JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Torres Terry

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Pro Se Plaintiff

DEFENDANTS

Squires, John A., in his official capacity as Director, United States Patent and Trademark Office

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☒ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. §§ 1331, 1361; 5 U.S.C. § 706

Brief description of cause:
Mandamus and APA challenge to USPTO penalty and ultra vires suspension of mandatory patent publication

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ $4,122 + injunctive relief

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE February 23, 2026

SIGNATURE OF ATTORNEY OF RECORD /s/ Terry Torres (Pro Se Plaintiff)

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TERRY LEE TORRES,
Plaintiff,

v.

JOHN A. SQUIRES, in his official capacity as
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office,

Defendant.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDAMUS

NATURE OF THE ACTION

1. This action challenges a pattern and practice of constitutional violations by the USPTO in administering its micro entity enforcement program. The agency imposed a $4,122 penalty on Plaintiff for conduct that occurred before the enforcement framework existed, demanded evidence that standard consumer technology had automatically destroyed before any duty to preserve arose, applied standards never disclosed in the operative notice, and maintained an institutional policy — admitted and corroborated by multiple employees — to withhold procedural information from applicants. This is not a case of individual employee error. It is a case of documented institutional direction.

2. The core facts are undisputed: On December 1, 2025, a USPTO agent reviewed Plaintiff's complete response and confirmed "everything is, it appears to be correct." Fifty-nine days later, without explanation, the agency reversed course and imposed statutory penalties based on the same submission. When Plaintiff sought clarification, USPTO employees explicitly stated they were operating under "the direction of the office" to "not entertain too many conversations" and could not provide "more information than what we have been authorized to provide." A second employee, asked separately whether that characterization of institutional withholding was accurate, responded: "Right."

3. This case presents fundamental questions of procedural fairness and institutional accountability: Can an agency retroactively enforce rules that did not exist when conduct occurred — and admit in its own penalty determination that the framework was issued "prior to implementation"? Can an agency demand evidence its own enforcement timeline made impossible to preserve? Can an agency maintain a policy to withhold procedural information while penalizing applicants for non-compliance with undisclosed standards? Can an agency suspend an application from prosecution pending collection of a disputed penalty that is not a "required fee" under the mandatory publication statute?

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under:

a. 28 U.S.C. § 1331 (federal question jurisdiction)

b. 28 U.S.C. § 1361 (mandamus jurisdiction)

c. 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act)

d. 5 U.S.C. §§ 702, 706 (Administrative Procedure Act judicial review)

5. Venue is proper in this District under 28 U.S.C. § 1391(e)(1) because:

a. Plaintiff resides at 1428 7th Ave., Neptune, New Jersey 07753 (Monmouth County, within this District)

b. A substantial part of the events giving rise to the claim occurred in this District, where Plaintiff prepared and filed his patent application and response to the USPTO's show cause order

c. The USPTO maintains operations and conducts business within or accessible to this District

6. Alternatively, venue is proper in the Eastern District of Virginia under 28 U.S.C. §§ 1391(e)(1) and 1400(b) as the USPTO's principal office is located at 600 Dulany Street, Alexandria, Virginia 22314.

PARTIES

7. Plaintiff Terry Lee Torres is an individual residing at 1428 7th Ave., Neptune, New Jersey 07753. Plaintiff is the pro se applicant for U.S. Patent Application No. 18/973,067.

8. Defendant John A. Squires is sued in his official capacity as Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. Director Squires was confirmed by the United States Senate on September 18, 2025. The Director has supervisory authority over all USPTO personnel and operations and possesses final decision-making authority over the administrative actions challenged in this Complaint pursuant to 35 U.S.C. § 3(a)(2)(A).

STANDING AND EXHAUSTION OF REMEDIES

9. Plaintiff has standing to bring this action because:

a. Plaintiff has suffered an injury-in-fact: the imposition of a $4,122 penalty and suspension of his patent application, which threatens the February 26, 2026 publication deadline and resulting competitive harm

b. The injury is fairly traceable to Defendant's challenged actions

c. The injury is redressable by this Court's judgment

10. Plaintiff has exhausted administrative remedies or exhaustion is excused.

11. On February 12, 2026, Plaintiff filed an Emergency Petition for Reconsideration and Request for Emergency Relief directed to the Director of the USPTO under 37 C.F.R. §§ 1.181 and 1.182, with an explicit 10-day response request tied to the imminent February 26, 2026 publication deadline. The Director's office re-routed the petition to OPET — the same office whose January 30 determination was being challenged — without response within the 10-day window. On February 17, 2026, Plaintiff filed a Supplemental Submission adding additional arguments and correcting a misquotation from the petition, which itself constituted affirmative evidence of the Gazette language's ambiguity to a non-lawyer reader.

12. Alternatively, exhaustion is excused because:

a. FUTILITY: Representative Rachel, Office of Petitions, explicitly confirmed on February 2, 2026 that "it'll be the same, it will be the same team. The same people who have issued this combined notice and show cause order... It's all being handled by the fraud mitigation team." (Exhibit I). This admission establishes that the same personnel who imposed the penalty would review any petition, creating structural bias that makes meaningful administrative review impossible under Withrow v. Larkin, 421 U.S. 35 (1975). This structural bias was confirmed in practice: the emergency Petition for Reconsideration filed February 12, 2026, directed to the Director, was re-routed to OPET — the same office whose January 30 determination it challenged. The Director-level appeal was deflected back to the body whose decision it was meant to review.

b. IMPRACTICABILITY: The imminent February 26, 2026 publication deadline makes exhaustion impracticable. Representative Bousono stated on January 9, 2026 that the process "might take three to five months," making it impossible to obtain administrative relief before the publication deadline.

c. INADEQUACY: The systematic institutional policy to withhold procedural information renders administrative remedies inadequate. Multiple USPTO employees over three months confirmed they were prohibited from providing information necessary for Plaintiff to navigate the administrative process.

STATEMENT OF FACTS

I. Background and Initial Certification

13. Plaintiff filed Patent Application No. 18/973,067 as a pro se applicant, certifying micro entity status in good faith under 37 C.F.R. § 1.29(a).

14. At the time of certification, no enforcement framework existed for assessing penalties for allegedly improper entity status claims. The statutory penalty provisions in 35 U.S.C. §§ 41(j) and 123(f) had been enacted in 2022-2023, but the USPTO had not implemented any administrative framework for their enforcement.

II. Post-Certification Implementation of Enforcement Framework

15. On July 8, 2025 — more than seven months after Plaintiff's certification — the USPTO published notice in the Official Gazette announcing it "will begin issuing" show cause orders for allegedly improper entity status claims. This notice used future-tense language throughout —

"will begin issuing," "will send," "applicants will be given" — unambiguously indicating prospective implementation rather than retroactive enforcement.

16. On October 24, 2025 — nearly ten months after Plaintiff's certification — the USPTO issued a memorandum to the Manual of Patent Examining Procedure (MPEP) implementing the enforcement framework. This memorandum explicitly stated it would "supersede" prior guidance. The word "supersede" does not mean clarify or supplement — it means replace entirely. If the October 2025 Memorandum merely clarified an already-existing obligation, it would say "clarifies" or "provides guidance consistent with." The choice of "supersede" establishes that prior to October 24, 2025, the operative framework did not exist in its current form.

17. Critically, USPTO's own January 30, 2026 penalty determination states that the July 8, 2025 Official Gazette Notice was issued "prior to implementation of the penalty provisions." This admission by the deciding official establishes that implementation had not yet occurred as of July 8, 2025 — meaning implementation occurred after that date, and certainly after Plaintiff's certification. An agency cannot simultaneously admit in its penalty determination that the framework was implemented after the OG Notice issued and argue that the framework governed conduct predating the Notice.

18. Representative Rachel, reviewing the proceedings on February 2, 2026, further confirmed the program's novelty from inside the agency: "I do know these are relatively new, at least from what I have since I've been working here in the office."

III. The Show Cause Proceeding

19. On November 4, 2025, the USPTO Fraud Mitigation Unit issued a Combined Notice of Payment Deficiency and Order to Show Cause regarding Application No. 18/973,067, claiming Plaintiff had improperly certified micro entity status because he had been named on more than four prior patent applications.

20. The show cause order required an explanation supported by "sufficient evidence" of good faith. The order did not cite 37 CFR § 11.18(b)(2). The order did not reference the Official Gazette notice. The order did not specify what specific items must be provided. The order did not define "sufficient evidence."

21. On November 18, 2025, Plaintiff filed a comprehensive response in which he: (a) paid the full fee deficiency of $1,412; (b) corrected entity status to small entity; (c) explained the good faith nature of the error; and (d) requested waiver or mitigation of any penalties. On November 19, 2025, Plaintiff's payment of $1,412 cleared, bringing his account current with the USPTO.

IV. Michele Eason Call — First Enacted Instance of Institutional Blackout (November 7, 2025)

22. On November 7, 2025, before filing his response, Plaintiff called the USPTO Office of Petitions seeking guidance on how to respond to the show cause order.

23. Representative Michele Eason stated: "I cannot answer those questions, and I have no one to transfer you to at this time." She promised to contact the decision-maker and call back.

24. When Representative Eason called back on the morning of November 10, 2025, she stated to Plaintiff directly: "I have been instructed not to help you." This statement was made on a government-initiated call, on official USPTO telecommunications infrastructure, by a named federal employee reporting a specific management instruction she had received.

25. Representative Eason did not name any institutional policy during these calls. She enacted it through her conduct. She was operating under the directive before it was ever named.

V. The December 1 Confirmation

26. On December 1, 2025, a USPTO agent reviewed Plaintiff's complete submission during a telephone call.

27. During this call, the agent confirmed: "Everything is, it appears to be correct." (Exhibit F). The agent used the word "everything" — not "your fees" or "your payment" or "the correction." The confirmation followed review of the complete submission.

28. This confirmation induced Plaintiff's reasonable reliance that his response satisfied all requirements. It also foreclosed any supplementation — having been told everything was correct, Plaintiff had no reason to provide additional evidence.

29. This agent did not name any institutional policy. She enacted it through selective disclosure: providing the one confirmation that closed the cure window while withholding the one assessment that would have enabled supplementation — namely, that the good faith showing was substantively deficient.

VI. The 59-Day Reversal and Penalty

30. After the December 1 confirmation, the USPTO remained silent for 59 days.

31. On January 30, 2026, the USPTO Fraud Mitigation Unit issued a final determination: (a) rejecting Plaintiff's good faith explanation; (b) assessing the statutory penalty of $4,122 (three times the $1,374 deficiency); (c) demanding payment within 60 days; and (d) suspending the application from prosecution.

32. The January 30 determination: (a) provided no explanation for why the December 1 confirmation that "everything is, it appears to be correct" was reversed; (b) identified as its sole deficiency Plaintiff's alleged failure to provide sufficient evidence of reasonable inquiry — a standard never cited in the show cause order; (c) cited 37 CFR § 11.18(b)(2) — a regulation never mentioned in the show cause order; and (d) applied an evidentiary standard that first appeared in the penalty determination itself, not in the notice.

33. The standard actually applied — 37 CFR § 11.18(b)(2)'s reasonable inquiry requirement — was different from the standard stated in the show cause order. "Explanation supported by sufficient evidence" appears in the notice. 37 CFR § 11.18(b)(2) does not. Applying a standard that does not appear in the notice is not inadequate notice — it is no notice at all.

VII. Bousono Call — First Named Instance of Institutional Blackout (January 9, 2026)

34. On January 9, 2026, Plaintiff called seeking a status update. Representative Bousono from the Office of Petitions provided explicit admission of institutional policy:

> *"what we have been given in actually the direction of the office is that we're trying to not, you know, entertain too much too many conversations on this topic. They want us to really leave this to the people who are actually reviewing your response to show cause order. They don't want us to really meddle into these matters until they have been reviewed by the proper authorities here. So I really wish that I could give you more information than what we have been authorized to provide."*

(Exhibit G, emphasis added).

35. This admission establishes: (a) "Direction of the office" — explicit management directive; (b) "Not entertain too many conversations" — policy to limit assistance; (c) "Don't want us to really meddle" — prohibition on providing guidance; (d) "Authorized to provide" — explicit management-imposed limits on disclosure.

36. Representative Bousono further stated employees were not even informed whether publication would proceed on schedule: "we have not been given information about whether the application would publish." An agency implementing a suspension policy whose own employees do not know its consequences with respect to mandatory statutory publication deadlines is an agency operating beyond the boundaries of its considered statutory authority.

VIII. Ombudsman Call — Enacted Instance of Institutional Blackout (January 9, 2026)

37. On the same day, Plaintiff contacted the USPTO Ombudsman office. The Ombudsman exists specifically to help applicants navigate USPTO processes when normal channels fail. This was the institutional safety net designed for exactly Plaintiff's situation.

38. Plaintiff informed the Ombudsman of the pattern of information withholding: "What they told me was that they literally are instructed pretty much not to give any information regarding their procedures, how long it's going to take." (Exhibit H).

39. The Ombudsman confirmed: "we cannot override petitions" and "We don't have authority to override petitions or any other department." (Exhibit H).

40. The Ombudsman did not name any institutional policy. She enacted it: the office institutionally designed as the remedy of last resort for applicants unable to obtain guidance through normal channels confirmed it had no authority to help. Even the safety net was neutralized.

IX. Rachel Call — Second Named and Corroborating Instance of Institutional Blackout; Admissions of Vague Standards and Structural Bias (February 2, 2026)

41. On February 2, 2026, three days after the penalty determination, Plaintiff called the Office of Petitions seeking clarification. Representative Rachel made multiple significant admissions.

