

more than 12 pages, and shall meet the requirements set forth in § 220.5(b) of this subchapter; and a response to that request must be filed within 30 days of the request to vacate, shall be no more than 12 pages, and shall meet the requirements set forth in § 220.5(b). The Board may vacate the *default determination* in the interests of justice.

### PART 228—CLAIMANT’S FAILURE TO PROCEED

Sec.

228.1 Claimant or counterclaimant’s failure to complete service.

228.2 Claimant or counterclaimant’s failure to prosecute.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 30088, May 17, 2022, unless otherwise noted.

#### § 228.1 Claimant or counterclaimant’s failure to complete service.

(a) *Failure to serve a respondent who is not a necessary party.* If a claimant fails to timely complete service on a respondent who is not a necessary party, pursuant to § 222.14 of this subchapter, the Copyright Claims Board (Board) shall dismiss that respondent from the proceeding without prejudice. The proceeding shall continue against any remaining respondents.

(b) *Failure to serve a respondent who is a necessary party.* If a claimant fails to timely complete service on a respondent who is a necessary party, pursuant to § 222.14 of this subchapter, the Board shall dismiss the proceeding without prejudice.

(c) *Complete failure to serve respondents.* For a claim to proceed, a claimant must complete service on at least one respondent. If a claimant does not timely file any proof of service, the Board shall dismiss the proceeding without prejudice.

#### § 228.2 Claimant or counterclaimant’s failure to prosecute.

(a) *General.* If a claimant or counterclaimant fails to proceed in an *active proceeding* without justifiable cause, as demonstrated by a failure to meet any filing deadline or requirement set forth in the scheduling order or other order, upon request of a party or on its own initiative, the Board shall issue a no-

tice following the missed deadline or requirement. Requests to issue a notice regarding a missed deadline or requirement and any responses thereto shall follow the procedures set forth in § 220.5(a)(1) of this subchapter.

(b) *Contents of failure to prosecute notice.* (1) A notice issued under paragraph (a) of this section shall inform the claimant or counterclaimant that failure to proceed in the proceeding may result in the Board issuing a determination dismissing the claimant’s or counterclaimant’s claims, including an award of attorneys’ fees and costs where appropriate, and shall explain the legal effects of such a determination. The notice shall provide the claimant or counterclaimant with 30 days, beginning on the date of the notice, to respond to the notice and meet the missed deadline or requirement. The notice shall be issued to the claimant or counterclaimant by mail and all known email addresses.

(2) If the claimant or counterclaimant has failed to respond 15 days after the notice of the failure to proceed, the Board shall send a second notice to the claimant or counterclaimant according to the procedures set forth in paragraph (b)(1) of this section. Such notice shall attach the first notice and shall remind the claimant or counterclaimant that it must respond and meet the missed deadline or requirement within 30 days from the date of the first notice.

(c) *Response to failure to prosecute notice.* (1) If the claimant or counterclaimant cures the missed deadline or requirement within the time specified by the notice, the proceeding shall resume and the Board shall issue a revised scheduling order, if necessary.

(2) If the claimant or counterclaimant fails to cure the missed deadline or requirement within the time specified by the notice but submits a response that indicates an intent to re-engage with the proceeding pursuant to the procedures set forth in § 220.5(a)(1) of this subchapter, the Board shall consider the response and either provide the claimant or counterclaimant with additional time to cure the missed deadline or requirement or issue a determination dismissing the claims or counterclaims.

(3) If the claimant or counterclaimant fails to cure the missed deadline or requirement within the time specified by the notice and does not otherwise respond to the notice, the Board shall issue a determination dismissing the claims or counterclaims.

(d) *Determination dismissing claims or counterclaims.* A determination dismissing the claims or counterclaims for failure to proceed in the *active proceeding* shall be with prejudice and shall include an award of attorneys' fees and costs pursuant to §232.3 of this subchapter, if appropriate. The claimant or counterclaimant may only challenge such determination to the extent permitted under 17 U.S.C. 1508(c) or the procedures set forth in paragraph (e) of this section.

(e) *Vacating a determination dismissing claims or counterclaims.* If additional proceedings have not been initiated under 17 U.S.C. 1508(c), the claimant or counterclaimant may request in writing that the determination be vacated and provide the reasons supporting the request. A request to vacate the determination must be filed within 30 days of the determination, shall be no more than 12 pages, and shall meet the requirements set forth in §220.5(b) of this subchapter; and a response to that request must be filed within 30 days of the request to vacate, shall be no more than 12 pages, and shall meet the requirements set forth in §220.5(b). The Board may vacate the determination of dismissal in the interests of justice.

(f) *Multiple missed deadlines.* A claimant or counterclaimant may cure a missed deadline according to the procedure set forth in this section at least twice without dismissal for failure to prosecute. If the claimant or counterclaimant misses a third deadline in the scheduling order without good cause, the Board may, in its discretion, proceed directly to issuing a determination dismissing the claims or counterclaims for failure to proceed under paragraph (d) of this section.

[87 FR 30088, May 17, 2022; 87 FR 36061, June 15, 2022]

## PART 229—RECORDS AND PUBLICATION

Sec.

229.1 Access to records and proceedings.

229.2 Record certification.

AUTHORITY: 17 U.S.C. 702, 1510.

SOURCE: 87 FR 30089, May 17, 2022, unless otherwise noted.

### §229.1 Access to records and proceedings.

(a) *Official written record.* Submissions by parties to a proceeding and documents issued by the Copyright Claims Board (Board) shall constitute the official written record.

(b) *Access to record.* Any member of the public may inspect the official written record through eCCB, except any materials that have been marked confidential pursuant to §222.19 of this subchapter.

(c) *Attendance at hearing.* Attendance at a Board hearing, including virtual hearings, is limited to the parties to the proceeding, including any legal counsel or *authorized representatives*, and any witnesses, except with leave of the Board. The Board may order that a witness be excluded from a hearing except when a question is directed to the witness. A request for attendance may be made in writing. Requests for a third-party non-witness to attend a hearing and any responses thereto shall follow the procedures set forth in §220.5(a)(2) of this subchapter.

(d) *Hearing transcript.* The Board may cause a transcript of a hearing to be made by using an official reporter or any technology that is available to the Board. At the request of any party, the Board may designate an official reporter to attend and transcribe a hearing or to prepare a transcript from a recording of a hearing. Requests to designate an official reporter and any responses thereto shall follow the procedures set forth in §220.5(a)(1) of this subchapter. The requesting party or parties shall pay the reporter directly for the cost of creating an official transcript.

### §229.2 Record certification.

Upon a written request to the Records Research and Certification