

**PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM UNDER 35 U.S.C. 119(e)
(37 CFR 1.78(c)) AND/OR TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM UNDER 35 U.S.C.
120, 121, 365(c), or 386(c) (37 CFR 1.78(e)) FOR THE BENEFIT OF A PRIOR-FILED APPLICATION**

Page 1 of 5

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

When filing via USPTO patent electronic filing system, use Doc Code PET.PCT (Petition for review by the PCT Legal Office) for applications filed under 35 U.S.C. 371 and/or if the reference to the prior-filed application(s) includes an international application or an international design application. In all other instances, use Doc Code PET.OP (Petition for review by the Office of Petitions).

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

APPLICANT HEREBY PETITIONS FOR ACCEPTANCE OF AN UNINTENTIONALLY DELAYED BENEFIT CLAIM TO A PRIOR-FILED APPLICATION UNDER 37 CFR 1.78(c) AND/OR 37 CFR 1.78(e).

NOTE: For a petition under 37 CFR 1.78(e), the above-identified application must have been filed during the pendency of the prior application or during the pendency of an intermediate application similarly entitled to the benefit of the filing date of the prior application. For a petition under 37 CFR 1.78(c), the above-identified application must have been filed within 12 months of the filing date of the provisional application or be entitled to claim the benefit under 35 U.S.C. 120, 121, or 365(c) of an application that was filed within 12 months of the filing date of the provisional application, except as provided in 37 CFR 1.78(b).

NOTE: A grantable petition requires the following items:

- (1) the reference required by 35 U.S.C. 119(e) and 37 CFR 1.78(a)(3) to the prior-filed provisional application and/or the reference required by 35 U.S.C. 120 and 37 CFR 1.78(d)(2) to the prior-filed nonprovisional application, international application designating the United States, or international design application designating the United States, unless previously submitted;
- (2) the petition fee set forth in 37 CFR 1.17(m) and the applicable fee (if any) set forth in 37 CFR 1.17(w); and
- (3) a statement that the entire delay between the date the benefit claim was due under 37 CFR 1.78(d)(3) and/or 37 CFR 1.78(a)(4) and the date the benefit claim was filed was unintentional. The Director may require additional information where there is a question as to whether the delay was unintentional.

1. The required reference to the prior-filed application:

- ☐ The above-identified application was filed on or after September 16, 2012, and the reference is either set forth in the attached corrected application data sheet (ADS) or in a corrected ADS that was previously submitted.
- ☐ The above-identified application was filed prior to September 16, 2012, and the reference is either (1) set forth in a supplemental ADS, (2) set forth in the attached amendment to the first sentence(s) of the specification, or (3) set forth in a supplemental ADS or amendment to the first sentence(s) of the specification that was previously submitted. See 37 CFR 1.78(h).

Reminder: Any ADS which corrects or updates the information of record must comply with 37 CFR 1.76(c)(2) (or for applications filed prior to September 16, 2012, pre-AIA 37 CFR 1.76(c)).

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. 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.

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Page 2 of 5

2. Petition fee:

(A) For delay greater than two years:

37 CFR 1.17(m)(1)

- ☐ Other than a small or micro entity (undiscounted) fee \$ _____ (Fee Code 14D2).
- ☐ Small entity fee \$ _____ (Fee Code 24D2). Applicant asserts small entity status. See 37 CFR 1.27.
- ☐ Micro entity fee \$ _____ (Fee Code 34D2). 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.

(B) For delay less than or equal to two years:

37 CFR 1.17(m)(2)

- ☐ 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 entire delay between the date the benefit claim was due under 37 CFR 1.78(d)(3) and/or 37 CFR 1.78(a)(4) and the date the benefit claim was filed was unintentional.

Petitioner is reminded that a change in circumstance or a delay resulting from a deliberately chosen course of action does not become an "unintentional" delay because, for example:

- the applicant does not consider any patent to be of sufficient value to justify the financial expense of obtaining the patent; or
- the applicant remains interested in eventually obtaining a patent, but simply seeks to defer patent fees and patent prosecution expenses.

