

# TRADEMARK OPPOSITION PROCEEDINGS IN THE UNITED STATES

## The Registration Process – Overview

The system for protecting trademark rights in the United States is based on use of marks and registration of marks. While an entity is not required to register its mark in order to protect it, there are a number of reasons why registration of its mark in the United States Patent and Trademark Office (hereinafter “USPTO”) is important, such as:

- constructive notice to the public of the registrant's claim of ownership of the mark;
- a legal presumption of the registrant's ownership of the mark and the registrant's exclusive right to use the mark nationwide on or in connection with the goods and/or services listed in the registration;
- the ability to bring an action concerning the mark in federal court;
- the use of the U.S registration as a basis to obtain registration in foreign countries; and
- the ability to file the U.S. registration with the U.S. Customs Service to prevent importation of infringing foreign goods.

Since we believe it is better to prevent acquisition of rights rather than to bestow rights only later to extinguish them, United States law requires the USPTO to provide an opportunity to qualified third parties to prevent the registration of a mark. The mechanism is known as the opposition proceeding and it takes place before the USPTO administrative tribunal, the Trademark Trial and Appeal Board (Board). The benefit of such a proceeding is to determine whether an applicant has the right to register, as against any third party, prior to the acquisition of registration rights. Furthermore, the Board is staffed with experts in the trademark field, all of whom have been examining attorneys, some with experience in private practice.

Once an application for registration is successfully filed, it is reviewed by an examining attorney for statutory compliance (absolute grounds and relative grounds) and for compliance with formal requirements. If the examining attorney is not convinced that the mark is registrable, she will issue a refusal which, if not successfully rebutted, may result in a final refusal that may ultimately be appealed by the applicant to the Board. If the applicant is not successful in convincing the examining attorney or the Board of the registrability of its mark, the application will be considered abandoned.

If the examining attorney believes that the mark is registrable, she will allow it to be published in the Trademark Official Gazette. The mark, the goods/services, use dates (if applicable), and other relevant information is published in the

Gazette, which is available on the USPTO website. The Gazette is published weekly.

If the mark is not opposed, or the applicant ultimately prevails in an opposition, the registration certificate will be issued—unless the application was filed based on a bona fide intention to use the mark in commerce, in which case a “Notice of Allowance” will be issued permitting the applicant time in which to submit evidence of use. If the applicant loses the opposition, its application will be deemed abandoned.

Once the mark is registered, the owner of the registration must file documents with the USPTO to maintain the registration; otherwise the registration will expire or be cancelled. Interested parties may petition to cancel the registration on the same grounds available in opposition proceedings before the fifth anniversary date of the registration. Petitions to cancel filed after five years may not be brought on relative grounds and certain absolute grounds.

## A. Examination

### 1. Refusals Based on Relative Grounds

If the examining attorney believes that confusion is likely with a registered mark, she will refuse registration and allow the applicant six months in which to rebut the refusal. If there are prior pending marks that, once registered, would become a bar to registration for the mark in the pending application, the examining attorney will so indicate and, if no other issues are present, suspend examination of the later-filed application pending disposition (registration or abandonment) of the earlier-filed application.

The factors considered in determining likelihood of confusion include: (Some of these are not considered by the examining attorney because they involve evidence that may only be relevant in an inter partes proceeding, such as facts relating to use of the mark.)

- The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
- The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
- The similarity or dissimilarity of established, likely-to-continue trade channels.
- The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing.
- The fame of the prior mark (sales, advertising, length of use).
- The number and nature of similar marks in use on similar goods.
- The nature and extent of any actual confusion.
- The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.
- The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).

- The market interface between applicant and the owner of a prior mark:
  - (a) a mere "consent" to register or use.
  - (b) agreement provisions designed to preclude confusion, i.e. limitations on continued use of the marks by each party.
  - (c) assignment of mark, application, registration and good will of the related business.
  - (d) laches and estoppel attributable to owner of prior mark and indicative of lack of confusion.
- The extent to which applicant has a right to exclude others from use of its mark on its goods.
- The extent of potential confusion, i.e., whether de minimis or substantial.
- Any other established fact probative of the effect of use.

