

review of a decision of the Board should file written notice thereof in the Patent and Trademark Office, addressed to the Board, within one month after the expiration of the time for appeal or civil action, in order to avoid premature termination of the Board proceeding.

(d) *Time for appeal or civil action.* (1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (paragraph (b) of this section), or for commencing a civil action (paragraph (c) of this section), is two months from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, as the case may be. If a request for rehearing or reconsideration or modification of the decision is filed within the time specified in § 2.127(b), 2.129(c) or 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In inter partes cases, the time for filing a cross-action or a notice of a cross-appeal expires

(i) 14 days after service of the notice of appeal or the summons and complaint; or

(ii) Two months from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, whichever is later.

(2) The times specified in this section in days are calendar days. The times specified herein in months are calendar months except that one day shall be added to any two-month period which includes February 28. If the last day of time specified for an appeal, or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday.

(3) If a party to an inter partes proceeding has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under section 21(a)(1) of the Act electing to have all further proceedings conducted under section 21(b) of the Act, the time for filing a civil action thereafter is specified in section 21(a)(1) of the Act. The time for filing a

cross-action expires 14 days after service of the summons and complaint.

(e) *Extensions of time to commence judicial review.* The Commissioner may extend the time for filing an appeal or commencing a civil action (1) for good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or (2) upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect.

[47 FR 47382, Oct. 26, 1982, as amended at 53 FR 16414, May 9, 1988; 54 FR 29554, July 13, 1989; 54 FR 34901, Aug. 22, 1989; 58 FR 54503, Oct. 22, 1993]

PETITIONS AND ACTIONS BY THE
COMMISSIONER

§ 2.146 Petitions to the Commissioner.

(a) Petition may be taken to the Commissioner:

(1) From any repeated or final formal requirement of the examiner in the ex parte prosecution of an application if permitted by § 2.63(b);

(2) In any case for which the Act of 1946, or title 35 of the United States Code, or this part of title 37 of the Code of Federal Regulations specifies that the matter is to be determined directly or reviewed by the Commissioner;

(3) To invoke the supervisory authority of the Commissioner in appropriate circumstances;

(4) In any case not specifically defined and provided for by this part of title 37 of the Code of Federal Regulations;

(5) In an extraordinary situation, when justice requires and no other party is injured thereby, to request a suspension or waiver of any requirement of the rules not being a requirement of the Act of 1946.

(b) Questions of substance arising during the ex parte prosecution of applications, including, but not limited to, questions arising under sections 2, 3, 4, 5, 6 and 23 of the Act of 1946, are not considered to be appropriate subject matter for petitions to the Commissioner.

(c) Every petition to the Commissioner shall include a statement of the

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