

THE QUICK GUIDE SERIES

United States Court of Appeals

FOR THE FEDERAL CIRCUIT

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GUIDELINES
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

INTRODUCTION

This serves only as a quick reference guide for filing Briefs and Appendices. **THE QUICK GUIDE SERIES** outlines procedures on how documents should be sequenced, paginated, indexed, titled, printed and bound. In addition, it contains formatting requirements for Briefs as well as information on service and filing deadlines. Please call Record Press for clarification, and our expert staff of attorneys and paralegals will assist you. For a comprehensive reference, consult the actual rules of the court, which can be downloaded from the court's Website at www.cafc.uscourts.gov.

April 2008
Record Press Inc.

Natasha R. Monell, Esq.
Staff Counsel

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THE QUICK GUIDE SERIES	
NEW YORK SUPREME COURT Appellate Division—First Department Appellate Division—Second Department Appellate Division—Third Department Appellate Division—Fourth Department Appellate Term—First Department Appellate Term—Second Department	UNITED STATES COURT OF APPEALS First Circuit Second Circuit Third Circuit Fourth Circuit Fifth Circuit Sixth Circuit Seventh Circuit Eighth Circuit Ninth Circuit Tenth Circuit Eleventh Circuit Federal Circuit District of Columbia Circuit
NEW YORK STATE COURT OF APPEALS	UNITED STATES SUPREME COURT

TABLE OF CONTENTS

	PAGE
INTRODUCTION	i
OUR COMPANY	ii
TABLE OF CONTENTS	iii
APPENDIX	1
Summary.....	1
Contents and Preparation of Bound Appendix to be Filed with the Court.....	1
Designation of Materials from which the Appendix will be Prepared.....	5
Format of Appendix	7
Combined Brief and Appendix	8
Appendix in a Pro Se Case	8
Separate or Supplemental Appendix.....	8
Costs	8
Appendices Containing Material Subject to a Protective Order ...	9
BRIEFS.....	11
Appellant’s Brief	11
Appellee’s Brief	11
Reply Brief	12
Reproduction of Statutes, Rules, Regulations, etc.	12
Brief Containing Material Subject to a Protective Order.....	12
Certificate of Interest	13
CD-ROM Briefs.....	13
Form of Briefs.....	14
En Banc Determination.....	18
Petition for Panel Rehearing	21
REQUIREMENTS FOR TYPOGRAPHY IN BRIEFS.....	22
TIME SCHEDULE	25
FILING AND SERVICE.....	26
SPECIFICATION CHART	27
SAMPLE COVER	28
APPELLATE SERVICES.....	29

APPENDIX

Fed. Cir. R. 30

Summary

The appellant is responsible for consecutively paginating the materials designated by the parties for inclusion in the appendix (Fed. Cir. R. 30(b)(4)). The first page numbers in the designated material must be assigned to the judgment or order appealed from and any opinion, memorandum, or findings and conclusions supporting it. Other designated materials follow chronologically.

The appellant shall prepare the bound appendix to be filed with the court (Fed. Cir. R. 30(a) and (c)). The bound appendix filed with the court must contain the following: table of contents, docket sheet from the proceedings below, excerpts of the designated material prepared and numbered by the appellant, and certificate of service. The documents in the bound appendix must keep the original pagination assigned by the appellant. Pages of the numbered material not referenced in the briefs—other than items required by these rules—must be omitted from the bound appendix.

Fed. Cir. R. 30 (Excerpts)

(a) Contents and Preparation of Bound Appendix to be Filed with the Court

(1) Purpose

The purpose of this rule is to limit the size of the appendix of documentary materials that is printed and filed with the court.

