

Good News for Patent Applicants: USPTO Extends the After Final Consideration Pilot Program 2.0

Article

Amundsen Davis IP Alert

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The U.S. Patent and Trademark Office has extended the After Final Consideration Pilot Program 2.0 through September 30, 2024. This program (the AFCP 2.0) allows applicants to request a patent examiner be given additional time to consider responses after a final office action in certain circumstances.

In order to be eligible for consideration under the AFCP 2.0, an applicant must (1) be filing a complete response to a final office action, (2) request consideration under the AFCP 2.0 program, (3) amend at least one claim in a way that does not broaden the claim, (4) agree to an Examiner Interview, and (5) authorize payment of any fees, though the AFCP 2.0 program itself is free.

Patent examiners are given a set amount of time to address patent responses. Under the AFCP 2.0, examiners are given extra time to consider a response after a final rejection. In order for an examiner to grant a request, the amendments and response must be able to be fully considered in that additional time allowed. If the AFCP 2.0 request is granted, the examiner will conduct any additional searching necessitated by the amendments and, if the application is not yet in condition for allowance, schedule an interview with the applicant or applicant's representative.

If the AFCP 2.0 request is not granted, the examiner will issue an advisory action as normal.

The primary benefits of participating in the free AFCP 2.0 are (1) giving the examiner extra time to consider the response and hopefully obtain allowance without requiring an RCE filing; and (2) having the opportunity to hold an Examiner Interview if the application is not in condition for allowance. The interview can be particularly helpful when considering whether and how to further respond to the final rejection and advisory action. In our experience, examiners are also likely to proceed with an interview even if the AFCP 2.0 request is not granted.

PROFESSIONALS

Laura Grebe
Partner

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As a free tool available to applicants, the AFCP 2.0 can be very helpful under the right circumstances, and it is now available for another year.

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