

USPTO Provides Small Entities an Opportunity to Move to the Head of the Line

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On November 27, 2009, the U.S. Patent and Trademark Office (USPTO) announced its “Patent Application Backlog Reduction Stimulus Plan” — temporary guidelines for allowing small entities to have their applications examined more quickly. Under these guidelines, the USPTO is allowing small-entity applicants to have an application accorded “special status” in exchange for abandoning one unexamined application. The application accorded special status will be examined out of turn, and therefore faster than if the application was not accorded the special status. The USPTO’s requirements for participating in the plan are:

- the application for which special status is sought is a non-provisional application that has an actual filing date earlier than October 1, 2009, in which the applicant has established small entity status
- the applicant has another co-pending nonprovisional application that has an actual filing date earlier than October 1, 2009, and is complete
- the application for which special status is sought and the other co-pending nonprovisional application either are owned by the same party as of October 1, 2009, or name at least one inventor in common
- the applicant files a letter of express abandonment in the co-pending nonprovisional application before it has been taken up for examination, and includes a letter of express abandonment, a statement that the applicant has not and will not file an application that claims the benefit of the expressly abandoned application and that the applicant agrees not to request a refund of any fees paid in the expressly abandoned application

FOR A PETITION UNDER THESE RULES TO BE GRANTED, THE PETITION AND THE LETTER OF EXPRESS ABANDONMENT AND ITS ACCOMPANYING STATEMENT MUST BE FILED ON OR BEFORE FEBRUARY 28, 2010.

- the applicant files a petition in the application for which special status is sought.

The USPTO has waived the fee that normally must be paid as part of the petition to make applications special. The express abandonment of an application should be exercised with due care, as the USPTO states that it “cannot revive an application once the letter of express abandonment is recognized by the USPTO because the application was expressly and intentionally abandoned by the applicant.” This procedure is being adopted on a temporary basis until February 28, 2010. For a petition under these rules to be granted, the petition and the letter of express abandonment and its accompanying statement must be filed on or before February 28, 2010. It is possible that the USPTO will extend the time period for filing or adopt this procedure on a permanent basis.

The complete notice regarding this procedure can be found at <http://www.uspto.gov/patents/law/notices/74fr62285.pdf>.

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