

U.S. Patent and Trademark Office (USPTO) Proposes Rules to Conform with the Patent Law Treaty

Article By:

Bernard P. Codd

The **U.S. Patent and Trademark Office (USPTO)** recently proposed new rules to conform with the Patent Law Treaty (PLT) and the Patent Law Treaties Implementation Act of 2012 (PLTIA). 78 Fed. Reg. 1788 (April 11, 2013). Among the proposed rule changes, there are three notable changes pertaining to the filing date requirements for a patent application, the restoration of patent rights via the revival of abandoned applications and acceptance of delayed maintenance fee payments and the restoration of the right of priority to a foreign application or the benefit of a provisional application.

Under the proposed rules, a claim is no longer required to obtain a non-provisional utility application filing date. In addition, a non-provisional application can be filed without a specification and drawings by making reference to a previously filed application. An application filed either way will be treated in a similar manner as a current application that is missing parts. The applicant will be given a period of time to file a claim and/or a copy of the missing specification and drawings, or the application will be abandoned. If such an application is abandoned it will be treated as if it were never filed, unless the application is subsequently revived. The USPTO is further proposing a reduction in patent term adjustment if an application is not in condition to be examined within eight months of filing or commencement of the national phase.

It is proposed that unavoidable delay as a basis for reviving an abandoned application or making a late payment of a maintenance fee be eliminated. Instead all petitions to revive an application or accept late payment of a maintenance fee would be determined solely on the basis of unintentional delay. Furthermore, the 24-month time limit for asserting an unintentional delay would be eliminated under the proposed rules.

Priority to a prior-filed foreign application or the right to benefit of a prior-filed provisional application can be restored within two months from the expiration of the 12-month period (six-month period for a design application) under the proposed rules if the delay in filing was unintentional. The Office may require additional information from the petitioner if there is a question whether the delay was unintentional.

The proposed petition fee for reviving an abandoned application, acceptance of a late maintenance fee payment and restoration of priority to an earlier-filed foreign application or benefit to an earlier-filed provisional application is \$1700 and \$850 for a small entity (there is no micro-entity fee).

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