

**United States Court of Appeals for the Federal Circuit
Proposed Changes to the
Rules of Practice**

Federal Circuit Rule 1

Rule 1. Scope of Rules; Title

(a) Reference to District and Trial Courts and Agencies.

(1) The terms “district court” and “trial court” include:

- (A) the United States district courts;
- (B) the United States Court of International Trade;
- (C) the United States Court of Federal Claims; and
- (D) if applicable, the United States Court of Appeals for Veterans Claims.

(2) The term “agency” includes an administrative agency, board, commission, bureau, or officer of the United States, including each of the following:

- (A) the ~~Board of Patent Appeals and Interferences of the Patent and Trademark Office, and the~~ Patent Trial and Appeal Board;
- (B) the Director of the United States ~~Patents~~ and ~~Trademarks~~ Trademark Office;
- (C) the Trademark Trial and Appeal Board;
- (D) the United States International Trade Commission;
- (E) the Secretary of Commerce acting under U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States (relating to importation of instruments or apparatus);
- (F) the Secretary of Agriculture acting under 7 U.S.C. § 2461;
- (G) the Merit Systems Protection Board;
- (H) certain arbitrators;
- (I) the Boards of Contract Appeals in federal agencies;
- (J) the Secretary of Veterans Affairs acting under 38 U.S.C. § 502;
- (K) the Equal Employment Opportunity Commission acting under 3 U.S.C. § 454;
- (L) the Federal Labor Relations Authority acting under part D of subchapter II of chapter 5 of title 3;
- (M) the Secretary of Labor or the Occupational Safety and Health Review Commission, under part C of subchapter II of chapter 5 of title 3;
- (N) the Office of Compliance acting under 2 U.S.C. § 1407(a)(1);
- (O) the Government Accountability Office Personnel Appeals Board; or
- (P) the Bureau of Justice Assistance.

(b) Rules of the Court of International Trade, Court of Federal Claims, and Court of Appeals for Veterans Claims.

(1) Reference in these rules to the Federal Rules of Civil Procedure includes analogous rules of the Court of International Trade and the Court of Federal Claims.

(2) Reference in these rules to the Federal Rules of Civil Procedure includes rules of the Court of Appeals for Veterans Claims only where applicable, because that court’s rules are derived from the Federal Rules of Appellate Procedure.

(c) Title. These rules are to be known as the Federal Circuit Rules.

Federal Circuit Rule 3

Rule 3. Appeal as of Right - How Taken

(a) ~~Appeal Information Sheet; Opinion; Certified Copy of Docket Entries.~~ When a notice of appeal is filed, the trial court clerk of court must promptly send to this court's clerk of court ~~the appeal information sheet prescribed by this court. The trial court clerk of court must attach~~ a copy of the opinion, if any, that accompanied the judgment or order being appealed. The trial court clerk of court must certify the copy of the docket entries and send it with the notice of appeal ~~and the appeal information sheet.~~

(b) **Petition for Certification of Judgment of the High Court of the Trust Territory of the Pacific Islands.** A petition for certification of a judgment of the High Court of the Trust Territory of the Pacific Islands under the Compact of Free Association: Federated States of Micronesia, Republic of Marshall Islands, Title II, Title One, Article VII, § 174(c), and the Compact of Free Association: Palau, Title II, Title One, Article VII, § 174(c), in 48 U.S.C. § 1901 note and § 1931 note, must be filed with this court's clerk of court, but otherwise is deemed to be an appeal from the judgment of a district court for purposes of these rules.

Practice Notes

FAILURE TO FILE A NOTICE OF APPEAL. Only a party that has filed a notice of appeal may attack all or any part of the trial court judgment. Any other party in the trial court not filing a notice of appeal may participate in the appeal as an appellee but may not seek to overturn or modify the judgment.

FEES. The fee schedule is set forth in Federal Circuit Rule 52. *See also* 28 U.S.C. § 1913, note 1 [Judicial Conference Schedule of Fees].

FILING AND DOCKETING AN APPEAL. An appeal is filed when the notice of appeal is received by the trial court. An appeal sent to this court by the trial court clerk of court is docketed when it is listed on the docket and assigned a docket number, ~~a docket card for the appeal is made available to the public, and the names of the parties to the appeal are recorded in the party index that is available to the public.~~

FILING AND DOCKETING APPEALS UNDER 15 U.S.C. § 3416(c) AND PETITIONS UNDER 42 U.S.C. § 300aa-12(f). Appeals under 15 U.S.C. § 3416(c) from the district courts and petitions under 42 U.S.C. § 300aa-12(f) from the Court of Federal Claims are filed in this court, unlike other appeals from those courts in which the notice of appeal is filed with the Clerks of those courts. However, once these appeals or petitions are filed in this court, they are forwarded to the Clerks of those courts with instructions to comply with Federal Rule of Appellate Procedure 3(d).

~~**APPEAL INFORMATION SHEET.** The format to use for the appeal information sheet is found in Form 7.~~

Federal Circuit Rule 4

Rule 4. Appeal as of Right - Untimely Notice

The United States Court of Appeals for the Federal Circuit cannot waive the untimely filing of a notice of appeal. The clerk may return a notice of appeal that is untimely on its face.

Practice Notes

TIME TO APPEAL. The table below is provided only as a convenience for counsel, who should refer to the statutes and case law before determining the period available for taking an appeal. Counsel should also be aware of the district court's authority under Federal Rule of Appellate Procedure 4 to extend or reopen the time for appeal.

COURT	STATUTE	TIME
District Courts	28 U.S.C. § 2107	30 days (60 days if U.S. is a party)
	15 U.S.C. § 3416(c)	30 days
Court of International Trade	28 U.S.C. § 2645(c)	60 days
Court of Federal Claims		
	Appeals 28 U.S.C. § 2522	60 days
	Petitions 42 U.S.C. § 300aa-12(f)	60 days
Court of Appeals for Veterans Claims	38 U.S.C. § 7292	60 days

~~**UNTIMELY NOTICE OF APPEAL.** The United States Court of Appeals for the Federal Circuit cannot waive the untimely filing of a notice of appeal.~~

DUTY TO NOTIFY THE CLERK OF POSTJUDGMENT MOTIONS PENDING IN THE TRIAL COURT. Even though the district court clerk must forward copies of later docket entries under Federal Rule of Appellate Procedure 3(d), the appellant should promptly notify this court's clerk if any party in the case files a motion listed in Federal Rule of Appellate Procedure 4(a)(4). Any other party may also notify the clerk in such a case. Upon receiving the appropriate docket entries from the district court, the clerk will deactivate the appeal. Deactivation of the appeal suspends all further action in the court of appeals. Upon reactivation of the appeal, the clerk will reschedule the next required filing and notify counsel.

EXPEDITED PROCEEDINGS. The overall time for an appeal can be accelerated by the expeditious filing of a notice of appeal shortly after entry of final judgment in the trial forum. When a party is considering seeking expedited proceedings on appeal, the party should consider filing its notice of appeal and initial brief well before the applicable deadlines. For further information on expedition procedures, see the Practice Note to Rule 27.

Federal Circuit Rule 5

Rule 5. Appeal by Permission

(a) ~~**Appeal Information Sheet.**~~

~~(1) A petition for permission to appeal must be accompanied by either:~~

~~(A) the appeal information sheet prescribed by this court prepared by the petitioner; or~~

~~(B) a copy of the docket entries in the trial court.~~

~~(2) If permission to appeal is granted, the trial court clerk of court must promptly prepare and send the appeal information sheet to this court's clerk of court.~~

(b) **Record; Certified Copy of Docket Entries.** In an allowed appeal, the trial court must retain the record as provided in Federal Rule of Appellate Procedure 11(e) and in Federal Circuit Rule 11(a). The trial court clerk of court must send a certified copy of the docket entries instead of the record.

(c) **Filing.** For information concerning how to file a petition for permission to appeal, which is a case-initiating document, see Federal Circuit Rule 25.

Practice Notes

APPEAL INFORMATION SHEET. The format is found in Form 7.

CASE INITIATION. The court's case management/electronic case filing system (CM/ECF) provides for submission of case opening materials in cases in which parties are represented by counsel and requires payment of fees using pay.gov. Requirements are included in the court's electronic case filing User Guide (www.cafc.uscourts.gov).

Federal Circuit Rule 8

Rule 8. Stay or Injunction Pending Appeal

(a) Notice of Appeal; Trial Court's Judgment or Order. A motion for a stay or injunction pending appeal must be accompanied by:

- (1) a copy of the notice of appeal that has been filed with the trial court clerk of court;
- (2) a copy of the trial court's judgment or order on the merits; ~~and~~
- (3) a copy of any order on the motion for a stay or injunction pending appeal; and
- (4) a certificate of interest.

(b) Length of Motion, Response, and Reply; Copies; Brief; Filing.

- (1) A motion or a response to a motion for a stay or injunction pending appeal may not exceed 20 pages. A reply may not exceed 10 pages.
- (2) No paper copies are required if the motion is filed by counsel through Electronic Case Filing (ECF). If the motion is filed by a pro se party, then one paper copy must be filed. ~~An original and 4 copies of a motion, response, or reply must be filed.~~
- (3) A separate brief supporting a motion, response, or reply is not permitted.
- (4) For information on filing a motion under this rule, when an appeal has been filed by the trial court but not yet docketed by this court, see the information in Federal Circuit Rule 25 and instructions on the court's website for how to file a case-initiating document.

(c) Notice and Service When Requesting Immediate Action; Facsimile or Email.

- (1) A party moving for a stay or injunction pending appeal who requests immediate action by the court must—before filing—notify all parties that a motion will be filed and must utilize an expedited method of service.
- (2) If a motion for a stay or injunction pending appeal is sent to the court by facsimile or email transmission, which is only permitted under Federal Circuit Rule 25 for pro se parties who cannot file electronically through CM/ECF, ~~a certificate of interest must be included and~~ opposing counsel must be served in the same manner. The filing must state the name, address, and, if applicable, the facsimile numbers or email addresses of the persons served.

(d) Statement. If an initial motion for a stay or injunction pending appeal was not made in the district court under Federal Rule of Appellate Procedure 8(a)(1), movant must include in its motion in this court a statement explaining why it was not practicable to do so. If an initial motion for a stay or injunction pending appeal was made in the district court under Federal Rule of Appellate Procedure 8(a)(1) and remains pending, the movant must include in its motion in this court a statement specifically identifying when it filed the motion in the district court and why it is not practicable to await a ruling by the district court on that motion.

Practice Notes

FORM REQUIREMENTS. See Federal Rule of Appellate Procedure 27(d) for form requirements concerning motions.

CERTIFICATE OF INTEREST. The format is found in Form 9.

CLERK'S OFFICE EMAIL. [Email address \(prose@cafc.uscourts.gov\) may only be used by pro se filers and only for submission under this Rule or Federal Rule of Appellate Procedure 8.](mailto:prose@cafc.uscourts.gov)

Federal Circuit Rule 10

Rule 10. The Record on Appeal

Delay in preparing the transcript. When a trial transcript is not filed in the trial court within 60 days after it was ordered, the clerk of court may direct the parties to proceed under Rule 10(c) or (d) of the Federal Rules of Appellate Procedure.

Practice Notes

DAILY COPY. Using daily transcript copy in lengthy trial proceedings can reduce or eliminate appellate delay in awaiting transcription after trial.

PROCEDURES TO EXPEDITE DELIVERY OF TRANSCRIPTS. District courts and regional circuit councils have procedures to expedite transcripts that may be available to counsel experiencing difficulty with late delivery of transcripts by court reporters.

Federal Circuit Rule 11

Rule 11. Forwarding the Record

(a) Retaining the Record; Certified Copy of the Docket Entries; Physical Exhibits; Archival Storage.

- (1) The district court clerk must:
 - (A) retain the assembled record unless this court, on motion or sua sponte, orders otherwise; and
 - (B) send to this court a certified copy of the docket entries instead of the record.
- (2) **Archival Storage.** The district court clerk of court must not send the record to archival storage until this court issues its mandate.

(b) Access of Parties and Counsel to the Original Record.

- (1) **Material Not Subject to a Protective Order; Inspection and Copying.** When a notice of appeal is filed, the trial court clerk of court must permit a party or counsel for a party to inspect and copy the nonconfidential original papers, transcripts, and exhibits to prepare the appendix. This inspection and copying is subject to reasonable regulation by the trial court.
- (2) **Material Subject to a Protective Order; Inspection and Copying.** A party or counsel for a party must be permitted to inspect and copy material in the record governed by a protective order of the trial court in accordance with that order. If this court modifies or annuls the protective order, the access of a party or counsel is governed by the order of this court.

(c) **Status of a Protective Order on Appeal.** In general, any portion of the record that was subject to a protective order in the trial court shall remain subject to that order on appeal. Material shall lose its status as subject to a protective order, however, if and when it has been removed from protected status under Federal Circuit Rule 30(h)(1)(B) or has appeared, without being marked confidential, in motion papers under Federal Circuit Rule 27 or a brief under Federal Circuit Rule 28 in this court. Federal Circuit Rules 27(m)(1) and 28(d)(1) tightly limit confidentiality markings in a motion, response, or reply and in a brief.

(d) **Agreement by Parties to Modify a Protective Order; Certificate of Compliance.** If any portion of the record in the trial court is subject to a protective order and a notice of appeal has been filed, each party must promptly review the record to determine whether protected portions need to remain protected on appeal. If a party determines that some portions no longer need to be protected, that party must seek an agreement with the other party. Any agreement that is reached must be promptly presented to the trial court, which may issue an appropriate order. Whether or not an agreement is reached, each party must file a certificate of compliance ~~within 45 days of docketing~~ no later than the time for filing the joint appendix stating it complied with this rule. This Federal Circuit Rule 11(d) does not apply in a case arising under 19 U.S.C. § 1516a.

(e) **Motion to Modify the Protective Order.** A party may move at any time in this court to modify a protective order to remove protection from some material or to include another person within its terms. This court may decide the motion or may remand the case to the trial court. This court, sua sponte, may direct the parties to show cause why a protective order should not be modified.

Federal Circuit Rule 12

The clerk of court must notify all parties of the date the appeal is docketed.

Practice Notes

FILING AND DOCKETING AN APPEAL. An appeal is filed when the notice of appeal is received by the trial court. An appeal sent to this court by the trial court clerk of court is docketed when it is listed on the docket and assigned a docket number, ~~a docket card for the appeal is made available to the public, and the names of the parties to the appeal are recorded in the party index that is available to the public.~~

DATE OF DOCKETING. The date of docketing starts the time running for filing briefs. *See* Federal Circuit Rule 31(a).

REPRESENTATION STATEMENT. The requirements of Federal Rule of Appellate Procedure 12(b) are met by filing the entry of appearance and certificate of interest required under Federal Circuit Rules 47.3 and 47.4.

OFFICIAL CAPTION; PARTICIPATION IN THE APPEAL BY APPELLEES; CONSOLIDATION OF PREVIOUSLY CONSOLIDATED CASES AND CROSS-APPEALS. The clerk will provide the parties with the official caption in the case at the time of docketing. Any objection to the official caption should be made promptly. It is the court's usual practice to include in the caption all parties that participated in the court below, even if they are no longer participating in the case on appeal. Parties included in the trial court title who have an adverse interest to the appellant but who are not cross-appealing will be deemed appellees. Parties permitted to intervene in the trial court as plaintiffs or defendants will be identified only as plaintiff or defendant to avoid

confusion with any third party permitted to intervene in the appeal. An appellee desiring not to file a brief or join in another party's brief must notify the clerk of court who will strike the party's designation as an appellee from the official caption. An appeal in a case that was consolidated in the trial court will be docketed under the title used for the consolidated case. When more than one party appeals from the same trial court case, the appeals or cross-appeals will be consolidated by the clerk of court. Other appeals may be consolidated on motion or by the court sua sponte.

TRANSFERRED APPEAL. An appeal transferred from another court will be given a new docket number and will be consolidated by the clerk of court with any previously docketed appeal from the same judgment or order.

Federal Circuit Rule 15

Rule 15. Review of an Agency Order - How Obtained

(a) Petition for Review or Notice of Appeal; Payment of Fees; Address and Telephone Number of Counsel or Pro Se Petitioner or Appellant; Number of Copies.

(1) From the Patent and Trademark Office. To appeal a decision of the [Patent Trial and Appeal Board](#) ~~Board of Patent Appeals and Interferences~~, the Trademark Trial and Appeal Board, or the Director under 15 U.S.C. § 1071(a), the appellant must file in the Patent and Trademark Office a notice of appeal within the time prescribed by law. The appellant must simultaneously send to the clerk of court [one copy](#) ~~three copies~~ of the notice with the fee set forth in Federal Circuit Rule 52. The Director must promptly advise the clerk of court that the notice is or is not timely.

(2) From Another Agency.

(A) Except as provided in Federal Circuit Rule 15(a)(1), to petition or appeal from a decision or order of an agency, the petitioner must file a petition for review or notice of appeal with this court's clerk of court within the time prescribed by law. [Within 14 days of filing](#), ~~Upon filing,~~ the petitioner must pay the clerk of court the fee set forth in Federal Circuit Rule 52.

(B) A petition filed by the Director of the Office of Personnel Management must be filed as prescribed in Federal Circuit Rule 47.9.

(3) Address and Telephone Number of Counsel or Pro Se Petitioner or Appellant. Each petition for review or notice of appeal must contain the counsel's — or the pro se petitioner's or appellant's — name, current address, [email address](#) and telephone number.

~~**(4) Copies.** A petition for review or notice of appeal must be filed in an original (except when the original is filed in the Patent and Trademark Office under 15 U.S.C. § 1071(a)) and three copies.~~

[\(4\) Copies.](#) No additional paper copies are required to be filed with the court.

(b) Docketing Petition or Appeal; Notice of Docketing.

~~**(1) From the Patent and Trademark Office.**~~

~~**(A)** In an appeal from the Board of Patent Appeals and Interferences, the Trademark Trial and Appeal Board, or the Director under 15 U.S.C. § 1071(a)(2), the clerk will docket the appeal when the Director of Patents and Trademarks sends a copy of the notice of appeal and the certified list as required by Federal Circuit Rule 17(b)(1).~~

~~**(B)** If the Director advises the clerk concerning the untimeliness of an appeal, the clerk may order the appellant to show cause why the appeal should not be dismissed and refer appellant's response to the court.~~

~~**(C)** The clerk will notify all parties of the date the appeal is docketed.~~

~~**(1) (2) From Another Agency.**~~ In a petition for review or appeal from an administrative agency ~~other than the Patent and Trademark Office~~, the clerk of court will docket a timely

appeal or petition upon receipt. Parties represented by counsel must file the petition or appeal and pay any required fees through CM/ECF and pay.gov. Parties not represented by counsel must submit the petition or appeal in paper and pay the required fees by check within 14 days of docketing. Facsimile transmission is not permitted. Instructions for electronically filing case-initiating documents such as a petition or appeal are posted on the court's website.

