

UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

RULES OF PRACTICE



PROPOSED AMENDMENTS  
SEPTEMBER 2022

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EDITOR'S NOTES

This document contains proposed substantive and non-substantive amendments to the Federal Circuit Rules of Practice.

Rules without any amendments are omitted.

All hyperlinks are for illustrative purposes only and will not work.

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**SUMMARY OF PROPOSED AMENDMENTS**

The court is proposing the following amendments to the Federal Circuit Rules of Practices (FCR) and corresponding Practice Notes:

1. **Fed. Cir. R. 25:** Decreasing the required number of paper copies on rehearing or hearing en banc.
2. **Fed. Cir. R. 27:** Clarifying that requests for reconsideration of dispositive orders must be filed as rehearing petitions with limited exceptions.
3. **Fed. Cir. R. 28:** Moving the principal brief addendum requirements to their own subsection and addressing multi-volume addenda; requiring a separate heading for the standard of review and clarifying location expectations; clarifying patent claim language on inside front cover of principal briefs and relocating requirement to FCR 32; clarifying informal brief form requirement; requiring separate heading for jurisdictional statement in informal response brief.
4. **Fed. Cir. R. 28.1:** Adjusting citation to FCR 28 to correspond with new addendum subsection.
5. **Fed. Cir. R. 30:** Clarifying expectation for inclusion of patent and rehearing orders in the appendix; requiring brief title to identify when it contains an appendix; permitting unrepresented parties to file additional record material attached to a reply brief when the appellee files a separate appendix.
6. **Fed. Cir. R. 31:** Eliminating separate briefing schedule for informal briefing.
7. **Fed. Cir. R. 32:** Relocating patent claim language on inside front brief cover requirement to this rule from FCR 28 and permitting single-spacing of this language; excluding inside front cover contents and contents required on the first page of a filing in lieu of a cover from word counts; clarifying informal brief form and type-volume requirements.
8. **Fed. Cir. R. 33:** Clarifying that settlement discussion obligations do not apply to appellate intervenors.
9. **Fed. Cir. R. 33.1:** Incorporating Mediation Guidelines docketing statement requirement into the rule and requiring use of the form.

10. **Fed. Cir. R. 34:** Requiring parties to file argument scheduling conflict notice, even if no conflicts exist; delegating authority to the clerk of court to set scheduling conflict limitations and accept or reject individual conflict dates; clarifying who must file a response to notice of oral argument; clarifying that parties represented by the same counsel can only have one counsel argue.
11. **Fed. Cir. R. 35:** Aligning with change to FCR 25 to decrease required number of paper copies.
12. **Fed. Cir. R. 38:** Adding practice note to direct filers to follow Rule 27 when filing motions for sanctions.
13. **Fed. Cir. R. 40:** Aligning with change to FCR 25 to decrease required number of paper copies.
14. **Fed. Cir. R. 41:** Adjusting the types of orders that will constitute the mandate.
15. **Fed. Cir. R. 47.4:** Citing to FCR 47.5 for related case requirement in certificate of interest.
16. **Fed. Cir. R. 47.5:** Creating expanded notice requirement when there are related cases in other tribunals in order to provide the court with more information on participating parties, firms, and attorneys.
17. **Fed. Cir. R. 47.7:** Adding practice note to direct filers to follow Rule 27 when filing motions for sanctions in the form of attorney fees.

**FEDERAL CIRCUIT RULE 25****Filing and Service****(a) General Filing Requirements.****(1) Filing Methods.**

Where these rules discuss electronic filing, it exclusively refers to use of the court's electronic filing system. Unless authorized in advance by the court or the clerk of court, facsimile and email transmission of documents will not be accepted.

**(A) Represented Parties.**

Parties represented by counsel must submit all documents in Portable Document Format (PDF) using the court's electronic filing system and following the instructions and requirements in the court's [Electronic Filing Procedures](#).

**(B) Unrepresented Parties.**

Following public notice, the clerk of court may provide for unrepresented parties to file electronically and may establish necessary procedures and requirements consistent with these rules. Once electronic filing is available, an unrepresented party must inform the court within fourteen (14) days after that party's case is docketed whether the filer elects to submit documents in paper form or register for electronic filing and submit documents in PDF through the court's electronic filing system; following this election, the party may not change methods in that case without leave of the court or the clerk of court for good cause shown. An unrepresented party may use either method to submit case-initiating documents and may elect to file using different methods in each separate case. If an unrepresented party elects to file electronically, [Federal Circuit Rule 25\(c\)\(1\)](#) applies.

**(2) Electronic Filer Registration.**

Attorneys who appear before this court and unrepresented parties choosing to file electronically must register for the court's electronic filing system. Registration requirements are located in the court's [Electronic Filing Procedures](#).

Registration for electronic filing is not a substitute for admission to the bar or appearance in a case. Unrepresented

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paper filers may register for electronic filing at any point, and they may elect to file electronically after registration is approved by the court.

**(3) Restrictions on Electronic Filers.**

Registration for the court's electronic filing system constitutes an agreement by the filer to abide by all the procedures and requirements set forth in the court's [Electronic Filing Procedures](#). Following notice and an opportunity to respond, the clerk of court may restrict or revoke electronic filing privileges for users who have either (A) repeatedly failed to comply with these procedures and requirements or (B) failed to maintain appropriate security of account credentials.

**(4) Electronic Filing Procedures.**

The clerk of court is authorized to adopt [Electronic Filing Procedures](#) governing the administrative and technical requirements and procedures for using the court's electronic filing system. However, nothing in the [Electronic Filing Procedures](#) may contradict the Federal Rules of Appellate Procedure, the Federal Circuit Rules, or any applicable federal law.

**(5) Change of Name or Contact Information.**

Filers must immediately submit an amended appearance under [Federal Circuit Rule 47.3](#) to notify the clerk of court of a change of name or contact information, including an email address for electronic service. Electronic filers must also update their information in the court's electronic filing system. Failure to maintain current contact information with the clerk of court may result in the suspension of electronic filing privileges or missed notifications.

**(b) Case-Initiating Documents.**

Documents such as appeals filed directly with this court, petitions for review, petitions for writs of mandamus, petitions for permission to appeal, and motions for stays or injunctions under [Federal Rule of Appellate Procedure 8](#) or [18](#) are considered case-initiating documents if the appeal or petition has not been docketed.

**(1) Electronic Submissions.**

A case-initiating document is considered filed at the time and date registered by the court's electronic filing system. No paper copy is required. Parties represented by a member of

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the bar of this court must submit case-initiating documents electronically.

**(2) Nonelectronic Submissions.**

Unrepresented parties or parties represented at the lower tribunal by counsel who are not members of the bar of this court may choose to submit case-initiating documents in paper. Only one paper copy is required of any case-initiating document submitted in paper. Once the notice of docketing is issued, an unrepresented party must follow [Federal Circuit Rule 25\(a\)\(1\)](#).

**(c) All Other Documents.****(1) Submissions by Electronic Filers.**

A document submitted electronically is deemed filed on the date and time stated on the Notice of Docket Activity generated from the court's electronic filing system. Paper copies must not be provided to the court except to the extent required by [Federal Circuit Rule 25\(c\)\(3\)](#) or as ordered by the court.

**(A) Motion for Exemption.**

A motion for exemption from electronic filing requirements may be submitted in paper form. Upon a showing of good cause, the court may exempt a filer from electronic filing requirements and authorize filing by other means.

