prosecution will be limited to claims found patentable at the time of the failure to respond and to claims which do not enlarge the scope of the claims found patentable at that time.

§1.958 Revival of terminated proceedings.

(a) A reexamination proceeding terminated for failure to prosecute may be revived as a pending proceeding if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an unavoidably terminated reexamination proceeding must be promptly filed after the patent owner is notified of, or otherwise becomes aware of, the termination of the proceeding, and must be accompanied by:

(1) a proposed response to continue prosecution of that proceeding unless it has been previously filed;

(2) the petition fee as set forth in $\S 1.17(l)$; 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 reexamination proceeding terminated for failure of the patent owner to prosecute may be revived as a pending proceeding if the delay in prosecution was unintentional. A petition to revive an unintentionally terminated reexamination proceeding must be:

(1) accompanied by a proposed response to continue prosecution of that proceeding 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 two months of the date of the first Office notification that the proceeding has been terminated; or

(ii) within two months of the date of the first decision on a petition to revive under paragraph (a) of this section which was timely filed within the time period set forth in paragraph (b)(4)(i) of this section.

(c) Any request for reconsideration or review of a decision refusing to revive a proceeding upon petition filed pursuant to paragraph (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 time period set forth in paragraph (c) of this section may be extended under the provisions of § 1.957(a).

Appeal to the Board of Patent Appeals and Interferences

§ 1.959 Notice of appeal and cross appeal to Board of Patent Appeals and Interferences.

(a) (1) Once a "Right of Appeal Notice" has been issued, by filing a notice of appeal within the time provided in § 1.953 and paying the fee set forth in § 1.17(e), the patent owner may appeal to the Board of Patent Appeals and Interferences with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent.

(2) Once a "Right of Appeal Notice" has been issued, by filing a notice of appeal within the time provided in § 1.953 and paying the fee set forth in § 1.17(e), a third party requester involved in a reexamination proceeding may appeal to the Board of Patent Appeals and Interferences with respect to any final decision favorable to the patentability of any original or proposed amended or new claim of the patent.

(b) (1) Within fourteen days of service of a third party requester's notice of appeal, and upon payment of the fee set forth in § 1.17(e), a patent owner who has not filed a notice of appeal may file a notice of cross appeal with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent.

(2) Within fourteen days of service of a patent owner's notice of appeal, and upon payment of the fee set forth in § 1.17(e), a third party 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 of any original or proposed amended or new claim of the patent.

(c) The appeal in a reexamination proceeding must identify the claim(s) appealed, and must be signed by the patent owner or third party requester, or their duly authorized attorney or agent.

(d) An appeal when taken must be taken from the rejection of all claims under rejection in a Right of Appeal Notice which the patent owner proposes to contest, or from the determination of patentability of all claims indicated as patentable in a Right of Appeal Notice which the third party requester proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered. (e) The time periods set forth in \S § 1.959 through 1.969 are subject to the provisions of § 1.957(a) for reexamination proceedings. See § 1.304(a) for extensions of time for filing a notice of appeal of the U.S. Court of Appeals for the Federal Circuit.

§1.961 Jurisdiction over appeal.

Jurisdiction over the patent under reexamination passes to the Board of Patent Appeals and Interferences upon transmittal of the file, including all briefs and examiner's answers, to the Board. Prior to the entry of a decision on the appeal, the Commissioner may sua sponte order the patent remanded to the examiner, for action consistent with the Commissioner's order.

§1.962 Appellant and respondent defined.

For the purposes of reexamination, appellant is any party filing a notice of appeal. A respondent is any opposing party responding to the appeal of the appellant. If more than one party appeals, each is an appellant with respect to the claims to which his or her appeal is directed and, to the extent each responds, each is a respondent with respect to the claims to which his or her opponent's appeal is directed.

§1.963 Time for filing briefs.

(a) If a party files a notice of appeal or cross appeal, the party must file an appellant brief within two months of the date of filing of their notice of appeal or cross appeal. However, if another party files a notice of appeal or cross appeal subsequent to that of the party, then the party must file an appeal brief within two months of the date of filing of the subsequent notice of appeal or cross appeal, so that the appellant briefs of all parties filing a notice of appeal or cross appeal will be due no later than two months after the last-filed notice.

(b) Once an appellant brief has been properly filed, an opposing party may file a respondent brief within one month from the date of service of the appellant brief. The examiner will consider both the appellant and respondent briefs and prepare an examiner's answer.

(c) The third party requester and the patent owner may each file a reply brief within one month of the date of the examiner's answer. No further brief will be acknowledged or considered.

§1.965 Applellant brief.

(a) Appellant(s) shall, within time limits for filing set forth in § 1.963, file a brief in triplicate and serve the brief on all parties in accordance with § 1.903. The brief must be accompanied by the requisite fee set forth in § 1.17(f)and must set forth the authorities and