

# **PETITION TO RESTORE THE BENEFIT OF A PROVISIONAL APPLICATION (37 CFR 1.78(b)) OR TO RESTORE THE PRIORITY TO A FOREIGN APPLICATION (37 CFR 1.55(c))**

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First named inventor: \_\_\_\_\_

Application No.: \_\_\_\_\_ Art Unit: \_\_\_\_\_

Filed: \_\_\_\_\_ Examiner: \_\_\_\_\_

Title: \_\_\_\_\_

Attention: Office of Petitions

**Mail Stop Petition**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX 571-273-8300

NOTE: If information or assistance is needed in completing this form, please contact the Office of Petitions at 571-272-3282.

**APPLICANT HEREBY PETITIONS TO RESTORE THE RIGHT TO CLAIM BENEFIT TO A PRIOR PROVISIONAL APPLICATION UNDER 37 CFR 1.78(b) OR TO RESTORE THE RIGHT OF PRIORITY TO A PRIOR FOREIGN APPLICATION UNDER 37 CFR 1.55(c).**

NOTE: For a petition under 37 CFR 1.78(b), the subsequent application must have been filed within two months from the expiration of the twelve-month period set forth in 37 CFR 1.78(a)(1)(i). For a petition under 37 CFR 1.55(c), the subsequent application must have been filed within two months from the expiration of the twelve-month period (six-month period in the case of a design application) set forth in 37 CFR 1.55(b)(1).

NOTE: A grantable petition requires the following items:

- (1) the reference required by 35 U.S.C. 119(e) to the prior-filed provisional application in an application data sheet (ADS) or the priority claim under 35 U.S.C. 119(a) through (d) or (f), 365(a) or (b), or 386(a) or (b) in an ADS identifying the foreign application to which priority is claimed by the application number, country (or intellectual property authority), and the filing date, unless previously submitted;
- (2) the petition fee set forth in 37 CFR 1.17(m); and
- (3) a statement that the delay in filing the subsequent application within the period set forth in 37 CFR 1.78(a)(1)(i) or 37 CFR 1.55(b)(1) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

**1. The required reference or priority claim:**

☐ is provided in an ADS included herewith.

☐ has been previously submitted.

**Reminders:**

- Any ADS which corrects or updates the information of record must comply with 37 CFR 1.76(c)(2).
- Restoration of benefit to a provisional application does not affect the requirement to include the reference required under 37 CFR 1.78(a)(3) within the time period provided by 37 CFR 1.78(a)(4). A separate petition under 37 CFR 1.78(c) and petition fee will be required if the reference is made after the expiration of the time period provided by 37 CFR 1.78(a)(4).
- Restoration of priority to a foreign application does not affect the requirement to include the claim within the time period provided by 37 CFR 1.55(d). A separate petition under 37 CFR 1.55(e) and petition fee will be required if the priority claim is made after the expiration of the time period provided by 37 CFR 1.55(d).

A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with an information collection subject to the requirements of the Paperwork Reduction Act of 1995, unless the information collection has a currently valid OMB Control Number. The OMB Control Number for this information collection is 0651-0032. Public burden for this form is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing this burden to the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 or email [InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov). DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

*If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.*

# **PETITION TO RESTORE THE BENEFIT OF A PROVISIONAL APPLICATION (37 CFR 1.78(b)) OR TO RESTORE THE PRIORITY TO A FOREIGN APPLICATION (37 CFR 1.55(c))**

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## **2. Petition fee (37 CFR 1.17(m)):**

- ☐ Other than a small or micro entity (undiscounted) fee \$ \_\_\_\_\_ (Fee Code 1454).
- ☐ Small entity fee \$ \_\_\_\_\_ (Fee Code 2454). Applicant asserts small entity status. See 37 CFR 1.27.
- ☐ Micro entity fee \$ \_\_\_\_\_ (Fee Code 3454). Applicant has established or is establishing micro entity status. See 37 CFR 1.29. Form PTO/SB/15A or B or equivalent must either be enclosed or have been submitted previously.

**3. Statement:** The delay in filing the subsequent nonprovisional application or international application designating the United States within the twelve-month period set forth in 37 CFR 1.78(a)(1)(i) was unintentional or the delay in filing the subsequent application within the period set forth in 37 CFR 1.55(b)(1) was unintentional.

### **WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Registration Number, if applicable

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Address

\* This petition must be signed in accordance with 37 CFR 1.33. Please see 37 CFR 1.4(d) for the signature requirements. Submit multiple forms if more than one signature is required.

### **Enclosures:**

- ☐ Application Data Sheet (see instructions starting on page 3)
- ☐ Fee (along with supporting documentation, if required)
- ☐ Other: \_\_\_\_\_

### **CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

- ☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.
- ☐ Transmitted by USPTO patent electronic filing system or by facsimile to (571) 273-8300, to the USPTO on the date shown below.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name of person signing certificate

**Instructions for Petition to Restore the Benefit of a Provisional Application (37 CFR 1.78(b))  
or to Restore the Priority to a Foreign Application  
(Not to be Submitted to the USPTO)**

Note: This form is for use in restoring the right to claim benefit to a prior provisional application or in restoring the right of priority to a prior foreign application only.

