

# United States Court of Appeals for the Federal Circuit

## MARCH 2016 AMENDMENTS AND REVISIONS

### Rule

### Summary of March 2016 Amendments

1. Amended terminology to include Patent Trial and Appeal Board, and other conforming changes.
3. Practice Notes: Amended to delete outdated reference to “docket cards” and “party index” and to clarify that electronic docketing includes entry on the docket and assignment of a case number.
4. Amended to clarify language from the former text “clerk may return a notice of appeal that is untimely” to more specifically reflect the jurisdictional limits on untimely appeals.
5. Amendment deletes reference to “appeal information sheet” and adds new subsection (c) to include information on filing a petition for permissive appeal, referencing amended Rule 25. Filing and Service on electronic filing.
5. Practice Notes: Updated to address Case Initiation in CM/ECF, including required payment of fees through pay.gov.
- 8(a). Amendment adds subsection (4) to require a Certificate of Interest when filing a motion for a stay or injunction pending appeal.
- 8(b). Amended to include the motion filing practice in CM/ECF; to no longer file paper copies of a motion (except one copy for pro se filers); and to reference amended Rule 25 on electronic filing generally.
- 8(c). Amended to include reference to amended Rule 25 on pro se use of email when requesting immediate action.
8. Practice Notes: Amended to include specific Clerk’s Office email address for use by pro se litigants only when filing (and not for correspondence).
- 11(c). Modified to clarify the new approach to material subject to a protective order and to complement changes to Rules 17, 27 and 28 relating to new limitations on confidential markings. Material will lose status as subject to a protective order, if it appears without confidential markings in motion papers or a brief. See also changes to Rules 27(m)(1), 28(d)(1) and Rule 30(h)(1)(B) which tightly limit confidential material.

12. Practice Notes: Inserted the word “promptly” for any objection to a caption; deleted references to “docket cards” and “party index” no longer used; and clarifies docketing includes entry on the docket and assignment of a case number.

15(a). Amended to reflect the new Patent Trial and Appeal Board; to reduce the required copies of petition for review or notice of appeal from 3 to 1 only and to reconcile this with Rule 25(b)(1); to set the period for payment of fees to 14 days after filing; to add a requirement for an email address; and to amend subsection (4) to clarify no additional paper copies are required.

15(b). Extensive amendment is proposed to reflect current practice in CM/ECF; and to consolidate agency practice sections into one section.

15(c). Extensive amendment is proposed to clarify the practice in discrimination claims following the *Kloekner* decision.

15(c)(2). Amended to substitute “involving” a claim of discrimination for the less precise “making” and continue with *Kloekner*-based revisions.

15. Practice Notes: Amended table to update agencies, statutes and filing times for petition for review or notice of appeal; inserted “only” in section on intervention to indicate the U.S. is often the only appellee or respondent; deleted the paragraph addressing discrimination consistent with the Rule change; and deleted reference to “docket card” and “party index.”

17(e). Amended to match change in Rule 11 and to clarify the new approach to material subject to a protective order and to complement changes to Rules 27(m)(1), 28(d)(1) and 30(h)(1)(B) which tightly limit material marked confidential.

18. Amended to reflect the current practice in CM/ECF and provide reference to amended Rule 25 on electronic filing.

18. Practice Notes: Amended to include Clerk’s Office email address only for use by pro se filers.

21. Amended to include CM/ECF practice and reference to amended Rule 25 on electronic filing.

25. Deleted current text of Rule 25 to allow extensive re-write, including key provisions from Administrative Order on Electronic Filing. The goal was to incorporate all elements appropriate for inclusion as a rule in the Rules of Practice and Procedure, while leaving more detailed provisions for inclusion in either the Attorney or Pro Se User Guides (which allows more fluid updating as technical changes are required or desired). Complementary changes to the Practice Notes are

also recommended, including new Clerk's Office public working hours, CM/ECF practices, and a new Note addressing pro se filers who are also attorneys.

26. Amended to add a new subsection (c) that clarifies 3 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.

26.1. Amended to emphasize and clarify that attorneys are required to file Certificates of Interest (COIs) with all briefs and motions; and that COIs must be amended promptly when information changes.

26.1 Practice Notes: Added a new Note to complement the proposed amendment to Rule 26.1 by providing context for the Rule revision.

27(a)(2). Amended to substitute the new term "short caption" for the former "authorized abbreviated" caption.

27(j). Amended to reflect current CM/ECF practice regarding paper copies.

27(m). An extensive revision to set forth new requirements for marking of confidential material, including a 15-word limit, absent a motion with required justification. A 50-word limit applies in cases arising under 19 U.S.C. § 1516a or 28 U.S.C. § 1491(b). Also clarifies CM/ECF process and terminology when filing confidential and non-confidential documents; sections renumbered to accommodate revisions. See also changes to Rules 11(c), 17(e), 28(d) and 30(h).

27. Practice Notes: Amended to clarify CM/ECF process on phone inquiries and access to motions; and to add new Note addressing Motion to Expedite Proceedings.

28(a)(11). Amended to correct paragraph numbering.

28(a)(11) and 28(f): Requires appendices, supplemental appendices and addendum material to be numbered using the abbreviation "Appx" or "SAppx" followed by the page number, and to be referenced in the briefs accordingly.