(2) Contents; Indiscriminate Referencing to Blocks of the Record Prohibited

- (A) In addition to the matters required by Federal Rule of Appellate Procedure 30(a)(1)(A),(B), and (C), the appendix must include:
 - (i) the entire docket sheet from the proceedings below
 - (ii) in an appeal from a jury case, the judge's charge, the jury's verdict, and the jury's responses to interrogatories
 - (iii) in an appeal involving a patent, the patent in suit in its entirety. The patent in suit may also be included as an addendum to appellant's initial brief. Any other patents included in an appendix must be included in their entirety
 - (iv) any nonprecedential opinion or order cited in accordance with Federal Circuit Rule 47.6(b)
- (B) Parts of the record authorized by Federal Rule of Appellate Procedure 30(a)(1)(D) must not be included in the appendix unless they are actually referenced in the briefs, but the parties are encouraged to include in the appendix sufficient surrounding transcript pages to provide context for a referenced transcript excerpt.
- (C) Indiscriminate referencing in briefs to blocks of record pages or inclusion of unnecessary pages in the appendix is prohibited.
- (D) If the appellant considers that parts of the record have been referenced in violation of this rule, the appellant may so advise the appellee and the appellee must advance the costs of including those parts in the appendix.

- (E) The following must not be included in the appendix except by leave of the court, and any motion for leave must state the number of pages requested to be included:
 - (i) briefs and memoranda in their entirety (except as otherwise provided in Federal Circuit Rule 30)
 - (ii) notices
 - (iii) subpoenas—except where the enforcement or validity of a subpoena is at issue
 - (iv) summonses—except in appeals from the Court of International Trade
 - (v) motions to extend time
 - (vi) jury lists

- (F) Nothing in this Federal Circuit Rule 30 prohibits from designation and inclusion in an appendix:
 - (i) an examiner’s answer in an ex parte patent case
 - (ii) a trademark examining attorney’s appeal brief in an ex parte trademark case
 - (iii) the briefs and memoranda in their entirety in a case where the only issue is the propriety of summary judgment

Practice Notes:

To reduce bulk in the appendix, the use of condensed, columnar transcripts of testimony is encouraged.

(3) Additional Mandatory Appendix Items in Patent and Trademark Office Appeals

In an appeal from the Patent and Trademark Office, unless the parties mutually agree otherwise, the appendix must include:

- (A) a copy of all rejected claims in an ex parte patent appeal
- (B) a copy of all counts in a patent interference appeal
- (C) a copy of the trademark sought to be registered or cancelled and a copy of any registration relied on to refuse or oppose registration or to seek cancellation of a registered mark ex parte or an inter partes trademark appeal

(4) Time for Filing

The appellant must serve and file an appendix within 7 days after the last reply brief is served and filed. When there is no cross-appeal, if the appellant does not file a reply brief, the appendix must be served and filed within the time for filing the reply brief. In a cross-appeal, if the cross-appellant does not file a reply brief, the appendix must be served and filed within 7 days after the time from filing the cross-appellant's reply brief has expired.

(5) Number of Copies

Twelve copies of the appendix must be filed with the court.

(6) Multi-Volume Appendix: Covers and Page Numbers

A multivolume appendix must have a volume number in roman numerals and the pages included in the volume listed at the top of the cover of each volume.

(7) Service

Two copies of the appendix must be served on counsel for each party separately represented. One copy must be served on each pro se party.

(b) Designation of Materials from which the Appendix will be Prepared

- (1)** The parties are encouraged to agree on the contents of an appendix that will comply with this Federal Circuit Rule 30.
- (2)** In the absence of an agreement, the appellant must, within 14 days after docketing in an appeal from a court or after service of the certified list or index in a petition for review or appeal from an agency, serve on the appellee or cross-appellant a designation of materials from which the appendix will be prepared and a statement of the issues to be presented for review. The appellee or cross-appellant may, within 14 days after receiving the designation, serve on the appellant a counterdesignation of additional parts to be included in the appendix.
- (3)** A designation or counterdesignation must not be filed with the court.