Any doubts as to registrability are resolved in favor of the registrant. The USPTO considers it important to examine applications on relative grounds because doing so ensures the integrity of the trademark register and rewards those who avail themselves of the federal registration process. This is important because the register and the database of pending applications provide notice to others that the owner of record has claimed rights in a particular mark for specified goods/services. A federal registration is prima facie evidence that the registrant is the owner of the mark for the goods/services specified. Furthermore, recordation of a federal registration certificate with U.S. Customs can prevent infringing articles bearing the mark from entry into the United States.

## 2. Refusals Based on Absolute Grounds

The examining attorney may also refuse registration because the mark –

- is descriptive—or geographically descriptive—(and has not acquired distinctiveness) of the goods/services;
- is generic of the goods/services;
- is deceptive as to the goods/services (this includes refusals based on deception as to unregistered well known marks and unregistered geographical indications)
- is misdescriptive or geographically misdescriptive of the goods/services;
- comprises any matter that, as a whole, is functional.
- is a surname;
- consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof;
- consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; and

- consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

### 3. Refusals Based on Non-Compliance with Formal Requirements

In order for an application to receive a filing date in the USPTO, it must include the application fee for at least one class of goods/services; a listing of the goods/service; the name of the applicant; a correspondence address; and a drawing of the mark. These informal applications are rare inasmuch as the electronic application program prompts the applicant to provide this information. There are additional prompts in the electronic system that ensures that other formal requirements, such as the entity type, the basis for application, specimens, signature and other data are entered before filing.

However, it is the responsibility of the examining attorney to review the application to make certain it is complete and that the identification of goods/services is clear. If the examining attorney finds omissions or requires clarification, she will issue an office action permitting the applicant six months in which to supply the information. As with refusals based on relative and absolute grounds, the examining attorney may issue a final refusal—or deem the application abandoned, if the applicant fails to correct the deficiencies, or appeal to the Board in the time allotted. Otherwise, if the applicant corrects the deficiencies, the mark is published for opposition.

Any entity that thinks it will be harmed by registration of the mark has thirty days from the day the mark is published in the Trademark Official Gazette in which to file an opposition. However, as noted below, extensions of time may be granted, extending that period up to six months. The opposition may be filed with the Board. (A complaint, including a request that the mark not be registered, may also be filed with a U.S. District Court, especially if issues other than registrability—such as infringement— are present.)

#### Elements for the Opposition

An opposition proceeding is similar to a court proceeding in many respects except that

- it is filed with the administrative tribunal of the USPTO—the Board;
- it is less expensive;
- it is based on a written record; and
- jurisdiction is limited to the issue of registrability.

#### A. Time for Filing Opposition and Extension Requests

The event that triggers the potential filing of an opposition is the publication of the mark in the Trademark Official Gazette. A party must file its opposition, or a

request to extend its time to file an opposition, within thirty days of the date the mark is published in the Gazette. A potential opposer may file additional extension requests, but in no case may an opposition be filed beyond 180 days of the date the mark was published in the Official Gazette. The period before the actual opposition is filed is often used by the parties to determine whether their dispute can be resolved without the need to go forward with the proceeding. Even after the opposition is filed, the parties may request suspension of proceedings for settlement discussions.

Extensions of time may be filed, and granted, electronically. If filing electronically, the potential opposer need only insert the application serial number and the remainder of the information will be populated by the computer program. A request to extend the opposition period for thirty days will be granted routinely. Extensions for an additional ninety days will be granted upon a showing of “good cause”—such as a statement that the potential opposer is investigating whether or not to file an opposition. For an extension of the last sixty days, the potential opposer must get the consent of the applicant or show extraordinary circumstances.

If an extension request is not filed before the expiration of the previously granted request, the opposition, if ultimately filed, will be rejected as untimely. For the most part, this process of granting or denying extension requests can be handled without human intervention. Currently, about 91% of extension requests are filed electronically. This technological advancement has virtually eliminated the need for personnel to review these submissions, has made it virtually impossible to lose documents; and has reduced the processing time to virtually nothing.

An opposition is commenced by the filing of a notice of opposition which gives notice to the applicant of the opposer’s basic factual and legal claims. These factual allegations do not have to be supported by evidence at this stage. The Board sends a copy of the notice of opposition to the applicant and sets a time for the applicant to file an answer to the notice of opposition. The Board also sets the dates for discovery and trial. Oppositions can also be filed electronically. 70% of all oppositions were filed electronically last year. These filings must also meet the timeliness requirement, which is determined by the computer program, and will be rejected if late. Of the 224,676 marks published for opposition, only 3% resulted in commencement of an opposition proceeding. (Since the majority of oppositions are based on relative grounds, we conclude that examination on relative grounds has substantially reduced the number of oppositions filed.)

