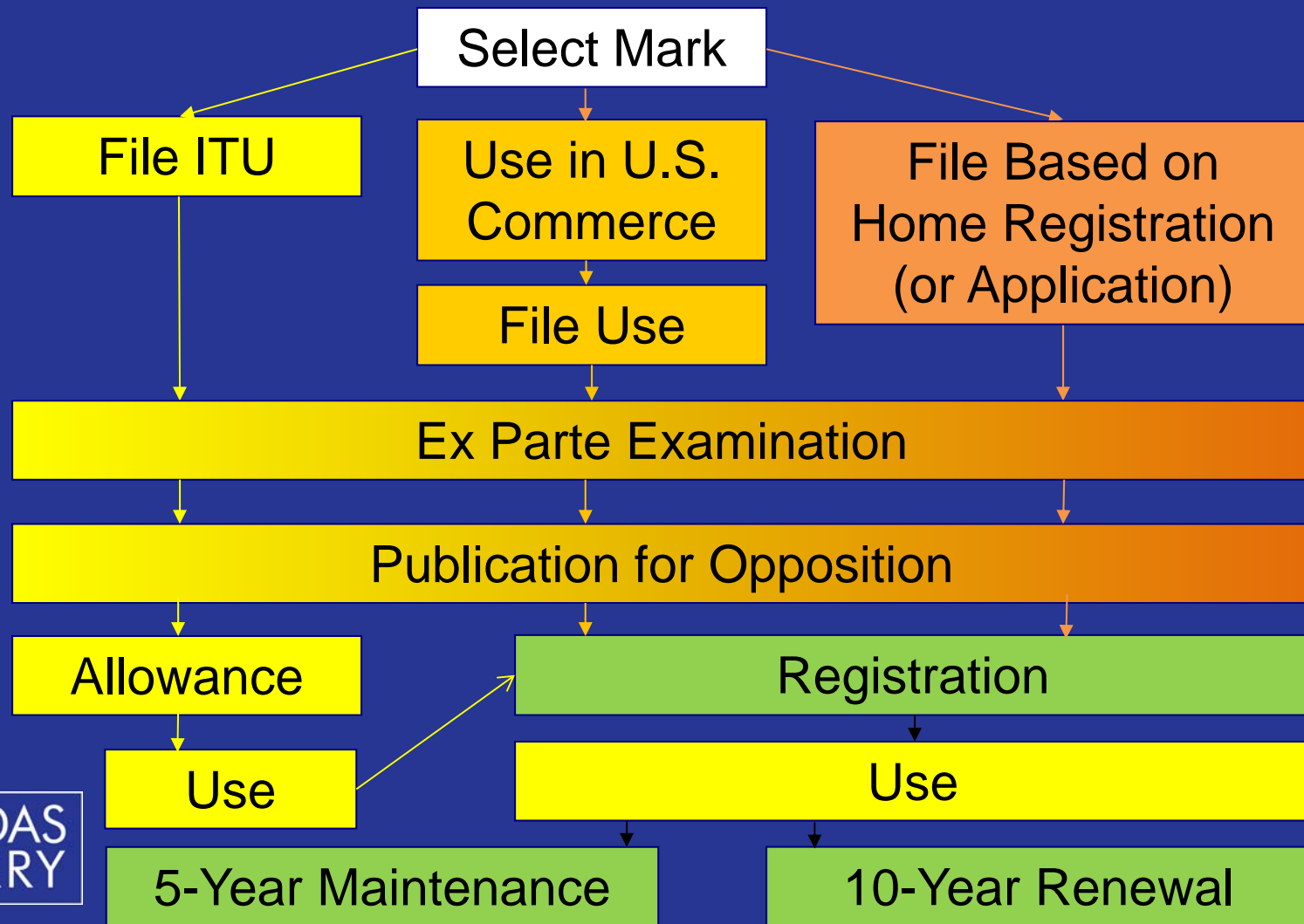




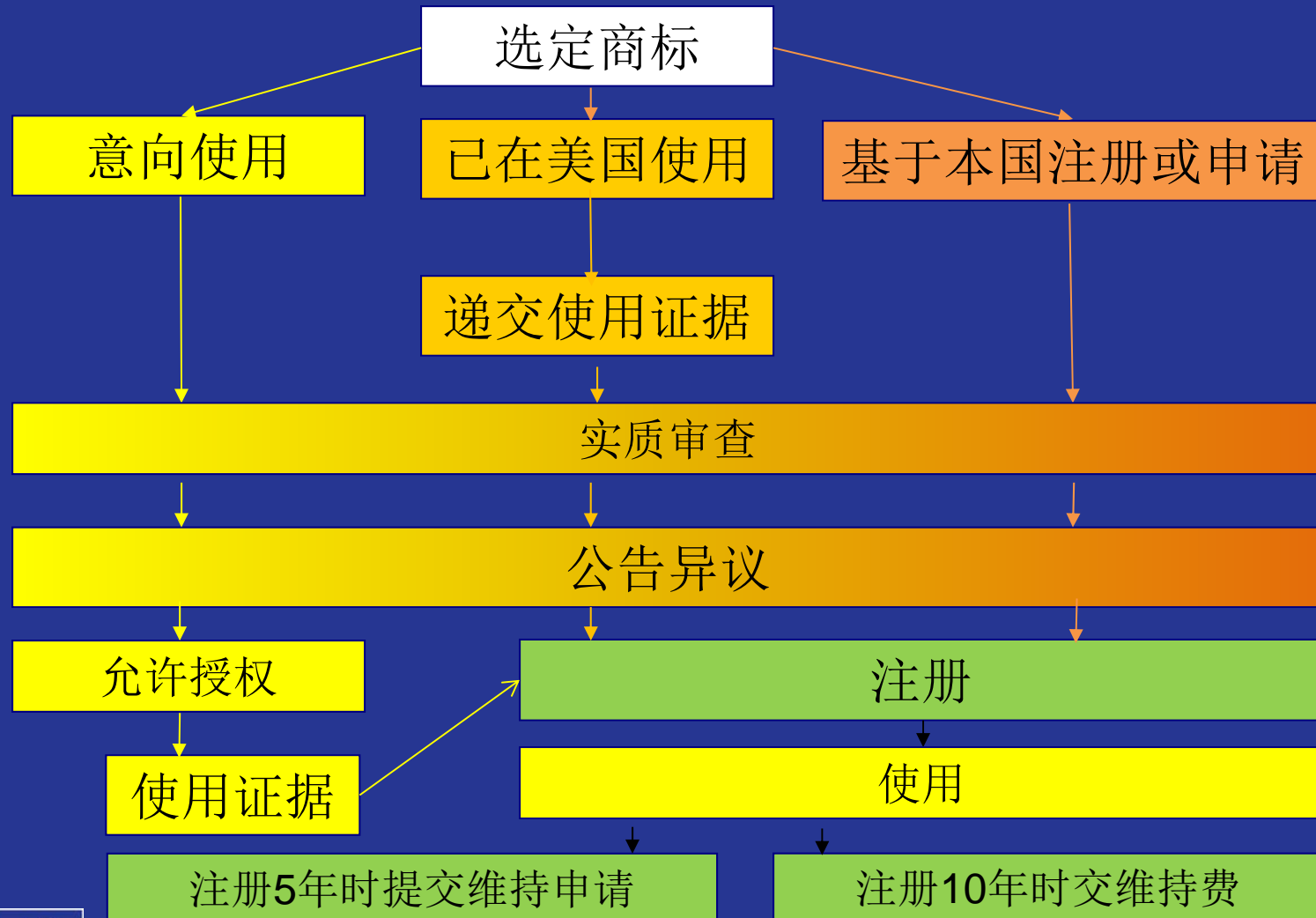
The U.S. Trademark Use Requirement and Associated
Risks and Strategies for Chinese Applicants
美国商标使用要求及相关的风险和应对策略

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Partner, Ladas & Parry LLP











Overview of Process of Obtaining and Maintaining a Registered U.S. Trademark



美国商标注册及维持流程



Registering Trademarks with the USPTO

	Filing Basis	Registration Basis
Bona Fide Intent to Use		
Use in U.S. Commerce		
Foreign Application (Paris Conv. Priority)		
Foreign Registration		
International Registration		

- Benefits
- Process
 - 3-4 months for initial examination
 - Typically 1-2 Years for Allowance/Registration
 - Up to 3 Years to Prove Use in Allowed Application (in 6-month intervals)
- Term is 10 Years, Maintenance in Year 5-6, Renewable Indefinitely

在USPTO申请商标

	申请基础	注册基础
真实的意向使用		
在美国有商业使用		
要求优先权的巴黎公约申请		
本国已有注册		
国际注册		

- 好处
- 流程
 - 3-4 个月初审
 - 一般1-2年允许注册或获得注册
 - 允许注册后有3年时间证明实际使用 (每次可延6个月, 可延5次)
- 保护期为10年, 5-6年时需维持商标。可无限期地维持。



