



In *Intel Corp. v. Emeny*, Opp. No. 91-123,312 (T.T.A.B. May 15, 2007), the Trademark Trial and Appeal Board clarified that an application to register a trademark based on intent to use may be deemed invalid if the applicant does not have objective evidence of its intent to use the mark at the time of filing, i.e. "evidence of real life facts measured by the actions of the applicant, not by the applicant's later arguments about his subjective state of mind." In a non-precedential opinion, the Board held that the applicant had failed to show evidence of a bona fide intent to use the mark at the time of filing, citing the lack of contemporaneous documentation of plans to use the mark, the breadth of the goods and services in the application, the applicant's filing of multiple applications for the same broad identification of goods and services, and cross-examination testimony in which the applicant stated that he had filed the applications to prevent others from using the marks. Although designated non-precedential, the Board recently announced that it would permit citation of non-precedential opinions for whatever persuasive force they may have.

According to Pattishall McAuliffe partner Sanjiv Sarwate, "the Board's decision is a reminder of the importance of properly documenting the plans for a new brand launch before the application is filed."