

From: James Longfellow [mailto:jlongfellow@gmail.com]  
Sent: Friday, January 27, 2012 3:24 PM  
To: AC63.comments  
Subject: Revision of PTA Provisions Relating to Appellate Review, 76 FR 81432 (Dec. 28, 2011)

Dear Mr. Fries:

In the final rule making notice, I would appreciate if the Office would consider the following issues:

- (1) What is the PTA effect under proposed 37 CFR 1.704(c)(9), if any, where the Examiner reopens prosecution before a compliant appeal brief is filed, but more than two months after a notice of appeal was filed.
- (2) Proposed 37 CFR 1.704(c)(9) requires that a compliant appeal brief (or RCE) be filed within two months from the date of a notice of appeal. Beyond causing a likely delay in meeting this deadline, what is the PTA effect, if any, of filing a non-compliant appeal brief (or other paper such as an IDS or amendment after final) after the notice of appeal. See, e.g., 37 CFR 1.704(c)(7) and (8).
- (3) Is the two-month deadline under proposed 37 CFR 1.704(c)(9) extendable for weekends and holidays per *ArQule v. Kappos*, No. 10-1904 (DDC 2011).
- (4) Under proposed 37 CFR 1.703(b)(4), when does the period end if jurisdiction ends without a decision by the Board or a Federal court. See, e.g., 37 CFR 41.35(b) et seq. (one example is the applicant filing an RCE after jurisdiction passes to the Board).
- (5) Please clarify the effective date vis-a-vis issued patents and pending applications with notices of appeal filed prior to the effective date. Since these rule changes will alter prosecution tactics regarding patent term, in the final rule making notice, please set a prospective effective date to ensure practitioners can learn and adapt to the new rules.

Thank you for your consideration.

Sincerely,

James P. Longfellow  
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