**(B) Items That Cannot Be Filed Electronically.**

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 physical form without leave of court. The party must file electronically a Notice of Physical Filing and submit the original exhibit, attachment, or appendix in physical form to the clerk of court within five (5) business days after filing the notice. If such an item is part of a brief, appendix, or petition, then additional copies must be provided in the same number and within the same timeframe as the paper copies of the brief, appendix, or petition. For electronic appendix material that is unable to be reproduced in paper,

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[Federal Circuit Rule 30\(i\)](#) applies, and a separate Notice of Physical Filing is not required.

**(C) Technical or System Failures.**

An electronic filer whose filing is untimely as the result of a technical or system failure may file a motion for leave to file out of time that includes (1) a declaration or affidavit attesting to the failed attempts to file electronically and (2) the document that could not be filed due to the technical or system failure.

**(2) Submissions by Nonelectronic Filers.**

A document submitted in paper form is deemed filed on the date and time it is received by the court. Additional paper copies must not be provided to the court except to the extent required by [Federal Circuit Rule 25\(c\)\(3\)](#) or as ordered by the court.

**(A) Originals.**

Nonelectronic filers, including counsel exempted from electronic filing requirements, must file one original of each document. If a party chooses to file required paper copies at the same time as the original submission, then the original will count toward the number of paper copies.

**(B) Paper Records.**

The clerk of court will scan originals provided in paper and make the scanned documents part of the court's official record through its electronic filing system. After the scanned documents are entered into the court's electronic filing system, the paper documents will be discarded in accordance with judiciary records management policies.

**(3) Paper Copies.**

Except as provided in this subsection or as ordered by the court, electronic filers must not provide paper copies to the court. When paper copies are required, the clerk of court will note receipt of those copies on the electronic docket.

**(A) Briefs and Appendices During Initial Consideration.**

During initial consideration of a case on the merits, six

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(6) paper copies — or three (3) for cases briefed informally — of each brief and appendix must be provided to the court within five (5) business days after the court's issuance of a notice requesting paper copies.

**(B) Petitions for Panel Rehearing.**

Three (3) paper copies of any petition for panel rehearing, related response, or related brief amicus curiae must be provided to the court within two (2) business days after the filing of the petition, response, or brief.

**(C) En Banc or Combined Petitions.**

Thirteen (13) paper copies — or three (3) for unrepresented parties — of any petition for en banc hearing, petition for en banc rehearing, combined petition for panel and en banc rehearing, related response, or related brief amicus curiae must be provided to the court within two (2) business days after the filing of the petition, response, or brief.

**(D) Briefs and Appendices in En Banc Cases.**

If the court orders en banc hearing or rehearing, twenty-six (26) paper copies of each brief and appendix filed in the case prior to the date of the court's order must be provided to the court within five (5) business days after that order. Twenty-six (26) paper copies of each brief and appendix filed during en banc consideration must be provided to the court within five (5) business days after the filing of the document.

**(E) Confidential Versions.**

If a confidential document is filed in two versions pursuant to [Federal Circuit Rule 25.1](#), then only paper copies of the confidential version must be provided to the court.

**(F) Corrected Versions.**

If a party has not yet filed paper copies of a document and that party has electronically filed a corrected version of that document, then only paper copies of the corrected version must be provided to the court.

**FEDERAL CIRCUIT RULE 25****(4) Review and Correction by the Clerk of Court.**

The clerk of court may require the filing of a corrected copy of any submission that fails to comply with the court's rules or the [Electronic Filing Procedures](#). If a party fails to file a timely corrected copy in response to a notice requiring correction from the clerk of court, the clerk of court may strike the non-compliant document from the docket. The clerk of court may also edit docket entries to correct or to add text or attachments, and any such revision will be identified on the docket.

**(d) Format of Documents.**

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 the court's [Electronic Filing Procedures](#).

**(e) Service.****(1) Electronic Filings.**

A filing does not require proof of service if it is served on all parties through the court's electronic filing system. Service of a filing to a user's email address registered with the court's electronic filing system at the time of the filing constitutes valid service, even if the user has failed to timely provide an updated valid email address and the served email address is invalid. Any nonelectronic filers in the case must be served in paper or by an alternative method of service permitted by [Federal Rule of Appellate Procedure 25\(c\)](#); the filing must include proof of service noting the method of service.

**(2) Paper or Physical Filings.**

A copy of any original filing submitted to the court in paper must be served on all other parties in paper. The original must include proof of service. If a Notice of Physical Filing is filed pursuant to [Federal Circuit Rule 25\(c\)\(1\)\(B\)](#), then a copy of the physical filing must be served on all other parties and the notice must include proof of service of the physical filing.

**(3) Confidential Material.**

Filers cannot serve confidential information through the court's electronic filing system. When a document is filed in two versions pursuant to [Federal Circuit Rule 25.1](#), the filer

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must serve all other authorized parties using one of the other service methods permitted by [Federal Rule of Appellate Procedure 25\(c\)](#).

**(4) Consent to Electronic or Alternative Service.**

Except for the service of confidential material under [Federal Circuit Rule 25\(e\)\(3\)](#), registration as an electronic filer constitutes consent to electronic service of all documents by the court's electronic filing system. Parties, including nonelectronic filers, may consent in writing to electronic service by other means. Absent such an agreement, [Federal Rule of Appellate Procedure 25\(c\)\(1\)](#) applies.

**(5) Service of Papers Before Appearance.**

Service of a filing on a party for which counsel has not yet entered an appearance must be made on counsel of record for the party in the proceeding below at that counsel's last known address, or, if unrepresented, on that party directly.

**(f) Private, Confidential, or Sealed Information.**

Requirements for filing private, confidential, and sealed material with the court are detailed in [Federal Circuit Rule 25.1](#).

**(g) Signatures.****(1) Electronic Signature.**

(A) An electronic signature consists of either (1) the printed name of the individual preceded by the mark "/s/" entered on the signature line or (2) an electronic signature from a commercial provider that complies with the Electronic Signatures in Global and National Commerce Act (ESIGN) (15 U.S.C. § 7001). The electronic signature must appear where the signature would otherwise appear.

(B) The clerk of court will only accept a document with an electronic signature when (1) the name of the electronic signer matches the name on the account used to file the document in the court's electronic filing system or (2) multiple signatures are present pursuant to [Federal Circuit Rule 32\(g\)](#).

**FEDERAL CIRCUIT RULE 25****(2) Form of Signature.**

Where the rules require a signature on a document filed electronically, an electronic signature may be used. For documents filed in paper form, an original, handwritten signature must be used. An original signature is not required on paper copies required by [Federal Circuit Rule 25\(c\)\(3\)](#). Applications for admission to this court's bar must always bear either (A) handwritten signatures or (B) an E-SIGN compliant electronic signature by the applicant and any sponsor. However, the oath of admission must bear a handwritten signature.

**(3) Retention of Documents.**

Documents that are electronically filed and require original signatures other than that of the filer (such as an affidavit signed by a person other than the filer) must be maintained in original form by the filer until the issuance of the mandate with no right of appeal or until such later date as the court prescribes. On request of the court, the filer must provide original documents for review.

**(h) Sanctions for Failure to Comply.**

Failure to comply with the court's rules may result in dismissal of the appeal or other action as deemed appropriate by the court.

