

§ 2.65

Director under § 2.146(a)(5) to request a waiver of the rule.

[82 FR 29407, June 29, 2017]

§ 2.65 Abandonment.

(a) An application will be abandoned if an applicant fails to respond to an Office action, or to respond completely, within six months from the date of issuance. A timely petition to the Director pursuant to §§ 2.63(a) and (b) and 2.146 or notice of appeal to the Trademark Trial and Appeal Board pursuant to § 2.142, if appropriate, is a response that avoids abandonment (*see* § 2.63(b)(4)).

(1) If all refusals and/or requirements are expressly limited to certain goods and/or services, the application will be abandoned only as to those goods and/or services.

(2) When a timely response by the applicant is a bona fide attempt to advance the examination of the application and is a substantially complete response to the examining attorney's action, but consideration of some matter or compliance with a requirement has been omitted, the examining attorney may grant the applicant thirty days, or to the end of the response period set forth in the action to which the substantially complete response was submitted, whichever is longer, to explain and supply the omission before the examining attorney considers the question of abandonment.

(b) An application will be abandoned if an applicant expressly abandons the application pursuant to § 2.68.

(c) An application will be abandoned if an applicant in an application under section 1(b) of the Act fails to timely file either a statement of use under § 2.88 or a request for an extension of time for filing a statement of use under § 2.89.

[80 FR 2311, Jan. 16, 2015]

§ 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 appli-

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cant 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;