director designates a postal service interruption or emergency within the meaning of 35 U.S.C. 21(a), any person attempting to file correspondence by “Express Mail Post Office to Addressee” service who was unable to deposit the correspondence with the United States Postal Service due to the interruption or emergency may petition the Director to consider such correspondence as filed on a particular date in the Office.*

(2) *The petition must:*

(i) *Be filed promptly after the ending of the designated interruption or emergency;*

(ii) *Include the original correspondence or a copy of the original correspondence; and*

(iii) *Include a statement that the correspondence would have been deposited with the United States Postal Service on the requested filing date but for the designated interruption or emergency in “Express Mail” service; and that the correspondence attached to the petition is the original correspondence or a true copy of the correspondence originally attempted to be deposited as Express Mail on the requested filing date.*

(3) *Paragraphs (e)(1) and (e)(2) of this section do not apply to correspondence that is excluded from the Express Mail procedure pursuant to §2.198(a)(1).*

303.01 Date of Receipt

Correspondence transmitted through TEAS is considered to have been filed on the date the USPTO receives the transmission, in Eastern Time, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. 37 C.F.R. §2.195(a)(2).

For paper correspondence, the date of actual receipt in the USPTO is assigned as the filing date of all correspondence. 37 C.F.R. §2.195(a). However, under 37 C.F.R. §§2.195(a)(1) and (3), no paper correspondence is “received” in the USPTO on Saturdays, Sundays, or Federal holidays within the District of Columbia. See TMEP §308 regarding response periods that end on a Saturday, Sunday, or Federal holiday within the District of Columbia.

The filing date of an e-mail communication (see TMEP §§304 *et seq.*) or fax transmission (see TMEP §§306 *et seq.*) is the date the complete transmission is received in the USPTO, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the filing date is the next succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia. 37 C.F.R. §§2.195(a)(1) and (3). However, if the communication is properly filed using the “certificate of transmission” procedure under 37 C.F.R. §2.197, the USPTO looks to the date on the

certificate to determine whether the filing is timely. TMEP §§304.05 and 306.05(c).

Similarly, if a document is mailed to the USPTO using the “certificate of mailing” procedure under 37 C.F.R. §2.197 (see TMEP §§305.02 *et seq.*), the filing date is the date of receipt in the USPTO, but the USPTO looks to the date on the certificate to determine whether the filing is timely. TMEP §305.02(e).

See TMEP §1904.01(b) regarding the filing date of a request for an extension of protection of an international registration to the United States under §66(a) of the Trademark Act, 15 U.S.C. §1141f(a).

303.02 Acknowledgment of Receipt

303.02(a) TEAS “Success” Page

When a document is filed electronically, the USPTO generally receives it within seconds after filing. TEAS almost immediately displays a “Success” page that confirms receipt. This page may be printed or copied-and-pasted into an electronic record for storage, and used as evidence of filing should any question arise as to the filing date of the document.

303.02(b) “Mail Room Date” Label Showing Receipt

The USPTO places a bar code label indicating the date of receipt on every application, part of an application, amendment, letter, or other document submitted to the USPTO on paper. The label is referred to as the “Mail Room Date” label, and it establishes the date of receipt (i.e., the filing date) of any document. Before 1998, the USPTO used a stamp, known as the “Office Date Stamp,” to indicate the date of receipt of incoming documents.

303.02(c) Postcard Receipt

For documents filed on paper, a party may obtain a receipt by enclosing a self-addressed, stamped postcard identifying the document. The USPTO will place a label indicating the receipt date on the card and return it to the party who filed the document.

The identifying data on the postcard should be complete and specific. The nature of the document being filed (e.g., application, affidavit, amendment, appeal, petition); the name of the applicant or registrant; the mark; the application filing date or registration date; and the application serial number, registration number, or proceeding number should be included if available. Each specific element of the filing should be listed on the postcard (e.g., written application, drawing page, fee, specimen) so that the postcard can be

used as evidence that the element was submitted if it is lost or disassociated from the record.

The party submitting the postcard is responsible for placing proper postage on the self-addressed postcard, and for ensuring that the proper mailing address appears on the postcard. See TMEP §303.02(c)(i) regarding the use of postage meters.

If a postcard with proper postage accompanies application documents that are mailed to the USPTO, a bar code label indicating the serial number assigned to the application will be applied to the postcard.

If the postcard accompanies application documents that are hand delivered, the bar code label will not be applied to the postcard because the application has not yet been serialized. Therefore, if application documents are hand carried, the applicant may submit a second postcard with proper postage so that, upon serialization, the USPTO may send the additional card, with a bar code label indicating the serial number, to the applicant.

When documents for more than one application or registration are filed under a single cover, a return postcard should be attached to each document for which a receipt is desired.

303.02(c)(i) Postage on Return Receipt Postcards

The party submitting a return receipt postcard (see TMEP §303.02(c)) is responsible for placing proper postage on the self-addressed postcard. Proper postage means that it has a stamp(s) in the correct amount or a meter stamp postmark that complies with USPS requirements.

The USPS provides in its Domestic Mail Manual that the date in a meter postmark must be the actual date of deposit, with limited exceptions, and that meter postmarks used to prepay reply postage must *not* show the date. The USPS will not accept for mailing a post card that contains a postage meter date more than ten days old. Thus, a return receipt postcard containing a dated meter postmark may not be delivered by the USPS, because the postcard will be mailed by the Office substantially after the date on which the meter postmark is printed on the card.

Therefore, to ensure the receipt of a confirmation post card, the party filing the postcard should: (1) affix postage stamps to their postcards, or purchase already-stamped post cards from the USPS; or (2) if a postage meter is used, ensure that the meter postmark does not show the date, and follow the instructions in the postage meter license agreement regarding prepay reply postage. See notice at 1246 TMOG 42 (May 8, 2001).

304 Electronic Mail

304.01 Communications Acceptable Via Electronic Mail

Applicants and registrants may use e-mail to conduct informal communications regarding a particular application or registration as an alternative to telephone communications. See TMEP §§709.04 and 709.05.

For example, an applicant may submit via e-mail:

- Questions regarding an outstanding Office action that do not constitute a response;
- Authorization to issue an examiner's amendment or priority action (see TMEP §§707.01 and 708.01);
- Objection to an examiner's amendment (see TMEP §§707 and 707.02);
- Notification of termination of a cancellation proceeding that is the basis for suspension (see TMEP §716.02(a)).
- A request to arrange a convenient time to speak by telephone.

See TMEP §304.02 regarding communications that are not acceptable via e-mail.

Attachments. The USPTO will accept legible attachments to e-mail in .jpg or .pdf format. The USPTO will not accept or open attachments in any other format.

The examining attorney must ensure that all relevant informal e-mail communications from applicants are entered into the electronic record. See TMEP §§709.04 and 709.05 for further information.

304.02 Communications *Not* Acceptable Via Electronic Mail

E-mail may ***not*** be used to file applications for registration of marks, responses to Office actions, pre- or post-publication amendments to an application, changes of correspondence address, appointments or revocations of attorneys, attorney withdrawal requests, petitions, documents required by statute to show use of a mark in commerce or to request an extension of time to show such use, and post-registration maintenance documents or proposed amendments. These documents may be filed electronically using TEAS.

