

The Active Phase

During the **active phase**, respondents have the opportunity to give their side of the story and file certain counterclaims if they wish. Parties exchange information and documents and make their cases to the CCB in this phase, which ultimately results in the CCB issuing a determination to resolve the dispute. A proceeding enters the active phase if at least one respondent does not opt out during the sixty-day opt-out period.



Chapter at a Glance

- **Initial Order**
- **Scheduling Order**
- **Common Questions About the Active Phase**

Why You Need This Information

This chapter provides an overview of the active phase, along with some key navigation tips. This chapter is not a substitute for examining the specific chapters related to each part of the active phase.

HOW DID YOU GET HERE?

A claimant filed a claim at the CCB and served it on a respondent or respondents. At least one respondent decided not to opt out of the proceeding during the sixty-day opt-out period. A proceeding automatically enters the active phase after the conclusion of the opt-out period.

WHAT CAN YOU EXPECT FROM THE ACTIVE PHASE?

The active phase is when the respondent explains their position in their response and then the parties collect and share information and documents (“discovery”). Your goal for discovery is to gather the information, documents, and evidence relevant to the claims and defenses in the case and exchange them with the other parties, so each side can develop their case. You will not be required to travel for any portion of a CCB proceeding, including the active phase.

WHERE YOU ARE IN A CCB PROCEEDING:

1. Filing a Claim
2. Compliance Review
3. Service
4. Opt-Out Period
- 5. Proceeding Becomes Active**
6. Response
7. Discovery
8. Settlement
9. Written Testimony
10. Determination
11. Post-Determination

WHAT HAPPENS NEXT?

The respondent will file a response (and any counterclaims they might have) before the parties exchange relevant information and documents during [discovery](#). After that, the parties will present their cases to the CCB before it issues a determination resolving the dispute.

Initial Order

Once a proceeding becomes active, the CCB will issue an order directing the claimant to pay the second filing fee of \$60 and directing any participants who haven't yet done so to both register for **eCCB** and link their eCCB accounts with the case. The parties will have fourteen days from the date of the order to complete these tasks.

Claimant Pays a Second Filing Fee

If you're the claimant, you paid a \$40 filing fee when you submitted your claim. Now you'll have fourteen days from the date of the initial order to submit the second filing fee payment of \$60 through eCCB.

Your proceeding will be delayed if you don't submit the second filing fee within fourteen days. If you don't pay within twenty-eight days (after fourteen days, a second fourteen-day order is issued), your proceeding will be dismissed **without prejudice** unless the CCB decides there are reasons that would make dismissal unfair. If you are unable to pay the \$60 filing fee in time, you should contact the CCB at asktheboard@ccb.gov to discuss your options.

Registration for eCCB

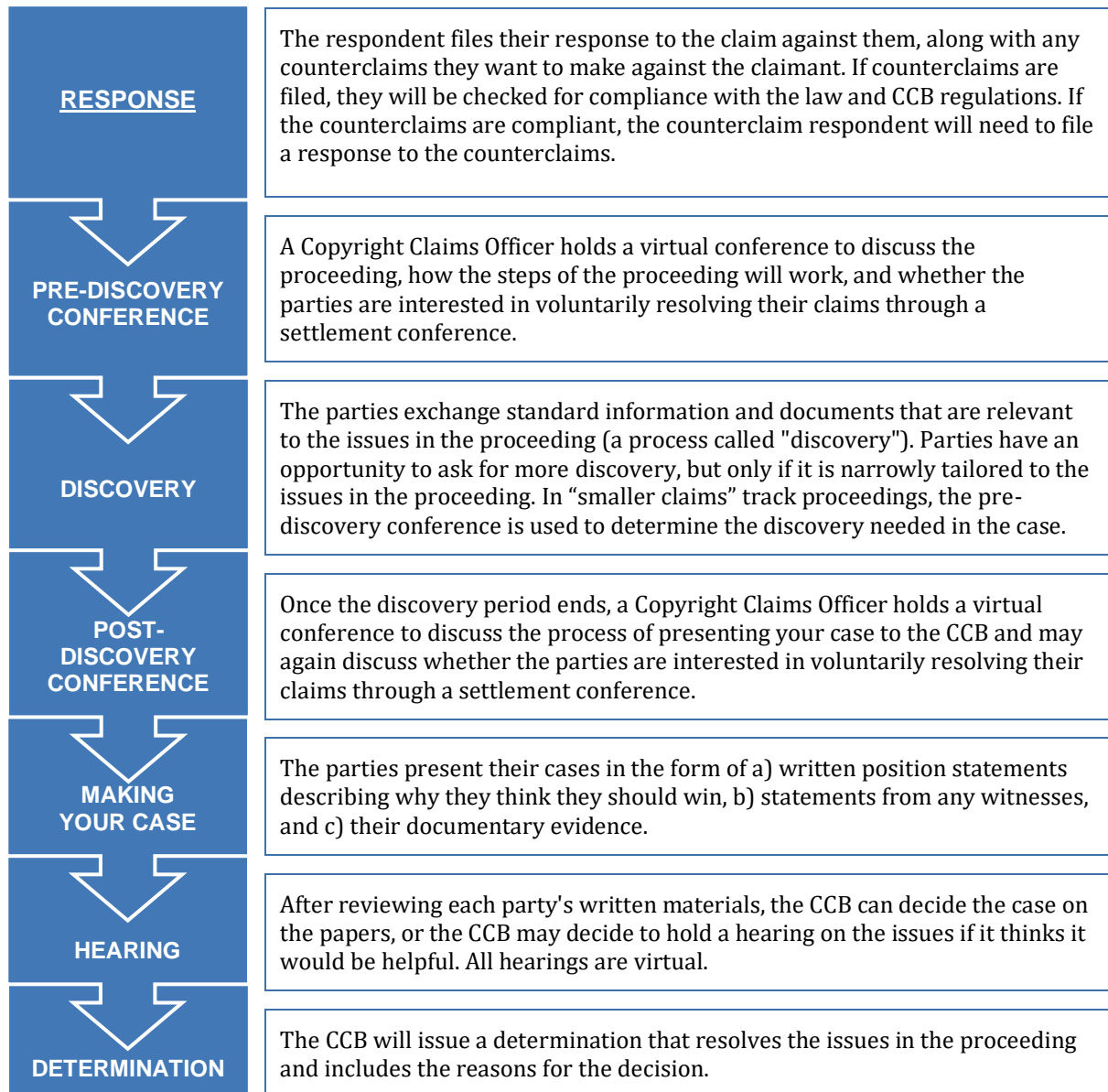
The person who filed the claim is automatically linked to the case. Otherwise, you must register for eCCB (if you haven't already) and link your eCCB account to the case within fourteen days from the date of the order instructing you to do so. Linking your eCCB account to the case allows you to make and receive filings in your case. You can find information on how to register for eCCB in the [eCCB](#) chapter.

