



# Patent Trial and Appeal Board (PTAB) FAQs

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Categories



## Patent Trial and Appeal Board (PTAB) - Procedures - Other

### ✓ Where can I find the Board's opinions?

- Board precedential and informative opinions are available at the following link: <https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/precedential-informative-decisions> ([/patents/ptab/precedential-informative-decisions](https://www.uspto.gov/patents/ptab/precedential-informative-decisions)).
- Board decisions are available at the following link: <https://developer.uspto.gov/ptab-web/#/search/decisions> (<https://developer.uspto.gov/ptab-web/#/search/decisions>).
- Board AIA Review decisions are available at the following link: <https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/decisions/aia-review-decisions> ([/patents/ptab/decisions/aia-review-decisions](https://www.uspto.gov/patents/ptab/decisions/aia-review-decisions)).

### ✓ How do I file a notice of appeal?

An applicant must follow the requirements set forth in [37 CFR § 41.31](https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec41-31) (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec41-31>), which require that a notice be filed within the time allowed for response from the examiner's last office action, and also pay a fee. See Section [1204](https://www.uspto.gov/web/offices/pac/mpep/documents/1200_1204.htm#sect1204) ([http://www.uspto.gov/web/offices/pac/mpep/documents/1200\\_1204.htm#sect1204](https://www.uspto.gov/web/offices/pac/mpep/documents/1200_1204.htm#sect1204)) of the Manual of Patent Examining Procedure. The notice of appeal and appropriate fee may be filed up to 6 months from the date of the Office action from which the appeal was taken, so long as an appropriate petition and fee for an extension of time under [37 CFR 1.136\(a\)](https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec1-136) (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec1-136>) is filed either prior to or with the notice of appeal. A sample form can be found at <http://www.uspto.gov/web/forms/sb0031.pdf> (<http://www.uspto.gov/web/forms/sb0031.pdf>). If certificate of mailing procedures under [37 CFR § 1.8](https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec1-8) (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec1-8>) are used, see [MPEP 512](#)

([http://www.uspto.gov/web/offices/pac/mpep/documents/0500\\_512.htm#sect512](http://www.uspto.gov/web/offices/pac/mpep/documents/0500_512.htm#sect512)). The actual receipt date of the Notice of Appeal will also be the date which is entered on Office records and from which any subsequent periods are calculated. For example, 37 CFR § 41.37 (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec41-37>), gives an appellant 2 months from the receipt date of the notice of appeal to file an appeal brief. If the last day to reply to a final Office action was January 10, 2011, and applicant deposited a Notice of Appeal with fee in the U.S. mail on January 10, 2011, and so certified using a certificate of mailing, that appeal is timely even if it is not received in the U.S. Patent and Trademark Office until January 16, 2011. Since the date of receipt of the notice of appeal is January 16, 2011, this date will be used to calculate the time at which the brief is due, and thus the brief will be due on March 16, 2011. This is 2 months after the date of receipt of the notice of appeal.

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### ▼ How can I file an appeal?

A notice of appeal may be filed after any of the claims has been twice rejected in applications for patent, including reissue or in an ex parte reexam based on a request filed before November 29, 1999. The limitation of "twice rejected" does not have to be related to a particular application. For example, if any claim was rejected in a parent application, and the claim is again rejected in a continuing application, then applicant can choose to file an appeal in the continuing application, even if the claim was rejected only once in the continuing application. Applicant cannot file an appeal in a continuing application, or after filing a request for continued examination (RCE) under 37 CFR 1.114 (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec1-114>), until the application is under a rejection. For ex parte reexaminations based on requests filed on/after November 29, 1999, the claims must be finally rejected - see 37 CFR § 41.31 (a)(3) (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec41-31>). To appeal, an applicant must file a notice of appeal followed by an appeal brief.

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### ▼ How do I file an appeal brief?