(4) Table of Pages; Physical Compilation

- (A)** Within 14 days after the parties have designated the material for the appendix, the appellant must assign consecutive page numbers to the designated material and serve on all parties a table reflecting the page numbers of each item designated.
- (B)** If not prohibited in an outstanding protective order, instead of the table the appellant may—at the appellant's option—serve on the parties one copy of a physical compilation of the designated material with the assigned page numbers shown. This copy may be in micrographic format.

- (C) The first page numbers in the designated material must be assigned to the judgment or order appealed from and any opinion, memorandum, or findings and conclusions supporting it.
- (D) The table of page numbers or the physical compilation of the designated material, whichever is used, must not be filed with the court. If all designated material comprises no more than 100 pages, Federal Circuit Rule 30(d) applies.

(5) Extension of Time Limits

The time limits for designating, counterdesignating, and compiling the table may be extended by agreement of the parties without seeking leave of the court, as long as an Extension of the time is not required for filing appellant's brief. But if a transcript of the proceedings is required before the material can be designated and if the transcript has been ordered but not completed within the time prescribed by this rule, the appellant must move for an extension of time within which to designate the material. An affidavit explaining in detail what has been done to expedite transcription of the trial proceedings must be attached to the motion.

(6) Preparation of Appendix

The appellant must prepare the appendix to be filed with the court from the designated material by selecting from that material only items required by these rules and pages specifically referred to in the briefs of the parties. Pages of the designated material not referenced in the briefs—other than items required by these rules—must be omitted from the appendix filed with the court.

(c) Format of Appendix

(1) Arrangement of Appendix

Federal Rule of Appellate Procedure 30(d) governs the arrangement of the appendix, except the judgment or order appealed from and any opinion, memorandum, or findings and conclusions supporting it must be placed first in the appendix.

(2) Pagination

The page numbers used in the appendix must be the page numbers assigned by the appellant or petitioner to the designated material in accordance with Federal Circuit Rule 30(b). The page number must appear centered in the bottom margin of each page in the appendix. Other pagination marks must be redacted if necessary to avoid confusion. The materials in the appendix must be in numerical order according to the page numbers the appellant assigned to the designated materials. Omission of pages need not be noted, e.g., page 102 may be followed by page 230 without stating that pages 103-229 are not reproduced in the appendix. References in the briefs must be only to the page numbers of the appendix.

(3) Printing

Pages in an appendix—even when filing a combined brief and appendix—may be printed on both sides. To the extent possible, the court encourages this.

(d) Combined Brief and Appendix

- (1)** When a brief and appendix are combined, the cover must so indicate.
- (2)** If all designated material comprises no more than 100 pages, all of it may be included in the appendix, in which case it may be bound together with the appellant's or petitioner's initial brief and the brief must be filed as provided in Federal Circuit Rule 31 (a).

(e) Appendix in a Pro Se Case

If an appellant appearing pro se files an inadequate appendix, the appellee may file with its brief an appendix containing material permitted by Federal Circuit Rule 30(a)(2).

(f) Separate or Supplemental Appendix

If the appellant has failed to participate in determining the contents of an appendix or has filed an inadequate appendix, the United States or an officer or agency of the United States, as the appellee, may file a separate or supplemental appendix containing material permitted by Federal Circuit Rule 30(a)(2). The cover must be red. If the separate or supplemental appendix contains no more than 100 pages, it may be bound together with the appellee's initial brief. Except as provided in Federal Circuit Rule 30(e) and (f), no party may file a separate or supplemental appendix without leave of the court.

(g) Costs

The costs of the table of page numbers or the copy of the physical compilation of the designated material authorized in Federal Circuit Rule 30(b)(4) and of the appendix, including the separate segments authorized in Federal Circuit Rule 30(h), may be assessed as provided in Federal Rule of Appellate Procedure 30(b)(2).

(h) Appendices Containing Material Subject to a Protective Order

(1) Two Sets of Appendices

If a party refers in appendices to material subject to confidentiality mandated by statute or to a judicial or administrative protective order, two sets of appendices must be filed.

