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Dated: June 22, 2017.

E.E. Williams,

Commander, U.S. Coast Guard, Captain of the Port.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO-T-2010-0016]

RIN 0651-AC41

Revival of Abandoned Applications, Reinstatement of Abandoned Applications and Cancelled or Expired Registrations, and Petitions to the Director

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) amends its rules regarding petitions to revive an abandoned trademark application and petitions to the Director of the USPTO (Director) regarding other trademark matters and to codify USPTO practice regarding requests for reinstatement of abandoned trademark applications and cancelled or expired trademark registrations. The changes will permit the USPTO to provide more detailed procedures regarding the deadlines and requirements for requesting revival, reinstatement, or other action by the Director. These rules will thereby ensure that the public has notice of the deadlines and requirements for making such requests, facilitate the efficient and consistent processing of such requests, and promote the integrity of application/registration information in the trademark electronic records system as an accurate reflection of the status of applications and registrations.

DATES: This rule is effective on July 8, 2017.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademarks Examination Policy, by email at TMFRNotices@uspto.gov or by telephone at (571) 272-8946.

SUPPLEMENTARY INFORMATION:

Purpose: The USPTO revises the rules in part 2 of title 37 of the Code of

Federal Regulations to provide more detailed procedures regarding the deadlines and requirements for petitions to revive an abandoned trademark application under 37 CFR 2.66 and petitions to the Director under 37 CFR 2.146. The changes also codify USPTO practice regarding requests for reinstatement of trademark applications that were abandoned and trademark registrations that were cancelled or expired, due to Office error. By providing more detailed procedures regarding requesting revival, reinstatement, or other action by the Director, the rulemaking benefits applicants, registrants, and the public because it: (1) Promotes the integrity of application/registration information in the trademark electronic records system as an accurate reflection of the status of live applications and registrations; (2) clarifies the time periods in which applications or registrations can be revived or reinstated after abandonment or cancellation and specifies the related filing requirements; (3) clarifies the deadline for requesting that the Director take action regarding other matters; and (4) facilitates the efficient and consistent handling of such requests.

The public relies on the trademark electronic records system to determine whether a chosen mark is available for use or registration. Applicants are encouraged to utilize the trademark electronic search system, which provides access to text and images of marks, to determine whether a mark in any pending application or current registration is similar to their mark and used on the same or related products or for the same or related services. The search system also indicates the status of an application or registration, that is, whether the application or registration is live or dead. A “live” status indicates the application or registration is active and may bar the registration of a similar mark in a new application. A “dead” status indicates the application has become abandoned or the registration is cancelled or expired and does not serve as a bar to registration of a similar mark in a new application unless it is restored to a live status pursuant to a corresponding rule.

When a party’s search discloses a potentially confusingly similar mark, that party may incur a variety of resulting costs and burdens, such as those associated with investigating the actual use of the disclosed mark to assess any conflict, proceedings to oppose the application or cancel the registration or of the disclosed mark, civil litigation to resolve a dispute over the mark, or changing plans to avoid use of the party’s chosen mark. In order to

determine whether to undertake one or more of these actions, the party would refer to the status of the conflicting application/registration and would need to consult the relevant rule to determine whether the application or registration is within the time period in which the applicant or registrant may request revival, reinstatement, or other action by the Director. Thus, the effective notice provided by the USPTO’s records plays a critical role in a party’s decision-making by enabling the party to clearly distinguish between the dead marks that are no longer candidates for, or protected by, a federal registration and those that are still able to be restored to active status.

If the trademark electronic records system indicates that an application or registration is dead because it is abandoned, cancelled, or expired, and there is any doubt as to whether the application or registration might be eligible for revival, reinstatement, or other action by the Director, the costs and burdens discussed above may be incurred unnecessarily. By providing more detailed procedures as to the deadlines and requirements for requesting revival, reinstatement, or other action by the Director, these rules will help the public avoid such needless costs and burdens and promote the efficient and consistent processing of such requests by the Office.

Background

Petition To Revive: The statutory period for responding to an examining attorney’s Office action is six months from the Office action’s date of issuance. 15 U.S.C. 1062(b); 37 CFR 2.62(a). If no response is received by the USPTO within the statutory period, and the Office action was sent to the correspondence address in the USPTO’s records, the application is then abandoned in full or in part, as appropriate. 37 CFR 2.65(a); *Trademark Manual of Examining Procedure* (TMEP) § 718.06.

The statutory period for filing a statement of use or a request for an extension of time to file a statement of use, in response to a notice of allowance issued under section 13(b)(2) of the Trademark Act (Act), is also six months. 15 U.S.C. 1051(d)(1), (2); 37 CFR 2.88(a), 2.89(a). Thus, an application is abandoned if the applicant fails to file a statement of use or request for an extension of time to file a statement of use within the statutory period or within a previously granted extension period. 37 CFR 2.65(c), 2.88(k); TMEP § 718.04.

An application is considered to be abandoned as of the day after the date

on which a response to an Office action or notice of allowance is due. TMEP § 718.06. However, to accommodate timely mailed paper submissions and to ensure that the required response was not received and placed in the record of another application (e.g., if the applicant enters the incorrect serial number on its response), the USPTO generally waits one month after the due date to update the trademark electronic records system to reflect the abandonment. When the trademark electronic records system is updated, the USPTO sends a computer-generated notice of abandonment to the correspondence address listed in the application. *Id.* If an application becomes abandoned for failure to respond to an Office action or notice of allowance within the statutory period, and the delay in responding was unintentional, the application may be revived upon proper submission of a petition under 37 CFR 2.66. Prior to this final rule, the deadlines for filing the petition were within two months after the date of issuance of the notice of abandonment or within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment and the applicant was diligent in checking the status of the application every six months.

