

Kratz, Quintos & Hanson, LLP – IP Newsletter

USPTO UPDATE: AFTER FINAL CONSIDERATION PILOT (AFCP) 2.0 PROGRAM

By: Darren Crew

The United States Patent and Trademark Office (USPTO) has extended the After Final Consideration Pilot (AFCP) 2.0 program through September 30, 2015.

The AFCP 2.0 program is intended to provide USPTO Patent Examiners with additional time to search and/or consider certain responses filed after a final Office Action, without reopening prosecution. Also, the AFCP 2.0 program is intended to decrease the number of Requests for Continued Examination (RCEs) and increase collaboration between the Applicant and the Patent Examiner, to effectively advance the prosecution of the application.

To be eligible for consideration under the AFCP 2.0 program, a patent application should contain an outstanding final rejection and be: (1) an original utility, plant or design nonprovisional application filed under 35 USC §111(a); or (2) an international application that has entered the national stage in compliance with 35 USC §371(c).

Also, please note that, to be eligible for consideration under AFCP 2.0 program, an Applicant must file a Response after the final rejection. That Response should include, or be accompanied by, the following:

- (1) an explicit request for consideration under the pilot (for example, Form PTO/SB/434; please see back page);
- (2) an amendment to at least one independent claim, without broadening that claim;
- (3) a statement that Applicant is willing to participate in an interview with the Patent Examiner; and
- (4) any necessary fees.

There is no additional fee required to request consideration of an amendment after final rejection under AFCP 2.0, but any necessary existing fee must still be paid (for example, the fee for an extension of time).

Previously, there were some concerns that Applicants did not receive clear information as to how the USPTO was handling Applicants' AFCP submissions. To address that issue, starting in November 2014, Applicants should receive a special AFCP 2.0 form (PTO-2323) intended to more clearly communicate the status of the AFCP submission, with an Interview Summary if applicable.

If the Examiner's consideration of a proper AFCP 2.0 request and Response does not result in a determination that all pending claims are in condition for allowance, the Examiner should contact the Applicant's representative to request an interview in order to discuss the response.

The Form PTO/SB/434, to be used to request consideration under AFCP 2.0, is shown on page 2.

If you have any questions regarding these issues, please feel free to contact us.

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**CERTIFICATION AND REQUEST FOR CONSIDERATION UNDER THE
AFTER FINAL CONSIDERATION PILOT PROGRAM 2.0**

Practitioner Docket No.:	Application No.:	Filing Date:
First Named Inventor:	Title:	

APPLICANT HEREBY CERTIFIES THE FOLLOWING AND REQUESTS CONSIDERATION UNDER THE AFTER FINAL CONSIDERATION PILOT PROGRAM 2.0 (AFCP 2.0) OF THE ACCOMPANYING RESPONSE UNDER 37 CFR 1.116.

1. The above-identified application is (i) an original utility, plant, or design nonprovisional application filed under 35 U.S.C. 111(a) [a continuing application (*e.g.*, a continuation or divisional application) is filed under 35 U.S.C. 111(a) and is eligible under (i)], or (ii) an international application that has entered the national stage in compliance with 35 U.S.C. 371(c).
2. The above-identified application contains an outstanding final rejection.
3. Submitted herewith is a response under 37 CFR 1.116 to the outstanding final rejection. The response includes an amendment to at least one independent claim, and the amendment does not broaden the scope of the independent claim in any aspect.
4. This certification and request for consideration under AFCP 2.0 is the only AFCP 2.0 certification and request filed in response to the outstanding final rejection.
5. Applicant is willing and available to participate in any interview requested by the examiner concerning the present response.
6. This certification and request is being filed electronically using the Office's electronic filing system (EFS-Web).
7. Any fees that would be necessary consistent with current practice concerning responses after final rejection under 37 CFR 1.116, *e.g.*, extension of time fees, are being concurrently filed herewith. [There is no additional fee required to request consideration under AFCP 2.0.]
8. By filing this certification and request, applicant acknowledges the following:
 - Reissue applications and reexamination proceedings are not eligible to participate in AFCP 2.0.
 - The examiner will verify that the AFCP 2.0 submission is compliant, *i.e.*, that the requirements of the program have been met (see items 1 to 7 above). For compliant submissions:
 - The examiner will review the response under 37 CFR 1.116 to determine if additional search and/or consideration (i) is necessitated by the amendment and (ii) could be completed within the time allotted under AFCP 2.0. If additional search and/or consideration is required but cannot be completed within the allotted time, the examiner will process the submission consistent with current practice concerning responses after final rejection under 37 CFR 1.116, *e.g.*, by mailing an advisory action.
 - If the examiner determines that the amendment does not necessitate additional search and/or consideration, or if the examiner determines that additional search and/or consideration is required and could be completed within the allotted time, then the examiner will consider whether the amendment places the application in condition for allowance (after completing the additional search and/or consideration, if required). If the examiner determines that the amendment does not place the application in condition for allowance, then the examiner will contact the applicant and request an interview.
 - The interview will be conducted by the examiner, and if the examiner does not have negotiation authority, a primary examiner and/or supervisory patent examiner will also participate.
 - If the applicant declines the interview, or if the interview cannot be scheduled within ten (10) calendar days from the date that the examiner first contacts the applicant, then the examiner will proceed consistent with current practice concerning responses after final rejection under 37 CFR 1.116.

Signature	Date
Name (Print/Typed)	Practitioner Registration No.

Note: This form must be signed in accordance with 37 CFR 1.33. See 37 CFR 1.4(d) for signature requirements and certifications. Submit multiple forms if more than one signature is required, see below*.

* Total of _____ forms are submitted.