## B. Fees

While there are no fees required for filing requests to extend the opposition period, fees are required for filing the opposition. The fee is \$300 per class for each opposer. As noted above, the opposition may be filed electronically. An example of how the electronic system helps opposer to make certain that the opposition is complete, is where the opposer fails to include the fee for all classes that it intends to oppose. If the opposition is filed electronically,

the computer program will prompt the opposer when less than all classes are opposed, and permit the opposer to correct the error if the omission was not intended. Those filing on paper will not get this opportunity and must forego opposing the other class(es). Fee processing by personnel will become unnecessary as more and more opposers opt for electronic filing. Not only does the electronic system reduce entry errors—the opposer reviews the submission before transmission—but because all oppositions are paperless, there is no more loss of files.

### C. Grounds for Opposition

In addition to grounds for refusal used in the initial examination of the application by the examining attorney, there are other grounds for opposition, including:

- abandonment of the mark;
- fraud; and
- dilution: (A lessening of the distinctive quality of the mark—opposer must prove that its mark was famous prior to the applicant's first use.)

The Board is not bound by the decision of the examining attorney during examination. The issues are resolved based on the evidence presented in the opposition proceeding by the parties.

### D. Standing

Any person (natural or legal) who believes that it would be damaged by the registration of a mark upon the principal register may file an opposition. Whether a party has standing to oppose depends on the grounds asserted in the opposition. For example, if an opposer is basing its opposition on likelihood of confusion with its registered mark, or its common law use, or as owner of an unregistered well-known mark or geographical indication, the opposer must plead, and subsequently prove, that it has priority rights in a confusingly similar mark. Another example of whether an opposer has standing is when it pleads that a mark is descriptive of the goods, in which case the opposer must plead that it is a competitor of the applicant and that the term(s) applied for is needed by other competitors to describe their products. If more than one ground is pleaded in the opposition, proof of standing for only one ground is necessary.

### E. Jurisdiction

As mentioned earlier, the Board has limited jurisdiction related only to determining registrability of a mark. The Board may not issue injunctions against a party's use of a mark. If a party is interested in enjoining use of a mark, the party must file suit in a court, which can also decide registrability issues.

## The Proceeding

### A. The Pleadings

The pleadings comprise the notice of opposition filed by the opposer; the answer and any affirmative defenses and/or counterclaims (to be discussed below) filed by the applicant; and any answer to a counterclaim (if filed) filed by opposer.

#### 1. The Notice of Opposition

The notice of opposition sets out (usually in numbered paragraphs) identifying information about the opposer and its allegations of standing and grounds for opposition.

#### The Institution Order

When the opposition is filed, the Board issues an institution order—electronically, if the opposer filed electronically and the applicant provided an email address in its application. The order sets out the time frame for the applicant to file its answer (40 days); the time for discovery (6 months); the time set for testimony (30 days for opposer; 30 days for applicant; and 15 days for opposer's rebuttal); and the times allotted for opposer and applicant to file their briefs on the case and for opposer to file a rebuttal brief, if necessary. These time frames may be extended on consent of the parties or by order of the Board. These extensions are usually granted, unless a party has been thwarting progress in the case.

#### 2. The Answer

In its answer the applicant is required to admit or deny the allegations in the notice of opposition. The applicant can also assert affirmative defenses. Affirmative defenses may include unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior registration defense, prior judgment, or any other matter constituting an avoidance or affirmative defense.

The applicant may also file a counterclaim to cancel the registration pleaded by opposer. The applicant must file a fee for each class in the registration it wishes to cancel. The opposer will be required to file an answer to the counterclaim. An amended institution order will be issued by the Board to accommodate the additional dates because the counterclaim (which is essentially a petition to cancel) will now be a combined with the opposition proceeding, with the opposer and the applicant acting as plaintiff and defendant in the respective cases.

