

## KEY TAKEAWAYS

# Petitions for Expungement or Reexamination and Other Aspects of the Trademark Modernization Act

Kilpatrick Townsend's [Ted Davis](#) recently spoke at the [Federal Bar Association's IP Law Fall Conference 2022](#) on the topic of "Petitions for Expungement or Reexamination and Other Aspects of the Trademark Modernization Act." United States trademark professionals and mark owners now had more than six months of experience in the United States Patent and Trademark Office's (USPTO) administration of the Trademark Modernization Act (TMA), which Congress enacted in part to address the problem of "deadwood" cluttering the USPTO's trademark registers. During roughly the same period, the USPTO has undertaken various other initiatives bearing on bad-faith trademark-related filings.

Five key takeaways from the presentation include:

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Over a half a year of experience has yielded valuable insights into the administration of the TMA by the United States Patent and Trademark Office, including:

- how to establish the prima facie case of nonuse necessary to initiate either or both of the TMA's ex parte mechanisms for challenging federal trademark registrations; and
- how federal registrants can rebut prima facie cases of nonuse.

The USPTO is increasingly cracking down on misrepresentations in the registration process through an apparent expansion of its administrative sanctions program.

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Likewise, the Trademark Trial and Appeal Board (TTAB) has recently become more receptive to allegations of the fraudulent procurement and maintenance of registrations.

The TMA has for the most part had its intended effect of restoring the presumption of irreparable harm in cases in which a violation of the Lanham Act has been shown in litigation.

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It has successfully protected the judges of the TTAB against allegations that they have been unlawfully installed under the Constitution's Appointments Clause.

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