**(i) Corrections to Filings.****(1) General.**

A document may not be corrected merely by filing or appending an errata sheet. A party wishing to make non-substantive corrections to any document currently on file with the clerk of court must file a Notice of Correction. Substantive corrections may only be made with leave of the court.

**(2) Format.**

A corrected document must indicate "corrected" in the title or on the cover. A new proof of service must be attached to any corrected filing that is not being served through the court's electronic filing system.

**(3) Notice of Correction.**

A Notice of Correction must be filed contemporaneously with the corrected document and must specifically delineate each

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correction. A Notice of Correction is not required for changes to a document when those changes have been ordered by the court or the clerk of court.

(4) **Required Copies.**

If paper copies have already been submitted, an adequate number of corrected paper copies must be filed.

**FEDERAL CIRCUIT RULE 27****Motions****(a) Contents and Format of a Motion.**

In addition to the requirements under [Federal Rule of Appellate Procedure 27\(a\)\(2\)](#) and [\(d\)](#), a motion must include the following:

- (1) the caption (if the motion is for a procedural order on consent, the short caption may be used; for any other motion, the official caption must be used);
- (2) a statement of consent or opposition representing that the movant has discussed the motion with the other parties and stating whether any party will object or file a response;
- (3) a certificate of interest under [Federal Circuit Rule 47.4](#); and
- (4) an affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746, if the facts relied on in the motion are subject to dispute.

**(b) Response; Reply.**

If a motion uses the short caption, any response or reply may also use the short caption. In addition to the requirements under [Federal Rule of Appellate Procedure 27\(a\)\(3\)](#) and [\(d\)](#), a response must include the following:

- (1) the items in [Federal Circuit Rule 27\(a\)\(1\)](#), [\(3\)](#), and [\(4\)](#); 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) Motion to Expedite.**

In addition to the requirements for a motion under [Federal Circuit Rule 27\(a\)](#), a motion to expedite proceedings must include the following:

- (1) the label "Motion to Expedite" on the cover or front page of the motion, either centered at the top or contained in the title;
- (2) a proposed expedited briefing schedule on the motion; and
- (3) a proposed expedited merits briefing schedule or proposed argument date, if applicable.

**FEDERAL CIRCUIT RULE 27****(d) Attachments or Exhibits.**

Attachments or exhibits to a motion, response, or reply must be preceded by a table of contents and must be paginated or separately tabbed for ease of reference. The pagination need not match the requirements for an appendix under [Federal Circuit Rule 30](#).

**(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, Transfer, or Remand.**

A motion to dismiss for lack of jurisdiction, to transfer, or to remand should be made as soon as the grounds for the motion are known. After the appellant or petitioner has filed its principal brief, the argument supporting dismissal, transfer, or remand should be made in the response brief of the appellee or respondent. Any response to such an argument made in the response brief must be included in the reply brief. Joint or unopposed motions or stipulations to dismiss, transfer, or 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 or transferred. 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.

**FEDERAL CIRCUIT RULE 27****(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) Reconsideration, Vacatur, or Modification of an Order or Action.**

A party seeking to reconsider, vacate, or substantively modify a dispositive order, opinion, or judgment issued by a panel must file a petition for panel, en banc, or panel and en banc rehearing within the time prescribed by [Federal Circuit Rule 40\(d\)](#). For nonsubstantive corrections to a dispositive order, opinion, or judgment, a party may file a motion to correct within fourteen (14) days after the order or action apart from any rehearing petition. For nondispositive orders or actions by the court, including by a single judge, a panel of judges, or the clerk of court, a party must file for relief within fourteen (14) days after the order or action.

**(k) Motions Containing Confidential or Sealed Material.**

[Federal Circuit Rule 25.1](#) applies to confidential or sealed material in motions, responses, and replies.

**FEDERAL CIRCUIT RULE 28****Briefs****(a) Contents and Organization of Principal Briefs.**

Principal briefs must contain a cover pursuant to Federal Circuit Rule 32(a), including any required material on the inside cover, and the following in the order listed:

- (1) the certificate of interest under [Federal Circuit Rule 47.4](#);
- (2) the table of contents;
- (3) the table of authorities;
- (4) the statement of related cases under [Federal Circuit Rule 47.5](#);
- (5) the jurisdictional statement including information demonstrating that the judgment or order appealed from is final or, if not final, appealable on another basis (e.g., preliminary injunction, Federal Rule of Civil Procedure 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, including the citation of any published decision of the trial tribunal in the proceedings;
- (8) the summary of the argument;
- (9) the argument, including the statement of the standard of review which must appear with its own heading either within the argument section or immediately preceding the argument section;
- (10) the conclusion and statement of relief sought;
- (11) any addenda required by Federal Rule of Appellate Procedure 28(f), Federal Circuit Rule 28(c), or Federal Rule of Appellate Procedure 32.1(b); and
- (12) the certificate of compliance, if required by [Federal Circuit Rule 32\(b\)\(3\)](#).

**(b) Exclusion of Contents from Appellee's Brief.**

An appellee's statements of jurisdiction, the issues, the case and facts, and the standard of review must be limited to specific areas of disagreement with those of the appellant. Absent disagreement, an appellee must not include those statements.

**FEDERAL CIRCUIT RULE 28****(c) Addendum Requirements.****(1) Principal Brief.**

Unless an appellant or petitioner permissibly binds an appendix with its principal brief pursuant to Federal Circuit Rule 30(d), the principal brief of an appellant or petitioner must include the following material as an addendum bound with the brief:

- (A) all judgments, orders, agency actions, or other decisions appealed from and any opinions, memoranda, or findings and conclusions supporting them, including any rehearing opinions or orders; and
- (B) if the appeal involves a patent or patent application, all patents or applications at issue on appeal reproduced in their entirety.

**(2) Addendum Pagination.**

Addendum material that is also designated for inclusion in the appendix must be paginated with the corresponding page numbers assigned to that material under [Federal Circuit Rule 30\(b\)\(2\)\(C\)](#). Other addendum material must be paginated in such a way as to avoid confusion.

**(3) Addendum Length.**

Parties may seek leave of the court to waive the addendum requirement of Federal Circuit Rule 28(c)(1) in whole or in part if the number of pages in the addendum to the principal brief will prevent the materials from being bound in a single volume, which equates to roughly 300 double-sided pages of printed addendum material, or 600 pages submitted electronically. If an addendum will cause the opening brief to exceed one volume, each volume of the brief must include a cover that identifies the volume number in Roman numerals and the range of pages within the volume centered at the top.

**(d) Brief Containing Confidential or Sealed Material.**

[Federal Circuit Rule 25.1](#) applies to confidential or sealed material in briefs.

**(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:

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- *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) Referring to the Record and Appendix.**

Any reference in a brief to the underlying record or to material authorized to be included in an appendix must be to the corresponding appendix page number(s) assigned to the material under [Federal Circuit Rule 30\(b\)\(2\)\(C\)](#). References must be as short as possible consistent with clarity and must follow the format required by the clerk of court in the court's [Electronic Filing Procedures](#). Indiscriminate references in briefs to blocks of record pages are prohibited.

**(g) Unrepresented Party Briefs; Response.**

An unrepresented party may file a formal brief or an informal brief, but not both.

**(1) Informal Brief.**

An informal principal brief must contain the information required by the form prescribed by the court. No other contents are required.

**(2) Formal Brief.**

A formal brief must comply with [Rules 28](#) and [32](#) regarding format and contents.

