

5 KEY TAKEAWAYS

Combating Misrepresentations in Trademark Prosecution and Maintenance

Kilpatrick Townsend's [Ted Davis](#) recently spoke at the [New York Intellectual Property Association](#) at its "Hot Topics in Trademark and Copyright Law" seminar. Mr. Davis presented on "Combating Misrepresentations in Trademark Prosecution and Maintenance."

Key takeaways from his presentation include the following:

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Over a half a year of experience has yielded valuable insights into the administration of the Trademark Modernization Act (TMA) by the United States Patent and Trademark Office (USO), including:

- How to establish the prima facie case of nonuse necessary to initiate either or both of the TMA's ex parte mechanisms for challenging federal trademark registrations; and
- How federal registrants can rebut prima facie cases of nonuse;

The USPTO is increasingly cracking down on misrepresentations in the registration process through an apparent expansion of its administrative sanctions program;

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Likewise, the Trademark Trial and Appeal Board (TTAB) has recently become more receptive to allegations of the fraudulent procurement and maintenance of registrations;

The TMA has had its intended effect of restoring the presumption of irreparable harm in cases in which a violation of the Lanham Act has been shown in litigation; and

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It also has successfully protected the judges of the TTAB against allegations that they have been unlawfully installed under the Constitution's Appointments Clause

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