

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# After-final practice

Kery A. Fries

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# After-final practice

1. Applicant's reply options after a final action (37 CFR 1.114 (RCE), 1.116 (amendment and affidavit), and 41.31 (appeal))
2. After-final pilot programs: After-final Consideration Pilot 2.0 and Pre-Appeal Brief Conference Pilot Program
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## After-Final Practice

- 1. Applicant's reply options after a final action (37 CFR 1.114 (RCE), 37 CFR 1.116 (amendment and affidavit), and 37 CFR 41.31 (appeal))**

## **Applicant's reply options after final are limited**

- To avoid abandonment, applicant's reply options are:
  - Filing an after-final reply (37 CFR 1.116);
  - Appealing any rejections (37 CFR 41.31); or
  - Filing an RCE (37 CFR 1.114).

MPEP 706.07 and 714.13(II), and 37 CFR 1.113



## **After final rejection, applicant has no right to unrestricted further prosecution**

- 37 CFR 1.116 applies to replies filed after final rejection but before or on the same date of filing an appeal.
- Once a proper final rejection has been entered in an application, applicant or patent owner no longer has a right to unrestricted further prosecution.
- Ordinarily, amendments filed after the final action are not entered unless approved by the examiner.

See MPEP 714.12

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15<sup>th</sup> Annual Advanced Patent Law Institute session  
"After Final Rejection Practice"