(2) The agency may advise the clerk of court concerning the untimeliness of an appeal and the clerk may order the appellant to show cause why the appeal should not be dismissed and refer the appellant's response to the court.

(3) Notice of Docketing. The clerk must notify all parties through CM/ECF of the date the appeal or petition for review is docketed.

(c) Statement Concerning Discrimination.

(1) Petitioner's Statement. Within 14 days after a petition for review of a decision of the Merit Systems Protection Board or a decision of an arbitrator under 5 U.S.C. § 7121 is docketed, the petitioner must serve on the respondent and file with the clerk of court see Form 10:

~~(A)~~ a statement whether or not a claim of discrimination by reason of race, sex, age, national origin, or handicapped condition has been or will be made in the case. *See* Form 10.

~~(ii) any claim of discrimination by reason of race, sex, age, national origin, or handicapped condition raised before the Board has been abandoned and will not be raised or continued in this or any other court;~~

~~(iii) the petition seeks review only of the Board's or arbitrator's dismissal of the case for lack of jurisdiction or for untimeliness;~~

~~(iv) the case involves an application to the Office of Personnel Management for benefits; or~~

~~(v) the case was transferred to the Court of Appeals for the Federal Circuit from a district court and petitioner continues to contest the transfer; and~~

~~(B) a statement whether petitioner has filed a discrimination case:~~

~~(i) in a United States district court; or~~

~~(ii) in the Equal Employment Opportunity Commission.~~

(2) Response When a Claim of Discrimination is Raised in a Motion or Brief. If the petitioner in a case described in Federal Circuit Rule 15(c)(1) files a motion or brief making involving a claim of discrimination as to the case before the court, the respondent must:

~~(A)~~ state, in a responsive motion or brief, ~~one of the following:~~ whether the respondent concurs or disagrees with the

~~(i) the respondent concurs in the~~ petitioner's statement concerning discrimination and indicate whether or not the respondent believes that the court has jurisdiction over the petition for review, with reasons provided as necessary.

~~(ii) any claim of discrimination the petitioner made to the Merit Systems Protection Board was frivolous, with supporting reasons; or~~

~~(iii) the petitioner presented no evidence of discrimination to the Merit Systems Protection Board;~~

~~(B) state, if known, whether a discrimination claim has been filed in a United States district court or in the Equal Employment Opportunity Commission; and~~

~~(C) include in the response or brief any other information relevant to the statement concerning discrimination.~~

(d) Untimely Petition for Review or Notice of Appeal. The clerk of court may return a petition for review or notice of appeal that is untimely on its face.

(e) Notice of Election Under 35 U.S.C. § 141 or 15 U.S.C. § 1071(a)(1). A party filing a notice of election under 35 U.S.C. § 141 or 15 U.S.C. § 1071(a)(1) with the Director of Patents and Trademarks must file a copy of the notice with the clerk of court, and the clerk of court must dismiss the appeal.

(f) Judicial Review of Department of Veterans Affairs Rules and Regulations. See Federal Circuit Rule 47.12.

Practice Notes

TIME TO APPEAL OR PETITION. The table below is provided only as a convenience to counsel, who should refer to the statutes, rules, and case law before determining the period available for taking an appeal or filing a petition for review. Counsel should also note that the event that causes the period to run varies in each case.

AGENCY	STATUTE	TIME
Arbitrator	5 U.S.C. §§ 7121, 7703	60 days
Merit Systems Protection Board	5 U.S.C. § 7703	60 days
Government Accountability Office Personnel Appeals Board	31 U.S.C. § 755	30 days
Patent Trial and Appeal Board ; Trademark Trial and Appeal Board; Director of Patents and Trademarks	35 U.S.C. § 142, 15 U.S.C. § 1071, 37 C.F.R. §§ 1.304, 2.145	2 months or 63 days
International Trade Commission	19 U.S.C. § 1337	60 days
Board of Contract Appeals	41 U.S.C. § 607(g) 7107	120 days
Secretary of Commerce	19 U.S.C. § 1202	20 days
Secretary of Agriculture	7 U.S.C. § 2461	60 days
Secretary of Veterans Affairs	38 U.S.C. § 502, Fed. Cir. R. 47.12(a)	60 days
Secretary of Labor; Occupational Safety and Health Review Commission; Federal Labor Relations Authority; certain Merit Systems Protection Board cases and Equal Employment Opportunity Commission cases	28 U.S.C. § 1296	30 days
Board of Directors , Office of Compliance Congressional Accountability Act	2 U.S.C. § 1407(c)(3)	90 days
Equal Employment Opportunity Commission	3 U.S.C. § 454; 28 U.S.C. § 1296(b)	30 days
Bureau of Justice Assistance	42 U.S.C. § 3796c-2	90 days

FILING IN THE PATENT AND TRADEMARK OFFICE. A notice of appeal mailed to the Patent and Trademark Office should be addressed:

**Office of the Solicitor
United States Patent and Trademark Office
Mail Stop 8
Post Office Box 1450
Alexandria, Virginia 22313-1450**

The general counsel requests that hand delivery, if any, be made between the hours of 8:30 a.m. and 5:00 p.m. to:

**Office of the General Counsel
Patent and Trademark Office
Madison East 10B20
600 Dulaney Street
Alexandria, Virginia 22314**

COPY OF DECISION OR ORDER. A party filing a petition for review or notice of appeal is urged to attach a copy of the decision or order of the agency for which review is sought.

INTERVENTION. A party with the right to appeal or to petition for review may not, instead of exercising that right, intervene in another appeal or petition to seek relief in its own cause. Because the United States or an agency of the United States is [often](#) the only appellee or respondent in cases under this rule, any other party seeking to intervene on the side of the appellee or respondent must move for leave to intervene within 30 days of the date when the petition for review or notice of appeal is filed. A motion for leave to intervene out of time will be granted only in extraordinary circumstances.

DISCRIMINATION STATEMENT. A discrimination statement form ~~with a preaddressed, postage paid return envelope~~ will be ~~provided~~ [included in the docketing statement package provided](#) to any petitioner seeking review of a decision of the Merit Systems Protection Board or [an](#) arbitrator. Failure to complete the discrimination statement will result in dismissal of the petition for review. See Form 10.

TIMELINESS. Except in inter partes appeals from decisions of the [Board of Patent Appeals and Interferences](#) the [Patent Trial and Appeal Board](#) or the Trademark Trial and Appeal Board, parties in agency proceedings do not have the 14-day “cross-appeal” period that Federal Rule of Appellate Procedure 4(a)(3) grants to parties appealing from trial courts. The court cannot waive the statutory time requirements for filing a petition for review or notice of appeal.

CONSOLIDATION. When more than one party files a petition for review or notice of appeal from the same decision or order, the parties should inform the clerk of court and the petitions or appeals may be consolidated and an adjusted briefing schedule may be issued.

ARBITRATION AWARDS IN THE UNITED STATES POSTAL SERVICE. These arbitration awards may not be appealed to this court.

PROPER GOVERNMENTAL PARTY IN APPEALS FROM BOARDS OF CONTRACT APPEALS. In appeals from the boards of contract appeals, [the title of the](#) head of the federal agency is ~~named~~ [listed](#) in the caption along with the name of the agency he or she heads.

FILING AND DOCKETING A PETITION FOR REVIEW OR APPEAL. A petition for review or appeal is filed when the petition for review or notice of appeal is received by the court or, in the case of an appeal from the Patent and Trademark Office, when the notice of appeal is received by the Director of [the United States Patents and Trademarks Trademark Office](#). A petition for review or appeal is docketed when it is [listed on the docket and](#) assigned a docket number [in CM/ECF](#); ~~a docket card for the petition for review or appeal is made available to the public, and the names of the parties to the petition for review or appeal are recorded in the party index that is available to the public.~~

JUDICIAL REVIEW OF DEPARTMENT OF VETERANS AFFAIRS RULES AND REGULATIONS. Federal Circuit Rule 47.12 governs actions for judicial review of Department of Veterans Affairs rules and regulations under 38 U.S.C. § 502. The procedures to be followed in such actions are the same as provided in this rule, except as provided in Federal Circuit Rule 47.12.

CHANGE OF HEAD OF AGENCY. In appeals in which the proper governmental party is the head of the agency, counsel for the government should promptly notify the clerk of court of any change that would affect the accuracy of the caption.

AGENCY. The term agency in these rules includes a board, commission, bureau, or arbitrator.

EXPEDITED PROCEEDINGS. The overall time for a review of an agency decision can be accelerated by the expeditious filing of a notice of appeal or petition for review shortly after entry of the reviewable agency order. When the appellant or petitioner is considering seeking expedited proceedings on appeal, the party should consider filing its notice of appeal or petition for review and initial brief well before the deadline for such actions. For further information on expedition procedures, see the Practice Notes to Rule 27.

Federal Circuit Rule 17

Rule 17. Filing the Record

(a) Retaining the Record; Sending the Certified List. The agency must retain the record and send to this court a certified list or index unless this court, on motion or sua sponte, orders otherwise.

(b) Certified List or Index.

(1) From the United States Patent and Trademark Office. No later than 40 days after receiving the notice of appeal, the Director must send to the clerk of court the certified list and a copy of the decision or order appealed. This constitutes compliance with the requirement of 35 U.S.C. § 143 and 15 U.S.C. § 1071(a)(3) for sending a certified record to the court.

(2) From Another Agency. No later than 40 days after the court serves a petition for review or notice of appeal on an agency, the agency must send to the clerk of court the certified list or index and a copy of the decision or order being appealed.

(3) Index of VA Rulemaking Record. In petitions for review under 38 U.S.C. § 502, if a petitioner has not adequately identified the rulemaking proceeding complained of, so that the Secretary of Veterans Affairs cannot send the certified list or index within the time provided in Federal Circuit Rule 17(b)(2), the Secretary must promptly move to waive or extend the time for filing the certified list or index.

(c) Service of Certified List or Index by Agency. When an agency sends a certified list or index to the clerk of court, it must simultaneously serve a copy on the parties and provide a certificate of service to the clerk of court. Service must be made on counsel for the appellant or petitioner who has

served the agency with a copy of an entry of appearance in this court; otherwise, service must be made on counsel who appeared before the agency or, if none, on the party. This service constitutes notice to the parties of the date the record was filed.

(d) Access of Parties and Counsel to Original Record.

(1) Material Not Subject to a Protective Order; Inspection and Copying. When a petition for review or notice of appeal is filed, the agency must permit a party or counsel for a party to inspect and copy the nonconfidential original papers, transcripts, and exhibits to prepare the appendix. This inspection and copying is subject to reasonable regulation by the agency.

(2) Material Subject to a Protective Order; Inspection and Copying. A party or counsel for a party must be permitted to inspect and copy material contained in the record governed by a protective order of an agency in accordance with that order. If this court modifies or annuls the protective order, the access of a party or counsel is governed by the order of this court.

(e) Preserving Status of a Protective Order on Appeal. In general, any portion of the record that was subject to a protective order in an agency shall remain subject to that order on appeal unless otherwise ordered. Material shall lose its status as subject to a protective order, however, if and when it has been removed from protected status under Federal Circuit Rule 30(h)(1)(B) or has appeared, without being marked confidential, in motion papers under Federal Circuit Rule 27 or a brief under Federal Circuit Rule 28 in this court. Federal Circuit Rules 27(m)(1) and 28(d)(1) tightly limit confidentiality markings in a motion, response, or reply and in a brief.

(f) Agreement by Parties to Modify Protective Order; Certificate of Compliance. If any portion of the record in an agency is subject to a protective order and a petition for review or notice of appeal has been filed, each party must promptly review the record to determine whether protected portions need to remain protected on appeal. If a party determines that some portions no longer need to be protected, that party must seek an agreement with the other party. Any agreement that is reached must be promptly presented to the agency, which may issue an appropriate order. Whether or not an agreement is reached, each party must file a certificate of compliance ~~within 45 days of docketing~~ no later than the time for filing the joint appendix stating it complied with this rule.

(g) Motion to Modify the Protective Order. A party may move at any time in this court to modify a protective order to remove protection from some material or to include another person within its terms. This court may decide the motion or may remand the case to the agency. This court, sua sponte, may direct the parties to show cause why a protective order should not be modified.

Practice Notes

TRANSCRIPT OF AGENCY PROCEEDING AT GOVERNMENT EXPENSE. These rules do not require an agency to provide a party with a written transcript at the agency's expense. Any party seeking a written transcript of a hearing should direct the request to the agency, not the court.

AGENCY. The term agency in these rules includes a board, commission, bureau, or arbitrator.

Federal Circuit Rule 18

Rule 18. Stay Pending Review

(a) Petition for Review or Notice of Appeal; Agency Order. A petition for review or notice of appeal must be filed with this court before it will entertain a motion for a stay pending review. A

motion for stay pending review must be accompanied by a copy of the agency decision on the merits and a copy of any agency order on the motion for a stay pending review.

(b) Length of Motion, Response, and Reply; Copies; Brief.

(1) A motion or a response to a motion for a stay pending review may not exceed 20 pages. A reply may not exceed 10 pages.

(2) No paper copies are required if the motion is filed by counsel through CM/ECF. If the motion is filed by a pro se party, then one paper copy must be filed. ~~An original and four copies of a motion, response, or reply must be filed.~~

(3) A separate brief supporting a motion, response, or reply is not permitted.

(4) For information on filing a motion along with a petition or appeal under this rule, see the information in Federal Circuit Rule 25 and instructions in the User's Guide on the court's website (www.cafc.uscourts.gov) for how to file a case-initiating document through CM/ECF.

(c) Notice and Service When Requesting Immediate Action; Facsimile or Email.

(1) A party moving for a stay pending review who requests immediate action by the court must – before filing – notify all parties that a motion will be filed and must utilize an expedited method of service.

(2) If a motion for stay pending review is sent to the court by facsimile or email transmission, which is only permitted under Federal Circuit Rule 25 for pro se parties who cannot file electronically through CM/ECF, a certificate of interest must be included and opposing counsel must be served in the same manner. The filing must state the name, address, and, if applicable, the facsimile numbers of the persons served.

(d) Statement. If an initial motion for a stay pending review was not made in the agency under Federal Rule of Appellate Procedure 18(a), movant must include in its motion in this court a statement explaining why it was not practicable to do so. If an initial motion for a stay pending review was made in the agency under Federal Rule of Appellate Procedure 18(a) and remains pending, the movant must include in its motion in this court a statement specifically identifying when it filed the motion in the agency and why it is not practicable to await a ruling by the agency.

Practice Notes

FORM REQUIREMENTS. See Federal Rule of Appellate Procedure 27(d) for form requirements concerning motions.

CERTIFICATE OF INTEREST. The form for the certificate of interest is found in Form 9.

AGENCY. The term agency in these rules includes a board, commission, bureau, or arbitrator.

CLERK'S OFFICE EMAIL. Email address (prose@cafc.uscourts.gov) may only be used by pro se filers.

Federal Circuit Rule 20

Rule 20. Applicability of Rules to the Review of an Agency Order

All provisions of these Federal Circuit Rules, except Federal Circuit Rules 3-12, apply to the review of an agency order. In these Federal Circuit Rules, “appellant” includes a petitioner or applicant, and “appellee” includes a respondent.

Federal Circuit Rule 21

Rule 21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs

(a) Title; Fee; Answer.

- (1) A petition for writ of mandamus or prohibition directed to a court or an agency must be entitled: "In Re [name of petitioner], Petitioner."
- (2) The petition must include a certificate of interest. An entry of appearance must accompany the petition, unless the petitioner is pro se.
- (3) The petition must state the name, address, telephone number and, if applicable, facsimile number of each person served.
- (4) The fee set forth in Federal Circuit Rule 52 must accompany the petition. [For counsel who must file the petition through CM/ECF, see the information in Federal Circuit Rule 25 and instructions in the User's Guide on the court's website \(www.cafc.uscourts.gov\) for how to file a case-initiating document through CM/ECF and pay the fees through pay.gov.](#)
- (5) No answer may be filed by any respondent unless ordered by the court.

(b) Copies; Brief.

- (1) [If the petition is filed by a pro se party, then one paper copy is required. No paper copies are required if counsel files the petition through CM/ECF as a case-initiating document. ~~An original and four copies of the petition or answer must be filed.~~](#)
- (2) A separate brief supporting or answering a petition is not permitted.
- (3) [No paper copies of a response or reply are required, if the response or reply is submitted through CM/ECF. If the respondent is pro se, then one paper copy of the response is required. If the petitioner is pro se, then one copy of the reply is required.](#)

(c) Reply. If the court directs the filing of a response to a petition, then the petitioner may file a reply within 7 days of the date of the filing of the response. The court may act on the petition before the receipt of any reply, and thus the filing of a reply should be expedited if appropriate. The reply may not exceed 15 pages.

(d) Service of Order Denying Petition. If the petition is denied, the petitioner must serve a copy of the order denying the petition on all persons served with the petition unless such a person has entered an appearance in the proceeding or has been sent a copy of the order by the clerk of court.

Federal Circuit Rule 24

Rule 24. Proceeding in Forma Pauperis

(a) Form. If an appeal or petition for review is docketed without payment of the docketing fee, the clerk of court in providing notice of docketing will forward to the appellant or petitioner the form prescribed by this court for the motion to proceed on appeal in forma pauperis. (See Form 6.) Except as provided in Federal Rule of Appellate Procedure 24(a), if the clerk of court does not receive a completed motion, the docketing fee, or a completed Form 6B within 14 days of the date of docketing of the appeal or petition, the clerk of court is authorized to dismiss the appeal or petition. See also Federal Circuit Rule 52(d). The motion and affidavit may be made on the form provided in the Federal Rules of Appellate Procedure, but the court may request additional information from the movant.

(b) Supplemental Form. If movant is incarcerated, in addition to Form 6 movant must file a supplemental form for prisoners, Form 6A.

Practice Notes

DOCKETING FEE; TRANSCRIPT REQUEST. A party permitted to proceed in forma pauperis on appeal is not required to pay the docketing fee. Any request for a transcript of an agency proceeding at government expense is governed by agency regulations and must be directed to the agency.

PROCEEDING ON ORIGINAL RECORD. A request under Federal Rule of Appellate Procedure 24(c) that an appeal be heard on the original record is rarely granted because the available informal brief procedure permits an appendix consisting only of a copy of the decision or order sought to be reviewed. *See* Federal Circuit Rules 28(g); 30(i); 31(e); and 32(c). *See* Forms 11-16.

EFFECT OF PRISON LITIGATION REFORM ACT. Under the Prison Litigation Reform Act of 1995, a prisoner granted pauper status before the district court is not automatically entitled to pauper status on appeal. *See* 28 U.S.C. § 1915. A prisoner seeking to proceed in forma pauperis is directed to the Guide for Pro Se Petitioners and Appellants for further information.