Request for Reinstatement: If an applicant has proof that an application was inadvertently abandoned due to a USPTO error, an applicant may file a request to reinstate the application, instead of a petition to revive. TMEP § 1712.01. Prior to this final rule, an applicant was required to file a request for reinstatement within two months of the issuance date of the notice of abandonment. *Id.* If the applicant asserted that it did not receive a notice of abandonment, the applicant was required to file the request within two months of the date the applicant had actual knowledge that the application was abandoned, and the applicant must have been duly diligent in monitoring the status of the application every six months. *Id.*

Similarly, a registrant could file a request to reinstate a cancelled or expired registration if the registrant had proof that a required document was timely filed and that USPTO error caused the registration to be cancelled or expired. TMEP § 1712.02. Prior to implementation of this rule, there was no deadline for filing a request to reinstate a cancelled/expired registration, and the USPTO generally did not invoke the requirement for due diligence when there was proof that a registration was cancelled or expired

solely due to USPTO error. TMEP § 1712.02(a).

Petition to the Director Under 37 CFR 2.146: Applicants, registrants, and parties to inter partes proceedings before the Trademark Trial and Appeal Board (TTAB) who believe they have been injured by certain adverse actions of the USPTO, or who believe that they cannot comply with the requirements of the Trademark Rules of Practice (37 CFR parts 2, 3, 6, and 7) because of an extraordinary situation, may seek equitable relief by filing a petition under 37 CFR 2.146. A variety of issues may be reviewed on petition under this section. *See* TMEP § 1703. Generally, unless a specific deadline is specified elsewhere in the rules or within this section, such as the deadlines for petitions regarding actions of the TTAB under § 2.146(e), a petition must be filed within two months of the date of issuance of the action from which relief is requested and, prior to this final rule, no later than two months from the date when Office records were updated to show that a registration was cancelled or expired under § 2.146(d). If a petitioner sought to reactivate an application or registration that was abandoned, cancelled, or expired because documents not received by the Office were lost or mishandled, the petitioner was also required to be duly diligent in checking the status of the application or registration. The section was traditionally invoked when papers submitted pursuant to the mailing rules in § 2.197 and § 2.198 were lost. However, the occurrence of such incidents is minimal. Further, the USPTO believes that if an applicant or registrant has proof that documents mailed in accordance with the requirements of § 2.197 or § 2.198 were lost or mishandled by the USPTO, thereby causing the abandonment of an application or cancellation/expirations of a registration, the proper recourse is to seek relief under new § 2.64 for requesting reinstatement.

Due-Diligence Requirement: The USPTO generally processes applications, responses, and other documents in the order in which they are received, and it is reasonable to expect some notice or acknowledgement from the USPTO regarding action on a pending matter within six months of the filing or receipt of a document. If an applicant or registrant does not receive a notice from the USPTO regarding the abandonment of its application, cancellation/expirations of its registration, or denial of some other request, but otherwise learns of the abandonment, cancellation/expirations, or denial, the applicant or registrant

must have been duly diligent in tracking the status of its application or registration in order to be granted revival, reinstatement, or other action by the Director. Being duly diligent means that a party who has not received a notice or acknowledgement from the USPTO within six months of the filing has the burden of inquiring as to the status of action on its filing and requesting in writing that corrective action be taken when necessary, to protect third parties who may be harmed by reliance on inaccurate information regarding the status of an application or registration in the trademark electronic records system. *See* TMEP § 1705.05. For example, a third party may have searched USPTO records and begun using a mark because the search showed that an earlier-filed application or prior registration for a conflicting mark had been abandoned or cancelled. In other cases, an examining attorney may have searched USPTO records and approved for publication a later-filed application for a conflicting mark because the earlier-filed application was shown as abandoned or a prior registration was shown as cancelled.

When a party seeks to revive an application that was abandoned or reinstate a registration that was cancelled or expired, due either to the failure of the applicant or registrant to file a required document or to the loss or mishandling of documents sent to or from the USPTO, or asks the Director to take some other action, the USPTO may deny the request if the petitioner was not diligent in checking the status of the application or registration, even if the petitioner shows that the USPTO actually received documents or declares that a notice from the USPTO was never received by the petitioner.

The due-diligence requirement means that any petition filed more than two months after the notice of abandonment or cancellation was issued or more than two months after Office records are updated is likely to be dismissed as untimely because the applicant or registrant will be unable to establish that it was duly diligent. For example, if an applicant files an application in July 1, 2016, and an Office action is issued on October 15, 2016, a response must be filed on or before April 15, 2017. If the applicant does not respond, the trademark electronic records system will be updated to show the application as abandoned and a notice of abandonment will be sent to the applicant on or about May 15, 2017. If the applicant does not receive the notice of abandonment, only checks the trademark electronic records system in

August 2017 (*i.e.*, more than two months after the issue date of the notice of abandonment and more than a year after filing), and thereafter files a petition to revive, that petition would be denied as untimely. Even if the applicant asserts that it only became aware of the issuance of the Office action and the notice of abandonment on, for example, July 18, 2017 (actual notice), the petition would be denied as untimely because the applicant could not prove that it was duly diligent in monitoring the status of the application by checking the status every six months.

