

§ 7.38

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sign on behalf of the holder, attesting to the use in commerce or excusable nonuse of the mark within the period set forth in section 71 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 7.36(b). A person who is properly authorized to sign on behalf of the holder is:

(1) A person with legal authority to bind the holder; or

(2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the holder; or

(3) An attorney as defined in § 11.1 of this chapter who has an actual written or verbal power of attorney or an implied power of attorney from the holder.

(c) Include the U.S. registration number;

(d)(1) Include the fee required by § 7.6 for each class of goods or services that the affidavit or declaration covers;

(2) If the affidavit or declaration is filed during the grace period under section 71(a)(3) of the Act, include the grace period surcharge per class required by § 7.6;

(3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. If the required fee(s) are not submitted within the time period set out in the Office action and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under § 7.37(f)(2);

(2) Specify the goods or services being deleted from the registration, if the affidavit or declaration covers less than all the goods or services or less than all the classes in the registration;

(f)(1) State that the registered mark is in use in commerce on or in connec-

tion with the goods or services in the registration; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark; and

(g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under § 7.37(f)(2). The specimen must meet the requirements of § 2.56 of this chapter.

[68 FR 55769, Sept. 26, 2003, as amended at 73 FR 47686, Aug. 14, 2008; 75 FR 35977, June 24, 2010]

§ 7.38 Notice to holder of extension of protection.

The registration certificate for an extension of protection to the United States includes a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 71 of the Act. However, the affidavit or declaration must be filed within the time period required by section 71 of the Act regardless of whether this notice is received.

§ 7.39 Acknowledgment of receipt of and correcting deficiencies in affidavit or declaration of use in commerce or excusable nonuse.

The Office will issue a notice as to whether an affidavit or declaration is acceptable, or the reasons for refusal.

(a) A response to the refusal must be filed within six months of the date of issuance of the Office action, or before the end of the filing period set forth in section 71(a) of the Act, whichever is later. The response must be signed by the holder, someone with legal authority to bind the holder (*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)(2).

(b) If no response is filed within this time period, the extension of protection will be cancelled, unless time remains in the grace period under section 71(a)(3) of the Act. If time remains in the grace period, the holder may file a complete, new affidavit.

(c) If the affidavit or declaration is filed within the time periods set forth in section 71 of the Act, deficiencies may be corrected, as follows:

(1) *Correcting deficiencies in affidavits or declarations timely filed within the periods set forth in sections 71(a)(1) and 71(a)(2) of the Act.* If the affidavit or declaration is timely filed within the relevant filing period set forth in section 71(a)(1) or section 71(a)(2) of the Act, deficiencies may be corrected before the end of this filing period without paying a deficiency surcharge. Deficiencies may be corrected after the end of this filing period with payment of the deficiency surcharge required by section 71(c) of the Act and § 7.6.

(2) *Correcting deficiencies in affidavits or declarations filed during the grace period.* If the affidavit or declaration is filed during the six-month grace period provided by section 71(a)(3) of the Act, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the grace period with payment of the deficiency surcharge required by section 71(c) of the Act and § 7.6.

(d) If the affidavit or declaration is not filed within the time periods set forth in section 71 of the Act, the registration will be cancelled.

[75 FR 35977, June 24, 2010]

§ 7.40 Petition to Director to review refusal.

(a) A response to the examiner's initial refusal to accept an affidavit or declaration is required before filing a petition to the Director, unless the examiner directs otherwise. *See* § 7.39(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the affidavit or declaration, the holder may file a petition to the Director to review the examiner's action. The petition must be filed within six months of the date of issuance of the action maintaining the refusal, or the Office will cancel the registration.

(c) A decision by the Director is necessary before filing an appeal or commencing a civil action in any court.

[68 FR 55769, Sept. 26, 2003, as amended at 73 FR 67776, Nov. 17, 2008]

Subpart G—Renewal of International Registration and Extension of Protection

§ 7.41 Renewal of international registration and extension of protection.

(a) Any request to renew an international registration and its extension of protection to the United States must be made at the International Bureau in accordance with Article 7 of the Madrid Protocol.

(b) A request to renew an international registration or extension of protection to the United States submitted through the Office will not be processed.