

civil action; § 1.645 for extensions of time in interference proceedings; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; and § 1.956 for extensions of time in *inter partes* reexamination proceedings. Any request under this section must be accompanied by the petition fee set forth in § 1.17(g).

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33. Section 1.137 is amended by revising its heading, the introductory text of paragraph (a), the introductory text of paragraph (b), paragraphs (d)(3) and (e) to read as follows:

**§ 1.137 Revival of abandoned application, concluded reexamination prosecution, or lapsed patent.**

(a) *Unavoidable*. If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution concluded under § 1.550(d) or § 1.957(b) or limited as to further prosecution under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

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(b) *Unintentional*. If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution concluded under § 1.550(d) or § 1.957(b) or limited as to further prosecution under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

\* \* \* \* \*

(d) \* \* \*

(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 concluded 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 concluded *ex parte* reexamination prosecution filed under § 1.510; or

(3) The provisions of § 1.956 for a concluded *inter partes* reexamination

prosecution or an *inter partes* reexamination limited as to further prosecution filed under § 1.913.

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34. Section 1.165 is amended by revising paragraph (b) to read as follows:

**§ 1.165 Plant drawings.**

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(b) The drawings may be in color. The drawing must be in color if color is a distinguishing characteristic of the new variety. Two copies of color drawings or photographs must be submitted.

35. Section 1.173 is amended by revising paragraph (b) introductory text to read as follows:

**§ 1.173 Reissue specification, drawings, and amendments.**

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(b) *Making amendments in a reissue application*. An amendment in a reissue application is made either by physically incorporating the changes into the specification when the application is filed, or by a separate amendment paper. If amendment is made by incorporation, markings pursuant to paragraph (d) of this section must be used. If amendment is made by an amendment paper, the paper must direct that specified changes be made, as follows:

\* \* \* \* \*

36. Section 1.175 is amended by adding a new paragraph (e) to read as follows:

**§ 1.175 Reissue oath or declaration.**

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(e) The filing of any continuing reissue application which does not replace its parent reissue application must include an oath or declaration which, pursuant to paragraph (a)(1) of this section, identifies at least one error in the original patent which has not been corrected by the parent reissue application or an earlier reissue application. All other requirements relating to an oath or declaration must also be met.

37. Section 1.178 is amended by revising paragraph (a) to read as follows:

**§ 1.178 Original patent; continuing duty of applicant.**

(a) The application for reissue of a patent shall constitute an offer to surrender that patent, and the surrender shall take effect upon reissue of the patent. Until a reissue application is granted, the original patent shall remain in effect.

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**§ 1.179 [Removed and Reserved].**

38. Section 1.179 is removed and reserved.

39. Section 1.182 is revised to read as follows:

**§ 1.182 Questions not specifically provided for.**

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(f).

40. Section 1.183 is revised to read as follows:

**§ 1.183 Suspension of rules.**

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

41. Section 1.213 is revised to read as follows:

**§ 1.213 Nonpublication request; rescission of a nonpublication request; notice of subsequent foreign filing.**

(a) *Nonpublication request and certification*. If the invention disclosed in an application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the application will not be published under 35 U.S.C. 122(b) and § 1.211 provided that:

(1) A request (nonpublication request) is submitted with the application upon filing;

(2) The request states in a conspicuous manner that the application is not to be published under 35 U.S.C. 122(b);

(3) The request contains a certification that the invention disclosed in the application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications at eighteen months after filing; and

(4) The request is signed in compliance with § 1.33(b). The certification under 35 U.S.C. 122(b)(2)(B)(i) and paragraph (a)(3) of this section is not appropriate unless the person signing the request has made an