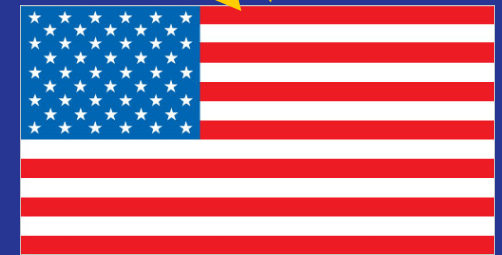
International
Registration



Chinese Registration

Use in Commerce
Intent to Use

U.S. Designation





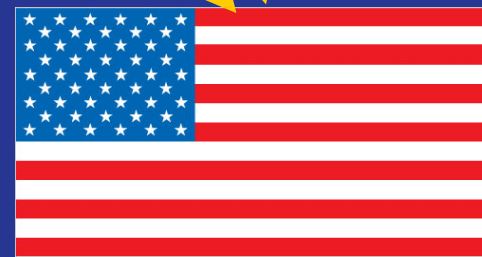
国际注册



中国注册

商业实际使用
意向使用

指定美国



Key Differences

United States

- Pre-registration Use requirement
- Refusal based on foreign equivalents
- Specific Identification of Goods/Services, but not limited to pre-approved descriptions
- Examining Attorney's analysis focused on *relationship between goods/services, regardless of classification*
- Division almost always possible
- Opposition extensions
- Oppositions have numerous short term deadlines, including discovery
- Presumption of Abandonment

China

- Use not required for registration
- Often no refusal of mark in one language when prior rights for same mark in another
- Conformity to “standard” Identification required
- Classification (and sub-classification) emphasized
- Division only possible in limited circumstances of partial refusal
- No opposition extensions
- Oppositions usually require initial submission and one subsequent more detailed submission
- No presumptions; Burden of Proof on Registrant

中美主要差别

美国

- 注册前有使用要求
- 基于外语等同词会驳回
- 商标或服务的描述以具体使用为主，不限于已批准的标准描述
- 审查员注重对商品或服务的关联性作审查，不管类别
- 几乎任何时候都可分案
- 异议可延期
- 异议程序中有很多短期的绝限，包括Discovery程序
- 不使用推定为自动放弃

中国

- 不要求有实际使用
- 不经常因在先权利为外语等同词而驳回
- 要求与“标准”保持一致
- 强调类别及子类别
- 只有部分驳回时才可以分案
- 异议不可延期
- 异议一般有首次递交及另一次后续的详细理由递交
- 没有推定，需注册人提供使用证据

Identification of Goods and Services

商品和服务的指定

- Goods or Services covered by a registration *must* be identified with specificity in the application
- Searchable database of pre-approved identifications accessible by Trademark Office
- 指定的商品或服务必须明确具体
- 商标局也提供可查询的，已经批准的商品或服务描述

United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Acceptable Identification of Goods & Services

Trademark ID Manual

Refine Search: "002"[C]

Submit

Documents: 1 - 334 of 334

Hit No.	Class	Description	Status	Effective Date	Type	Note	TMS
1	002	Abrasion-resistant coating compositions for polymeric and other substrates	A	19 Jul 07	G	N	T
2	002	Acid dyes	A	20 Jul 04	G	N	T
3	002	Acrylic paints	A	23 May 13	G	N	
4	002	Agglutinants for paints and for putty	A	20 Jul 04	G	N	T
5	002	Agglutinates for paints	A	02 Apr 91	G	N	T
6	002	Alcohol soluble dyes	A	20 Jul 04	G	N	T
7	002	Aluminum powders for painting	A	07 Jan 10	G	N	T
8	002	Aluminized coatings for use on roofs, pavement, driveways, walls, and foundations	A	16 Dec 10	G	N	
9	002	Aniline dyes	A	01 Oct 02	G	N	T
10	002	Annatto [annatto, amotta or annotta]	A	20 Jul 04	G	N	T
11	002	Annatto [dye]	A	01 Oct 02	G	N	
12	002	Anticorrosive paints	A	20 Jul 04	G	N	T
13	002	Anti-chipping coatings, namely, stone guard coatings for vehicle bodies	A	26 Apr 07	G	N	

<http://tess2.uspto.gov/netathtml/tidm.html>

How scope of protection can vary 保护范围的不同

Trademark Acceptable Identification of Goods & Services - Windows Internet Explorer

http://tess2.uspto.gov/netacgi/nph-brs?sect2=THESOFF§3=PLURON&pg1=ALL&s1=footwear+and+%>

Trademark ID Manual

Refine Search: FOOTWEAR AND ("025"[IC])

Submit Query

Documents: 1 - 30 of 30

Hit No.	Class	Description	Status	Effective Date	Type	Note	Trilateral
1	025	Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms	A	19 Jun 08	G	N	
2	025	Athletic footwear	A	02 Apr 91	G	N	
3	025	Beach footwear	A	20 Jul 04	G	N	T
4	025	Climbing footwear	A	02 Jul 09	G	N	T
5	025	Flip flops [footwear]	A	01 Aug 04	G	N	
6	025	Footwear	A	02 Apr 91	G	N	T
7	025	Footwear [excludi...	A	20 Jul 04	G	N	T
8	025	Footwear for men	A	20 Jul 04	G	N	T
9	025	Footwear for men and women	A	20 Jul 04	G	N	T
10	025	Footwear for track and field athletics	A	20 Jul 04	G	N	T
11	025	Footwear for women	A	20 Jul 04	G	N	T
12	025	Footwear made of wood	A	20 Jul 04	G	N	T
13	025	Footwear not for sports	A	20 Jul 04	G	N	T
14	025	Footwear, namely, pumps	A	04 Sep 01	G	N	
15	025	Footwear, namely, rubbers	A	01 Jun 01	G	N	
16	025	Footwear, namely, work boots	A	09 Aug 07	G	N	
17	025	Insoles for footwear	A	02 Jul 09	G	N	T
18	025	Japanese footwear of rice straw (waraji)	A	20 Jul 04	G	N	T
19	025	Japanese split-toed work footwear (jikatabi)	A	20 Jul 04	G	N	T
20	025	Non-slip soles for footwear	A	13 Jan 11	G	N	