**(3) Counseled Party Response Brief.**

When the appellant or petitioner files an informal brief, the appellee or respondent may elect to file an informal brief. An informal response brief must contain a statement of the case, but the brief may otherwise follow the format prescribed for the unrepresented party. In an informal or formal response brief, the party must affirmatively state under a separate heading whether the party believes the court has jurisdiction over the case, 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

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those briefs instead of filing briefs prescribed by these rules. The stipulation and each brief must be filed with this court within fourteen (14) days after docketing, with the required number of paper copies to be provided in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#). The court may also order supplemental briefs as needed.

**(i) Multiple Parties.****(1) Single Brief.**

Each party is permitted to file a single brief of each type authorized for that party by these rules. Private parties with identical or similar interests are strongly encouraged to join in a single brief.

**(2) Combined Brief Required.**

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.

**(j) Briefs in Related Cases.**

Parties may not file entirely duplicative briefs in related cases. If all or a portion of a brief is duplicative of a brief in a related case, as defined by [Federal Circuit Rule 47.5](#), the filing party must so advise the court at the beginning of the brief or section containing the duplicative content.

**FEDERAL CIRCUIT RULE 28.1****Cross-Appeals****(a) Page Limitation.**

Unless it complies with [Federal Circuit Rule 28.1\(b\)](#), the appellant's principal brief must not exceed thirty (30) pages; the appellee's principal and response brief, thirty-five (35) pages; the appellant's response and reply brief, thirty (30) pages; and the appellee's reply brief, fifteen (15) pages.

**(b) Type-Volume Limitation.**

- (1) The appellant's principal brief or the appellant's response and reply brief is acceptable if it meets one of the following:
  - (A) it contains no more than 14,000 words; or
  - (B) it uses a monospaced face and contains no more than 1,300 lines of text.
- (2) The appellee's principal and response brief is acceptable if it meets one of the following:
  - (A) it contains no more than 16,500 words; or
  - (B) it uses a monospaced face and contains no more than 1,500 lines of text.
- (3) The appellee's reply brief is acceptable if it meets one of the following:
  - (A) it contains no more than 7,000 words; or
  - (B) it uses a monospaced face and contains no more than 650 lines of text.

**(c) Certificate of Compliance.**

A brief submitted under this rule must comply with [Federal Circuit Rule 32\(b\)\(3\)](#).

**FEDERAL CIRCUIT RULE 28.1****(d) Brief Contents.**

Appellant's principal brief must comply with [Federal Circuit Rule 28\(a\)](#). Appellee's principal and response brief must comply with [Federal Circuit Rule 28\(a\)](#), and [\(b\)](#) to the extent that it refers to the statement of the case. Appellee's principal and response brief must also include the addendum under [Federal Circuit Rule 28\(c\)\(1\)](#) to the extent that the materials differ from those produced in the appellant's principal brief. Appellant's response and reply brief must comply with [Federal Circuit Rule 28\(b\)](#).

**FEDERAL CIRCUIT RULE 30****Appendix to the Briefs****(a) Contents of Appendix; Time for Filing; Number of Copies; Multiple Volumes; Failure to File.****(1) Contents.**

- (A) In addition to the material required by [Federal Rule of Appellate Procedure 30\(a\)\(1\)\(A\), \(B\), and \(C\)](#), the appendix must include the following:
- (i) the entire docket sheet, certified list, or index 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; and
  - (iii) in an appeal involving a patent or patent application, any patents or applications at issue on appeal in their entirety. Any other patents included in an appendix must be included in their entirety.
- (B) Parts of the record must not be included in the appendix unless they are cited in the briefs. Parties must, however, include in the appendix sufficient surrounding record and transcript pages to provide context for a cited excerpt, as well as the transcript cover page identifying participating counsel if included in the record. Inclusion of unnecessary pages in the appendix is prohibited.
- (C) In an appeal from the Patent and Trademark Office, unless the parties agree otherwise, the appendix must include the following:
- (i) a copy of all rejected claims that are being appealed from a final decision of the Patent Trial and Appeal Board;
  - (ii) a copy of all counts in a patent interference appeal or claims involved in a derivation proceeding; and
  - (iii) 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 registered mark in a trademark appeal.
- (D) If the appellant includes in the appendix material

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counter-designated by the appellee under [Federal Circuit Rule 30\(b\)](#) that the appellant considers to be included 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, except as permitted by [Federal Circuit Rule 30\(a\)\(1\)\(F\)](#);
  - (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 [Federal Circuit Rule 30](#) prohibits from designation and inclusion in an appendix any of the following:
- (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;
  - (iii) briefs and memoranda in a case where the propriety of summary judgment is an issue or where there is an issue of waiver; or
  - (iv) the notice of appeal.

(2) **Time for Filing.**

The appellant must serve and file the appendix within seven (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 seven (7) days after the time for filing the cross-appellant's reply brief has expired.

**FEDERAL CIRCUIT RULE 30****(3) Number of Copies.**

Six (6) paper copies of the appendix must be filed with the court in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#).

**(4) Appendix Volumes.**

No appendix volume filed electronically may exceed 400 sheets of paper when printed. Appendices exceeding 400 printed sheets of paper must be divided into separate volumes before filing. 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). Parties must not include a volume number on the cover of an appendix if that appendix consists of only one volume. A complete table of contents or index must be included in each volume of the appendix.\*

**(5) Consequence of Failing to File an Appendix.**

If the appellant fails to file the appendix, the clerk of court is authorized to dismiss the case.

**(b) Preparing the Appendix.****(1) Designation of Material.**

The parties must compile a designation of material, consisting of all items in the record and other items required by [Federal Circuit Rule 30](#), from which the appendix will be prepared.

(A) To the extent practicable, the parties must attempt to agree on the designation no later than forty-five (45) days prior to the deadline for the appellant's principal brief.

(B) If the parties cannot agree within the timeframe, the appellant must serve its designation on the appellee along with a statement of the issues the appellant intends to present no later than thirty (30) days prior to the deadline for the appellant's principal brief. Within fourteen (14) days after service of appellant's designation, the appellee may serve on the appellant a counter-designation of additional material, which the appellant must include, or

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\*Ed. Note: Refer to the [Practice Notes to Rule 30](#) (Appendix Volumes) for further explanation of this requirement.

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inform the appellant that no additional material needs to be added.

**(2) Pagination.**

(A) The appellant must assign consecutive page numbers to the designated material and serve on all parties either a table reflecting the page numbers of each item or, if not prohibited by an outstanding protective order, a physical compilation of the material with the assigned page numbers shown.

(B) The first page numbers in the designated material must be assigned to all judgments, orders, agency actions, or other decisions appealed from and any opinions, memoranda, or findings and conclusions supporting them, including any rehearing opinions or orders. Other items must follow in accordance with [Federal Rule of Appellate Procedure 30\(d\)](#).

(C) The pages of the designated material must be numbered by the automated Bates numbering feature of the software used to convert the document into a PDF and must be in the format required by the clerk of court in the court's [Electronic Filing Procedures](#).

**(3) Extension of Time.**

The parties may extend the time to complete the designation without leave of the court; however, the designation and pagination must be completed before the appellant files its principal brief or the parties must move to extend the time to file the brief. If the designation cannot be timely completed due to a pending transcript request, an affidavit detailing what has been done to expedite transcription must be attached to the motion.

**(4) Prohibition on Filing.**

The parties are prohibited from filing the designation of material and any counter-designation, table of page numbers, or physical compilation with the court.