- (A) Confidential set; labeling; number of copies. One set of appendices, consisting of 12 copies of the complete appendix, must be labeled “confidential” and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., “CONFIDENTIAL UNTIL [DATE],” or “CONFIDENTIAL DURING JUDICIAL REVIEW.” The confidential appendix must include at the beginning (i.e., in front of the judgment or order appealed from) pertinent excerpts of any statutes imposing confidentiality or the entirety of any judicial or administrative protective order. Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.
- (B) Nonconfidential set; labeling; number of copies. The second set of appendices, consisting of the original and four copies from which confidential matter has been deleted, must be labeled “nonconfidential” and filed with the court. Each page from which material subject to a protective order has been deleted must bear a legend so stating. The table of contents of a nonconfidential appendix must describe the general nature of the confidential material that has been deleted.

Note:

The Confidential and Non-Confidential appendices must contain a Statement Regarding Confidential Materials.

(2) Service

Each party to the appeal must be served two copies of the nonconfidential appendices and, when permitted by the applicable protective order, two copies of the confidential appendices.

(i) Appendix to Informal Brief

The appendix to an informal brief must contain the judgment and opinion of the trial court or the final order of an administrative agency. The initial decision of the administrative judge must also be included in the appendix in a Merit Systems Protection Board case.

(i) Supplementary Video Recording Media Appendix

When the record on appeal or review has been perpetuated in whole or in part on video recording media in accordance with the rules of the court or agency, those video recording media portions of the record that would properly be included in the appendix if they were in documentary form may be included in a supplementary video recording media appendix. Four copies must be filed.

BRIEFS

Fed. Cir. R. 28

Appellant's Brief

- (1) Certificate of interest (FRAP 26.1 and Fed. Cir. R. 47.4)
- (2) Table of contents
- (3) Table of authorities
- (4) Statement of related cases (Fed. Cir. R. 47.5)
- (5) Jurisdictional statement
- (6) Statement of the issues
- (7) Statement of the case
- (8) Statement of the facts
- (9) Summary of the argument
- (10) Argument, including statement of the standard of review
- (11) Conclusion and statement of relief sought (Signature of counsel required)
- (12) Judgment, order, or decision in question, and any opinion, memorandum, or findings and conclusions supporting it, as an addendum placed within the initial brief of the appellant or petitioner. Additionally, in an appeal involving a patent, the patent in suit may be included within the addendum of the initial brief and, if included, must be reproduced in its entirety
- (13) Certificate of service
- (14) Certificate of compliance (if required by FRAP 32(a)(7))

Appellee's Brief

The brief of the appellee shall conform to the requirements of the appellant's brief except that the appellee's jurisdictional statement and statements of the issues, the case, the facts, and the standard of review must be limited to specific areas of disagreement with those of the appellant. Absent disagreement, the appellee must not include any of those statements. The statement of the case must include the citation of any published decision of the trial tribunal in the proceedings that is not included in the appellant's statement of the case.

Reply Brief

All reply briefs shall contain a table of contents, table of authorities, argument, conclusion, certificate of service and certificate of compliance.

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 brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

Fed. Cir. R. 28(d) Brief Containing Material Subject to a Protective Order

(1) Two Sets of Briefs

If a party refers in a brief to material subject to confidentiality mandated by statute or to a judicial or administrative protective order, two sets of briefs must be filed.

- (A) Confidential set; labeling; number of copies. One set of briefs, consisting of the original and eleven copies, must be labeled "confidential" and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., "CONFIDENTIAL UNTIL [DATE]," or "CONFIDENTIAL DURING JUDICIAL REVIEW." Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.
- (B) Nonconfidential set; labeling; number of copies. The second set of briefs, consisting of the original and four copies from which confidential matter has been deleted, must be labeled "nonconfidential" and filed with the court. Each page from which material subject to a protective order has been deleted must bear a legend so stating. The table of contents of a nonconfidential brief must describe the general nature of the confidential material that has been deleted.

