

FREQUENTLY ASKED QUESTIONS – AFCP 2.0 PILOT PROGRAM

Q1. What is the current status of the pilot?

The AFCP 2.0 pilot has been extended, unchanged, until September 30, 2022.

Q2. I just received an advisory action for an application in which I filed a 37 CFR 1.116 after final amendment without an AFCP 2.0 request (a “non-pilot after final amendment”). Can I file an AFCP 2.0 request after having previously filed a non-pilot after final amendment?

Yes, the prior filing of a non-pilot after final amendment does not affect applicant’s ability to submit an AFCP 2.0 request. Note that only one AFCP 2.0 request may be filed in response to an outstanding final rejection.

Q3. I previously filed a notice of appeal. Can I file an AFCP 2.0 request?

Yes, the prior (or concurrent) filing of a notice of appeal does not affect applicant’s ability to submit an AFCP 2.0 request, as long as applicant has not yet filed an appeal brief or a Pre-Appeal Brief Conference Request.

Q4. I have not yet received a response to a previously filed non-pilot after final amendment. Can I now file a PTO/SB/434 AFCP 2.0 request form in an effort to transform the previously filed non-pilot after final amendment into a proper AFCP 2.0 submission?

Synchronizing between USPTO databases is corrupted when the PTO/SB/434 request form is not filed concurrently with the remainder of the after final amendment materials. For this reason, applicants are requested to always file the AFCP 2.0 request form concurrently with a proposed amendment that is compliant with AFCP 2.0. A previously filed non-pilot after final amendment may be processed consistent with current non-pilot practice, e.g., by mailing an advisory action, notwithstanding a subsequently filed AFCP 2.0 request form.

Q5. Are there any fees associated with filing an AFCP 2.0 request?

There are no fees unique to an AFCP 2.0 request. Do note, however, that applicants will be required to pay any applicable non-pilot fee, e.g., the fee for an extension of time, concurrently at the time of filing the AFCP 2.0 request.

Q6. How does an AFCP 2.0 request affect the fee calculations for extending the shortened statutory period for responding to a final rejection and the 6-month statutory deadline for responding to a final rejection?

An AFCP 2.0 request does not affect the fee calculations for extending the shortened statutory period for responding to a final rejection. The extension of time fees should be calculated as they would be for a non-pilot after final amendment. Please see MPEP 706.07(f) and 710.02(e) for further information about the shortened statutory period and extensions of time.

An AFCP 2.0 request does not affect the 6-month statutory deadline for responding to a final rejection. The statutory period for reply expires 6 months from the mailing date of the final rejection, regardless of any AFCP 2.0 submission.

Q7. When can I expect the examiner to take action on my AFCP 2.0 request, e.g., when can I expect the examiner to contact me to schedule an interview?

The goal of the USPTO is to have examiners respond as soon as possible to after final amendments, both pilot and non-pilot. In general, if you have not been contacted by the examiner or received a response within one month of filing, it is advisable to contact the examiner to inquire as to the status of the AFCP 2.0 request.

Q8. Do I need to file an RCE to be considered under the AFCP 2.0 pilot?

An RCE should not be filed with an AFCP 2.0 request. A proper AFCP 2.0 request does not include an RCE or the payment of RCE fees. The goal of AFCP 2.0 is to reduce pendency by reducing the number of RCEs.

Q9. Is there any data available on the effectiveness of the AFCP 2.0 pilot?

The USPTO is still collecting and evaluating data. As significant data is collected, it will be provided to external stakeholders. Results of an external survey revealed that the majority of applicants felt that the AFCP 2.0 program was effective in advancing prosecution and reduced the likelihood of filing an RCE.