

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

RULES OF PRACTICE



PROPOSED AMENDMENTS
SEPTEMBER 2024

PUBLIC CLEAN COPY

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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Introduction

Rule 5. Merits/Motions Panel or Standing Panel Procedure

SUMMARY OF PROPOSED AMENDMENTS

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

1. **Practice Notes to Fed. Cir. R. 15:** Updates language that corrects an error regarding Time to Appeal or Petition table to reflect the correct time of six years and updates the information regarding the filing of a notice of appeal with the Patent and Trademark Office to reflect recent updates in 37 CFR 90.2 and 2.145.
2. **Fed. Cir. R. 21(f):** Adjusting citation to FCR 40 to correspond with new rule subsection.
3. **Fed. Cir. R. 27(j):** Adjusting citation to FCR 40 to correspond with new rule subsection.
4. **Practice Notes to Fed. Cir. R. 28:** Provides guidance to attorneys regarding the use of reply briefs.
5. **Fed. Cir. R. 30:** Implements a new requirement regarding the appendix table of contents (TOC). The proposed addition as FCR 30(a)(6) would require that in addition to the page at which each entry begins, the TOC must include information identifying how the document was designated in the reviewed tribunal (such as the docket or other record number).
6. **Fed. Cir. R. 32(b):** Adjusting citation to FCR 40 to correspond with new rule subsection.
7. **Fed. Cir. R. 35 and 40:** Proposed updates to FCR 35 and 40 mirror the suggested updates to upcoming December 2024 Amendments to FRAP 35 and 40, which incorporate into a single rule all procedural requirements for petitions for panel rehearing, petitions for hearing or rehearing en banc, and combined petitions for panel rehearing and rehearing en banc. There are no substantive updates to the rule; the core of the change is to update the format and combine the requirements for each of these petitions into a single rule.
8. **Federal Circuit Attorney Discipline Rules Introduction and Rule 5:** Adjusting citation to FCR 40 to correspond with new rule subsection.
9. **Form 33 (Response to Oral Argument):** Requires arguing counsel provide the phonetic spelling of their name ahead of their appearance.

Practice Notes to Rule 15

Time to Appeal or Petition.

[...]

AGENCY	STATUTE	TIME
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[...]

Secretary of Veterans Affairs	38 U.S.C. § 502; Fed. Cir. R. 15(f)	6 years
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* * *

Filing in the Patent and Trademark Office.

A notice of appeal must be filed with the Director by electronic mail to the email address indicated on the Patent and Trademark Office’s web page for the Office of General Counsel. If there is some circumstance in which electronic mail cannot be used, submission may be by Priority Mail Express® addressed to

Office of the Solicitor
United States Patent and Trademark Office
Mail Stop 8
P.O. Box 1450
Alexandria, Virginia 22313-1450.

[...]

Federal Circuit Rule 21.

Writs of Mandamus and Prohibition, and Other Extraordinary Writs

[...]

(f) Petition for Panel Rehearing or Rehearing En Banc.

[Federal Rule of Appellate Procedure 40](#) and [Federal Circuit Rule 40](#) apply to any petition for panel rehearing, petition for hearing or rehearing en banc, or a combined petition for panel rehearing and rehearing en banc.

* * *

Federal Circuit Rule 27**Motions**

[...]

(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\(f\)](#). For nonsubstantive corrections to a dispositive order, opinion or judgment, a party may file a motion to correct without 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) day after the order or action.

* * *

Practice Notes to Rule 28

[...]

Reply Brief

The court prefers that reply briefs respond to the response brief rather than repeating what is in the principal brief. Further, the court favors reply briefs that do not use the full word length when not necessary.

Federal Circuit Rule 30**Appendix to the Briefs**

[...]

(a) Contents of Appendix; Time for Filing; Number of Copies; Multiple Volumes; Failure to File; Table of Contents.

[...]

(6) Table of Contents.

In addition to the page of the appendix at which each entry begins, an appendix table of contents must include information identifying how the document was designated in the reviewed tribunal (such as the docket or other record number) and, if applicable, the corresponding exhibit number or letter. If any materials included in the appendix did not have an identifying designation in the reviewed tribunal, the table of contents must include a brief explanation why that is so. If a single explanation applies to all or multiple documents, a single explanation to that effect can suffice.