(2) Service

Each party to the appeal must be served two copies of the nonconfidential brief and, when permitted by the applicable protective order, two copies of the confidential brief.

Fed. Cir. R. 47.4 Certificate of Interest

To determine whether recusal by a judge is necessary or appropriate, an attorney—except an attorney for the United States—for each party, including a party seeking or permitted to intervene, and for each amicus curiae, must file a certificate of interest containing the following items:

- (1)** The full name of every party or amicus represented in the case by the attorney.
- (2)** The name of the real party in interest if the party named in the caption is not the real party in interest.
- (3)** The corporate disclosure statement prescribed in Federal Rule of Appellate Procedure 26.1.
- (4)** The names of all law firms and the partners and associates that have appeared for the party in the lower tribunal or are expected to appear for the party in this court.

The certificate must be filed with the entry of appearance. The certificate—omitting the caption—must also be filed with any motion, petition or response and in each principal brief and brief amicus curiae.

Fed. Cir. R. 32(e) CD-ROM Briefs

In addition to the filing of a paper brief, a party may file a corresponding brief contained on a compact disc—read only memory (CD-ROM). It must be identical in content to the paper brief. A corresponding brief may provide hypertext links to the complete versions of material that was part of the record below. Hypertext links to other material must be confined to materials such as cases, statutes, treatises, law review articles and similar authorities.

An electronic brief must be accompanied by a statement, preferably within or attached to the packaging, that:

- (A) sets forth the instructions for viewing the brief and the minimum equipment required for viewing
- (B) verifies the absence of computer viruses and lists the software used to ensure that the brief is virus-free

An electronic brief must be filed no later than the time for filing the joint appendix. Except for the time of filing, the brief must be filed and served in the same manner and the same number of copies as the paper brief.

All parties to an appeal who intend to file a corresponding CD-ROM brief are encouraged to cooperate in placing all such briefs on a single CD-ROM.

Parties filing a corresponding brief are encouraged to include a table of contents with links to all of the items required in a joint appendix and to all other parts of the record contained on the corresponding brief.

A label with the caption of the case, the number of the case, and the types of briefs included on the CD-ROM must be included on both the packaging and the CD-ROM.

FRAP 32(a) Form of Briefs

(1) Reproduction

- (A) The paper must be opaque and unglazed. Only one side of the paper may be used.
- (B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.
- (C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover

The cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; and reply brief, gray. The front cover of a brief must contain:

- (A) the number of the case centered at the top;
- (B) the name of the court;
- (C) the title of the case (Official Caption);
- (D) the nature of the proceeding;
- (E) the title of the brief, identifying the party or parties for whom the brief is filed; and
- (F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

Practice Note:

Official Caption—the cover of the brief or appendix must follow the Official Caption provided by the Clerk of the Court. (Fed. R. App. P. 32(a)(2)(A-D). A copy of the Official Caption is included with the notice of docketing).

(3) Binding

The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open; that a ring-type binding, plastic or metal, or a binding that protrudes from the front and back covers (e.g., VeloBind) **not** be used; and that any externally positioned staple be covered with tape.

(4) Paper Size, Line Spacing, and Margins

The brief must be on 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) Typeface

Either a proportionally spaced (i.e. Times Roman) or a monospaced (i.e. Courier) typeface may be used.

- (A) A proportionally spaced typeface must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced typeface must be 14-point or larger.
- (B) A monospaced face may not contain more than 10½ characters per inch.

Practice Note:

The typeface requirements apply to all text in the brief, including footnotes.

(6) Type Styles

A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) Length

- (A) **Page limitation.** A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (C).

(B) ***Type-volume limitation.***

- (i) A principal brief is acceptable if:
 - it contains no more than 14,000 words; or
 - it uses a monospaced face and contains no more than 1,300 lines of text.
- (ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).
- (iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.