Broad较宽

Specific具体

Internet | Protected Mode: Off 100%

Comparison of Specifications

商品描述比较

Typically Overinclusive Specification for Non-U.S. Applicant

非美国申请人的典型的过度保护的描述

- *Acoustic conduits; Acoustic couplers; Acoustic sound alarms; Adding machines; Amplifiers; Answering machines; Antennas; Antennas; Audio-video receivers; Audiovisual receivers; Automatic teller machines (ATM); Batteries; Batteries and battery chargers; Blueprinting machines; Bullet-proof vests and clothing; Cables, electric; Calculating scales; Calculators; Cameras; Cases for spectacles, for pince-nez and for contact lenses; Cash registers; Cell phone straps; Central processing units (CPU); Chains for spectacles and for sunglasses; Circuit boards; Circuit breaker panel boards; Circuit breakers and circuit closers; Clothing for protection against accidents; Communication hubs; Communication software for providing access to the Internet; Communications computers; Compasses; Computer backup and storage systems with multiple removable RAID cartridges; Computer cables; Computer game software; Computer hardware and computer peripheral devices; Computer hardware and computer peripherals; Computer hardware for upload, storage, retrieval, download, transmission and delivery of digital content; Computer network switches; Computer networking hardware; Computer peripheral apparatus; Computer peripheral devices; Computer peripheral equipment; Computer peripherals; Computer peripherals and parts thereof; Computer software and firmware for operating system programs; Computer software to enhance the audio-visual capabilities of multimedia applications, namely, for the integration of text, audio, graphics, still images and moving pictures; Computer storage devices, namely, high-speed storage subsystems for storage and backup of electronic data either locally or via a telecommunications network; Computers and computer peripherals; Crash test dummies; Data processing apparatus; Decompression chambers; Demagnetizers for magnetic tapes; Dictating machines; Digital colour copiers; Digital plotters; Disk drives; Diving equipment, namely, helmets; Diving equipment, namely, protective diving shoes; Downloadable music files; Downloadable ring tones for mobile phones; Electric cables and wires; Electric couplings; Electric fences; Electric light dimmers; Electric sensors; Electric warning light systems; Electrical switches; Electronic book reader; Electronic data processing apparatus; Electronic locks; Electronic parking lot ticket dispensers; Electronic plotters; Electronic switchers for audio and video signals; Electronic testing equipment, namely, sound level meters; Electronic testing equipment, namely, telecommunication line integrity testing apparatus; Exposed cinematographic film; Eyeglasses; Fall protection equipment for fall restraint and fall arrest, namely, bars, anchors, harnesses, lines, lanyards, carabiners and anchorage connectors; Fax machines; Fire sprinklers; Fire-extinguishers; Frames for spectacles and sunglasses; Gloves for protection against accidents; GPS navigation device; Graduated rulers; Headphones; Juke boxes; Junction boxes; Laboratory apparatus and chromatography systems for use in protein purification; Laboratory apparatus and computer systems for use in protein purification; Laboratory apparatus and instruments for the exchange of substances and heat; Laboratory apparatus and instruments for use in screening for trichinella; Laboratory apparatus and instruments, namely, bottle top filters used for the purification of tissue culture media; Laboratory apparatus and instruments, namely, homogenizers; Laboratory apparatus and instruments, namely, pre-packed columns for use in separation and purification; Laboratory apparatus, namely, a syringeless filter; Laboratory apparatus, namely, cellular mixed ester membranes for use in the analysis of asbestos; Laboratory apparatus, namely, centrifuges; Laboratory apparatus, namely, handheld devices containing a disc for the processing of buccal cells; Laser rangefinders; Level gauges; Luminous beacons for safety or warning purposes; Luminous safety beacons; Mechanisms for coin operated apparatus; Megaphones; Memories for data processing equipment; Microphones; Mirror and star diagonals; Mobile phone straps; Mobile phones; Multifunctional devices which incorporate copier and facsimile functions in the standalone mode; Neon signs; Odometers; Optical signaling cables; Pagers; Phonograph record players; Phonographs; Photocopying apparatus; Photovoltaic cells; Photovoltaic systems that convert sunlight into electric and thermal energy; Pocket callipers for measuring; Pressure indicators; Printers; Projectors particularly projectors for the entertainment industry; Protection masks; Radio frequency identification tag readers; Radio receivers and transmitters; Radios and telephones; Remote circuit breaker control switch operators; Remote controls for televisions; Respirators other than for artificial respiration; Sirens; Slide callipers; Smoke detectors; Spectacle cases; Spectacle holders; Spectacle lens blanks; Spectacle lenses; Spectacles, frames and cases; Speedometers; Telegraphs; Telemeters; Television sets; Testing equipment for measuring the temperature, pressure, position or form of workpieces in a machine tool; Thermometers not for medical purposes; Thermostats; Trip unit for circuit breakers; Video disks and video tapes with recorded animated cartoons; Voltage regulators; Voltage regulators for vehicles; X-ray

