

nature of the action and the condition of the case may require.

§ 2.63 Reexamination.

(a) After response by the applicant, the application will be reexamined or reconsidered. If registration is again refused or any formal requirement[s] is repeated, but the examiner's action is not stated to be final, the applicant may respond again.

(b) After reexamination the applicant may respond by filing a timely petition to the Commissioner for relief from a formal requirement if: (1) The requirement is repeated, but the examiner's action is not made final, and the subject matter of the requirement is appropriate for petition to the Commissioner (see § 2.146(b)); or (2) the examiner's action is made final and such action is limited to subject matter appropriate for petition to the Commissioner. If the petition is denied, the applicant shall have until six months from the date of the Office action which repeated the requirement or made it final or thirty days from the date of the decision on the petition, whichever date is later, to comply with the requirement. A formal requirement which is the subject of a petition decided by the Commissioner may not subsequently be the subject of an appeal to the Trademark Trial and Appeal Board.

[48 FR 23134, May 23, 1983]

§ 2.64 Final action.

(a) On the first or any subsequent reexamination or reconsideration the refusal of the registration or the insistence upon a requirement may be stated to be final, whereupon applicant's response is limited to an appeal, or to a compliance with any requirement, or to a petition to the Commissioner if permitted by § 2.63(b).

(b) During the period between a final action and expiration of the time for filing an appeal, the applicant may request the examiner to reconsider the final action. The filing of a request for reconsideration will not extend the time for filing an appeal or petitioning the Commissioner, but normally the examiner will reply to a request for reconsideration before the end of the six-month period if the request is filed

within three months after the date of the final action. Amendments accompanying requests for reconsideration after final action will be entered if they comply with the rules of practice in trademark cases and the Act of 1946.

(c)(1) If an applicant in an application under section 1(b) of the Act files an amendment to allege use under § 2.76 during the six-month response period after issuance of a final action, the examiner shall examine the amendment. The filing of such an amendment will not extend the time for filing an appeal or petitioning the Commissioner.

(2) If the amendment to allege use under § 2.76 is acceptable in all respects, the applicant will be notified of its acceptance.

(3) If, as a result of the examination of the amendment to allege use under § 2.76, the applicant is found not entitled to registration for any reason not previously stated, applicant will be notified and advised of the reasons and of any formal requirements or refusals. The Trademark Examining Attorney shall withdraw the final action previously issued and shall incorporate all unresolved refusals or requirements previously stated in the new non-final action.

[48 FR 23134, May 23, 1983, as amended at 54 FR 37592, Sept. 11, 1989]

§ 2.65 Abandonment.

(a) If an applicant fails to respond, or to respond completely, within six months after the date an action is mailed, the application shall be deemed to have been abandoned. A timely petition to the Commissioner pursuant to §§ 2.63(b) and 2.146 is a response which avoids abandonment of an application.

(b) When action by the applicant filed within the six-month response period is a bona fide attempt to advance the examination of the application and is substantially a complete response to the examiner's action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, opportunity to explain and supply the omission may be given before the question of abandonment is considered.

(c) If an applicant in an application under section 1(b) of the Act fails to timely file a statement of use under