

§2.146

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showing that the failure to act was the result of excusable neglect.

(2) The request must be filed as provided in §104.2 of this chapter and addressed to the attention of the Office of the Solicitor. A copy of the request should also be filed with the Trademark Trial and Appeal Board via ESTTA.

[81 FR 69986, Oct. 7, 2016, as amended at 81 FR 89383, Dec. 12, 2016]

PETITIONS AND ACTION BY THE DIRECTOR

§2.146 Petitions to the Director.

(a) Petition may be taken to the Director in a trademark case:

(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, Title 35 of the United States Code, or parts 2, 3, 6, and 7 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 parts 2, 3, 6, and 7 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 quali-

fied 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.

[82 FR 29409, June 29, 2017, as amended at 84 FR 37095, July 31, 2019]

§ 2.147 Petition to the Director to accept a paper submission.

(a) *Paper submission when TEAS is unavailable on the date of a filing deadline.*

(1) An applicant or registrant may file a petition to the Director under this section requesting acceptance of a submission filed on paper if:

(i) TEAS is unavailable on the date of the deadline for the submission specified in a regulation in part 2 or 7 of this chapter or in a section of the Act; and

(ii) The petition is timely filed, pursuant to § 2.197 or § 2.198, on the date of the deadline.

(2) The petition must include:

(i) The paper submission;

(ii) Proof that TEAS was unavailable on the date of the deadline;

(iii) A statement of the facts relevant to the petition, supported by a declaration under § 2.20 or 28 U.S.C. 1746 that is 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;

(iv) The fee for a petition filed on paper under § 2.6(a)(15)(i); and

(v) Any other required fee(s) under § 2.6 for the paper submission.

(b) *Certain paper submissions timely filed before the date of a filing deadline.*

(1) An applicant, registrant, or petitioner for cancellation may file a petition to the Director under this section, requesting acceptance of any of the following submissions that was timely submitted on paper and otherwise met the minimum filing requirements, but not processed or examined by the Office because it was not submitted electronically pursuant to § 2.21(a), § 2.23(a), or § 2.111(c)(1), and the applicant, registrant, or petitioner for cancellation is unable to timely resubmit the document electronically by the deadline:

(i) An application seeking a priority filing date with a deadline under section 44(d)(1) of the Act;

(ii) A statement of use filed within the last six months of the period specified in section 1(d)(2) of the Act;

(iii) An affidavit or declaration of continued use or excusable nonuse with a deadline under section 8(a)(3) or section 71(a)(3) of the Act;