



Copyright Office

37 CFR Parts 201 and 221

[Docket No. 2021-2]

Small Claims Expedited Registration Procedures: Clarification

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulations to clarify the rules governing the expedited registration option under the Copyright Alternative in Small-Claims Enforcement Act of 2020. The amendment clarifies that when a Copyright Claims Board proceeding cannot continue because a registration is still pending, the Board may hold proceedings in abeyance at any point before a final determination is issued. The rule also describes the process for the Board to receive registration certificates when they are issued while a proceeding is pending, allows parties to request expedited registration before a proceeding becomes active, and corrects non-substantive typographical errors.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at meft@copyright.gov, or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

The Copyright Alternative in Small-Claims Enforcement (“CASE”) Act of 2020¹ directs the Copyright Office to establish the Copyright Claims Board (“CCB” or “Board”), a voluntary tribunal within the Office comprised of three Copyright Claims

¹ Pub. L. 116-260, sec. 212, 134 Stat. 1182, 2176 (2020).

Officers who have the authority to render determinations on certain copyright claims for economic recoveries within the statutory limit. The Office issued a notification of inquiry (“NOI”) and subsequent notices of proposed rulemaking (“NPRM”) to describe the CASE Act’s legislative background and regulatory scope and to ask for public input on various topics.² One NPRM addressed “regulations allowing the Copyright Office to make a decision, on an expedited basis, to issue or deny copyright registration for an unregistered work that is at issue before the Board.”³

In August 2021, the Librarian of Congress, after consulting with the Register of Copyrights, issued a final rule promulgating regulations to govern the expedited registration process.⁴ The final rule contained the following language: “[i]f the proceeding cannot continue because of a pending registration, the Copyright Claims Board shall hold proceedings in abeyance until the claimant or counterclaimant provides the Copyright Claims Board with the certificate of registration or the registration number on the certificate of registration or certificate preview.”⁵ The final rule also only allowed a party to initiate the expedited registration process once “the proceeding has become active.”⁶

II. Final Rule

The Board asked the Office to clarify two points regarding the regulations. First, the Board asked to clarify that neither the regulations nor the CASE Act require that a CCB proceeding must be held in abeyance immediately at the point the Board discovers that the claim concerns a work with a pending registration. The Office had promulgated a rule reflecting that the CASE Act allows for a proceeding to be held in abeyance where

² 86 FR 16156, 16161 (Mar. 26, 2021).

³ 86 FR 21990, 21991 (quoting 17 U.S.C. 1505(d)).

⁴ 86 FR 46119 (Aug. 18, 2021).

⁵ *Id.* at 46123 (codified at 37 CFR 221.1(b)).

⁶ *Id.* (codified at 37 CFR 221.1(b)).

“the proceeding may not proceed further because a registration certificate for the work is pending.”⁷ The CASE Act also states that “if the proceeding is held in abeyance for more than 1 year, the Copyright Claims Board may, upon providing written notice to the parties to the proceeding, and 30 days to the parties to respond to the notice, dismiss the proceeding without prejudice” and that the Board cannot issue a final determination for a claim involving a work that has been denied registration.⁸ The CASE Act does not offer additional guidance on when a proceeding may not proceed further due to a pending registration certificate.

Where a registration application is pending for a work at issue before the Board, the Board has the authority to hold the proceeding in abeyance at any point where it believes the pendency means that the proceeding should not proceed further. If a work’s eligibility for copyright registration is not at issue, the Board may not have any reason to delay the proceeding while the Copyright Office considers the application. In other circumstances, the Board may decide to halt the proceedings until after the Copyright Office makes a registration decision. The amended regulations reflect that it is within the Board’s discretion, up to the issuance of its final determination, to determine whether and when a proceeding may not proceed further due to a pending registration.

Second, the Board asked the Office to clarify the procedures related to submitting a registration certificate and lifting the abeyance. The regulations state that proceedings will be held in abeyance due to a pending registration “until the claimant or counterclaimant provides the Copyright Claims Board with the certificate of registration or the registration number on the certificate of registration or certificate preview.”⁹ While this process complies with the requirement that “the proceeding shall be held in abeyance

⁷ 17 U.S.C. 1505(b)(2); 86 FR 46119, 46123 (codified at 37 CFR 221.1(b)).

⁸ *Id.* at 1505(b)(2)–(3).