Failure to register for eCCB may result in your claim being dismissed due to a failure to proceed if you're a claimant, or a **default** determination being entered against you if you're a respondent.

In *extremely rare* circumstances, the CCB may waive the eCCB registration requirement for self-represented parties who are truly unable to use eCCB. If you are representing yourself in the proceeding and you aren't able to use eCCB because, for example, you don't have access to the internet, you can contact the CCB at asktheboard@ccb.gov to discuss your options, including getting a waiver of the requirement. However, the CCB was designed to be a virtual tribunal, with an electronic filing system, to ensure it is easy and cost-efficient for the parties. **Accordingly, any waivers of the eCCB requirement will be rare and will require a showing that you truly cannot use eCCB.**

Scheduling Order

After fourteen days have passed since the initial order was issued, and if the claimant has paid the second filing fee, the CCB will issue a Scheduling Order. The Scheduling Order provides a roadmap for the proceeding and includes key dates and deadlines for each stage of the active phase. The Scheduling Order will include at least some of the following events:



It's important that you attend each conference and meet each deadline in the schedule. If you miss deadlines or don't show up to conferences or the hearing, then you risk having a default determination entered against you if you're a respondent or having your claim dismissed if you're a claimant.

The CCB can change the schedule, if necessary. Reasons why the CCB might change the schedule include:

- to pause the proceeding (for instance, to review a counterclaim to make sure it's compliant),
- to give the parties time to discuss voluntarily resolving their claims through settlement,
- because the parties need more or less time to complete discovery,
- to accommodate a party's request, or
- to manage its own schedule or workload.

You can find more information on how to request that the CCB [change the schedule](#) below.

Common Questions for the Active Phase

This section covers some key issues that might come up during the active phase of your proceeding.

Do I need to travel for CCB proceedings?

No. All proceedings before the CCB are held virtually, so you can participate in CCB proceedings wherever you are, and you don't need to travel. Hearings and conferences will typically be held via Zoom. The CCB will provide instructions for accessing a virtual hearing or conference prior to the date. You should test the Zoom platform before the hearing or conference to make sure that you are able to log in and that your microphone and camera work. If you can't use or don't have access to Zoom, contact the CCB at asktheboard@ccb.gov to discuss alternative arrangements.

Note that conferences and hearings generally aren't open to the public, so you shouldn't share the instructions for accessing a virtual hearing or conference with anyone who isn't a participant, a representative, or a witness to the hearing. If you know of someone else who wants to attend a hearing, they will need to request the CCB's permission.

Will I be meeting with the Copyright Claims Officers?

Yes. Apart from a potential virtual "hearing" at the end of your case, meetings with Copyright Claims Officers will take the form of virtual **conferences**.

A pre-discovery conference and a post-discovery conference will be held in each proceeding. These conferences are designed to allow a Copyright Claims Officer to hear about the case and understand the issues as well as explain the CCB process to the participants.

In addition to the pre-discovery and post-discovery conferences, the CCB may hold additional conferences, either because the CCB believes one would be helpful or because a party has requested one. The CCB regulations also permit conferences in certain special circumstances, such as when there's

- a request for a conference to discuss settlement,
- a discovery dispute between the parties,
- a request for sanctions, or
- an accusation of bad-faith conduct.

You can find more information on how to request conferences below. Note that a conference won't be held unless the CCB grants the request.