(C) ***Certificate of compliance.*** A brief submitted under Rule 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

- (i) the number of words in the brief; or
- (ii) the number of lines of monospaced type in the brief.

Fed. Cir. R. 32(d)

Pages in an appendix—even when filing a combined brief and appendix—may be printed on both sides.

Rule 35. En Banc Determination

(a) General

- (1) ***Arguing to a Panel to Overrule a Precedent.*** Although only the court en banc may overrule a binding precedent, a party may argue, in its brief and oral argument, to overrule a binding precedent without petitioning for hearing en banc. The panel will decide whether to ask the regular active judges to consider hearing the case en banc.
- (2) ***Frivolous Petition.*** A petition for hearing or rehearing en banc that does not meet the standards of Federal Rule of Appellate Procedure 35(a) may be deemed frivolous and subject to sanctions.

(b) Statement of Counsel

Petition for Rehearing En Banc. A petition that an appeal be reheard en banc must contain one or both of the following statements of counsel at the beginning:

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).

/s/ _____

ATTORNEY OF RECORD FOR _____

(c) Number of Copies

If only nonconfidential copies are filed, an original and eighteen copies of a petition for hearing or rehearing en banc must be filed with the court. Two copies must be served on each party separately represented. If confidential and nonconfidential copies are filed, an original and eighteen copies of the confidential petition and original and three copies of the nonconfidential petition must be filed with the court. Two copies of the confidential petition and one copy of the nonconfidential petition must be served on each party separately represented.

(d) Combined Petition for Panel Rehearing and Rehearing En Banc

If a party chooses to file both a petition for panel rehearing, see Federal Circuit Rule 40, and a petition for a rehearing en banc, then the two must not be filed separately, they must be combined. A combined petition for panel rehearing and rehearing en banc must comply with Federal Circuit Rule 35(c). The cover of a combined petition must indicate that it is a combined petition.

(e) Contents

Petition for Rehearing En Banc

- (A) cover page
- (B) certificate of interest
- (C) table of contents
- (D) table of authorities
- (E) statement of counsel required in Federal Circuit Rule 35(b)
- (F) argument

- (G) the addendum containing a copy of the court's opinion or judgment of affirmance without opinion sought to be reheard; and
- (H) certificate of service

Combined Petition for Panel Rehearing and Rehearing En Banc

- (A) cover page
- (B) certificate of interest
- (C) table of contents
- (D) table of authorities
- (E) statement of counsel required in Federal Circuit Rule 35(b)
- (F) points of law or fact overlooked or misapprehended by the panel of the court
- (G) argument in support of a rehearing
- (H) argument in support of rehearing en banc
- (I) the addendum containing a copy of the court's opinion or judgment of affirmance without opinion sought to be reheard; and
- (J) certificate of service

Response

If the court requests a response, which must not exceed 15 pages unless otherwise ordered, the preferred contents and organization are:

- (A) cover page
- (B) certificate of interest
- (C) table of contents
- (D) table of authorities

- (E) argument against a rehearing, rehearing en banc, or both; and
- (F) certificate of service

Rule 40. Petition for Panel Rehearing

- (a)(1) **Time.** A petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, if the United States or its officer or agency is a party, the time within which any party may seek rehearing is 45 days after entry of judgment,
- (2) **Contents.** The preferred contents and organization for a petition for panel rehearing are:
 - (1) cover page
 - (2) certificate of interest
 - (3) table of contents
 - (4) the points of law or fact overlooked or misapprehended by the court
 - (5) argument
 - (6) the addendum containing a copy of the court's opinion or judgment of affirmance without opinion sought to be reheard; and
 - (7) certificate of service

Practice Notes:

A petition for panel rehearing, unlike a brief, is not deemed filed when mailed; it must be received by the clerk within the time fixed for filing. The time runs from the date the judgment is entered not from the date counsel receives the opinion or order.