photographs, other than for medical purposes* in Class 9

Typically Narrow Specification by U.S. Applicant

典型的美国申请人所作的描述

- “Electronic display boards for sporting events and controllers for such display boards” in Class 9

Fraud Emerges: Medinol, Inc. v. Neuro Vasx Inc., 2003

- material misrepresentation of fact could void the entire registration (or entire class of goods or services at issue) if the applicant or registrant knew or should have known the statement was false or misleading.
- Neuro Vasx filed an application based on its intent to use the trademark NEUROVASX for "stents and catheters."
- used the mark only on catheters
- failed to delete stents when filing the statement of use required for registration.
- cancelled in its entirety
- Following Medinol, for a period of 6 years, numerous U.S. registrations were cancelled on grounds of fraud
 - Reasoning for harsh consequences was in part to reduce "dead wood" on the register

Fraud作为撤销理由产生

Medinol, Inc. v. Neuro Vasx Inc., 2003

- 如果申请人明知或应知声明材料虚假或误导，可导致整个申请无效（或申请的整个类别）
- Neuro Vasx基于意向使用递交 NEUROVASX申请，注册在“支架和导管”商品上。
- 只将商标用在“导管”上。
- 在递交使用声明时未将“支架”删掉。
- 导致整个申请被撤销。
- Medinol之后的6年里，大量美国商标注册因虚假声明材料被撤销。
 - 造成如此严厉后果的原因部分是因为要减少冗余的注册商标。

Fraud Dies: In re Bose Corp., 2009

- Bose opposed HEXAWAVE application based on its registration for WAVE; Hexawave counterclaimed for cancellation
- Alleging Bose committed fraud in its renewal application when it claimed use on all goods in the registration.
- Bose had stopped manufacturing and selling audio tape recorders and players, which were listed among the goods in the registration
- Bose's attorney knew it had stopped manufacturing and selling those goods at time he signed renewal application
- Attorney's testified to his mistaken belief that Bose's continuing to repair previously sold audio tape recorders and players, some of which were still under warranty constituted use in commerce because "in the process of repairs, the product was being transported back to customers."

Fraud作为撤销理由不再成立

In re Bose Corp., 2009

- Bose基于其注册商标WAVE对HEXAWAVE提出异议；Hexawave反过来撤销Bose的商标。
- 声称Bose在续展其商标时提供了虚假材料声明其将商标用在已注册的所有商品上。
- Bose已停止生产声频磁带录音机和播放机，而这两个产品列在注册商品中。
- Bose的律师在签署续展申请时明知该公司已停止生产这些产品。
- 律师对其错误认识作证，认为Bose对之前已售的声频磁带录音机和播放机仍提供修理服务，部分产品甚至仍在保质期，因此构成商业使用，因为“在修理后，产品会再次寄回给客户”。

Bose (Cont'd)

- Court of Appeals for the Federal Circuit rejected the TTAB's definition of fraud
- fraud requires proof of willful deceit. "[M]ere negligence" or even "gross negligence does not of itself justify an inference of intent to deceive."
- declined to rule on whether "reckless disregard of ... truth or falsity" might suffice to show fraud
- intent to deceive can be inferred from indirect and circumstantial evidence, but that "such evidence must still be clear and convincing."

Bose案 (续)

- 联邦巡回法庭上诉法庭驳回了TTAB对虚假声明的定义。
- 虚假声明需证明有故意欺骗事实。“轻微疏忽”或甚至“重大疏忽本身不能推断为故意欺骗”。
- 拒绝对是否为“粗心地忽视...真实或虚假”作出裁定。
- 故意欺骗可从非直接及间接证据推断，但“此类证据必须清楚且有说服力”。

Fraud returns September 30, 2014: *Nationstar Mortgage LLC v. Ahmad*

- “the law does not require ‘smoking gun’ evidence of deceptive intent but instead... deceptive intent may be inferred from the surrounding facts and circumstances”
- use-based application filed on April 20, 2006 for NATIONSTAR for “real estate brokerage...”
 - Applicant amended his application from 1(a) use basis to 1(b) intent to use basis; however, doing so does not protect the application from the fraud claim.
- Ahmad was a licensed real estate agent and did not become licensed as a real estate broker until October 2006.
- Alleged that he was conducting business as NationStar Mortgage, Inc. as early as January 2005, but did not incorporate until May 2006.

