

## § 2.65

the amendments comply with the rules of practice in trademark cases and the Act.

(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 an amendment to allege use does not extend the deadline for filing a response to an outstanding Office action, appeal to the Trademark Trial and Appeal Board, or petition to 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 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; 73 FR 67769, Nov. 17, 2008; 74 FR 54908, Oct. 26, 2009]

## § 2.65 Abandonment.

(a) If an applicant fails to respond, or to respond completely, within six months after the date an action is issued, 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 or notice of appeal to the Trademark Trial and Appeal Board pursuant to § 2.142, 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

## 37 CFR Ch. I (7–1–10 Edition)

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; 73 FR 67769, Nov. 17, 2008]

## § 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 date of issuance 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 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