Should Section 8 Affidavits of Continued Use be filed at Year Three?

Wednesday, August 22, 2012

The U.S. Patent and Trademark Office on August 16 filed a request for comments regarding amending the first filing deadline for affidavits or declarations of use or excusable nonuse. 77 Fed. Reg. 49,425, and also published a notice of inquiry indicating that it was considering a fee adjustment for trademark applications. 77 Fed. Reg. 49,426. The request for comments seeks to change the filing deadline for a Section 8 Affidavit of Continuing Use from between the fifth and sixth years after first registration of a trademark to between the third and fourth years after first registration, maintaining the six month grace period. The USPTO contends that most businesses fail within the first two years, that eliminating deadwood from the Register earlier will reduce unnecessary cancellation proceedings, and that an earlier filing deadline would keep the active Register more accurate. The notice of inquiry on fees seeks input on whether to go forward with a rulemaking changing the fee structure for paper vs. electronic trademark application filing fees in an effort to incentivize electronic filings.

Comments in both matters are due to be filed by October 15.
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