42. ADMISSION 1 — Order Lacks Specificity: Representative Rachel reviewed the show cause order in real time during the call and stated: "I do see evidence revealing the notice itself, and it doesn't look like they provide any items you specifically must provide to meet that." (Exhibit I). This was not an applicant's characterization. This was a USPTO employee describing what she saw — or did not see — in the agency's own document during contemporaneous review.

43. ADMISSION 2 — Employee Uncertainty: When asked what evidence would satisfy the requirement, Representative Rachel stated: "Yeah, I'm really not sure. I'm so sorry for that." This phrase was repeated multiple times during the conversation.

44. ADMISSION 3 — Need for Clarity: "I completely understand everything you're saying and I do think language could be clear in the notice itself of what's required."

45. ADMISSION 4 — Employee Unfamiliarity: "I'm not too familiar with the process behind the scenes. Well, if I'm not familiar and I work here, then I can understand how someone approaching the applicant would be a little bit confused." This statement goes beyond uncertainty. Rachel acknowledged that her own unfamiliarity with the standard — as a USPTO employee processing these cases — makes it understandable that an applicant would be confused. That is an acknowledgment that the standard is objectively confusing to people on both sides of the proceeding.

46. ADMISSION 5 — Program Novelty: "I do know these are relatively new, at least from what I have since I've been working here in the office."

47. CONFRONTATION ABOUT INSTITUTIONAL BLACKOUT AND ADOPTIVE ADMISSION: Plaintiff directly described the systematic withholding pattern to Rachel:

> *"Nobody can say anything about these proceedings. These procedures are being held hush hush. Nobody could talk about them. No one can describe them. No one can tell you what your remedies are. No one can tell you what the next step is. Nobody could tell you anything apparently regarding the show cause order proceedings. It's not permissible."*

Representative Rachel's response was a single word: "Right." (Exhibit I).

48. This response constitutes an adoptive admission under Federal Rule of Evidence 801(d)(2)(B) and a party admission under FRE 801(d)(2)(D). Rachel had the opportunity to deny the allegations. Any USPTO employee would naturally deny allegations of institutional misconduct if untrue. Instead, Rachel validated Plaintiff's comprehensive description of systematic obstruction without qualification.

49. STRUCTURAL BIAS ADMISSION: Representative Rachel confirmed: "it'll be the same, it will be the same team. The same people who have issued this combined notice and show cause order... It's all being handled by the fraud mitigation team."

X. The Institutional Blackout: Spoken and Enacted

50. The evidence establishes two independently corroborating categories of proof that an institutional blackout policy existed and operated:

51. EMPLOYEES WHO SPOKE THE POLICY: Bousono (January 9, 2026) named the directive: "direction of the office," "authorized to provide," "don't want us to meddle." Rachel (February 2, 2026) validated it: "Right." Two independent employees on two separate recorded calls confirmed the same institutional directive. One employee describing a policy could reflect individual confusion or miscommunication. Two independent employees — one describing it from within as a management directive, one validating it as accurately characterized from outside — constitutes corroborated evidence of deliberate institutional policy.

52. EMPLOYEES WHO ENACTED THE POLICY IN REAL TIME: Michele Eason (November 7, 2025) stated she could not answer and later communicated that she had been instructed not to help — without naming any policy. The anonymous December 1 agent (December 1, 2025) confirmed the application was correct while providing nothing about the evidentiary standard — selective disclosure that is consistent with institutional direction, not individual judgment. The Ombudsman (January 9, 2026) confirmed she had no authority to help — enacting the blackout through the neutralization of the one channel designed to provide it. Three employees across three separate contacts demonstrated the policy through conduct without naming it.

53. SIGNIFICANCE OF FIVE CONSISTENT CONTACTS: The blackout operated consistently across five independent employees over three months. No contact produced the one piece of information Plaintiff needed. Five employees — across independent contacts, spanning three months, in different roles — whose conduct is entirely consistent with a single institutional directive is not confusion. It is coordination.

XI. Temporal Impossibility of Compliance

54. The USPTO penalized Plaintiff for the absence of digital evidence documenting his December 2024 eligibility inquiry. The evidence was destroyed months before any duty to preserve arose and before any enforcement framework was announced.

55. Under Zubulake v. UBS Warburg, the duty to preserve evidence arises only when litigation or formal proceedings are reasonably foreseeable. On the date of Plaintiff's certification, no show cause order existed, no investigation was pending, and no enforcement framework had been announced. The duty to preserve never arose before the evidence ceased to exist.

56. The relevant evidence — browser history, cached pages, download logs, dynamic eligibility determination pages — is maintained on consumer devices and purged automatically by standard technology: browser history within 7-30 days, session-based content at session end. By January 2025 at the latest, all digital evidence of the December 2024 inquiry had been automatically destroyed through normal device operation, not any negligent act by Plaintiff.

57. The enforcement framework was not announced until July 8, 2025 — at minimum six months after all digital evidence had been destroyed. The specific evidentiary requirement did not appear until the January 30, 2026 penalty determination — fourteen months after the inquiry.

58. Moreover, the show cause order itself — issued November 4, 2025 — never requested documentation of the inquiry process, never cited 37 CFR § 11.18(b)(2), and never mentioned a "reasonable inquiry" requirement. Even if a duty to preserve had somehow arisen at the show cause order stage, the order still failed to trigger a preservation obligation for inquiry documentation because it never asked for it. The requirement appeared for the first time in the penalty determination, at which point it was fourteen months too late.

59. If USPTO's position is correct, every applicant certifying micro entity status must screenshot every webpage visited, save every PDF downloaded, document every search query, preserve all browser history indefinitely, and maintain contemporaneous notes of every research step — not because any regulation requires it, but because an enforcement action might issue more than a

year later demanding proof of routine activity. That is not reasonable inquiry. It is documented paranoia imposed retroactively without notice.

XIII. The Agency-Created Emergency

60. The emergency before this Court was created entirely by the agency, not by Plaintiff. The Show Cause Order issued November 4, 2025. Plaintiff responded within 14 days — on November 18, 2025 — paying the full $1,412 fee deficiency and submitting a complete written response. The agency then took 73 days to issue its determination, delivering it on January 30, 2026 — 27 days before the mandatory publication deadline.

61. On February 12, 2026, Plaintiff filed an emergency Petition for Reconsideration directed to the Director under 37 CFR 1.181 and 1.182, with an explicit 10-day response request. The Director's office re-routed the petition to OPET — the same office whose determination was being challenged — without response. On February 17, 2026, Plaintiff filed a Supplemental Submission. No response has issued to either. Plaintiff filed this action on February 23, 2026, three days before the statutory publication deadline.

62. At every stage, Plaintiff acted promptly. At every stage, the agency delayed. A party who responds in 14 days and then waits 73 days for a determination has not manufactured an emergency. The agency that took 73 days to respond — and then re-routed a 10-day emergency petition directed to the Director back to the unit whose determination it challenged — has.

XII. Publication Deadline and Irreparable Harm

63. Patent Application No. 18/973,067 is scheduled for publication on February 26, 2026, pursuant to the mandatory publication requirement of 35 U.S.C. § 122(b)(1)(A).

64. The USPTO has suspended the application from prosecution, threatening this deadline. The suspension is not incidental — Representative Bousono confirmed it as deliberate policy: "applications subject to show cause orders are not being examined until we verify the response."

65. Publication timing creates irreparable harm through multiple independent mechanisms: (a) Under 35 U.S.C. § 154(d), publication triggers provisional rights that allow Plaintiff to collect reasonable royalties for infringement occurring after the publication date. Every day of wrongful suspension is a day during which infringement may occur without provisional royalty liability — a window that cannot be recovered retroactively regardless of Patent Term Adjustment; (b) Publication triggers the 18-month clock for continuation applications, compressing Plaintiff's continuation strategy in ways that cannot be remedied after the fact; (c) Publication creates constructive notice to potential infringers — every day of delayed publication is a day infringement may occur without the constructive notice that would support provisional royalties from the publication date forward; (d) Publication timing affects licensing opportunities and market positioning. The commercial paralysis imposed by enforced uncertainty during the suspension period is permanently lost regardless of what the agency ultimately decides.

63. Independently and additionally, Respondent's deliberate refusal to communicate its intentions regarding publication constitutes irreparable harm in itself. Petitioner explicitly requested confirmation of publication status in the Petition for Reconsideration filed February 12, 2026. 11-days have passed without response. This silence is not administrative delay — it is the product of a documented institutional policy, confirmed by Representative Bousono, that employees 'have not been given information on whether the application will be published.'

Petitioner cannot obtain adequate relief after February 26 if publication is suppressed, nor can Petitioner make any informed decision about his position before that date. The harm is the uncertainty deliberately maintained by the agency, not merely the potential outcome.

64. The agency's deliberate refusal to disclose its intentions has independently prevented Petitioner from initiating commercialization efforts entirely. Any approach to potential licensees, industry partners, or investors requires Petitioner to represent the condition of the underlying application. USPTO's suspension of prosecution, combined with its documented institutional refusal to communicate whether publication will proceed, renders Petitioner unable to make any such representation. This is not anticipated harm — it is ongoing harm that has continued for every day of the agency's silence. The market opportunities foregone during this period of enforced uncertainty are permanently lost regardless of what the agency ultimately decides. Unlike the harms addressable by Patent Term Adjustment, this commercial paralysis has no retroactive remedy.

COUNT I

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

(5 U.S.C. § 706(2)(A) — Arbitrary, Capricious, and Not in Accordance with Law)

66. Plaintiff incorporates paragraphs 1-65. This Count is the foundational APA claim. The four independent sub-grounds set forth below are each individually sufficient to establish a violation. They are developed in greater detail in Counts II through IV. This Court need find only one sub-ground established to sustain Count I.

67. An agency action is arbitrary and capricious if "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). Under Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244 (2024), this Court evaluates the agency's authority independently without deference to the agency's interpretation of its own statutory authority.

68. The USPTO's actions are arbitrary and capricious on four independent grounds:

a. RETROACTIVE APPLICATION: The agency imposed penalties under a framework its own penalty determination admits was issued "prior to implementation." The framework was announced July 8, 2025 using future-tense language and implemented October 24, 2025 with language that it would "supersede" prior guidance — ten months after Plaintiff's certification.

b. UNEXPLAINED REVERSAL: The agency confirmed Plaintiff's submission was "correct" on December 1, 2025, then imposed penalties 59 days later based on the same submission, with no explanation for the reversal. This is the paradigmatic State Farm violation — opposite conclusions on identical facts without explanation.

c. TEMPORALLY IMPOSSIBLE DEMANDS: The agency penalized Plaintiff for the absence of digital evidence that standard consumer technology automatically destroyed

before the enforcement framework was announced, before any duty to preserve arose, and before the show cause order was issued.

d. UNDISCLOSED STANDARDS: The agency applied 37 CFR § 11.18(b)(2) — never cited in the show cause order — and an evidentiary standard that even the agency's own employees cannot articulate. The moving goalpost between notice standard and penalty standard is documented on the face of the two documents.

69. The agency failed to consider: the temporal impossibility of preserving evidence before the enforcement framework existed; the reasonable reliance created by the December 1 confirmation; the systematic destruction of evidence by standard technology retention; and the lack of clear evidentiary standards even after framework implementation.

70. The agency's explanation for its decision is inadequate: no explanation for reversing the December 1 confirmation; no explanation for why 'failure to provide sufficient evidence of reasonable inquiry' — a standard absent from the show cause order — was applied retroactively to a submission already confirmed correct; no explanation for the 59-day delay; and no explanation for citing 37 CFR § 11.18(b)(2), a regulation never mentioned in the notice.

71. These deficiencies, taken individually or together, render the agency's action arbitrary and capricious under State Farm.

COUNT II

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

(5 U.S.C. § 706(2)(A) — Application of Non-Existent Regulatory Framework)

72. Plaintiff incorporates paragraphs 1-71.

73. The timeline is undisputed: On December 8, 2024: Plaintiff certified micro entity status → July 8, 2025: USPTO announced it "will begin issuing" show cause orders (7+ months later) → October 24, 2025: USPTO implemented framework that would "supersede" prior guidance (10 months later) → January 30, 2026: USPTO imposed penalties for the initial certification (13+ months later).

74. The July 8, 2025 Official Gazette notice used exclusively future-tense language: "will begin issuing," "will send," "applicants will be given." This language unambiguously indicated prospective application. The October 24, 2025 MPEP memorandum stated it would "supersede" prior guidance — establishing that prior to that date, the current framework did not govern applicant conduct.

75. Most significantly, USPTO's own January 30, 2026 penalty determination states the OG Notice was issued "prior to implementation of the penalty provisions." This is a direct admission by the deciding official that the framework was not yet implemented when the OG Notice was published — meaning the framework certainly was not in place when Plaintiff certified months before the OG Notice issued. The agency is bound by its own admission in its own penalty determination.

76. USPTO may argue that 37 CFR § 11.18(b)(2) predated the 2025 framework and therefore the underlying obligation existed before December 2024. That argument fails for three independent

reasons: First, the "supersede" language in the MPEP Memorandum establishes that the operative framework was new — not a mere clarification of existing regulation. Second, the penalty determination's own citation to the July 2025 Gazette as authority demonstrates the Gazette added something that did not exist before — if the CFR alone was sufficient, no Gazette citation was needed. Third, the "prior to implementation" admission establishes that implementation occurred after July 8, 2025 — making retroactive application to December 2024 conduct indefensible regardless of when 37 CFR § 11.18(b)(2) was promulgated.

77. Representative Rachel confirmed the framework's novelty from inside the agency: "I do know these are relatively new, at least from what I have since I've been working here in the office."