Moreover, in some situations when an applicant or owner of a registration asserts that it did not receive a notice of abandonment or cancellation, it is often difficult for the USPTO to determine when the party had actual notice of the abandonment/cancellation and whether the party was duly diligent in prosecuting the application or maintaining the registration. By effectively making applicants and registrants more clearly aware of the requirement to conduct the requisite status checks of Office records every six months from the filing of a document, whether an application or a submission requesting action by the Office, parties would have sufficient notice to timely respond to any issues regarding the acceptance or refusal of their submission in the vast majority of circumstances. For example, if a document is filed on January 2 and an Office action requiring a response within six months is issued on February 2, and if the submitting party is duly diligent and reviews the trademark electronic records system on July 2, it would learn of the issuance of the action, even if the party did not receive it. In that situation, the party would still have one month in which to respond timely.

Discussion of Changes and Rulemaking Goals

Establish Certainty Regarding Timeliness: The goals of the changes implemented herein are to harmonize the deadlines for requesting revival, reinstatement, or other action by the Director and remove any uncertainty for applicants, registrants, third parties, and the Office as to whether a request is timely.

In this rulemaking, the USPTO adds §§ 2.64(a)(1)(i) and (b)(1)(i) and amends §§ 2.66(a)(1) and 2.146(d)(1) to clarify that applicants and registrants who receive an official document from the USPTO, such as a notice of abandonment or cancellation or a denial of certification of an international registration, must file a petition to

revive, request for reinstatement, or petition to the Director to take another action, by not later than two months after the issue date of the notice. The addition of §§ 2.64(a)(1)(i) and (b)(1)(i) codifies this deadline for parties seeking reinstatement of an application or registration abandoned or cancelled due to Office error and makes it consistent with the deadline in § 2.66(a)(1). The amendment to § 2.66(a) clarifies that the deadline applies to abandonments in full or in part. Finally, the change to § 2.146(d) deletes the requirement that a petition be filed no later than two months from the date when Office records are updated to show that a registration is cancelled or expired. As noted below, this deadline is extended to not later than six months after the date the trademark electronic records system indicates that the registration is cancelled/expired, when the registrant declares that it did not receive the action or where no action was issued, to harmonize the deadlines across the relevant sections.

To establish certainty and ensure consistency, the rule also adds §§ 2.64(a)(1)(ii) and (b)(1)(ii) to codify the deadline for all applicants and registrants who assert that they did not receive a notice of abandonment or cancellation/expiration from the Office and thereafter seek reinstatement. This deadline is identical to the deadlines implemented in §§ 2.66(a)(2) and 2.146(d)(2) for applicants and registrants who assert that they did not receive a notice from the Office and thereafter seek relief. Under §§ 2.64(a)(1)(ii) and (b)(1)(ii), if the applicant or registrant did not receive the notice, or no notice was issued, a petition must be filed by not later than two months of actual knowledge that a notice was issued or that an action was taken by the Office and not later than six months after the date the trademark electronic records system is updated to indicate the action taken by the Office. Thus, the rule makes clear that applicants and registrants must check the status of their applications and registrations every six months after the filing of an application or other document and thereby removes any uncertainty in the Office's assessment of whether an applicant or registrant was duly diligent.

Balance Duties of the USPTO to Registrants and Third Parties: Under this rule, the USPTO adds § 2.64(b)(1)(ii) and § 2.146(d)(2)(ii) to include the requirement for due diligence in tracking the status of a registration after the timely filing of an affidavit of use or excusable non-use under section 8 or 71 of the Act or a renewal application under section 9 of

the Act. Registrants who have timely filed such documents and who seek reinstatement of a registration cancelled due to Office error, but who assert that they did not receive a notice of cancellation/expiration, or where no notice was issued, must file the request by not later than two months of actual knowledge of the cancellation and not later than six months after the date the trademark electronic records system indicates that the registration is cancelled/expired.

As noted above, the USPTO has generally not invoked the requirement for due diligence when there is proof that a registration was cancelled or expired solely due to Office error. Although the USPTO has a duty to correct its errors, the USPTO has a concurrent duty toward third parties to ensure that the trademark electronic records system accurately reflects the status of applications and registrations, especially given that the USPTO encourages such third parties to search the trademark electronic records system prior to adopting or seeking to register a mark. Therefore, the USPTO must balance its duties to third parties who rely on the accuracy of the trademark electronic records system and to registrants whose registration may have been cancelled as a result of Office error. The USPTO believes that, in order to fulfill its duties to all parties, the requirement for due diligence should apply equally to registrants who timely filed an affidavit of use or excusable non-use under section 8 or 71 of the Act or a renewal application under section 9 of the Act, but did not receive a notice of cancellation/expiration, and who then request reinstatement of their registrations, as it does to all other applicants and registrants who do not receive notice of any other action taken by the Office. As noted above, it is reasonable to expect some notice or acknowledgement from the USPTO regarding action on a pending matter within six months of the filing of a document. A registrant who has timely filed a maintenance or renewal document, but has not received notification from the USPTO regarding the acceptance or refusal of the document within that time frame, has the burden of inquiring as to the status of the USPTO's action on the filing and requesting in writing that corrective action be taken when necessary, to protect third parties who may be harmed by reliance on inaccurate information regarding the status of its registration in the trademark electronic records system.