28(d). Amended to complement revisions in Rules 11(c), 27(m) and 30(h), tightly limiting marking of confidential material; the rule is also updated to reflect CM/ECF process for filing confidential and non-confidential briefs. A new subparagraph (5) requires parties to attempt to agree on confidential markings.

28(g). Amended to further focus the Rule by retitling the caption from "Informal Brief; Appellee's Brief" to "Pro Se Briefs; Response" and to clarify that a pro se party may file either a formal or an informal brief. The amendments include the proper

number of paper copies; and a new subsection (3) is added to require a statement of the basis of jurisdiction in a respondent's brief.

28(h). Amended to reflect current CM/ECF process and required paper copies.

28(i). Amended to reflect current CM/ECF process and required paper copies.

28. Practice Notes: Added a new note to allow any party to place the language of a patent or claim at issue 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 also included in the brief.

29. Amended to reflect current CM/ECF process regarding the number of paper copies to be filed by amicus curiae.

30(b)(4)(E): Requires the use of Bates numbering for all pages of an appendix or supplemental appendix.

30(a)(5) and (7). Amended to reflect current CM/ECF process, including the number of paper copies to be filed; and to add a cross-reference to Rule 30(h)(3).

30(h). Amended the caption to include material in briefs and motions, consistent with changes to Rules 11(c), 27(m) and 28(d), which limit confidentiality markings; to reflect current CM/ECF process in filing appendixes containing protected material; and the rule has been renumbered to accommodate new text.

31(b). Amended to reflect current CM/ECF process requirements for paper copies.

31. Practice Notes: Deleted the first Practice Notes addressing a complex filing scenario unlikely to occur in an electronic filing environment.

32. Amended to more precisely anticipate an electronic filing environment, such as deleting "printed and bound" and substituting "prepared."

32. Practice Notes: Deleted reference to a brand-name product; and amended to reflect current CM/ECF process, including the number of paper copies required.

32.1(e). Amended to reflect current CM/ECF process, including the number of paper copies required.

32. Practice Notes: Amended to direct inquiries on case information to the Court's website: [www.cafc.uscourts.gov](http://www.cafc.uscourts.gov).

33.1. Amended to incorporate a new title on mediation guidelines.

34(c). Amended to incorporate CM/ECF process requirements, including that parties must correspond with the Clerk's Office about visual aids through CM/ECF.

34. Practice Notes: Various amendments are proposed to: change the time to 7 days from completion of briefing as the time in which counsel must advise the Clerk's Office of schedule conflicts; to clarify argument time per side (not per attorney); to clarify that the manner in which to conduct oral arguments is on the website (no longer in "pamphlets" sent with calendaring notice); and to clarify that recordings of oral arguments are now publicly available on line at no cost.

35(c)(4) and (f). Amended to reflect current CM/ECF process, including the proper number of paper copies required.

39(b). Amended to reflect CM/ECF electronic filing process, including the proper number of paper copies required.

39. Practice Notes: Amended to reflect CM/ECF electronic filing process, including the proper number of paper copies required.

40(f). Amended to reflect CM/ECF electronic filing process, including the proper number of paper copies required.

40(g). Amended by inserting the word "for" to correct an editorial omission in the original Rule.

40. Practice Notes: Amended to reflect CM/ECF electronic filing process.

45. Amended to reflect a requirement of only one paper copy in electronic filing environment.

46(c) and (e). Amended to add "email address" to required information.

47.3(a). Amendments update the Rule to reflect that CM/ECF will not auto-populate names of counsel into a case caption, if that counsel has not entered an appearance; additional changes reflect current terminology for electronic filing; broaden the category of filed material to include more than "documents" and clarify material is transmitted electronically rather than sent through the mail.

47.3(b). Amended to include email addresses.

47.3(c). Amended to address a late entry of appearance or a change in representation. An Entry of Appearance (EOA) filed after a case is assigned to a panel will be referred to the panel as a motion; whenever there is a change in EOA

information, an amended EOA must be filed, including email addresses; and to clarify that if there is no attorney of record, service of any matter must be outside CM/ECF.

47.3(d). Amended to allow an electronic signature of counsel in CM/ECF.

47.3 Practice Notes: Amended to clarify that only government counsel are exempted from requirement for admission to the Federal Circuit Bar. A new Note is added on the effect of entry of appearance after a case has been assigned to a panel (it will be transmitted to the panel as a motion) and how counsel will be notified of panel's disposition (via CM/ECF).

47.4(a) and (b). Amended to require further information on potential conflicts, including parent/subsidiaries owning more than 10% of a company; and to require amended COIs when information changes.

47.9. Various amendments are proposed to: clarify the timing for filing a petition for review of a final order or decision of the Merit Systems Protection Board or of an arbitrator reflecting change in 5 U.S.C. §7703; to include current CM/ECF electronic filing, the proper number of paper copies, and to clarify a "miscellaneous case" is designated in CM/ECF and deletes reference to the discontinued paper "miscellaneous docket."

47.11. Amended to delete the requirement that the Clerk of Court notify parties of a change in panel composition due to recusal or other reason.

50. Practice Notes: A new sentence is added to address "substantial participation" circumstances (e.g., different case, but same patent).

52(a)(4). Amended to clarify statutory and regulatory bases for the payment of fees.

52(b). Amended to clarify the public source of court orders and opinions, as well as related fees.

52. Practice Notes: Amended to provide a reference to the Court of Appeals Miscellaneous Fee Schedule promulgated by the Judicial Conference of the United States.