78. An agency cannot penalize conduct under rules that did not exist when the conduct occurred. The retroactive application of the enforcement framework is arbitrary, capricious, and unlawful.

COUNT III

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

(5 U.S.C. § 706(2)(A) — Retroactive Demand for Evidence Destroyed Before Any Duty to Preserve Arose)

79. Plaintiff incorporates paragraphs 1-78.

80. The temporal sequence makes compliance structurally impossible regardless of Plaintiff's good faith: Plaintiff certified and conducted eligibility inquiry → Standard consumer technology automatically deleted all digital evidence of that inquiry (browser history: 7-30 days; session-based content: immediately) → July 8, 2025: USPTO announced show cause orders for the first time → October 24, 2025: USPTO implemented evidentiary framework → November 4, 2025: Show cause order issued — without requesting inquiry documentation → January 30, 2026: Penalty imposed for absence of documentation destroyed 12-14 months earlier.

81. The duty to preserve evidence arises when litigation or formal proceedings are reasonably foreseeable. Zubulake v. UBS Warburg, 220 F.R.D. 212 (S.D.N.Y. 2003). At the time of Plaintiff's certification, no investigation existed, no enforcement framework had been announced, and no duty to preserve had arisen. The evidence was destroyed through standard automated consumer technology retention cycles — not through negligence — before any trigger for a preservation duty existed.

82. The destroyed evidence consisted of records maintained on Plaintiff's personal devices — browser history, cached pages, download records, session-based dynamic eligibility pages — not USPTO records. These are purged automatically by consumer technology as a matter of standard operation. No reasonable person preserves such records absent notice that they may someday be required. No such notice existed. The enforcement framework had not been announced when the evidence ceased to exist.

83. Moreover, even the show cause order issued November 4, 2025 never requested documentation of the inquiry process, never cited 37 CFR § 11.18(b)(2), and never mentioned a reasonable inquiry requirement. The requirement to document inquiry steps appeared for the first time in the January 30, 2026 penalty determination — fourteen months after the inquiry, twelve

or more months after all digital evidence had been automatically destroyed, and more than two months after a response deadline had already passed. This means the requirement never appeared in any notice to Plaintiff before it was invoked to penalize him.

84. An agency cannot demand evidence that: was destroyed by standard consumer technology before any duty to preserve arose; was destroyed before the evidentiary requirement was announced; could not have been preserved because no reasonable person knew it would be required; and was never requested in the operative notice.

85. The demand for this evidence is arbitrary, capricious, and violates fundamental fairness. It is the direct and inevitable consequence of the USPTO's decision to retroactively enforce a framework that did not exist when the evidence was available.

COUNT IV

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

(5 U.S.C. § 555(b) — Violation of Statutory Duty to Assist and Inform)

86. Plaintiff incorporates paragraphs 1-85.

87. Section 555(b) of the APA imposes mandatory duties on agencies in dealing with parties before them. The statute uses "shall" — establishing non-discretionary obligations. The USPTO systematically violated these duties through an institutional policy to withhold procedural information from applicants during show cause proceedings.

88. The show cause order failed to specify evidentiary requirements. When Plaintiff sought clarification through every available channel — Office of Petitions, Ombudsman — employees refused to provide information, explicitly confirming this was pursuant to institutional directive. Morgan v. United States, 304 U.S. 1 (1938), requires agencies to provide parties a fair opportunity to know and meet the claims against them — a foundational due process requirement that applies with full force to administrative proceedings. Section 555(b)’s mandatory “shall” language independently requires agency personnel to provide information, assistance, and a statement of the grounds for denial to parties in proceedings before them. The institutional blackout policy violated both.

89. The institutional blackout is proven by two independent categories of evidence:

> a. NAMED BY TWO INDEPENDENT EMPLOYEES: Bousono (January 9, 2026) described the directive: "direction of the office," "authorized to provide," "don't want us to meddle." Rachel (February 2, 2026) validated it: when Plaintiff described the complete pattern of withholding across all five contacts and stated "It's not permissible," Rachel responded "Right." These are not the admissions of employees speculating about policy. Bousono described it from within as a management directive. Rachel validated it as accurately characterized from outside. Two independent employees on two separate recorded calls confirming the same institutional directive constitutes corroborated evidence of deliberate policy under FRE 801(d)(2)(D).
>
> b. ENACTED BY THREE ADDITIONAL EMPLOYEES WITHOUT NAMING IT: Michele Eason stated she was instructed not to help. The December 1 anonymous agent

confirmed “everything is correct” while withholding substantive guidance. The Ombudsman confirmed she had no authority to help. These employees did not name a policy. They demonstrated it through identical conduct across independent contacts.

90. The causation chain is complete and documented: The show cause order failed to specify requirements → Plaintiff sought clarification → institutional policy prevented any employee from providing it → December 1 confirmation induced reliance that requirements were satisfied → penalty imposed for failing to meet requirements that were never disclosed and could not be clarified. Each link in this chain is documented in the record.

91. This institutional blackout directly contradicts the USPTO's own Pro Se Assistance Program, which exists specifically to help unrepresented inventors navigate patent office procedures. An agency cannot simultaneously operate a program acknowledging pro se applicants' need for guidance and maintain an institutional directive prohibiting employees from providing guidance during the proceedings where pro se applicants most need it. These two policies cannot coexist innocently.

92. The systematic violation of the agency's statutory duty to assist required judicial intervention.

COUNT V

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

(5 U.S.C. § 706(2)(C) — Ultra Vires Action in Excess of Statutory Authority)

93. Plaintiff incorporates paragraphs 1-92.

94. Statutory Framework for Publication: 35 U.S.C. § 122(b)(1)(A) provides: "each application for a patent shall be published... promptly after the expiration of a period of 18 months from the earliest filing date." This is mandatory, non-discretionary language. The statute contains no exception for pending fee disputes, penalty assessments, show cause proceedings, or any other administrative determination unrelated to patent examination.

95. The Fee Deficiency Has Been Paid in Full. The only remaining issue is a disputed penalty. The penalty and the fee deficiency are fundamentally different legal instruments. The fee deficiency is a required prosecution fee under Title 35. The penalty is a punitive sanction assessed under 35 U.S.C. § 123(f) and collected through federal debt procedures under 31 U.S.C. § 3711. Title 35's suspension authority extends to unpaid "fees required by this title" — examination fees, filing fees, maintenance fees that fund patent prosecution. A punitive sanction is not a required fee. Conflating them as a condition of prosecution resumption exceeds the agency's statutory authority.

96. The Official Gazette states that prosecution suspension continues until "both the deficiency and fine are resolved." But the Gazette is a policy statement — not a statute. A policy statement cannot expand agency authority beyond Congressional grants. Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986). When the Gazette-based suspension policy conflicts with the mandatory publication command of 35 U.S.C. § 122(b)(1)(A), the statute controls. Morton v. Ruiz, 415 U.S. 199 (1974).

97. Under Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244 (2024), this Court owes no deference to USPTO's interpretation of its own suspension authority. The question whether the mandatory "shall be published" language authorizes suspension pending disputed penalty collection is a legal question this Court resolves independently. The statute answers itself: "shall" is mandatory; no exceptions are enumerated; penalty collection is not patent prosecution.

98. The agency is using application suspension as unauthorized debt collection leverage — holding the application until Plaintiff pays a disputed penalty that is legally and structurally distinct from a required prosecution fee. Representative Bousono confirmed this as deliberate policy: "applications subject to show cause orders are not being examined until we verify the response."

99. The Director's authority under 35 U.S.C. § 122(a) to keep applications confidential does not create authority to override the mandatory publication timeline of § 122(b). These are separate provisions with separate purposes. The confidentiality authority does not subsume the mandatory publication command.

100. The ultra vires suspension requires judicial correction. It is the narrow but concrete legal question on which this Court can grant immediate relief: the mandatory statute says "shall be published," the fee is paid, the penalty is disputed and is not a required fee, and no statutory authority permits suspension of publication pending collection of a disputed punitive sanction.

COUNT V(b)
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(5 U.S.C. § 706(2)(C) — Ultra Vires Prosecution Suspension After Payment of All Required Fees)

101. Plaintiff incorporates paragraphs 1-100.

102. This Count is independent of Count V. Even if this Court were to find that publication could lawfully be deferred pending resolution of the disputed penalty, the suspension of prosecution itself lacks statutory authority from November 18, 2025 forward — the date all required fees were paid.

103. STATUTORY FRAMEWORK FOR PROSECUTION SUSPENSION: The USPTO's authority to suspend prosecution derives from 35 U.S.C. § 132 and 37 C.F.R. § 1.17, which authorize suspension pending payment of fees required by Title 35. That authority is expressly conditioned on the existence of unpaid required fees. On November 18, 2025, Plaintiff paid the full $1,412 fee deficiency and payment cleared November 19, 2025. From that date forward, no unpaid required fee existed.

104. THE PENALTY IS NOT A REQUIRED FEE: The $4,122 penalty is a punitive sanction collected through federal debt procedures under 31 U.S.C. § 3711. It is not an examination fee, filing fee, maintenance fee, or any other fee required by Title 35 to maintain prosecution. The statutory predicate for suspension — unpaid required fees — was extinguished on November 18, 2025. No statutory basis for continued prosecution suspension exists from that date forward.

105. DURATION OF ULTRA VIRES SUSPENSION: Prosecution has been suspended for more than three months without any statutory basis. The agency froze prosecution not because required fees remained unpaid, but to coerce payment of a disputed punitive sanction through a mechanism Congress did not authorize. Using prosecution suspension as leverage to collect a disputed penalty legally distinct from required fees is ultra vires regardless of whether the penalty itself is valid.

106. LOPER BRIGHT: Under Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244 (2024), this Court owes no deference to the USPTO's interpretation of its own suspension authority. The question whether suspension authority under 35 U.S.C. § 132 and 37 C.F.R. § 1.17 extends to disputed punitive sanctions collected under 31 U.S.C. § 3711 is a legal question this Court resolves independently. The statutory text answers the question: the authority applies to unpaid required fees; the penalty is not a required fee; the suspension authority was therefore exhausted on November 18, 2025.

COUNT VI

VIOLATION OF DUE PROCESS

(Fifth Amendment — Inadequate Notice of Requirements)

107. Plaintiff incorporates paragraphs 1-106.

108. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Agencies must provide "a statement so clear and precise that [the applicant] may know what he must meet or combat." International Union, United Mine Workers v. Fed. Mine Safety & Health Rev. Comm'n, 920 F.2d 960, 967 (D.C. Cir. 1990). In re Jung, 637 F.3d 1356 (Fed. Cir. 2011), requires USPTO to provide clear notice of the grounds for rejection before penalizing applicants.

109. The show cause order failed to provide adequate notice on four independent grounds: (a) it did not specify what specific evidence was required; (b) it did not cite 37 CFR § 11.18(b)(2); (c) it did not reference the Official Gazette; and (d) it did not define "sufficient evidence." Each of these failures is demonstrable from the face of the document itself.

110. THE PLAIN ENGLISH DOCTRINE: The show cause order used plain English — "explanation supported by sufficient evidence." Plaintiff interpreted it in plain English — a sworn, detailed explanation of the reasonable mistake constitutes sufficient evidence of good faith. USPTO then applied an undisclosed technical standard — 37 CFR § 11.18(b)(2)'s reasonable inquiry requirement — that nowhere appears in the order's plain language. Under Federal Aviation Administration v. Robertson, 422 U.S. 255 (1975), an agency cannot use ordinary language in its public notices and then penalize parties for failing to divine the technical standards behind that language.

111. THE MOVING GOALPOST: The standard stated in the show cause order — "explanation supported by sufficient evidence" — is different from the standard applied in the penalty determination — 37 CFR § 11.18(b)(2)'s reasonable inquiry requirement. The first appears in the notice. The second does not appear anywhere in the notice. Applying a standard that does not appear in the notice is not inadequate notice — it is no notice at all. The moving goalpost between notice and determination is itself proof of the constitutional violation.

112. THE RACHEL DOCUMENT REVIEW: Representative Rachel reviewed the actual show cause order in real time during the February 2, 2026 call and stated: "it doesn't look like they provide any items you specifically must provide to meet that." This was not an applicant's frustrated characterization. This was a USPTO employee describing the contents — or omissions

— of the agency's own document during contemporaneous review. If the notice contained the required information, a USPTO employee reading it in real time would not describe the absence of specific requirements.

113. THE AMBIGUITY AS EVIDENCE: In Plaintiff's Supplemental Submission, he acknowledged misquoting the Gazette's conditional structure in his original petition. This misreading — by a careful reader preparing a formal legal document with time to review — is itself evidence that the language is objectively ambiguous to a non-lawyer reader. A standard that a careful reader preparing formal legal submissions misreads is not a standard that provides constitutionally adequate notice to a pro se applicant reading it for the first time under a response deadline.

114. THE INSTITUTIONAL BLACKOUT AS COMPOUNDING FACTOR: The notice deficiency was not merely curable through inquiry. The institutional blackout made it incurable. When Plaintiff sought to fill the gap through direct inquiry, five employees across five contacts over three months were institutionally prevented from providing the missing information. Inadequate notice combined with institutional prohibition on clarification creates a complete deprivation of meaningful opportunity to comply — not merely deficient notice.

115. These failures, taken individually or together, establish that the notice was not "reasonably calculated" to convey the required information and violated due process.

COUNT VII

VIOLATION OF DUE PROCESS

(Fifth Amendment — Retroactive Application of Undisclosed Standards)

116. Plaintiff incorporates paragraphs 1-115.

117. Retroactive application of new legal obligations violates due process when it imposes substantial burdens on past conduct, particularly when the party could not reasonably have anticipated the regulatory change. Eastern Enterprises v. Apfel, 524 U.S. 498 (1998). The foundational framework is Landgraf v. USI Film Products, 511 U.S. 244 (1994), which establishes a presumption against retroactivity and requires clear Congressional expression of retroactive intent before courts will apply new legal obligations to past conduct.

