

Intervention

Rules 37(1), 41, 47 and 50(3) restrict the defending of applications brought for revocation, invalidity, variation and rectification by a person other than the owner, to the “owner” of the registered trade mark concerned. The “owner” is defined in section 2 as the person whose name is for the time being entered in the register as the owner of the trade mark. A difficulty accordingly arises when, for example, an assignee who has yet to have his interest as the new owner recorded in the register, is interested in the proceedings. The solution is contained in rule 51, which provides for leave to intervene. The right to intervene is confined to the proceedings referred to in Part 6 of the Rules.

Who may apply?

An application for leave to intervene is not restricted to an unrecorded assignee of the trade mark. An application for leave to intervene may be filed by any person (other than the owner) who claims to have an interest in the proceedings under Part 6 of the Rules.

How is the application made?

The application is made on Form T6, which includes a filing fee (currently \$800). On the form, the applicant is required to state the nature of his interest. The intended intervener must at the same time send a copy of the application to each party to the proceedings. At the same time, the intended intervener must file an address for service (rule 105(1)), either by completing the relevant part of Form T6 or alternatively by notifying the Registrar in writing of the intervener’s address for service.

Grant or refusal of leave

The grant for leave to intervene is discretionary. The Registrar must, pursuant to section 70(1) give the party seeking leave and the applicant for revocation etc an opportunity to be heard. This does not necessarily mean a formal hearing, although the Registrar may grant one. In the first instance, the Registrar shall invite the applicant for revocation etc to make whatever comments he may wish to make within a specified time. Those comments must be copied to the intended intervener. The intended intervener will be granted the same time to answer those comments, after which the Registrar will make his determination and notify the parties of his decision and of the provisions of section 70 of the Ordinance. Unless either party requests to be heard under the provisions of rule 74, that determination will be final after the expiry of the period of one month.

There is specific power to allow intervention subject to an undertaking as to costs. Further, security for costs may be granted if requested notwithstanding the undertaking – rule 84(4).

If leave to intervene is granted, the intervener becomes a party to the proceedings.

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