2014年9月30日Fraud再次成为撤销理由 *Nationstar Mortgage LLC v. Ahmad*

- “法律不要求欺骗有确凿的证据...欺骗意图可以从外围事实及情形推断得出。”
- NATIONSTAR商标被Ahmad于2006年4月20日基于使用注册在“房地产经纪...”
 - 申请人将申请基础从“使用”改为“意向使用”。但是，这样做并不能保护该申请，使其免于欺诈嫌疑。
- Ahmad是一位执业房地产代理人但直到2006年10月才成为一名执业房地产经济人。
- Ahmad声称其在2005年1月即开始以NationStar Mortgage, Inc的名义做业务，但直到2006年5月才将公司注册下来。

Nationstar Mortgage (cont'd)

- Although he maintained that he used the name NATIONSTAR in real estate transactions, he testified that he had no documentary evidence showing that NATIONSTAR was used in any transactions.
- subjective intent to deceive based on his unwillingness to cooperate, his “evasiveness, and his failure to respond”, his “dodging” of simple yes or no questions, and his inability and unwillingness to identify corroborating evidence.
- testimony lacked “any and all credibility”.
- Applicant’s choice to file the application himself did not grant him a “free pass to disregard the straightforward requirements of a use-based application...”
- culpable intent can be found where the accused’s testimony is so lacking in credibility that it supports the inference that the party’s statements to the USPTO are also not credible

Nationstar Mortgage (续)

- 尽管Ahmad声称其在房产交易中使用 NATIONSTAR，但他也证实自己没有任何文档佐证其使用。
- 主观上的欺诈意愿从这些方面可以推断：不愿配合、推脱、不答复，对于简单的“是或否”问题都不愿正面答复，以及不能及不愿确认补强证据等。
- 证词缺乏“任何可信度”。
- 申请人选择自行递交申请这一点不能作为其忽视的理由，因为以使用为基础的商标申请需要递交使用声明是很简单的要求。
- 从缺乏可信度的证词可推断申请人给USPTO提供的声明也不可信，这也是判断申请人是否有欺诈意愿的一种方式。

Lack of Bona Fide Intent to Use

缺乏真实的使用意图

- While opposition and cancellation based on fraud has become infrequent, there are a growing number of successful challenges based on allegations that the applicant/registrant lacked a bona fide intent to use the mark at the time of filing
- Opposer has burden of proving, by a preponderance of the evidence, that applicant lacked that required bona fide intent
- Burden of Proof can be satisfied by showing that at the time of filing there was little or no objective documentation to support the applicant's subjective intent to use the mark in commerce.
- 以欺诈为理由提异议和撤销变少了，但有越来越多以缺乏真实使用意图为理由挑战权利人的成功案例。
- 异议人负有举证义务，通过强有力的证据证明申请人缺乏真实的使用意图。
- 如果能展示申请人在申请时没有或几乎没有客观的文档来支撑申请人有主观意愿将商标实际商用的打算，举证即可成立。

Recent Lack of B.F. Intent Cases

- Pacific Poultry v. George Stirling (2013) – no b.f. intent to use SWEET G'S HULI MARINADE, SAUCE, GLAZE for “retail grocery stores”, when record reflected intent to use for a food product
- Diageo North America, Inc. v. Captain Russell Corp. (2013) – no b.f. intent to use CAPTAIN RUSSELL in absence of documentation
- Swatch v. M.Z. Berger (2013, precedential, on appeal to CAFC, docketed for December 2014) – no b.f. intent to use IWATCH without documentation showing applicant was taking steps to develop it
- PRL USA Holdings v. Rich C. Young (2013) – no b.f. intent to use IRISH POLO CLUB without evidence of a “current business”
- Lincoln National v. Kent Anderson (2014) – no b.f. intent to use FUTURE for financial services because highly unlikely he could actually commence use: unemployed, only a community college education, no experience, and no specific timeline regarding efforts to license

近期缺乏真实使用意图案例

- Pacific Poultry v. George Stirling (2013) – 无真实使用 SWEET G'S HULLI MARINADE, SAUCE, GLAZE 在r “retail grocery stores”, 因为有记录显示该商标仅意向使用在食品上。
- Diageo North America, Inc. v. Captain Russell Corp. (2013) –CAPTAIN RUSSELL没有任何文档支撑其真实使用意图。
- Swatch v. M.Z. Berger (2013年成为判例, 仍在CAFC上诉中, 预计2014年12月有结论) – 无真实使用意愿, 因为没有文档证明申请人正采取措施开发产品
- PRL USA Holdings v. Rich C. Young (2013) –无真实使用IRISH POLO CLUB意愿, 因为没有证据显示申请人有“当前业务”。
- Lincoln National v. Kent Anderson (2014) – 无真实意愿将 FUTURE用在金融服务上, 因为从申请人本人的情况可判断其几乎不可能使用此商标: 失业、社会大学教育背景、没经验、也无特别的计划努力获得资质。