Further, e-mail may not be used to request an advisory opinion as to the likelihood of overcoming a refusal or requirement. The examining attorney

should advise the applicant to file a formal response for consideration of arguments regarding any refusal or requirement.

See TMEP §304.01 regarding communications that are acceptable via e-mail, §709.04 regarding telephone and e-mail communications, and §709.05 regarding informal communications.

The Board does not accept e-mail communications.

304.03 Authorization of Electronic Mail Communications From the USPTO

The USPTO will send communications concerning an application or registration by e-mail only if e-mail communication is authorized by the applicant or registrant, or the applicant's or registrant's attorney.

The applicant or registrant may authorize the USPTO to communicate by e-mail by so indicating in the initial application or in any official written communication. The authorization must include the e-mail address to which e-mail is to be sent. The USPTO will not send e-mail to more than one e-mail address.

It is the responsibility of the applicant, registrant or attorney to notify the USPTO of any changes of e-mail address. See TMEP §609.03.

The Office considers any authorization for e-mail communications to end upon the date of registration of a mark.

See TMEP §304.06 regarding outgoing e-mail.

304.04 Date of Receipt of Electronic Mail

The date of receipt of an incoming e-mail communication is the date the communication is received in the USPTO. 37 C.F.R. §2.195(a)(1).

See TMEP §304.05 regarding certificates of transmission by e-mail.

304.05 Certificate of Transmission by Electronic Mail

Under 37 C.F.R. §2.197, e-mail correspondence will be considered to be timely filed, even if received after the due date, if the correspondence is: (1) transmitted to the USPTO by e-mail on or before the due date; and (2) accompanied by a certificate attesting to the date of transmission. See TMEP §§306.05 *et seq.* regarding the certificate of transmission procedure under 37 C.F.R. §2.197.

If e-mail correspondence is timely filed with a certificate of transmission, but is not received by or is lost within the USPTO, the correspondence will be considered timely based on the date of transmission set forth on the

certificate of transmission, if the party who transmitted the correspondence: (1) informs the USPTO in writing of the previous e-mail transmission of the correspondence within two months after becoming aware that the USPTO has no evidence of its receipt; (2) provides a copy of the previously transmitted correspondence, including the certificate of transmission; and (3) submits a statement attesting to the personal knowledge of transmission of the correspondence. 37 C.F.R. §2.197(b). The statement attesting to the personal knowledge of transmission does not have to be verified. See TMEP §306.05(d) for additional information about correspondence that is transmitted with a certificate of transmission but not received by or lost within the USPTO.

The following wording is suggested for the certificate of transmission:

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted by electronic mail to the United States Patent and Trademark Office on the date shown below.

(Typed or Printed Name of Person Signing Certificate)

(Signature)

(Date)

See TMEP §304.07 regarding signature of electronic mail.

Responses to examining attorneys' Office actions cannot be filed by e-mail. See TMEP §304.02. Therefore, the certificate of transmission by e-mail procedure cannot be used for such responses.

304.06 Outgoing Electronic Mail

The USPTO will not send formal e-mail notices or correspondence to an applicant or registrant unless the applicant or registrant authorizes the USPTO to do so. TMEP §304.03.

When authorized to communicate by e-mail, the USPTO may send notices regarding Office actions and other official correspondence to the e-mail address designated by the applicant or registrant. The USPTO will not send correspondence to more than one e-mail address. See TMEP §304.08 regarding addresses for e-mail correspondence directed to the USPTO.

If outgoing electronic mail is returned as undeliverable, the USPTO will mail a paper copy to the correspondence address of record.

The USPTO is not required to send Office actions and other official correspondence by e-mail whenever the applicant or registrant authorizes

e-mail correspondence. The USPTO may send correspondence by e-mail, regular mail, fax, or other appropriate means.

304.07 Signature of Electronic Mail

An applicant, registrant or attorney may sign an e-mail communication by entering a “symbol” that he or she has adopted as a signature between two slashes. See 37 C.F.R. §2.193(c) and TMEP §611.01(c).

In addition, the USPTO will accept an e-mail communication containing the “/s/” (“/(signature)/”) notation in lieu of a signature.

A scanned image of a document signed in ink is also acceptable, as long as the image is attached in .jpg or .pdf format.

Under 37 C.F.R. §11.18(b), the use of an electronic signature under 37 C.F.R. §2.193(c) or an “/s/” notation, will be understood to constitute a certification that:

- (1) The correspondence has been read by the applicant, registrant, or attorney;
- (2) The filing of the correspondence is authorized;
- (3) To the best of the signatory’s knowledge, information, and belief, there is good ground to support the correspondence; and
- (4) The correspondence is not presented for purposes of delay.

The signatory must personally sign the communication. 37 C.F.R. §2.193(c)(1). See TMEP §§611.02, 611.01(b), and 611.01(c).

304.08 E-Mail Addresses for Correspondence With the Office

Where an applicant or registrant is permitted to send communications to the USPTO by e-mail (see TMEP §304.01), the applicant or registrant should send e-mail to the address set forth on the correspondence sent by the USPTO. Applicants and registrants should **not** send e-mail to more than one address in the USPTO, and should not send courtesy copies of an e-mail message (e.g., “Cc” or “Bcc”) to additional e-mail addresses within the USPTO.

Responses to examining attorneys’ Office actions cannot be filed by e-mail. See TMEP §304.02.

**304.09 “Confirmation” Copies of E-Mail Communications
Should Not Be Sent to the Office**

Applicants, registrants, and attorneys should *not* send “confirmation” copies of e-mail communications to the USPTO by fax, regular mail, or any other means, because this can delay processing.

305 Mailing Documents to the Office

305.01 Mailing Addresses

Documents filed through TEAS are automatically sent to the appropriate location.

For trademark-related documents filed on paper, except for documents sent to the Assignment Services Branch for recordation, requests for copies of trademark documents, and certain documents filed under the Madrid Protocol (listed below), all trademark-related correspondence that is mailed to the USPTO should be addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

The names of individual employees should *not* be placed on the *envelopes* in which official communications are sent to the USPTO. Envelopes may be marked “Attention: Trademark Examining Operation.” Responses to Office actions should include the name of the examining attorney in the heading.

Documents Filed Under the Madrid Protocol

International applications under 37 C.F.R. §7.11, subsequent designations under 37 C.F.R. §7.21, responses to irregularity notices under 37 C.F.R. §7.14, requests to record changes in the International Register under 37 C.F.R. §§7.23 and 7.24, requests for transformation under 37 C.F.R. §7.31, requests to note replacement under 37 C.F.R. §7.28, and petitions to the Director to review the actions of the USPTO’s Madrid Processing Unit, when filed by mail, must be mailed to:

Madrid Processing Unit
600 Dulany Street
MDE-7B87
Alexandria, Virginia 22314-5793

37 C.F.R. §§2.190(e) and 7.4(b).

Documents to be Recorded in Assignment Services Branch

To expedite processing, the USPTO recommends filing requests to record documents through the USPTO website, at <http://etas.uspto.gov>. Documents filed electronically are recorded much faster than their paper counterparts. Paper documents and cover sheets to be recorded in the Assignment Services Branch should be sent to Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, P. O. Box 1450, Alexandria VA 22313-1450. 37 C.F.R. §§2.190(c) and 3.27.