**(5) Preparation of Appendix.**

The appellant must prepare the appendix by selecting from the designated material only items required by these rules and pages specifically cited in the briefs of the parties, including the briefs of intervenors and amici. Pages not cited in the briefs —

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other than items required by these rules — must be omitted from the appendix. If all material designated by the parties comprises no more than 100 pages, the entire designation may be filed as the appendix and combined with the appellant's principal brief pursuant to [Federal Circuit Rule 30\(d\)](#).

**(c) Format of Appendix.****(1) Arrangement of Appendix.**

[Federal Rule of Appellate Procedure 30\(d\)](#) governs the arrangement of the appendix, except the judgments, orders, agency actions, or other decisions appealed from and any opinions, memoranda, or findings and conclusions supporting them, including any rehearing opinions or orders, must be placed first in the appendix. Pursuant to [Federal Circuit Rule 25.1\(e\)\(1\)\(A\)](#), if the appendix must include an excerpt of a statute imposing confidentiality or a judicial or administrative protective order, the excerpt or order must appear before the first page and may be paginated with Roman numerals.\*

**(2) Pagination.**

The page numbers in the appendix must be those assigned to the designated material in accordance with [Federal Circuit Rule 30\(b\)](#), and the pages must appear in numerical order. The pages must retain the Bates numbering of the designated material. The page numbers must appear centered in the bottom margin of each page and meet the font size requirements of [Federal Rule of Appellate Procedure 32\(a\)\(5\)](#). Other marks must be redacted if necessary to avoid confusion. 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).

**(3) Printing.**

The court encourages the double-sided printing of the pages of the appendix, an appendix combined with a brief, and an addendum.

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\*The table of contents must still appear before all contents. See [Fed. R. App. P. 30\(d\)](#).

**FEDERAL CIRCUIT RULE 30****(d) Combined Brief and Appendix.**

- (1) When a brief and appendix are combined, the title on the cover must so indicate.
- (2) If either the appendix agreed upon by the parties or the designated material comprises no more than 100 pages, it may be bound together with the appellant's or petitioner's principal brief as a combined brief and appendix.

**(e) Separate or Supplemental Appendix.**

Except as provided below, no party may file a separate or supplemental appendix without leave of the court.

**(1) Appellee's Appendix in an Unrepresented Party's Case.**

In cases involving only unrepresented appellants who have failed to participate in determining the contents of the appendix or have filed an inadequate appendix, the appellee may file an appendix containing material permitted by [Federal Circuit Rule 30\(a\)](#). Should the appellee file such an appendix, the appellants may then attach additional material permitted by Federal Circuit Rule 30(a) to any reply brief.

**(2) Appendix Filed by the United States as an Appellee or Intervenor.**

If all appellants have failed to participate in determining the contents of the appendix or have filed an inadequate appendix, the United States or an officer or agency of the United States, as an appellee or intervenor, may file an appendix containing material permitted by [Federal Circuit Rule 30\(a\)](#).

**(3) Cover and Binding.**

If a separate or supplemental appendix contains no more than 100 pages, it may be bound together with the filer's principal brief. If it is separately bound, then the cover must be red.

**(4) Pagination.**

The pages of a separate or supplemental appendix must be numbered by the automated Bates numbering feature of the software used to convert the document into a PDF and must be in the format required by the clerk of court in the court's [Electronic Filing Procedures](#). The separate or supplemental appendix need not follow any designated material pagination.

**FEDERAL CIRCUIT RULE 30****(5) Time for Filing.**

Any separate or supplemental appendix must be filed within seven (7) days after the appendix would be due under [Federal Circuit Rule 30\(a\)\(2\)](#).

**(f) Costs.**

The costs of the table of page numbers or the copy of the physical compilation of the designated material in [Federal Circuit Rule 30\(b\)](#) may be assessed as provided in [Federal Rule of Appellate Procedure 30\(b\)\(2\)](#). Costs associated with the inclusion of material under [Federal Circuit Rule 30\(a\)\(1\)\(D\)](#) may be recovered.

**(g) Appendices Containing Confidential or Sealed Material.**

[Federal Circuit Rule 25.1](#) applies to confidential or sealed material in appendices, exhibits, addenda, and attachments.

**(h) Unrepresented Party's Informal Appendix.**

An informal brief will be considered filed with an appendix if it includes a copy of 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. If an unrepresented party chooses to separately file an appendix, then the items noted above must be included if they are not already attached to the informal brief.

**(i) Electronic Appendix Material Unable to Be Produced in Paper.**

When the record has been perpetuated in whole or in part in an electronic format and that portion of the record cannot be reproduced in a nonelectronic format, those portions of the record that would properly be included in the appendix if they were in documentary form will be considered supplementary appendix material.

**(1) Copies.**

Four (4) copies must be filed on an electronic medium no later than the time to file the paper copies of the appendix under [Federal Circuit Rule 25\(c\)\(3\)](#). These copies must be accompanied by a cover letter that includes the case number, short case name, and corresponding appendix page(s).

**(2) Statement Concerning Instructions and Malware.**

The copies must be accompanied by an affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746,

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preferably within or attached to the packaging, that does the following:

- (A) sets forth the instructions for viewing the submission and the minimum equipment required for viewing; and
  - (B) verifies the absence of computer malware and lists the software used to ensure that the submission is free of any malware.
- (3) **Slip Sheet.**

A slip sheet representing the supplementary appendix material must be placed in the electronically filed appendix and corresponding paper copies. The slip sheet must bear proper appendix pagination and be included in the appendix where the material would have appeared. No separate notification is required.

**FEDERAL CIRCUIT 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 principal brief within sixty (60) days after docketing.
- (B) In an appeal from an agency, the petitioner or appellant must serve and file its principal brief within sixty (60) days after the certified list or index is served pursuant to [Federal Circuit Rule 17\(c\)](#).
- (C) When two or more appellants or petitioners choose to proceed by filing a single brief, that brief must be served and filed no later than the latest date on which the principal brief of any of those appellants or petitioners is due.
- (D) In consolidated cases in which more than one set of parties filed a notice of appeal or petition for review, the deadline for the principal brief of the appellant or petitioner is computed from the docketing date of the last-docketed case or the date of service of the last-served certified list or index. In consolidated cross-appeals, the deadline is computed from the docketing date of the first-docketed case or date of service of the first-served certified list or index.

**(2) Brief of Appellee or Cross-Appellant.**

The appellee or cross-appellant must serve and file its principal brief within forty (40) days after the appellant's brief is served. In a petition for review or appeal from an agency, if the certified list or index is served after the appellant's principal brief, the appellee or cross-appellant must service and file its principal brief within forty (40) days after service of the certified list or index.

**(3) Cross-Appeal.**

In a cross-appeal, the following apply:

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

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(B) the cross-appellant must serve and file its reply brief within twenty-one (21) days after the appellant's response and reply brief is served.

(4) **Brief Responding to Multiple Parties.**

A brief that responds to the briefs of multiple parties must be served and filed within the time prescribed after service of the last of those briefs. If one party timely files its brief and another party fails to file, then the deadline for any responsive brief will be calculated from the date of service of the filed brief or the date the unfiled brief was due, whichever is later.

(b) **Number of Copies.**

Six (6) paper copies of each brief, or three (3) paper copies if filing an informal brief, must be provided to the court in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#).

