

EXTENDING PATENT TERM

If you have a patent that issued since August 1, 2009, consider promptly submitting a request to the Patent Office to extend the patent term.

“ ...one-time opportunity to request a recalculation of patent term.

Most U.S. patents now expire 20 years from the effective filing date. That term is often extended due to delays in the Patent Office that are the fault of the Patent Office. A recent court decision determined that the Patent Office was not properly calculating the length of extensions due to delays by the Patent Office.

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The Patent Office will be correcting these calculations. It is providing a one-time opportunity to request a recalculation of patent term. The request needs to be filed within 180 days of the patent issuance.

Patents that meet the following criteria are eligible for the extension of patent term:

1. The application was actually filed on or after May 29, 2000; and
2. Prosecution pendency of the application was greater than three years.

The vast majority of affected patents also show that the Patent Office delayed in examining the application during the first three years of pendency. The most likely delay is the Patent Office waiting more than 14 months before providing initial examination to the response.

Professor Crouch, Associate Professor of the University of Missouri School of Law, believes the additional term typically will be under one year. For some inventions this can be valuable. For example, many patents for drugs find their value toward the end of the term due to delays in regulatory approval from the FDA.

Accordingly, if you have a patent that meets this criteria, it is advisable to promptly contact your patent attorney to determine if it makes sense to seek an extension.

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**Sheldon Mak
Rose & Anderson
Recent Successes**

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**License Agreement
Dispute Economical
Resolution**

A client was sued by its licensee with regard to a license agreement. We arranged for prompt mediation, and as a result of the agreements we presented during the mediation, the plaintiff never served the complaint on our clients, instead dismissing the lawsuit.

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