An appellant must follow the requirements set forth in 37 CFR § 41.37 (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec41-37>), which require a brief to be filed within 2 months from the filing date of the notice of appeal, and payment of a fee. All requirements of the brief are set forth in 37 CFR § 41.37 (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec41-37>). The time periods set forth in 37 CFR § 41.37 (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec41-37>), are extendable under the provisions of 37 CFR § 1.136 (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec1-136>) for patent applications and 37 CFR § 1.550(c) (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec1-550>) for ex parte reexamination proceedings. The See also **Section 1205 of the Manual of Patent Examining Procedure (MPEP)** ([http://www.uspto.gov/web/offices/pac/mpep/documents/1200\\_1205.htm#sect1205](http://www.uspto.gov/web/offices/pac/mpep/documents/1200_1205.htm#sect1205)) for additional guidance. To avoid common pitfalls in preparing an appeal brief, see also [http://www.uspto.gov/ip/boards/bpai/procedures/guidance\\_noncompliant\\_briefs.jsp](http://www.uspto.gov/ip/boards/bpai/procedures/guidance_noncompliant_briefs.jsp) ([http://www.uspto.gov/ip/boards/bpai/procedures/guidance\\_noncompliant\\_briefs.jsp](http://www.uspto.gov/ip/boards/bpai/procedures/guidance_noncompliant_briefs.jsp)).

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### ▼ How can I withdraw my appeal?

A request to withdraw an appeal may be filed any time before the decision is rendered. Withdrawal of an appeal may result in the abandonment of some or all claims. See [MPEP §§ 1215.01](#) (<http://www.uspto.gov/web/offices/pac/mpep/s1215.html#sect1215.01>), [1215.02](#) ([http://www.uspto.gov/web/offices/pac/mpep/documents/1200\\_1215\\_02.htm#sect1215.02](http://www.uspto.gov/web/offices/pac/mpep/documents/1200_1215_02.htm#sect1215.02)), [1215.03](#) ([http://www.uspto.gov/web/offices/pac/mpep/documents/1200\\_1215\\_03.htm#sect1215.03](http://www.uspto.gov/web/offices/pac/mpep/documents/1200_1215_03.htm#sect1215.03)). Appellant should file the request by facsimile transmission to 571-273-8300 or through online filing using EFS-Web. Information about EFS-Web can be found at <http://www.uspto.gov/patents/process/file/efs/index.jsp> (<http://www.uspto.gov/patents/process/file/efs/index.jsp>).

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#### ✓ Can an oral hearing fee be refunded?

No, pursuant to [37 CFR § 1.26\(a\)](#) (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec1-26>), a change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee. See [37 CFR § 1.26\(a\)](#) (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec1-26>). Refunds.

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#### ✓ How does an applicant reinstate an appeal?

An applicant can reinstate an appeal by filing a second notice of appeal in compliance with [37 CFR 41.31](#) (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec41-31>) and a complete new brief in compliance with [37 CFR 41.37](#) (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec41-37>). Any fees paid for the notice of appeal, appeal brief, and request for an oral hearing (if applicable) will be applied to the reinstated or second appeal on the same application as long as a final Board decision has not been made on the first appeal. If, however, the appeal fees set forth in [37 CFR 41.20](#) (<https://www.govinfo.gov/app/details/CFR-2018-title37-vol1/CFR-2018-title37-vol1-sec41-20>) have increased since they were previously paid, then applicants must pay the difference between the current fee(s) and the amount previously paid.

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#### ✓ What is a docketing notice?

A docketing notice is a notice issued by the Board assigning an appeal number to your appeal.

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#### ✓ When is my Oral Hearing?

Please refer to the Notice of Oral Hearing which sets forth the date, time and hearing room location for your hearing. If you have not received one, one will be issued in due course.

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#### ✓ Can I present an oral argument (oral hearing) for my appeal?

Also available as part of the eCourse

[2021 Advanced Patent Law \(USPTO\) eConference](#)

First appeared as part of the conference materials for the  
16<sup>th</sup> Annual Advanced Patent Law Institute session

"Best Practices for Ex Parte Appeals"