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Keeping a Registration Alive: Sections 8, 9, and 15 Explained

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IN BRIEF

- A Section 8 declaration of continued use is due between the fifth and sixth anniversaries of registration, with a six-month grace period at an added fee. Miss both and the USPTO cancels the registration.
- A combined Section 8 declaration and Section 9 renewal is due between the ninth and tenth anniversaries, with the same grace period, and again every ten years for as long as the mark stays in use.
- Section 15 is optional: after five consecutive years of continuous use following registration, with no adverse decision and nothing pending, it makes your right to use the mark much harder to challenge, though not immune.

The registration certificate is framed in the hallway, and it has been for years. It looks permanent. It is not. A federal trademark registration stays alive only while you keep showing the U.S. Patent and Trademark Office (the USPTO), on a fixed schedule and with proof, that you are still using the mark. Miss the schedule and the USPTO cancels the registration, whether or not you are still selling.

Two filings do the work, and a third is optional and worth having. They take their names from sections of the federal trademark statute.

- **Section 8** is a sworn declaration that the mark is still in use, due between the fifth and sixth anniversaries of registration, and again with every renewal.
- **Section 9** is the renewal itself, due between the ninth and tenth anniversaries, and every ten years after that.
- **Section 15** is optional. Once the mark has been in continuous use for five years after registration, it can make your right to use the mark much harder to challenge.

Section 8: the first checkpoint

In the year before the sixth anniversary of registration, you file a declaration that the mark is in use in commerce on the goods and services listed in the registration, with a specimen for each class. (A specimen is a real example of the mark in use: a label, the packaging, a product page with a way to buy.) If you miss that year, there is a six-month grace period, at an added fee. After the grace period, the registration is canceled.

The USPTO's fee schedule currently sets the Section 8 fee at $325 per class, plus $100 per class if you file in the grace period.

The declaration is made under oath, and that is the part that catches people. Six years is long enough for a company to have quietly stopped selling several of the products its registration lists. The declaration has to identify those so they can be deleted. The USPTO's own advice is to review your actual use carefully before you file.

Section 9: the ten-year renewal, and every ten after

In the year before the tenth anniversary, and before the end of every ten-year period after that, you file a combined Section 8 declaration and Section 9 renewal. The Section 8 half proves use again; the Section 9 half renews the registration for another ten years. The same six-month grace period applies, at an added fee.

The USPTO's fee schedule currently sets the combined filing at $650 per class ($325 for the Section 8 and $325 for the Section 9). Filing in the grace period adds $100 per class for each half.

There is no limit on renewals. A mark that stays in use can be renewed every ten years indefinitely.

Section 15: optional, and worth understanding

If your mark is on the Principal Register (the main federal register), has been in continuous use for five consecutive years after registration and is still in use, and there has been no final decision against your ownership and no proceeding about it still pending, you can file a Section 15 declaration. The statute requires it within one year after a five-year period of continuous use ends, and the USPTO lets you combine it with your Section 8 filing when you qualify between the fifth and sixth anniversaries. The USPTO's fee schedule currently sets Section 15 at $250 per class, or $575 per class combined with Section 8.

What you get is incontestable status: your right to use the mark for those goods and services becomes much harder to challenge. It is not bulletproof. A registration can still be canceled at any time if the mark becomes the generic name for the goods, is abandoned, or was obtained by fraud, and a generic term can never become incontestable.

A registration listing goods you no longer sell is not a bigger registration. It is a fragile one.

An illustration, with the arithmetic

This is a composite, not a client. A mark was registered in two classes and has been in continuous use ever since.

1. **Between the fifth and sixth anniversaries,** the Section 8 declaration is due. Five years of continuous use after registration have passed, so Section 15 is available too, and the sensible filing is the combined form. USPTO fees: 2 classes × $575 = $1,150.
2. **If that year slips by,** the six-month grace period adds 2 classes × $100 = $200, for $1,350.
3. **Between the ninth and tenth anniversaries,** the combined Section 8 and Section 9 is due. USPTO fees: 2 classes × $650 = $1,300.
4. **Every ten years after that,** step 3 again, for as long as the mark is in use.

The firm prices each maintenance filing separately, per class, and publishes those fees on its trademark page. For registrations the firm filed, it monitors your Section 8 and Section 9 windows at no charge, because these are the easiest deadlines in trademark practice to lose.

The audit nobody expects

When you file a Section 8 declaration, the USPTO may audit it. Under its post-registration audit program, a registration can be picked at random if it has at least one class listing four or more goods or services, or at least two classes listing two or more each. Many registrations meet that test. It can also be picked deliberately if something in the file, such as a specimen that looks digitally altered, suggests the mark is not really in use.

An audit arrives as an office action (an official letter) asking for proof of use of more items: in a random audit, two more goods or services in each audited class. If you cannot prove use of an item, you must delete it and pay a $250 fee for each class with a deletion, and possibly a

$100 deficiency surcharge as well. If you do not respond at all, the registration is canceled. The USPTO reports that audits have led it to cancel registrations or remove goods and services in more than half of the registrations it has audited.

The lesson is upstream. Between filings, the USPTO lets you delete goods you no longer sell through a Section 7 request, at no fee, and deleting them in the declaration itself is free too. Deleting them after the declaration is filed costs a fee for each class.

A registration listing goods you no longer sell is not a bigger registration. It is a fragile one.

Excusable nonuse, and what it is not

A Section 8 declaration can rest on excusable nonuse instead of use, but the exception is narrower than the name suggests. The statute requires special circumstances that excuse the nonuse, and nonuse that is not due to any intention to abandon the mark. The USPTO describes the exceptions as rare, and says you must show the nonuse was caused by circumstances beyond your control.

What it is not is a shelter for a brand you simply stopped using, or one you are holding in case a project restarts someday. If a brand has genuinely gone quiet, the honest options are to resume real use before the window, or to let the registration go and reassess.

The things that break registrations between checkpoints

Ownership changes. If the company merges, converts or sells the brand, record the change in the USPTO's assignment records, and file each declaration in the name of whoever owns the registration at the time. The statute treats a declaration filed in the wrong owner's name as deficient, and fixing it costs a surcharge.

Stale contact details. The USPTO sends courtesy email reminders before maintenance deadlines, but it is explicit that missing a reminder does not excuse missing the deadline. Keep the email address on the registration current. And be wary of official-looking letters from private companies around your deadlines: the USPTO warns that many are fraudulent, and its own email comes only from the uspto.gov domain.

Madrid-based registrations. A U.S. registration that came through the international Madrid system files a Section 71 declaration instead of Section 8, and is renewed with the World Intellectual Property Organization rather than the USPTO.

Where to start

Find your registration date on the certificate or in the USPTO's online status system. Put four dates in a calendar the business actually looks at: the fifth, sixth, ninth and tenth anniversaries. Then start a folder where someone drops a dated photograph or screenshot of the mark in use, for every product or service it covers, twice a year. That is the whole discipline. Everything above is what happens when it is missing.

This is general information about keeping a federal trademark registration alive, not legal advice about your registration. USPTO fees change, so check the current fee schedule before relying on any figure here.

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Anthony is the Managing Partner of Clemenza Law Group and serves as general counsel to a wide range of companies and philanthropic organizations. Nearly every essay here began as a real question from a real client: the contract that landed at 4 p.m., the board that meets on Thursday. He writes them the way he would answer you across the table, plainly and with care.