USERRA CASES. In a petition for review of a Merit Systems Protection Board decision, a petitioner is not required to pay the docketing fee or costs if the case involved a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). 38 U.S.C. § 4323. A petitioner claiming exemption from the fee pursuant to USERRA should submit Form 6B within 14 days of the date of docketing of the petition and may be required to submit documentation that his or her case before the Board involved a USERRA claim.

Federal Circuit Rule 25

Rule 25. Filing and Service

(a) Filing in General; Payment of Fees; Registration; Admission to Bar.

(1) Filing in General; Payment of Fees. Except as noted below, parties represented by counsel must submit all documents, including appeals and petitions when applicable, through Case Management/Electronic Case Filing (CM/ECF). Pro se parties must submit any documents in paper form, providing one copy to the court. Payment of any required fees must be made by counsel through pay.gov. Instructions are available on the court's website concerning use of pay.gov. Payment of any required fees must be made by pro se parties through check or money order. *See* also Federal Circuit Rule 52. A User's Guide for CM/ECF and instructions for the use of pay.gov are posted on the court's website.

(2) Registration; Admission to Bar. Attorneys who appear before this court must register for the court's CM/ECF system. Registration requirements are posted on the court's website. Registration for CM/ECF is not a substitute for counsel's application for admission to the bar or entry of appearance in a case. Applications for admission to the bar must be filed using the CM/ECF system by following the instructions posted on the court's website.

(b) Case-initiating Documents. Documents such as appeals filed directly with this court, petitions for review, petitions for writs of mandamus, and motions for stays or injunctions under Fed. R. App. P. 8 or 18, are considered case-initiating documents if the appeal or petition has not otherwise been opened.

(1) Submissions by Counsel. Case-initiating documents must be filed in Portable Document Format (PDF) by parties represented by counsel through CM/ECF and pay.gov. *See* the instructions on the court's website for how to file a case-initiating document through CM/ECF and pay the fees through pay.gov. A case-initiating document is considered filed at the time and date registered by CM/ECF. No paper copy is required.

(2) Submissions by Pro Se Parties. Case-initiating documents submitted by pro se parties must be provided to the court in paper. Only one copy is required. The paper document must be served on opposing counsel at the same time it is mailed or delivered to the court.

(c) All Other Documents.

(1) Submissions by Counsel. All other documents must be submitted in PDF through CM/ECF, and except as otherwise provided herein or as ordered by the court, and paper copies are not required to be provided. Paper copies of briefs, appendices, and petitions for rehearing, and petitions for hearing en banc must be provided to the court after the filing of the electronic version of the briefs, appendices, or petitions first submitted through CM/ECF. A document filed electronically is deemed filed on the date and time stated on the Notice of Docket Activity from the court. Unless a time for filing is specified by the court, filing must be completed before midnight Eastern Time to be considered timely filed on that day.

(A) Briefs. In cases to be heard by a three-judge panel, six paper copies are required to be provided to the court within five business days of the court's acceptance of the electronic brief.

(B) Appendices. In cases to be heard by a three-judge panel, six paper copies are required to be provided to the court within five business days of the court's acceptance of the appendices.

(C) Petitions for Panel Rehearing. Three paper copies are required to be provided to the court within two business days of filing the petition through CM/ECF, unless otherwise ordered.

(D) Petitions for En Banc Hearing or Rehearing. Sixteen paper copies are required to be provided to the court within two business days of the filing of the petition through CM/ECF, unless otherwise ordered.

(E) Combined Petition for Panel Rehearing and Rehearing En Banc. Unless otherwise ordered, 16 paper copies are required to be provided to the court within two business days of the filing of the petition through CM/ECF.

(F) Briefs in En Banc Cases. If the court grants a petition for hearing en banc, unless otherwise ordered, 28 copies of all briefs and appendices shall be filed within five business days of the court's acceptance of the electronic brief. If the court grants a petition for rehearing en banc, unless otherwise ordered, 28 copies of the original briefs and appendices (in cases where briefs were filed in CM/ECF prior to the court's order granting an en banc rehearing) shall be filed within seven business days of the court's order granting en banc rehearing. Additionally, if the court grants a petition for rehearing en banc, 28 copies of any ordered supplemental briefs, appendices, and amicus briefs must be filed within five business days of the court's acceptance of the electronic brief or appendices. If a brief is accompanied by a motion for leave, paper copies of the motion shall also be submitted in the quantity required of the brief by this subsection.

(G) Confidential versions. If confidential and nonconfidential versions of the briefs, appendices, or petitions were filed through CM/ECF, paper copies of only the confidential version(s) are required to be submitted to the court. Two paper copies of confidential versions of any document submitted to the court through CM/ECF must be served on any party, whether that party is or is not represented by counsel. Electronic access to confidential versions of documents is restricted to the court only.

(H) Other documents. Exhibits, attachments, or appendices that are not in a format that readily permits electronic filing such as those which are illegible when scanned or which, because of their odd shape, are unable to be scanned, may be filed in paper form without leave of court. Counsel must then file electronically a Notice of Paper Filing. Documents filed pursuant to this subsection must be served by an alternate method of service by providing two paper copies to all other parties. If such documents are submitted with a brief or appendix, then an original and six copies must be filed. For all other filings of documents that may not be scanned, an original and three copies must be filed.

(I) Motion for exemption. A motion for exemption from the court's CM/ECF requirements may be submitted in paper form. Only one paper copy is required. Upon a showing of good cause, the court may exempt a party from CM/ECF requirements and authorize filing by means other than use of CM/ECF.

(J) Technical or System Failures. A CM/ECF filer whose filing is made untimely as the result of a technical or system failure may seek appropriate relief from the court, and must include in that submission a declaration or affidavit attesting to the filer's failed attempts to file electronically.

(K) Review and Correction by the Clerk of Court. The clerk of court may require a corrected copy of any submission that fails to comply with the court's rules or the CM/ECF User Manual. The clerk of court may edit a CM/ECF filer's docket entry or the clerk of court's own entry to correct or supplement the text, and such a revision will be so identified.

(L) Sanctions for Failure to Comply. Failure to comply with the court's rules or instructions from the clerk of court may result in dismissal of the appeal or other action as deemed appropriate by the court. For example, failure to timely provide the required paper copies of a brief or appendix may result in dismissal of the appeal or in the case proceeding solely on the appellant's opening brief.

(2) Submissions by Pro Se Parties. All documents from pro se parties must be provided to the court in paper form. The court will scan the documents provided by the pro se parties and place them on the electronic docket. The court will discard other paper documents once they have been scanned and made a part of the official record unless the electronic file thereby produced is incomplete or of questionable quality in accordance with judiciary records management policies.

(A) Facsimile and Email Transmission. A motion, response to a motion, reply to a response, or letter may be filed by email or facsimile transmission if submitted by a pro se party. The certificate of service must state whether a copy has been served on all parties by email or facsimile transmission. No other document, including for example an appeal or petition, may be filed or served by email or facsimile. A petition or appeal submitted by a pro se party **must** be filed with the court by mail or delivery, and the court must **receive** the document by the due date.

(B) Copies. Unless otherwise ordered in a particular case, three paper copies of any briefs, appendices, or petition for rehearing must be submitted to the court by a pro se party on or before the due dates provided in these rules. For all other documents, including for example motions or letters, only one paper copy is required.

(3) Entries by the Court. Unless otherwise provided, all orders, opinions, judgments, and other court-issued documents in cases maintained in the CM/ECF system will be issued electronically. Such issuance constitutes entry on the docket kept by the clerk of court. Electronic transmission of the Notice of Docket Activity constitutes any notice and service required by the court's rules. Any document released electronically by the court without the original signature of a judge, clerk of court, or authorized court representative shall have the same force and effect as if signed. The clerk of court shall give notice in paper form to a person who is not an electronic filer.

(d) Format of Documents; Signatures. Documents filed electronically and in paper must comply with the format requirements set forth in the Federal Rules of Appellate Procedure, the Federal Circuit Rules, and any other requirements established by the court or by the CM/ECF User Manual. Where the court's rules require a signature on a document, the name of the filer whose log-in and password is used to submit a document may be preceded by "/s/" and typed in the space where the signature would otherwise appear.

(e) Service.

(1) Documents Submitted by Counsel. Registration as a CM/ECF filer constitutes consent to electronic service of all documents. If a document is filed by counsel through

CM/ECF, the Notice of Docketing Activity generated by that filing constitutes service on opposing counsel. A certificate of service should indicate that the document was served through CM/ECF. Service of a filing to an invalid email address constitutes valid service if the individual has failed to timely provide a current email address. If one of the other parties is proceeding pro se, then counsel must serve a paper copy of any document as provided in Federal Rules of Appellate Procedure 25(c), (d), and a certificate of service must be included to explain how service was achieved on the pro se party. If a document is filed and served electronically on a non-business day, timeliness and calculation of any responsive deadlines will begin on the next business day. Three additional days are NOT added to the time to file a responsive pleading because the court considers service by email through CM/ECF to be delivered when transmitted.

(2) Documents Submitted by Pro Se Parties. A copy of any document submitted to the court by a pro se party must be mailed, delivered or transmitted by the pro se party to all other parties as provided in Federal Rules of Appellate Procedure 25(c), (d). A certificate of service is required to be included with the document to explain how the document was provided to the other parties in the case. See Form 30.

(f) Privacy. Unless ordered otherwise, all parties (including pro se parties) must refrain from including or must redact the following personal data identifiers from documents filed with the court: Social Security numbers; financial account numbers; names of minors (use instead the minor's initials); dates of birth (use the year only); home addresses (use the city and state only). If a party refers to materials in appendices that a party determines for good reason and in compliance with court rules should not be made available to the public on the Internet through PACER, then two versions of the appendices must be filed: a nonconfidential public version with the sensitive materials redacted, and an unredacted confidential version of the full document. The responsibility for redacting restricted or sensitive materials from documents and assuring that all materials contained in the public version of documents rests solely with the parties and counsel. The clerk of court will not review documents filed for compliance with this requirement.

(g) Retention of documents. Documents that are electronically filed and require original signatures other than that of the CM/ECF filer (such as an affidavit signed by a person other than the CM/ECF filer) must be maintained in paper form by the CM/ECF filer until the case is terminated with finality and with no right of appeal or until such later date as the court prescribes. On request of the court, the CM/ECF filer must provide original documents for review.

Rule 25. Filing and Service

~~(a) Electronic filing.~~ As authorized by Fed. R. App. P. 25(a)(2)(D) and (c)(2), the court requires electronic filing of documents and authorizes electronic service of documents, with certain exceptions, as explained in the court's "Administrative Order Regarding Electronic Case Filing."

~~(b) Facsimile filing or e-mail filing.~~

~~(1) Parties who are otherwise required to use electronic filing.~~ If a party would otherwise be required to file a document electronically, a motion may be filed by facsimile transmission or e-mail transmission only if the case has not yet been docketed by this court. The certificate of service must state that a copy has been served on all parties by facsimile transmission or by e-mail, as the case may be, and that the required number of paper copies of the motion has been mailed or shipped for delivery to the clerk and the parties on the next business day. See also Fed. Cir. R. 8. A party filing a document by facsimile or e-mail transmission under this provision must first call the clerk's office in advance to receive permission to do so. No other document may be filed by facsimile transmission or e-mail transmission.

~~(2) Parties who are not required to use electronic filing.~~ If the filing party is not required to file documents electronically in a particular case pursuant to the court's "Administrative

~~Order Regarding Electronic Case Filing," then the party may file a motion, response to a motion, reply to a response, or letter by submitting paper copies in accordance with Fed. Cir. R. 8 or by facsimile transmission. If the party elects to file such documents by facsimile transmission, the certificate of service must state that a copy has been served on all parties by facsimile transmission, that all parties have been notified of such facsimile transmission by telephone or e-mail, and that the required number of paper copies has been mailed or shipped for delivery to the clerk and the parties on the next business day. No other document may be filed by facsimile transmission.~~

Practice Notes

LOCATION OF CLERK'S OFFICE; HOURS OF OPERATION; NIGHT BOX. The clerk's office is in Room 401 of the National Courts Building, 717 Madison Place, NW, Washington, DC 20439, and is open from ~~9:00~~ 8:30 a.m. to ~~5:00~~ 4:30 p.m. on workdays. After the office closes on workdays, papers may be deposited until midnight in a night box at the garage entrance on H Street NW, between 15th Street and Madison Place.

CLERK'S MAILING ADDRESS. Address mail as follows:

Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

The clerk of court will not pay postage due.

CLERK'S FACSIMILE NUMBER. Documents which Federal Circuit Rule 25 permits to be sent by facsimile to the clerk of court by pro se parties should be sent to: 202-275-9678. Note that appeals and petitions for review may NOT be filed by facsimile.

CLERK'S OFFICE EMAIL. Email address (prose@cafc.uscourts.gov) may only be used by pro se filers.

PROOF OF SERVICE. Each brief, petition, motion, response, or reply must contain proof of service. If filed by counsel through CM/ECF, the certificate of service may state that the brief or other document was filed through CM/ECF and thereby served electronically. If filed by or to a pro se party, the certificate must state how the document was mailed or delivered. ~~Only the original filed pro se with the court must be signed. A copy of the unsigned proof of service must be attached to any copies.~~

RETURN COPY MARKED RECEIVED. When a brief or other paper is presented for filing and the filer provides a copy to be marked "received," the clerk of court will mark it received and return it. If the filing is by mail or if the night box is used, a self-addressed, postage-paid (first class) return envelope must accompany the request.

FILING REVIEW AND CORRECTION BY THE CLERK. The clerk of court may review material submitted for filing and require correction to conform with the Federal Rules of Appellate Procedure and the Federal Circuit Rules. The clerk of court will issue a notice ~~letter~~ advising of the nature of the nonconformity and guidelines for resubmission. Opposing counsel will be notified of the required correction. The timeliness of a response is computed from date of service of the original material. Because of occasional delays with some mail transmitted by the United States Postal Service, due to screening or other issues, if a document such as a notice of appeal, petition for review, motion, or

other document must be received by the court on a particular date, then the [pro se](#) filer might consider using an alternative method of delivering the document to the court, such as a commercial carrier, hand-delivery [or email](#). The court cannot waive the deadlines for filing a notice of appeal or petition for review, even if the document was deposited in the mail in a timely fashion. Federal Rule of Appellate Procedure 26(b).

PRO SE PARTIES WHO ARE ATTORNEYS. [If a pro se party is also an attorney, that individual may use CM/ECF only if the attorney is registered as a member of the court's bar and if the attorney enters an appearance. If the pro se party who also happens to be an attorney is not registered as a member of the bar, that pro se party must proceed by following the rules applicable to pro se parties and thus may not use CM/ECF.](#)

Federal Circuit Rule 26

Rule 26. Computing and Extending Time

(a) Computation of Time; Closing the Clerk's Office. “Legal holiday” also means a day on which the clerk's office is closed by order of the court or the chief judge. Such an order will be posted publicly.

(b) Motion to Extend Time.

- (1) A motion to extend the time prescribed by the Federal Rules of Appellate Procedure, the Federal Circuit Rules, or an order of this court must be made at least 7 days before the date sought to be extended, except that in extraordinary circumstances a motion may be made later than that deadline if accompanied by an affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746 that describes the extraordinary circumstances.
- (2) Before filing the motion, the movant must inform all other parties that it will seek an extension.
- (3) The movant must state in the motion whether any other parties object and, if so, whether a response in opposition will be filed.
- (4) In addition to showing good cause, the motion must state:
 - (A) the date to be extended;
 - (B) the revised date sought;
 - (C) the number of days of extension sought; and
 - (D) the total number of days of extension previously granted to the movant.
- (5) A request for an extension of more than 14 days must be accompanied by an affidavit or unsworn declaration of counsel or a pro se party under penalty of perjury under 28 U.S.C. § 1746 showing good cause for the extension.

(c) Electronic service of documents by counsel through CM/ECF. [Three additional days are NOT added to the time to file a responsive pleading, when the original document was filed through CM/ECF, because the court considers service by email through CM/ECF to be delivered when transmitted.](#)

Practice Notes

OPPOSITION TO EXTENSION. If a party opposes a motion for extension of time, that party should file its response promptly. The court will not necessarily wait for an opposition before ruling on a motion.

BENEFIT OF TIMELY EXTENSION REQUEST. Unless the court has previously ordered that there will be no further extensions, an appeal will not be dismissed for failure to file appellant's brief if appellant's motion to extend the time for filing was filed and served at least 7 days before the due date for the brief, but the motion has not been acted on by the due date.

EXTENSION DURING SETTLEMENT NEGOTIATIONS. Parties jointly stipulating that they are actively pursuing settlement of the case will be granted a reasonable extension of time to accomplish settlement.

COURT ORDER. Federal Rule of Appellate Procedure 26(c) does not apply when a court order requires action within a specified time; the due date is as specified in the order.

Federal Circuit Rule 26.1

Rule 26.1. Corporate Disclosure Statement

The corporate disclosure statement must be included in the certificate of interest prescribed in Federal Circuit Rule 47.4. A certificate of interest must be filed by any party represented by counsel within 14 days of the date of docketing of the appeal or petition. *See* Federal Circuit Rule 47.4 for additional requirements. [Each brief, petition or motion filed by counsel must also include a certificate of interest. A party represented by counsel must file an amended certificate of interest promptly when any of the information required by the certificate changes.](#)

Practice Notes

The requirements of Federal Rule of Appellate Procedure 26.1 are satisfied by filing a certificate of interest under Federal Circuit Rule 47.4. *See* Form 9.

[**TIMELY UPDATES.** The court uses the Certificate of Interest to determine when recusal of a judge may be appropriate. Thus timely correction and updating of the certificate is required to identify potential conflicts.](#)

Federal Circuit Rule 27

Rule 27. Motions

(a) **Content of Motion.** The preferred content and organization of a motion are:

- (1) the name of this court;
- (2) the caption. If the motion is for a procedural order on consent, the ~~authorized abbreviated~~ short caption may be used. For any other motion, the official caption must be used;
- (3) the title of the motion;
- (4) the grounds for the motion, the relief sought, and the legal argument to support the motion;
- (5) the movant's statement of consent or opposition to the motion. The movant must state in the motion that the movant has discussed the motion with the other parties, whether any party will object, and whether any party will file a response;
- (6) counsel's or pro se party's signature;
- (7) the certificate of interest. The certificate of interest (*see* Federal Circuit Rule 47.4) must be included in each motion;

- (8) supporting affidavit. If the facts relied on in the motion are subject to dispute, an affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746 must be attached to the motion;
- (9) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(b) Response; When Filed; Content. If a motion states that it is consented to or unopposed, a response is not required. If a motion does not state whether – or incorrectly states that – it is consented to or unopposed, a response should be filed as soon as the omission or error becomes known. The preferred organization of a response is comparable to the organization of a motion provided in (a) of this rule and the preferred content of a response is:

- (1) as provided in (a)(1), (2), (6), (7), (8), and (9) of this rule; and
- (2) the grounds for denying the motion, limiting the relief granted, or modifying the order sought, and the legal argument to support the response; or the responding party’s statement of consent or lack of opposition.