Requests for Copies of Trademark Documents

Copies of trademark documents can be ordered through the USPTO website at <http://www.uspto.gov>. Requests for copies of documents can also be faxed or e-mailed to the USPTO, with an authorization to charge the fee to a credit card or USPTO deposit account. See TMEP §111 for additional information.

All other requests for certified or uncertified copies of trademark documents should be sent to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, P. O. Box 1450, Alexandria VA 22313-1450. 37 C.F.R. §§2.190(d).

305.02 Certificate of Mailing Procedure

37 C.F.R. §2.197. Certificate of mailing or transmission.

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in §2.190 and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Office in accordance with §2.195(c); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(2) The procedure described in paragraph (a)(1) of this section does not apply to:

(i) Applications for the registration of marks under 15 U.S.C. 1051 or 1126; and

(ii) Madrid-related correspondence filed under §7.11, §7.21, §7.14, §7.23, §7.24 or §7.31.

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Office, and an application is abandoned, a registration is cancelled or expired, or a proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence within two months after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine whether the correspondence was timely filed.

In 37 C.F.R. §2.197, there is a “certificate of mailing or transmission” procedure to avoid lateness due to mail delay. This procedure may be used for all trademark correspondence **except**:

- Applications for registration of marks;
- International applications under 37 C.F.R. §7.11;
- Subsequent designations under 37 C.F.R. §7.21;
- Responses to notices of irregularity under 37 C.F.R. §7.14;
- Requests to record changes of ownership under 37 C.F.R. §7.23;
- Requests to record restrictions of the holder's right of disposal, or the release of such restrictions, under 37 C.F.R. §7.24; and
- Requests for transformation under 37 C.F.R. §7.31.

37 C.F.R. §§2.197(a)(2) and 7.4(e).

Under the certificate of mailing or transmission procedure, correspondence is considered to be timely even if received after the due date, if the correspondence was: (1) deposited with the United States Postal Service as first class mail or transmitted to the USPTO by facsimile transmission before the expiration of the filing period; and (2) accompanied by a certificate attesting to the date of deposit or transmission.

Filers must retain a copy of the correspondence, including the signed and dated certificate. *In re Sasson Licensing Corp.*, 35 USPQ2d 1510 (Comm'r Pats. 1995).

See TMEP §§305.02(a) *et seq.* regarding the certificate of mailing procedure, and TMEP §§306.05 *et seq.* regarding the certificate of facsimile transmission procedure.

305.02(a) When Certificate of Mailing Procedure May Not Be Used

The certificate of mailing procedure may be used for all trademark filings **except:**

- An application to register a mark;
- International applications under 37 C.F.R. §7.11;
- Subsequent designations under 37 C.F.R. §7.21;
- Responses to notices of irregularity under 37 C.F.R. §7.14;
- Requests to record changes of ownership under 37 C.F.R. §7.23;
- Requests to record restrictions of the holder's right of disposal, or the release of such restrictions, under 37 C.F.R. §7.24; and
- Requests for transformation under 37 C.F.R. §7.31.

37 C.F.R. §§2.197(a)(2) and 7.4(e).

305.02(b) Mailing Requirements

The correspondence must be deposited in the United States mail, properly addressed (see TMEP §305.01 for mailing addresses), and the envelope must have sufficient postage as first class mail. Since first class mail services of the USPS are not available in foreign countries, the certificate of mailing procedure may not be used for sending mail to the USPTO from a foreign country.

305.02(c) Location and Form of Certificate

The certificate of mailing must: (1) state the date of deposit in the mail, which must be a date within the set filing period (this includes the last day of the period, or the succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia when the last day of the period falls on a Saturday, Sunday, or Federal holiday within the District of Columbia); and (2) be signed by a person who has a reasonable basis to expect the correspondence to be deposited in the mail on the date indicated. The

signature of the certificate must be separate from any signature for the correspondence being deposited.

The best location for the certificate of mailing is at the beginning of the correspondence to which it pertains, typed in its entirety.

The certificate of mailing should be separated from contents of the correspondence that are on the same page. Several blank lines between the contents and the certificate will suffice.

If the certificate of mailing does not fit on the correspondence to which it pertains, the certificate may be placed on a separate sheet of paper that is attached securely to the correspondence. The separate sheet must exhibit or bear a complete identification of the nature of the document or fee as well as an identification of the application, registration, and/or proceeding to which the document pertains (including serial number or registration number). The separate sheet may be a cover letter or transmittal letter, with the certificate placed at the bottom of the letter and signed separately from the letter. If there is any doubt concerning the correspondence to which a certificate of mailing on a separate sheet relates, the USPTO will not accept the certificate.

There must be a certificate of mailing for each piece of correspondence. When correspondence for more than one application or registration is mailed in a single envelope, each item of correspondence must have its own certificate of mailing. Similarly, when more than one type of correspondence is submitted in connection with the same application, each item of correspondence must have its own certificate of mailing.

It is suggested that the certificate be signed by the applicant or the party involved in the proceeding, or by the attorney for such person. If someone else signs, it should be a responsible person in a position to know that the mail will be deposited on the date specified.

The USPTO accepts the date of deposit stated in the certificate of mailing on the basis of the statement of personal knowledge. The USPTO does not normally inspect the postmark on the envelope.

305.02(d) Wording of Certificate of Mailing

The following wording is suggested for the certificate of mailing.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date shown below:

(Typed or Printed Name of Person Signing Certificate)

(Signature)

(Date)

305.02(e) Effect of Certificate of Mailing

The filing date assigned to paper correspondence is the date of actual receipt in the USPTO. 37 C.F.R. §2.195(a). The USPTO does not retain the envelopes in which material is received or record the date of the postmark.

The date of deposit indicated on the certificate of mailing is used only to determine whether the correspondence was deposited with the USPS within the filing period. Therefore, if the correspondence is actually received in the USPTO within the filing period, the certificate of mailing is ignored. If, however, the USPTO receives the correspondence after the filing period has expired, the USPTO looks to see whether a certificate of mailing was included. If no certificate is found, the correspondence is untimely.

When a document received after the expiration of the filing period includes a signed certificate of mailing, and the date of deposit on the certificate is within the filing period, the USPTO considers the correspondence to be timely filed.

If the filing period ends on a Saturday, Sunday, or Federal holiday within the District of Columbia, the correspondence is considered timely if the date of deposit on the certificate of mailing is the next succeeding day that is not a Saturday, Sunday or Federal holiday within the District of Columbia (see 37 C.F.R. §2.196 and TMEP §308).

Whenever it is necessary to change the effective filing date of an application (e.g., when an application filed under §1(b) of the Trademark Act is amended to request registration on the Supplemental Register after submission of an allegation of use), the date of actual receipt rather than the date on the certificate is the new effective filing date. See TMEP §§206 *et seq.* as to changes in the effective filing date of an application.

