

Cantor Colburn Client Alert: USPTO to End the After-Final Pilot Program

The U.S. Patent and Trademark Office (USPTO) recently announced that its After Final Consideration Pilot Program 2.0 (“AFCP 2.0”) will expire on December 14, 2024. The AFCP program started in 2013 as part of an effort by the USPTO to reduce the need for Requests For Continued Examination (RCE) by providing an opportunity to obtain consideration of narrowing claim amendments following a “final” Office Action. Because the program could possibly result in allowance and grant of a patent without requiring an additional fee, it has been a popular option for patent applicants.

According to the USPTO announcement, however, since 2016 more than 60,000 AFCP 2.0 requests have been filed per year. The USPTO estimates that for fiscal year 2022 alone, it expended more than \$15 million in costs associated with Examiners considering the merits of AFCP 2.0 submissions. In its proposed fee changes for 2025, the USPTO sought to recover some of these costs by implementing a substantial \$500 fee to participate in the AFCP 2.0 program. However, public comments were largely against the implementation of such a fee. Thus, the USPTO has decided to terminate the program and will not accept AFCP 2.0 requests filed after December 14, 2024.

What This Means for You

Termination of the AFCP 2.0 program without any replacement eliminates a useful patent prosecution tool, and therefore applicants and practitioners will need to adjust their strategies, particularly when addressing final rejections. If you are considering filing a response to a final Office Action that you believe will lead to allowance of your application with only limited further searching and/or consideration by the examiner, you should consider requesting consideration of the response under AFCP 2.0 prior to the December 14, 2024 ending date. After December 14, 2024, other options will still be available after a final Office Action, including:

- Presenting amendments that will place the application in condition for allowance or in better form for appeal under 37 CFR § 1.116;
- Requesting an interview with the examiner;
- Filing a Notice of Appeal with a Request for Pre-Appeal Brief Review

As always, you should consult with your Cantor Colburn patent practitioner to determine the best strategy for your particular patent situation.

For Further Information and Assistance

Please do not hesitate to contact [your Cantor Colburn attorney](#) with any questions you may have regarding this matter and anything related to your intellectual property.

Please note that each situation has its own unique circumstances and ramifications. This Client Alert is for informational purposes only and is not legal advice.