

## USPTO Changes RCE Docketing: Delayed Prosecution?

On October 19, 2009, the U.S. Patent and Trademark Office (USPTO) issued a notice stating that it is changing the manner in which it docket Requests for Continued Examination (RCEs). Under the old docketing procedures, RCEs were classified as amendments and placed on the examiner's amended docket, which requires examiners to pick up the case within two months of the RCE filing. Under the new procedure, RCEs will now be docketed on the examiner's "Special New" application docket, which is the same docket on which continuation and divisional applications are processed. The key difference is that RCEs will no longer have to be picked up within two months of filing. The USPTO states that the change is being made "to allow examiners greater flexibility in managing their workload and allocating their time among requests for continued examination and new applications." Because of this change, applicants will no longer be able to predict when they will get a response from the USPTO after an RCE has been filed. This change will take effect on any RCE that is filed on or after November 15, 2009.

This change in docketing procedures comes on the heels of the USPTO changing the "count" system that allocates credit to examiners' disposal of applications. Under the new system, an examiner gets less credit for multiple RCEs filed. The effect of this change in docketing procedure might provide incentive for examiners to delay examination of RCEs, on which the credit may be less, and instead examine new applications to receive full credit. Applicants should consider this change in docketing procedures, which could result in longer prosecution times, before filing an RCE.

The complete notice regarding the change in docketing procedures can be found at [http://www.uspto.gov/patents/law/notices/rce\\_docket.pdf](http://www.uspto.gov/patents/law/notices/rce_docket.pdf).

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## Intellectual Property Practice Group

Pepper Hamilton's Intellectual Property Practice Group is an interdisciplinary team that procures intellectual property rights and litigates or otherwise resolves intellectual property disputes. Our lawyers are capable and experienced in all areas of intellectual property. If you have any questions or comments regarding this *Update*, please contact your representative within the group.

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