305.02(f) Correspondence Mailed Pursuant to 37 C.F.R. §2.197 But Not Received by Office

If correspondence filed with a certificate of mailing is not received by (or is lost within) the USPTO, the USPTO will consider the correspondence to be timely based on the date of deposit stated in the certificate of mailing if the party who filed the correspondence:

- (1) informs the USPTO in writing of the previous mailing of the correspondence within two months after becoming aware that the USPTO has no evidence of receipt of the correspondence;
- (2) supplies an additional copy of the previously mailed correspondence, including a copy of the signed and dated certificate of mailing (see *In re Sasson Licensing Corp.*, 35 USPQ2d 1510 (Comm'r Pats. 1995)); and
- (3) includes a statement attesting to the previous timely mailing on the basis of the signer's personal knowledge. This statement does not have to be verified.

37 C.F.R. §2.197(b).

The two-month time period for notifying the USPTO begins to run from the date that the party who filed the correspondence became aware that the USPTO has no evidence of receipt of the correspondence, unless the USPTO has issued a written action, such as a notice of abandonment or cancellation. In such situations, the issue date of the USPTO written action will serve as the starting point for measuring timeliness. See 37 C.F.R. §§2.146(d) and 2.197(b)(1). See also TMEP §1705.04.

The required evidence should be sent to the area in the USPTO where the misplaced or lost document was intended to be filed, e.g., the law office, ITU/Divisional Unit, or Post Registration Section.

If *all* three criteria listed above cannot be met, the only remedy available is a petition to revive under 37 C.F.R. §2.66 (if appropriate) or a petition under 37 C.F.R. §2.146, which must include a petition fee, and a statement that attests on a personal knowledge basis to the previous timely mailing, along with any additional evidence. See 37 C.F.R. §§2.66 and 2.146; TMEP §§1702 through 1708 regarding petitions under 37 C.F.R. §2.146 and TMEP §§1714 *et seq.* regarding petitions to revive.

The above procedure does *not* apply to the filing of an application for registration of a mark, or to the Madrid-related documents listed in 37 C.F.R. §2.197(a)(2) and TMEP §305.02(a).

The USPTO may require additional evidence relating to the mailing or transmission of correspondence. 37 C.F.R. §2.197(c). See, e.g., *In re Klein*, 6 USPQ2d 1547 (Comm'r Pats. 1987), *aff'd sub nom. Klein v. Peterson*, 696 F. Supp. 695, 8 USPQ2d 1434 (D.D.C. 1988), *aff'd*, 866 F.2d 412, 9 USPQ2d 1558 (Fed. Cir. 1989), *cert. denied*, 490 U.S. 1091 (1989).

305.02(g) Correspondence Deposited as First Class Mail Pursuant to 37 C.F.R. §2.197 and Returned by the U.S. Postal Service

The USPS requires that all domestic first class mail that weighs 16 ounces or more be presented to a retail clerk at a USPS office. All such mail that is not presented to a retail clerk at a USPS office (e.g., is placed in a mailbox) will be returned by the USPS. The USPS has posted notice of this requirement on mailboxes. The “Express Mail” service of the USPS is not affected.

Correspondence must be deposited with the USPS as first class mail in compliance with any and all applicable requirements of the USPS to be considered “[d]eposited with the U.S. Postal Service,” within the meaning of 37 C.F.R. §2.197(a)(1)(i)(A). Therefore, correspondence returned by the USPS as not mailed in compliance with USPS requirements concerning mail weighing sixteen ounces or more is not entitled to any benefit under 37 C.F.R. §2.197. See notice at 1192 TMOG 43 (Nov. 12, 1996).

305.02(h) Certificate of Mailing Requirements Strictly Enforced

The requirements of 37 C.F.R. §2.197 are strictly enforced, and the USPTO denies petitions to consider a document timely filed as of the date on the certificate if a party fails to comply with these requirements.

A party’s inadvertent failure to comply with the requirements of a rule is not considered an extraordinary situation that would warrant waiver of a rule under 37 C.F.R. §2.146(a)(5) or §2.148. See *Honigsbaum v. Lehman*, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995), *aff’d mem.*, 95 F.3d 1166 (Fed. Cir. 1996) (Commissioner did not abuse his discretion in refusing to waive requirements of 37 C.F.R. §1.10(c) and grant filing date to patent application, where applicant failed to produce “Express Mail” customer receipt or any other evidence that application was actually deposited with USPS as “Express Mail”); *In re Sasson Licensing Corp.*, 35 USPQ2d 1510 (Comm’r Pats. 1995) (failure to retain executed hard copy of certificate of mailing under 37 C.F.R. §1.8 not extraordinary situation that would justify waiver of rule); *Gustafson v. Strange*, 227 USPQ 174 (Comm’r Pats. 1985) (counsel’s unawareness of 37 C.F.R. §1.8 not extraordinary situation warranting waiver of a rule); *In re Chicago Historical Antique Automobile Museum, Inc.*, 197 USPQ 289 (Comm’r Pats. 1978) (lateness due to mail delay not deemed to be extraordinary situation, because certificate of mailing procedure under 37 C.F.R. §1.8 was available to petitioner).

305.03 “Express Mail”

37 C.F.R. §2.198. Filing of correspondence by “Express Mail.”

(a)(1) Except for documents listed in paragraphs (a)(1)(i) through (vii) of this section, any correspondence received by the Office that was delivered by

the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) will be considered filed with the Office on the date of deposit with the USPS. The Express Mail procedure does not apply to:

- (i) Applications for registration of marks;*
- (ii) Amendments to allege use under section 1(c) of the Act;*
- (iii) Statements of use under section 1(d) of the Act;*
- (iv) Requests for extension of time to file a statement of use under section 1(d) of the Act;*
- (v) Affidavits of continued use under section 8 of the Act;*
- (vi) Renewal requests under section 9 of the Act; and*
- (vii) Requests to change or correct addresses.*

(2) The date of deposit with USPS is shown by the “date in” on the “Express Mail” label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the date of receipt in the Office as the filing date.

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the “Express Mail” mailing label with the “date-in” clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an “Express Mail” drop box) do so at the risk of not receiving a copy of the “Express Mail” mailing label with the desired “date-in” clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the “Express Mail” mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(c) Any person filing correspondence under this section that was received by the Office and delivered by the “Express Mail Post Office to Addressee” service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the “date-in” on the “Express Mail” mailing label or other official USPS notation, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the “Express Mail” mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing; and

(3) The petition includes a true copy of the “Express Mail” mailing label showing the “date-in,” and of any other official notation by the USPS relied upon to show the date of deposit.

(d) Any person filing correspondence under this section that was received by the Office and delivered by the “Express Mail Post Office to Addressee” service of the USPS, who can show that the “date-in” on the “Express Mail” mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the

correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) prior to the original mailing; and

(3) The petition includes a showing that establishes, to the satisfaction of the Director, that the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup on the requested filing date. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or evidence that came into being within one business day after the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

(e) If correspondence is properly addressed to the Office pursuant to §2.190 and deposited with sufficient postage in the "Express Mail Post Office to Addressee" service of the USPS, but not received by the Office, the party who mailed the correspondence may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) prior to the original mailing;

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup on the requested filing date; and

(4) The petition includes a statement that establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine whether the correspondence was deposited as "Express Mail" with the USPS on the date in question.