Pilot Program: Specimens of use

试点项目：使用证据样本

- June 21, 2012 - June 21, 2014
 - At time of Affidavit of Use of Registration, USPTO could request evidence of use for 2 additional specified items in the identification
 - Examining Attorneys could also request additional evidence in pending applications
 - Consequences of failure to show use: Deletion and Requirement to provide further evidence of use
 - 审查员也可要求申请人在申请过程中提供额外的证据。
 - 在提交使用声明时，USPTO可要求申请人多提供2个指定商品的使用证据
 - 不能提供使用证据的结果：删掉相关产品并要求提供进一步的证据。

Status Report on Pilot Program: July 2014

- 172 of the registrations, or 34%, involved deletions of the goods and/or services queried under the pilot.
- In another 78 registrations, or 16%, the trademark owner failed to respond to the requirements of the pilot and any other issues raised during examination of the underlying maintenance filing, resulting in cancellation of the registration.
- Accordingly, of the 500 registrations selected for the pilot, to date a total of 250 registrations, or 50%, were unable to meet the requirement to verify the previously claimed use.

Basis for Registration	Percentage of Registrations Selected for the Pilot Deleting Goods/Services Queried Under the Pilot	Percentage of Registrations Selected for the Pilot Receiving Notices of Cancellation
Use in U.S. Commerce	27%	17%
Foreign Registration	56%	7%
Madrid	61%	18%
Combination of Use and Foreign Registration	63%	13%



Results of Pilot Program: October 15, 2014

- 173 of the registrations, or 35%, involved deletions of the goods and/or services queried under the pilot.
- In another 80 registrations, or 16%, the trademark owner failed to respond to the requirements of the pilot and any other issues raised during examination of the underlying maintenance filing, resulting in cancellation of the registration.
- Accordingly, of the 500 registrations selected for the pilot, to date a total of 253 registrations, or 51%, were unable to meet the requirement to verify the previously claimed use.

Basis for Registration	Percentage of Registrations Selected for the Pilot Deleting Goods/Services Queried Under the Pilot	Percentage of Registrations Selected for the Pilot Receiving Notices of Cancellation
Use in U.S. Commerce	27%	18%
Foreign Registration	58%	7%
Madrid	59%	14%
Combination of Use and Foreign Registration	63%	13%

试点项目报告

15 October 2014

- 项目中的**173**件注册商标，即**35%**的案件涉及删掉商品和/或服务。
- **80**件注册商标，即**16%**案件的权利人未能答复项目中的要求或其他维持申请中审查员提出的问题，最终导致撤销注册。
- 所以，**500**件项目选定的案件至今只有**253**件注册仍有效，也就是说，**51%**案件未能按要求证明其商标有实际使用。

使用基础	参与试点项目的案件	最终被撤销的案件
使用	27%	18%
本国注册	58%	7%
国际注册	59%	14%
使用与本国注册结合	63%	13%

USPTO's Proposals for Future: Seeking Public Comment

1. Streamlined non-use expungement procedure
 - Third party requests to USPTO to require that the owner prove use of its mark for the goods and/or services. If the owner complies, that ends the procedure. Otherwise, any goods and/or services for which the owner has not provided the requisite proof would be deleted from the registration.
2. Require specimens for all goods and/or services listed in the registration when the first Section 8 or 71 declaration is filed;
 - and possibly also mandate that the specimen must be a photo showing use of the mark in conjunction with the claimed goods and/or an advertisement for the services.
3. Increase the solemnity of the declaration.
 - For example, (1) require the trademark owner to check a box stating that he/she understands the seriousness of the oath, or (2) require statements detailing steps taken to verify use
4. Conduct random audits of Section 8 and 71 declarations
 - Require that a Section 7 Request be filed (along with the required fee) to delete any goods and/or services randomly queried by the USPTO for which the trademark owner is unable to show proof of use

USPTO对未来操作办法的提议：寻求公开意见

1. 未使用商标删除程序流程化
 - 第三方可请求USPTO要求权利人证明其商标的使用情况。如果权利人成功履行，程序终止。否则，权利人未提供证明的产品或服务就会从注册中删除。
2. 要求申请人在递交8或71条使用声明时提供所有注册商品和/或服务的使用证据；
 - 而且可能强制要求证据样本必须为照片，表明商标使用在注册商品上和/或服务的广告上。
3. 提升使用声明的严肃性
 - 比如：(1) 要求商标所有人通过在清单中打勾的方式声明其理解声明的严肃性，或(2) 要求在声明中详细说明采取何措施确认使用。
4. 对8和71条声明进行随机审计
 - 如权利人不能证明使用，会导致未提供证据的商品和/或服务被删除。

Roundtable Discussion

12 December 2014

- The results of the pilot program and 4 proposals were discussed by representatives of the USPTO and representatives of stakeholders
- Essentially ruled out all of the proposals with the sole exception of the streamlined non-use expungement procedure
- Several hurdles to adoptions of the proposed procedure were presented, but it was essentially determined that the USPTO would consider whether a version of it could be adopted without new legislation or if it would need to work with legislators.
- To date, no legislation has been proposed, and the USPTO has not issued any related regulations/rules.