REQUIREMENTS FOR TYPOGRAPHY IN BRIEFS

Federal Rule of Appellate Procedure 32(a) contains detailed requirements for the production of briefs. FRAP 32(a) is designed not only to make documents more readable but also to ensure that different methods of reproduction (and different levels of technological sophistication among lawyers) do not affect the length of a brief. The following information may help you better understand FRAP 32(a) and associated local rules.

1. FRAP 32(a)(1)(B) requires text to be reproduced with “a clarity that equals or exceeds the output of a laser printer.” The resolution of a laser printer is expressed in dots per inch. First generation laser printers broke each inch into 300 dots vertically and horizontally, creating characters from this 90,000-dot matrix. Second generation laser printers use 600 or 1200 dots per inch in each direction and thus produce a sharper, more easily readable output; commercial typesetters use 2400 dots per inch.

Any means of producing text that yields 300 dots per inch or more is acceptable. Daisy-wheel, typewriter, commercial printing, and many ink-jet printers meet this standard, as do photocopies of originals produced by these methods. Dot matrix printers and fax machines use lower resolution, and their output is unacceptable.

2. FRAP 32(a)(5) distinguishes between proportional and monospaced fonts, and between serif and sans-serif type. It also requires knowledge of points and pitch.

Proportionally spaced type uses different widths for different characters. A monospaced face, by contrast, uses the same width for each character. Most typewriters produce monospaced type, and most computers also can do so using fonts with names such as “Courier” or “Courier New.” The rule leaves to each lawyer the choice between proportional and monospaced type.

This sentence is in a proportionally spaced font; as you can see, the m and i have different widths.

This sentence is in a monospaced font; as you can see, the m and i have the same width.

Serifs are small horizontal or vertical strokes at the ends of the lines that make up the letters and numbers. The next line shows two characters enlarged for detail. The first has serifs, the second does not.



Studies have shown that long passages of serif type are easier to read and comprehend than long passages of sans-serif type. The rule accordingly limits the principal sections of briefs to serif type, although sans-serif type may be used in headings and captions.

This sentence is in New Century Schoolbook, a proportionally spaced font with serifs. Baskerville, Bookman, Caslon, Garamond, Georgia, and Times are other common serif faces.

This sentence is in Helvetica, a proportionally spaced sans-serif font. Arial, Eurostile, Trebuchet, Univers, and Verdana are other common sans-serif faces.

Type must be large enough to read comfortably. For a monospaced face, this means type approximating the old “pica” standard used by typewriters, 10 characters per horizontal inch, rather than the old “elite” standard of 12 characters per inch. Because some computer versions of monospaced type do not come to exactly 10 characters per inch, FRAP 32(a)(5)(B) allows up to 10½ characters per inch, including punctuations and spaces.

Proportionally spaced characters vary in width, so a limit of characters per line is not practical. Instead FRAP 32(a)(5)(A) requires a minimum of 14-point type. Local rules may vary. “Point” is a printing term for the height of a character. Word processing and page layout programs can expand or condense the type using tracking controls, or you may have access to a condensed version of the face. Do not use these. Condensed type is prohibited by FRAP 32(a)(6). It offers no benefit to counsel under an approach that measures the length of briefs in words rather than pages, and it is to your advantage to make the brief as legible as possible.

This is 9-point type.

This is 10-point type.

This is 11-point type.

This is 12-point type.

This is 12-point type, condensed. Condensed type is not acceptable.

This is 13-point type.

This is 14-point type.

3. FRAP 32(a)(6) provides that the principal type must be a plain, roman style. In other words, the main body of the document cannot be bold, italic, capitalized, underlined, narrow, or condensed. This helps to keep the brief legible. Italics or underlining may be used only for case names or occasional emphasis. Boldface and all-caps text should be used sparingly.

4. FRAP 32(a)(7) determines the maximum length of a brief. The variability of proportionally spaced type makes it necessary to express this length in words rather than pages.

