

electing and paying the fee set forth in § 1.17(s) will be deferred and any decision on the petition affirming or modifying the requirement will set a new time period to elect the invention or inventions to be searched and examined and to pay the fee set forth in § 1.17(s) for each independent and distinct invention claimed in the application in excess of one which applicant elects.

(3) The additional inventions for which the required fee has not been paid will be withdrawn from consideration under § 1.142(b). An applicant who desires examination of an invention so withdrawn from consideration can file a divisional application under 35 U.S.C. 121.

(c) The provisions of this section shall not be applicable to any application filed after June 8, 1995.

27. Section 1.137 is amended by revising paragraph (c) to read as follows:

§ 1.137 Revival of abandoned application.
* * * * *

(c) In all applications filed before June 8, 1995, and in all design applications filed on or after June 8, 1995, any petition pursuant to paragraph (a) of this section not filed within six months of the date of abandonment of the application, must be accompanied by a terminal disclaimer with fee under § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. The terminal disclaimer must also apply to any patent granted on any continuing application entitled under 35 U.S.C. 120 to the benefit of the filing date of the application for which revival is sought.
* * * * *

28. Section 1.139 is added to read as follows:

§ 1.139 Revival of provisional application.

(a) A provisional application which has been accorded a filing date and abandoned for failure to timely respond to an Office requirement may be revived so as to be pending for a period of no longer than twelve months from its filing date if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. Under no circumstances will the provisional application be pending after twelve months from its filing date. A petition to revive an abandoned provisional application must be promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment, and must be accompanied by:

(1) The required response unless it has been previously filed;

(2) The petition fee as set forth in § 1.17(l); and

(3) A showing that the delay was unavoidable. The showing must be a verified showing if made by a person not registered to practice before the Patent and Trademark Office.

(b) A provisional application which has been accorded a filing date and abandoned for failure to timely respond to an Office requirement may be revived so as to be pending for a period of no longer than twelve months from its filing date if the delay was unintentional. Under no circumstances will the provisional application be pending after twelve months from its filing date. A petition to revive an abandoned provisional application must be:

(1) Accompanied by the required response unless it has been previously filed;

(2) Accompanied by the petition fee as set forth in § 1.17(m);

(3) Accompanied by a statement that the delay was unintentional. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) Filed either:

(i) Within one year of the date on which the provisional application became abandoned; or

(ii) Within three months of the date of the first decision on a petition to revive under paragraph (a) of this section which was filed within one year of the date on which the provisional application became abandoned.

(c) Any request for reconsideration or review of a decision refusing to revive a provisional application upon petition filed pursuant to paragraphs (a) or (b) of 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.

(d) The time periods set forth in this section cannot be extended, except that the three-month period set forth in paragraph (b)(4)(ii) of this section and the time period set forth in paragraph (c) of this section may be extended under the provisions of § 1.136.

29. Section 1.177 is revised to read as follows:

§ 1.177 Reissue in divisions.

The Commissioner may, in his or her discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for each division. Each

division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts, subject to the provisions of §§ 1.83 and 1.84. On filing divisional reissue applications, they shall be referred to the Commissioner. Unless otherwise ordered by the Commissioner upon petition and payment of the fee set forth in § 1.17(i), all the divisions of a reissue will issue simultaneously; if there is any controversy as to one division, the others will be withheld from issue until the controversy is ended, unless the Commissioner orders otherwise.

30. Section 1.312 is amended by revising paragraph (b) to read as follows:

§ 1.312 Amendments after allowance.

* * * * *

(b) Any amendment pursuant to paragraph (a) of this section filed after the date the issue fee is paid must be accompanied by a petition including the fee set forth in § 1.17(i) and a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

31. Section 1.313 is amended by revising paragraph (a) to read as follows:

§ 1.313 Withdrawal from issue.

(a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. Any such petition by the applicant must include a showing of good and sufficient reasons why withdrawal of the application is necessary and, if the reason for the withdrawal is not the fault of the Office, must be accompanied by the fee set forth in § 1.17(i). If the application is withdrawn from issue, a new notice of allowance will be sent if the application is again allowed. Any amendment accompanying a petition to withdraw an application from issue must comply with the requirements of § 1.312.
* * * * *

32. Section 1.314 is revised to read as follows:

§ 1.314 Issuance of patent.

If payment of the issue fee is timely made, the patent will issue in regular course unless the application is withdrawn from issue (§ 1.313), or issuance of the patent is deferred. Any petition by the applicant requesting a deferral of the issuance of a patent must be accompanied by the fee set forth in § 1.17(i) and must include a showing of good and sufficient reasons why it is necessary to defer issuance of the patent.