**1. The reference or priority claim to the prior-filed application in an application data sheet (ADS):** Any ADS filed after the filing of the application is considered a corrected (or updated) ADS even if an ADS was not previously submitted. A corrected ADS must identify the information that is being changed with underlining for insertions and strike-through or brackets for text removed. In general, the identification of the information being changed should be made relative to the most recent filing receipt. For example, where the most recent filing receipt for the application shows no benefit claim, the entire benefit claim must be shown with underlining in the corrected ADS. In addition, if the ADS identified an incorrect provisional application number and the most recent filing receipt included the incorrect provisional application number, the corrected ADS should identify the incorrect provisional application number being deleted with strike-through or brackets, and should identify the correct provisional application number being added with underlining. For more information regarding a corrected ADS in an application filed on or after September 16, 2012, see MPEP 601.05(a), subsection II.

A corrected ADS may include all of the section headings listed in 37 CFR 1.76(b) with all appropriate data for each heading or only those sections (including the section headings) containing changed or updated information. See 37 CFR 1.76(c)(2). A corrected ADS must identify the application by application number and be properly signed.

Use of the corrected Web-based ADS is recommended for registered users of the USPTO patent electronic filing system because it will pre-populate with information of record; applicants can then type in the desired changes, and the system will create a PDF version with the appropriate strike-through and underlining. For more information, see the "Quick Start Guide for Corrected Web-based Application Data Sheet (Corrected Web ADS)" available at <https://www.uspto.gov/patents-application-process/applying-online/efs-web-guidance-and-resources>.

Applicants may also use Form PTO/AIA/14 which may be printed and marked up to comply with 37 CFR 1.76(c).

Note: For applications filed prior to September 16, 2012, the reference to the prior provisional application must be in an ADS (37 CFR 1.76(a)) and/or in the first sentence(s) of the specification following the title, although the Office prefers the use of an ADS. For applications filed prior to September 16, 2012, the foreign priority claim must be in the ADS (37 CFR 1.76(a)) or the oath or declaration under 37 CFR 1.63, although the Office prefers the use of an ADS. For more information regarding a supplemental ADS in an application filed before September 16, 2012, see MPEP 601.05(b), subsection II.

**2. Petition fee:** The petition fee is set forth in 37 CFR 1.17(m) and must be included with the petition. Petitioner is advised to refer to the current fee schedule at <https://www.uspto.gov/learning-and-resources/fees-and-payment/uspto-fee-schedule>.

**3. Statement:** 37 CFR 1.78(b) requires a statement that the delay in filing the subsequent nonprovisional application or international application designating the United States within the twelve-month period set forth in 37 CFR 1.78(a)(1)(i) was unintentional. 37 CFR 1.55(c) requires a statement that the delay in filing the subsequent application within the period set forth in 37 CFR 1.55(b)(1) was unintentional. Both statements have been included in this form.

Note: the Director may require additional information where there is a question whether the delay was unintentional.

## Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. The United States Patent and Trademark Office (USPTO) collects the information in this record under authority of 35 U.S.C. 2. The USPTO's system of records is used to manage all applicant and owner information including name, citizenship, residence, post office address, and other information with respect to inventors and their legal representatives pertaining to the applicant's/owner's activities in connection with the invention for which a patent is sought or has been granted. The applicable Privacy Act System of Records Notice for the information collected in this form is COMMERCE/PAT-TM-7 Patent Application Files, available in the Federal Register at 78 FR 19243 (March 29, 2013). <https://www.govinfo.gov/content/pkg/FR-2013-03-29/pdf/2013-07341.pdf>

Routine uses of the information in this record may include disclosure to:

- 1) law enforcement, in the event that the system of records indicates a violation or potential violation of law;
- 2) a federal, state, local, or international agency, in response to its request;
- 3) a contractor of the USPTO having need for the information in order to perform a contract;
- 4) the Department of Justice for determination of whether the Freedom of Information Act (FOIA) requires disclosure of the record;
- 5) a Member of Congress submitting a request involving an individual to whom the record pertains, when the individual has requested the Member's assistance with respect to the subject matter of the record;
- 6) a court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel in the course of settlement negotiations;
- 7) the Administrator, General Services Administration (GSA), or their designee, during an inspection of records conducted by GSA under authority of 44 U.S.C. 2904 and 2906, in accordance with the GSA regulations and any other relevant (i.e., GSA or Commerce) directive, where such disclosure shall not be used to make determinations about individuals;
- 8) another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c));
- 9) the Office of Personnel Management (OPM) for personnel research purposes; and
- 10) the Office of Management and Budget (OMB) for legislative coordination and clearance.

If you do not furnish the information requested on this form, the USPTO may not be able to process and/or examine your submission, which may result in termination of proceedings, abandonment of the application, and/or expiration of the patent.