



# Expedited Cancellation Pilot Program

As part of the United States Patent and Trademark Office's (USPTO) initiatives to ensure the accuracy and integrity of the Trademark Register, the Trademark Trial and Appeal Board (TTAB) is piloting a program to explore the effectiveness of an expedited cancellation proceeding for challenges to registrations of allegedly unused marks. If your cancellation proceeding is limited to abandonment or nonuse claims, consider participating. The program could save you time and money compared to a traditional proceeding.

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## ▼ Background

USPTO random audits suggested that over half of active registrations include some goods or services for which the registered mark is not actually being used. Registered trademarks that are not actually in use in commerce may block other trademark owners from registering their marks. Stakeholders have voiced interest in making challenges to such registrations faster and less burdensome than traditional full cancellation proceedings.

The TTAB has discussed with stakeholder groups and the public the possibility of rules for a formal streamlined cancellation for abandonment and nonuse claims. In general, the model discussed would require:

- The plaintiff's initial submission to include their evidence and brief
- The defendant's response to include their evidence and brief
- The plaintiff to have had a reply opportunity.

Following [public comments \(/trademark/trademark-updates-and-announcements/public-comments-streamlined-version-trademark\)](#) that included some reservations about the potential effectiveness of streamlined cancellation proceedings, we launched the expedited cancellation pilot program. The program will inform our decision on whether to proceed with a permanent special program for abandonment and nonuse cancellations.

## Part of a larger effort

Expedited cancellation proceedings are only one component of the USPTO's efforts to ensure the accuracy and integrity of the Trademark Register. Two other initiatives are already in place: the random [audits of post-registration maintenance filings \(http://www.uspto.gov/trademarks-maintaining-trademark-registration/post-registration-audit-program\)](#) and the increased [readability of the use declarations \(http://www.uspto.gov/sites/default/files/documents/TEAS\\_Reformatted\\_Declarations.docx\)](#). The USPTO continues to explore other options.

## ▼ How it works

Under the pilot, the TTAB identifies newly-filed cancellation proceedings limited to abandonment or nonuse claims that may benefit by some form of the Board's existing Accelerated Case Resolution (ACR) procedures. The TTAB has an established practice of offering ACR in inter partes proceedings to simplify and speed up proceedings, allowing the parties to save time and expense. The standards of proof in an ACR proceeding remain the same as those in a traditional proceeding, and a final decision rendered under ACR may be appealed in the same manner and under the same time frames as non-ACR decisions.

## Selection for the pilot

In March 2018, the TTAB began identifying instituted cancellations involving only abandonment or nonuse grounds as potentially eligible for the program. In such cases, once an answer is filed, the assigned TTAB Interlocutory Attorney informs the parties that the TTAB will participate in their mandatory discovery conference. The Interlocutory Attorney also advises the parties that they should familiarize themselves with ACR in advance of the conference (such as by reviewing TBMP §§ [528.05\(a\)](#)

([\(http://tbmp.uspto.gov/RDMS/TBMP/current#/current/sec-04993dc2-74c0-4b3e-bee4-d6d8c9ae8def.html\)](http://tbmp.uspto.gov/RDMS/TBMP/current#/current/sec-04993dc2-74c0-4b3e-bee4-d6d8c9ae8def.html))(2) and [702.04](#) (<http://tbmp.uspto.gov/RDMS/TBMP/current#/current/sec-bc79a369-b439-4e4c-b5d1-d13f23de9159.html>)) and should be prepared to discuss any specific ACR measures to which they might agree.

## The discovery conference

Both the Interlocutory Attorney and one of the Administrative Trademark Judges join in the conference. The judge who joins in the conference will not be on the panel of judges to decide the case on the merits. In addition to the usual subjects covered in a discovery conference, these conferences explore potential stipulations of fact, evidentiary stipulations, ways to limit discovery, and the possible use of the "summary judgment ACR model" to abbreviate the proceeding by having the Board treat summary judgment motion filings and accompanying evidence as the final record and briefing, and decide disputed factual issues.

## The decision

The TTAB makes every effort to issue final decisions in ACR cases within 50 days once they are ready for decision. By reducing the length and complexity of the case, ACR provides a more efficient and economical alternative to the traditional full cancellation proceeding.

Please be assured that if your case is identified as a candidate for an expedited proceeding, no judgment has been made as to the likely outcome of your case. Rather, the case was identified because it involved only claims of nonuse and/or abandonment and because use of ACR may save the parties time and expense, and lead to a quicker resolution of the case.

### ▼ How to participate

You may participate in the pilot even if your case was not initially identified by the TTAB, and even if you already conducted your discovery conference. Coordinate with your opponent and call the Interlocutory Attorney assigned to schedule a conference.

### ▼ Program goals and duration

The pilot will measure or assess:

- The frequency of parties' willingness to agree to ACR in some form.

- Concerns expressed about ACR.
- The types of ACR measures preferred.
- How effective such measures are in developing the record and issues.
- The progress and timing of ACR pilot cases.
- The rates of default judgment.
- Withdrawals and settlements.

We plan to continue the pilot until sufficient information has been collected to assess the usefulness of ACR or some other form of expedited proceedings in abandonment and nonuse cases. The pilot will help us identify the type of cancellation petitions most suitable for an expedited proceeding and the most effective procedures. We plan to share the results with the public and may seek additional input from the public.

## Collecting information on the default judgment rate

Entry of a default judgment in a TTAB cancellation proceeding is an efficient way to remove registrations involving abandonment or nonuse claims. The overall default judgment rate is fairly high, and the pilot program will yield information about the default rate specifically for abandonment and nonuse claims.

## Identifying the type of cancellation petitions most suitable for an expedited proceeding

Through the pilot, the TTAB also hopes to learn how best to identify early on which cases can appropriately be expedited. On the opposite end of the spectrum from cases in which default judgment is entered, some abandonment and nonuse cancellation claims are hard fought through trial, with large evidentiary records. These latter cases likely would not be suitable for an expedited proceeding. *See, e.g., Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043 (TTAB 2017) (Cancellation No. [92057132](http://ttabvue.uspto.gov/ttabvue/v?pno=92057132&pty=CAN&eno=98) (<http://ttabvue.uspto.gov/ttabvue/v?pno=92057132&pty=CAN&eno=98>)) and *Exec. Coach Builders, Inc. v. SPV Coach Co.*, 123 USPQ2d 1175 (TTAB 2017) (Opposition No. [91212312](http://ttabvue.uspto.gov/ttabvue/v?pno=91212312&pty=OPP&eno=96) (<http://ttabvue.uspto.gov/ttabvue/v?pno=91212312&pty=OPP&eno=96>)).

## Identifying the most effective procedures for an expedited proceeding

Working with the parties to use effectively ACR techniques in the pilot and assessing the evidentiary records in pilot cases also will assist in identifying the best procedures to use in an expedited proceeding.

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