(c) **Certain Motions Suspend the Briefing Schedule.**

When a motion is filed that, if granted, would terminate an appeal, cross-appeal, or consolidated appeal, the briefing schedule is suspended. This suspension does not apply to an appellant's principal brief if the motion would only terminate a cross-appeal. 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 fourteen (14) days from the date of the order.

(d) **Consequence of Failure to File a Brief by Appellant or Petitioner.**

If the appellant or petitioner fails to file a principal brief, the clerk of court is authorized to dismiss the case.

(e) **Time for Filing Informal Brief.**

The deadlines to serve and file informal briefs are the same as those for briefs that are not informal. See Federal Rule of Appellate Procedure 31(a)(1) and Federal Circuit Rule 31(a).

**FEDERAL CIRCUIT RULE 32****Form of Briefs, Appendices, and Other Papers****(a) Cover.****(1) Official Caption.**

Whenever a document is filed with a cover, that cover must contain the official caption provided by the clerk of court, unless noted otherwise in these rules. See [Federal Circuit Rule 12\(b\)](#) and [Federal Circuit Rule 15\(b\)\(4\)](#). This caption satisfies the requirement under [Federal Rule of Appellate Procedure 32\(a\)\(2\)\(C\)](#).

**(2) Prohibitions.**

“Nonconfidential” or “public” may not appear on the cover or first page of any filing unless there is a corresponding confidential version.

**(3) Appeals Involving Patents.**

When the language of a patent or patent application is at issue on appeal, each party’s principal brief must include the language of one or more exemplary patent claims illustrative of the issue(s) on appeal on the inside of the front cover (or immediately following the front cover if the language requires more space). The text of any reproduced claim may be single-spaced.

**(b) Type-Volume Limitations.****(1) Brief Word or Line Limitation.**

A principal brief may exceed thirty (30) pages in length if it contains no more than 14,000 words, or 1,300 lines of text if using a monospaced typeface. A reply brief may exceed fifteen (15) pages in length if it contains no more than 7,000 words, or 650 lines of text if using a monospaced typeface.

**(2) Exclusions.**

In addition to the items listed in [Federal Rule of Appellate Procedure 32\(f\)](#) that are not counted in the type-volume limitations of these rules, the following items do not count toward those limitations:

- (A) certificate of interest;
- (B) statement of related cases;

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- (C) any addendum;
- (D) any requirements under [Federal Circuit Rule 25.1\(e\)](#);
- (E) the cover page, the inside of the front cover, or text required to appear on the first page of a filing in lieu of a cover page; and
- (F) statement of counsel for a petition for hearing or rehearing en banc under [Federal Circuit Rule 35\(b\)](#).

**(3) Certificate of Compliance for Briefs.**

Each brief exceeding the page limitation under [Federal Rule of Appellate Procedure 32\(a\)\(7\)\(A\)](#) or [Federal Circuit Rule 28.1\(a\)](#) must include a certificate of compliance with the type-volume limitation that adheres to the requirements in [Federal Rule of Appellate Procedure 32\(g\)](#). It is the responsibility of the filing party to ensure that the certificate of compliance is accurate.

**(c) Informal Brief.**

An informal principal brief should be typewritten, but block printing or, as a last resort, legible handwriting is permitted. An informal principal brief must not exceed thirty (30) pages of typewritten double-spaced text or its equivalent. An informal reply brief must not exceed fifteen (15) pages of typewritten double-spaced text or its equivalent. If prepared on the court's form, the form pages count against the total page limitation. The paper informal briefs may be secured by a single staple in the left-hand corner in lieu of any other form of binding required by [Federal Circuit Rule 32\(h\)](#).

**(d) Form of Appendix or Addendum.**

The court encourages the double-sided printing of the pages of the appendix, an appendix combined with a brief, and an addendum.

**(e) Pagination.**

Submissions to the court over two (2) pages must include page numbers. The page number must be centered at the bottom of the page and need not be included on a cover page.

**(f) Page Proof.**

Page proof copies of documents must not be filed with the court.

**FEDERAL CIRCUIT RULE 32****(g) Signature Authority; Multiple Signatures.****(1) Appearance Prerequisites.**

After a case is docketed, documents filed in that case on behalf of a represented party can only be signed by an attorney who has filed an entry of appearance for that party.

**(2) Signature Authority.**

Any person having actual authority may sign a document on behalf of counsel or an unrepresented party who is unavailable to sign or incapable of signing, provided the filing also includes as an attachment an affidavit of authority or an unsworn declaration of authority under penalty of perjury pursuant to 28 U.S.C. § 1746.

**(3) Documents Requiring Multiple Signatures.**

Any document requiring the signature of more than one party or individual must include the signature of the filer and account for all other signatures in either one or a combination of the following fashions:

- (A) The document may contain the handwritten signatures of the other parties or individuals.
- (B) The document may contain the electronic signatures of the other parties or individuals with their consent and must so state that consent.
- (C) The document may identify the other parties or individuals required to sign, and those parties or individuals must file a notice endorsing the signature within three (3) business days after filing.

**(h) Binding.**

Paper copies of briefs and appendices must be securely bound along the left margin to ensure that the bound copies will not loosen or fall apart and that the brief will lie reasonably flat when open.

**(i) Extraneous Markings.**

Parties must not include any highlighting or extraneous markings within either the briefs or the appendix beyond confidentiality notations required by these rules or markings that originally appeared on appendix materials in the record below.

**FEDERAL CIRCUIT RULE 33****Appeal Conferences****(a) Settlement Discussion; Joint Statement of Compliance or Agreement to Dismiss.****(1) Timing.**

When all parties are represented by counsel, within seven (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)–(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). This requirement does not apply to intervenors on appeal.

**(2) Compliance.**

No later than the time for filing the appendix under [Federal Circuit Rule 30\(a\)\(2\)](#), the parties must file either of the following:

- (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****Mediation Guidelines****(a) Guidelines.**

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

**(b) Docketing Statement.**

Except in cases involving unrepresented parties, each party must file a docketing statement on the form prescribed by the clerk of court within fourteen (14) days after the case is docketed, or thirty (30) days after the case is docketed if the United States or its officer or agency is a party. Filing this docketing statement satisfies the requirement for an appellant to file a statement of the issues under [Federal Rule of Appellate Procedure 10\(b\)\(3\)\(A\)](#).

**PRACTICE NOTES TO RULE 33.1****Docketing Statement Form.**

Using Federal Circuit [Form 26](#) satisfies the docketing statement requirements under Federal Circuit Rule 33.1(b).

**FEDERAL CIRCUIT 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 fourteen (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 the parties 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 a party intends to display at oral argument a visual aid used at a trial or administrative hearing, the party must advise the court by letter no later than fourteen (14) days before argument.

**(2) Visual Aids Not Used at a Trial or Administrative Hearing; Notice.**

If a party intends to display at oral argument a visual aid that was not used at a trial or administrative hearing, the party must give notice to opposing counsel and notify the court by letter no later than twenty-one (21) days before 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 as a letter and filed no later than seven (7) days before the oral argument. If a party objects, the parties' submissions will be treated as a motion and response and will be referred to the panel.

**(4) Scope.**

Presentation programs or projection equipment may not be utilized during argument without leave of the court. A motion for leave must be filed no later than twenty-one (21) days before argument. This rule does not preclude use of a

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chalkboard or equivalent supplied by the party.