NOTE: Where the petition under 37 CFR 1.78(c) and/or 37 CFR 1.78(e) is filed more than two years after the date the priority or benefit claim was due, the United States Patent and Trademark Office requires an additional explanation of the circumstances surrounding the delay that establishes the entire delay was unintentional. This requirement is in addition to the requirement to provide a statement that the entire delay was unintentional. See *Clarification of the Practice for Requiring Additional Information in Petitions Filed in Patent Applications and Patents Based on Unintentional Delay*, 85 FR 12222 (March 2, 2020). See MPEP 711.03(c)(II)(C)-(F) for additional guidance on the information required to establish that the entire delay was unintentional.

☐ Because this petition under 37 CFR 1.78(c) and/or 37 CFR 1.78(e) is being filed more than two years after the date the priority or benefit claim was due, additional explanation of the circumstances surrounding the delay that establishes the entire delay was unintentional is enclosed herewith. Note: If this box is checked, section 2A must also be completed.

Reminder: Presentation of a benefit claim may prompt a requirement to pay the continuing application fee set forth in 37 CFR 1.17(w), if the actual filing date of the application is more than six years after the earliest benefit date. See 37 CFR 1.78(d)(3)(i) and 37 CFR 1.17(w).

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Page 3 of 5

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 4)

☐ 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 the USPTO patent electronic filing system or by facsimile to 571-273-8300, to the USPTO on the date shown.

Date

Signature

Typed or printed name of person signing certificate

Instructions for Petition to Accept an Unintentionally Delayed Claim under 35 U.S.C. 119(e) (37 CFR 1.78(c)) and/or to Accept an Unintentionally Delayed Claim under 35 U.S.C. 120, 121, 365(c), or 386(c) (37 CFR 1.78(e)) for the Benefit of a Prior-Filed Application

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1. The reference required to the prior-filed application:

a. For applications filed on or after September 16, 2012, the reference must be set forth in a corrected application data sheet (ADS). See 37 CFR 1.76.

Note: 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 "Application Data Sheet to Update and/or Correct Information" available at <https://www.uspto.gov/sites/default/files/documents/Corrected-WebADS-QSG.pdf>

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

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(Not to be Submitted to the USPTO)

b. For applications filed before September 16, 2012, the reference to the prior-filed application may be made in a supplemental ADS in compliance with pre-AIA 37 CFR 1.76(c) or in an amendment in the first sentence(s) of the specification following the title. See 37 CFR 1.78(h).

Note: For applications filed before September 16, 2012, any ADS submitted after the filing date of the application is a supplemental ADS, regardless of whether an original ADS was submitted with the application papers on filing. Supplemental ADS papers must be labeled Supplemental ADS or Supplemental Application Data Sheet, include each of the seven section headings listed in pre-AIA 37 CFR 1.76(b) with all appropriate data for the section heading, and identify the information that is being changed. See pre-AIA 37 CFR 1.76(c). A supplemental ADS must also identify the application by application number and be properly signed. 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(c) and 37 CFR 1.78(e) require a statement that the entire delay between the date the benefit claim was due and the date the benefit claim was filed was unintentional. The required statement(s) is 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 9) 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.

Additional Uses

Additional USPTO uses of the information in this record may include disclosure to: 1) the International Bureau of the World Intellectual Property Organization, if the record is related to an international application filed under the Patent Cooperation Treaty; 2) the public i) after publication of the application pursuant to 35 U.S.C. 122(b), ii) after issuance of a patent pursuant to 35 U.S.C. 151, iii) if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections, or an issued patent, or iv) without publication of the application or patent under the specific circumstances provided for by 37 CFR 1.14(a)(1)(v)-(vii); and/or 3) the National Archives and Records Administration, for inspection of records.