

incorporate the earlier opinion reflecting its decision for appeal, except for those portions specifically withdrawn on rehearing, and is final for the purpose of judicial review, except when noted otherwise in the decision on rehearing.

(b) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

§ 41.54 Action following decision.

After decision by the Board, the proceeding will be returned to the examiner, subject to appellant's right of appeal or other review, for such further action by appellant or by the examiner, as the condition of the proceeding may require, to carry into effect the decision.

§ 41.56 Termination of appeal.

An appeal under this subpart is terminated by the dismissal of the appeal or when, after a final Board action:

(a) A notice of appeal under 35 U.S.C. 141 is filed,

(b) A civil action under 35 U.S.C. 146 is commenced, or

(c) The time for seeking judicial review (§ 1.304 of this title) has expired.

Subpart C—Inter Partes Appeals to the Board

§ 41.60 Definitions.

In addition to the definitions in § 41.2, the following definitions apply to proceedings under this subpart unless otherwise clear from the context:

Proceeding means an *inter partes* reexamination proceeding. Appeal to the Board in an *ex parte* reexamination proceeding is controlled by subpart B of this part. An *inter partes* reexamination proceeding is not a contested case subject to subpart D of this part.

Owner means the owner of the patent undergoing *inter partes* reexamination under § 1.915 of this title.

Requester means each party, other than the owner, who requested that the patent undergo *inter partes* reexamination under § 1.915 of this title.

Appellant means any party, whether the owner or a requester, filing a notice of appeal or cross appeal under § 41.61. If more than one party appeals or cross appeals, each appealing or cross appealing party is an appellant with respect to the claims to which his or her appeal or cross appeal is directed.

Respondent means any requester responding under § 41.68 to the

appellant's brief of the owner, or the owner responding under § 41.68 to the appellant's brief of any requester. No requester may be a respondent to the appellant brief of any other requester.

Filing means filing with a certificate indicating service of the document under § 1.903 of this title.

§ 41.61 Notice of appeal and cross appeal to Board.

(a)(1) Upon the issuance of a Right of Appeal Notice under § 1.953 of this title, the owner may appeal to the Board with respect to the final rejection of any claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 41.20(b)(1).

(2) Upon the issuance of a Right of Appeal Notice under § 1.953 of this title, the requester may appeal to the Board with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 41.20(b)(1).

(b)(1) Within fourteen days of service of a requester's notice of appeal under paragraph (a)(2) of this section and upon payment of the fee set forth in § 41.20(b)(1), an owner who has not filed a notice of appeal may file a notice of cross appeal with respect to the final rejection of any claim of the patent.

(2) Within fourteen days of service of an owner's notice of appeal under paragraph (a)(1) of this section and upon payment of the fee set forth in § 41.20(b)(1), a requester who has not filed a notice of appeal may file a notice of cross appeal with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original, proposed amended, or new claim of the patent.

(c) The notice of appeal or cross appeal in the proceeding must identify the appealed claim(s) and must be signed by the owner, the requester, or a duly authorized attorney or agent.

(d) An appeal or cross appeal, when taken, must be taken from all the rejections of the claims in a Right of Appeal Notice which the patent owner proposes to contest or from all the determinations favorable to patentability, including any final determination not to make a proposed rejection, in a Right of Appeal Notice which a requester proposes to contest. Questions relating to matters not affecting the merits of the invention may

be required to be settled before an appeal is decided.

(e) The time periods for filing a notice of appeal or cross appeal may not be extended.

(f) If a notice of appeal or cross appeal is timely filed but does not comply with any requirement of this section, appellant will be notified of the reasons for non-compliance and given a non-extendable time period within which to file an amended notice of appeal or cross appeal. If the appellant does not then file an amended notice of appeal or cross appeal within the set time period, or files a notice which does not overcome all the reasons for non-compliance stated in the notification of the reasons for non-compliance, that appellant's appeal or cross appeal will stand dismissed.

§ 41.63 Amendments and affidavits or other evidence after appeal.

(a) Amendments submitted after the date the proceeding has been appealed pursuant to § 41.61 canceling claims may be admitted where such cancellation does not affect the scope of any other pending claim in the proceeding.

(b) All other amendments submitted after the date the proceeding has been appealed pursuant to § 41.61 will not be admitted except as permitted by § 41.77(b)(1).

(c) Affidavits or other evidence submitted after the date the proceeding has been appealed pursuant to § 41.61 will not be admitted except as permitted by reopening prosecution under § 41.77(b)(1).

§ 41.64 Jurisdiction over appeal in inter partes reexamination.

(a) Jurisdiction over the proceeding passes to the Board upon transmittal of the file, including all briefs and examiner's answers, to the Board.

(b) If, after receipt and review of the proceeding, the Board determines that the file is not complete or is not in compliance with the requirements of this subpart, the Board may relinquish jurisdiction to the examiner or take other appropriate action to permit completion of the proceeding.

(c) Prior to the entry of a decision on the appeal by the Board, the Director may sua sponte order the proceeding remanded to the examiner.

§ 41.66 Time for filing briefs.

(a) An appellant's brief must be filed no later than two months from the latest filing date of the last-filed notice of appeal or cross appeal or, if any party to the proceeding is entitled to file an appeal or cross appeal but fails to timely