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Dated: November 30, 2012.

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO-P-2012-0043]

Request for Comments on Request for Continued Examination (RCE) Practice

AGENCY: United States Patent and
Trademark Office, Commerce.

ACTION: Request for Comments.

SUMMARY: The United States Patent and Trademark Office (Office) currently has a backlog of over 90,000 patent applications that have not been examined since the filing of a Request for Continued Examination (RCE). This backlog diverts resources away from the examination of new applications. The Office is continuing its efforts to reduce the RCE backlog. For example, the Office recently implemented a pair of pilot programs—the Quick Path Information Disclosure Statement (QPIDS) pilot program and the After Final Consideration Pilot (AFCP)—designed to reduce the need to file an RCE. The Office is now soliciting public feedback in an effort to better understand the full spectrum of factors that impact the decision to file an RCE. The Office is providing three different avenues for the public to provide their feedback on RCE practice: (1) Through the submission of written comments by electronic mail message over the Internet or by postal mail; (2) through the submission of written comments using a Web-based collaboration tool called IdeaScale®; and (3) through a series of roundtables that the Office is planning to conduct. The Office plans to use the information it obtains to design additional programs and initiatives aimed at reducing RCE filings and the RCE backlog.

DATES: *Comment Deadline Date:* Written comments must be received on or before February 4, 2013.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: rceoutreach@uspto.gov. Comments may

also be submitted by postal mail addressed to: United States Patent and Trademark Office, Mail Stop Comments—Patents, Office of Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Raul Tamayo. Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet in order to facilitate posting on the Office's Internet Web site.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located at Madison Building East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (<http://www.uspto.gov>). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Legal Advisor, Office of the Deputy Commissioner for Patent Examination Policy (telephone (571) 272-7728; email raul.tamayo@uspto.gov). Alternatively, mail may be addressed to Raul Tamayo, Office of Commissioner for Patents, Attn: RCE Outreach, P.O. Box 1450, Alexandria, VA 22313-1450.

SUPPLEMENTARY INFORMATION: The Office has gathered a variety of statistics related to RCEs, including the fraction of applications (by technology classification) containing at least one RCE, and the fraction of applications (out of a random sample) in which no submission under 37 CFR 1.116 was filed prior to the filing of the RCE. These statistics can be viewed at http://www.uspto.gov/patents/init_events/rce_outreach.jsp, and may help inform comments responsive to this request for comments (RFC).

The Office has generated the following list of questions concerning RCE practice to further inform comments responsive to this RFC. Responders to this RFC can choose to address as many of these questions as desired. The Office is particularly interested in receiving information that facilitates an understanding of filing strategies related to RCEs.

(1) *If within your practice you file a higher or lower number of RCEs for certain clients or areas of technology as compared to others, what factor(s) can you identify for the difference in filings?*

(2) *What change(s), if any, in Office procedure(s) or regulation(s) would reduce your need to file RCEs?*

(3) *What effect(s), if any, does the Office's interview practice have on your decision to file an RCE?*

(4) *If, on average, interviews with examiners lead you to file fewer RCEs, at what point during prosecution do interviews most regularly produce this effect?*

(5) *What actions could be taken by either the Office or applicants to reduce the need to file evidence (not including an IDS) after a final rejection?*

(6) *When considering how to respond to a final rejection, what factor(s) cause you to favor the filing of an RCE?*

(7) *When considering how to respond to a final rejection, what factor(s) cause you to favor the filing of an amendment after final (37 CFR 1.116)?*

(8) *Was your after final practice impacted by the Office's change to the order of examination of RCEs in November 2009? If so, how?*

(9) *How does client preference drive your decision to file an RCE or other response after final?*

(10) *What strategy/strategies do you employ to avoid RCEs?*

(11) *Do you have other reasons for filing an RCE that you would like to share?*

Interested members of the public can provide the Office with their feedback on RCE practice through the submission of written comments by electronic mail message over the Internet or by postal mail sent to the corresponding address noted above. Feedback on RCE practice can alternatively be submitted using a Web-based collaboration tool called IdeaScale®. The tool allows users to post comments on a topic, and view and respond to others' comments. In addition, users may vote to indicate agreement or disagreement with a particular comment. Information on how to use IdeaScale® to comment on RCE practice is available at http://www.uspto.gov/patents/init_events/rce_outreach.jsp.

Finally, the Office is planning to conduct roundtables to obtain input from diverse organizations and individuals on RCE practice. Further information on roundtable dates and how to participate in a roundtable on RCE practice will be available at http://www.uspto.gov/patents/init_events/rce_outreach.jsp.

Dated: November 30, 2012.

Teresa Stanek Rea,

Deputy Under Secretary of Commerce for
Intellectual Property and Deputy Director of
the United States Patent and Trademark
Office.

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