

Fowles, Bernhardt and Bostrom in Reuters: Best Practices for Drafting Revival Petitions for Patents and Patent Applications

February 3, 2025 Adam Fowles, Dirk Bernhardt, Brett Bostrom

PRACTICES Patents, Patent Prosecution and Counseling, Patent Office Trials

Haynes Boone Partner [Adam Fowles](#) and Associates [Dirk Bernhardt](#) and [Brett Bostrom](#) authored an article for *Reuters* offering guidance on how to craft an effective petition to revive a patent application abandoned for over two years due to unintentional delay.

Read an excerpt below.

When the United States Patent and Trademark Office (USPTO) changed the rule regarding revival petitions in March 2020 to additionally require a statement explaining unintentional delays of more than two years, ambiguity remained on what constituted a successful statement.

Now that the rule has been in effect for several years and the USPTO has had opportunity to respond to several relevant petitions, it is worth revisiting the topic and glean insight from the responses about what the USPTO considers to be a grantable revival petition.

An applicant may seek revival of an abandoned application or patent by certifying that the entire delay from abandonment to the filing of a grantable revival petition was an unintentional delay. In considering revival petitions, the USPTO relies on the applicant's duty of candor and good faith to the Patent Office when certifying that the delay was truly unintentional.

"Unintentional delay" has been the standard for revival since 2013, before which time the standard was "unavoidable" delay. Between 2013 and 2020, an applicant seeking to revive an abandoned patent or patent application met the requirements of certification simply by checking a box on a standardized form. The USPTO would typically defer to the applicant's duty of candor, and rarely requested supplemental information about the delay.

The USPTO's clarification in the Federal Register on March 2, 2020, added a new requirement for delays longer than two years. For these longer delays, the applicant/patentee must now provide a statement including "sufficient information of the facts and circumstances surrounding the entire delay."

For cases under two years, the rule is unchanged (i.e., check-the-box). Based on a review of recent responses, the USPTO appears to be applying the 2020 rule change rather strictly, requiring a detailed account of the entire delay period. Patent practitioners must therefore carefully consider how to draft this additional statement when preparing a revival petition for patents or applications with more than a two-year delay period.

To read the full article from *Reuters*, click [here](#).