### B. Discovery

The discovery period allows the parties to request and receive relevant information from each other necessary to evaluate their claims and defenses. Means by which discoverable information can be obtained are:

- written interrogatories
- requests for production of documents
- depositions
- requests for admissions

#### 1. Written Interrogatories

Currently, the parties are limited to 75 interrogatories (although the Board has published a proposed rule to reduce this number to 25). The interrogatories (questions) must be relevant to the ground or defense. Both parties can submit these questions to the other party to be answered within 30 days—or within an extension agreed upon by the parties.

#### 2. Documents

There is no limit to the number of documents a party may be asked to produce. However, the parties are not permitted to require burdensome or duplicative documents, as that may be considered harassing the other party.

#### 3. Deposition

The discovery deposition is used for the purpose of obtaining information from the other party. The party requesting the deposition must provide proper notice to the other party as to whom is to be deposed and the particulars of the deposition. As a practical matter, Board proceeding depositions taken in the United States are usually taken before a court reporter that is authorized to administer oaths in the jurisdiction where the deposition is taken. The deposition allows for cross questions, redirect questions, re-cross questions, objections, and substitute questions.

#### 4. Admissions

This is a device used to limit the issues in dispute. One party will ask the other to admit certain facts. For example, in an opposition proceeding where the issue is relative grounds, the opposer may ask the applicant to admit that it first used its mark on a certain date. If the applicant admits the date asserted in the request for admissions, and that date is subsequent to opposer's date of use, the Board can consider this as evidence that the opposer has priority.

#### D. Testimony

The assignment of testimony periods corresponds to setting a case for trial in court proceedings. The taking of depositions during the assigned testimony

periods corresponds to the trial in court proceedings. Testimony is taken out of the presence of the Board, on oral examination or written questions, and the written transcripts thereof, together with any exhibits thereto, are then submitted to the Board. During a party's testimony period, testimony depositions are taken, by or on behalf of the party, of the party himself or herself (if the party is an individual), or of an official or employee of the party, or of some other witness testifying (either willingly or under subpoena) in behalf of the party.

Evidence may be introduced in the form of testimony depositions taken by a party during its testimony period, and documents and other exhibits may be made of record with appropriate identification and introduction by the witness during the course of the deposition. Certain specified types of evidence, including official records and printed publications may, but need not be, introduced in connection with the testimony of a witness. Such evidence may instead be made of record by filing the materials with the Board under cover of a notice of reliance during the testimony period of the offering party. The papers and other materials filed with the Board during the course of an inter partes proceeding are kept, during the course of the proceeding, in the physical possession of the Board. However, no paper, document, exhibit, etc. will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

By written agreement of the parties, the testimony of any witness or witnesses of any party may be submitted in the form of an affidavit by such witness or witnesses. The parties may also stipulate in writing the facts in the case of any party, or what a particular witness would testify to if called, or that a party may use a discovery deposition as testimony. See Trademark Board Manual of Procedure (TBMP) Chapter 700; <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/700.pdf>.

#### E. Briefs, Oral Hearing and Termination of Board Proceedings

As the party bringing the case, the opposer is responsible for submitting a brief on the case. The applicant may file a brief or choose not to. If the applicant files a brief, opposer may file a rebuttal brief or choose not to. There are time frames and page limits associated with the filing of these briefs.

An oral hearing is held only if requested by a party to the proceeding. The oral hearing is for summation of the case only. No new evidence can be introduced. Oftentimes, the judges take this time to ask questions about facts and arguments that were not clear in the parties' briefs. The non-requesting party need not attend. The majority of these hearings are held at the USPTO site in Alexandria, Virginia; however, some are held by video conference in which one or both parties attend remotely. Board judges can also attend remotely.

Prior to an oral hearing, the Board panel members read the briefs on the case and, if necessary, examine the case files. A panel of at least three Board members renders the final decision. The judges will consider the evidence, the briefs and the oral hearing comments. If there has been an oral hearing in a case, the final decision normally is rendered by the panel before which the oral

hearing was held. One judge will be assigned to write the opinion. The other two members of the panel must agree on a final version of the order—otherwise, a dissent must be written by the disagreeing judge.

A party may file a request for rehearing, reconsideration, or modification of a decision issued after final hearing within one month from the date of decision. The request may not be used to introduce additional evidence, nor to reargue the points presented in the losing party's brief on the case.

