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Subject: Changes To Implement the Patent Law Treaty, 78 FR 21788

This is a follow up comment the rules implementing the changes to law imposed by the PLTIA.

US rule 37 CFR 1.452 provides for restoration in a PCT application filed with RO/US based upon the "unintentional" standard. That rule was promulgated in 2007 before the US provided for restoration under US national law and at that time was therefore limited to restoration in the Office of those other nations that would accept restoration based upon the "unintentional" standard. The US rules promulgated to implement PLTIA provide for revival and restoration of priority in the United States, only based upon the "unintentional" standard before the USPTO. However, a showing of "despite due care" is deemed to also satisfy the "unintentional" standard.

In 2007 the right of restoration was a relatively new concept in international law and it may not have been clear that the majority of countries would only accept a restoration based upon the "despite due care" standard. However, that is now the case. Accordingly, the limitation imposed by rule 37 CFR 1.452 to determining restoration only based upon the "unintentional" standard places a PCT applicant requiring restoration that files in RO/US at a distinct disadvantage.

The Office should consider revising 37 CFR 1.452 to allow RO/US to grant restorations upon a successful showing of "despite due care" to avoid disadvantaging US nationals and residents that file a PCT application in RO/US.

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