

From: jack.e.haken@philips.com
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To: AB71 Comments
Subject: Proposed Rule on Patent Term Adjustments 68 Fed. Reg. 67818

This comment is submitted on behalf of Koninklijke Philips Electronics NV (KPEENV). KPEENV and its related companies are among the largest customers of the USPTO. We typically file in excess of 3000 new U.S. utility patent applications per year.

We wholly support the substance of the proposed rule which will correct, what we believe is, an ill-advised Office position that held that remand by a BPAI panel was not a "decision reversing an adverse determination" within the meaning of 35 U.S.C.

154(b)(1)(A)(iii) for purpose of calculating patent term extensions.

However, we note that the language of the proposed amended rule does not address the issue of an effective date; that is, whether or not the rule will be applied retroactively to extend the term of patents that issued after remand from the Board but before the date of that the amended rule is adopted.

We believe that fairness and equity require that the amended rule should apply to all patents that meet the enumerated requirements without regard to whether they issued before or after the adoption of the amended rule and we further believe that there is no statutory prohibition or authority which would prevent the USPTO from giving the proposed rule retroactive effect to the effective date of the respective provisions of the Patent Term Extension Acts.

If the Office believes that automatic retroactive application of the amended rule would significantly add to its administrative burden, then we suggest that a process be adopted wherein patentees would be able to petition for recalculation of the extension period based upon the amended rule.

Regards,

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