If, during an opposition proceeding, facts are disclosed which appear to render the mark unregistrable, but such matter has not been tried under the pleadings as filed by the parties, the Board, in lieu of determining the matter in the decision on the proceeding, may remand the application to the trademark examining attorney for reexamination in the event the applicant ultimately prevails in the inter partes proceeding. The Board may include in its decision a recommendation that in the event the applicant ultimately prevails in the inter partes proceeding, the examining attorney reexamine the application in light of the disclosed facts. Similarly, a party to an opposition proceeding in which facts have been disclosed which appear to render the mark unregistrable may request that the Board include, in its decision in the proceeding, a remand to the examining attorney.

When an opposition proceeding ends with a judgment in favor of the applicant, the application returns to the status it had before commencement of the proceeding, unless the Board indicates in its decision that the application must be republished for some reason, or includes in its decision a remand to the trademark examining attorney. If the proceeding ends with a judgment that is adverse to the applicant, the application stands refused.

The losing party can appeal on the Board record to the U.S. Court of Appeals for the Federal Circuit; or it can request a new trial in a U.S. District Court. With the former, the party cannot introduce new evidence—the appeal is based on the closed record compiled during the Board proceeding. With a new trial in the U.S. District Court, there is an opportunity for the losing party to introduce additional evidence and present additional arguments. Furthermore, additional claims may be pleaded, including claims that the Board did not have jurisdiction to consider. The losing party in that forum may appeal to the Supreme Court of the United States.

### Responsibility of the Board

The Board is responsible for instituting the opposition; for issuing a notice of default judgment if the defendant fails to file an answer to the opposition; to enter judgment if the defendant fails to respond to the notice of default judgment; to consider motions; to preside over oral hearings; and issue decisions on the case. Currently, the Board has one Chief Administrative Trademark Judge who oversees the work of 16 Administrative Trademark Judges. There are also 13 motions attorneys, 14 paralegals and a number of administrative clerks who provide support to the Board—all totaling 60. The judges preside at oral hearings and render final decisions in cases. The motions attorneys decide

contested motions filed by the parties. Motions that are potentially dispositive of the proceeding must be signed by a three-judge panel.

The Judges, Motions Attorneys, Paralegals and Clerks have deadlines. Judges are required to issue final decisions within 10 to 20 weeks from the date the case is ready for decision. Their performance ratings depend upon meeting these deadlines and, for judges, a certain number of points (usually based on the number of decisions written and their complexity) are required for successful performance.

The Board will suspend proceedings for settlement negotiations between the parties and when a complaint that may have a bearing on the Board decision is filed in a court by one of the parties against the other. The Board encourages settlement talks, and will suspend its proceedings for such talks almost indefinitely. There were over 6000 oppositions/cancellations filed last year—with only 162 final decisions by a three-judge panel issued. This is because the majority of the disputes are settled by agreement of the parties or loss of interest in the case by one of the parties.

Each party bears its own costs for the proceeding. The losing party is not required to pay all costs. The Board has chosen not to become involved in determining who is required to pay costs and attorneys' fees because, as evidenced by the federal court system for awarding fees, the process is very burdensome and the Board does not have the resources to decide such matters.

### Responsibility of the Parties

#### A. Cooperation

The parties must cooperate with each to provide relevant information and documents as requested; to respond to Board orders; and to file only motions that are meritorious. The parties are encouraged to settle the dispute without the intervention of the Board, when possible.

#### B. Motions

If a party is entitled to relief from non-cooperation of the other party or upon consent of the parties, a motion may be filed to the Board to review the request. There are literally dozens of motions that can be filed during the discovery phase. If a party refuses to answer or supply, or answer fully or supply fully, responses to interrogatories or document requests, the other party may file a motion to compel these responses. If a party refuses to respond to requests for admissions the other party may file a motion to have the admissions deemed admitted. (Having admissions deemed admitted may have serious consequences if a party has admitted something that is critical to its case.) As for depositions, a motion can be filed, for example, to quash the notice of deposition if the notice is untimely, or if it constitutes harassment.

These motions are handled by the motions attorneys. If the motion is potentially dispositive of the opposition proceeding, then a panel of three judges

must sign the order. Other types of motions that the motions attorneys handle are:

- Motions for default judgment
- Motions to dismiss for failure to state a claim
- Motions to extend/suspend
- Motions for summary judgment

It is important to note that either of the parties may file a motion that the Board proceedings be suspended because a complaint has been filed in a court where at least one of the parties is involved and where the outcome of the court proceeding may have a bearing on the Board's case. In the majority of these cases, the Board will suspend proceedings. This is because the decision of a court is often binding on the Board, whereas the reverse is not true.

