

(A) Addressed as set out in § 2.190 and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Office in accordance with § 2.195(c); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

(2) The procedure described in paragraph (a)(1) of this section does not apply to the filing of a trademark application.

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Office, and an application is abandoned, a registration is cancelled or expired, or a proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence within two months after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine whether the correspondence was timely filed.

§ 2.198 Filing of correspondence by "Express Mail."

(a)(1) Except for documents listed in paragraphs (a)(1)(i) and (ii) of this section, any correspondence received by the Office that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the Office on the date of deposit with the USPS. The Express Mail procedure does not apply to:

(i) Applications for registration of marks;

(ii) Amendments to allege use under section 1(c) of the Act;

(iii) Statements of use under section 1(d) of the Act;

(iv) Requests for extension of time to file a statement of use under section 1(d) of the Act;

(v) Affidavits of continued use under section 8 of the Act;

(vi) Renewal requests under section 9 of the Act; and

(vii) Requests to change or correct addresses.

(2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the date of receipt in the Office as the filing date.

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing; and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express

Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) prior to the original mailing; and

(3) The petition includes a showing that establishes, to the satisfaction of the Director, that the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup on the requested filing date. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or evidence that came into being within one business day after the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

(e) If correspondence is properly addressed to the Office pursuant to § 2.190 and deposited with sufficient postage in the "Express Mail Post Office to Addressee" service of the USPS, but not received by the Office, the party who mailed the correspondence may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed within two months after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) prior to the original mailing;

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup on the requested filing date; and