118. THE LANDGRAF TWO-STEP: Step one: Does the framework apply to conduct occurring before its effective date? Yes — it is being applied to Plaintiff's certification, predating both the July 2025 announcement and the October 2025 implementation. Step two: Did Congress clearly express intent for retroactive application? No — 35 U.S.C. § 123(f) contains no language expressly authorizing retroactive application to certifications made before implementing regulations were published or before the enforcement framework was established. Under Landgraf, the presumption against retroactivity controls.

119. THE SUPERSEDE LANGUAGE: The MPEP Memorandum states it "supersedes" prior guidance — not that it clarifies it. USPTO may argue 37 CFR § 11.18(b)(2) already required reasonable inquiry before December 2024 and the 2025 framework was merely procedural. Fernandez-Vargas v. Gonzales, 548 U.S. 30 (2006), distinguishes procedural from substantive retroactive changes. The 2025 framework imposed substantive changes on four grounds: it

created a new obligation to document pre-certification inquiry; established penalties with a defined good faith exception; defined previously undefined terms; and changed legal consequences from non-routine reviews to systematic penalty assessments. These are substantive changes to which Landgraf's presumption against retroactivity applies.

120. THE USPTO'S OWN ADMISSION: As established in Count II, the penalty determination's "prior to implementation" admission establishes that the framework was not yet implemented as of July 8, 2025. An agency that admits in its penalty determination that the framework was pre-implementation as of the OG Notice date cannot defend retroactive application to conduct predating that notice.

121. THE IMPOSSIBLE COMPLIANCE DIMENSION: The retroactive application is not merely burdensome — it is structurally impossible to satisfy. The evidence required to comply with the retroactively applied standard was automatically destroyed before the standard was announced. Retroactive application that demands temporally impossible compliance constitutes a more severe due process violation than retroactive application that is merely unfair. Aristocrat Technologies Australia Pty Ltd v. International Game Technology, 521 F.3d 1328 (Fed. Cir. 2008).

122. Plaintiff could not reasonably have anticipated that a framework announced seven months after his certification would be applied retroactively, that evidence from fourteen months earlier would be required, that standard technology would have destroyed the required evidence before the framework was announced, or that evidentiary standards never disclosed in the show cause order would be applied. Representative Rachel's insider characterization of the program as "relatively new" directly corroborates that no established framework existed at the time of certification.

COUNT VIII

VIOLATION OF DUE PROCESS

(Fifth Amendment — Void for Vagueness)

123. Plaintiff incorporates paragraphs 1-122.

124. A regulation is void for vagueness if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." United States v. Williams, 553 U.S. 285 (2008). "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes." Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939). Connally v. General Construction Co., 269 U.S. 385 (1926). Where civil penalties serve a deterrent purpose — as a 3× multiplier unambiguously does — the vagueness doctrine applies with full force. Village of Hoffman Estates v. Flipside, 455 U.S. 489 (1982). FCC v. Fox Television Stations, 567 U.S. 239 (2012), requires agencies to provide fair warning before imposing sanctions.

125. THE GAZETTE LANGUAGE INCONSISTENCY: The Gazette uses 'for example: if...' framing — which is by definition illustrative and non-mandatory, identifying documented inquiry steps as one possible element of a response, not a required threshold. The penalty determination, however, treated the absence of documented inquiry steps as dispositive — converting a non-exhaustive illustrative example into a mandatory threshold requirement whose

absence alone justified penalties. Three sequential agency documents — Gazette, show cause order, penalty determination — each treat the documentation requirement differently: the first as illustrative, the second as vague and incomplete, the third as mandatory and outcome-determinative. A standard that cannot be applied consistently across three sequential agency documents by the agency itself is not a standard that provided fair notice to Applicant.

126. THE AMBIGUITY EVIDENCE: As noted in Count VI, Plaintiff misread the Gazette's conditional structure in his original petition — a careful reader preparing a formal legal document misunderstood whether the language was permissive or mandatory. Objective ambiguity demonstrated by a careful reader is constitutionally inadequate notice under both Mullane and the vagueness doctrine.

127. THE RACHEL ADMISSIONS: The unconstitutional vagueness is established by Representative Rachel's own statements, made while reviewing the show cause order three days after the penalty was imposed:

> "Yeah, I'm really not sure" — stated when asked what evidence would satisfy the requirement.
>
> "I'm really not sure" — repeated.
>
> "I'm really not sure" — repeated again.
>
> "it doesn't look like they provide any items you specifically must provide to meet that" — describing the show cause order itself.
>
> "I do think language could be clear in the notice itself of what's required" — acknowledging the notice was insufficiently clear.
>
> "I'm not too familiar with the process behind the scenes. Well, if I'm not familiar and I work here, then I can understand how someone approaching the applicant would be a little bit confused" — acknowledging that the standard is objectively confusing to both applicants and agency employees alike.

128. If a USPTO employee reviewing the show cause order three days after enforcement states three times she is "really not sure" what would satisfy the requirement, and acknowledges that her own unfamiliarity makes applicant confusion understandable, the standard is unconstitutionally vague as a matter of law. The standard confused the people enforcing it and the people subject to it simultaneously.

129. The vagueness enables arbitrary enforcement: the December 1 confirmation that "everything is correct" and the January 30 determination that the same submission was insufficient demonstrate that identical submissions can produce opposite outcomes under the standard. Where the agency retains unlimited discretion to accept or reject any evidence because the standard provides no objective criteria, the vagueness authorizes arbitrary enforcement in the precise manner Williams and Hoffman Estates prohibit.

COUNT IX

VIOLATION OF DUE PROCESS

(Fifth Amendment — Denial of Opportunity to Cure Deficiencies)

130. Plaintiff incorporates paragraphs 1-129.

131. Due process requires a meaningful opportunity to respond to agency determinations. Mathews v. Eldridge, 424 U.S. 319 (1976). Morgan v. United States, 304 U.S. 1 (1938). When an agency finds a submission deficient, due process requires either identifying the specific deficiencies so the party can cure them or providing sufficient advance notice so the party knows what is required. USPTO did neither.

132. THE MATHEWS BALANCING: The private interest is concrete — $4,122 penalty plus suspension of a patent application threatening a statutory publication deadline. The risk of erroneous deprivation is demonstrated — the same submission was confirmed correct then penalized, the standard was never disclosed, employees cannot articulate it, and the evidence was destroyed before the requirement was announced. The government's interest in collecting a penalty under a program retroactively applied to fourteen-month-old conduct is comparatively weak. The Mathews balance weighs heavily in Plaintiff's favor.

133. TWO INDEPENDENT DEPRIVATIONS OF CURATIVE OPPORTUNITY: USPTO deprived Plaintiff of the opportunity to cure through two distinct and sequential mechanisms. First deprivation: before submission, institutional policy prevented Plaintiff from learning what evidence was required despite direct and repeated attempts at five separate contacts. No employee could or would identify the deficiency. Second deprivation: after submission, the December 1 confirmation that "everything is correct" induced reasonable reliance that no supplementation was needed — foreclosing supplementation even if Plaintiff had independently identified the deficiency. These are sequential, not concurrent, deprivations. Either alone would be sufficient. Together they created a complete procedural seal.

134. THE 59-DAY SILENCE AS INDEPENDENT DEPRIVATION: During the 59 days between the December 1 confirmation and the January 30 determination, Plaintiff had no reason to supplement and no indication the response was deficient. If the agency had identified the deficiency at any point during that window, Plaintiff could have responded. The agency's silence following an affirmative confirmation of correctness created and maintained the reliance that the January 30 determination then exploited. An agency that creates reliance through confirmation and maintains it through 59 days of silence before imposing penalties has deliberately foreclosed every window during which cure was possible.

135. THE STRUCTURAL BIAS FURTHER FORECLOSES CURE: Rachel's admission that challenges are reviewed by "the same team" that imposed the penalty means the petition process — nominally a curative opportunity — is not a meaningful one. Withrow v. Larkin, 421 U.S. 35 (1975). The structural bias was confirmed in practice: the emergency Petition for Reconsideration directed to the Director on February 12, 2026 was re-routed to OPET — the same unit whose determination it challenged. No opportunity to cure before submission, no opportunity to cure after submission, and no meaningful opportunity to cure through the petition process — including a Director-level petition deflected back to the challenged unit: three successive foreclosures constitute a complete procedural deprivation.

136. THE PRO SE DIMENSION: These deprivations fell disproportionately on Plaintiff as a pro se applicant. A represented applicant would research 37 CFR § 11.18(b)(2) independently and structure the response to address reasonable inquiry without needing to call for guidance.

Plaintiff, without legal training, depended on the notice itself and on employee assistance for the information the institutional blackout withheld. The denial of opportunity to cure fell hardest on the one category of applicant least equipped to identify the deficiency independently.

COUNT X

VIOLATION OF DUE PROCESS

(Fifth Amendment — Government-Induced Reliance)

137. Plaintiff incorporates paragraphs 1-136.

138. "When the Government has encouraged an individual to rely on its representations, and when the individual has done so to his detriment, the Government may be estopped from changing its position." Office of Pers. Mgmt. v. Richmond, 496 U.S. 414, 422 (1990). While government estoppel has a high bar, due process independently prohibits the government from making affirmative confirmations that induce reliance, then reversing course without explanation to impose penalties. Heckler v. Community Health Services, 467 U.S. 51 (1984).

139. THE DECEMBER 1 CONFIRMATION — DEFINITE AND AFFIRMATIVE: On December 1, 2025, an agent with apparent authority reviewed Plaintiff's complete submission — response document, payment, correction of entity status, and all components — and confirmed: "Everything is, it appears to be correct." The agent said "everything" — not "your fees" or "your payment." If USPTO contends the agent meant something narrower than "everything," the burden is on USPTO to explain that contention; no textual basis for limitation exists in the transcript.

140. THE CONFIRMATION AS PRODUCT OF THE BLACKOUT: The December 1 confirmation was not an isolated event. Plaintiff had contacted USPTO through five channels and received no substantive guidance from any of them due to institutional policy. The December 1 confirmation was the only affirmative information any employee had provided about the adequacy of the response. Under those circumstances — where every contact was sealed by institutional policy — reliance on the one affirmative statement that emerged was not merely reasonable. It was the only rational response available.

141. REASONABLE RELIANCE: Plaintiff reasonably relied on this representation. The confirmation came from a USPTO agent during an official call, following review of the actual submission, using unqualified language. A reasonable person would understand this as agency approval. Thirteen days was sufficient time for the agency to identify deficiencies if any existed.

142. DETRIMENTAL RELIANCE — THE 59-DAY WINDOW: Between December 1 and January 30, whatever remained of the possibility of reconstructing or supplementing evidence of the original inquiry — already limited by the passage of time — became further diminished. The December 1 confirmation did not merely prevent Plaintiff from filing additional paperwork. It eliminated the remaining window during which memory was freshest and reconstruction most feasible. By January 30, fourteen months after the original inquiry, that window had closed entirely. The agency's confirmation is directly responsible for the loss of whatever supplementation opportunity remained.

143. THE AGENT AUTHORITY OBJECTION: The government may argue that the December 1 agent lacked authority to assess penalty liability and that her confirmation therefore cannot bind the agency. That argument proves too much. Whatever her formal authority, the agency placed her in a position to review Plaintiff's submission and she did so. The institutional directive that withheld guidance from every other available channel left Plaintiff with no source of information except what she provided. Reliance is not measured by the agent's internal authority — it is measured by whether a reasonable party in Plaintiff's position would have acted on the representation. Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. 51, 60 (1984). A party who cannot obtain guidance from any official channel, and who receives a confirmation of correctness from the only agency representative willing to engage, acts reasonably in relying on that confirmation. The agency cannot invoke its own information blackout as a shield against the reliance that blackout created.

144. THE RICHMOND DISTINCTION: Richmond involved estoppel overriding a statutory entitlement scheme. This case is different. The claim is not that estoppel overrides a statutory requirement. The claim is that the agency's affirmative confirmation followed by 59 days of silence and then penalties — with no explanation for the reversal — violated the procedural due process requirement of consistent and fair application of standards. That constitutional claim is not subject to Richmond's limitation on statutory estoppel.

145. THE UNEXPLAINED REVERSAL UNDER STATE FARM: The same facts that establish the due process violation establish an APA arbitrary and capricious violation simultaneously. Motor Vehicle Mfrs. Ass'n v. State Farm, 463 U.S. 29 (1983). The agency reached opposite conclusions on identical facts without explanation. The absence of explanation violates both the constitutional requirement of fair and consistent standards and the APA's rational connection requirement. These are independent violations arising from the same facts.

COUNT XI

PATTERN AND PRACTICE OF SYSTEMATIC CONSTITUTIONAL VIOLATIONS

(Fifth Amendment — Institutional Due Process Violations)

146. Plaintiff incorporates paragraphs 1-145.

147. The evidence establishes a pattern and practice of systematic constitutional violations pursuant to explicit institutional policy. This is not a case of isolated employee error that can be explained by individual confusion or inconsistent training. It is documented institutional direction producing consistent constitutional deprivation across five independent employees over three months.