(c) Content of Reply. The preferred organization of a reply is comparable to the organization of a motion as provided in (a) of this rule and the preferred content of the reply is:

- (1) as provided in (a)(1), (2), (6), (7), (8), and (9) of this rule; and
- (2) the reply to the response and the legal argument to support it.

(d) Length of Motion, Response, or Reply; Cover and Backing; Attachments. Items listed in Federal Circuit Rule 27(a)(7)-(9) do not count toward the page limitation in Federal Rule of Appellate Procedure 27(d)(2). Cover and backing for a motion, response, or reply are not required. If a motion includes several attachments or exhibits, the court prefers that the attachments or exhibits be separately tabbed for ease of reference.

(e) Motion to Strike; Response. A motion to strike all or part of a brief, except to strike scandalous matter, is prohibited as long as the party seeking to strike has the right to file a responsive brief in which the objection could be made. A response, if any, in opposition to a motion to strike must be included in the responsive brief if one is authorized, or may be filed if leave is sought and obtained, or may be made at oral argument.

(f) Motion to Dismiss or to Remand; Response. A motion to dismiss for lack of jurisdiction or to remand should be made as soon after docketing as the grounds for the motion are known. After the appellant or petitioner has filed the principal brief, the argument supporting dismissal for lack of jurisdiction or remand should be made in the brief of the appellee or respondent. A response in opposition, if any, should be included in the responsive brief. Joint or unopposed motions or stipulations to dismiss or to remand may be made at any time.

(g) Motion Incorporated in a Brief. Except as provided in Federal Circuit Rule 27(e) and (f), a motion must not be incorporated in a brief.

(h) Delegation of Authority to the Clerk of Court. The clerk of court is authorized to act on any procedural motion or unopposed nonprocedural motion, but may not act on an opposed nonprocedural motion or any motion that requires action by a judge or panel of judges. The clerk of court may also direct an expedited response to a motion or petition and may direct the parties to show cause why an appeal or petition should not be dismissed. Even if the clerk of court is authorized to act on a particular motion, the clerk of court may nonetheless refer the matter to a judge or panel, or may defer the matter to the merits panel, when appropriate.

(i) Ex Parte Application. Neither the court nor any judge of the court will conduct an ex parte hearing on an application for relief.

~~(j) Copies in an En Banc Case. When an appeal is pending before the court en banc, motions and responses must be filed in an original and 18 copies. No paper copies are required to be provided to the court for any motion, response, or reply that is submitted by counsel through CM/ECF. If a motion, response or reply is filed by a pro se party, then one paper copy must be provided by the court.~~

(k) Application for Consideration, Vacation, or Modification of Procedural Order. A party adversely affected by a procedural order entered on a motion without awaiting the response time or by an order of the clerk of court may move for relief within 14 days of the order or action. The application must be made by motion.

(l) Review or Reconsideration of the Order of a Single Judge or Panel of Judges. Except for a dispositive order issued by a panel, which time will be governed by Federal Rule of Appellate Procedure 40(a)(1), a party seeking review by the court of the action of a single judge or reconsideration of the action of a panel of judges must file a motion for reconsideration within 14 days of the entry of the order.

(m) ~~Motions Papers~~ Containing Material Subject to a Protective Order.

(1) Confidentiality.

(A) ~~Except as provided herein, no material in a motion, response, or reply shall be marked confidential, including references to information previously treated as confidential pursuant to a protective order. The exceptions are as follows: Each motion, response, or reply may mark confidential up to fifteen (15) words if the information (1) was treated in the matter under review as confidential pursuant to a judicial or administrative protective order and (2) such marking is authorized by statute, administrative regulation, or court rule (such as Federal Rule of Civil Procedure 26(c)(1)). When words are marked confidential in a motion, response, or reply, repeating the marked words in the same motion, response, or reply shall not add to the count toward the fifteen-word allotment. A response need not count toward its allotment any words that were already marked confidential in the motion to which it responds; a reply need not count words that were marked confidential in the response but not in the motion. A party seeking to mark confidential more than fifteen words must file a motion with this court establishing that the additional confidentiality markings are appropriate and necessary pursuant to a statute, administrative regulation, or court rule. Such a motion shall be made contemporaneously with the filing of the underlying motion, response, or reply, and the marked material shall be treated as confidential until the court acts on the motion. If the motion to mark additional material confidential is denied in whole or in part, an amended motion, response or reply shall be filed within ten (10) days of the action on the motion.~~

(B) ~~Attachments and exhibits to a motion, response, or reply may be marked confidential to the extent permitted for appendix material under Federal Circuit Rule 30(h).~~

~~**(12) Two Sets Versions of the Motions Papers Documents.** If a party refers in a motion papers to material subject to confidentiality as permitted by Federal Circuit Rule 27(m)(1) mandated by statute or to a judicial or administrative protective order, two sets versions of motions papers documents must be filed.~~

~~**(A) Confidential-setversion; labeling; number of copies.** One set-version of motion papers documents, consisting of the original and three copies, must be labeled “confidential” and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., “CONFIDENTIAL UNTIL [DATE],” or “CONFIDENTIAL DURING JUDICIAL REVIEW.” Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.~~

(B) **Nonconfidential ~~set version; labeling; number of copies.~~** The second ~~set version~~ of motion ~~papers~~documents, ~~consisting of the original and three copies~~ from which confidential matter has been deleted, must be labeled “nonconfidential” and filed with the court. Each page from which material subject to a protective order has been deleted must bear a legend so stating. The introductory paragraph of the nonconfidential motion or response must describe the general nature of the confidential material that has been deleted.

(23) **Service.** Each party to the appeal must be served two copies of the ~~nonconfidential motion papers and, when permitted by the applicable protective order, two copies of the~~ confidential motion ~~papers~~documents if otherwise permitted by the applicable protective order.

(34) **Availability to the Public.** The confidential motion ~~papers~~documents will be made available only to authorized court personnel and must not be made available to the public. After 5 years following the end of all proceedings in the court, the parties may be directed to show cause why confidential motion papers (except those protected by statute) should not be made available to the public.

Practice Notes

CONTENT OF A MOTION, RESPONSE, OR REPLY. Using Federal Circuit Rule 27’s preferred content and organization for a motion, response, or reply will help avoid delays caused by the need for additional information. Although motions, responses, and replies need not have the formality of briefs, a motion, response, or reply may be rejected if it is not substantially complete.

MOOT RESPONSE. A response to a motion for a procedural order that is received after the motion has been acted on is considered moot.

AUTHORITY TO ACT ON MOTIONS; MOTIONS REFERRED TO PANEL. Neither the clerk of court nor the court is required to grant relief just because the parties agree it should be granted. The clerk of court’s authority to act on procedural or unopposed nonprocedural motions includes the authority to grant or deny the requested relief in whole or in part or to refer the motion to a judge or a panel. Examples of procedural motions include motions for extensions of time, motions to reform the caption, motions for leave to file various documents, motions for leave to proceed in forma pauperis, etc. Examples of nonprocedural motions include motions to dismiss, motions to remand, motions to transfer, motions to summarily affirm judgments, motions for stays of injunctions, motions to strike portions of briefs or appendices, motions for leave to intervene, motions for leave to file briefs as amici curiae, etc. Motions to exceed the permitted word or page limitation for a brief will be decided by a judge. If the clerk of court grants a motion to extend the time to file a principal brief by 60 days, no further extensions should be anticipated. Once a case is assigned to a merits panel, the clerk of court refers all motions to the merits panel.

TELEPHONE INQUIRY ABOUT PENDING MOTIONS; ACCESS TO ORDERS ON WEBSITE. Telephone inquiries about pending motions are discouraged because they divert the clerk’s office staff from more pressing duties. ~~When an order on a motion directs counsel to take prompt action, the clerk’s office will telephone counsel. All other~~ Most orders are considered routine and counsel may await notification by mail or Notice of Docket Activity (NDA). ~~Alternatively,~~ eCounsel or the parties may often determine the status of a pending motion and obtain copies of court orders ~~on this court’s website, <http://www.cafe.uscourts.gov/index.html>, through CM/ECF or PACER.~~ First, one may view on PACER the court’s current docket sheet in any pending appeal or petition to determine the current status of a motion. Many ~~other~~ pertinent orders, including en banc orders, are promptly posted on the court’s opinions and orders page. Under no circumstances should anyone telephone a judge or the office of the senior staff attorney about a motion. In an emergency, you may call the clerk’s office.

MOTION TO EXPEDITE PROCEEDINGS. While motions to expedite proceedings are not routinely granted, they may be filed in an appropriate case. A motion for expedited proceedings is the procedural vehicle to request the court to accelerate consideration of an appeal or petition for review, and should be filed immediately upon filing of an appeal or petition for review. Such a motion is appropriate where the normal briefing and disposition schedule may adversely affect one of the parties, such as appeals involving preliminary or permanent injunctions, or government contract bid protests. A motion for expedited proceedings should be styled as an “Emergency Motion.” Unopposed emergency motions should still include a brief review of the grounds for the motion, the specific relief sought by way of a proposed briefing schedule, and the legal argument to support the motion, per Rule 27(a)(4). A motion for expedited proceedings should also include as part of the relief sought a request for an expedited briefing schedule for the motion.

Federal Circuit Rule 28

Rule 28. Briefs

(a) Contents of Brief; Organization of Contents; Addendum; Binding. Briefs must be bound as prescribed in Rule 32 of the Federal Rules of Appellate Procedure and must contain the following in the order listed:

- (1) the certificate of interest (*see* Federal Circuit Rule 47.4);
- (2) the table of contents;
- (3) the table of authorities;
- (4) the statement of related cases (*see* Federal Circuit Rule 47.5);
- (5) the jurisdictional statement including a representation that the judgment or order appealed from is final or, if not final, the basis for appealability (e.g., preliminary injunction, Fed. R. Civ. P. 54(b) certification of final judgment as to fewer than all of the claims or parties, etc.);
- (6) the statement of the issues;
- (7) the statement of the case setting out the facts relevant to the issues, including the citation of any published decision of the trial tribunal in the proceedings;
- (8) the summary of the argument;
- (9) the argument, including statement of the standard of review;
- (10) the conclusion and statement of relief sought;
- (11) the judgment, order, or decision in question, and any opinion, memorandum, or findings and conclusions supporting it, as an addendum placed last within the initial brief of the appellant or petitioner. This requirement is met when the appendix is bound with the brief. (*See* Federal Circuit Rule 30(c)(1) and (d) for a duplicative requirement of the appendix.) Additionally, in an appeal involving a patent, the patent in suit may be included within the addendum of the initial brief and, if included, must be reproduced in its entirety. (*See also* Federal Circuit Rule 30(a)(2)(A)(iii) and Federal Circuit Rule 30(a)(3) for a requirement that the patent in suit be included in its entirety in the appendix). Addendum material must be paginated with the corresponding appendix page numbers following the numbering format specified in Federal Circuit Rule 30(b)(4)(E), e.g. “Appx134,” “Appx3-17,” or “SAppx1185”;
- (12) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)); and
- (13) the certificate of compliance, if required by Federal Rule of Appellate Procedure 32(a)(7).

(b) Appellee’s Jurisdictional Statement and Statements of the Issues, the Case, the Facts, and the Standard of Review. The appellee’s jurisdictional statement and statements of the issues, the case, the facts, and the standard of review must be limited to specific areas of disagreement with those of the appellant. Absent disagreement, the appellee must not include any of those statements. The statement of the case must include the citation of any published decision of the trial tribunal in the proceedings that is not included in the appellant’s statement of the case.

(c) Motion to File Extended Brief. The court looks with disfavor on a motion to file an extended brief and grants it only for extraordinary reasons. Unless the order granting a motion to file an extended brief provides otherwise, when additional pages or words are allowed in the principal brief of an appellant or cross-appellant, a responsive brief permitted by the rules may contain the same number of additional pages or words.

(d) Brief Containing Material Subject to a Protective Order.

(1) Confidentiality.

(A) Except as provided herein, no material in briefs shall be marked confidential, including references to information previously treated as confidential pursuant to a protective order. The exceptions are as follows: Each brief may mark confidential up to fifteen (15) words if the information (1) was treated in the matter under review as confidential pursuant to a judicial or administrative protective order and (2) such marking is authorized by statute, administrative regulation, or court rule (such as Federal Rule of Civil Procedure 26(c)(1)). When words are marked confidential in a brief, repeating the marked words in the same brief shall not add to the count toward the fifteen-word allotment. A brief need not count toward its allotment words that were marked confidential for the first time in the briefing cycle in an immediately preceding brief to which it is responding. A party seeking to mark confidential more than fifteen words in any brief must file a motion with this court establishing that the additional confidentiality markings are appropriate and necessary pursuant to a statute, administrative regulation, or court rule. Such a motion shall be made contemporaneously with the filing of the brief, and the marked material shall be treated as confidential until the court acts on the motion. If the motion is denied in whole or in part, an amended brief shall be filed within ten (10) days of the action on the motion.

(B) Addendum material may be marked confidential to the extent permitted for appendix material. See Federal Circuit Rule 30(h).

(C) For purposes of this subsection (d), petitions for en banc or panel rehearing and responses thereto shall be considered to be briefs.

~~(12)~~ Two Sets—Versions of Briefs. If a party refers in a brief to material subject to confidentiality under Federal Circuit Rule 28(d) mandated by statute or to a judicial or administrative protective order, two ~~sets~~ versions of briefs must be filed. See Federal Circuit Rule 25 for requirements on filing briefs through CM/ECF, with paper copies to follow. The following subsections relate to the paper briefs that are filed after a brief is accepted for filing through CM/ECF.

(A) Confidential ~~set~~ version; labeling; number of copies. Counsel should file one set version of paper briefs, consisting of six the original and eleven copies, which must be labeled “confidential.” and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., “CONFIDENTIAL UNTIL [DATE],” or “CONFIDENTIAL DURING JUDICIAL REVIEW.” Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.

(B) Nonconfidential brief set; labeling; number of copies. Counsel should file the nonconfidential brief through CM/ECF. No paper copies are required if the nonconfidential brief was filed through CM/ECF and paper copies of the confidential brief were filed, unless otherwise ordered. The nonconfidential brief, second set of briefs, consisting of the original and four copies from which confidential matter has been deleted, must be labeled “nonconfidential” and filed with the court. ~~Each~~ each page from which confidential material subject to a protective order has been deleted must bear a legend so stating. The table of contents of a nonconfidential brief must describe the general nature of the confidential material that has been deleted.

(23) Service. A nonconfidential brief filed by counsel through CM/ECF is served on each party through an NDA. Each party to the appeal must be served two paper copies of any ~~the nonconfidential brief and, when permitted by the applicable protective order, two copies of the confidential brief.~~

(34) Availability to the Public. The confidential briefs will be made available only to authorized court personnel and must not be made available to the public. After 5 years following the end of all proceedings in the court, the parties may be directed to show cause why confidential briefs (except those protected by statute) should not be made available to the public.

(5) Agreement to Remove Confidentiality Markings. Before the filing of any motion to mark material as confidential and thereafter if a motion is filed, the parties shall attempt to reach agreement that material should not be marked confidential in briefs or motions pursuant to Federal Circuit Rules 11(d) or 17(f).

(e) Citations. Opinions of this court and its predecessors should be cited as found in the Federal Reporter. Parallel citations to any other reporters are discouraged. Examples of acceptable citations are:

Guotos v. United States, 552 F.2d 992 (Ct. Cl. 1976).

In re Sponnable, 405 F.2d 578 (CCPA 1969).

South Corporation v. United States, 690 F.2d 1368 (Fed. Cir. 1982)(en banc).

Doe v. Roe, No. 12-345, slip op. (Fed. Cir. Oct. 1, 1982).

(f) Reference to Appendix. Reference in the brief to pages of the joint appendix and, if permitted, of a supplemental appendix must be as short as possible consistent with clarity and must follow the numbering format specified in Federal Circuit Rule 30(b)(4)(E), e.g., “*Appx134*,” “*Appx3-17*” or “*SAppx1185*.”

(g) ~~Informal Brief; Appellee’s Brief.~~ Pro se Briefs; Response.

(1) Informal Brief; Appellee’s Brief. A pro se party may file a formal brief or an informal brief, but not both. A pro se party may file an informal brief on the form prescribed by the court. When the appellant or petitioner files an informal brief, the appellee or respondent may elect to file an informal brief. An informal brief filed by an appellee or respondent must contain a statement of the case but otherwise follow the format prescribed for the pro se party. Three paper copies of an informal brief are required to be filed. See Federal Circuit Rule 25(c)(2)(B).

(2) Formal Brief. If a pro se party chooses to file a formal brief, then an informal brief may not be filed. If a formal brief is filed, it must comply with the various rules of this court regarding format and content, and six paper copies must be filed.

(3) Response. In a responsive brief, the respondent must state whether or not respondent believes the court has jurisdiction over the petition for review, with reasons provided.

(h) Briefs in a Transferred Case. When an appeal is transferred to this court by another court of appeals after briefs have been filed, the parties may stipulate to proceed on those briefs instead of filing briefs prescribed by these rules. The stipulation must be filed within 14 days of docketing, and the briefs must be filed by counsel through CM/ECF, with the required number of paper copies to follow. See Federal Circuit Rule 25(c). ~~and the number of copies of briefs required by Federal Circuit Rule 31(b) must accompany the stipulation.~~ The court may order supplemental briefs.

(i) Citation of Supplemental Authorities. Any citation of supplemental authorities must be submitted through CM/ECF by counsel. If filed by a pro se party, then 3 copies must be filed. ~~An original and 6 copies of a citation of supplemental authorities must be filed.~~

Practice Notes

INFORMAL BRIEF. The informal brief procedure is explained in the Guide for Pro Se Petitioners and Appellants.

MULTIPLE PARTIES. When there are multiple parties represented by the same counsel or counsel from the same firm, a combined brief must be filed on behalf of all the parties represented by that counsel or firm.

DESCRIBING THE GENERAL NATURE OF CONFIDENTIAL MATERIAL DELETED FROM THE NONCONFIDENTIAL BRIEF. The following example is acceptable:

CONFIDENTIAL MATERIAL OMITTED

The material omitted on page 42 describes the circumstances of an alleged lost sale; the material omitted in the first line of page 43 indicates the dollar amount of an alleged revenue loss; the material omitted on page 44 indicates the quantity of the party's inventory and its market share; the material omitted in the text on page 45 describes the distributor's experiences concerning the inventories and order lead times; and the material omitted in the footnote on page 45 describes non-price factors affecting customers' preferences between competing methods.

JUSTIFICATION FOR CLAIM OF CONFIDENTIALITY. Unnecessarily designating material in the briefs and appendix as confidential may hinder the court's preparation and issuance of opinions. Counsel must be prepared to justify at oral argument any claim of confidentiality.