Maintain Pendency: The USPTO herein changes § 2.66 to prevent

applicants from utilizing the revival process to delay prosecution by repeatedly asserting non-receipt of an Office action or notice of allowance. Specifically, the regulations at § 2.66(b) are amended to clarify that a response to the outstanding Office action is required or, if the applicant asserts that the unintentional delay is based on non-receipt of an Office action or notification, the applicant may not assert non-receipt of the same Office action or notification in a subsequent petition. The USPTO also adds § 2.66(b)(3)(i)–(ii) to clarify the requirements for requesting revival when the abandonment occurred after a final Office action. The regulations at § 2.66(c) are amended to clarify that if the applicant asserts that the unintentional delay is based on non-receipt of a notice of allowance, the applicant may not assert non-receipt of the notice of allowance in a subsequent petition.

In some situations, an application will become abandoned multiple times for failure to respond to an Office action or notice of allowance, and the applicant will assert that it did not receive the same Office action or the notice of allowance each time that it petitions to revive the application. Under the regulations implemented herein at § 2.66(b)(3) and § 2.66(c)(2)(iii), the Office limits the applicant's ability to assert more than once that the unintentional delay is based on non-receipt of the same Office action or the notice of allowance. When an applicant becomes aware that its application has been abandoned, either via receipt of a notice of abandonment or after checking the status of the application, the applicant is thereby on notice that the Office has taken action on the application. If the applicant then files a petition to revive an application held abandoned for failure to respond to an Office action, which states that the applicant did not receive the action, and the petition is granted, the USPTO will issue a new Office action, if there are additional issues that need to be raised since the original Office action was sent, and provide the applicant with a new six-month response period. If all issues previously raised remain the same, after reviving the application, the USPTO will send a notice to the applicant directing the applicant to view the previously issued Office action in the electronic file for the application available on the USPTO's Web site and provide the applicant with a new six-month response period. When a petition to revive an application for failure to respond to a notice of allowance states

that the applicant did not receive the notice, and the petition is granted, the USPTO will cancel the original notice of allowance and issue a new notice, giving the applicant a new six-month period in which to file a statement of use or request for extension of time to file a statement of use.

In either situation, the USPTO sends the new Office action (or notice directing the applicant to view the previously issued Office action in the electronic file) or notice of allowance to the correspondence address of record. In general, under the current regulations at 37 CFR 2.18, the owner of an application has a duty to maintain a current and accurate correspondence address with the USPTO, which may be either a physical or email address. If the correspondence address changes, the USPTO must be promptly notified in writing of the new address. If the correspondence address has not changed in the USPTO records since the filing of the application, the applicant is on notice that documents regarding its application are being sent to that address by virtue of its awareness of the abandonment of the application and its subsequent filing of the petition to revive.

Allowing an applicant who is on notice that the Office has taken action in an application to continually assert non-receipt of the same Office action or notice of allowance significantly delays prosecution of the application. It also results in uncertainty for the public, which relies on the trademark electronic records system to determine whether a chosen mark is available for use or registration. Therefore, because the applicant is on notice that documents regarding its application are being sent to the address of record, this final rule limits an applicant to asserting only once that the unintentional delay is based on non-receipt of the same Office action or notice of allowance. If the correspondence address has changed since the filing of the application, the applicant is responsible for updating the address, as noted above, so that any further Office actions or notices will be sent to the correct address.

Codify Requirements for Reinstatement: The USPTO hereby implements a new regulation at § 2.64 to codify the requirements for seeking reinstatement of an application that was abandoned or a registration that was cancelled or expired due to Office error. The regulation indicates that there is no fee for requesting reinstatement. It also sets out the deadlines for submitting such requests, as discussed under the heading "Establish Certainty Regarding Timeliness," and the nature of proof

necessary to support an allegation of Office error in the abandonment of the relevant application or cancellation/expiration of the relevant registration. Further, the regulation provides an avenue for requesting waiver of the requirements if the applicant or registrant is not entitled to reinstatement.

The rationale for the changes to the deadline for requesting reinstatement of a registration when the registrant did not receive a notice of cancellation is discussed above. The TMEP currently sets out the deadlines for requesting reinstatement of an application or registration that was abandoned, cancelled, or expired due to Office error. TMEP §§ 1712.01, 1712.02(a). Other requirements, such as the nature of proof required to establish Office error, are also set out in the TMEP. However, although the TMEP sets out the deadlines and guidelines for submitting and handling requests for reinstatement, it does not have the force of law. Codifying the deadlines for filing a request for reinstatement in a separate rule that also lists the types of proof necessary to warrant such remedial action provides clear and definite standards regarding an applicant's or registrant's burden. It also furnishes the legal underpinnings of the Office's authority to grant or deny a request for reinstatement and provides applicants and owners of registrations with the benefit of an entitlement to relief when the standards of the rules are met.

If an applicant or registrant is found not to be entitled to reinstatement, the rule also provides a possible avenue of relief in that the request may be construed as a petition to the Director under § 2.146 or a petition to revive under § 2.66, if appropriate. In addition, if the applicant or registrant is unable to meet the timeliness requirement for filing the request, the rule provides that the applicant or registrant may submit a petition to the Director under § 2.146(a)(5) to request a waiver of that requirement.

Proposed Rule: Comments and Responses

The USPTO published a proposed rule on October 28, 2016, at 81 FR 74997, soliciting comments on the proposed amendments. In response, the USPTO received comments from three organizations and one individual. The commenters generally supported the proposed rules as meeting the stated objectives while also raising specific issues. Those issues are summarized below, with similar comments grouped together, and are followed by the USPTO's responses. All comments are

posted on the USPTO's Web site at <https://www.uspto.gov/trademark/trademark-updates-and-announcements/comments-proposed-rulemaking-relating-revival>.