Documents Excluded From 37 C.F.R. §2.198

Trademark Rule 2.198, 37 C.F.R. §2.198, provides a procedure for obtaining a filing date as of the date that correspondence is deposited as “Express Mail” with the USPS. However, this procedure does **not** apply to the following trademark documents:

- Applications for registration of marks;
- Amendments to allege use under §1(c) of the Trademark Act, 15 U.S.C. §1051(c);
- Statements of use under §1(d) of the Trademark Act, 15 U.S.C. §1051(d);
- Requests for extension of time to file a statement of use under §1(d) of the Trademark Act, 15 U.S.C. §1051(d);
- Affidavits of continued use under §8 of the Trademark Act, 15 U.S.C. §1058;
- Renewal applications under §9 of the Trademark Act, 15 U.S.C. §1059;
- Requests to change or correct addresses;
- Combined filings under §§8 and 9 of the Trademark Act, 15 U.S.C. §§1058 and 1059;
- Combined affidavits or declarations under §§8 and 15 of the Trademark Act, 15 U.S.C. §§1058 and 1065;
- Responses to notices of irregularity under 37 C.F.R. §7.14;
- Requests for transformation under 37 C.F.R. §7.31; and
- Requests to note replacement under §7.28.

37 C.F.R. §§2.198(a)(1) and 7.4(b)(2). See notice at 67 Fed. Reg. 36099 (May 23, 2002), available at <http://www.uspto.gov/web/offices/com/sol/notices/expmailrule2.pdf>.

If the documents listed above are filed by “Express Mail,” they will receive a filing date as of the date of receipt in the USPTO and *not* the date of deposit with USPS. 37 C.F.R. §2.195(a). See TMEP §303.01.

Lost Documents

If one of the documents listed above is sent by “Express Mail” but is lost within the USPTO, and the applicant or registrant presents proof of actual

receipt in the form of evidence that a USPTO employee signed for or acknowledged the “Express Mail” package (e.g., an “Express Mail” mailing label that bears an Office date stamp or label or the signature of a USPTO employee, or evidence from the USPS website showing that the document was actually received in the USPTO), the USPTO will grant the document a filing date as of the *date of actual receipt in the USPTO*. The applicant or registrant must submit a true copy of the document(s), and an affidavit or declaration under 37 C.F.R. §2.20 attesting to the contents of the “Express Mail” package. See TMEP §1711 regarding restoration of application filing dates, TMEP §1712.01 regarding reinstatement of abandoned applications, and TMEP §§1712.02 *et seq.* regarding reinstatement of cancelled or expired registrations.

If a document is sent by “Express Mail” but is not received by or is lost within the USPTO, and the applicant does not have proof of actual receipt in the USPTO, the USPTO will not grant a filing date to the document.

Certificate of Mailing Under 37 C.F.R. §2.197 for Documents Sent by Express Mail

For documents other than applications for registration of marks and the Madrid-related documents listed in 37 C.F.R. §2.197(a)(2) (see TMEP §305.02(a)), the certificate of mailing procedure of 37 C.F.R. §2.197 may be used for documents sent by “Express Mail” as well as documents sent by first class mail. Under the certificate of mailing procedure, correspondence is considered to be timely filed even if received after the due date, if the correspondence is deposited with the USPS with sufficient postage as first class mail before the expiration of the filing period and accompanied by a certificate attesting to the date of deposit. Correspondence sent by “Express Mail” is deemed to meet the requirements of 37 C.F.R. §2.197(a)(1)(i)(A) for postage as first class mail, because the postage for “Express Mail” exceeds the postage required for first class mail. However, to use the certificate of mailing procedure for documents mailed by “Express Mail,” the filer must place a certificate attesting to the date of deposit and meeting the requirements of 37 CFR §2.197(a)(1)(ii) on the document prior to mailing. See TMEP §§305.02 *et seq.* for further information about the certificate of mailing procedure.

The following wording is suggested for a certificate of mailing when correspondence is sent by “Express Mail:”

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as “Express Mail” in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date shown below:

(Typed or Printed Name of Person Signing Certificate)

(Signature)

(Date)

Documents Not Excluded From 37 C.F.R. §2.198

The procedures for filing documents by “Express Mail” under 37 C.F.R. §2.198 may be used for documents *not expressly excluded by 37 C.F.R. §2.198(a)*, e.g., documents filed with the Board or the Assignment Services Branch of the Office. These documents are entitled to a filing date as of the date of deposit with USPS if the filer meets the requirements of 37 C.F.R. §2.198. The rule requires: (1) the document must be sent through the “Express Mail Post Office to Addressee” service of the USPS; (2) it must be deposited prior to the last scheduled pickup on the relevant date; (3) it must be properly addressed in accordance with the requirements of 37 C.F.R. §2.190; and (4) the number of the “Express Mail” mailing label must be placed on the document prior to mailing.

If a document not excluded by 37 C.F.R. §2.198(a) is filed in accordance with the requirements of 37 C.F.R. §2.198, but the document is not given a filing date as of the date of deposit as “Express Mail,” the filer may request the USPTO to change the filing date of the document, pursuant to 37 C.F.R. §2.198(c), (d) or (e). Rule 2.198(c) applies when there is a discrepancy between the filing date assigned by the USPTO and the “date-in” entered by the USPS on the “Express Mail” mailing label; Rule 2.198(d) applies when the “date-in” is incorrectly entered or omitted by the USPS; and Rule 2.198(e) applies when correspondence deposited with the USPS as “Express Mail” is not received by (or is lost within) the USPTO. A petition to change the filing date of a document pursuant to 37 C.F.R. §2.198 must:

- (1) be filed within two months of the issuance date of the action from which relief is requested, or, if there is no “issuance of an action,” within two months of the date that the party who filed the correspondence became aware that there was a problem with the USPTO’s receipt of the correspondence (37 C.F.R. §§2.146(d), 2.198(c)(1), 2.198(d)(1), and 2.198(e)(1); TMEP §1705.04);
- (2) include a showing that the number of the “Express Mail” mailing label was placed on the correspondence prior to the original mailing (37 C.F.R. §§2.198(c)(2), 2.198(d)(2), and 2.198(e)(2));

- (3) include a true copy of the “Express Mail” mailing label with the “date-in” clearly marked (37 C.F.R. §§2.198(c)(3), 2.198(d)(3), and 2.198(e)(3));
- (4) if the filer contends that the “date-in” was entered incorrectly by the USPS, include: (a) a showing that the correspondence was deposited as “Express Mail” prior to the last scheduled pickup on the requested filing date; and (b) evidence from the USPS or evidence that came into being *after* deposit and within one business day of the deposit of the correspondence as “Express Mail” (37 C.F.R. §2.198(d)(3)); and
- (5) if the correspondence is lost within or never received by the USPTO, include: (a) a true copy of the originally deposited correspondence showing the number of the “Express Mail” mailing label; and (b) a statement, signed by the person who deposited the documents as “Express Mail” with the USPS, setting forth the date and time of deposit, and stating that the copies of the correspondence and “Express Mail” mailing label accompanying the petition are true copies of those originally sent (37 C.F.R. §§2.198(e)(3) and 2.198(e)(4)).

When correspondence not excluded by 37 C.F.R. §2.198(a) is placed in an “Express Mail” drop box after the box has been cleared for the last time on a given day, it is considered to have been deposited as of the date of receipt indicated on the “Express Mail” mailing label by the USPS employee. See notice at 61 Fed. Reg. 56439 (Nov. 1, 1996) and 1192 TMOG 95 (Nov. 26, 1996).