INCLUSION OF PATENT CLAIMS. Any party or intervenor may include the language of a patent or claim at issue beginning on the inside of the front cover of the brief (this duplicate language is not counted pursuant to Fed. R. App. P. 32(a)(7)), provided the same language is included in the brief.

Federal Rule of Appellate Procedure 28.1 – Cross-Appeals

Practice Notes

CROSS-APPEALS. A party may file a cross-appeal only when it seeks to modify or overturn the judgment of a trial tribunal. Although a party may present additional arguments in support of the judgment as an appellee, counsel are cautioned against improperly designating an appeal as a cross-appeal when they merely present arguments in support of the judgment. *See Bailey v. Dart Container Corp.*, 292 F.3d 1360 (Fed. Cir. 2002). Further, counsel are cautioned, in cases involving a proper cross-appeal, to limit the fourth brief to the issues presented by the cross-appeal. In all cases, counsel should be prepared to defend the filing of a cross-appeal and the propriety of arguments presented in the fourth brief at oral argument.

TIME TO SERVE AND FILE A BRIEF. Please refer to Federal Circuit Rule 31 (a) for brief due dates when there is a cross-appeal.

CLARIFICATION TO FEDERAL RULE OF APPELLATE PROCEDURE 28.1(4). Where the term “appellee” is used, it refers to the “cross-appellant.”

Federal Circuit Rule 29

Rule 29. Brief of an Amicus Curiae

(a) Content; Form; Copies. In addition to the contents required by Federal Rule of Appellate Procedure 29, the brief of an amicus curiae must include a certificate of interest (*see* Federal Circuit Rule 47.4) in front of the table of contents. [After the court grants a motion for leave to file the brief, the movant must file six paper copies of the brief within five business days of the clerk of court's acceptance of the electronic version of the brief.](#)

(b) List of Amicus Curiae. The clerk will maintain a list of bar associations and other organizations to be invited to file amicus curiae briefs when the court directs. Bar associations and other organizations will be placed on the list if they request. The request must be renewed annually not later than October 1.

(c) Consent. If an amicus brief is filed on consent of all parties, then no motion for leave is required and the brief should state, pursuant to Federal Rule of Appellate Procedure 29(a), that all parties have consented to its filing.

Practice Notes

An amicus curiae must file an entry of appearance and a certificate of interest, if applicable. *See* Federal Circuit Rules 47.3, 47.4, and Forms 8 and 9.

Federal Circuit Rule 30

Rule 30. Appendix to the Briefs

(a) Purpose; Content of Appendix; Time for Filing; Number of Copies; Cover; Service.

(1) Purpose. The purpose of this rule is to limit the size of the appendix of documentary materials that is printed and filed with the court. The rule also authorizes a supplementary video recording media appendix under some circumstances.

(2) Contents; Indiscriminate Referencing to Blocks of the Record Prohibited.

(A) In addition to the matters required by Federal Rule of Appellate Procedure 30(a)(1)(A),(B), and (C), the appendix must include:

- (i) the entire docket sheet from the proceedings below;
- (ii) in an appeal from a jury case, the judge's charge, the jury's verdict, and the jury's responses to interrogatories;
- (iii) in an appeal involving a patent, the patent in suit in its entirety. The patent in suit may also be included as an addendum to appellant's initial brief. Any other patents included in an appendix must be included in their entirety; and
- (iv) any nonprecedential opinion or order cited in accordance with Federal Circuit Rule 32.1(c).

(B) Parts of the record authorized by Federal Rule of Appellate Procedure 30(a)(1)(D) must not be included in the appendix unless they are actually referenced in the briefs, but the parties are encouraged to include in the appendix sufficient surrounding transcript pages to provide context for a referenced transcript excerpt.

(C) Indiscriminate referencing in briefs to blocks of record pages or inclusion of unnecessary pages in the appendix is prohibited.

(D) If the appellant considers that parts of the record have been referenced in violation of this rule, the appellant may so advise the appellee and the appellee must advance the costs of including those parts in the appendix.

(E) The following must not be included in the appendix except by leave of the court, and any motion for leave must state the number of pages requested to be included:

- (i) briefs and memoranda in their entirety (except as otherwise provided in Federal Circuit Rule 30);
- (ii) notices;
- (iii) subpoenas – except where the enforcement or validity of a subpoena is at issue;
- (iv) summonses – except in appeals from the Court of International Trade;
- (v) motions to extend time; or
- (vi) jury lists.

(F) Nothing in this Federal Circuit Rule 30 prohibits from designation and inclusion in an appendix:

- (i) an examiner's answer in an ex parte patent case;
- (ii) a trademark examining attorney's appeal brief in an ex parte trademark case; or
- (iii) the briefs and memoranda in their entirety in a case where the only issue is the propriety of summary judgment.

(3) Additional Mandatory Appendix Items in Patent and Trademark Office Appeals. In an appeal from the Patent and Trademark Office, unless the parties mutually agree otherwise, the appendix must include:

- (A) a copy of all rejected claims in an ex parte patent appeal;
- (B) a copy of all counts in a patent interference appeal; or
- (C) a copy of the trademark sought to be registered or cancelled and a copy of any registration relied on to refuse or oppose registration or to seek cancellation of a registered mark in an ex parte or an inter partes trademark appeal.

(4) Time for Filing. The appellant must serve and file an appendix within 7 days after the last reply brief is served and filed. When there is no cross-appeal, if the appellant does not file a reply brief, the appendix must be served and filed within the time for filing the reply brief. In a cross-appeal, if the cross-appellant does not file a reply brief, the appendix must be served and filed within 7 days after the time for filing the cross-appellant's reply brief has expired.

(5) Number of Copies. ~~Twelve~~ Six paper copies of the appendix must be filed with the court.

(6) Multi-Volume Appendix: Covers and Page Numbers. A multi-volume appendix must have a volume number in roman numerals and the pages included in the volume listed at the top of the cover of each volume (e.g., Volume II, Pages 542 to 813).

(7) Service. ~~Two copies of the appendix must be served on counsel for each party separately represented.~~ One paper copy must be served on, or by, each pro se party. In a case in which all parties are represented by counsel, service is made through CM/ECF and no paper copies are required to be served to the parties.

(8) Consequence of Failing to File an Appendix. If the appellant fails to file an appendix, the clerk of court is authorized to dismiss the case.

(b) Determination of Contents of Appendix; Designation of Materials; Extension of Time.

(1) The parties are encouraged to agree on the contents of an appendix that will comply with this Federal Circuit Rule 30.

(2) In the absence of an agreement, the appellant must, within 14 days after docketing in an appeal from a court or after service of the certified list or index in a petition for review or appeal from an agency, serve on the appellee or cross-appellant a designation of materials from which the appendix will be prepared and a statement of the issues to be presented for review. The appellee or cross-appellant may, within 14 days after receiving the designation, serve on the appellant a counterdesignation of additional parts to be included in the appendix.

(3) A designation or counterdesignation must not be filed with the court.

(4) Table of Page Numbers; Physical Compilation.

(A) Within 14 days after the parties have designated the material for the appendix, the appellant must assign consecutive page numbers to the designated material and serve on all parties a table reflecting the page numbers of each item designated.

(B) If not prohibited in an outstanding protective order, instead of the table the appellant may—at the appellant’s option—serve on the parties one copy of a physical compilation of the designated material with the assigned page numbers shown. This copy may be in micrographic format.

(C) The first page numbers in the designated material must be assigned to the judgment or order appealed from and any opinion, memorandum, or findings and conclusions supporting it.

(D) The table of page numbers or the physical compilation of the designated material, whichever is used, must not be filed with the court. If all designated material comprises no more than 100 pages, Federal Circuit Rule 30(d) applies.

(E) The pages of the appendix or supplemental appendix shall be numbered by the automated Bates numbering feature of the software used to convert the appendix to a .pdf document and must be in the format “Appx” or “SAppx” followed by the page number(s); e.g., “Appx134,” “Appx3-17,” or “SAppx1385.”

(5) Extension of Time Limits. The time limits for designating, counterdesignating, and compiling the table may be extended by agreement of the parties without seeking leave of the court, as long as an extension of the time is not required for filing appellant’s brief. But if a transcript of the proceedings is required before the material can be designated and if the transcript has been ordered but not completed within the time prescribed by this rule, the appellant must move for an extension of time within which to designate the material. An affidavit explaining in detail what has been done to expedite transcription of the trial proceedings must be attached to the motion.

(6) Preparation of Appendix. The appellant must prepare the appendix to be filed with the court from the designated material by selecting from that material only items required by these rules and pages specifically referred to in the briefs of the parties. Pages of the designated material not referenced in the briefs – other than items required by these rules – must be omitted from the appendix filed with the court.

(c) Format of Appendix; Pagination.

(1) Arrangement of Appendix. Federal Rule of Appellate Procedure 30(d) governs the arrangement of the appendix, except the judgment or order appealed from and any opinion, memorandum, or findings and conclusions supporting it must be placed first in the appendix. (See Federal Circuit Rule 28(a)(12) for a duplicative requirement of the appellant’s or petitioner’s initial brief.)

(2) Pagination. The page numbers used in the appendix must be the page numbers assigned by the appellant or petitioner to the designated material in accordance with Federal Circuit Rule 30(b). The page number must appear centered in the bottom margin of each page in the appendix. Other pagination marks must be redacted if necessary to avoid confusion. The materials in the appendix must be in numerical order according to the page numbers the appellant assigned to the designated materials. Omission of pages need not be noted, e.g., page 102 may be followed by page 230 without stating that pages 103-229 are not reproduced in the appendix. References in the briefs must be only to the page numbers of the appendix.

(3) Printing. Pages in an appendix – even when filing a combined brief and appendix – may be printed on both sides. To the extent possible, the court encourages this.

(d) Combined Brief and Appendix.

(1) When a brief and appendix are combined, the cover must so indicate.

(2) If all designated material comprises no more than 100 pages, all of it may be included in the appendix, in which case it may be bound together with the appellant’s or petitioner’s initial brief and the brief must be filed as provided in Federal Circuit Rule 31(a).

(e) Appendix in a Pro Se Case. If an appellant appearing pro se files an inadequate appendix, the appellee may file with its brief an appendix containing material permitted by Federal Circuit Rule 30(a)(2).

(f) Separate or Supplemental Appendix. If the appellant has failed to participate in determining the contents of an appendix or has filed an inadequate appendix, the United States or an officer or agency of the United States, as the appellee, may file a separate or supplemental appendix containing material permitted by Federal Circuit Rule 30(a)(2). The cover must be red. If the separate or supplemental appendix contains no more than 100 pages, it may be bound together with the appellee's initial brief. Except as provided in Federal Circuit Rule 30(e) and (f), no party may file a separate or supplemental appendix without leave of the court.

(g) Costs. The costs of the table of page numbers or the copy of the physical compilation of the designated material authorized in Federal Circuit Rule 30(b)(4) and of the appendix, including the separate segments authorized in Federal Circuit Rule 30(h), may be assessed as provided in Federal Rule of Appellate Procedure 30(b)(2).

(h) Appendices Containing Material Subject to a Protective Order.

(1)(A) Confidentiality. Material that retains its status as covered by a protective order may be marked confidential in appendices (and addenda to briefs). Material that has lost its coverage under a protective order under Federal Circuit Rule 11(c) or 17(e)—based on Federal Circuit Rules 30(h)(1)(B), 27(m)(1), or 28(d)(1)—may not be marked confidential in appendices (or addenda).

(B) Agreement by Parties to Modify a Protective Order; Certificate of Compliance. If any portion of the record in the trial court or an agency is subject to a protective order and a notice of appeal has been filed, each party must promptly review the record to determine whether protected portions need to remain protected on appeal. If a party determines that some portions no longer need to be protected, that party must seek an agreement with the other party. Any agreement that is reached must be promptly presented to the trial court or the agency, which may issue an appropriate order. Whether or not an agreement is reached, each party must file a certificate of compliance no later than the time for filing the joint appendix stating it complied with this rule. This Federal Circuit Rule 30(h)(1)(B) does not apply in a case arising under 19 U.S.C. § 1516a.

(C) Motion to Modify the Protective Order. A party may move at any time in this court to modify a protective order to remove protection from some material or to include another person within its terms. This court may decide the motion or may remand the case to the trial court. This court, sua sponte, may direct the parties to show cause why a protective order should not be modified.

(12) Two ~~Sets~~ Versions of Appendices. If a party refers in appendices to material subject to confidentiality mandated by statute or to a judicial or administrative protective order, consistent with Federal Circuit Rule 30(h)(1), two ~~sets~~ versions of appendices must be filed.

(A) Confidential ~~set~~version; labeling; number of copies. One set of appendices, consisting of ~~12~~ six paper copies of the complete appendix, must be labeled “confidential” and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., “CONFIDENTIAL UNTIL [DATE],” or “CONFIDENTIAL DURING JUDICIAL REVIEW.” The confidential appendix must include at the beginning (i.e., in front of the judgment or order appealed from) pertinent excerpts of any statutes imposing confidentiality or the entirety of any judicial or administrative protective order. Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.

(B) Nonconfidential ~~set~~version; labeling; ~~number of copies~~. The second ~~set~~ version of appendices, ~~consisting of the original and four three copies~~ from which confidential matter has been deleted, must be labeled “nonconfidential” and filed with the court. Each page

from which material subject to a protective order has been deleted must bear a legend so stating. The table of contents of a nonconfidential appendix must describe the general nature of the confidential material that has been deleted.

(23) Service. In a pro se case, each party to the appeal must be served one copy ~~two copies~~ of the nonconfidential appendices and, when permitted by the applicable protective order, one copy ~~two copies~~ of the confidential appendices. In a case in which all parties are represented by counsel, service is made through CM/ECF of a nonconfidential appendix; one paper copy of the confidential version must be served.

(34) Availability to the Public. The confidential appendices will be made available only to authorized court personnel and must not be made available to the public. After 5 years following the end of all proceedings in the court, the parties may be directed to show cause why confidential appendices (except those protected by statute) should not be made available to the public.

(i) Appendix to Informal Brief. The appendix to an informal brief must contain the judgment and opinion of the trial court or the final order of an administrative agency. The initial decision of the administrative judge must also be included in the appendix in a Merit Systems Protection Board case.

(j) Supplementary Video Recording Media Appendix. When the record on appeal or review has been perpetuated in whole or in part on video recording media in accordance with the rules of the court or agency, those video recording media portions of the record that would properly be included in the appendix if they were in documentary form may be included in a supplementary video recording media appendix. Four copies must be filed.

Practice Notes

FILING PAGE PROOF COPIES PROHIBITED; NOTICE OF NEW REFERENCES IN CROSS-APPELLANT'S REPLY BRIEF. Preparing the appendix requires extensive cooperation between the parties. Federal Circuit Rule 30, unlike Federal Rule of Appellate Procedure 30, does not permit filing page proof copies of briefs. An appendix prepared without careful attention to Federal Circuit Rule 30 may be rejected when submitted and may result in dismissal. To expedite preparing the joint appendix, a cross-appellant will notify the appellant promptly on being served appellant's reply brief whether the cross-appellant will file a reply brief and, if so, whether it will refer to pages not referenced in the briefs already filed, listing any such pages.

DISPENSING WITH THE APPENDIX. A motion to dispense with the appendix will be granted only in extraordinary circumstances.

BRIEFS AND MEMORANDA. Briefs and memoranda presented to the trial court or agency may not ordinarily be included in their entirety in the appendix, but individual pages may be included when it is necessary to refer to them in the appellate briefs.

TABLE OF CONTENTS OR INDEX. Parties are encouraged to include a table of contents or index in each volume of the appendix.

Federal Circuit Rule 31

Rule 31. Serving and Filing Briefs

(a) Time for Service and Filing.

(1) Brief of Appellant or Petitioner.

(A) In an appeal from a court, the appellant must serve and file its initial brief within 60 days after docketing. Docketing a cross-appeal does not affect the time for serving and filing the appellant's initial brief.

(B) In an appeal from an agency, the petitioner or appellant must serve and file its initial brief within 60 days after the certified list or index is served pursuant to Federal Circuit Rule 17(c). ~~In an appeal from the Patent and Trademark Office, the appellant's brief is due within 60 days after the date of docketing.~~

(C) When two or more appellants or petitioners choose to proceed by filing a single brief, the initial brief must be served and filed no later than the latest date on which the initial brief of any of these appellants or petitioners is due.

(2) **Brief of Appellee or Cross-Appellant.** The appellee or cross-appellant must serve and file its initial brief within 40 days after appellant's brief is served.

(3) **Cross-Appeal.** In a cross-appeal:

(A) the appellant must serve and file its reply brief within 40 days after cross-appellant's brief is served; and

(B) the cross-appellant must serve and file its reply brief within 14 days after appellant's reply brief is served.

(4) **Single Brief Responding to Multiple Parties.** A single brief that responds to the briefs of multiple parties must be served and filed within the time prescribed after service of the last of these briefs or, if no such brief is filed, after the time expires for filing the last of these briefs.

~~(5) **Reply Brief; Oral Argument.** A reply brief that is filed within 7 days of oral argument must be served so that it reaches all parties before the argument.~~

(b) **Number of Copies.** Except for briefs containing material subject to a protective order (*see* Federal Circuit Rule 28(d)), ~~12 6~~ copies of each brief, ~~including the original or a copy designated as the original,~~ must be filed with the court ~~by counsel and 2 copies must be served on the principal counsel for each party, intervenor, and amicus curiae separately represented.~~ Counsel will be directed by the clerk's office to file the paper copies after the copy submitted through CM/ECF is accepted for filing. If the brief is filed by a pro se party, then three paper copies are required to be filed with the court.

(c) **Certain Motions Suspend the Due Date of the Next Brief.** When a motion is filed that, if granted, would terminate the appeal, the time to serve and file the next brief due is suspended. If the motion is denied, the next brief becomes due, unless the court orders otherwise, within the balance of the time remaining under this rule when the motion was filed, but not fewer than 14 days from the date of the order.

(d) **Consequence of Failure to File a Brief by Appellant or Petitioner.** If the appellant fails to file an initial brief, the clerk of court is authorized to dismiss the case.

(e) Informal Brief; Time for Filing; Number of Copies.

(1) Brief of Appellant or Petitioner.

(A) In an appeal from a court, a pro se appellant filing an informal brief must serve and file the brief within 21 days after the appeal is docketed.

(B) In a petition for review or an appeal from an agency, a pro se petitioner or appellant filing an informal brief must serve and file the brief within 21 days after the certified list or

index is served pursuant to Federal Circuit Rule 17(c) or within 21 days after docketing, whichever is later.

(2) Brief of Appellee or Respondent. An appellee or respondent filing an informal brief must serve and file the brief within 21 days after petitioner's or appellant's brief is served or within 21 days after the certified list or index is served pursuant to Federal Circuit Rule 17(c), whichever is later.

