

**From:** John Sopp  
**Sent:** Tuesday, February 05, 2013 10:24 AM  
**To:** RCE outreach  
**Subject:** Comments on RCE policy

Dear PTO:

I realize my comments are one day late but wanted to provide them anyway.

I think the current policy of making RCE's the lowest priority for examiners to act on is a travesty. I will give you one example which is indicative of the huge problem that has been created. Nearly three years ago (before the RCE docketing policy was changed) I was prosecuting an After Final case and wanted to interview the examiner to discuss some changes which would significantly advance prosecution. He urged that I file an RCE to restart prosecution so he could fully consider all the comments and amendments. I was happy to do so and we had the interview, at which I believe we made good progress. Then I waited. In the meantime the PTO docketing policy changed. I waited more. After about a year I called the examiner to see what was going on. He mentioned the new policy and said his hands were tied and he had many other RCEs in line ahead of mine and was only required to act on two per month. I waited another year and called again. He explained the problem still existed and my RCE was his 39<sup>th</sup> in line. This meant I could not expect action for nearly two more years. It has now been almost another year since then (almost 3 years since my RCE was filed) and no action is in sight. Obviously, the examiner has completely forgotten our interview discussion, which was the impetus for the RCE in the first place. My client is very unhappy with the system and with me (although I had no way to foresee this outcome).

Most RCE's were previously filed to expedite the process, i.e., to get the examiner to act on some new issue or amendment developed after a final rejection. Under the new regime, RCE's are being treated as a coffin nail to an application. The extremely long wait means any development of the issues from the previous prosecution has been completely lost and both sides just start over again. This will be a particularly egregious outcome when the new higher fees for RCEs kick in.

Best regards,  
John A. Sopp

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