CCB conferences aren't as formal as hearings or court appearances. But it's a good idea to prepare for a conference by thinking through your position and, if the conference is to handle a dispute, like a disagreement over discovery, the outcome you want. In advance of the conference, you may wish to make, for your own reference, an outline of the points you would like to raise and questions you would like to ask at the conference. You don't have to submit anything to the CCB ahead of a conference unless a CCB order or the regulations require you to do so.

How do I request a conference?

How you go about requesting a conference depends on the topics the conference is going to cover. In general, you may submit a request for a conference through a fillable form on eCCB, where you explain your reasons for needing one. Select the reason appropriate for your situation from the drop-down menu of different types of conference requests, and use the fillable box that comes up.

If someone else submits a request for a conference and you disagree with the request, you may submit a response through a fillable form on eCCB. Some sets (“tiers”) of requests have seven days to submit a response and some have fourteen. You can see the list of request tiers in the CCB regulations at § 220.5.

It is a good idea to ask the other parties if they consent to having a conference. If they do, note that, or your attempt to contact them and any disagreement, when you request the conference. The CCB may be more likely to grant a request for a conference and to schedule one more quickly when it knows the parties have agreed to have a conference.

The CCB will usually give all parties an opportunity to respond before granting a request, unless the requesting party states that they have the consent of other parties. However, the CCB can deny a request before the other parties respond. The CCB will make its decision by issuing an order through eCCB.

What if I need to change a deadline in the Scheduling Order?

If you need to request a change to the schedule due to a legitimate conflict or because you need additional time to meet a deadline, you must submit the request through a fillable form on eCCB. You can select the Request to Amend Scheduling Order option from the drop-down menu. The form will have a box (limited to 4,000 characters) in which you can explain your reasons for a postponement, which deadlines you need to change, and what you need the new deadlines to be. You should submit a request to change the schedule before the deadline you want modified has passed, as the CCB may be less likely to grant a request after a deadline has already passed.

The CCB may be more likely to grant a request for a scheduling change when all parties agree with it. It is a good idea to check with the other parties in your proceeding to see if they agree with your requested change to the schedule. If they do, state that they have consented at the beginning of your request (or your attempt to contact them or if they did not agree).

If another party submits a request to change the schedule, you are not required to submit a response to the request. However, if you disagree with the request, you may submit a response to explain why you disagree. That response also must be submitted through a fillable form on eCCB and is also limited to 4,000 characters. It must be submitted within seven days after the request is filed.

The CCB usually will wait to give all parties an opportunity to respond before granting a request, unless the requesting party states that they have the consent of other parties. However, the CCB can deny a request before the other parties respond. The CCB will make its decision by issuing an order through eCCB.

How do I figure out what my deadline is?

Many of the deadlines will be in the schedule. However, some deadlines are calculated from a **particular event**, like the filing of a request or an order from the CCB. Your deadline to respond will be provided through an eCCB notification, which will trigger an email to you, and which can always be found on your **docket**. These deadlines follow some common rules, and most of them have a set response time of seven or fourteen days:

- Each type of request that parties in a CCB proceeding can make has a set response time.

***Example:** If one party submits a request to change the schedule, then the other party has seven calendar days—not business days—to respond. That is the response time set by the regulations for responding to requests to change the schedule.*

- To comply with a deadline, you must complete the filing on eCCB by 11:59 p.m. eastern time on the date in question.
- If the start date (the date the request is made by a party) for calculating the deadline for your response is on a weekend or federal holiday, then the clock won't begin to run until the next federal workday.

***Example:** If a party submits a request to change the schedule on Veterans Day (November 11), which happens to fall on a Friday that year, then the seven-day clock to respond won't begin running until the following Monday, November 14, and the response would be due by Monday, November 21.*

- If a deadline would fall on a weekend or on a federal holiday, the deadline will be extended to the next federal workday.

***Example:** If a party submits a request to change the schedule (which has a seven-day response deadline) on the last Monday in August, the deadline for the other party to respond to the request would not be Labor Day, the first Monday in September. Instead, the deadline would be the Tuesday after Labor Day—the following federal workday.*

You can find a list of the federal holidays on the [U.S. Office of Personnel Management \(OPM\) website](#).

What rules do I need to know?

The rules that govern CCB proceedings are in the [CASE Act](#) and the [CCB regulations](#). The CCB isn't bound by the same rules that apply in federal court proceedings, such as the Federal Rules of Civil Procedure and the Federal Rules of Evidence, so you do not need to have familiarity with these rules to participate in CCB proceedings.

Glossary

- **Active Phase:** When the respondent has not opted out, the portion of the proceeding starting from the end of the sixty-day opt-out period and continuing until the CCB's final determination of your case.
- **Conference:** A virtual meeting between the parties and the CCB to discuss issues related to the case.
- **Default:** A determination that can be issued against a respondent or counterclaim respondent if they miss deadlines and fail to participate in their defense.
- **Docket:** Each proceeding has a unique case number associated with it. The docket is the list of all documents associated with that particular proceeding.
- **eCCB:** The CCB's electronic filing and case management system.
- **Without prejudice:** The claim can be filed again in the future.