

Consistency Initiative

After a complete review of the Consistency Initiative Pilot Program, the Office has determined that it would be useful to both our customers and the Office to make the Pilot a permanent program. As originally envisioned by the Office, the Consistency Initiative serves as a valuable instrument for applicants to raise concerns about the occasional instances of inconsistent practice within the Office and to promote overall high quality examination.

The guidelines for both Non-ID-Related Requests and ID-Related Requests have set appropriate bounds to address consistency concerns, and they are adopted as the guidelines for the permanent initiative. The guidelines are set forth below for reference.

Non-ID-Related Requests

An applicant may bring to the attention of the Office situations where, in applicant's opinion, the Office has acted inconsistently in its treatment of applicant's pending applications/recent registration(s). For Requests that address substantive or procedural issues (excluding issues involving identifications of goods and services), applicants' Requests may include registrations that have issued within five years. Applicants may submit a Request when a substantive or procedural issue has been addressed in a significantly different manner in different cases, subject to the following provisions: (1) the Request is based on co-pending applications or an application and a registration owned by the same legal entity or a successor in interest (e.g., assignee); (2) the registration(s) involved was issued less than five years prior to the date of the Request; (3) at least one of the applications in the Request is in a pre-publication status at the time of the Request; and (4) the allegedly inconsistent treatment has already occurred. Third parties are prohibited from submitting Requests in this forum, and the Office will not consider or act on such Requests.

ID-Related Requests

Turning to Requests involving identifications of goods and services, applicants may submit a Request when an identification issue(s) has been addressed in a significantly different manner in different cases (excluding applications and registrations based on the Madrid Protocol), subject to the following provisions: (1) the Request is based on co-pending applications or an application and a registration owned by the same legal entity or a successor in interest (e.g., assignee); (2) the registration(s) involved was issued less than two years prior to the date of the Request and since the latest edition of the Nice Agreement Concerning the International Classification of Goods and Services; (3) at least one of the applications in the Request is in a pre-publication status at the time of the Request with a final Office action containing identification and/or classification requirements; and (4) the allegedly inconsistent treatment has already occurred. Third parties are also prohibited from submitting Requests in this forum, and the Office will not consider or act on such Requests.

As stated in the previous notices, the Consistency Initiative is in no way meant to discourage applicants from first contacting the assigned examining attorneys to address consistency issues. On the contrary, applicants are encouraged to do so because of the examining attorneys' familiarity with and knowledge of the issues raised in their Office actions. Applicants should not contact the examining attorney of any application that has already registered unless the examining attorney is also assigned to one of the co-pending applications at issue. Applicants who are unable to resolve any issue associated with consistency in co-pending applications assigned to more than one examining attorney may always [contact the managing attorneys of the law offices \(/trademark/contact-trademarks/other-trademark-contact-information\)](#) involved.

In all Requests, applicants must briefly describe the allegedly inconsistent action, list the application(s) and/or registration(s) involved, and clearly mark at the top of the page the nature of the Request (e.g., . Request for Consistency Review of a Substantive/Procedural Issue, Request for Consistency Review of Identification). All Requests will be scanned into the USPTO's database and will be viewable by the public through Trademark Status and Document Retrieval (TSDR). Applicants may not submit additional evidence. If evidence is submitted, it will not be considered during this process.

The Office will promptly review and consider each Request. The Office will not respond directly to the Request, but action will be taken in the pending application(s) if the Office deems it appropriate. Requesters can expect that any action taken should occur within four to six weeks of the date of the Request, and requesters may monitor changes in the identified applications through TSDR. Requesters should note, however, that subsequent action taken by the Office may differ from that requested. Alternatively, the Office may determine that different handling of the cases is appropriate, and no action will be taken. Generally, no action can be taken to amend, or cancel and restore to application status any existing registrations as a result of a Request.

Applicants must send requests to TMCONSISTENCY@USPTO.GOV (<mailto:TMCONSISTENCY@USPTO.GOV>). The filing of a Request does not provide a basis to request suspension of an application or appeal and will not stay the period for replying to an Office action, filing a notice of appeal or submitting any other filing that is due before the Office.