148. THE TWO-CATEGORY EVIDENTIARY STRUCTURE: The institutional blackout is proven through two independently corroborating categories of evidence:

> a. EMPLOYEES WHO SPOKE THE POLICY: Bousono (January 9, 2026) named the directive explicitly: "direction of the office," "authorized to provide," "don't want us to meddle." Rachel (February 2, 2026) validated it without qualification: "Right." These are not employees speculating. Bousono described the policy from within as a management-level directive. Rachel validated Plaintiff's comprehensive characterization from outside. One employee describing a policy could reflect individual confusion. Two independent

employees on two separate recorded calls confirming the same institutional directive constitutes corroborated evidence of deliberate institutional policy. The corroboration eliminates individual confusion as an explanation.

b. EMPLOYEES WHO ENACTED THE POLICY IN REAL TIME WITHOUT NAMING IT: Michele Eason (November 7, 2025) stated she could not answer and had been instructed not to help — without naming any policy. The anonymous December 1 agent confirmed correctness while withholding substantive guidance — selective disclosure consistent only with institutional direction, not individual judgment. The Ombudsman (January 9, 2026) confirmed she had no authority to help — neutralizing the institutional safety net without naming the policy that required its neutralization.

149. SIGNIFICANCE OF FIVE CONSISTENT CONTACTS: The blackout operated consistently across five independent employees over three months: November 7, December 1, January 9 (twice), February 2. No contact produced the one piece of information Plaintiff needed. Five employees across independent contacts spanning three months in different institutional roles producing identical outcomes is not confusion. It is coordination. The consistency across independent actors is itself proof that the conduct was directed rather than individual.

150. DELIBERATE DIRECTION — NOT DELIBERATE INDIFFERENCE: The relevant standard here is not deliberate indifference to constitutional rights. The evidence establishes something stronger: affirmative institutional direction that produced the constitutional deprivation. Bousono's "direction of the office" is not evidence of indifference to constitutional rights. It is evidence of active management-level directive that caused the deprivation across all five contacts. Pembaur v. City of Cincinnati, 475 U.S. 469 (1986); City of Canton v. Harris, 489 U.S. 378 (1989).

151. SUPERVISORY LIABILITY AND DISCOVERY: The "direction of the office" directive was issued by a management-level official whose identity would be established through discovery. That official bears supervisory liability for the constitutional violations the directive produced. Internal communications regarding the source, scope, and authorization of the directive — including whether concerns were raised internally about its constitutional implications — are subject to discovery. The moment this count survives a motion to dismiss, discovery produces subpoenas for those communications.

152. SYSTEMIC IMPACT BEYOND PLAINTIFF: The pattern and practice violations documented here affected not only Plaintiff but every applicant who received a show cause order and called OPET seeking guidance during the period the blackout was in effect. The institutional policy was not tailored to Plaintiff — it applied to all show cause proceedings. Every such applicant experienced the same constitutional deprivation.

153. STRUCTURAL REMEDIES REQUIRED: Pattern and practice violations require structural remedies, not merely individual relief. Each structural remedy corresponds directly to a documented violation: (a) The information blackout requires USPTO to provide procedural guidance to applicants during show cause proceedings. (b) The vague evidentiary standard requires USPTO to publish specific objective criteria for satisfying the good faith exception. (c) The retroactive application requires limiting enforcement to certifications made after the

framework was fully implemented and publicly announced. (d) The same-team review requires independent adjudication of penalty challenges.

D. DISPARATE IMPACT ON PRO SE APPLICANTS (Equal Protection Dimension)

154. The pattern and practice violations documented in this Count fall disproportionately and predictably on pro se applicants, compounding the constitutional deprivations already established. The disparate impact is not incidental — it is the documented consequence of institutional choices made at each stage of the proceeding, each of which bears more heavily on applicants who lack legal representation.

155. The USPTO's enforcement regime has a disparate and discriminatory impact on pro se applicants compared to represented applicants, violating the equal protection component of the Fifth Amendment. Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252 (1977). Haines v. Kerner, 404 U.S. 519 (1972), requires liberal construction of pro se submissions — a standard the enforcement regime not only fails to apply but actively inverts.

156. THE ARLINGTON HEIGHTS FACTORS: The statistical impact — pro se applicants lack institutional document retention, legal knowledge of CFR provisions, and independent research capacity — is structural and entirely predictable. The historical background includes Congress's explicit decision to create micro entity status to assist financially constrained inventors. The sequence of events — implementing an information blackout specifically during show cause proceedings where pro se applicants most need guidance — represents a departure from USPTO's stated mission of assisting pro se filers. The administrative history includes the Pro Se Assistance Program whose existence directly contradicts the blackout policy.

157. RATIONAL BASIS FAILURE: USPTO will argue the show cause program treats all applicants identically. That argument has formal appeal but fails rational basis review. The government's legitimate interest is accurate entity status certification. The information blackout does not advance that interest — it undermines it by preventing applicants from understanding and satisfying certification requirements. A policy that withholds compliance information from the applicants most dependent on such information is not rationally related to ensuring accurate certifications. The disparate impact cannot survive rational basis review when the policy directly contradicts the program's stated purpose.

158. THE CONGRESSIONAL INTENT INVERSION: Congress created micro entity status specifically to reduce barriers for financially constrained inventors. The fee reduction program exists because Congress recognized these applicants cannot afford the same resources as large corporate filers. The show cause program as implemented — vague standards, information blackout, retroactive application, impossible evidence demands, same-team review — systematically eliminates the benefit Congress created by imposing compliance burdens that require precisely the legal and institutional resources Congress sought to compensate for. The program inverts the statutory scheme. That inversion lacks rational basis because it directly contradicts Congress's stated purpose.

159. THE PRO SE ASSISTANCE PROGRAM CONTRADICTION: USPTO simultaneously operates a Pro Se Assistance Program — acknowledging that pro se applicants need guidance navigating patent procedures — and an institutional blackout policy preventing guidance during the proceedings where pro se applicants most need it. An agency cannot simultaneously

acknowledge a population's need for assistance and maintain a directive designed to prevent that assistance. This contradiction is evidence that the discriminatory impact is not accidental.

160. THE RACHEL ADMISSION AND EQUAL PROTECTION: Rachel's admission — "if I'm not familiar and I work here, then I can understand how someone approaching the applicant would be a little bit confused" — is not merely evidence of vagueness. It is evidence of a knowledge differential that falls entirely on pro se applicants. Represented applicants have attorneys who bridge that differential through legal training and institutional knowledge. Pro se applicants have only the notice itself and the guidance the blackout withheld. Rachel's admission that confusion is predictable and understandable corroborates the disparate impact claim directly.

161. The classification effectively creates two tiers: represented applicants who can navigate vague standards with attorney assistance, and pro se applicants who face undefined requirements with systematically withheld guidance. That classification lacks rational basis and violates equal protection.

COUNT XII

MANDAMUS

(28 U.S.C. § 1361)

162. Plaintiff incorporates paragraphs 1-161.

163. A writ of mandamus is appropriate when: (a) the plaintiff has a clear right to relief; (b) the defendant has a clear, non-discretionary duty to act; and (c) there is no other adequate remedy. Cheney v. U.S. District Court for D.C., 542 U.S. 367 (2004).

164. CLEAR RIGHT TO RELIEF: 35 U.S.C. § 122(b)(1)(A) provides: "each application for a patent shall be published... promptly after the expiration of a period of 18 months from the earliest filing date." Application No. 18/973,067 is scheduled for publication on February 26, 2026. Plaintiff has a statutory right to publication on that date.

165. CLEAR NON-DISCRETIONARY DUTY: The statute uses "shall be published" — this is mandatory, not discretionary. The statute contains no exception for fee disputes, penalty assessments, or show cause proceedings. The Director's authority under 35 U.S.C. § 122(a) over application confidentiality does not subsume the mandatory publication command of § 122(b) — these are separate provisions with separate purposes. The Gazette-based suspension policy is a policy statement that cannot override a Congressional mandate under Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986). Under Loper Bright, this Court owes no deference to USPTO's expansive reading of its own suspension authority. The statute answers the question: "shall be published" means publication is mandatory and the Director has no discretion to defer it pending collection of a disputed punitive sanction that is not a required fee.

166. NO ADEQUATE REMEDY:

a. STRUCTURAL BIAS IN ADMINISTRATIVE REVIEW: Representative Rachel confirmed the petition is reviewed by "the same team" that imposed the penalty (Exhibit I). Withrow v. Larkin, 421 U.S. 35 (1975). This was confirmed in practice: the emergency Petition for Reconsideration filed February 12, 2026 and directed to the

Director was re-routed to OPET — the unit whose January 30 determination it challenged. The Director-level appeal was deflected back to the body whose decision it was meant to review. A review process that deflects Director-level challenges back to the challenged unit does not constitute an adequate remedy.

b. TIMELINE IMPRACTICABILITY: Representative Bousono stated the process "might take three to five months" — past the February 26, 2026 publication deadline. No administrative remedy can be completed before irreparable harm occurs.

c. INADEQUACY OF ADMINISTRATIVE PROCESS: Systematic information withholding across five contacts makes administrative process ineffective at every stage.

d. IRREPARABLE HARM FROM PUBLICATION DELAY: Delayed publication causes irreparable harm through multiple mechanisms that cannot be remedied by Patent Term Adjustment: loss of provisional rights under 35 U.S.C. § 154(d) for the period of wrongful suspension during which infringement may occur without provisional royalty liability; compression of continuation strategy window; loss of constructive notice and provisional royalties from the publication date forward; and loss of competitive positioning and licensing opportunities from enforced commercial uncertainty.

e. DELIBERATE INFORMATIONAL BLACKOUT ELIMINATES ALTERNATIVE REMEDY: Respondent has refused for 11 days to respond to Petitioner's explicit request for confirmation of publication status. This refusal — consistent with the documented institutional policy confirmed by Representative Bousono — forecloses every alternative remedy. Petitioner cannot assess his position, cannot make contingency plans, and cannot seek alternative relief because the agency has deliberately maintained uncertainty about its own intentions. When the agency's conduct itself is what eliminates adequate alternative remedies, mandamus is not merely appropriate — it is the only remedy that exists.

167. APPROPRIATENESS OF WRIT: The ultra vires suspension established in Count V requires mandamus as the necessary remedy. If the suspension lacks statutory authority — which it does, because a disputed penalty is not a required fee and the mandatory publication statute contains no enumerated exception — then the writ directing publication follows as a matter of course. The logic is sequential: Count V establishes the suspension is ultra vires; Count XII directs the remedy that the ultra vires finding requires.

168. NUNC PRO TUNC ALTERNATIVE RELIEF: In the event this Court cannot act before February 26, 2026, Plaintiff requests in the alternative that the Court order USPTO to publish the application nunc pro tunc — as of February 26, 2026 — regardless of when the order issues. Nunc pro tunc publication would preserve the prior art date, constructive notice, and continuation strategy benefits of timely publication even if the physical publication is slightly delayed.

169. EMERGENCY RELIEF REQUESTED: Given the February 26, 2026 publication deadline, Plaintiff respectfully requests that this Court issue an order to show cause requiring USPTO to respond within 48 hours why the writ should not issue, and that the Court schedule an emergency hearing at the earliest available date to allow time for response before the publication deadline.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. DECLARATORY RELIEF — ADMINISTRATIVE PROCEDURE ACT:

1. DECLARE that the USPTO's imposition of the $4,122 penalty violates 5 U.S.C. § 706(2)(A) as arbitrary, capricious, and not in accordance with law;

2. DECLARE that retroactive application of the enforcement framework to Plaintiff's certification violates 5 U.S.C. § 706(2)(A);

3. DECLARE that the demand for evidence destroyed by standard consumer technology before any duty to preserve arose violates 5 U.S.C. § 706(2)(A);

4. DECLARE that the institutional policy to withhold procedural information violates 5 U.S.C. § 555(b) and the statutory duty to assist;

5. DECLARE that the suspension of Application No. 18/973,067 and the delay of mandatory publication violate 5 U.S.C. § 706(2)(C) as action in excess of statutory authority;

6. DECLARE that the continued suspension of prosecution of Application No. 18/973,067 from November 18, 2025 forward — after all required fees were paid in full — violates 5 U.S.C. § 706(2)(C) as ultra vires action in excess of statutory authority under 35 U.S.C. § 132 and 37 C.F.R. § 1.17;

B. DECLARATORY RELIEF — CONSTITUTIONAL VIOLATIONS:

7. DECLARE that USPTO's failure to provide adequate notice of evidentiary requirements violates the Due Process Clause of the Fifth Amendment;

8. DECLARE that retroactive application of the enforcement framework to Plaintiff's certification violates the Due Process Clause of the Fifth Amendment;

9. DECLARE that the evidentiary standard for demonstrating "good faith" is void for vagueness in violation of the Fifth Amendment;

10. DECLARE that the institutional policy to withhold procedural information denied Plaintiff the opportunity to cure deficiencies in violation of the Fifth Amendment;

11. DECLARE that the December 1, 2025 confirmation followed by unexplained reversal and penalties violates the Fifth Amendment;

12. DECLARE that the pattern and practice of systematic information withholding pursuant to institutional policy constitutes systematic due process violation requiring structural relief, and that the enforcement regime’s structural features create a disparate and compounding impact on pro se applicants that lacks rational basis under the equal protection component of the Fifth Amendment;

C. WRIT OF MANDAMUS AND INJUNCTIVE RELIEF:

13. ISSUE a writ of mandamus pursuant to 28 U.S.C. § 1361 directing Defendant to: (i) immediately resume prosecution of Patent Application No. 18/973,067; (ii) publish the application on its scheduled date of February 26, 2026, or nunc pro tunc as of that date if the order issues thereafter; and (iii) process the application according to normal USPTO procedures without regard to the disputed penalty;

14. PERMANENTLY ENJOIN Defendant from: (i) collecting or enforcing the $4,122 penalty against Plaintiff; (ii) suspending Application No. 18/973,067 based on the penalty assessment; (iii) delaying mandatory publication based on the disputed penalty; and (iv) implementing or maintaining the institutional policy to withhold procedural information from applicants;

D. ADMINISTRATIVE REMEDIES:

15. VACATE the January 30, 2026 penalty determination as arbitrary, capricious, and unconstitutional;

16. REMAND to the agency with instructions to: (i) apply the enforcement framework prospectively only; (ii) publish specific objective criteria for show cause proceedings; (iii) eliminate the institutional policy to withhold procedural information; (iv) establish independent review of penalty challenges; and (v) establish procedures to ensure pro se applicants receive adequate notice and assistance;

E. COSTS AND ADDITIONAL RELIEF:

17. AWARD Plaintiff his costs of suit pursuant to 28 U.S.C. § 1920; and

18. GRANT such other and further relief as this Court deems just and proper.

Dated: February 23, 2026

Respectfully submitted,

/s/ Terry Torres

_____

Terry Torres
Pro Se Plaintiff

VERIFICATION

I, Terry Lee Torres, declare under penalty of perjury under the laws of the United States of America that I am the Plaintiff in the above-captioned action, that I have read the foregoing Verified Complaint, and that the facts stated therein are true and correct to the best of my knowledge, information, and belief.