Requirement for Proof of Use

What it is

- Evidence that the applied-for mark is used as a trademark
 - For goods in Classes 1-34, on the product, packaging, or a point-of-sale display
 - For services in Classes 35-45, in advertising or marketing materials or in the course of providing the services

What it is **not**

- Evidence that the applied-for mark is used in the United States
- Evidence that the applied-for mark was used on a particular date or for a particular period of time
- The USPTO relies on the applicant's sworn oath in relation to these aspects

使用证据要求

什么是使用证据

- 证明所申请的商标是作为商标来使用的证据
 - 1-34类商品，要求是打在产品上、包装上，或销售网点的展示
 - 35-45类服务，要求提供广告或营销材料，或提供服务时对商标的使用

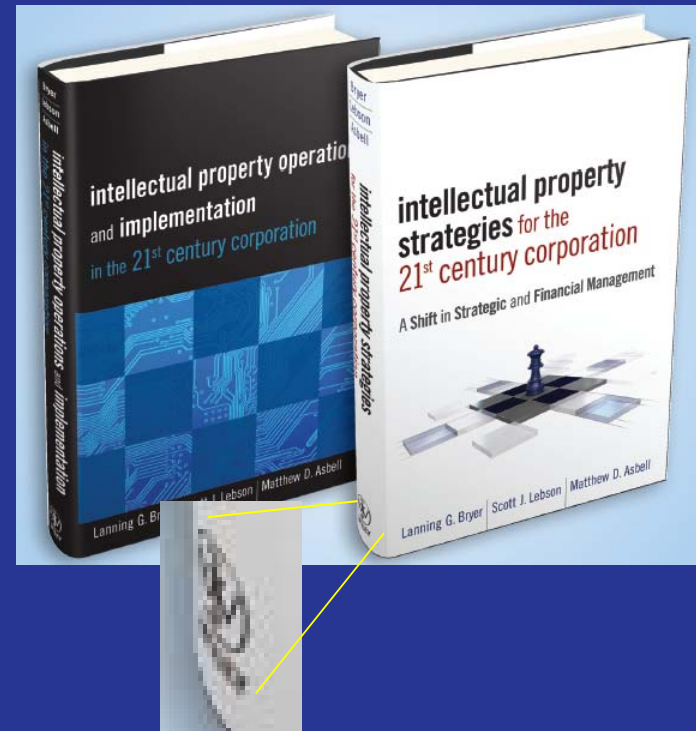
使用证据不是

- 商标在美国使用的证据
- 商标在某个日期或某段时间使用的证据
- 以上两点USPTO仅依赖申请人的宣誓。

Acceptable Specimens of Use: Goods

可接受的使用样本：商品

- Mark affixed to goods
- Mark on packaging
- 产品上附有商标
- 包装上有商标



Acceptable Specimens of Use: Goods

可接受的使用样本：商品

- Point of sale display
- Online or catalogue that shows method of ordering the goods
 - “1-800 ###-####”
 - “Add to Cart”
- 销售点展示
- 网络或产品目录显示订购方法



Unacceptable Specimens of Use: Goods

不合格的使用样本：商品

- Invoices
- Advertisements
- Just the mark or logo by itself
- Printer's proofs
- 发票
- 广告
- 仅商标或logo
- 印刷者的证明



INVOICE

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Invoice No. 0000000

Sample Client
1 Sample Street
Sample, NY 11111

Date
Tax ID No. 0000000

RE: Sample Trademark Applicant
Application No. 86/000000 for the Trademark
TRADEMARK in Class 0 in the United States
L&P Ref: 1T156000000:TMU

<u>DATE</u>	<u>POSITION</u>	<u>SERVICE</u>	<u>HOURS</u>	<u>AMOUNT</u>
Date	MA	Sample of services provided	0.4 @ \$0	No Charge

TOTAL : \$0.00

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Acceptable Specimens of Use: Services

合格的使用样本：服务

- Mark as actually used in sale or advertising of the services recited in the application
- Specimen must reference service
- USPTO published a new Examination Guide for Service Mark Specimens in September 2014 – These generally address services related to software and technology
- 在销售或广告时实际使用商标的样式
- 样本必须指向注册的服务
- 2014年9月USPTO公布了新的服务商标使用样本审查指南—这些主要是针对软件和技术相关的服务



Thank You!

谢谢

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