(3) Reply Brief. When an informal brief is used, any reply brief must be served within 14 days after respondent's or appellee's brief is served.

(4) Number of Copies. ~~An original and 3~~ Three paper copies of each informal brief must be filed with the court and one copy must be served on each party.

Practice Notes

~~**REPLY BRIEFS DUE AT LEAST 7 DAYS BEFORE ORAL ARGUMENT; EXPEDITED SERVICE.** The reply brief of the appellant (or cross appellant in a cross appeal) is due to be served and filed within 14 days of the preceding brief. The 7 day provision of Federal Rule of Appellate Procedure 31(a)(1) means that the reply period is automatically shortened if the end of the 14 day period is within 7 days of oral argument. The briefing schedule will not ordinarily run so close to oral argument, but if it does because of extensions or otherwise the reply brief must be filed early. Federal Circuit Rule 31(a)(5) provides that when that happens, a reply brief filed within 7 days of oral argument must be filed and served in an expedited manner. Regular mail would be inappropriate.~~

CONSOLIDATED APPEALS. In consolidated appeals in which more than one appellant filed a notice of appeal, the opening brief of all appellants will be governed by the docketing date of the last filed appeal.

CONSOLIDATED CROSS-APPEALS. In consolidated cross-appeals, the briefing schedule is computed according to the docketing date of the first appeal.

Federal Circuit Rule 32

Rule 32. Form of Briefs, Appendices, and Other Papers

(a) Nonconforming Brief. The clerk of court may refuse to file any brief that has not been prepared ~~printed or bound~~ in conformity with Federal Rule of Appellate Procedure 32.

(b) Exclusion from Type-Volume Limitation. In addition to the items listed in Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) that are not counted in the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B), the following items do not count toward that limitation:

- (1) the certificate of interest;
- (2) the statement of related cases; and
- (3) the addendum in an initial brief of an appellant or petitioner.

(c) Informal Brief. An informal brief must be prepared on a form provided by the clerk of court. The form contains instructions for preparing and filing an informal brief. An informal brief should be typewritten, but block printing or, as a last resort, legible handwriting is permitted. An informal brief including continuation pages must not exceed 30 pages of typewritten double-spaced text or its equivalent.

(d) Form of Appendix. Pages in an appendix—even when filing a combined brief and appendix—may be printed on both sides. To the extent possible, the court encourages this.

(e) Filing Corresponding Brief on Compact Disc. In addition to the filing of a paper brief, a party may file a corresponding brief contained on a compact disc - read only memory (CD-ROM), subject to the following requirements.

(1) Consent; Motion. Within 14 days of docketing an appeal, a party intending to file a corresponding brief must ascertain whether any other party consents or objects. If the other parties consent, the filing party must promptly file with the court a notice of intent to file a corresponding brief. If any other party does not consent, the party seeking to file a corresponding brief must promptly file a motion for leave with the court. If no response is filed within 7 days, the clerk will grant the motion for leave to file a corresponding brief. The court will deny a motion for leave to file a corresponding brief only if an opposing party demonstrates substantial prejudice.

(2) Content. A corresponding brief must be identical in content to the paper brief. A corresponding brief may provide hypertext links to the complete versions of material that was part of the record below. Hypertext links to other material must be confined to materials such as cases, statutes, treatises, law review articles, and similar authorities. A corresponding brief must be self-contained and static.

(3) Statement Concerning Instructions and Viruses. A corresponding brief must be accompanied by a statement, preferably within or attached to the packaging, that:

(A) sets forth the instructions for viewing the brief and the minimum equipment required for viewing; and

(B) verifies the absence of computer viruses and lists the software used to ensure that the brief is virus-free.

(4) Time for Filing. A corresponding brief, if any, must be filed no later than the time for filing the joint appendix.

(5) Filing and Service. Except for the time of filing, a corresponding brief must be filed and served in the same manner and the same number of copies as the paper brief.

(6) Single CD-ROM. All parties to an appeal who intend to file a corresponding CD-ROM brief are encouraged to cooperate in placing all such briefs on a single CD-ROM.

(7) Table of Contents. Parties filing a corresponding brief are encouraged to include a table of contents with links to all of the items required in a joint appendix under Federal Rule of Appellate Procedure 30 and Federal Circuit Rule 30 and to all other parts of the record contained on the corresponding brief.

(8) Labeling. A label with the caption of the case, the number of the case, and the types of briefs included on the CD-ROM must be included on both the packaging and the CD-ROM.

Practice Notes

PREFERRED COVER. In addition to the requirements of Federal Rule of Appellate Procedure 32(a)(2)(D), the court encourages inclusion on the cover of the name of the judge, when applicable, from whose judgment appeal is taken.

PREFERRED BINDING. The court prefers that a brief be securely bound along the left margin to ensure that the bound copy will not loosen or fall apart; that a brief lie flat when open; that a ring-type binding, plastic or metal, or a binding that protrudes from the front and back covers ~~(e.g., VeloBind)~~ not be used; and that any externally positioned staple be covered with tape.

PRINT SIZE OF BRIEFS. Counsel should avoid photoreproduction that reduces the print size of the original smaller than the size required by Federal Rule of Appellate Procedure 32.

FOOTNOTES. The typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) apply to all text in the brief, including footnotes.

BRIEF COVERS IN CROSS-APPEALS. The color of the cover of the cross-appellant's principal brief is red. The color of the covers of appellant's reply brief is yellow and cross-appellant's reply brief is gray.

COPIES OF PATENT DOCUMENTS. Oversize patent documents reproduced in a brief or appendix should be photoreduced to 8 1/2 by 11 inches if readability can be maintained; otherwise, they should be folded and bound so they do not protrude from the covers of the brief or appendix.

ERRATA; CORRECTIONS TO BE MADE BY COUNSEL OR A PARTY. A brief may not be corrected merely by appending an errata sheet. Corrections, which must be limited to nonsubstantive matters, must be made by counsel or a party using suitable means directly in the paper briefs in the clerk's office. As a last resort, briefs may be replaced. Corrected or replacement briefs must ~~be re-served~~ also be submitted through CM/ECF. ~~but~~ The time to file a brief in response to a corrected or replaced brief runs from service of the original brief. A corrected or replacement brief should so indicate on the cover. Counsel or a party must file a "Notice of Correction" with the court through CM/ECF and serve opposing counsel or and serve any unrepresented party with a paper copy, specifically delineating each correction. Any pro se party filing a corrected brief must file and original and three paper copies of the corrected brief. Any individual making corrections to the paper briefs in the clerk's office must provide written authorization and present proper photo identification.

TESTIMONY IN THE APPENDIX. To reduce bulk in the appendix, the use of condensed, columnar transcripts of testimony is encouraged.

CERTIFICATE OF COMPLIANCE. Federal Rule of Appellate Procedure 32(a)(7)(C)(ii) states that the use of Federal Rules of Appellate Procedure Form 6 is sufficient to satisfy the requirements of Rule 32(a)(7)(C)(i). That form is reproduced as Federal Circuit Form 19. Parties are reminded that some software programs do not automatically include footnotes. When certain text is marked for word count or line count purposes, a party may need to separately mark text in footnotes and include those words or lines in the certified count. It is the responsibility of the filing party to ensure that its certificate of compliance is accurate.

Federal Circuit Rule 32.1

Rule 32.1. Citing Judicial Dispositions

(a) Disposition of Appeal, Motion, or Petition. Disposition of an appeal may be announced in an opinion; disposition of a motion or petition may be announced in an order. An appeal may also be disposed of in a judgment of affirmance without opinion pursuant to Federal Circuit Rule 36. A nonprecedential disposition shall bear a legend designating it as nonprecedential. A precedential disposition shall bear no legend.

(b) Nonprecedential Opinion or Order. An opinion or order which is designated as nonprecedential is one determined by the panel issuing it as not adding significantly to the body of law.

(c) Parties' Citation of Nonprecedential Dispositions. Parties are not prohibited or restricted from citing nonprecedential dispositions issued after January 1, 2007. This rule does not preclude

assertion of claim preclusion, issue preclusion, judicial estoppel, law of the case, and the like based on a nonprecedential disposition issued before that date.

(d) Court's Consideration of Nonprecedential Dispositions. The court may refer to a nonprecedential disposition in an opinion or order and may look to a nonprecedential disposition for guidance or persuasive reasoning, but will not give one of its own nonprecedential dispositions the effect of binding precedent. The court will not consider nonprecedential dispositions of another court as binding precedent of that court unless the rules of that court so provide.

(e) Request to Make an Opinion or Order Precedential; Time for Filing. Within 60 days after any nonprecedential opinion or order is issued, any person may request, with accompanying reasons, that the opinion or order be reissued as precedential. An original and 6 paper copies of the request must be filed with the court. ~~If unless the request is made by an one of the parties to the case~~ electronic filer. All electronic filers the party must instead file the documents through CM/ECF in accordance with Federal Circuit Rule 25(a)(2). The request will be considered by the panel that rendered the disposition. The requester must notify the court and the parties of any case that person knows to be pending that would be determined or affected by reissuance as precedential. Parties to pending cases who have a stake in the outcome of a decision to make precedential must be given an opportunity to respond. If the request is granted, the opinion or order may be revised as appropriate.

(f) Public Records. All dispositions by the court in any form will be in writing and are public records.

Practice Notes

FILING AN OPINION. An opinion is issued when ready. No particular day of the week is considered a “down day.” An opinion is not issued on a holiday, as defined in Federal Rule of Appellate Procedure 26 and Federal Circuit Rule 26. The judgment is entered on the day the opinion is filed with the clerk of court and transmitted ~~mailed~~ to the parties.

AVAILABILITY OF AN OPINION. The court's precedential and nonprecedential opinions are available in a variety of commercially available print and electronic media.

SUBSCRIPTIONS. Subscriptions to opinions are not available from the court, but are available from several commercial sources.

INFORMATION ABOUT AN OPINION. ~~A disposition sheet containing i~~Information about decisions rendered, opinions issued, and actions taken on petitions for rehearing is posted daily on the court's website, www.cafc.uscourts.gov. ~~in the Clerk's Office. The information about opinions is also available after 11:00 a.m. daily on a telephone recording; call 202-275-8030. On Fridays, the opinions for the entire week are included on the recording.~~ The court's opinions, rules, and other information are also available on the Federal Circuit web site: www.cafc.uscourts.gov. ~~Copies of the court's opinions also may be purchased from the administrative services office of the court for \$2.~~

REQUEST TO MAKE AN OPINION OR ORDER PRECEDENTIAL. It is improper to refer in a brief to a request to make an opinion or order precedential before the request has been acted on. The opinion or order that is subject to the request remains nonprecedential unless and until the court grants the request.

Federal Circuit Rule 33

Rule 33. Appeal Conferences

(a) Settlement Discussion; Joint Statement of Compliance or Agreement to Dismiss.

(1) When all the parties are represented by counsel, within 7 days after the first two briefs in an appeal or the first three briefs in a cross-appeal are served and filed, the parties through counsel must discuss settlement in appeals under 28 U.S.C. §§ 1292(c)(1)-(2); 1295(a)(1); 1295(a)(4)(A) [with respect to patent interferences only]; 1295(a)(4)(B) [with respect to inter partes proceedings only]; 1295(a)(4)(C) [with respect to civil actions under 35 U.S.C. § 146 only]; and 1295(a)(6).

(2) No later than the time for filing a separate appendix under Federal Circuit Rule 30(a)(4), the parties must file one copy of either of the following (select only one):

(A) a joint statement of compliance with this rule indicating that settlement discussions have been conducted; or

(B) an agreement that the proceeding be dismissed under Federal Rule of Appellate Procedure 42(b).

(b) Other Settlement Discussions. This rule does not preclude the parties from discussing settlement or agreeing to dismiss the proceedings at other times, including after oral argument but before decision.

Federal Circuit Rule 33.1

Rule 33.1 Mediation Guidelines

The court may adopt mediation guidelines with respect to mediation of the cases pending before the court. These guidelines shall be binding on the parties.

Federal Circuit Rule 34

Rule 34. Oral Argument

(a) Reply Brief Instead of Oral Argument. If an appeal is not called for oral argument and the appellant declined to file a reply brief in anticipation of replying during oral argument, the appellant may file a reply brief within 14 days after the notice that the appeal will be submitted on the briefs.

(b) Time Allowed. The time allowed each side for oral argument will be determined by the court. The clerk of court will advise counsel of the time allotted. A party is not obliged to use all the time allowed. The court may terminate the argument if it deems further argument unnecessary.

(c) Visual Aids.

(1) Visual Aids Used at a Trial or Administrative Hearing; Notice. If counsel intends to use at oral argument a visual aid used at a trial or administrative hearing, counsel must advise the clerk ~~by letter through CM/ECF in an original and 3 copies and served~~ no later than 14 days before argument of the proposed visual aid.

(2) Visual Aids Not Used at a Trial or Administrative Hearing; Notice. If counsel intends to use at oral argument a visual aid that was not used at a trial or administrative hearing, counsel must give ~~written~~ notice to opposing counsel and notify the clerk of court by letter through CM/ECF no later than 21 days before the oral argument.

(3) Objection to the Use of Visual Aids. An objection to the proposed use of a visual aid at oral argument must be submitted [through CM/ECF](#) as a letter ~~in writing, served on all parties,~~ and filed no later than 7 days before the oral argument. If a party objects, the parties' ~~written~~ submissions will be treated as a motion and response and will be referred to the panel.

(4) Scope. This rule does not preclude use of a chalkboard or equivalent during oral argument.

(5) Disposition. The clerk of court may dispose of visual aids not removed by the parties.

Practice Notes

COURT SESSIONS; HEARING DATE. Sessions of the court will be held as announced by the court. Sessions are held regularly in Washington, DC, but the court may sit elsewhere. Appeals are usually calendared for oral argument or submission without argument within 2 months after the briefs and joint appendix are filed. Counsel are advised of the firm date of hearing approximately 30 days before the session. Once scheduled, a case will not be postponed except on motion showing **compelling reasons**. Counsel should advise the clerk of court in writing within ~~30-7~~ days ~~once briefing is completed~~ of filing of the appellee's or respondent's brief of potential scheduling conflicts or as soon as they are known and should not wait until an actual conflict arises. Counsel requiring a courtroom accessible to the disabled, if oral argument is scheduled, should notify the clerk of court of this requirement when counsel files the entry of appearance. Counsel may elect to submit on the briefs to avoid delay in disposition or for any other reason.

ORAL ARGUMENT. Counsel must report to the clerk's office at least 30 minutes before the scheduled session and before proceeding to the courtroom. The members of the panel will have read the briefs before oral argument. Counsel should, therefore, emphasize the dispositive issue or issues. Time allotted for oral argument is ordinarily 15 minutes per side (not per party or attorney), although the court may vary this depending on the nature of the case. The court may extend the allotted time during the argument, or it may terminate the argument, if it deems it appropriate.

JUSTIFICATION FOR CLAIM OF CONFIDENTIALITY. Unnecessarily designating material in the briefs and appendix as confidential may hinder the court's preparation and issuance of opinions. Counsel must be prepared to justify at oral argument any claim of confidentiality.

~~**PAMPHLET-CONDUCT OF ORAL ARGUMENT.** Guidelines for the conduct of oral argument are available on the court's website and should be viewed once a case is assigned for argument. When counsel are advised of the firm date of oral argument, they will be sent a pamphlet, Notice to Counsel on Oral Argument, which contains detailed instructions about the conduct of oral argument.~~

COPIES OF RECORDINGS AVAILABLE. Oral arguments are recorded for the convenience of the court. ~~Copies of a recording may be purchased from the administrative services office of the court.~~ Recordings are ~~also~~ available on the court's website, www.cafc.uscourts.gov, free of charge.

OPEN TO PUBLIC. Unless held in camera, oral arguments are open to the public. Those in attendance whose attire or behavior reflects adversely on the dignity of the proceedings will be asked to leave.

ORAL ARGUMENT ON MOTIONS. Oral argument is ordinarily not granted on motions. See Federal Rule of Appellate Procedure 27(e).

Federal Circuit Rule 35

Rule 35. En Banc Determination

(a) General.

(1) Arguing to a Panel to Overrule a Precedent. Although only the court en banc may overrule a binding precedent, a party may argue, in its brief and oral argument, to overrule a binding precedent without petitioning for hearing en banc. The panel will decide whether to ask the regular active judges to consider hearing the case en banc.

(2) Frivolous Petition. A petition for hearing or rehearing en banc that does not meet the standards of Federal Rule of Appellate Procedure 35(a) may be deemed frivolous and subject to sanctions.

(b) Statement of Counsel.

(1) Petition for Hearing En Banc. A petition that an appeal be initially heard en banc must contain the following statement of counsel at the beginning:

Based on my professional judgment, I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance: (set forth each question in a separate sentence).

/s/ _____

ATTORNEY OF RECORD FOR _____

(2) Petition for Rehearing En Banc. A petition that an appeal be reheard en banc must contain one or both of the following statements of counsel at the beginning:

Based on my professional judgment, I believe the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedent(s) of this court: (cite specific decisions).

Based on my professional judgment, I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance: (set forth each question in a separate sentence).

/s/ _____

ATTORNEY OF RECORD FOR _____

(c) Petition for Hearing or Rehearing En Banc; Response.

(1) Certificate of Interest. A certificate of interest (*see* Federal Circuit Rule 47.4) must be included in a petition for a hearing or rehearing en banc or a response to such a petition. The certificate must appear immediately following the cover.

(2) Items Excluded from Page Limitation. The following items do not count against the page limitation in Federal Rule of Appellate Procedure 35(b)(2):

(A) the certificate of interest;

(B) the table of contents;

(C) the table of citations; and

(D) any addendum containing statutes, rules, regulations, and similar matters.

(3) Rehearing En Banc: Copy of Opinion or Judgment.

A petition for a rehearing must include a copy of the opinion or the judgment of affirmance without opinion. The copy must be bound with the petition as an addendum.

(4) Number of Copies. If only nonconfidential copies are filed, in addition to the copy filed through CM/ECF, ~~an original and~~ eighteen copies of a petition for hearing or rehearing en banc must be filed with the court. ~~Two copies must be served on each party separately represented.~~ If confidential and nonconfidential copies are filed, in addition to the copies filed through CM/ECF, ~~an original and~~ eighteen copies of the confidential petition ~~and original~~ and three copies of the nonconfidential petition must be filed with the court. Two copies of the confidential petition ~~and one copy of the nonconfidential petition~~ must be served on each party separately represented.

(d) Combined Petition for Panel Rehearing and Rehearing En Banc. If a party chooses to file both a petition for panel rehearing, see Federal Circuit Rule 40, and a petition for a rehearing en banc, then the two must not be filed separately and they must be combined. A combined petition for panel rehearing and rehearing en banc must comply with Federal Circuit Rule 35(c). The cover of a combined petition must indicate that it is a combined petition.

