

Trademark Trial and Appeal Board (TTAB) update

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UNITED STATES
PATENT AND TRADEMARK OFFICE



Cumulative increases FY17-FY19

- Ex parte appeals up 6.8%
- Extensions to oppose up 7.6%
- Oppositions up 18.3%
- Petitions to cancel up 31.3%

FY 2020 TTAB incoming filings

FY 2020 TTAB incoming filings	FY 2019 EOY results	FY 2020 Full Year	Rate of Change
TYPE OF FILING			
Notices of appeal	3,333	3,487	+4.6%
Extensions of time to oppose	20,502	18,893	-7.8%
Notices of opposition	6,955	6,712	-3.5%
Petitions to cancel	2,426	2,501	+3.1%

FY 2020 TTAB performance: contested motions

FY 2020 TTAB performance: Contested motions	FY 2019 EOY results	FY 2020 Target	FY 2020 full year	Variance
<p>PENDENCY – Contested motions</p> <p>(1) Measured from ready-for decision until mailing; average of orders on contested motions, excluding precedents, issued during reporting period</p>	11.5 weeks	8-12 weeks (target)	12.4 weeks	Above target range
<p>INVENTORY – Contested motions ready for decision</p> <p>The number of cases with contested motions in which briefing was completed, becoming ready for decision, as of the end of the reporting period</p>	242		213	12% decrease

Attorney achievements FY20

- Increased decisions issued by 7%
- Increased motions resolved by 8.6%
- FY20 average pendency—within goal Q3
- Q4 cleared 30+ previously undocketed motions to start FY21 with none over goal

Trends—cases ready for decision

Final decisions on merits appeals and trial cases	FY17	FY18	FY19	FY20
Maturing to Ready for Decision (change from prior year) (appeals/trials) (percent trials)	679 (-1.2%) (517/162) (23.9%)	650 (-4.3 %) (473/177) (27.2%)	744 (+14.5%) (514/230) (29.9%)	681 (-8.5%) (523/158) (23.2%)
Awaiting decision at end of period (appeals/trials) (percent trials)	93 (+12%) 65/28 (30.1%)	130 (+39.8%) (74/56) (43.1%)	206 (+58.5%) (123/83) (40.3%)	126 (-23.3%) (118/40) (25.3%)

FY 2020 TTAB performance: final decisions

FY 2020 TTAB performance: Final decisions	FY 2019 EOY results	FY 2020 target	FY 2020 Full Year	Variance
<p>PENDENCY – Final decisions in ex parte appeals Average time to issuance, measured from ready for decision date until mailing for final decisions, excluding precedents, in appeal cases decided during reporting period</p>	12.7 weeks	10-12 weeks (target)	11.7 weeks	within target range
<p>PENDENCY – Final decisions in trial cases Average time to issuance, measured from ready for decision date until mailing for final decisions, excluding precedents, in trial cases decided during reporting period</p>	15.3 weeks	12-15 weeks (target)	17.7 weeks	above target range

ATJ achievements FY19-20

- Increased production 11.3% & 12%
- Trial cases decided 203 and 200
- FY20 average pendency–appeals above 10-12 week goal Q1 and Q2, below goal Q3 and Q4
- FY20 average pendency–trials above 12-15 week goal Q1 and Q2, within goal Q3 and Q4

FY 2020: TTAB performance: End-to-end processing times

FY 2020 TTAB performance: End-to-end processing times	FY 2019 EOY results	FY 2020 full year	Variance
TOTAL PENDENCY Average total pendency, commencement to completion, excluding precedents			
Appeals (448 in FY19; 529 decided FY20)	40.5 weeks	44.7 weeks	+10.4%
Trial cases (203 in FY19; 200 decided FY20)	160.6 weeks	146.6 weeks	-8.7%
ACR trial cases (27 decided in FY19; 20 decided FY20)	126.2 weeks	101.3 weeks	-19.7%

TTAB IT issues–addresses/email

- Problem: Most returned Board email comes from address(es) not in any TTAB records.
- Fix: **Avoid auto-forwarding to unlisted email addresses. Instead, list the address as a secondary (CC) email using ESTTA change of address form.**
- Problem: ESTTA filing receipts and other notifications often returned as SPAM.
- Fix: ESTTA email comes from estta@uspto.gov (for party primary email) or esttanoreply@uspto.gov (for secondary (CC) email)–set SPAM filters accordingly.



TTAB IT issues—counsel

- Common problems:
 - TTAB institutes cancellation, listing registrant address as correspondence address, but attorney enters appearance only in registration through trademarks.
 - TTAB grants attorney withdrawal, new counsel enters appearance only in application/registration, not at Board.
 - Counsel “appears” by filing answer, or a consent motion, or revocation/power of attorney as a “general filing.” Use ESTTA correspondence update form instead.

TTAB IT issues—counsel

- Attorneys need to update correspondence and bar information with TTAB for application/registration in Board proceeding. Don't rely on "roll over" from entry via TEAS.
- Attorneys representing U.S. domiciled parties need to check ESTTA box noting client is represented, to be taken to screen for updating correspondence and bar information. (Only non-U.S. domiciled parties forced to that screen.)
- Check files commenced prior to July 2, 2020. If bar information is missing, enter it.



TTAB IT—steps we are taking

- Daily monitoring of correspondence updates in Trademarks for applications or registrations involved in Board proceedings.
- Minimizing our requests for bar information by checking Trademark or other TTAB records from July 2, 2020 or later.
- Performing “whereabouts” search when defendant’s email institution notices returned as undeliverable, to prevent premature notices of default/default judgment.

TTAB IT—use the Reading Room

- TTAB Reading Room replaced e-FOIA webpage August 1.
- Search final decisions and precedential decisions/orders.
- Search by date, issue involved, or other criteria, or by text.
- URL: <https://e-foia.uspto.gov/Foia/TTABReadingRoom.jsp>
- Provide feedback via TTABFeedback@uspto.gov (suggestions will be considered for future releases).