Executed on February 23, 2026 at Neptune, New Jersey.

/s/ Terry Torres

_____

Terry Torres

EXHIBIT LIST

Exhibit A: Original Application Filing

Exhibit B: USPTO Official Gazette Notice — July 8, 2025 ("will begin issuing")

Exhibit C: MPEP Memorandum — October 24, 2025 ("supersedes" prior guidance)

Exhibit D: Show Cause Order — November 4, 2025

Exhibit E: Michele Eason Call Recording and Transcript — November 7, 2025

Exhibit F: Anonymous Agent Call Recording and Transcript — December 1, 2025 ("everything is correct")

Exhibit G: Bousono Call Recording and Transcript — January 9, 2026 ("direction of the office")

Exhibit H: Ombudsman/Tara Call Recording and Transcript — January 9, 2026

Exhibit I: Rachel Call Recording and Transcript — February 2, 2026 ("Right"; "really not sure")

Exhibit J: Response to Show Cause Order — November 18, 2025

Exhibit K: Payment Receipt — November 19, 2025

Exhibit L: Final Penalty Determination — January 30, 2026 ("prior to implementation")

Exhibit M: Petition for Reconsideration — February 12, 2026

Exhibit N: Supplemental Submission — February 17, 2026

Exhibit A

Doc Code: MES.GIB
Document Description: Certification of Micro Entity Status (Gross Income Basis)

PTO/SB/15A (07-14)

CERTIFICATION OF MICRO ENTITY STATUS
(GROSS INCOME BASIS)

Application Number or Control Number (if applicable):	Patent Number (if applicable):
First Named Inventor: Terry Torres	Title of Invention: Social Networking Content Supplemented Web Page Linker

The applicant hereby certifies the following—

(1) **SMALL ENTITY REQUIREMENT –** The applicant qualifies as a small entity as defined in 37 CFR 1.27.

(2) **APPLICATION FILING LIMIT –** Neither the applicant nor the inventor nor a joint inventor has been named as the inventor or a joint inventor on more than four previously filed U.S. patent applications, excluding provisional applications and international applications under the Patent Cooperation Treaty (PCT) for which the basic national fee under 37 CFR 1.492(a) was not paid, and also excluding patent applications for which the applicant has assigned all ownership rights, or is obligated to assign all ownership rights, as a result of the applicant's previous employment.

(3) **GROSS INCOME LIMIT ON APPLICANTS AND INVENTORS –** Neither the applicant nor the inventor nor a joint inventor, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding the "Maximum Qualifying Gross Income" reported on the USPTO Web site at http://www.uspto.gov/patents/law/micro_entity.jsp which is equal to three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census.

(4) **GROSS INCOME LIMIT ON PARTIES WITH AN "OWNERSHIP INTEREST" –** Neither the applicant nor the inventor nor a joint inventor has assigned, granted, or conveyed, nor is under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding the "Maximum Qualifying Gross Income" reported on the USPTO Web site at http://www.uspto.gov/patents/law/micro_entity.jsp which is equal to three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census.

SIGNATURE by an authorized party set forth in 37 CFR 1.33(b)

Signature	/Terry Torres/				
Name	Terry Torres				
Date	12/8/2024	Telephone		Registration No.	

☐ There is more than one inventor and I am one of the inventors who are jointly identified as the applicant. The required additional certification form(s) signed by the other joint inventor(s) are included with this form.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Exhibit B

Statutory Penalties for False Assertions or Certifications of Small and Micro Entity Status

Statutory Penalties for False Assertions or Certifications
of Small and Micro Entity Status

Summary

35 U.S.C. 41(j) and 123(f) require the United States Patent and Trademark Office (USPTO) to assess a fine of not less than three times the amount an entity failed to appropriately pay the USPTO, when the entity is found by the USPTO to have falsely made an assertion or certification of small or micro entity status, unless the entity shows that the assertion or certification was made in good faith. The USPTO will begin issuing a combined notice of payment deficiency and order to show cause as to why a fine should not be assessed ("combined notice and order"), when the USPTO makes a preliminary determination that a pending patent application ("application") or patent contains a false assertion or certification that resulted in the payment of at least one fee in an unentitled reduced amount. The USPTO will issue a subsequent notice to provide a final determination of whether a fine is being assessed, and the fine amount, based on any timely response to the combined notice and order and the record as a whole.

The statutory penalty system of 35 U.S.C. 41(j) and 123(f) promotes the submission of compliant assertions and certifications of small and micro entity status, reduces the revenue loss from false assertions and certifications that would otherwise be borne by all entities, and discourages inappropriate conduct related to making false assertions and certifications.

Background

An entity may qualify for small entity status if the entity is a person, a small business concern, or a nonprofit organization, including an institution of higher education. See 37 CFR 1.27. Sections 509.02-03 of the Manual of Patent Examining Procedure (MPEP) (9th Edition, Rev. 01.2024, November 2024) provide guidance on when small entity status may be appropriately asserted. The MPEP is available at www.uspto.gov/MPEP.

Some entities that qualify for small entity status can benefit from an additional reduction of most fees charged by the USPTO if they also qualify for micro entity status. The entity may be entitled to certify micro entity status under either a gross income basis or a United States institution of higher education basis. Section 509.04 of the MPEP and www.uspto.gov/PatentMicroentity provide guidance on when micro entity status may be appropriately certified. If an applicant, inventor, or joint inventor has been named as the inventor or a joint inventor on more than five prior nonprovisional applications, the applicant may be required to establish that a certification under the gross income basis as a micro entity is appropriate, e.g., establishing that the exceptions in 37 CFR 1.29(b) apply to a sufficient number of prior applications that the certification was not falsely made. See MPEP section 509.04(a), subsection I.

An entity is required to conduct an inquiry reasonable under the circumstances prior to making the assertion or certification. See 37 CFR 11.18(b)(2).

The USPTO is a fully fee-funded agency. When entities ineligible for the small or micro entity status fee reductions pay fees in an unentitled reduced amount, they take improper advantage of the fees paid by other

entities. Fee payments made in an unentitled reduced amount result in revenue loss for the USPTO, which is required to set fees to recover aggregate costs. Entities paying fees in unentitled reduced amounts result in the fees for all applicants being reset higher to offset this revenue loss.

Division W of the Consolidated Appropriations Act of 2023 enacted the Unleashing American Innovators Act of 2022 and amended Title 35 of the United States Code to provide for penalties for false assertions and certifications under 35 U.S.C. 41(j) and 123(f), respectively. See Public Law 117-328. In December 2024, Public Law 118-151 further amended Title 35 to provide good faith exceptions to the statutory penalty system of 35 U.S.C. 41(j) and 123(f). Consequently, 35 U.S.C. 41(j) and 123(f) require the USPTO to assess a fine of not less than three times the amount an entity failed to appropriately pay the USPTO, when the entity is found by the USPTO to have falsely made an assertion or certification of small or micro entity status that resulted in the payment of a fee in an unentitled reduced amount, unless the entity establishes that the assertion or certification was made in good faith.

Combined Notice and Order

At USPTO's discretion, a review may be undertaken of an entity status claim for compliance with all relevant USPTO rules. For example, the USPTO may review a micro entity status certification claim to determine whether the entity is compliant with the limit of filing no more than five nonprovisional applications. If the review leads to a preliminary determination that an application contains a false assertion or certification that resulted in the payment of at least one fee in an unentitled reduced amount, the USPTO will issue to the correspondence address of record a combined notice and order. The combined notice and order will set forth the USPTO's basis for its preliminary determination and provide a response period of two months, extendible under 37 CFR 1.136(a), to give the entity notice and an opportunity to respond.

Response to Combined Notice and Order

The combined notice and order will provide the following three options for response:

I. If the assertion or certification was not falsely made, a reply must be submitted that includes an explanation supported by sufficient evidence to rebut the preliminary determination that the application contains a false assertion or certification. Relying upon the previously submitted assertion or certification or providing a reassertion or recertification are not satisfactory responses.

II. If the assertion or certification was falsely made, but in good faith, an itemization of the total deficiency owed must be provided under 37 CFR 1.28(c)(2) or 1.29(k)(1), as appropriate, along with payment for the total deficiency under 37 CFR 1.28(c)(2) or 1.29(k)(2), as appropriate, and include an explanation supported by sufficient evidence that the assertion or certification was made in good faith.

III. If the assertion or certification was falsely made and a good faith explanation is not submitted, an itemization of the total deficiency owed and payment for the total deficiency must be provided, along with, as appropriate, an offer to pay any fine once assessed.

The USPTO will evaluate any response to the combined notice and order on a case-by-case basis before issuing a final determination. For example, if the response includes an explanation supported by evidence that the false assertion or certification was made in good faith, the USPTO will take into consideration the reasonableness of any steps taken to avoid the false assertion or certification (i.e., an inquiry reasonable under 37 C.F.R. 11.18(b)(2)) and whether the entity, e.g., applicant or practitioner, has exhibited a pattern of making false assertions or certifications.

Subsequent Notice from the USPTO

Following a response to the combined notice and order, or after the expiration of the time period for response, the USPTO will generally issue a subsequent notice that will contain a final determination, based on the record as a whole, of whether the application contains a false assertion or certification that resulted in the payment of at least one fee in an unentitled reduced amount. The subsequent notice will also set forth the fine amount, if any, being assessed. In certain situations, where the facts warrant, the USPTO may require additional information prior to the final determination.

In addition, the USPTO may issue sanctions under 37 CFR 11.18(c) for an entity's conduct before the USPTO regarding a false assertion or certification. Practitioners remain subject to the USPTO Rules of Professional Conduct and sanctions under 37 CFR 11.15, 11.19, and 11.20 for violations thereof. See 37 CFR 11.101 et seq.

Impact on Prosecution Status and Patent Term Adjustment

When the USPTO issues a combined notice and order, the USPTO will remove the application from examination pending resolution of the preliminary determination that the application contains a false assertion or certification. The USPTO will not return the application to examination until both the fee deficiency and fine are resolved.

In the event that the USPTO makes a final determination that the application contains a false assertion or certification that resulted in the payment of at least one fee in an unentitled reduced amount, there will be a patent term adjustment (PTA) impact for the application.

Under 37 CFR 1.704(c), circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application may result in the reduction of the period of adjustment set forth in 37 CFR 1.703. There will be a delay in prosecution corresponding to the USPTO removing an application from examination, pending the resolution of the false assertion or certification in the application. Because the delay is the result of a false assertion or certification, the delay is a failure to engage in reasonable efforts to conclude processing or examination of the application, starting on the date the USPTO issues the combined notice and order and ending on the date all appropriate fee deficiencies and any assessed fine are paid in full.

Additional Information

An entity is subject to the penalty provisions of 35 U.S.C. 41(j) and 123(f) only when inappropriately discounted fees were paid on or after December 29, 2022. The filing date of the application is not relevant to whether the fee payment could result in a penalty.

Once a fine has been assessed, the fine is a debt owed to the United States Government, unless the USPTO determines that the assessment was in

error in response to a request for further review. Payment of only the fee deficiency amount after the penalty has been assessed does not obviate the fine owed to the United States Government, and a collection process will be initiated to collect the fine owed. The fine must be paid even if the application is abandoned or if the patent has expired. Additionally, failure to pay the fine amount within the time period for its payment may result in sanctions under 37 CFR 11.18, including termination of the proceedings. Payment of only the fine amount and not the fee deficiency will, after expiration of the time period to pay the fee deficiency, result in abandonment of the application.

Contact information

Inquiries concerning the statutory penalty system of 35 U.S.C. 41(j) and 123(f) may be directed to Joseph F. Weiss Jr., Senior Legal Advisor, Office of Patent Legal Administration, at 571-270-0629. Inquiries concerning patent term adjustment may be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7757.

