

§ 2.61 Action by examiner.

(a) Applications for registration, including amendments to allege use under section 1(c) of the Act, and statements of use under section 1(d) of the Act, will be examined and, if the applicant is found not entitled to registration for any reason, applicant will be notified and advised of the reasons therefor and of any formal requirements or objections.

(b) The examiner may require the applicant to furnish such information and exhibits as may be reasonably necessary to the proper examination of the application.

(c) Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, each party and also the attorney shall be notified of this fact.

[30 FR 13193, Oct. 16, 1965, as amended at 37 FR 2880, Feb. 9, 1972; 54 FR 37592, Sept. 11, 1989]

§ 2.62 Period for response.

The applicant has six months from the date of mailing of any action by the examiner to respond thereto. Such response may be made with or without amendment and must include such proper action by the applicant as the 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 Director 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 Director (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 Director. 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 Director 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 Director 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 Director, 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 Director.

(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

§ 2.65

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 abandoned unless the refusal or requirement is expressly limited to only certain goods and/or services. If the refusal or requirement is expressly limited to only certain goods and/or services, the application will be abandoned only as to those particular goods and/or services. A timely petition to the Director pursuant to §§ 2.63(b) and 2.146, if appropriate, is a response that 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 § 2.88, the application shall be deemed to be abandoned.

[48 FR 23134, May 23, 1983, as amended at 54 FR 37592, Sept. 11, 1989; 68 FR 55764, Sept. 26, 2003]

§ 2.66 Revival of abandoned applications.

(a) The applicant may file a petition to revive an application abandoned because the applicant did not timely respond to an Office action or notice of allowance, if the delay was unintentional. The applicant must file the petition:

(1) Within two months of the mailing date of the notice of abandonment; or

(2) Within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of

37 CFR Ch. I (7-1-08 Edition)

abandonment, and the applicant was diligent in checking the status of the application every six months in accordance with § 2.146(i).

(b) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to an Office action are:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the response on or before the due date was unintentional; and

(3) Unless the applicant alleges that it did not receive the Office action, the proposed response.

(c) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to a notice of allowance are:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the statement of use (or request for extension of time to file a statement of use) on or before the due date was unintentional;

(3) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the required fees for the number of requests for extensions of time to file a statement of use that the applicant should have filed under § 2.89 if the application had never been abandoned;

(4) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, either a statement of use under § 2.88 or a request for an extension of time to file a statement of use under § 2.89; and

(5) Unless a statement of use is filed with or before the petition, or the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the applicant must file any further requests for extensions of time to file a statement of use under § 2.89 that become due while the petition is pending, or file a statement of use under § 2.88.

(d) In an application under section 1(b) of the Act, the Director will not grant the petition if this would permit the filing of a statement of use more