305.04 Interruptions in U.S. Postal Service

37 C.F.R. §2.195(e). Interruptions in U.S. Postal Service.

(1) If the Director designates a postal service interruption or emergency within the meaning of 35 U.S.C. 21(a), any person attempting to file correspondence by “Express Mail Post Office to Addressee” service who was unable to deposit the correspondence with the United States Postal Service due to the interruption or emergency may petition the Director to consider such correspondence as filed on a particular date in the Office.

(2) The petition must:

(i) Be filed promptly after the ending of the designated interruption or emergency;

(ii) Include the original correspondence or a copy of the original correspondence; and

(iii) Include a statement that the correspondence would have been deposited with the United States Postal Service on the requested filing date but for the designated interruption or emergency in “Express Mail” service; and that the correspondence attached to the petition is the original

correspondence or a true copy of the correspondence originally attempted to be deposited as Express Mail on the requested filing date.

(3) Paragraphs (e)(1) and (e)(2) of this section do not apply to correspondence that is excluded from the Express Mail procedure pursuant to §2.198(a)(1).

Under 35 U.S.C. §21(a) and 37 C.F.R. §2.195(e), if there is an interruption or emergency in the United States Postal Service, the Director may consider correspondence to have been filed in the Office on a particular date if the correspondence or a copy thereof is: (1) filed promptly after the ending of the designated interruption or emergency; and (2) accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service. This procedure does not apply to correspondence that is excluded from the "Express Mail" procedure pursuant to §2.198(a)(1). 37 C.F.R. §2.195(e)(3). See TMEP §305.03 regarding "Express Mail."

306 Facsimile Transmission (Fax)

Extract from 37 C.F.R. §2.195. Receipt of trademark correspondence.

*(a) * * **

Trademark correspondence received in the Office is given a filing date as of the date of receipt except as follows:

** * **

(3) Correspondence transmitted by facsimile will be given a filing date as of the date on which the complete transmission is received in the Office unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the filing date will be the next succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

** * * * **

(c) Facsimile transmission. Except in the cases enumerated in paragraph (d) of this section, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is received in the Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See §2.196. To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application, registration or proceeding before the Office. The application serial number, registration number, or proceeding number should be entered as a part of the sender's identification on a facsimile cover sheet.

(d) Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations:

(1) Applications for registration of marks;

(2) Drawings submitted under §2.51, §2.52, §2.72, or §2.173;

- (3) Correspondence to be filed with the Trademark Trial and Appeal Board, except notices of *ex parte* appeal;
- (4) Requests for cancellation or amendment of a registration under section 7(e) of the Trademark Act; and certificates of registration surrendered for cancellation or amendment under section 7(e) of the Trademark Act; and
- (5) Madrid-related correspondence submitted under §7.11, §7.21, §7.14, §7.23, §7.24, or §7.31.

* * * * *

The USPTO permits the filing of certain correspondence by fax. See TMEP §306.03 regarding the date of receipt of correspondence that is filed by fax.

A certificate of transmission may be used to establish timely filing in the event that the correspondence is transmitted within the response period but is received in the Office after expiration of the response period, or is not received by or lost within the Office. See TMEP §§306.05 *et seq.* regarding the requirements for the certificate of transmission procedure.

306.01 Documents That May Not Be Filed by Facsimile Transmission

All trademark documents ***except the documents listed below*** may be filed by fax, and are eligible for the benefits of the certificate of transmission provided for in 37 C.F.R. §2.195.

The following types of trademark correspondence may *not* be filed by facsimile transmission and, if submitted by fax, will not be given a filing date:

- (1) Trademark applications;
- (2) Drawings submitted under 37 C.F.R. §§2.51, 2.52, 2.72, or 2.173;
- (3) Requests for cancellation or amendment of a registration under 15 U.S.C. §1057(e);
- (4) Certificates of registration;
- (5) Correspondence to be filed with the Board, except a notice of *ex parte* appeal;
- (6) Madrid-related correspondence submitted under 37 C.F.R. §7.11, §7.14, §7.21, §7.23, §7.24, or §7.31; and
- (7) Documents that are required by statute to be certified (e.g., certified copies of court orders).

37 C.F.R. §§2.195(d) and 7.4(d). Applications for registration of marks may be filed through TEAS.

When any trademark document specifically excluded from the fax transmission procedure is received in the USPTO by fax, the document will not be accepted. *Vibe Records, Inc. v. Vibe Media Group LLC*, 88 USPQ2d 1280 (TTAB 2008) (faxed notice of opposition unacceptable and can be given no effect). As a courtesy, the USPTO will attempt to notify senders whenever correspondence that falls within one of these prohibitions is sent to the USPTO by fax.

306.02 Fax Machines Designated to Accept Relevant Trademark Documents

The fax machines that are designated to accept trademark documents are attended between the business hours of 8:30 a.m. and 5:00 p.m., Eastern Time, Monday through Friday, excluding Federal holidays within the District of Columbia.

Submissions by fax should be transmitted to the location for which they are intended. A USPTO Contacts List, which includes fax numbers, is available on the USPTO website at <http://www.uspto.gov>, and appears periodically in the *Official Gazette*. In addition, questions about fax numbers may be directed to the Trademark Assistance Center at (571) 272-9250 or (800) 786-9199.

The USPTO does not formally acknowledge receipt of documents transmitted by fax, but USPTO fax machines will usually confirm to the sending unit that the transmission is complete.

Each fax machine location in the USPTO maintains a log comprising a collection of daily activity sheets recording all fax transmissions received. These logs can be used as evidence of receipt in the USPTO, and may be used to reinstate applications and registrations. The individual activity report that pertains to a particular transmission received in the USPTO is kept with the correspondence.

306.03 Effect of Filing by Fax

The filing date of correspondence received in the USPTO by fax, regardless of whether it contains a certificate of transmission, is the date that the complete transmission is received by a USPTO fax machine, unless the transmission is completed on a Saturday, Sunday, or Federal holiday within the District of Columbia. Correspondence for which transmission is completed on a Saturday, Sunday, or Federal holiday within the District of Columbia is given a filing date as of the next succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia. 37 C.F.R. §2.195(a)(3).

For example, a 20-minute fax transmission to the USPTO from California starting on a Friday at 8:45 p.m. Pacific Time would be completed at 9:05

p.m. Pacific Time. The complete transmission would be received in the USPTO at approximately 12:05 a.m. Eastern Time on Saturday. The filing date accorded to the correspondence is the date of the following business day, which in this case would be Monday (assuming that Monday is not a Federal holiday within the District of Columbia).

The phrase “complete transmission” means that the transmission was received in its entirety. For example, if page one of a ten-page fax transmission is received in the USPTO at 11:55 p.m. on a Tuesday and page ten of that transmission is received at 12:05 a.m. Wednesday, the filing date accorded to that correspondence will be the date of that Wednesday (assuming that Wednesday is not a Federal holiday within the District of Columbia).

If the sender wants the correspondence to be considered timely filed as of the date that the transmission began, the correspondence must include a certificate of transmission under 37 C.F.R. §2.197(a). See TMEP §306.05(c) regarding the effect of a certificate of transmission.