June 6, 2025 COKE MORGAN STEWART
Acting Under Secretary of Commerce for Intellectual Property and
Acting Director of the United States Patent and Trademark Office

Exhibit C

MEMORANDUM

DATE: October 24, 2025

TO: Patent Examining Corps

FROM: Brian E. Hanlon, Assistant Commissioner for Patents *Brian E. Hanlon*

SUBJECT: Advance notice of change to the MPEP with respect to false assertions or certifications of entity status

This memorandum is to provide advance notice of changes made to the Manual of Patent Examining Procedure (MPEP) §§ 410, 509.03(b), subsection II, 509.04, subsection I, and 1002.02(b) related to the USPTO's determination of false assertions or certifications of entity status. On June 12, 2025, the USPTO issued an Official Gazette Notice titled "Statutory Penalties for False Assertions or Certifications of Small and Micro Entity Status," 1536 OG 204, July 8, 2025. The notice states that the USPTO may institute a review of pending patent applications or patents to determine whether there is a false entity status claim that resulted in the payment of at least one fee in an unentitled reduced amount. As a result, the following changes are made to the MPEP and supersede the 9th Edition, Revision 01.2024, November 2024 publication of the MPEP.[1]

The ante-penultimate and penultimate paragraphs in MPEP § 410 are revised to read:

> 37 CFR 1.4(d)(5)~~(4)~~[2] and 11.18 are intended to discourage the filing of frivolous or clearly unwarranted correspondence in the Office; the Office may ~~does not routinely~~ review correspondence for compliance with 37 CFR 11.18(b)(2) and impose sanctions under 37 CFR 11.18(c).
>
> Where the circumstances of an application or other proceeding warrant a determination of whether there has been a violation of 37 CFR 11.18(b), the file or the application or other proceeding may be forwarded to the Deputy Commissioner for Patents who oversees the Office of Petitions for a determination of whether there has been a violation of 37 CFR 11.18(b). See, e.g., MPEP §§ 509.03(b), subsection II, 509.04, subsection I, and 1002.02(b) (At USPTO's discretion, employees reporting to the Assistant Commissioner for Patents that oversees the Office of Petitions may review an entity status claim to

[1] These changes do not suggest that the USPTO previously lacked authority or procedure to review pending applications or patents in connection with entity status claims or that the USPTO previously refrained from doing so. Although the USPTO did not routinely undertake such reviews, the USPTO has done so where, for example, the record contains *prima facie* evidence that an entity status certification is erroneous.

[2] 37 CFR 1.4(d)(4) was renumbered as 37 CFR 1.4(d)(5). 89 FR 20321, March 22, 2024.

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determine whether an applicant (or patent owner) is entitled to the entity status claimed as well as the reasonableness of their conduct in making the entity status claimed.). See also MPEP § 714.25. In the event that a provision of 37 CFR 11.18(b) has been violated, the USPTO Director will determine what (if any) sanction(s) under 37 CFR 11.18(c) is to be imposed in the application or other proceeding.

MPEP § 509.03(b), subsection II, is revised to read:

37 CFR 1.27(h) indicates that any attempt to fraudulently establish status as a small entity or pay fees as a small entity will be considered as a fraud practiced or attempted on the Office. Applicants should not rely on any oral advice inadvertently given by an Office employee as to entitlement to small entity status. In addition, applicants (or patent owners) that, improperly and with intent to deceive, establish ~~establishing~~ status as a small entity or pay~~ing~~ fees as a small entity will be considered as practicing or attempting ~~a~~ fraud ~~practiced or attempted~~ on the Office. At USPTO's discretion, employees reporting to the Assistant Commissioner for Patents that oversees the Office of Petitions may review a small entity status claim to determine whether an applicant (or patent owner) is entitled to small entity status.

The second paragraph of MPEP § 509.04, subsection I, is revised to read:

Any attempt to fraudulently establish status or pay fees as a micro entity shall be considered as a fraud practiced or attempted on the Office. Improperly, and with intent to deceive, establishing status or paying fees as a micro entity shall be considered as a fraud practiced or attempted on the Office. See 37 CFR 1.29(j). The provisions of 37 CFR 1.29(j) for micro entity correspond to the provisions of 37 CFR 1.27(h) for small entity. Applicants should not rely on any oral advice inadvertently given by an Office employee as to entitlement to micro entity status.

The following is added to the end of MPEP § 1002.02(b):

51. Requests for reconsideration of any assessed fine or issued sanction based upon a determination an entity status claim was falsely made and not in good faith under 35 U.S.C. 41(j), 123(f) and 37 CFR 11.18(b).

These changes to the MPEP are effective on issuance of this memo and supersede the content in the Ninth Edition, Revision 01.2024, November 2024 publication of the MPEP. The MPEP will be revised to include these changes in due course.

Exhibit D

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
18/973,067	12/08/2024	Terry Torres	CIP	5833

195408 7590 11/04/2025
Terry Lee Torres

EXAMINER
CENTRAL, DOCKET

ART UNIT	PAPER NUMBER
OPAP	

MAIL DATE	DELIVERY MODE
11/04/2025	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Payment Deficiency & Show Cause Order: Penalty Determination – Micro Entity *(page 1 of 3)*	**Application No.** 18/973,067
	Applicant(s) Torres, Terry
	Examiner Central Docket
	Art Unit PFMU

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The United States Patent and Trademark Office ("USPTO") has made a preliminary determination that the above-identified application contains a micro entity status error that resulted in the payment of at least one fee in an unentitled reduced amount. The USPTO's basis for this preliminary determination is set forth below.

Preliminary Determination and Notice of Payment Deficiency

The above-identified application contains a certification of micro entity status. Status as a micro entity is proper only if each applicant qualifies for micro entity status under 37 CFR 1.29, and any other party holding rights in the invention qualifies for small entity status under 37 CFR 1.27. See 37 CFR 1.29(h). The record, including this notice and any attachments, establishes a prima facie case that the submitted certification is in error because one or more of the following are not met.

- ☒ The patent application filing requirements of 37 CFR 1.29(a)(2) and (b).
- ☐ The gross income requirements of 37 CFR 1.29(a)(3) and (4).
- ☐ The institution of higher learning requirements of 37 CFR 1.29(d)(2).
- ☐ The small entity status requirements of 37 CFR 1.27 and 1.29(a)(1), (d)(1) or (h).

Reasons:

Applicant has submitted a certification of micro entity status based upon the gross income basis and paid fees in the above-identified application based upon this certification. In order to qualify for micro entity status under the gross income basis, 37 CFR 1.29(a)(2) requires the applicant to certify "[n]either the applicant nor the inventor nor a joint inventor has been named as the inventor or a joint inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or international applications for which the basic national fee under 35 U.S.C. 41(a) was not paid." As explained in MPEP 509.04(a)(I)(B), previously filed applications count against the filing limit even if the previously filed applications did not claim micro entity status. Further, it does not matter how long ago the previous applications were filed or whether the previously filed applications are pending, patented, or abandoned. When the above identified application was filed, an applicant, inventor, or joint inventor was named on more than four previously filed patent applications. This is *prima facie* evidence the submitted certification is in error because the filing limit of 37 CFR 1.29(a)(2) was exceeded.

Accordingly, the payment(s) made in this application based upon the apparently erroneous certification are deficient. The application has been removed from the examiner's docket (if assigned), or formalities review for the application has been paused, pending resolution of the apparent entity status error.

Notice of Payment Deficiency; Show Cause Order: Penalty Determination – Micro Entity

Show Cause Order: Penalty Determination

The USPTO has statutory authority to assess a fine when the Director determines an entity has falsely certified micro entity status that resulted in the payment of a fee in an unentitled reduced amount, unless the entity shows that the certification was made in good faith. The amount of the assessed fine shall be not less than three (3) times the amount the entity failed to pay due to the false certification. See 35 U.S.C. 123(f).

In view of its preliminary determination, the USPTO is issuing an order to show cause as to why it should not assess a fine pursuant to 35 U.S.C. 123(f).

A. Options for responding

The applicant is reminded of their duty of candor and good faith under 37 CFR 1.56 and the certifications made under 37 CFR 1.4 and 11.18. The applicant must timely respond in one of the following three ways. Failure to respond will result in abandonment of the application.

I. If the certification was not falsely made, a reply must be submitted that includes an explanation supported by sufficient evidence to rebut the preliminary determination that the application contains a false certification. Relying upon the previously submitted certification or providing a recertification are **NOT** satisfactory responses. When responding, please use document description MES.JUST.

II. If the certification was falsely made, but in good faith, an itemization of the total deficiency owed must be provided under 37 CFR 1.29(k)(1), along with payment for the total deficiency under 37 CFR 1.29(k)(2), and include an explanation supported by sufficient evidence that the certification was made in good faith. Failure to pay the total deficiency will result in abandonment of the application. When submitting the itemization, fee deficiency payment and explanation, please use the Response to Notice of Payment Deficiency & Show Cause Order – Options II and III form available on the USPTO Forms page.

III. If the certification was falsely made and a good faith explanation is not submitted, an itemization of the total deficiency owed and payment for the total deficiency must be provided, along with, as appropriate, an offer to pay any fine once assessed. Failure to pay the total deficiency will result in abandonment of the application. When submitting the itemization, fee deficiency payment, and offer to pay the fine, please use the Response to Notice of Payment Deficiency & Show Cause Order – Options II and III form available on the USPTO Forms page.

B. Additional information

A complete written response is due **two (2) months** from the mailing date of this communication. **Extensions of time are available under 37 CFR 1.136(a).*** Failure to respond will result in abandonment of the application.

The USPTO will issue a subsequent notice with a final determination of whether a fine is being assessed and the fine amount based on the record as a whole. Note that a failure to pay any assessed fine will result in referral to the U.S. Treasury for collection of any outstanding fine. Additionally, failure to pay any assessed fine when it is due, after expiration of the time period to pay, may result in sanctions under 37 CFR 11.18 including termination of the proceedings.

Only a registered practitioner authorized by the applicant or the applicant who is not represented by a practitioner can sign a response or make changes to the application. Note that an applicant who is a juristic entity must be represented by a registered practitioner. See 37 CFR 1.31. While the USPTO cannot recommend a registered practitioner, the USPTO provides a searchable list of registered practitioners at oedci.uspto.gov/OEDCI/.

This order is issued without prejudice to the USPTO taking any other appropriate action(s).

Questions about the contents of this notice and order should be directed to the Office of Petitions (OPET) at 571-272-3282.

11/3/2025	/Jacob F Bétit/
Date	Director (Acting), Fraud Mitigation Unit

Attachment(s)

☐

* For patent applications filed under 35 U.S.C. 111(a) and granted special status under the prioritized examination (Track One) program, the applicant is reminded that any request for an extension of time, including an extension of time for the purpose of responding to this notice, will cause the application to be ineligible for further treatment under the prioritized examination program. In addition, a request for an extension of time prior to a decision on a request for prioritized examination status will prevent such status from being granted. See MPEP 708.02(b), subsection (I)(B)(4).

Deficiency Notice and Show Cause Order: Penalty Determination – Micro Entity (page 3 of 3)

Exhibit E

Representative Michele Eason
Assignment: Office of Petitions
November 7, 2025

[00:00] Automated System: Please remain on the line. You can press 9 to repeat this message. Thank you.
[00:09] Automated System: To ensure quality services, your call may be monitored or recorded.
[00:29] Rep. Michele: Office of Petitions, how may I help you.
[00:31] Terry: Hi, how's it going? Um, actually I do need help. I received, I'm a pro se petitioner,
[00:37] Terry: and I recently received a notice, a notice of payment deficiency,
[00:44] Terry: and it also says show cause, order, penalty, determination, micro entity.
[00:52] Terry: Um, essentially I received this notice, um, and they told me that I, you know,
[00:57] Terry: there was things in it that I think that I should probably have an attorney look at,
[01:00] Terry: but I'm trying to see if I can resolve this quickly.
[01:05] Rep. Michele: What's your application number?
[01:06] Terry: Um, the application number is 1-8-9-7-3-0-6-7.
[01:32] Rep. Michele: One moment. What office sent this out, let's see, cause this is probably who you're going to, okay,
[01:36] Rep. Michele: Our office Jacob F. Betit who did this. Ok and what did you need to know about it?
[02:11] Terry: Well, I was trying to figure out how to resolve this. Um, I, I, you know,
[02:16] Terry: clearly I, there's a mistake. I made a mistake. Um, and if I have, you know,
[02:25] Terry: uh, made a mistake, I would like to resolve it and, you know,
[02:29] Terry: have the application move forward. I just need to know, um,
[02:34] Terry: I just need to know, uh, what I need to do.
[02:40] Rep. Michele: Okay, let me get everything, I'm just writing everything down.
[02:49] Rep. Michele: Okay, give me your, go ahead, I'm going to take your name and number.
[02:53] Terry: Oh sure, sure. My name is Terry, my middle name is xxx,
[02:58] Terry: and my last name is Torres, and my telephone number is, um,
[03:06] Terry: I'm sorry, I'm a little bit nervous, I apologize.
[03:09] Terry: Um, 732-867-6476.
[03:18] Rep. Michele: 732-867-6476.
[03:22] Terry: Yes ma'am.
[03:24] Rep. Michele: Okay, so I'm not sure exactly about everything that you're going to need to do with this,
[03:29] Rep. Michele: but I'm going to contact the person who signed off for it to get more information
[03:34] Rep. Michele: and see what they tell me, and I'll get back to you.
[03:37] Rep. Michele: I'll turn around time is normally 48 hours,
[03:40] Rep. Michele: but I'll do my best to get back to you next week on Monday.
[03:43] Terry: On Monday? Well, by then I probably will have approached an attorney then,
[03:51] Terry: so I'm a little bit concerned because I don't want to lose the application.
[03:56] Terry: You know, I'm a pro se file, I've filed this myself, pro se,
[03:59] Terry: They're saying that I exceeded the number of times that I could have applied for micro-entity status.