Comment: One commenter inquired as to the meaning of "abandonment" in the phrase "Two months after the date of actual knowledge of the abandonment" and whether the two-month period begins on the date of the missed deadline, if the party knows the deadline was missed, or on the date of the notice of abandonment.

Response: As discussed above, an application is considered to be abandoned as of the day after the date on which a response to an Office action or notice of allowance is due. However, to accommodate timely mailed paper submissions and to ensure that the required response was not received and placed in the record of another application, the USPTO generally waits one month after the due date to update the trademark electronic records system to reflect the abandonment. When the trademark electronic records system is updated, the USPTO sends a computer-generated notice of abandonment to the correspondence address listed in the application. The provision for filing a petition or request for reinstatement within two months after the date of actual knowledge of an abandonment or cancellation/expiration, but not later than six months after the date the trademark electronic records system indicates that the application is abandoned or the registration is cancelled/expired, applies specifically when an applicant declares that it did not receive a notice of abandonment, or a registrant declares that it did not receive a notice of cancellation/expiration or the Office did not issue such a notice. If the applicant or registrant did not receive a notice that was issued, the applicant or registrant would presumably not be aware of the date of the notice and the two-month time period would start running on the date the applicant or registrant had actual knowledge of the abandonment or cancellation/expiration.

However, as also discussed above, if an applicant or registrant does not receive a notice from the USPTO regarding the abandonment of its application, cancellation/expiration of its registration, or denial of some other request, but otherwise learns of the abandonment, cancellation/expiration, or denial, the applicant or registrant must have been duly diligent in tracking the status of its application or registration in order to be granted revival, reinstatement, or other action by the Director. To be considered duly

diligent, an applicant must check the status of the application at least every six months between the filing date of the application and issuance of a registration. After filing an affidavit of use or excusable nonuse under section 8 or section 71 of the Act or a renewal application under section 9 of the Act, a registrant must check the status of the registration every six months until the registrant receives notice that the affidavit or renewal application has been accepted or refused. The provision for filing a petition or request for reinstatement when an applicant or registrant did not receive a notice of abandonment or of cancellation/expiration clarifies that, even if a petition is filed within two months of actual knowledge, it will not be considered timely if the date of filing is later than six months after the date the trademark electronic records system indicates that the application is abandoned or cancelled/expired, because the applicant or registrant was not duly diligent.

Comment: One commenter requested that the USPTO explain why the deadlines refer to a notice of cancellation/expiration when the Office does not currently issue such a notice for the failure to file a timely § 8 affidavit or a § 9 renewal application. The commenter also asked the Office to begin issuing a notice of cancellation/expiration for any registration that is cancelled or expired for failure to file a timely § 8 affidavit and/or a § 9 renewal application.

Response: The USPTO does not issue a notice of cancellation/expiration when a registrant fails to file a timely § 8 affidavit and/or a § 9 renewal application, nor does it plan to do so, because there is no remedy in such situations. Sections 8(a) and 71(a) of the Trademark Act, 15 U.S.C. 1058(a), 1141k(a), require an affidavit or declaration of use or excusable nonuse during the sixth year after the date of registration, at the end of each successive ten-year period following the date of registration, or within a six-month grace period after each required period. Section 9 of the Trademark Act, 15 U.S.C. 1059, provides that registrations resulting from applications based on section 1 or section 44 of the Trademark Act may be renewed for successive periods of ten years following the date of registration and that the application for renewal be filed within one year before the expiration of the ten-year period or within the six-month grace period after the expiration of the ten-year period. If the § 8 or § 71 affidavit is not filed within the statutory filing period (which includes the grace

period), the registration shall be cancelled. If the § 9 renewal application is not filed within the statutory filing period (which includes the grace period), the registration expires. The duration of a registration and the time frames for filing the maintenance and renewal documents are statutory requirements, which the USPTO has no authority to waive, and filing after the expiration of the grace period is not a deficiency that can be cured. Therefore, the filing of a petition in response to a notice of cancellation/expiration would provide no remedy in such situations. The petition would be dismissed since the Director is without authority to provide any relief.

The USPTO also notes that it sends a courtesy email reminder of maintenance filing deadlines to trademark owners who authorize email communication and maintain a current email address with the USPTO.

Comment: Two commenters expressed support for the proposed rules, but were concerned that the proposed changes appear to require registrants to check the USPTO's electronic records every six months and do not make it clear that this requirement is linked to the pendency of a filed affidavit of use or excusable nonuse under § 8 or § 71 of the Trademark Act or a renewal application under § 9 of the Trademark Act. One of the commenters recommended a revision to the proposed revised rules and the comments to clarify that the requirement to check the status of a registration (as compared to an application) every six months is only applicable during the time that the registrant is waiting for the USPTO to take action on a filed affidavit of use or excusable nonuse under § 8 or § 71 or a renewal application under § 9.

Response: The USPTO appreciates the commenters' support of the rule changes and concurs that the requirement to check the status of a registration every six months is only applicable during the time that the registrant is waiting for the USPTO to take action on a filed affidavit of use or excusable nonuse under § 8 or § 71 or a renewal application under § 9. To that end, §§ 2.64(b)(1)(ii) and 2.146(d)(2)(ii) have been revised to indicate that the deadlines recited therein apply where the registrant has timely filed an affidavit of use or excusable non-use under § 8 or § 71 or a renewal application under § 9.

Costs and Benefits: This rulemaking is not considered to be economically significant under Executive Order 12866 (Sept. 30, 1993).

