

facts relevant to the petition, the points to be reviewed, the action or relief that is requested, and the requisite fee (see § 2.6). Any brief in support of the petition shall be embodied in or accompany the petition. When facts are to be proved in ex parte cases (as in a petition to revive an abandoned application), the proof in the form of affidavits or declarations in accordance with § 2.20, and any exhibits, shall accompany the petition.

(d) A petition must be filed within two months of the mailing date of the action from which relief is requested, unless a different deadline is specified elsewhere in this chapter.

(e)(1) A petition from the grant or denial of a request for an extension of time to file a notice of opposition shall be filed within fifteen days from the date of mailing of the grant or denial of the request. A petition from the grant of a request shall be served on the attorney or other authorized representative of the potential opposer, if any, or on the potential opposer. A petition from the denial of a request shall be served on the attorney or other authorized representative of the applicant, if any, or on the applicant. Proof of service of the petition shall be made as provided by § 2.119(a). The potential opposer or the applicant, as the case may be, may file a response within fifteen days from the date of service of the petition and shall serve a copy of the response on the petitioner, with proof of service as provided by § 2.119(a). No further paper relating to the petition shall be filed.

(2) A petition from an interlocutory order of the Trademark Trial and Appeal Board shall be filed within thirty days after the date of mailing of the order from which relief is requested. Any brief in response to the petition shall be filed, with any supporting exhibits, within fifteen days from the date of service of the petition. Petitions and responses to petitions, and any papers accompanying a petition or response, under this subsection shall be served on every adverse party pursuant to § 2.119(a).

(f) An oral hearing will not be held on a petition except when considered necessary by the Commissioner.

(g) The mere filing of a petition to the Commissioner will not act as a stay in any appeal or inter partes proceeding that is pending before the Trademark Trial and Appeal Board nor stay the period for replying to an Office action in an application except when a stay is specifically requested and is granted or when §§ 2.63(b) and 2.65 are applicable to an ex parte application.

(h) Authority to act on petitions, or on any petition, may be delegated by the Commissioner.

(i) Where a petitioner seeks to reactivate an application or registration that was abandoned or cancelled because papers were lost or mishandled, the Commissioner may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, the applicant must check the status of the application or registration within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected.

(j) If the Commissioner denies a petition, the petitioner may request reconsideration, if the petitioner:

- (1) Files the request within two months of the mailing date of the decision denying the petition; and
- (2) Pays a second petition fee under § 2.6.

[48 FR 23142, May 23, 1983; 48 FR 27226, June 14, 1983, as amended at 63 FR 48100, Sept. 9, 1998; 64 FR 48924, Sept. 8, 1999]

#### § 2.147 [Reserved]

#### § 2.148 Commissioner may suspend certain rules.

In an extraordinary situation, when justice requires and no other party is injured thereby, any requirement of the rules in this part not being a requirement of the statute may be suspended or waived by the Commissioner.

#### CERTIFICATE

#### § 2.151 Certificate.

When the Office determines that a mark is registrable, a certificate will be issued stating that the applicant is entitled to registration on the Principal Register or on the Supplemental

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Register. The certificate will state the date on which the application for registration was filed in the Office, the act under which the mark is registered, the date of issue, and the number of the registration. A reproduction of the mark and pertinent data from the application will be sent with the certificate. A notice of the requirements of section 8 of the Act will accompany the certificate.

[64 FR 48924, Sept. 8, 1999]

### PUBLICATION OF MARKS REGISTERED UNDER 1905 ACT

AUTHORITY: Secs. 2.153 to 2.156 also issued under sec. 12, 60 Stat. 432; 15 U.S.C. 1062.

#### §2.153 Publication requirements.

A registrant of a mark registered under the provisions of the Acts of 1881 or 1905 may at any time prior to the expiration of the period for which the registration was issued or renewed, upon the payment of the prescribed fee, file an affidavit or declaration in accordance with §2.20 setting forth those goods stated in the registration on which said mark is in use in commerce, specifying the nature of such commerce, and stating that the registrant claims the benefits of the Trademark Act of 1946.

[31 FR 5262, Apr. 1, 1966]

#### §2.154 Publication in Official Gazette.

A notice of the claim of benefits under the Act of 1946 and a reproduction of the mark will then be published in the *Official Gazette* as soon as practicable. The published mark will retain its original registration number.

#### §2.155 Notice of publication.

The Office will send the registrant a notice of publication of the mark and of the requirement for filing the affidavit or declaration required by section 8 of the Act.

[64 FR 48924, Sept. 8, 1999]

#### §2.156 Not subject to opposition; subject to cancellation.

The published mark is not subject to opposition, but is subject to petitions to cancel as specified in §2.111 and to cancellation for failure to file the affi-

dativ or declaration required by section 8 of the Act.

[64 FR 48924, Sept. 8, 1999]

### REREGISTRATION OF MARKS REGISTERED UNDER PRIOR ACTS

#### §2.158 Reregistration of marks registered under Acts of 1881, 1905, and 1920.

Trademarks registered under the Act of 1881, the Act of 1905 or the Act of 1920 may be reregistered under the Act of 1946, either on the Principal Register, if eligible, or on the Supplemental Register, but a new complete application for registration must be filed complying with the rules relating thereto, and such application will be subject to examination and other proceedings in the same manner as other applications filed under the Act of 1946. See §2.26 for use of old drawing.

### CANCELLATION FOR FAILURE TO FILE AFFIDAVIT OR DECLARATION DURING SIXTH YEAR

AUTHORITY: Secs. 2.161 to 2.165 also issued under sec. 8, 60 Stat. 431; 15 U.S.C. 1058.

#### §2.160 Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation of registration.

(a) During the following time periods, the owner of the registration must file an affidavit or declaration of continued use or excusable nonuse, or the registration will be cancelled:

(1)(i) For registrations issued under the Trademark Act of 1946, on or after the fifth anniversary and no later than the sixth anniversary after the date of registration; or

(ii) For registrations issued under prior Acts, on or after the fifth anniversary and no later than the sixth anniversary after the date of publication under section 12(c) of the Act; and

(2) For all registrations, within the year before the end of every ten-year period after the date of registration.

(3) The affidavit or declaration may be filed within a grace period of six months after the end of the deadline set forth in paragraphs (a)(1) and (a)(2) of this section, with payment of the grace period surcharge required by section 8(c)(1) of the Act and §2.6.