306.04 Procedure for Filing by Fax

Each transmission session should be limited to correspondence to be filed in a single application or other proceeding before the Office. The application serial number or registration number should be entered as a part of the sender’s identification on a facsimile cover sheet. 37 C.F.R. §2.195(c). Applicants should wait until an application serial number is assigned before filing any document related to a new application by fax. See 37 C.F.R. §2.194(a).

It is recommended that each transmission include a cover sheet that, in addition to stating the application serial number or registration number, specifies the mark, the number of pages being transmitted, and the name, address, fax number, and telephone number of the transmitting party.

Each facsimile-transmitted document must be legible. The preferred size of the document being submitted is 8½ inches by 11 inches, letter size or A4 paper. Because equipment used by the Office cannot print a document larger than 8½ inches by 11 inches, correspondence should not be transmitted on larger paper.

When correspondence is filed by facsimile transmission, it is recommended that the sending facsimile machine generate a report confirming transmission for each transmission session. This report should be retained by the applicant, along with the original correspondence, as evidence of content and date of transmission.

Unless specifically requested to do so by the Office, parties should **not** mail follow up copies of documents transmitted by fax. 37 C.F.R. §2.193(g)(2). This can delay processing.

306.05 Certificate of Transmission Procedure

37 C.F.R. §2.197. Certificate of mailing or transmission.

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in §2.190 and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Office in accordance with §2.195(c); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(2) The procedure described in paragraph (a)(1) of this section does not apply to:

(i) Applications for the registration of marks under 15 U.S.C. 1051 or 1126; and

(ii) Madrid-related correspondence filed under §7.11, §7.21, §7.14, §7.23, §7.24 or §7.31.

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Office, and an application is abandoned, a registration is cancelled or expired, or a proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence within two months after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine whether the correspondence was timely filed.

Trademark Rule 2.197, 37 C.F.R. §2.197, provides a certificate of transmission procedure to avoid lateness when correspondence is faxed within the response period but is received in the USPTO after expiration of the response period, or not received, or lost within the USPTO. The certificate of transmission procedure can be used for any correspondence that can be filed by fax. See TMEP §306.01 regarding documents that can be filed by fax.

Under the certificate of transmission procedure, certain correspondence will be considered to be timely filed even if received after the end of the filing period, if the correspondence is transmitted by fax to the USPTO before the expiration of the filing period and accompanied by a certificate attesting to the date of transmission. The person signing the certificate certifies the expectation that the transmission would be initiated before midnight, local time, on the date specified.

Filers must retain a copy of the correspondence, including the signed and dated certificate. See *In re Sasson Licensing Corp.*, 35 USPQ2d 1510 (Comm'r Pats. 1995).

See TMEP §306.05(d) regarding the procedure for establishing the timely filing of correspondence that was faxed to the USPTO with a certificate of transmission under 37 C.F.R. §2.197, but was lost or misplaced.

See TMEP §304.05 regarding certificates of transmission by e-mail.

306.05(a) Location and Form of Certificate of Transmission

The certificate of transmission should be clearly labeled as such and should include a reference to the registration number or application serial number, the date of transmission, and the signature of the person attesting that the document is being transmitted on a certain date.

When possible, the certificate should appear on the document being transmitted, rather than on a separate sheet of paper. See notices at 58 Fed. Reg. 54494 (Oct. 22, 1993) and 1157 TMOG 87, 92-93 (Dec. 28, 1993).

If the certificate of facsimile transmission is presented on a separate paper, it *must* identify the document, and the application or registration to which it relates.

306.05(b) Wording of Certificate of Transmission

The following wording is suggested for the certificate of transmission:

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on the date shown below.

(Typed or Printed Name of Person Signing Certificate)

(Signature)

(Date)

306.05(c) Effect of Certificate of Transmission

As noted in TMEP §306.03, the filing date given to correspondence received by fax transmission is the date that the complete transmission is received by a USPTO fax machine, unless the transmission is completed on a Saturday, Sunday, or Federal holiday within the District of Columbia, in which case the filing date is the next succeeding day that is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

The date of transmission on the certificate is used only to determine whether the correspondence was transmitted to the USPTO within the filing period. Therefore, if the complete transmission is actually received in the USPTO within the filing period, the certificate of transmission is ignored. If the transmission is completed after the expiration of the filing period, the USPTO looks at the correspondence to see if a certificate of transmission was included. If no certificate is found, the correspondence is untimely.

If the correspondence includes a signed certificate of transmission, and the date of transmission on the certificate is within the filing period, the correspondence is considered to be timely.

For example, if a West Coast applicant transmitted correspondence by fax on the last day of the response period, beginning before 9:00 p.m. Pacific Time (midnight Eastern Time) but completed after 9:00 p.m. Pacific Time, the USPTO would give the correspondence a filing date as of the next business day, because that is the date on which the USPTO received the complete transmission. However, if the practitioner affixed a certificate of transmission to the faxed correspondence indicating that the correspondence was being transmitted on the last day of the response period, then the correspondence would be considered timely filed, even though the transmission completed

after 9:00 p.m. Pacific Time (midnight Eastern Time) was received in the USPTO the day after the deadline for response.

If the filing period ends on a Saturday, Sunday or Federal holiday within the District of Columbia, the correspondence will be considered to be timely if the date of transmission on the certificate is the next succeeding day that is not a Saturday, Sunday or Federal holiday within the District of Columbia (see 37 C.F.R. §2.196 and TMEP §308).

Whenever it is necessary to change the effective filing date of an application (e.g., when an application filed under §1(b) of the Trademark Act is amended to request registration on the Supplemental rather than the Principal Register after submission of an allegation of use) and the correspondence included a certificate of transmission under 37 C.F.R. §2.197, the date of actual receipt (as stamped or labeled on the relevant correspondence) rather than the date on the certificate is used as the new effective filing date. See TMEP §§206 *et seq.* as to changes in the effective filing date of an application.

306.05(d) Correspondence Transmitted by Fax Pursuant to 37 C.F.R. §2.197 But Not Received by Office

Rule 2.197(b) sets forth procedures for requesting that correspondence be considered timely when the correspondence is filed with a certificate of transmission, but is not received by or is lost within the USPTO. Such correspondence will be considered timely based on the date of transmission set forth on the certificate of transmission, if the party who transmitted the correspondence:

- (1) informs the USPTO in writing of the previous fax transmission of the correspondence within two months after becoming aware that the USPTO has no evidence of receipt of the correspondence;
- (2) supplies an additional copy of the previously transmitted correspondence, including a copy of the signed and dated certificate of transmission (see *In re Sasson Licensing Corp.*, 35 USPQ2d 1510 (Comm'r Pats. 1995)); and
- (3) includes a statement attesting to the previous timely transmission on the basis of the signer's personal knowledge. A copy of the sending unit's report confirming transmission may be used to support this statement. The statement does not have to be verified.

The party who transmitted the correspondence must notify the USPTO of the transmission of the correspondence within two months after becoming aware that the USPTO has no evidence of receipt of the correspondence. 37 C.F.R. §§2.146(d) and 2.197(b)(1). Where no written action is generated that can be used as a starting point for measuring timeliness, the two-month deadline

runs from the date that the party who filed the correspondence became aware that there was a problem with the filing date. See TMEP §1705.04.