Lawyers who choose monospaced type may avoid word counts by counting lines of type. Unless the brief employs a lot of block quotes or footnotes it will be enough to count pages and multiply by the number of lines per page. (Fifty pages at 26 lines per page is 1,300 lines.) The line-count option is not available when the brief uses proportional type.

For most courts, principal briefs of 30 pages or less, and reply briefs of 15 pages or less, need not be accompanied by a word or line count. Think of FRAP 32(a)(7)(A) as a safe harbor. Lawyers who need more should use FRAP 32(a)(7)(B). A brief that meets the type volume limitations of FRAP 32(a)(7)(B) is acceptable without regard to the number of pages it contains, as long as it is accompanied by a signed certificate of compliance.

TIME SCHEDULE

Fed. Cir. R. 31

(a) Time for Service and Filing.

(1) *Brief of Appellant or Petitioner.*

(A) In an appeal from a court, the appellant must serve and file its initial brief within 60 days after docketing. Docketing a cross appeal does not affect the time for serving and filing the appellant's initial brief.

(B) In an appeal from an agency, the petitioner or appellant must serve and file its initial brief within 60 days after the certified list or index is served pursuant to Federal Circuit Rule 17(c).

(C) When two or more appellants or petitioners choose to proceed by filing a single brief, the initial brief must be served and filed no later than the latest date on which the initial brief of any of these appellants or petitioners is due.

(2) ***Brief of Appellee or Cross Appellant.*** The appellee or cross appellant must serve and file its initial brief within 40 days after appellant's brief is served.

(3) ***Cross Appeal.*** In a cross appeal:

(A) the appellant must serve and file its reply brief within 40 days after cross appellant's brief is served; and

(B) the cross appellant must serve and file its reply brief within 14 days after appellant's reply brief is served.

- (4) ***Single Brief Responding to Multiple Parties.*** A single brief that responds to the briefs of multiple parties must be served and filed within the time prescribed after service of the last of these briefs or, if no such brief is filed, after the time expires for filing the last of these briefs.
- (5) ***Reply Brief; Oral Argument.*** A reply brief that is filed within 4 business days of oral argument must be served so that it reaches all parties before the argument.

FILING AND SERVICE

FRAP 25

Service and filing of briefs and appendices may be personal, by mail, or by third-party commercial carrier for delivery within 3 calendar days. Filing and service by mail or by commercial carrier is complete on mailing or delivery to the carrier. The Certificate of Service should include method of delivery to the court and the number of copies filed.

SPECIFICATION CHART

Document	Color	Limitation	Serve	File
Appendix	white	no limit	2	12
Appellee's Supplemental Appendix	red	no limit	2	12
Appellant's Brief	blue	14,000 words	2	12
Appellee's Brief	red	14,000 words	2	12
Reply Brief	gray	7,000 words	2	12
Amicus Brief	green	7,000 words	2	12
Petition for Rehearing	white	15 pages	2	12
Petition for Rehearing En Banc	white	15 pages	2	19
Opposition to Petition for Rehearing	white	15 pages	2	12
Motion	—	20 pages	1	4
Appellant's Principal Brief[†]	blue	14,000 words	2	12
Appellee's Principal & Response Brief[†]	red	16,500 words	2	12
Appellant's Response & Reply Brief[†]	yellow	14,000 words	2	12
Appellee's Reply Brief[†]	gray	7,000 words	2	12
Supplemental Brief	tan	—	2	12

[†] Cross-Appeals.

NOTE: All counsel listed on the brief and appendix covers must be a member of the Bar of the Federal Circuit.

SAMPLE COVER

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IN THE
United States Court of Appeals
FOR THE FEDERAL CIRCUIT

JOHN DOE,

Plaintiff-Appellant,

—v.—

RECORD PRESS, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF _____,
CASE NO. _____, JUDGE _____

BRIEF FOR PLAINTIFF-APPELLANT

NAME OF ATTORNEY

LAW FIRM

Attorneys for Plaintiff-Appellant

Address

Phone

Date

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