**(5) Disposition.**

The clerk of court may dispose of visual aids not removed by the parties.

**(d) Scheduling Conflicts.****(1) Notice from the Clerk.**

In cases to be scheduled for oral argument, the clerk of court will issue a notice to the parties following the end of briefing to request scheduling conflict information from counsel.

**(2) Requirement to Notify of Conflicts.**

Within seven (7) days after the clerk of court issues a notice requesting scheduling conflicts, the parties must file a completed response on the form prescribed by the clerk of court, even if no scheduling conflicts exist. Until the case is scheduled for argument or submitted or resolved without argument, counsel has a continuing obligation to advise the court of any additional scheduling conflicts or changes to existing scheduling conflicts that arise after counsel responds to the clerk of court's initial notice.

**(3) Good Cause Requirement.**

Arguing counsel must show good cause for each identified scheduling conflict; conflicts that do not provide sufficient showing of good cause will not be considered. If arguing counsel fails to show good cause for a scheduling conflict in advance of scheduling and the court schedules the case on a day arguing counsel is unavailable, then the case will not be rescheduled absent a showing of compelling reason and leave of court.

**(4) Delegation of Authority.**

The court may delegate to the clerk of court the authority to impose additional limitations on scheduling conflicts, including limiting counsel to a specified number of scheduling conflicts, and to accept or reject individual conflict dates for lack of good cause.

**FEDERAL CIRCUIT RULE 34****(e) Arguing Counsel.****(1) Notice of Oral Argument; Required Response.**

The clerk of court will notify parties when a case has been scheduled for argument. Each party must respond to the notice of oral argument on the form prescribed by the clerk of court within the time requested by the clerk of court.

**(2) Limitation on the Number of Arguing Counsel.**

Absent leave of court requested at least seven (7) days before argument, no more than two (2) counsel may argue on behalf of each side and no more than one (1) counsel may argue on behalf of each party or on behalf of parties represented by the same counsel or by counsel from the same firm.

**FEDERAL CIRCUIT 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 judges in regular active service 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 sanctions may be imposed.

**(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, and separately signed by, 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).

**(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, and separately signed by, 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).

**(c) Paper Copies.**

Paper copies of petitions for hearing or rehearing en banc, combined

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petitions, or related responses must be filed with the court in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#).

**(d) Combined Petition for Panel Rehearing and Rehearing En Banc.**

If a party chooses to file both a petition for panel rehearing under [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. The cover of a combined petition must indicate that it is a combined petition.

**(e) Contents of Petition for Hearing En Banc, Petition for Rehearing En Banc, and Combined Petition; Response.****(1) Required Contents.**

The required contents for a petition for hearing en banc, petition for rehearing en banc, and combined petition are as follows:

- (A) a white cover or first sheet as prescribed in [Federal Rule of Appellate Procedure 32\(c\)\(2\)\(A\)](#);
- (B) the certificate of interest under [Federal Circuit Rule 47.4](#), which must appear immediately after the front page;
- (C) the table of contents;
- (D) the table of authorities;
- (E) the statement of counsel required under [Federal Circuit Rule 35\(b\)](#);
- (F) if filing a combined petition, the points of law or fact the filer believes the court has overlooked or misapprehended as required under [Federal Rule of Appellate Procedure 40\(a\)\(2\)](#);
- (G) the argument;
- (H) if filing a petition for rehearing en banc or combined petition, a copy of this court's dispositive order, opinion, or judgment of affirmance without opinion attached as an addendum; and
- (I) a certificate of compliance that adheres to [Federal Rule of Appellate Procedure 32\(g\)](#).

**(2) Response.**

If the court requests a response, which must not exceed 3,900 words if prepared electronically or fifteen (15) pages otherwise,

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the required contents are as follows:

- (A) a white cover or first sheet as prescribed in [Federal Rule of Appellate Procedure 32\(c\)\(2\)\(A\)](#);
- (B) the certificate of interest under [Federal Circuit Rule 47.4](#), which must appear immediately after the front page;
- (C) the table of contents;
- (D) the table of authorities;
- (E) the argument in response;
- (F) any addendum under [Federal Circuit Rule 35\(i\)](#); and
- (G) a certificate of compliance that adheres to [Federal Rule of Appellate Procedure 32\(g\)](#).

**(f) Copies of Briefs in Cases to be Heard or Reheard En Banc.**

Paper copies of all briefs and appendices that were before the panel that initially heard the appeal, as well as any briefs and appendices ordered by the court during en banc consideration, must be provided to the court in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#), unless the court directs otherwise.

**(g) Amicus Curiae Brief.**

In addition to the content requirements under [Federal Rule of Appellate Procedure 29\(b\)\(4\)](#), the following apply to amicus curiae briefs filed during the court's consideration of whether to grant a petition for hearing en banc, petition for rehearing en banc, or combined petition for panel rehearing and rehearing en banc, except as otherwise permitted or directed by the court.

**(1) Leave.**

The brief must be accompanied by a motion for leave to file.

**(2) Timeliness.**

Any brief and motion for leave must be filed within fourteen (14) days after the date of the filing of the petition or response that the amicus curiae supports. If the amicus curiae does not support either party, then the brief and motion must be filed within fourteen (14) days after the date of the filing of the petition.

**(3) Type-Volume Limitation.**

The brief must not exceed 2,600 words if prepared electronically

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or ten (10) pages otherwise.

**(4) Paper Copies.**

Paper copies of the brief must be provided to the court in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#).

**(h) Informal En Banc Petition; Response.****(1) Informal Petition.**

An unrepresented party may file three (3) copies of an informal petition for hearing en banc, petition for rehearing en banc, or combined petition for panel rehearing and rehearing en banc in letter form not to exceed fifteen (15) typewritten double-spaced pages, attaching to each a copy of the dispositive order, opinion, or judgment sought to be reheard, if applicable.

**(2) Informal Response.**

If the court requests a response to an informal petition for hearing en banc, informal petition for rehearing en banc, or informal combined petition for panel rehearing and rehearing en banc, or if the court requests an unrepresented party to respond to a formal petition, the response may be informal. The informal response may not exceed fifteen (15) typewritten double-spaced pages, and three (3) copies must be filed in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#).

**(i) Addendum Contents.****(1) Court's Decision.**

A copy of the dispositive order, opinion, or judgment of affirmance without opinion sought to be reheard must be bound with the petition as an addendum.

**(2) Reproduction of Statutes, Rules, Regulations, etc.**

If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the petition or response, or in any addendum attached to the petition or response.

**(3) Other Material.**

Material not listed in subsections (1)–(2) above or permitted under [Federal Rule of Appellate Procedure 32.1\(b\)](#) may not be included as an addendum without leave of the court.

**FEDERAL CIRCUIT RULE 35****(j) Time.**

A petition for rehearing en banc or combined petition for panel rehearing and rehearing en banc must be filed within the time prescribed for a petition for panel rehearing under [Federal Circuit Rule 40\(d\)](#).

**PRACTICE NOTES TO RULE 38****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 unrepresented 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.

**Motions for Sanctions.**

Motions for sanctions under this rule are filed in accordance with the requirements of Federal Rule of Appellate Procedure and Federal Circuit Rule 27.

