

Don't Miss Out On Patent Term -- Use The USPTO IDS PTA Safe Harbor Form

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Effective July 17, 2023, the USPTO will "require" Information Disclosure Statement (IDS) Patent Term Adjustment (PTA) safe harbor statements to be made on a specific USPTO form and electronically filed under a specific document code. According to the Federal Register Notice, if these procedures are followed, the USPTO PTA calculation should recognize the safe harbor filing and not charge a PTA deduction for the concurrently filed IDS.

Although the rule "requires" use of the new form, the USPTO will permit patent owners who submit a safe harbor statement in a different format to request reconsideration of a PTA award that charged a PTA deduction for the IDS at issue. This is a change from the originally proposed rule, made in response to public comments submitted on the proposed rulemaking. I know comments from Intellectual Property Owners Association included this suggestion.

The Federal Register Notice also points out the possibility of retroactively filing a safe harbor statement, via a petition to suspend the rules under 37 CFR 1.183 that can be filed with a request for reconsideration of a PTA award along with the "late" safe harbor statement.

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