One very important type of motion is the motion for summary judgment. This is a pre-trial device which the Board will grant if there is no genuine issue of material fact and the party is entitled to judgment as a matter of law. The motion should be filed before the opening of the first testimony period, which is the equivalent of the trial in a court proceeding.

Once the trial period is over, the opposer must submit its legal arguments in a written brief. If the opposer does not timely file its brief, the Board will issue an order to show cause why the opposition should not be dismissed for plaintiff's apparent loss of interest in the case. The applicant need not file a brief, but if it does, the opposer will be able to file a reply brief. Generally, only pleaded issues may be argued and no new evidence may be presented.

The opposer also must submit evidence during its testimony period. If no evidence is submitted during this time period, the applicant may file a motion to dismiss the opposition in its favor for opposer's failure to introduce evidence during its testimony period. This motion is usually granted inasmuch as it is opposer's responsibility to prove its case which requires submission of evidence.

### Proposed Change in Board Procedure

Members of trademark bars across the United States are, for the most part, satisfied with the role the opposition proceeding plays in reducing overall costs of litigating trademark disputes. Even with this high level of satisfaction, the Board is proposing to improve the process by adopting, in part, the way federal courts handle the cumbersome task of discovery.

The Board—if the proposal is adopted—will require the parties, early in the proceeding, to disclose information and evidence that support their case. This practice may improve the chances of settlement prospects and lead to earlier resolution of cases. Even cases that do not settle benefit from early disclosure because cases eventually decided on their merits are based on a record where the parties knew what to expect and how to prepare for it.

Information about Board proceedings is available on our website at [www.uspto.gov](http://www.uspto.gov). This includes U.S. law and implementing regulations; the Trademark Trial and Appeal Board Manual (TBMP) and Board decisions. Public

users can view all non-confidential filings at this website in TTABVue. Parties, and potential parties, can file documents online in ESTTA.

## Conclusion

We find that our opposition system works well in the United States because it dovetails with our trademark law that is based on use in commerce as well as treaty obligations such as Paris Convention filings, protection of unregistered well-known marks and, protection of unregistered geographical indications. Our examination of pending applications based on relative and absolute grounds preserves the integrity of our register and encourages filing as a means of notification to others of claims to rights in a particular mark, and the additional benefits of registration mentioned earlier, such as recordation of the certificate with Customs to prevent entry of infringing goods. Examination on relative grounds also reduces the number of oppositions filed.

We adopted the pre-registration opposition proceeding because it is important to the USPTO to ascertain rights in a mark before registration rights vest—especially with regard to bad-faith applicants.

The electronic means for filing extension requests, oppositions, motions, and fees; and for issuance of decisions, both final and non-final, has greatly increased efficiencies by transferring work from Board personnel to a computer program; providing transparency through electronic means for viewing all documents within a proceeding (except those documents filed by the parties that have been designated as confidential), including the final decision; and providing a work-flow platform that eliminates the need for paper.

The system encourages settlement and suspension of Board proceedings in favor of related court proceedings, thereby allowing the parties (or the court) to resolve the issues without Board intervention, thus conserving the limited Board resources.

Further, the system places the burden on the parties to move the proceeding forward by filing motions if the other party is not compliant. The system also provides a number of triggers that signal the possibility of termination of a proceeding. For example, as noted above, a proceeding will be terminated if an applicant fails to answer the opposition and the notice of default. Additionally, if a motion is filed against the other party and that party does not respond, the motion may be granted as uncontested, and in some case will lead to termination of proceedings.

One other feature that conserves Board resources is that the proceeding is only on a written record, with an oral hearing held only if requested by one of the parties. This means that judges do not have to prepare for many oral hearings and may use their time efficiently to review and decide cases. In fact, the majority of judges and motions attorneys work from their homes.

Further, the proposed change in procedure, due to become effective this year, concerning mandatory initial disclosure of each party's claims and defenses should streamline Board practice since it forces the parties to investigate their case early in the proceeding, which may lead to earlier settlement or resolution.