Although many aspects of practice before the U.S. Trademark Trial and Appeal Board remain the same since the last edition of this monograph in 2016, others have changed significantly. On the one hand, proceedings before the Board still entail the use of mechanisms little known to litigants before other tribunals, including the automatic entry of the Board’s standard protective order, the potential introduction of certain categories of evidence under cover of notices of reliance, and the possible resolution of matters through accelerated case resolution. Those proceedings also continue to include the general unavailability of oral depositions of witnesses not resident in the United States, the absence of judicial notice of registrations maintained elsewhere within the U.S. Patent and Trademark Office, the seriousness with which the Board takes Rule 9’s requirement that allegations of fraud be pleaded with particularity, and the Board’s occasional skepticism toward consent agreements submitted by applicants attempting to overcome likelihood-of-confusion-based refusals to register their marks.

On the other hand, however, the Board is a dynamic institution, and parties and practitioners alike must take care to keep up with the continuing evolution of the rules and case law governing the disposition of matters before it. The circa-August 2019 requirement that nonresidents appearing before the Board retain U.S. counsel is the most recent of those developments, but they also include the fundamental changes to Board practice worked by the January 14, 2017, rules package. Although more comprehensive discussions of those revisions to the rules appear in the following chapters, they have effected, inter alia, the following changes meriting particular attention:
• the resumption of service of opening pleadings by the Board (and not by the plaintiff);
• the required electronic filing and service of all papers and concomitant abolition of the former five-day rule giving parties five additional days to respond to papers served by mail or overnight courier;
• the required service of interrogatories, requests for production of documents, and requests for admission early enough that the responses will be due prior to the close of discovery;
• new limits on the number of requests for production and requests for admission (both 75, including subparts);
• the possible submission of trial testimony in declaration form, subject to cross-examination by the opposing party;
• the allowance of evidentiary objections in separate appendices to briefs not counting toward otherwise applicable page limits;
• the availability of motions for oral examination of witnesses noticed for depositions by written questions;
• the Board’s increased authority to dismiss actions sua sponte for failure to prosecute if a plaintiff has failed to submit evidence before the expiration of its testimony period and has not successfully moved to reopen its trial period, even if that plaintiff has responded to a show-cause order from the Board; and
• earlier deadlines for the filing of a number of certain motions, including
  • motions to compel initial disclosures (within 30 days of the disclosures’ due date);
  • motions to compel discovery (the same deadline as that for the plaintiff’s initial pretrial disclosures);
  • motions to test the sufficiency of responses to requests to admit (same);
  • motions for judgment on the pleadings (same);
  • motions for summary judgment (same); and
  • motions to use discovery depositions at trial (the same deadline as that for the movant’s pretrial disclosures).

Indeed, even the Board’s standard protective order has changed since 2016. Experienced practitioners and Board neophytes alike therefore will benefit from the guidance and insights set forth in the following chapters, each of which concludes with a valuable checklist of items meriting consideration at the relevant stage of a Board proceeding.

The success of any multi-author enterprise depends on the dedication and the commitment of its contributors. Readers of this edition of *A Legal Strategist’s Guide to Trademark Trial and Appeal Board Practice* will
benefit from the unquestioned expertise and quality work product of its authors (two of whom are former Board judges), and this preface would be greatly remiss if it failed to acknowledge the many hours and hard work they have invested into the project. Credit also is due to Board Judge Jonathan Hudis, who shepherded the first three editions to publication during his earlier life as a practitioner. Finally, of course, neither the current iteration of this book nor earlier ones would have come to fruition without the support of the American Bar Association Section of Intellectual Property Law and the active participation of ABA Publishing; they too deserve credit for its success.