⁹ 86 FR 46119, 46123 (codified at 37 CFR 221.1(b)).

pending submission of the certificate to the Copyright Claims Board,”¹⁰ the rule did not explain that where party submits a registration number, and not the registration certificate, the Office will provide a copy of the certificate to the Board to include in the proceeding’s record. While the Office hopes to automate this process in the future, parties should contact the Board when submitting the registration number, so the Board can notify the Office to complete the certificate submission process. In all circumstances, the parties to the proceeding will be given “an opportunity to address the registration certificate” before the Board renders a determination.¹¹

The Board also suggested that the Office allow a claimant or counterclaimant to request expedited registration before a proceeding becomes active, with the Board’s permission. While the Office’s NPRM stated that a rule that only allowed a claimant or counterclaimant to request expedited registration after a proceeding becomes active would “ensure that registration applicants do not invoke the CCB to receive special handling treatment at a discounted rate when not genuinely intending to pursue their claim through the CCB,”¹² at this point the Office agrees that the Board should have the authority to allow a claimant or counterclaimant with a pending application to request expedited registration prior to a proceeding becoming active. In particular, the amendment will allow claimants or counterclaimants to receive an earlier registration decision where copyrightability is unclear. The Office is implementing the Board’s suggestion in the final rule, but will revisit this rule if the aforementioned concerns materialize.

Finally, while the final rule clearly stated that an expedited registration request applied to a “registration application,” the language describing the fee stated that it

¹⁰ 17 U.S.C. 1505(b)(2).

¹¹ *Id.* at 1505(b)(1)(B).

¹² 86 FR 21990, 21992.

applied to “each request” without noting that this specifically referred to an application request.¹³ This final rule clarifies that language and also removes minor typographical errors.

These amendments constitute a change to a “rule[] of agency . . . procedure[] or practice”¹⁴ and do not “alter the rights or interests of parties.”¹⁵ Therefore, these amendments are not subject to the notice and comment requirements of the Administrative Procedure Act and are being issued as a final rule.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 221

Copyright, Claims.

Final Regulations

For the reasons stated in the preamble, the U.S. Copyright Office amends chapter II, subchapters A and B, of title 37 Code of Federal Regulations as follows:

Subchapter A—Copyright Office and Procedures

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

Section 201.10 also issued under 17 U.S.C. 304.

2. In § 201.3, revise paragraph (d)(8) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Section and the Copyright Claims Board.

¹³ 86 FR 46119, 46122–23 (codified at 37 CFR 221.2(c)(1)).

¹⁴ 5 U.S.C. 553(b)(A).

¹⁵ *JEM Broad. Co. v. F.C.C.*, 22 F.3d 320, 326 (D.C. Cir. 1994) (internal citation omitted).

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(d) * * *

(8) Small claims expedited registration fee per registration application request	50
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PART 221—REGISTRATION

3. The authority citation for part 221 continues to read as follows:

Authority: 17 U.S.C. 702, 1510.

4. In § 221.1, revise paragraph (b) to read as follows:

§ 221.1 Registration requirement.

* * * * *

(b) For a work that has not yet been registered, a claimant or counterclaimant who has a pending application to register the work must indicate on its claim or counterclaim notice that the work is pending registration and must include the work's service request (SR) number that was assigned to the copyright registration claim. If the Copyright Claims Board, in its discretion, at any time determines that the proceeding may not proceed forward because of a pending registration, the Copyright Claims Board shall issue an order holding the proceeding in abeyance until it is provided with the certificate of registration or the registration number on the certificate of registration or certificate preview. Under this provision, the Copyright Claims Board can decide to hold the proceeding in abeyance at any point in the proceeding, but must dismiss the proceeding without prejudice if it is notified that the registration application was refused. If the proceeding has been held in abeyance for more than one year, the Copyright Claims Board may dismiss the claim or counterclaim without prejudice after providing thirty days' written notice to all parties to the proceeding.

5. In § 221.2, revise paragraphs (b) and (e) to read as follows:

§ 221.2 Small claims expedited registration.

* * * *

(b) *Initiating small claims expedited registration.* The small claims expedited registration process can only be initiated after the claimant or counterclaimant has completed an application for copyright registration and either the Copyright Claims Board has issued an order holding the proceedings in abeyance pursuant to § 221.1(b) and has granted the applicant permission to request an expedited registration or the proceeding has become active. To initiate the small claims expedited registration process, the qualifying claimant or counterclaimant must make a request and pay the required fee set forth in § 201.3(d). Parties must not attempt to initiate small claims expedited registration by using the Copyright Office's electronic registration system (eCO).

* * * *

(e) *Granted requests.* If the request for expedited registration under this section is granted, the Office will make every attempt to examine the application within 10 business days after notice of the request is delivered by the Copyright Claims Board to the Copyright Office's Office of Registration Policy and Practice, although the Copyright Office cannot guarantee that all applications will be examined within that timeframe.

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Dated: April 15, 2022.

Shira Perlmutter,

*Register of Copyrights and
Director of the U.S. Copyright Office.*

Approved by:

Carla D. Hayden,

Librarian of Congress.

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