

UNITED STATES
PATENT AND TRADEMARK OFFICE



After-final practice

Kery A. Fries

March 13, 2020



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
3. Quick Path Information Disclosure Statement (QPIDS)



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

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: After-Final Practice

Also available as part of the eCourse

[2020 Advanced Patent Law \(USPTO\) eConference](#)

First appeared as part of the conference materials for the
15th Annual Advanced Patent Law Institute session
"After Final Rejection Practice"