* * *

Practice Notes to Rule 30

[. . .]

Inclusion of Reviewed Tribunal's Numbering Designations

In addition to including in the appendix table of contents a description of each document (e.g., Answer or Decl. of [first name, last name of expert witness]) and the Appx page number corresponding to the document's first page, parties should also include any numbering designation that was used by the reviewing tribunal for each document. The purpose of including this information is so that when the Court is reviewing the materials from the reviewed tribunal, such as the reviewed tribunal's decision or briefs filed there, which necessarily cite documents based on whatever numbering convention is used by the reviewed tribunal, the Court can look to the appendix table of contents as a cross-reference to locate documents based on the reviewed tribunal's designation. For example, if the reviewed tribunal and parties would have cited a document as Tab 3, the joint appendix should note Tab 3 next to the entry for that document. Or if the reviewed tribunal and parties would have cited a document as Paper 8, that should be included. Or, as yet another example, if a document in the joint appendix would have been cited by the reviewed tribunal and parties as one of two potential docket numbers (e.g., either a sealed or public version), the appendix table of contents should indicate both next to the entry for that document, e.g., ECF No. 81 (sealed); ECF No. 83 (public).

Federal Circuit Rule 32.**Form of Briefs, Appendices, and Other Papers**

[...]

(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;
- (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 40\(c\)](#).

* * *

Federal Circuit Rule 35

[Reserved]

Federal Circuit Rule 40.**Panel Rehearing; En Banc Determination****(a) General.****(1) Rehearing of Panel Decision**

The party may seek rehearing of a decision through a petition for panel rehearing, a petition for rehearing en banc, or both. Panel rehearing is the ordinary means of reconsidering a panel decision; rehearing en banc is not favored.

(2) Combined Petition for Panel Rehearing and Rehearing En Banc.

If a party chooses to file both a petition for panel rehearing and a petition for a rehearing en banc, then the two must be combined. The cover of a combined petition must indicate that it is a combined petition.

(3) Initial Hearing En Banc.

A party may ask that the court hear a case en banc as an initial matter, without a panel hearing the case first. Such initial hearing is almost never justified and will almost never be granted.

(4) Arguing to Overrule a Precedent.

Although only the court en banc may overrule a binding precedent, a party may argue, in its brief and at oral argument, to overrule a binding precedent without petitioning for a hearing en banc. The panel will decide whether to ask the judges in regular active service to consider hearing the case en banc.

(5) Frivolous Petition.

A petition for panel rehearing, hearing en banc, or rehearing en banc that does not meet the standards of this rule may be deemed frivolous and sanctions may be imposed.

(b) Required Contents**(1) Contents of Petition for Panel Rehearing.**

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

- (A) a white cover or first page 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 points of law or fact overlooked or misapprehended by the court;
- (E) the argument;
- (F) an addendum containing a copy of the court's dispositive order, opinion, or judgment of affirmance without opinion; and
- (G) a certificate of compliance that adheres to [Federal Rule of Appellate Procedure 32\(g\)](#).

(2) Contents of Petition for Hearing En Banc, Petition for Rehearing En Banc, and Combined Petition.

The required contents for a petition for hearing en banc, a petition for rehearing en banc, and a 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 40(c);
- (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).

(c) Statement of Counsel, Required for En Banc Requests.

(1) Petition for Rehearing En Banc or Combined Petition.

A petition that an appeal be reheard en banc must contain one or both of the following statements of, and be separately signed by, counsel at the beginning of the petition:

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).

(2) Petition for Hearing En Banc.

A petition that an appeal be initially heard en banc must contain the following statement of, and be separately signed by, counsel at the beginning of the petition:

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).

(d) Addendum Contents.

The required contents for an addendum to a petition for panel rehearing, a petition for rehearing en banc, or a combined petition are as follows:

(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 a petition for rehearing as an addendum, as appropriate.

(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.

(e) Response.

If the court requests a response, which must not exceed 3,900 words if 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\(d\)](#); and
- (7) a certificate of compliance that adheres to [Federal Circuit Rule 32\(g\)\(1\)](#).

(f) Time.