(e) Contents of Petition for Hearing En Banc, Rehearing En Banc, and Combined Petition; Response.

(1) Petition for Hearing En Banc. The preferred contents and organization for a petition for a hearing en banc are:

- (A) white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);
- (B) the certificate of interest (*see* Federal Circuit Rule 47.4);
- (C) the table of contents;
- (D) the table of authorities;
- (E) the statement of counsel required in Federal Circuit Rule 35(b);
- (F) the argument; and
- (G) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(2) Petition for Rehearing En Banc. The preferred contents and organization for a petition for a rehearing en banc are:

- (A) white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);
- (B) the certificate of interest (*see* Federal Circuit Rule 47.4);
- (C) the table of contents;
- (D) the table of authorities;
- (E) the statement of counsel required in Federal Circuit Rule 35(b);
- (F) the argument;
- (G) the addendum containing a copy of the court's opinion or judgment of affirmance without opinion sought to be reheard; and
- (H) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(3) Combined Petition for Panel Rehearing and Rehearing En Banc. The preferred contents and organization for a combined petition for panel rehearing and a rehearing en banc are:

- (A) white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);
- (B) the certificate of interest (*see* Federal Circuit Rule 47.4);
- (C) the table of contents;
- (D) the table of authorities;
- (E) the statement of counsel required in Federal Circuit Rule 35(b);
- (F) the points of law or fact overlooked or misapprehended by the panel of the court;
- (G) the argument in support of a rehearing;
- (H) the argument in support of rehearing en banc;
- (I) the addendum containing a copy of the court's opinion or judgment of affirmance without opinion sought to be reheard; and
- (J) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(4) Response. If the court requests a response, which must not exceed 15 pages unless otherwise ordered, the preferred contents and organization are:

- (A) white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);
- (B) the certificate of interest (*see* Federal Circuit Rule 47.4);
- (C) the table of contents;
- (D) the table of authorities;
- (E) argument against a rehearing, rehearing en banc, or both; and

(F) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(f) Additional Copies of Briefs in Cases to be Heard En Banc. Within 7 days after the order granting a rehearing en banc, counsel must file 30 [paper](#) sets of the briefs [and appendices](#) that were before the panel that initially heard the appeal, unless the court directs otherwise.

(g) Amicus Curiae Brief. Except by the court's permission or direction, an amicus curiae brief submitted in connection with a petition for hearing en banc, a petition for rehearing en banc, or a combined petition for panel rehearing and rehearing en banc, must be accompanied by a motion for leave and must not exceed 10 pages. Except by the court's permission or direction, any brief amicus curiae or any motion for leave to file a brief amicus curiae must be filed within 14 days of the date of filing of the petition or response that the amicus curiae supports. If the amicus curiae does not support either party, then the brief or motion for leave to file the brief must be filed within 14 days of the date of filing of the petition.

Practice Notes

HEARING OR REHEARING EN BANC. The court may sua sponte order that an appeal be initially heard or be reheard en banc. The panel or a judge on the panel that is considering a case may at any time request the active judges of the court to hear or rehear the case en banc with or without further briefs or argument by counsel.

REHEARING EN BANC; SENIOR JUDGES. If a senior judge participated in the original hearing and disposition of a case for which rehearing en banc is granted, that senior judge may participate fully in the rehearing.

COMBINED PETITION FOR PANEL REHEARING AND REHEARING EN BANC. When a combined petition for panel rehearing and petition for rehearing en banc is filed, the petition for panel rehearing is decided first in the same manner as a petition for panel rehearing without an accompanying petition for rehearing en banc. If the panel grants the requested relief, the petition for rehearing en banc is deemed moot.

PETITION FOR REHEARING EN BANC REFERRED TO PANEL. A petition for rehearing en banc is presumed to request relief that can be granted by the panel that heard the appeal, and action on the petition for rehearing en banc will be deferred until the panel has an opportunity to grant the relief requested.

TIMELINESS. A petition for hearing or rehearing en banc is filed when the court receives it, not on mailing. The clerk of court will return an untimely petition for hearing or rehearing en banc.

NONPRECEDENTIAL OPINIONS. A petition for rehearing en banc is rarely appropriate if the appeal was the subject of a nonprecedential opinion by the panel of judges that heard it.

WRIT OF CERTIORARI. Filing a petition for a panel rehearing or for rehearing en banc is not a prerequisite to filing a petition for a writ of certiorari in the Supreme Court.

Federal Circuit Rule 36

Rule 36. Entry of Judgment – Judgment of Affirmance Without Opinion

The court may enter a judgment of affirmance without opinion, citing this rule, when it determines that any of the following conditions exist and an opinion would have no precedential value:

- (a) the judgment, decision, or order of the trial court appealed from is based on findings that are not clearly erroneous;
- (b) the evidence supporting the jury's verdict is sufficient;
- (c) the record supports summary judgment, directed verdict, or judgment on the pleadings;
- (d) the decision of an administrative agency warrants affirmance under the standard of review in the statute authorizing the petition for review; or
- (e) a judgment or decision has been entered without an error of law.

Practice Note

SEPARATE JUDGMENT NOT PREPARED IN CERTAIN INSTANCES. A separate judgment is not prepared when a case is dismissed on consent or on motion or for failure to prosecute. The order of dismissal serves as the judgment when entered.

Federal Rule of Appellate Procedure 38 – Frivolous Appeals—Damages and Costs

Practice Note

WARNING AGAINST FILING OR PROCEEDING WITH A FRIVOLOUS APPEAL OR PETITION. The court's early decision in *Asberry v. United States*, 692 F.2d 1378 (Fed. Cir. 1982), established the policy of enforcing this rule vigorously. Since then, many precedential opinions have included sanctions under the rule. Damages, double costs, and attorney fees, singly or in varying combinations, have been imposed on counsel, parties, and pro se petitioners for pursuing frivolous appeals.

CHALLENGING A FRIVOLOUS APPEAL. If an appellee or respondent considers an appeal or petition frivolous, the appellee or respondent must file a separate motion with that allegation. The assertion that an appeal is frivolous must be accompanied by citation to the opposing brief or the record below with clear argument as to why those citations establish that the appeal is frivolous. A party whose case has been challenged as frivolous is expected to respond or to request dismissal of the case.

Federal Circuit Rule 39

Rule 39. Costs

(a) **Notice of Entitlement to Costs.** When the clerk of court provides notice of judgment or order disposing of an appeal, the clerk of court must advise which party or parties are entitled to costs.

(b) **Bill of Costs; Copies; Objection.** A party must ~~file~~ serve the bill of costs on the form prescribed by the court ~~and must file an original and three copies with the court.~~ An objection to a bill of costs must not exceed 5 pages and must be ~~filed in an original and three copies and~~ served on the other parties.

Practice Notes

COSTS WHEN THE UNITED STATES IS A PARTY; COSTS IN EX PARTE APPEALS FROM THE PATENT AND TRADEMARK OFFICE. 28 U.S.C. § 2412(a) authorizes costs to be taxed against the United States; thus, costs (as defined in 28 U.S.C. § 1920) may be awarded both for and against the United States in this court. ~~An ex parte patent appeal under 35 U.S.C. § 141 and an ex parte trademark appeal under 15 U.S.C. § 1071 are not within the scope of 28 U.S.C. § 2412; however, and costs in these appeals are not awarded for or against the Patent and Trademark Office.~~

LIMIT ON PRINTING COSTS. The costs taxable under Federal Rule of Appellate Procedure 39 are limited to the costs of preparing typewritten briefs (even if a party elects to have a brief printed) and of copying briefs and appendices.

CURRENT RATES. The following rates are the current maximum allowable costs: \$6.00 per page for the table of page numbers of designated materials, the originals of briefs, and the table of contents for the appendix (whether printed, typewritten, or word processed); \$0.08 per page for copying and collating; and \$2.00 per copy for covers and binding.

ALLOWABLE COSTS. Costs may be billed for the number of copies of briefs and appendices required to be prepared by the court ~~16 copies of briefs and appendices, plus 2 copies for each additional party, plus any copies required or allowed, e.g., confidential briefs or appendices.~~ The cost of service copies of the table or physical compilation of the designated materials may also be billed. Any other cost billed must be separately justified. The total billed for any item must be limited to the lesser of actual or allowable costs. Actual cost of briefs and appendices prepared in-house includes word processing, copying, and binding, at the amount normally billed to a client for these services. The United States may assume its actual costs are the allowable costs. The costs of correcting a nonconforming brief are not taxable. Counsel are urged to stipulate to costs.

PAYMENT OF COSTS TAXED. Pay the party or parties in whose favor costs are taxed by check sent to counsel for the party or to the party if the party appeared pro se. Do not involve the court in collection matters.

DOCKETING FEE AND COSTS IN A CASE INVOLVING A CLAIM UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994. No costs are taxed, and the docketing fee does not have to be paid, in a petition for review of a decision of the Merits Systems Protection Board if the underlying appeal involved a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)). 38 U.S.C. § 4323. The petitioner must complete form 6B to inform the court that the case involves a claim under USERRA.

Federal Circuit Rule 40

Rule 40. Petition for Panel Rehearing

(a) Contents of Petition for Panel Rehearing. The preferred contents and organization for a petition for panel rehearing are:

- (1) white cover or first page with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);
- (2) the certificate of interest (*see* Federal Circuit Rule 47.4);
- (3) the table of contents;
- (4) the points of law or fact overlooked or misapprehended by the court;
- (5) the argument;

- (6) the addendum containing a copy of the court's opinion or judgment of affirmance without opinion sought to be reheard; and
- (7) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(b) Addendum. A copy of the opinion or judgment of affirmance without opinion sought to be reheard must be bound with the petition for panel rehearing as an addendum.

(c) Items Excluded from Page Limitation; Other Material.

(1) Items Excluded. The following items do not count against the page limitation in Federal Rule of Appellate Procedure 40(b):

- (A) the certificate of interest;
- (B) the table of contents;
- (C) the table of citations;
- (D) the addendum containing a copy of the opinion or judgment of affirmance without opinion; and
- (E) any addendum containing statutes, rules, regulations, and similar matters.

(2) Other Material. Material not listed in this Federal Circuit Rule 40 may not be included in the addendum or in an appendix without leave of the court.

(d) Answer. If the court requests an answer, which must not exceed 15 pages unless otherwise ordered, the preferred contents and organization for the answer are:

- (1) white cover or first sheet with the information prescribed in Federal Rule of Appellate Procedure 32(a)(2);
- (2) the certificate of interest (*see* Federal Circuit Rule 47.4);
- (3) the table of contents;
- (4) the argument; and
- (5) the proof of service (*see* Federal Rule of Appellate Procedure 25(d)).

(e) Time. Except for a civil case in which the United States or its officer or agency is a party, a petition for panel rehearing may be filed within 30 days after entry of judgment. If the United States or its officer or agency is a party, a petition for panel rehearing may be filed within 45 days after entry of judgment. The time limits set forth in this rule also apply to a motion for panel reconsideration of a dispositive panel order.

(f) Informal Petition for Panel Rehearing; Answer.

(1) Informal Petition. A pro se party may file ~~an original and~~ three copies of an informal petition for panel rehearing in letter form not to exceed 15 typewritten double-spaced pages, attaching to each a copy of the opinion or judgment sought to be reheard.

(2) Informal Answer. If the court requests an answer to an informal petition for panel rehearing, or if the court requests a pro se party to answer a formal petition for panel rehearing, the answer may be informal, following the standards prescribed for informal briefs. The informal answer may not exceed 15 typewritten double-spaced pages, and three copies must be filed ~~in an original and 3 copies~~.

(g) Amicus Curiae Brief. Except by the court's permission or direction, an amicus curiae brief submitted in connection with a petition for panel rehearing must be accompanied by a motion for leave to file and must not exceed 10 pages. Except by the court's permission or direction, any brief amicus curiae or any motion for leave to file a brief amicus curiae must be filed within 14 days of the date of filing of the petition or response that the amicus curiae supports. If the amicus curiae does not support either party, then the brief or motion for leave to file the brief must be filed within 14 days of the date of filing of the petition.

Practice Notes

PETITION FOR PANEL REHEARING NOT FILED WHEN MAILED. A petition for panel rehearing must be received by the court or filed through CM/ECF, ~~unlike a brief, is not deemed filed when mailed; it must be received by the clerk~~ within the time fixed for filing. The time provided in Federal Circuit Rule 40(e) runs from the date the judgment is entered (*see* Federal Rule of Appellate Procedure 36), not from the date counsel or the pro se party receives the opinion or order. Therefore, Federal Rule of Appellate Procedure 26(c) does not apply. The clerk of court may return an untimely petition for panel rehearing.

ACTION BY THE COURT. When a petition for panel rehearing is filed, the clerk of court will transmit copies to the panel that decided the case. The clerk of court will enter an order denying the petition unless a majority of the panel agrees to rehear the case. Rehearing before the panel may take place with or without further briefing or oral argument by the parties as the court directs.

Federal Circuit Rule 41

Rule 41. Issuance of Mandate

An order dismissing a case on consent or for failure to prosecute, or dismissing, remanding, or transferring a case on motion, will constitute the mandate. The date of the certified order is the date of the mandate. In an appeal dismissed or transferred by the court sua sponte in an opinion, the mandate will issue in regular course.

Practice Notes

RELATION OF MANDATE TO APPLICATION FOR CERTIORARI; STAY. That a mandate has issued does not affect the right to apply to the Supreme Court for a writ of certiorari. Consequently, a motion to stay the mandate should advance reasons for the stay beyond the mere intention to apply for certiorari, *e.g.*, to forestall action in the trial court or agency that would necessitate a remedial order of the Supreme Court if the writ of certiorari were granted.

Federal Circuit Rule 45

Rule 45. Clerk of Court's Duties

(a) Dismissal by Clerk of Court; Reconsideration. The clerk of court may dismiss an appeal for a failure to follow the Federal Rules of Appellate Procedure or these Federal Circuit Rules. A party may move that the court reconsider such dismissal. A motion for reconsideration must:

- (1) be filed within 14 days after issuance of the order of dismissal;
- (2) be in the form prescribed by Federal Rule of Appellate Procedure 27 and Federal Circuit Rule 27; and
- (3) not exceed 5 pages.

(b) Informal Motion for Reconsideration. A pro se party may file one copy of an original and 3 copies of an informal motion, which may be in the form of a letter, for reconsideration of the dismissal. The informal motion must not exceed 5 typewritten double-spaced pages. A copy of the dismissal order must be attached to the original and each copy of the informal motion.

(c) Authority to Enter Orders. The clerk of court may enter an order “For the Court” only when authorized by these rules or at the direction of a judge or the court.

(d) Communication with the Court. All correspondence and telephone calls about cases and motions and all press inquiries must be directed to the clerk of court.

Federal Circuit Rule 46

Rule 46. Attorneys

(a) Eligibility. An attorney is eligible for admission to the bar of this court if that attorney is of good moral and professional character and is admitted to practice before and of good standing in:

- (1) any of the courts listed in Federal Rule of Appellate Procedure 46(a);
- (2) the United States Court of International Trade;
- (3) the United States Court of Federal Claims;
- (4) the United States Court of Appeals for Veterans Claims; or
- (5) the District of Columbia Court of Appeals.

(b) Procedure for Admission.

(1) Motion in Open Court. An attorney may be admitted to the bar in open court by appearing personally with a sponsor who is a member of the bar of this court and who states the applicant’s qualifications and moves the admission. Motions for admission to the bar will be entertained at the opening of each session of court.

(2) Written Motion by Member of the Court’s Bar. An attorney may be admitted on written motion of a member of the bar of the court who states the applicant’s qualifications.

(3) Written Motion by Attorney. An attorney may be admitted on that attorney’s own motion, accompanied by a certificate of good standing from a court listed in Federal Rule of Appellate Procedure 46(a) or Federal Circuit Rule 46(a). The certificate must be dated within 30 days of the motion for admission and must bear the seal of the issuing court. A written motion for admission must be submitted on a form approved by this court. The clerk of court will furnish the form.

(4) Oath. Each attorney admitted to the bar of this court must take an oath prescribed by the court.

(c) Admission Fee; pay.gov. The fee for admission to the bar of the court is \$50, in addition to the Judicial Conference fee of \$176. Payment must be made through CM/ECF using pay.gov. The applicant will receive a certificate of admission. For a duplicate certificate, the fee is \$25, in addition to the Judicial Conference fee of \$~~15~~18.

(d) Government Attorney. An attorney for any federal, state, or local government office or agency may appear before this court in connection with that attorney’s official duties without formal admission to the bar of the court.

(e) Change of Name, Address, or Telephone Number. An attorney admitted to the bar of this court must promptly notify the clerk of court of a change of name, address, [email address](#) or telephone number.

(f) Disciplinary Action. Disciplinary action against an attorney will be conducted in accordance with the Federal Circuit Attorney Discipline Rules.

Federal Circuit Rule 47.1

Rule 47.1. Sessions and Places of Holding Court

(a) Sessions. Sessions of the court will be held as the court announces.

(b) Places of Holding Court. The court may hold sessions in any place named and permitted in 28 U.S.C. § 48.

Federal Circuit Rule 47.2

Rule 47.2. Panels

(a) Panels. Cases and controversies will be heard and determined by a panel consisting of an odd number of at least three judges, two of whom may be senior judges of the court.

(b) Assignment of Cases. Assignment of cases to panels will be made so as to provide each judge with a representative cross-section of the fields of law within the jurisdiction of the court.

Federal Circuit Rule 47.3

Rule 47.3. Appearance

(a) Party and Amicus Curiae Must Be Represented; Pro Se Party; Attorney of Record; Of Counsel. An individual (not a corporation, partnership, organization, or other legal entity) may choose to be represented by counsel or to represent himself or herself pro se, but may not be represented by a nonattorney. An individual represented by counsel, each other party in an action, each party seeking to intervene, and each amicus curiae must appear through an attorney authorized to practice before this court and must designate one attorney as the principal attorney of record. Any other attorney assisting the attorney of record must be designated as “of counsel.” Every attorney named on a brief must enter an appearance. ~~except that the filing of an entry of appearance does not apply to government officials who, by reason of their status as supervisors or heads of offices, are listed on briefs in their ex officio capacity.~~ Documents and matters that are sent by the court will be transmitted ~~sent~~ only to the principal attorney of record.

(b) Petition for Writ of Mandamus or Prohibition. The attorney whose name, address, email address and telephone number appears first on a petition for a writ of mandamus or a writ of prohibition will be deemed attorney of record.

(c) Appearance; Contents; Service of Papers Before Appearance; Withdrawal of Counsel.

