

**From:** Kip Werking [mailto:kip.werking@gmail.com]  
**Sent:** Monday, January 30, 2012 12:58 PM  
**To:** AC63.comments  
**Subject:** Patent Term Extension comments

Dear Mr. Fries (or to whom it may concern):

I am writing to request an extension to submit comments on the new Notice of Proposed Rulemaking, "Revision of Patent Term Adjustment Provisions Relating to Appellate Review."

Comments were officially due on January 27. The comment period was exceptionally short (about one month).

I already have 12 pages of a draft of comments that I would like to submit. I need at least one more day to finalize my draft, though.

Here is a very brief summary of my points:

1. The 41.35 jurisdiction date should not govern 154(b)(1)(C)(iii) for two reasons:

(A) 41.35 was created 5 years after the relevant 154 sections, and so Congress cannot have intended for it to define the period of appellate review (rather, the date of the Notice of Appeal under 41.31 and \$500 appeal fee under 35 USC 41 should).

(B) The idea that APJs don't perform "appellate review" until the 41.35 date is false: since 2010, APJs have "sole responsibility" for ensuring that appeal briefs comply with 41.37 before the examiner files an answer.

2. Governing the notice-to-jurisdiction time period under type B PTA will have adverse consequences.

(A) Because 154(b)(1)(B) cannot distinguish between successful and unsuccessful appeals, Applicants will receive PTA for even unsuccessful and frivolous appeals. In one example, an applicant could file a frivolous appeal, wait until an affirmance by the BPAI three years later, and then file a 41.33 amendment canceling rejected claims, thereby obtaining 3 years of type B PTA. 154(b)(1)(B) was simply not designed to accommodate the notice-to-jurisdiction period.

(B) Because 154(b)(1)(B) contains the "3 year" and "no RCE" limitations, applicants will be denied PTA in successful appeals when those limitations are not satisfied. For example, an applicant who files an RCE and then files four successful appeals will receive no PTA for the notice-to-jurisdiction period before each appeal, even though the applicant would receive type C PTA for the jurisdiction-to-decision periods. That just doesn't make sense.

Respectfully,

Kip Werking  
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