The required evidence should be directed to the area in the USPTO where the misplaced or lost document was intended to be filed, e.g., the law office, ITU/Divisional Unit, or Post Registration Section.

If *all* the above criteria cannot be met, the only remedy available is a petition to revive under 37 C.F.R. §2.66 (if appropriate), or a petition under 37 C.F.R. §2.146, which must include a petition fee, and a statement that attests on a personal knowledge basis to the previous timely transmission, along with any additional evidence. See 37 C.F.R. §§2.66 and 2.146; TMEP §§1702 through 1708 regarding petitions under 37 C.F.R. §2.146, and TMEP §§1714 *et seq.* regarding petitions to revive.

The above procedure does *not* apply to submissions that are excluded from the certificate of mailing or transmission procedures under 37 C.F.R. §2.195(d) or §2.197(a)(2). See TMEP §306.01.

The USPTO may require evidence relating to the transmission of correspondence under 37 C.F.R. §2.197(a), to establish an actual date of transmission. 37 C.F.R. §2.197(c). See, e.g., *In re Klein*, 6 USPQ2d 1547 (Comm'r Pats. 1987), *aff'd sub nom. Klein v. Peterson*, 696 F. Supp. 695, 8 USPQ2d 1434 (D.D.C. 1988), *aff'd*, 866 F.2d 412, 9 USPQ2d 1558 (Fed. Cir. 1989), *cert. denied*, 490 U.S. 1091 (1989).

306.06 Requirements for Certificate of Transmission Strictly Enforced

The requirements of 37 C.F.R. §2.197 are strictly enforced, and petitions to consider a document timely filed as of the date on the certificate are denied when a party fails to comply with these requirements. A party's inadvertent failure to comply with the requirements of a rule is not considered an extraordinary situation that would warrant waiver of the rule under 37 C.F.R. §2.146(a)(5) or §2.148. See TMEP §305.02(h) and cases cited therein.

307 Hand Delivery

Trademark Operation, Madrid Processing Unit, and Trademark Trial and Appeal Board. Correspondence may be hand-delivered between 8:30 a.m. and 5:00 p.m., Eastern Time, Monday through Friday, except Federal holidays within the District of Columbia, to the following location:

Trademark Assistance Center
James Madison Building - East Wing
Concourse Level
600 Dulany Street
Alexandria, VA

Trademark examining attorneys *will not* accept documents for filing (either with or without fees).

If the filer wants a receipt, he or she should provide a card, which will be date-labeled and handed back to the person delivering the document. When a card is used for receipt, it should include the applicant's name, the application serial number or registration number, the mark, and the title or a description of the document being filed. The card should also specify the items submitted (e.g., drawing, specimen, fee). See TMEP §303.02(c).

Customer Service Window. The USPTO strongly encourages parties who are hand-delivering trademark correspondence to bring it directly to the Trademark Assistance Center at the address listed above. Use of any patent box for trademark-related correspondence is strongly discouraged, and may result in delayed processing. However, the USPTO will accept trademark correspondence delivered to the Customer Service Window located in the Randolph Building, 401 Dulany Street, Alexandria, Virginia. The USPTO will stamp postcard-type receipts to acknowledge the receipt of correspondence filed at the Customer Service Window. The Customer Service Window is open from 8:30 a.m. until 12:00 midnight, Monday through Friday, except Federal holidays within the District of Columbia.

See TMEP §309 regarding unscheduled closings of the USPTO.

308 Period Ending on Saturday, Sunday, or Federal Holiday

35 U.S.C. §21(b) When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding secular or business day.

37 C.F.R. §2.196. Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or by regulation under this part for taking any action or paying any fee in the Office falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day that is not a Saturday, Sunday, or a Federal holiday.

(See also 37 C.F.R. §2.145 for time for appeal to court and civil action.)

Any action or fee that is due on a date falling on a Saturday, Sunday, or a Federal holiday within the District of Columbia is considered timely if the action is received, or the fee paid, on the following day that is not a Saturday, Sunday, or a Federal holiday within the District of Columbia. This applies to all documents, whether filed through TEAS or on paper.

The following days are Federal holidays in the District of Columbia, under 5 U.S.C. §6103:

- New Year's Day, January 1.
- Birthday of Martin Luther King, Jr., the third Monday in January.
- Washington's Birthday, the third Monday in February.
- Memorial Day, the last Monday in May.
- Independence Day, July 4.
- Labor Day, the first Monday in September.
- Columbus Day, the second Monday in October.
- Veterans Day, November 11.
- Thanksgiving Day, the fourth Thursday in November.
- Christmas Day, December 25.
- Inauguration Day (January 20 of each fourth year after 1965), **except** when it falls on a Saturday (see Note below).

As to the observance of holidays that fall on Saturday, 5 U.S.C. §6103 also provides:

(b)(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal public holiday...

NOTE: If Inauguration Day (January 20 of each fourth year after 1965) falls on a Saturday, the preceding Friday is **not** a legal public holiday for purposes of 35 U.S.C. §21. When Inauguration Day falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday. 5 U.S.C. §6103(c).

309 Unscheduled Closings of the United States Patent and Trademark Office

When the USPTO is officially closed by executive order of the President or by the Office of Personnel Management for an entire day because of some unscheduled event, such as adverse weather conditions, the USPTO will

consider that day to be a “Federal holiday within the District of Columbia” under 35 U.S.C. §21. 37 C.F.R. §2.2(d). Any action or fee due that day is considered timely if the action is taken, or the fee paid, on the next succeeding business day that the USPTO is open.

However, when the USPTO is open for business during any *part* of a business day between 8:30 a.m. and 5:00 p.m., documents are due on that day even though the USPTO may be officially closed for some period of time during the business day because of an unscheduled event. TEAS, or the procedures of 37 C.F.R. §2.197, may be used, as appropriate, for the filing of documents during unscheduled closings of the USPTO.

310 Computing Period for Response to Office Action or Notice

The deadline for responding to an Office action, notice of allowance, or other notice issued by the USPTO is computed from the date of issuance of the action or notice to the date the response is received in the USPTO. See TMEP §303.01 regarding the date of receipt in the USPTO.

For example, a response to an examining attorney’s Office action dated August 31 is due on the following February 28 (or 29 if it is a leap year); a response to an Office action dated February 28 is due on August 28 and not on the last day of August. *Ex parte Messick*, 7 USPQ 57 (Comm’r Pats. 1930).

Under 37 C.F.R. §2.197, correspondence is considered to be timely filed even if it is received after the expiration of the filing period, if the correspondence was deposited with the USPS as first class mail or transmitted to the USPTO by facsimile transmission before the expiration of the filing period and accompanied by a certificate attesting to the date of mailing or transmission. See TMEP §§305.02 *et seq.* regarding the certificate of mailing procedure, and TMEP §§306.05 *et seq.* regarding the certificate of transmission procedure.

If a document or fee is due on a Saturday, Sunday, or a Federal holiday within the District of Columbia, the document or fee is considered timely if it is received on or before the following day that is not a Saturday, Sunday or a Federal holiday within the District of Columbia. 35 U.S.C. §21(b); 37 C.F.R. §2.196; TMEP §308.

See TMEP §309 regarding unscheduled closings of the USPTO.