

## **Guidelines for Consideration of Responses After Final Rejection under 37 CFR 1.116(b) under the After Final Consideration Pilot 2.0 (AFCP 2.0)**

To advance the goal of compact prosecution, the following guidance is provided to highlight situations when entry of an Amendment After Final Rejection under 37 CFR 1.116(b) may lead to earlier allowance of the application without undue burden on the examiner or applicant. Once a final rejection that is not premature has been entered in an application, there is no right to unrestricted further prosecution. In limited situations further amendments or arguments may be considered. Many of the difficulties encountered in the prosecution of a patent application after final rejection may be alleviated if the application includes, preferably at the time of filing, or before a first action by the examiner, claims varying from the broadest to which the applicant believes he or she is entitled, to the most detailed that he or she is willing to accept. See MPEP 714.12. Examiners should conduct an initial search which is as complete as possible, in keeping with the scope of the claims as well as disclosed features and subject matter which the examiner reasonably anticipates might be incorporated into the claims.

Situations where after a full and complete review, a response after final rejection should be entered:

1. The amendment places the application in condition for allowance by canceling claims or complying with formal requirement(s) in response to objection(s) made in the final office action.
2. The amendment places the application in condition for allowance by rewriting objected-to claims in independent form.
3. The amendment places the application in condition for allowance by incorporating limitations from objected-to claims into independent claims, if the new claim can be determined to be allowable with only a limited amount of further consideration or search.
4. The amendment can be determined to place the application in condition for allowance with only a limited amount of further search or consideration, even if new claims are added without cancelling a corresponding number of finally rejected claims.
5. The amendment can be determined to place the application in condition for allowance by adding new limitation(s) which require only a limited amount of further consideration or search.
6. The response comprises a perfected 37 CFR 1.131 or 37 CFR 1.132 affidavit or declaration (i.e., a supplemental declaration which corrects formal defects noted in a prior affidavit or declaration) which can be determined to place the application in condition for allowance with only a limited amount of further search or consideration. A new 37 CFR 1.131 or 37 CFR 1.132 affidavit or declaration will not be considered a proper submission for AFCP 2.0.

**Note: For situations 1 and 2 above, no non-production time will be granted. Such situations would be considered under pre-pilot practice and therefore do not qualify under AFCP 2.0.**

If a submission under 37 C.F.R. 1.116 includes a request for consideration under the AFCP, an amount of non-production time up to 3 hours for plant and utility applications, or up to 1 hour (plus any time attributed to an interview) for design applications, and a ten (10) day adjustment of the docket management clock can be made regardless of whether consideration of the amendment results in allowance of the application, subject to the following limitations:

The non-production time authorized by this pilot should be recorded under two separate time codes.

- A. For utility and plant applications:
  - i. If the application is being allowed:

- a. If an interview was conducted, up to 2 hours of non-production time may be charged to the AFCP 2.0 consideration code and up to 1 hour of non-production time may be charged to the AFCP 2.0 interview code.
    - b. If an interview was not conducted, up to 3 hours of non-production time may be charged to the AFCP 2.0 consideration code.
  - ii. If the application is not being allowed:
    - a. The examiner must request an interview with the applicant. If an interview is conducted up to 2 hours of non-production time may be charged to the AFCP 2.0 consideration code and up to 1 hour of non-production time may be charged to the AFCP 2.0 interview code.
    - b. If the applicant declines the interview or the interview cannot be conducted within ten (10) calendar days from the date the examiner requests the interview, up to 3 hours of non-production time may be charged to the AFCP 2.0 consideration code.
- B. For design applications:
  - i. If the application is being allowed:
    - a. If an interview was conducted, up to 1 hour of non-production time may be charged to the AFCP 2.0 consideration code and any time attributed to the interview may be charged to the AFCP 2.0 interview code.
    - b. If an interview was not conducted, up to 1 hour of non-production time may be charged to the AFCP 2.0 consideration code.
  - ii. If the application is not being allowed:
    - a. The examiner must request an interview with the applicant. If an interview is conducted up to 1 hour of non-production time may be charged to the AFCP 2.0 consideration code and any time attributed to the interview may be charged to the AFCP 2.0 interview code.
    - b. If the applicant declines the interview or the interview cannot be conducted within ten (10) calendar days from the date the examiner requests the interview, up to 1 hour of non-production time may be charged to the AFCP 2.0 consideration code.