Discussion of Regulatory Changes

The USPTO adds § 2.64 and amends §§ 2.66 and 2.146 to clarify the requirements for submitting petitions to revive an abandoned application and petitions to the Director regarding other matters, as described in the section-by-section analysis below.

The USPTO adds § 2.64 to codify the requirements for requests to reinstate an application that was abandoned or a registration that was cancelled or expired, due to Office error. After internal review, the provisions in §§ 2.64(a)(2)(iv) and (b)(2)(iv) of the proposed rule regarding the correspondence address were further revised for enhanced clarity. In response to comments from stakeholders, § 2.64(b)(1)(ii) was revised to clarify that the deadlines apply where the registrant has timely filed an affidavit of use or excusable non-use under section 8 or 71 of the Act or a renewal application under section 9 of the Act.

The USPTO amends the title of § 2.66 to “Revival of applications abandoned in full or in part due to unintentional delay.”

The USPTO amends § 2.66(a) by adding the title “Deadline” and the wording “in full or in part” and “by not later than,” amends § 2.66(a)(1) by indicating that the deadline is not later than two months after the issue date of the notice of abandonment in full or in part, and amends § 2.66(a)(2) by revising the deadline if the applicant did not receive the notice of abandonment.

The USPTO amends § 2.66(b) by adding the title “Petition to Revive Application Abandoned in Full or in Part for Failure to Respond to an Office Action” and rewords the paragraph for clarity and to add “in full or in part”; revises § 2.66(b)(3) to clarify that (1) if a response to the outstanding Office action is submitted, it must be properly signed, (2) non-receipt of the same Office action or notification can be asserted only once, and (3) if the abandonment is after a final Office action, the response is treated as a request for reconsideration; and adds § 2.66(b)(3)(i)-(ii) to set out the requirements for requesting revival when the abandonment occurs after a final Office action. After internal review, the provision in § 2.66(b)(3) contained in the proposed rule limiting an assertion of non-receipt of an Office action was further revised for enhanced clarity.

The USPTO amends § 2.66(c) by adding the title “Petition to Revive Application Abandoned for Failure to Respond to a Notice of Allowance”; adds § 2.66(c)(2)(i)-(iv) to incorporate

and further clarify requirements in current §§ 2.66(c)(4) and (5), to indicate that non-receipt of a notice of allowance can be asserted only once, and to set out requirements for a multiple-basis application; deletes current § 2.66(c)(3)-(4); and redesignates current § 2.66(c)(5) as § 2.66(c)(3) and deletes the wording prior to “the applicant must file.” After internal review, the provision in § 2.66(c)(2)(iii) contained in the proposed rule limiting an assertion of non-receipt of the notice of allowance was revised for enhanced clarity.

The USPTO amends § 2.66(d) by adding the title “Statement of Use or Petition to Substitute a Basis May Not Be Filed More Than 36 Months After Issuance of the Notice of Allowance” and rewords the paragraph for clarity.

The USPTO deletes current § 2.66(e).

The USPTO redesignates current § 2.66(f) as § 2.66(e), adds the title “Request for Reconsideration,” rewords the paragraph for clarity, and revises paragraphs (1) and (2) to clarify the requirements for requesting reconsideration of a petition to revive that has been denied.

The USPTO amends § 2.146(b) by deleting the wording “considered to be.”

The USPTO amends § 2.146(d) by deleting the current paragraph and adding a sentence introducing new § 2.146(d)(1)-(2)(iii), which sets out the deadlines for filing a petition. In response to comments from stakeholders, § 2.146(d)(2)(ii) was revised to clarify that the deadlines apply where the registrant has timely filed an affidavit of use or excusable non-use under section 8 or 71 of the Act or a renewal application under section 9 of the Act.

The USPTO amends § 2.146(e)(1) by changing the wording “within fifteen days from the date of issuance” and “within fifteen days from the date of service” to “by not later than fifteen days after the issue date” and “by not later than fifteen days after the date of service.” The USPTO amends § 2.146(e)(2) by changing the wording “within thirty days after the date of issuance” and “within fifteen days from the date of service” to “by not later than thirty days after the issue date” and “by not later than fifteen days after the date of service.”

The USPTO deletes current § 2.146(i).

The USPTO redesignates current § 2.146(j) as new § 2.146(i), deletes the wording “the petitioner,” and revises paragraphs (1) and (2) to clarify the requirements for requesting reconsideration of a petition to revive that has been denied.

Rulemaking Considerations

Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1204 (2015) (Interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers.” (citation and internal quotation marks omitted)); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez*, 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency “issue[s] an initial interpretive rule” nor “when it amends or repeals that interpretive rule.”); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” (quoting 5 U.S.C. 553(b)(A))). However, the Office chose to seek public comment before implementing the rule to benefit from the public’s input.

Similarly, the 30-day delay in effectiveness is not applicable because this rule is not a substantive rule as the changes herein have no impact on the standard for reviewing trademark applications. 5 U.S.C. 553(d). As discussed above, this rulemaking involves rules of agency practice and procedure, consisting of changes to the deadlines and requirements for requesting revival, reinstatement, or other action by the Director. These changes are procedural in nature and will have no substantive impact on the evaluation of a trademark application. Therefore, the requirement for a 30-day delay in effectiveness is not applicable.

Regulatory Flexibility Act: The Deputy General Counsel for General Law of the USPTO has certified to the Chief Counsel for Advocacy of the Small

Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. *See* Regulatory Flexibility Act, 5 U.S.C. 605(b).

