

## Act Quickly to Correct Recent USPTO Patent Term Adjustment Errors

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The U.S. Patent and Trademark Office (USPTO) has revealed “a coding error” in the software used to calculate Patent Term Adjustment (PTA) awards that may have impacted patents issued from March 19, 2024, through July 30, 2024. As with most PTA errors, the burden is on patent owners to identify patents with erroneous PTA awards and “submit a timely request for reconsideration” under 37 CFR § 1.705(b). However, the USPTO will **waive** the required fee and any associated extension of time fees if the **only** basis for reconsideration is this error, and the request is “timely” filed.

According to [the USPTO notice](#), approximately 1% of patents granted from March 19, 2024, through July 30, 2024, may have been impacted by the coding error. As explained in the notice, as long as “the sole reason for contesting the PTA determination” is associated with the coding error (which impacted the calculated amount of “A” delay and “Overlap”), the USPTO will **waive** both the request for reconsideration fee and any extension of time fees. However, “the USPTO will not consider any untimely filed request for reconsideration of the patent term adjustment nor will the USPTO grant any petition under 37 CFR 1.182 or 1.183 to extend such deadline.” The notice also makes clear that the USPTO will not issue any refunds of fees already paid.

A request for reconsideration of a PTA award under 37 CFR § 1.705(b) must be filed within two months of the patent’s grant date unless an extension of time is obtained under 37 CFR § 1.136(a). The maximum extension of time available is five months, making the final deadline for requesting reconsideration of a PTA award seven months from the patent’s grant date. This means patent owners of impacted patents may need to act quickly to seek correction of an erroneous PTA award before it is too late.

*Practitioners should refer to the USPTO’s notice for guidance on how to file a request for reconsideration on this basis without paying the usually required fees.*

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