



ARE Patent Law Alert: USPTO Clarifies Rules for Petitions Reviving Abandoned Patent Applications and for Making Other Delayed Requests

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The USPTO has announced that starting Monday, March 2, 2020, additional information will be required for petitions filed with more than a two-year delay that request revival of an abandoned application, acceptance of a delayed maintenance fee payment, or acceptance of a delayed priority or benefit claim under the unintentional standard.

Specifically, the USPTO will require additional information when:

- (1) a petition to revive an abandoned application is filed more than two years after the date the application became abandoned,
- (2) a petition to accept a delayed maintenance fee payment is filed more than two years after the date the patent expired for nonpayment, and
- (3) a petition to accept a delayed priority or benefit claim is filed more than two years after the date the priority or benefit claim was due.

Until now, the USPTO has mostly accepted such petitions with a blanket statement that the delay was unintentional, even when the delay was more than two years. As now clarified by the USPTO, if the delay has been more than two years, petitioners “should expect to be required to provide an additional explanation of the circumstances surrounding the delay that establishes that the entire delay was unintentional.” The USPTO explained that this clarification is necessary to address issues with “reliability and predictability of patent rights.”

With this clarification in mind, patent owners should regularly review their portfolio to identify unintentionally abandoned patents to avoid having to clear the USPTO’s heightened scrutiny for those patents abandoned for more than two years. Practitioners should also be careful to present priority or benefit claims in a timely manner.

[Read the full USPTO announcement.](#)

We will continue to monitor patent practice at the USPTO. For more information on such developments, please contact us.

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