

Patent Term Extension and Adjustment

The terms of certain patents may be subject to extension or adjustment under 35 U.S.C. 154(b). Such extension or adjustment results from certain specified types of delays which may occur while an application is pending before the Office.

There are three main bases for a patent term adjustment (PTA) under 35 U.S.C. 154(b). The first basis for PTA is the failure of the Office to take certain actions within specific time frames set forth in 35 U.S.C. 154(b)(1)(A) (See 37 CFR 1.702(a) and 1.703(a)).

The second basis for PTA is the failure of the Office to issue a patent within three years of the actual filing date of the application as set forth in 35 U.S.C. 154(b)(1)(B) (See 37 CFR 1.702(b) and 1.703(b)).

The third basis for PTA is set forth in 35 U.S.C. 154(b)(1)(C), and includes delays due to interference proceedings under 35 U.S.C. 135(a), secrecy orders under 35 U.S.C. 181, or successful appellate review (See 37 CFR 1.702(c)-(e) and 1.703(c)-(e)).

Any PTA which has accrued in an application will be reduced by the time period during which an applicant failed to engage in reasonable efforts to conclude prosecution of the application

pursuant to 35 U.S.C. 154(b)(2)(C). A non-exclusive list of activities which constitute failure to engage in reasonable efforts to conclude prosecution is set forth in 37 CFR 1.704.

An initial PTA value is printed on the notice of allowance and fee(s) due, and a final PTA value is printed on the front of the patent. Any request for reconsideration of the PTA value printed on the notice of allowance and fee(s) due should be made in the form of an application for patent term adjustment, which must be filed prior to or at the same time as the payment of the issue fee. (See 37 CFR 1.705.)