This rule amends the regulations to provide detailed deadlines and requirements for petitions to revive an abandoned application and petitions to the Director regarding other matters and to codify USPTO practice regarding requests for reinstatement of abandoned applications and cancelled or expired registrations. The rule will apply to all persons seeking a revival or reinstatement of an abandoned trademark application or registration or other equitable action by the Director. Applicants for a trademark are not industry specific and may consist of individuals, small businesses, non-profit organizations, and large corporations. The USPTO does not collect or maintain statistics on small-versus large-entity applicants, and this information would be required in order to determine the number of small entities that would be affected by the rule.

The burdens to all entities, including small entities, imposed by these rule changes will be minor procedural requirements on parties submitting petitions to revive an abandoned application and petitions to the Director regarding other matters and those submitting requests for reinstatement of abandoned applications and cancelled or expired registrations. The changes do not impose any additional economic burden in connection with the changes as they merely clarify existing requirements or codify existing procedures.

Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule changes; (2) tailored the rules to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed

rulemaking, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): Because this rulemaking has been determined to be not significant for purposes of Executive Order 12866, the requirements of Executive Order 13771 (Jan. 30, 2017) do not apply. *See Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs,"* at page 3 (OMB mem.) (April 5, 2017).

Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995: The changes in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded

Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

Paperwork Reduction Act: This rulemaking involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this rule has been reviewed and previously approved by OMB under control numbers 0651-0051, 0651-0054, and 0651-0061.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons stated in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office amends part 2 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2, Section 10 of Public Law 112-29, unless otherwise noted.

■ 2. Add § 2.64 to read as follows:

§ 2.64 Reinstatement of applications and registrations abandoned, cancelled, or expired due to Office error.

(a) *Request for Reinstatement of an Abandoned Application.* The applicant may file a written request to reinstate an application abandoned due to Office error. There is no fee for a request for reinstatement.

(1) *Deadline.* The applicant must file the request by not later than:

(i) Two months after the issue date of the notice of abandonment; or

(ii) Two months after the date of actual knowledge of the abandonment and not later than six months after the date the trademark electronic records system indicates that the application is abandoned, where the applicant declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the notice of abandonment.

(2) *Requirements.* A request to reinstate an application abandoned due to Office error must include:

(i) Proof that a response to an Office action, a statement of use, or a request

for extension of time to file a statement of use was timely filed and a copy of the relevant document;

(ii) Proof of actual receipt by the Office of a response to an Office action, a statement of use, or a request for extension of time to file a statement of use and a copy of the relevant document;

(iii) Proof that the Office processed a fee in connection with the filing at issue and a copy of the relevant document;

(iv) Proof that the Office sent the Office action or notice of allowance to an address that is not the designated correspondence address; or

(v) Other evidence, or factual information supported by a declaration under § 2.20 or 28 U.S.C. 1746, demonstrating Office error in abandoning the application.

(b) *Request for Reinstatement of Cancelled or Expired Registration.* The registrant may file a written request to reinstate a registration cancelled or expired due to Office error. There is no fee for the request for reinstatement.

(1) *Deadline.* The registrant must file the request by not later than:

(i) Two months after the issue date of the notice of cancellation/expiry; or

(ii) Where the registrant has timely filed an affidavit of use or excusable non-use under section 8 or 71 of the Act, or a renewal application under section 9 of the Act, two months after the date of actual knowledge of the cancellation/expiry and not later than six months after the date the trademark electronic records system indicates that the registration is cancelled/expired, where the registrant declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the notice of cancellation/expiry or where the Office did not issue a notice.

(2) *Requirements.* A request to reinstate a registration cancelled/expired due to Office error must include:

(i) Proof that an affidavit or declaration of use or excusable nonuse, a renewal application, or a response to an Office action was timely filed and a copy of the relevant document;

(ii) Proof of actual receipt by the Office of an affidavit or declaration of use or excusable nonuse, a renewal application, or a response to an Office action and a copy of the relevant document;

(iii) Proof that the Office processed a fee in connection with the filing at issue and a copy of the relevant document;

(iv) Proof that the Office sent the Office action to an address that is not the designated correspondence address; or

(v) Other evidence, or factual information supported by a declaration under § 2.20 or 28 U.S.C. 1746, demonstrating Office error in cancelling/expiring the registration.

(c) *Request for Reinstatement May be Construed as Petition.* If an applicant or registrant is not entitled to reinstatement, a request for reinstatement may be construed as a petition to the Director under § 2.146 or a petition to revive under § 2.66, if appropriate. If the applicant or registrant is unable to meet the timeliness requirement under paragraphs (a)(1) or (b)(1) of this section for filing the request, the applicant or registrant may submit a petition to the Director under § 2.146(a)(5) to request a waiver of the rule.

■ 3. Revise § 2.66 to read as follows:

§ 2.66 Revival of applications abandoned in full or in part due to unintentional delay.

(a) *Deadline.* The applicant may file a petition to revive an application abandoned in full or in part 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 by not later than:

(1) Two months after the issue date of the notice of abandonment in full or in part; or

(2) Two months after the date of actual knowledge of the abandonment and not later than six months after the date the trademark electronic records system indicates that the application is abandoned in full or in part, where the applicant declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the notice of abandonment.

