

Post-dating at applicant's request

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Summary

Post-dating means changing the application filing date to a later date and is only applied to applications/specifications that have not been accepted. Once post-dated, the application is deemed for all purposes to have been filed on the later date.

The applicant can request post-dating, but the maximum period (accumulated) is limited to six months beyond the original date of filing. Post-dating of provisional specifications is often requested to allow the filing within 15 months of a complete specification in New Zealand or the filing within 12 months of a convention application or PCT international application claiming priority from the original provisional filing.

See the Notes of this Topic Guide for an explanation regarding a recent change of IPONZ practice respecting post-dating.

Legislation

Patents Act 1953

12. Examination of application -

(3) At any time after an application has been filed under this Act and before acceptance of the complete specification, the Commissioner may, at the request of the applicant and upon payment of the prescribed fee, direct that the application shall be post-dated to such date as may be specified in the request:

Provided that -

1. No application shall be post-dated under this subsection to a date later than 6 months from the date on which it was actually made or would, but for this subsection, be deemed to have been made; and
2. A convention application shall not be post-dated under this subsection to a date later than the last date on which, under the foregoing provisions of this Act, the application could have been made.

Regulation

Patents regulations 1954

part V, 28.

“Request for Post-dating an Application

Where an applicant for a patent desires that his application shall be post-dated in pursuance of the provisions of section 12(3) of the Act, he shall make a request in [form 8](#).”

Office practice

Patent office practice circular No. 10, 3 September 1973 (Superceded as of 31 March 2003)

Postdating of applications under s.12(3).

If postdating of a patent application and its accompanying provisional specification is desired under s.12(3) of the Act, and more than 12 months has elapsed since the application was filed, a request on Form 8 for postdating will only be acted upon if an appropriate request in Form 7 has also been filed in time.

This 1973 practice note is withdrawn and replaced by:

Information for Clients, No. 24, 31 March 2003.

Extension of Time – Section 9(2) (Patents)

This policy supersedes that set out in Practice Note No. 10 of 3 September 1973.

When an application for post-dating of a provisional application occurs more than 12 months from the provisional filing date (but within 15 months) it is no longer necessary for an applicant to also file a Patents Form No. 7 for an extension of time. A request for an extension of time will only be necessary if a complete specification is filed after 12 months (but within 15 months) from the new provisional filing date.

Notes

This recent practice stems from the decision with regard to R., B. and F.'s Application in the British courts and renders the ratio of the earlier British decisions mentioned below somewhat irrelevant.

Case law

Parker's application RPC [1962] at page 126,

"When an application for a patent is accompanied by a provisional specification, and no complete specification has been filed, and a request for post-dating of the application is made more than 12 (but less than 15) months after the application, the Comptroller (Commissioner) has the power to post-date the application if and only if a request for extension of time for filing the complete specification is made within the 15 month period."

British Patent Office Decision on practice under the 1949 Act

A.H. Freeman and Heatrae Ld.'s application RPC [1958] at page 263

"There was no right to post-date an application after such application was 'deemed to be abandoned' by reason of no complete specification having been filed within 15 months from the date of such application."

British High Court Decision by three Justices, Lord Goddard, Justice Cassels, and Justice Diplock.

A.H. Freeman and Heatrae Ld.'s application RPC [1959] at page 25

"Post-dating could only be allowed if application (for post-dating) be made within the time within which the complete specification could be accepted"

British Appeal (Supreme) Court Decision by Lord Justice Evershed, Lord Justice Sellers, and Lord Justice Pearce

R., B. and F.'s application [1976]R.P.C. at page 680

"It's true meaning then is that there is a time limit of 12 months for filing a complete specification; that time can be extended for 3 months if the necessary requests are made, the fee paid (no fee in NZ) and the formalities complied with. If the complete specification is not filed during that time in accordance with those rules, then it is deemed to be abandoned. Thus, until the expiry of the 12 months plus 3 months, 15 months in all, the application is alive and is not deemed to be abandoned." Lord Justice Geoffrey Lane

British Appeal (Supreme) Court Decision by Lord Justices Buckley, Geoffrey Lane and Goff