

§ 41.64

(c) Affidavits or other evidence filed after the date of filing an appeal 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 file.

(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 do so, no later than two months from the expiration of the time for filing (by the last party entitled to do so) such notice of appeal or cross appeal. The time for filing an appellant's brief or an amended appellant's brief may not be extended.

(b) Once an appellant's brief has been properly filed, any brief must be filed by respondent within one month from the date of service of the appellant's brief. The time for filing a respondent's brief or an amended respondent's brief may not be extended.

(c) The examiner will consider both the appellant's and respondent's briefs and may prepare an examiner's answer under § 41.69.

(d) Any appellant may file a rebuttal brief under § 41.71 within one month of the date of the examiner's answer. The time for filing a rebuttal brief or an amended rebuttal brief may not be extended.

(e) No further submission will be considered and any such submission will

37 CFR Ch. I (7-1-08 Edition)

be treated in accordance with § 1.939 of this title.

§ 41.67 Appellant's brief.

(a)(1) Appellant(s) may once, within time limits for filing set forth in § 41.66, file a brief and serve the brief on all other parties to the proceeding in accordance with § 1.903 of this title.

(2) The brief must be signed by the appellant, or the appellant's duly authorized attorney or agent and must be accompanied by the requisite fee set forth in § 41.20(b)(2).

(b) An appellant's appeal shall stand dismissed upon failure of that appellant to file an appellant's brief, accompanied by the requisite fee, within the time allowed under § 41.66(a).

(c)(1) The appellant's brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(xi) of this section.

(i) *Real party in interest.* A statement identifying by name the real party in interest.

(ii) *Related appeals and interferences.* A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(xi) of this section.

(iii) *Status of claims.* A statement of the status of all the claims in the proceeding (*e.g.*, rejected, allowed or confirmed, withdrawn, objected to, canceled). If the appellant is the owner, the appellant must also identify the rejected claims whose rejection is being appealed. If the appellant is a requester, the appellant must identify the claims that the examiner has made a determination favorable to patentability, which determination is being appealed.

(iv) *Status of amendments.* A statement of the status of any amendment