(b) *Petition To Revive Application Abandoned in Full or in Part for Failure To Respond to an Office Action.* A petition to revive an application abandoned in full or in part because the applicant did not timely respond to an Office action must include:

(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) A response to the Office action, signed pursuant to § 2.193(e)(2), or a statement that the applicant did not receive the Office action or the notification that an Office action issued. If the applicant asserts that the unintentional delay is based on non-receipt of an Office action or notification, the applicant may not assert non-receipt of the same Office action or notification in a subsequent petition. When the abandonment is after

a final Office action, the response is treated as a request for reconsideration under § 2.63(b)(3) and the applicant must also file:

(i) A notice of appeal to the Trademark Trial and Appeal Board under § 2.141 or a petition to the Director under § 2.146, if permitted by § 2.63(b)(2)(iii); or

(ii) A statement that no appeal or petition is being filed from the final refusal(s) or requirement(s).

(c) *Petition To Revive Application Abandoned for Failure To Respond to a Notice of Allowance.* A petition to revive an application abandoned because the applicant did not timely respond to a notice of allowance must include:

(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; and one of the following:

(i) A statement of use under § 2.88, signed pursuant to § 2.193(e)(1), and 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;

(ii) A request for an extension of time to file a statement of use under § 2.89, signed pursuant to § 2.193(e)(1), and 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;

(iii) A statement that the applicant did not receive the notice of allowance and a request to cancel said notice and issue a new notice. If the applicant asserts that the unintentional delay in responding is based on non-receipt of the notice of allowance, the applicant may not assert non-receipt of the notice of allowance in a subsequent petition; or

(iv) In a multiple-basis application, an amendment, signed pursuant to § 2.193(e)(2), deleting the section 1(b) basis and seeking registration based on section 1(a) and/or section 44(e) of the Act.

(3) 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) *Statement of Use or Petition To Substitute a Basis May Not Be Filed More Than 36 Months After Issuance of the Notice of Allowance.* In an application under section 1(b) of the Act, the Director will not grant a

petition under this section if doing so would permit an applicant to file a statement of use, or a petition under § 2.35(b) to substitute a basis, more than 36 months after the issue date of the notice of allowance under section 13(b)(2) of the Act.

(e) *Request for Reconsideration.* If the Director denies a petition to revive under this section, the applicant may request reconsideration, if:

(1) The applicant files the request by not later than:

(i) Two months after the issue date of the decision denying the petition; or

(ii) Two months after the date of actual knowledge of the decision denying the petition and not later than six months after the issue date of the decision where the applicant declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the decision; and

(2) The applicant pays a second petition fee under § 2.6.

■ 4. Revise § 2.146 to read as follows:

§ 2.146 Petitions to the Director.

(a) Petition may be taken to the Director:

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

(3) To invoke the supervisory authority of the Director 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; or

(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 appropriate subject matter for petitions to the Director.

(c) Every petition to the Director shall include a statement of the facts relevant to the petition, the points to be reviewed, the action or relief requested, and the fee required by § 2.6. Any brief in support of the petition shall be embodied in or accompany the petition. The petition must be signed by the petitioner, someone with legal authority to bind the petitioner (*e.g.*, a corporate

officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the requirements of § 2.193(e)(5). When facts are to be proved on petition, the petitioner must submit proof in the form of verified statements signed by someone with firsthand knowledge of the facts to be proved, and any exhibits.

(d) Unless a different deadline is specified elsewhere in this chapter, a petition under this section must be filed by not later than:

(1) Two months after the issue date of the action, or date of receipt of the filing, from which relief is requested; or

(2) Where the applicant or registrant declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the action, or where no action was issued, the petition must be filed by not later than:

(i) Two months of actual knowledge of the abandonment of an application and not later than six months after the date the trademark electronic records system indicates that the application is abandoned in full or in part;

(ii) Where the registrant has timely filed an affidavit of use or excusable non-use under Section 8 or 71 of the Act, or a renewal application under Section 9 of the Act, two months after the date of actual knowledge of the cancellation/expiration of a registration and not later than six months after the date the trademark electronic records system indicates that the registration is cancelled/expired; or

(iii) Two months after the date of actual knowledge of the denial of certification of an international application under § 7.13(b) and not later than six months after the trademark electronic records system indicates that certification is denied.

(e)(1) A petition from the grant or denial of a request for an extension of time to file a notice of opposition must be filed by not later than fifteen days after the issue date of the grant or denial of the request. A petition from the grant of a request must 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 must be served on the attorney or other authorized representative of the applicant, if any, or on the applicant. Proof of service of the petition must be made as provided by § 2.119. The potential opposer or the applicant, as the case may be, may file a response by not later than fifteen days after the date of service of the petition and must serve a copy of the response on the petitioner, with proof of service as provided by

§ 2.119. No further document relating to the petition may be filed.

(2) A petition from an interlocutory order of the Trademark Trial and Appeal Board must be filed by not later than thirty days after the issue date of the order from which relief is requested. Any brief in response to the petition must be filed, with any supporting exhibits, by not later than fifteen days after the date of service of the petition. Petitions and responses to petitions, and any documents accompanying a petition or response under this subsection, must be served on every adverse party pursuant to § 2.119.

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

(g) The mere filing of a petition to the Director 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(a) and (b) and 2.65(a) are applicable to an ex parte application.

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

(i) If the Director denies a petition, the petitioner may request reconsideration, if:

(1) The petitioner files the request by not later than:

(i) Two months after the issue date of the decision denying the petition; or

(ii) Two months after the date of actual knowledge of the decision denying the petition and not later than six months after the issue date of the decision where the petitioner declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the decision; and

(2) The petitioner pays a second petition fee under § 2.6.

Dated: June 22, 2017.

Joseph D. Matal,

Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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