- (1) Except for a civil case in which the United States or its officer or agency is a party, a petition for panel rehearing, a petition for rehearing en banc, or a combined petition for rehearing en banc and panel rehearing must be filed within thirty (30) days after entry of judgment on the panel decision sought to be reheard. If the United States or its officer or agency is a party, the petition must be filed within forty-five (45) days after entry of judgment.
- (2) A party's petition that an appeal be heard initially en banc must be filed no later than the date when its principal brief is due in accordance with the Federal Rule of Appellate Procedure 40(g). Unless the court orders otherwise, the filing of such a petition does not alter the schedule for briefing to the panel.

(g) Paper Copies.

Paper copies of petitions for panel rehearing, petitions for hearing or rehearing en banc, combined petitions, or responses to any such petition must be provided to the court in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#).

(h) Informal Petition for Panel Rehearing or En Banc Petition; Response.

(1) Informal Petition.

An unrepresented party may file an informal petition for panel rehearing, informal petition for hearing en banc, informal petition for rehearing en banc, or informal 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, and three (3) copies must be filed in accordance with [Federal Circuit Rule 25\(c\)\(3\)](#).

(2) Informal Response.

If the court requests a response to an informal petition for panel rehearing, 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 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\(c\)\(3\)](#).

(i) 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 panel rehearing, 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 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\(c\)\(3\)](#)

Practice Notes to Rule 40

Timeliness.

A petition for panel rehearing, hearing en banc, rehearing en banc, or combined petition is filed when the court receives it, not on the date it was mailed. The clerk of court may return an untimely petition.

Hearing or Rehearing En Banc.

The court may sua sponte order that an appeal be initially heard or be reheard en banc. The panel or a judge on the panel that is considering a case may at any time request the judges of the court in regular active service to hear or rehear the case en banc with or without further briefs or argument by counsel.

Practice Notes to Rule 40**Rehearing En Banc; Senior Judges.**

If a senior judge participated in the original hearing and disposition of a case for which rehearing en banc is granted, that senior judge may, as provided in the statute, participate fully in the rehearing, if rehearing is granted. *See* 28 U.S.C. § 46(c).

Petition for Rehearing En Banc Referred to Panel.

A petition for rehearing en banc is presumed to request relief that can be granted by the panel that heard the appeal, and action on the petition for rehearing en banc will be deferred until the panel has an opportunity to grant the relief requested.

Review of En Banc Nonprecedential Opinions.

A petition for rehearing en banc is rarely appropriate if the appeal was the subject of a nonprecedential opinion or Rule 36 disposition by the panel of judges that heard it.

Combined Petition for Panel Rehearing and Rehearing En Banc.

When a combined petition for panel rehearing and rehearing en banc is filed, the petition for panel rehearing is decided first in the same manner as a petition for panel rehearing without an accompanying petition for rehearing en banc. If the panel grants the requested relief, the petition for rehearing en banc is deemed moot.

Action by the Court in Petition for Panel Rehearing.

When a petition for panel rehearing is filed, the clerk of court will transmit copies to the panel that decided the case. The clerk of court will enter an order denying the petition unless a majority of the panel agrees to rehear the case. Rehearing before the panel may take place with or without further briefing or oral argument by the parties as the court directs.

Writ of Certiorari.

Filing a petition for a panel rehearing or rehearing en banc is not a prerequisite to filing a petition for a writ of certiorari in the Supreme Court.

Federal Circuit Attorney Discipline Rules

INTRODUCTION

[...]

At the conclusion of a proceeding in which discipline is imposed, the final order and the record will be made a public record. A final order issued by a panel will be reviewable in a manner analogous to review under [Federal Rule of Appellate Procedure 40](#)

Rule 5. Merits/Motions Panel or Standing Panel Procedure

[...]

(g) Review by the Panel or the Judges of the Court.

An attorney may file a petition for rehearing by the panel or a combined petition for rehearing by the panel or a petition for rehearing en banc, or a majority of the judges in regular active service may order that a disciplinary matter be heard or reheard by them. Such a hearing or rehearing is not favored and ordinarily will not be ordered except when necessary to secure or maintain uniformity of the court's decisions or when the proceeding involves a question of exceptional importance. Any such petition must be filed within thirty (30) days after the date of the panel's final order. The procedures governing a petition for rehearing or a combined petition or a petition for rehearing en banc will otherwise be in accordance with the provisions of [Federal Rule of Appellate Procedure 40](#) and [Federal Circuit Rule 40](#).

