From: Patricia A. Walker [mailto:paw@walkerandjocke.com]
Sent: Thursday, June 02, 2016 3:45 PM
To: TTABFRNotices <TTABFRNotices@USPTO.GOV>
Subject: Comments on Proposed Changes to the TTAB Rules of Practice

Ms. Cheryl Butler
Trademark Trial and Appeal Board

Re: Comments on Proposed Changes to the TTAB Rules of Practice

Dear Ms. Butler:

I appreciate the opportunity to comment on the proposed changes to the TTAB Rules of Practice. This comment is directed solely to 37 C.F.R. § 2.120 (c)(2) on page 19314 and specifically to the following sentence:

Whenever a foreign party has or will have, during a time set for discovery, an officer, director, managing agent, or other person who consents to testify on its behalf, present within the United States or any territory which is under the control and jurisdiction of the United States, the party must inform every adverse party of such presence and such officer, director, managing agent, or other person who consents to testify in its behalf may be deposed by oral examination upon notice by the party seeking discovery.

First, the above requirement is impractical. It is unlikely that even with due diligence the U.S. attorney for a foreign party will be given the travel information of the officers, directors and managing agents. It is difficult to keep track of other people's travel schedules let alone the travel schedules of clients in another country. Unexpected trips come up at the last moment and trips get cancelled at the last minute.

Second, the number of people whose whereabouts the U.S. attorney is to track may be large. The company may have numerous officers, directors and managing agents.

Third, the foreign officers, directors and managing agents may not have any knowledge relevant to the dispute in the TTAB.

Fourth, the foreign officers, directors and managing agents or the U.S. attorney may not recognize all the U.S. territories. The foreign party or its U.S. attorney may not know that Puerto Rico, Guam, the Northern Mariana Islands, the U.S. Virgin Islands and American Samoa are U.S. territories, let alone that there are also ten small islands, atolls and reefs that are U.S. territories. It would be easier if the rule only applied to the States of the United States and the District of Columbia.

Fifth, the rule is unclear concerning the obligation of the foreign resident to stay in the United States. Is the foreign resident obligated to stay longer than the foreign resident planned so that the opposing party may take the deposition?

A rule that a party must notify the opposing parties when a potential witness, who is identified in the initial disclosures, is or will be in the States of the United States or the District of Columbia during the discovery period may work better. A further rule that the foreign resident is not obligated to extend the U.S. stay for the purposes of a deposition unless a TTAB order requires otherwise may be warranted. Such rules would overcome most of the above objections.

Thank you for your consideration.

Respectfully,

Patricia A. Walker
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