(ii) The period extending beyond twenty years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed.

(2) Any terminal disclaimer pursuant to paragraph (d)(1) of this section must also apply to any patent granted on a continuing utility or plant application filed before June 8, 1995, or a continuing design application, that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought.

(3) The provisions of paragraph (d)(1) of this section do not apply to applications for which revival is sought solely for purposes of copendency with a utility or plant application filed on or after June 8, 1995, to lapsed patents, to reissue applications, or to reexamination proceedings.

(e) Request for reconsideration. Any request for reconsideration or review of a decision refusing to revive an abandoned application, a terminated or limited reexamination prosecution, or lapsed patent upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under:

(1) The provisions of §1.136 for an abandoned application or lapsed patent;

(2) The provisions of §1.550(c) for a terminated ex parte reexamination prosecution, where the ex parte reexamination was filed under §1.510; or

(3) The provisions of §1.956 for a terminated inter partes reexamination prosecution or an inter partes reexamination limited as to further prosecution, where the inter partes reexamination was filed under §1.913.

(f) Abandonment for failure to notify the Office of a foreign filing: A nonprovisional application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(i)(III) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing, may be revived only pursuant to paragraph (b) of this section. The reply requirement of paragraph (c) of this section is met by the notification of such filing in a foreign country or under a multinational treaty, but the filing of a petition under this section will not operate to stay any period for reply that may be running against the application.

(g) Provisional applications. A provisional application, abandoned for failure to timely respond to an Office requirement, may be revived pursuant to this section. Subject to the provisions of 35 U.S.C. 119(e)(3) and §1.17(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

§1.138 Express abandonment.

(a) An application may be expressly abandoned by filing a written declaration of abandonment identifying the application in the United States Patent and Trademark Office. Express abandonment of the application may not be recognized by the Office before the date of issue or publication unless it is actually received by appropriate officials in time to act.

(b) A written declaration of abandonment must be signed by a party authorized under §1.33(b)(1), (b)(3), or (b)(4) to sign a paper in the application, except as otherwise provided in this paragraph. A registered attorney or agent, not of record, who acts in a representative capacity under the provisions of §1.34(a) when filing a continuing application, may expressly abandon the prior application as of the filing date granted to the continuing application.

(c) An applicant seeking to abandon an application to avoid publication of the application (see §1.211(a)(1)) must submit a declaration of express abandonment by way of a petition under this paragraph including the fee set forth in §1.17(h) in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the publication
process. Applicants should expect that
the petition will not be granted and the
application will be published in regular
course unless such declaration of ex-
press abandonment and petition are re-
ceived by the appropriate officials
more than four weeks prior to the pro-
jected date of publication.
(d) An applicant seeking to abandon
an application filed under 35 U.S.C.
111(a) and §1.53(b) on or after December
8, 2004, to obtain a refund of the search
fee and excess claims fee paid in the
application, must submit a declaration
of express abandonment by way of a pe-
tition under this paragraph before an
examination has been made of the
application.
§ 1.139 [Reserved]
JOINDER OF INVENTIONS IN ONE
APPLICATION; RESTRICTION

(65 FR 54674, Sept. 8, 2000, as amended at 65
FR 57058, Sept. 20, 2000; 71 FR 12284, Mar. 10,
2006)

§ 1.142 Requirement for restriction.

(a) If two or more independent and
distinct inventions are claimed in a
single application, the examiner in an
Office action will require the applicant
in the reply to that action to elect an
invention to which the claims will be
restricted, this official action being
called a requirement for division.
Such requirement will normally
be made before any action on the mer-
its; however, it may be made at any
time before final action.

(b) Claims to the invention or inven-
tions not elected, if not canceled, are
nevertheless withdrawn from further
consideration by the examiner by the
election, subject however to reinstate-
ment in the event the requirement for
restriction is withdrawn or overruled.

§ 1.143 Reconsideration of require-
ment.

If the applicant disagrees with the re-
quirement for restriction, he may re-
quest reconsideration and withdrawal
of modification of the requirement,