(1) Appearance. Each attorney who intends to participate in an appeal must file, within 14 days of docketing, an entry of appearance on the form provided by the clerk of court. A pro se party must also file an entry of appearance unless all the necessary information appears on the petition for review or notice of appeal. Any attorney retained for the case later must file an entry of appearance within 14 days after being retained. An attorney representing a party seeking or permitted to intervene, and for each amicus curiae, must file an entry of appearance with the motion for leave to intervene (if required) or with the brief amicus curiae. If an attorney’s entry of appearance is first submitted after a case is assigned to a merits panel, the appearance will be treated as a motion to appear and will be transmitted to the panel, which may choose to reject the entry of appearance. Counsel must immediately file an updated Entry of Appearance if representation changes, including a change in contact information. Electronic filers must also report a change in contact information to the PACER Service Center. ~~If an~~

~~attorney's entry of appearance is first submitted within 30 days of the scheduled argument, then the attorney must file a motion for leave to file the entry of appearance. The motion for leave will be transmitted to the merits panel assigned to the case.~~

(2) Contents. The appearance must include the name of the party or parties represented and the name, address, [email address](#), and telephone number of the attorney or the pro se party. An attorney's appearance must show the name of the law firm or public or quasi-public legal office with which the attorney is associated. A new entry of appearance must be filed and served any time the information on record changes.

(3) Certificate of Interest. A certificate of interest must be filed [at the same time as](#) ~~with~~ the first-filed entry of appearance. *See* Federal Circuit Rule 47.4. Both documents are due within 14 days of the date of docketing of the appeal or petition.

(4) Service of Papers Before Appearance. Until an attorney files a written entry of appearance, service of all papers must be made on the attorney of record in the proceeding below at the last known address. [If no attorney has filed an entry of appearance through ECF for a party, service of any matters must be made outside of CM/ECF until an attorney enters an appearance.](#) In a pro se case, unless an attorney files an entry of appearance, service of all papers must be made on the pro se party at the last known address.

(5) Withdrawal of Counsel. An attorney other than a government attorney who has been properly replaced, may not withdraw from representing a party without notice to the party, filing a motion with the court, and obtaining the court's consent.

(d) Signature. At least one copy of each brief, petition, motion, application, notice, or other paper presented for filing must contain the signature of the pro se party or the [electronic signature of the](#) attorney who has entered an appearance. When no attorney appearing for a party is available to sign, any person having actual authority may sign on behalf of the attorney of record, attaching an affidavit of authority or an unsworn declaration of authority under penalty of perjury pursuant to 28 U.S.C. § 1746.

Practice Notes

FORM FOR ENTRY OF APPEARANCE. *See* Form 8, for a form for entry of appearance.

FILINGS REQUIRING SIGNATURE AND APPEARANCE. After docketing, the clerk will accept no filing required to be signed, unless it is signed by a pro se party or an attorney who is a member of the bar, ~~if required unless exempted~~ under Federal Circuit Rule 46, and unless the pro se party or attorney has entered an appearance in the case.

NEW COUNSEL ON APPEAL. New counsel on appeal should provide a copy of the entry of appearance form filed in this court to the lower court or agency to expedite service of the certified list and other communications.

[POST-PANELING ENTRY OF APPEARANCE. When an entry of appearance is filed after the case has been assigned to a merits panel, that entry will be transmitted to the merits panel as a motion. Notification of the disposition of the motion, accepting or rejecting the entry of appearance, will be provided to counsel through CM/ECF.](#)

Federal Circuit Rule 47.4

Rule 47.4. Certificate of Interest

(a) Purpose; Contents. To determine whether recusal by a judge is necessary or appropriate, an attorney – except an attorney for the United States – for each party, including a party seeking or

permitted to intervene, and for each amicus curiae, must file a certificate of interest. The certificate of interest must be filed within 14 days of the date of docketing of the appeal or petition, except that for an intervenor or amicus curiae, the certificate of interest must be filed with the motion and with the brief. A certificate of interest must be in the form set forth in the appendix to these rules, and must contain the information below in the order listed. Negative responses, if applicable, are required as to each item on the form.

- (1) The full name of every party or amicus represented in the case by the attorney.
- (2) The name of the real party in interest if the party named in the caption is not the real party in interest.
- (3) The corporate disclosure statement prescribed in Federal Rule of Appellate Procedure 26.1 and identifying each party with its parent corporation or any publicly held corporation that owns 10% or more of its stock.
- (4) The names of all law firms and the partners and associates that have appeared for the party in the lower tribunal or are expected to appear for the party in this court and who are not already listed on the docket for the current case.

(b) Filing. The certificate must be filed with the entry of appearance. The certificate ~~—first filed—~~ must also be included ~~filed~~ with each motion, petition, or response thereto, and in each principal brief and brief amicus curiae. When ownership, representation or contact information changes an updated Certificate of Interest must be filed when the change occurs.

(c) Changes. If any of the information required in Federal Circuit Rule 47.4(a) changes after the certificate is filed and before the mandate has issued, the party must file an amended certificate within 7 days of the change.

Federal Circuit Rule 47.5

Rule 47.5. Statement of Related Cases

Each principal brief must contain a statement of related cases indicating:

(a) whether any other appeal in or from the same civil action or proceeding in the lower court or body was previously before this or any other appellate court, stating:

- (1) the title and number of that earlier appeal;
- (2) the date of decision;
- (3) the composition of the panel; and
- (4) the citation of the opinion in the Federal Reporter; and

(b) the title and number of any case known to counsel to be pending in this or any other court that will directly affect or be directly affected by this court's decision in the pending appeal. If there are many related cases, they may be described generally, but the title and case number must be given for any case known to be pending in the Supreme Court, this court, or any other circuit court of appeals.

Federal Circuit Rule 47.6. [Reserved]

Federal Circuit Rule 47.7

Rule 47.7. Attorney Fees and Expenses Incurred in This Court

(a) Time for Filing; Response.

(1) Generally. The court may award attorney fees and expenses when authorized by law. An award may be made by the court on its own motion or on application of a party.

(2) Time for Filing. An application for an award of attorney fees and expenses must be served and filed within the time prescribed by the statute authorizing the award. If the statute does not prescribe a time, the application must be made within 30 days after entry of the judgment or order denying rehearing, whichever is later. However, if a petition for writ of certiorari is filed, the application will not be due until 30 days after all proceedings in the Supreme Court are concluded.

(3) Response. No response may be filed to an application for attorney fees and expenses unless directed by the court, but no application will be granted without the court giving the party an opportunity to submit a response.

(4) Award on the Court's Motion. A party awarded attorney fees and expenses by the court on its own motion must file and serve a bill of attorney fees and expenses containing the information required in Federal Circuit Rule 47.7(b)(2)(A)-(C) with the bill of costs authorized by Federal Rule of Appellate Procedure 39. Any objection must be filed within the time prescribed in Federal Rule of Appellate Procedure 39.

(b) Content of Application.

(1) Application under the Equal Access to Justice Act.

An application for attorney fees and expenses under the Equal Access to Justice Act must be made on Form 20.

(2) Other Applications. Each other application for attorney fees and expenses must cite the authority for an award and must indicate how the prerequisites for an award, including timeliness, are met. In addition, each application must contain a statement, under oath, specifying:

(A) the nature of each service rendered;

(B) the amount of time expended rendering each type of service; and

(C) the customary charge for each type of service rendered.

Federal Circuit Rule 47.8

Rule 47.8. In Camera Proceedings

On motion showing that the interest of justice requires it, the court may sit in camera, seal its record, or both.

Federal Circuit Rule 47.9

Rule 47.9. Petition for Judicial Review Under 5 U.S.C. § 7703(d)

(a) Time for Filing. A petition for review of a final order or decision of the Merit Systems Protection Board or of an arbitrator pursuant to 5 U.S.C. § 7703(d) must be filed by the Director of the Office of Personnel Management within 60 days after the date [the Board or arbitrator issues notice](#) ~~Director received notice~~ of the final order or decision of the Board or arbitrator.

(b) Contents. The Director's petition must contain:

(1) a statement of jurisdiction (*see* Federal Rule of Appellate Procedure 28(a)(4));

(2) the Director's determination that the Board or arbitrator erred in interpreting a civil service law, rule, or regulation affecting personnel management and the reasons supporting the determination;

(3) the Director's determination that the decision or order of the Board or arbitrator will have a substantial impact on a civil service law, rule, regulation, or policy directive, and the reasons supporting the determination; and

(4) an appendix including a copy of the order or decision for which review is sought and any relevant portion of the record on review; the appendix may also include documents not part of the record on review that are relevant to the determination that the decision will have substantial impact.

(c) Length of Petition, Answer and Reply; Separate Brief. A petition or answer must not exceed 20 pages. A reply must not exceed 10 pages. A separate brief supporting a petition, answer, or reply is not permitted.

(d) Service and Filing; ~~Number of Copies~~. The Director must file [the petition](#) with the clerk of court [through CM/ECF](#) ~~an original and 3 copies of the petition with proof of service~~ and must serve a copy of the petition on the named respondents, all other parties before the Board or arbitrator, and the Board or arbitrator.

(e) Notice of Docketing. On receipt, the clerk of court will enter the petition on the ~~miscellaneous~~ docket [as a miscellaneous case](#) and notify the Director, the named respondents, all other parties before the Board or arbitrator, and the Board or arbitrator of the docketing date.

(f) Appearance by Other Than the Named Respondent. The Board or arbitrator and any other party to the proceeding desiring to participate in the proceeding in this court must enter an appearance. Anyone entering an appearance will be deemed a respondent.

(g) Answer; Appendix; Reply. Within 21 days after service of a petition, any respondent may file an answer. The answer may include an appendix containing any relevant portion of the record on review not included in the appendix to the petition; the appendix may also include documents or affidavits not part of the record on review that are relevant to the determination that the decision will have substantial impact. Within 14 days after service of an answer, the Director may file a reply.

(h) Action by the Court. Granting a petition for review is at the discretion of the court. On receipt of an order granting review, the clerk of court must enter the petition for review on the general docket. The petition for review will then proceed as if filed under Federal Rule of Appellate Procedure 15.

Federal Circuit Rule 47.10

Rule 47.10. Dismissal of a Bankruptcy Stay Case

An appeal stayed in accordance with the bankruptcy stay provisions of 11 U.S.C. § 362 may be dismissed by the clerk of court without prejudice to the appellant reinstating the appeal within 30 days after the stay is lifted or the bankruptcy proceeding ends.

Federal Circuit Rule 47.11

Rule 47.11. Quorum

A quorum is a simple majority of a panel of the court or of the court en banc. In determining whether a quorum exists for en banc purposes, more than half of all circuit judges in regular active service, including recused or disqualified judges, must be eligible to participate in the en banc process. If a judge of a panel that has heard oral argument or taken under submission any appeal, petition, or motion is unable to continue with consideration of the matter because of death, illness, resignation,

incapacity, or recusal, the remaining judges will determine the matter if they are in agreement and no remaining judge requests the designation of another judge. If the remaining judges are not in agreement or if any remaining judge requests the designation of another judge, the remaining judges will promptly advise the chief judge who will secure another judge to sit with the panel. ~~The Clerk will advise the parties of the designation, but no further argument will be had or briefs received unless ordered by the court.~~

Federal Circuit Rule 47.12

Rule 47.12. Action for Judicial Review Under 38 U.S.C. § 502

(a) Time for Filing. An action for judicial review under 38 U.S.C. § 502 of a rule and regulation of the Department of Veterans Affairs must be filed with the clerk of court within 60 days after issuance of the rule or regulation or denial of a request for amendment or waiver of the rule or regulation.

(b) Parties. Only a person or persons adversely affected by the rule or regulation or the rulemaking process may bring an action for judicial review. The Secretary of Veterans Affairs must be named the respondent.

(c) Contents. The action for judicial review must describe how the person or persons bringing the action are adversely affected and must specifically identify either:

- (1)** the rule, regulation, opinion, or order of the Department of Veterans Affairs separately stated and published in the Federal Register pursuant to 5 U.S.C. § 552(a)(1) on which judicial review is sought; or
- (2)** the notice-and-comment rulemaking process by the Department of Veterans Affairs pursuant to 5 U.S.C. § 553 on which judicial review is sought.

(d) Procedure. Except as provided in this rule, the procedures applicable to an action for judicial review under 38 U.S.C. § 502 are the same as those for a petition for review under Federal Rule of Appellate Procedure 15.

Federal Circuit Rule 49

Rule 49. Seal of the Court

The clerk of court is the keeper of the seal, which is the means of authentication of all records and certificates issued from this court.

Federal Circuit Rule 50

Rule 50. Employee and Former Employee

No employee of the court may engage in the practice of law. No former employee of the court may participate or assist, by representation, consultation, or otherwise, in any case that was pending in the court during the period of employment. For purposes of this rule, a person serving at the court as an intern, whether in a judge's chambers or otherwise, is considered an employee of the court, whether such service is for pay, for law school credit, or voluntary.

Practice Notes

ALL FUTURE PARTICIPATION AND ASSISTANCE PROHIBITED. A former employee of the court is prohibited from participating or assisting in any case after employment with the court if the case was before this court at any point during the person's employment. Thus, for example, a former employee is prohibited from participating or assisting in a case in a trial forum, agency, or other forum if the case was before this court during the person's employment and was remanded by this court or otherwise continued in the trial forum, agency, or other forum for any other reason. A former employee is also prohibited, for example, from participating or assisting in the case if it is subsequently before this court again or if it is before the Supreme Court of the United States. [In addition to Rule 50, former employees should also consult any applicable local bar rules and Canon 3\(d\) of the Code of Conduct for Judicial Employees.](#)

Federal Circuit Rule 51

Rule 51. Complaint of Judicial Misconduct or Disability

The procedures for processing a complaint of judicial misconduct or disability are pursuant to 28 U.S.C. § 351, *et seq.* The clerk of court will provide copies of these procedures on request.

Federal Circuit Rule 52

Rule 52. Fees

(a) Judicial Conference Schedule of Fees.

(1) General. The fees charged by the clerk of court must be the fees prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1913 or by this rule. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in subsections (3)(B), (D) and (E) of this rule. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs. Fees paid to the court by attorneys must be made through CM/ECF using pay.gov.

(2) Docketing Fee. The docketing fee will be paid to the trial court clerk of court on filing a notice of appeal in that court. The docketing fee will be paid to this court's clerk of court on filing any other proceeding, including an appeal or petition for review from the Patent and Trademark Office or the Merit Systems Protection Board, or any other agency, and including an extraordinary writ.

(3) Judicial Conference Schedule of Fees.

(A) For docketing a case on appeal or review, or docketing any other proceeding, \$500. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(b), unless the appeal is allowed.

(B) For every search of the records of the court and certifying the results thereof, \$30. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access.

(C) For certifying any document or paper, whether the certification is made directly on the document, or by separate instrument, \$11.

(D) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm

reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.

(E) For reproduction of recordings of proceedings, regardless of the medium, \$30, including the cost of materials. This fee shall apply to services rendered on behalf of the United States if the reproduction of the recording is available electronically.

(F) For reproduction of the record in any appeal in which the requirement of an appendix is dispensed with by any court of appeals pursuant to Rule 30(f), FRAP, a flat fee of \$83.

(G) For each microfiche or microfilm copy of any court record, where available, \$5.

(H) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$53.

(I) For a check paid into the court which is returned for lack of funds, \$53.

(J) The court may charge and collect a fee of \$200 per remote location for counsel's requested use

of videoconferencing equipment in connection with each oral argument.

(K) For original admission of attorneys to practice, \$176 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, ~~\$15~~18. Federal Circuit Rule 46 requires an additional local fee of \$50 for admission and ~~\$10~~25 for a duplicate certificate.

(4) Electronic Public Access Fee Schedule. The fees for electronic public access are ~~set forth in~~ authorized by ~~the note following~~ 28 U.S.C. § 1913 and promulgated in the Judicial Conference Electronic Public Access fee schedule.

(b) Copies of Opinions. All court opinions are available on the court's website or PACER without charge. Printed copies of court orders and opinions are subject to the Electronic Public Access fee schedule, and are available without cost to those persons and organizations whose names are on a public interest list established by order of the court. ~~For each copy of an opinion (including any separate or dissenting opinions), the fee is \$2. No charge may be assessed for the following: (1) a copy of the opinion furnished to each party of record in the case; and (2) copies of opinions furnished persons and organizations whose names are on a public interest list established by order of the court.~~

(c) Fees To Be Paid in Advance. The clerk of court is not required to docket any proceeding or perform any other service until all fees due the clerk of court are paid unless a party has been granted leave to proceed in forma pauperis.

(d) Dismissal of Appeal or Petition for Failing To Pay Docketing Fee. If a proceeding is docketed without prepayment of the docketing fee, the appellant or petitioner must pay the fee within 14 days after docketing. If the clerk of court does not receive the docketing fee, a completed motion for leave to proceed in forma pauperis, or a completed Form 6B within 14 days of the date of docketing of the appeal or petition, the clerk of court is authorized to dismiss the appeal or petition.

(e) Online payments; Checks. Counsel shall use pay.gov to make payments for all applicable fees online. Instructions for use of pay.gov are available on the court's website. For matters that are not paid through pay.gov, and for pro se parties who do not use CM/ECF, checks in payment of fees must be made payable to the Clerk of Court, United States Court of Appeals for the Federal Circuit.

Practice Notes

NO REFUND OF FEES. Fees are deposited with the Treasury Department on receipt. The clerk of court cannot refund any fee once it is deposited.

CHECKS AND DRAFTS. Checks and drafts are accepted subject to collection, and full credit will be given only when the check or draft is accepted by the financial institution on which it is drawn.

DOCKETING FEE AND COSTS IN A CASE INVOLVING A CLAIM UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994.

The docketing fee does not have to be paid, and no costs are taxed, in a petition for review of a decision of the Merits Systems Protection Board if the underlying appeal involved a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)). 38 U.S.C. § 4323. The petitioner must complete Form 6B to inform the court that the case involves a claim under USERRA.

Federal Circuit Rule 53

Rule 53. Judicial Conference

There will be held, at a time and place designated by the chief judge, a conference to consider the business of the court and to advise means of improving the administration of justice. The chief judge presides at the conference. All members of the bar of the court may be members of the conference and may participate in its discussions and deliberations. Registrants must pay a fee to be applied to the payment of expenses of the conference.

Federal Circuit Rule 54

Rule 54. Library

(a) General. The library in the Howard T. Markey National Courts Building serves this court and the United States Court of Federal Claims.

(b) Authorized Users. The library's authorized users are limited to:

- (1)** the judges of the courts;
- (2)** their court staff;
- (3)** members of the bars of either court;
- (4)** pro se litigants with pending cases in either court;
- (5)** attorneys employed by the United States; and
- (6)** employees of the Administrative Office of the United States Courts and the Federal Judicial Center.

(c) Suspension; Closing. The librarian may suspend an authorized user for cause and may, when warranted, close the library to all except judges and the court staff.

(d) Books: Check Out and Removal. Only judges and the court staff may check out books from the library. Library books must not be removed from the premises of the Howard T. Markey National Courts Building without express permission from the librarian.