

October 7, 2015



## USPTO Extends Pilot Programs for Accelerating Examination

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The U.S. Patent and Trademark Office (USPTO) has extended its After Final Consideration Pilot 2.0 and Quick Path Information Disclosure Statement programs through **September 30, 2016**. The programs are part of the USPTO's on-going efforts toward compact prosecution and reduced pendency.

### **After Final Consideration Pilot 2.0 (AFCP 2.0)**

<http://www.uspto.gov/patent/initiatives/after-final-consideration-pilot-20>

#### Purpose

- Authorizes additional time for Examiners to search and/or consider Applicant responses after a final rejection.

#### Requirements

- Application must have an outstanding final rejection.
- File a response to the final rejection that includes:
  - ◊ A request for AFCP 2.0 consideration (Form PTO/SB/434), and
  - ◊ An amendment to at least one independent claim that "does not broaden the scope of the independent claim in any aspect."
- Applicant agrees to participate in any interview requested by the Examiner.
- Must be filed by the USPTO's electronic filing system.

#### Advantages

- No additional fee is required to participate in the program.
- Recommended for applications Applicant believes will be allowed after filing a response to a final rejection with only limited further searching and/or consideration by the Examiner.
- Examiners will also use the additional time to schedule and conduct an interview to discuss the results of the search and/or consideration if the response does not place the application in condition for allowance, so that Applicant benefits from the additional search and/or consideration even if the results do not lead to allowance.
- The option to request an Examiner interview is available regardless of whether a response is considered under AFCP 2.0.
- Available for utility, plant, design and U.S. national stage applications.

#### Disadvantages

- Not available for reissue applications or reexamination proceedings.
- The Examiner may determine that the response cannot be considered under AFCP 2.0 if, for example, additional searching and/or consideration is required that cannot be completed within the time allotted under AFCP 2.0.
- Any supplemental response filed, for example, after an Examiner interview, could be considered Applicant delay that is counted against a patent term adjustment to which the application may be entitled.

## Quick Path Information Disclosure Statement (QPIDS)

<http://www.uspto.gov/patent/initiatives/quick-path-information-disclosure-statement-qpids>

### Purpose

- Eliminates the requirement for processing a Request for Continued Examination (RCE) to obtain consideration of an Information Disclosure Statement (IDS) filed after payment of the issue fee.
- If no item of information in the IDS necessitates reopening examination, the USPTO will issue a corrected notice of allowability.

### Requirements

- Application must be allowed and the issue fee paid.
- File:
  - ◊ A request for QPIDS consideration (Form PTO/SB/09),
  - ◊ An IDS that includes:
    - » An IDS fee, and
    - » A statement that:
      - Each item of information in the IDS was first cited in a communication from a foreign patent office in a counterpart foreign application not more than 3 months prior to filing the IDS (37 C.F.R. § 1.97(e)(1)), or
      - No item of information in the IDS was cited in a communication from a foreign patent office in a counterpart foreign application and was known to any individual designated in 37 C.F.R. § 1.56(c) more than 3 months prior to filing the IDS (37 C.F.R. § 1.97(e)(2)),
  - ◊ A petition to withdraw the application from issue and petition fee,
  - ◊ An RCE and RCE fee, and
  - ◊ An authorization to charge a USPTO deposit account for all required fees.
- Must be filed by the USPTO's electronic filing system.

### Advantages

- No additional fee is required to participate in the program.
- If no item in the IDS necessitates reopening prosecution, the RCE will not be processed and the RCE fee will be refunded.
- However, if any item in the IDS necessitates reopening prosecution, the RCE will be processed and the IDS fee will be refunded.
- Available for utility, U.S. national stage and reissue applications.
- Multiple QPIDS requests can be filed for the same application.

### Disadvantages

- Not available for plant and design applications or reexamination proceedings.
- Inclusion of an amendment is not allowed.

### Considerations for Patent Term Adjustment

- If no item in the IDS necessitates reopening prosecution, the submission of the IDS will be considered Applicant delay that is counted against a patent term adjustment (PTA) to which the application may be entitled.
  - ◊ If possible, include a statement under 37 C.F.R. § 1.704(d) to avoid this reduction:
    - » Each item of information in the IDS:

- Was first cited in any communication from a patent office in a counterpart foreign or international application or from the USPTO, and this communication was not received by any individual designated in 37 C.F.R. § 1.56(c) more than 30 days prior to filing the IDS, or
  - Is a communication that was issued by a patent office in a counterpart foreign or international application or by the USPTO, and this communication was not received by any individual designated in 37 C.F.R. § 1.56(c) more than 30 days prior to filing the IDS.
- If any item in the IDS necessitates reopening prosecution, the submission of the RCE could be counted against a PTA that may be accruing under 35 U.S.C. § 154(b)(1)(B) for an application that is pending for more than 3 years.

For more information, please contact:

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