**FEDERAL CIRCUIT RULE 40****Petition for Panel Rehearing****(a) Contents of Petition for Panel Rehearing.**

The required contents for a petition for panel rehearing are as follows:

- (1) a white cover or first page as prescribed in [Federal Rule of Appellate Procedure 32\(c\)\(2\)\(A\)](#);
- (2) the certificate of interest under [Federal Circuit Rule 47.4](#), which must appear immediately after the front page;
- (3) the table of contents;
- (4) the table of authorities;
- (5) the points of law or fact overlooked or misapprehended by the court;
- (6) the argument;
- (7) an addendum containing a copy of the court's dispositive order, opinion, or judgment of affirmance without opinion; and
- (8) a certificate of compliance that adheres to [Federal Rule of Appellate Procedure 32\(g\)](#).

**(b) Addendum Contents.****(1) Court's Decision.**

A copy of the dispositive order, opinion, or judgment of affirmance without opinion sought to be reheard must be bound with the petition for panel rehearing as an addendum.

**(2) Reproduction of Statutes, Rules, Regulations, etc.**

If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the petition or response, or in any addendum attached to the petition or response.

**(3) Other Material.**

Material not listed in subsections (1)–(2) above or permitted under [Federal Rule of Appellate Procedure 32.1\(b\)](#) may not be included as an addendum without leave of the court.

**(c) Response.**

If the court requests a response, which must not exceed 3,900 words if

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prepared electronically or fifteen (15) pages otherwise, the required contents are as follows:

- (1) a white cover or first sheet with the information prescribed in [Federal Rule of Appellate Procedure 32\(c\)\(2\)\(A\)](#);
- (2) the certificate of interest under [Federal Circuit Rule 47.4](#), which must appear immediately after the front page;
- (3) the table of contents;
- (4) the table of authorities;
- (5) the argument;
- (6) any addendum under [Federal Circuit Rule 40\(b\)](#); and
- (7) a certificate of compliance that adheres to [Federal Circuit Rule 32\(g\)\(1\)](#).

**(d) 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 thirty (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 forty-five (45) days after entry of judgment.

**(e) Informal Petition for Panel Rehearing; Response.****(1) Informal Petition.**

An unrepresented party may file three (3) copies of an informal petition for panel rehearing in letter form not to exceed fifteen (15) typewritten double-spaced pages, attaching to each a copy of the dispositive order, opinion, or judgment sought to be reheard.

**(2) Informal Response.**

If the court requests a response to an informal petition for panel rehearing, or if the court requests an unrepresented party to respond to a formal petition for panel rehearing, the response may be informal. The informal response may not exceed fifteen (15) typewritten double-spaced pages, and three (3) copies must be filed in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#).

**(f) Amicus Curiae Brief.**

In addition to the content requirements under [Federal Rule of Appellate Procedure 29\(b\)\(4\)](#), the following apply to amicus curiae briefs filed during the panel's consideration of whether to grant a

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petition for panel rehearing, except as otherwise permitted or directed by the court.

(1) **Leave.**

The brief must be accompanied by a motion for leave to file.

(2) **Timeliness.**

Any brief and motion for leave must be filed within fourteen (14) days after the date of the filing of the petition or response that the amicus curiae supports. If the amicus curiae does not support either party, then the brief and motion for leave to file the brief must be filed within fourteen (14) days after the date of the filing of the petition.

(3) **Type-Volume Limitation.**

The brief must not exceed 2,600 words if prepared electronically, or ten (10) pages otherwise.

(4) **Paper Copies.**

Paper copies of the brief must be provided to the court in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#).

**(g) Paper Copies.**

Paper copies of petitions for panel rehearing or responses to petitions for panel rehearing must be provided to the court in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#).

**FEDERAL CIRCUIT RULE 41**

**Issuance of Mandate**

An order granting an unopposed motion to dismiss or remand a case will constitute the mandate.

**FEDERAL CIRCUIT RULE 47.4****Certificate of Interest****(a) Purpose; Contents.**

A certificate of interest is required to determine whether recusal by a judge is necessary or appropriate. The certificate must contain the information below in the order listed. For purposes of subsections (1)–(4) below, “entity” refers to any party, intervenor, amicus curiae, or movant represented in the case by the counsel filing the certificate of interest. Negative responses, if applicable, are required as to each item.

- (1) The full name of every entity represented in the case by the counsel filing the certificate.
- (2) For each entity, the name of every real party in interest, if that entity is not the real party in interest.
- (3) For each entity, that entity’s parent corporation(s) and every publicly held corporation that owns ten percent (10%) or more of its stock. This satisfies the disclosure statement requirement of [Federal Rule of Appellate Procedure 26.1\(a\)](#).
- (4) The names of all law firms, partners, and associates that have not entered an appearance in the appeal, and
  - (A) appeared for the entity in the lower tribunal; or
  - (B) are expected to appear for the entity in this court.
- (5) An indication as to whether there are any related or prior cases, other than the originating case number(s), that meet the criteria under Federal Circuit Rule 47.5.
- (6) All information required by [Federal Rule of Appellate Procedure 26.1\(b\)](#) and [\(c\)](#) that identifies organizational victims in criminal cases and debtors and trustees in bankruptcy cases.

**(b) Filing.**

Each party, intervenor, amicus curiae, or movant must file a certificate of interest. The certificate must be filed contemporaneously with the first-filed entry of appearance. However, the United States, or its officers or agencies, and unrepresented individuals are exempt from filing a certificate of interest unless disclosing information under [Federal Circuit Rule 47.4\(a\)\(6\)](#) in compliance with [Federal Rule of Appellate Procedure 26.1\(b\)](#). The certificate must also be included with each motion, petition, or related response, and in each principal brief and brief amicus curiae.

**FEDERAL CIRCUIT RULE 47.4****(c) Changes.**

If any of the information required by [Federal Circuit Rule 47.4\(a\)](#) changes after the certificate is first filed and before the mandate has issued, an amended certificate must be filed within seven (7) days after the change.

**FEDERAL CIRCUIT RULE 47.5****Related Case Disclosure****(a) Statement of Related Cases.**

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

- (1) whether any other appeal in or from the same civil action or proceeding in the originating tribunal was previously before this or any other appellate court, stating the following:
  - (A) the title and number of that earlier appeal;
  - (B) the date of decision;
  - (C) the composition of the panel; and
  - (D) the citation of the opinion in the Federal Reporter.
- (2) the title and number of any case known to counsel to be pending in this or any other tribunal that will directly affect or be directly affected by this court's decision in the pending case.

**(b) Notice of Related Case Information.**

At the same time a party files its first certificate of interest as required by Federal Circuit Rule 47.4(b), the party must also file a separate Notice of Related Case Information if there are related or prior cases that meet the criteria under Federal Circuit Rule 47.5(a). The notice must include the following information:

- (1) A list of those cases, including title and number; and
- (2) A non-duplicative list of the following information, which does not need to specifically identify the associated case:
  - (A) the names of all parties, past or present, involved in those cases; and
  - (B) the names of all law firms, partners, and associates that appeared in those cases.

**PRACTICE NOTES TO RULE 47.7****Equal Access to Justice Act Application Form.**

Using [Federal Circuit Form 20](#) satisfies the requirements under [Federal Circuit Rule 47.7\(b\)\(1\)](#) for an application for attorney fees under the Equal Access to Justice Act.

**Motions for Sanctions in the Form of Attorney Fees.**

Motions for sanctions in the form of attorney fees are filed in accordance with the requirements of Federal Rule of Appellate Procedure and Federal Circuit Rule 27. Federal Circuit Rule 47.7 does not control the filing and review of such motions.