[04:07] Terry: They said that I didn't understand that there was a limit.
[04:13] Terry: I thought, you know, I didn't understand that period.
[04:18] Terry: And, you know, I didn't do anything on purpose to defraud the patent office,
[04:30] Terry: and I do want the application prosecuted, and I apologize.
[04:38] Rep. Michele: Okay, well most likely everything is going to have to be put in writing,
[04:42] Rep. Michele: so what it is, I cannot answer those questions,
[04:46] Rep. Michele: and I have no one to transfer you to at this time, you know, to get an answer right away.
[04:53] Rep. Michele: You know, looking at the document, we do have a pro se area, you know,
[04:58] Rep. Michele: I can transfer you to see if they can help you out, you know, understanding what it's saying.
[05:01] Terry: I would greatly appreciate that. I would appreciate that, you know.
[05:07] Rep. Michele: Okay, let me get that information.
[05:10] Rep. Michele: But also, let me see if there's something that I, okay,
[05:25] Rep. Michele: it says it didn't complete a written response in two months,
[05:28] Rep. Michele: validating the issue of subsequent notice.
[05:31] Rep. Michele: Okay, yeah, like I said, I'm going to transfer you,
[05:35] Rep. Michele: I'm going to give you the, pro se, as soon as I find their information,
[05:42] Rep. Michele: but I'm also going to keep your name and number that way I can ask the question about this.
[05:47] Rep. Michele: And, you know, maybe someone can give you a call back Monday, you know,
[05:52] Rep. Michele: once I, you know, find it, I can give you, let you know what they tell me,
[05:56] Rep. Michele: or the person who is available who decided the decision,
[05:59] Rep. Michele: if they're able to call you and let you know. But other than that,
[06:04] Rep. Michele: For now, I'll try to let me look for the pro se inventor's telephone number.
[06:10] Terry: Sure, I mean, I, you know, like I said, I, it wasn't,
[06:16] Terry: I, you know, I just simply didn't understand that one rule.
[06:20] Terry: I didn't know that there was a limit to how many times you could file micro entity status.
[06:28] Terry: I am indigent, you know, that hasn't changed.
[06:32] Terry: So I never thought to revisit the rules on indigency, you know what I mean?
[06:40] Terry: Because my life didn't change.
[06:43] Terry: But I know that there's no excuse for it.
[06:47] Terry: Ignorance is not an excuse.
[06:49] Terry: But at the same time, I don't want to jeopardize the application because I made a mistake.
[06:56] Rep. Michele: Okay, well, I'm going to give you the here's their numbers.
[07:00] Rep. Michele: It's the Office of Innovation, Innovation Development.
[07:04] Rep. Michele: And these are pro se inventors.
[07:06] Rep. Michele: They're there to help the pro se inventors with any questions or, you know, whatever they can answer.
[07:11] Rep. Michele: And the number is, you're welcome.
[07:15] Rep. Michele: The number is 1-866-767-3848.
[07:29] Terry: I really want to thank you for your time and your help.
[07:31] Terry: I really appreciate it.
[07:32] Terry: I mean, this is, I apologize.

[07:37] Terry: You know, I don't know what else to say.
[07:41] Rep. Michele: You're welcome.
[07:42] Rep. Michele: And we all make mistakes and it might be correctable.
[07:46] Rep. Michele: So just talk to them and wait to hear back from me or, you know, always call back, you know, to find out your information.
[07:54] Rep. Michele: So hopefully I can have some information to you by Monday, you know, or hopefully maybe.
[07:59] Terry: I really thank you.
[08:00] Terry: I really, I just, I have to, I want you to know that it really is appreciated because I really didn't do this on purpose.
[08:09] Terry: And what did you say your name was so that when you call, I know who it is?
[08:14] Rep. Michele: Michele Eason
[08:16] Terry: Michele Eason
[08:18] Terry: Thank you so much, Michele
[08:20] Terry: I just, I feel so bad.
[08:22] Terry: I feel stupid.
[08:25] Terry: I just, I'm ashamed right now.
[08:27] Terry: I don't know what else.
[08:31] Rep. Michele: You're doing what you're supposed to do.
[08:32] Rep. Michele: You're calling in to get help and get your evidence, finding out what you're needing, what you need to do.
[08:37] Rep. Michele: So that's the first step.
[08:39] Rep. Michele: So you're doing what you're supposed to do.
[08:40] Rep. Michele: So talk to the pro se inventors to see if there's any information they can tell you.
[08:47] Rep. Michele: And like I said, in the meantime, I'll find out what I found out and try to give you a call back Monday.
[08:53] Terry: Thank you so much.
[08:55] Terry: Thank you so much and have a wonderful weekend.
[08:57] Terry: I really appreciate it.
[08:58] Terry: Thank you.
[08:59] Rep. Michele: Thank you.
[09:00] Rep. Michele: Thank you and you as well.
[09:03] Terry: Bye.

Exhibit F

Anonymous OPET Agent
Assignment: Office of Petitions
December 1, 2025

[00:00] Automated System: www.uspto.gov slash baton slash apply slash petitions.
[00:04] Automated System: If you still wish to speak to a representative, please remain on the line.
[00:09] Automated System: You can press 9 to repeat this message.
[00:12] Automated System: Thank you.
[00:13] Automated System: You may be asked to provide identifying information that will be collected and used by the USPTO call centers to facilitate customer assistance.
[00:25] Automated System: Furnishing this information is strictly voluntary.
[00:28] Automated System: More information is available at www.uspto.gov slash goprivacy.
[00:39] Automated System: To ensure quality services, your call may be monitored or recorded.
[00:44] Automated System: Customer service representatives are busy assisting other customers.
[00:49] Automated System: Please call for the next available customer service representative.
[00:53] Intake Agent: Thank you for calling the Office of Petition.
[02:41] Intake Agent: How may I help you?
[02:42] Terry: Hi, how's it going?
[02:43] Terry: I was just wondering if you might be able to help.
[02:45] Terry: I received a notice, let me see if I can find the name. It was a notice of, notice of payment deficiency and show cause order penalty determination micro-entity status.
[03:02] Terry: and I received that at office action stating that I used the micro-entity status too many times.
[03:12] Terry: They asked me to file.
[03:15] Terry: a response explaining what happened.
[03:20] Terry: Subsequently, I did all of that and I submitted my response explaining that it was an accident.
[03:28] Terry: I explained that there was a non-provisional application that was granted micro-entity status.
[03:39] Terry: And I'm acting pro se.
[03:42] Terry: I didn't understand that.
[03:44] Terry: It was the very same application.
[03:46] Terry: I did a CIP, continuation in part.
[03:49] Terry: So it's on the very same application.
[03:52] Terry: And I thought, I wrongly thought that the, since it was a continuation of the very same application that the micro-entity status applied.
[04:03] Terry: But apparently that didn't, but I didn't understand that at that time.
[04:08] Terry: So I explained that in the letter and I fired it off with full payment, corrected payment.
[04:14] Terry: And with the corrected forms and, um, I've checked the wrapper, uh, patent center wrapper, and I could see that they received the check and that they received my motion, but they haven't made a decision on it.
[04:30] Terry: And I was wondering if, you know, there was anybody that could tell me what's going on.

[04:42] Intake Agent: So let me, uh, may I have the application number please?
[04:47] Terry: Oh, absolutely.
[04:48] Terry: It's 1.
[04:49] Terry: 8.
[04:51] Terry: 9.
[04:51] Terry: 7.
[04:52] Terry: 3.
[04:54] Terry: 0.
[04:55] Terry: 6.
[04:56] Terry: 7.
[04:59] Intake Agent: Are you please again, 1.
[05:01] Intake Agent: 8.
[05:02] Intake Agent: 9.
[05:02] Automated System: 7.
[05:03] Intake Agent: 3.
[05:03] Intake Agent: 0.
[05:04] Intake Agent: 6.
[05:04] Intake Agent: 7.
[05:04] Terry: Yes, ma'am.
[05:05] Terry: Yes.
[05:08] Intake Agent: One moment, please.
[05:09] Terry: Thank you.
[05:19] Intake Agent: Um, sir, this is, uh, the, the, the, let me transfer your call to opposition service desk.
[05:27] Intake Agent: You will be able to help you.
[05:29] Intake Agent: Okay, sir.
[05:30] Terry: Okay, thank you.
[05:31] Terry: Thank you.
[05:51] Automated System: Thank you for calling the Office of Petitions at the United States Patent and Trademark Office.
[05:57] Automated System: If you know petition-related information is available on the Patent Petitions website at
[06:02] Automated System: www.uspto.gov slash patent slash upon slash petitions.
[06:08] Automated System: If you still wish to speak to a representative, please remain on the line.
[06:13] Automated System: You can press 9 to repeat this message.
[06:15] Automated System: Thank you.
[06:20] Terry: To ensure quality services, your call may be monitored or recorded.
[06:24] Automated System: All customer service representatives are busy assisting other customers.
[06:30] Automated System: Please hold for the next available customer service representative.
[06:34] Terry: Do you see tabs around here?
[07:41] Terry: Yellow tabs?
[07:43] Automated System: Press 1 now.
[08:49] Automated System: Otherwise, please remain on the line for the next available customer service representative.

[09:03] Automated System: All customer service representatives are still busy assisting other customers.
[09:10] Automated System: Please continue to hold and a customer service representative will be called.
[09:14] Automated System: We'll be with you shortly.
[09:16] Automated System: We're still busy assisting others.
[12:59] Automated System: Please continue to hold.
[13:02] Anon. OPET Rep.: Good afternoon.
[13:08] Anon. OPET Rep.: Office of petitions help desk,
[13:10] Anon. OPET Rep.: how may I help you?
[13:11] Terry: Hi, how's it going?
[13:12] Terry: I was just speaking to another Anon. OPET Rep.rom another department.
[13:16] Terry: She passed me over to you.
[13:18] Terry: And, yes, I hope that you could actually help me.
[13:21] Anon. OPET Rep.: Okay.
[13:22] Terry: On 11-4 of the same year, I received a combined notice to show cause.
[13:28] Terry: And immediately, I generated the response, and I mailed it off, certified registered mail, and it was entered on 11-18-2025.
[13:45] Terry: It was a simple mistake where I filed, and I'm moving as a pro se applicant.
[13:53] Terry: I filed a non-provisional patent application, and then I followed that non-provisional.
[13:58] Terry: patent application with a continuation in part application, CIP.
[14:03] Terry: And I didn't realize that even though it was the same, you know, it was based on the same application that I wasn't allowed to file for micro-entity status,
[14:16] Terry: I thought since it was, you know, since the base application, the non-provisional, since everything originated from that same status would carry through,
[14:28] Terry: through the continuation.
[14:30] Terry: And so I made that mistake.
[14:31] Terry: Um, I acknowledged it.
[14:33] Terry: I explained it in the letter that I replied.
[14:36] Terry: I didn't know that this status change, and I made full remittance and full payment.
[14:42] Terry: Um, and I explained that I understood that I was not entitled to small entity status, any, any micro-entity status anymore.
[14:50] Terry: That I would, from, from this date forward pay, you know, small entity status.
[14:58] Terry: Uh, fees and I, I filed it.
[15:01] Terry: I sent it, it's been sitting there since the 18th and, you know, I just was wondering if there was any update or any information regarding it, the status of it.
[15:14] Anon. OPET Rep.: Okay.
[15:15] Anon. OPET Rep.: I can check it out for you.
[15:17] Anon. OPET Rep.: What is, what is the application number?
[15:22] Terry: Uh, the application number is 1-8-9-7-3-0-6-7.
[15:36] Anon. OPET Rep.: Okay.
[15:37] Anon. OPET Rep.: Okay.
[15:51] Anon. OPET Rep.: And you responded to the dismissal.
[15:57] Anon. OPET Rep.: Is that correct?
[15:58] Terry: Uh, yes, ma'am.

[15:59] Terry: Yes.
[15:59] Terry: It's, it's in the wrapper.
[16:00] Anon. OPET Rep.: Okay.
[16:00] Anon. OPET Rep.: Okay.
[16:12] Anon. OPET Rep.: Yeah.
[16:13] Anon. OPET Rep.: 11-18.
[16:13] Anon. OPET Rep.: Here we go.
[16:15] Terry: Yeah.
[16:15] Anon. OPET Rep.: This one hasn't been assigned to anyone yet.
[16:19] Anon. OPET Rep.: So let me get down this number.
[16:22] Anon. OPET Rep.: Okay.
[16:38] Anon. OPET Rep.: 11-18.
[16:40] Anon. OPET Rep.: Now, I do want to tell you that the turnaround time for revival, um, it's going to take, uh, between two to four months.
[16:48] Anon. OPET Rep.: Hopefully it doesn't take that long once I, um, submit this to one of our patent attorneys for review.
[16:56] Anon. OPET Rep.: Um, but I do want to just at least give you that time window when it may be revised.
[17:04] Terry: So that's essentially the reason why I was contacting
[17:08] Terry: you.
[17:08] Terry: Because I, I don't remember exactly where I read it, but that they said that it was being paused.
[17:16] Terry: The application was being paused.
[17:19] Anon. OPET Rep.: Mm-hmm.
[17:19] Anon. OPET Rep.: Mm.
[17:19] Anon. OPET Rep.: Okay.
[17:20] Terry: And I, I, I was afraid because it's, it's getting around time that it should be published.
[17:26] Terry: And four months would be beyond the scope of, I didn't know if that affected it being published.
[17:32] Terry: You know, I, I didn't.
[17:35] Anon. OPET Rep.: No.
[17:36] Anon. OPET Rep.: No.
[17:37] Anon. OPET Rep.: No, not at all.
[17:38] Anon. OPET Rep.: It just hasn't been processed, that's all.
[17:42] Anon. OPET Rep.: I mean, your, as we do see on your, um, petition right here, it just hasn't been moved on to a deciding, deciding official for review.
[17:53] Terry: All right.
[17:54] Anon. OPET Rep.: So that's probably what it is, it, it's probably pending.
[17:58] Anon. OPET Rep.: It hasn't, yeah, it's pending.
[18:02] Terry: Got it.
[18:03] Terry: So, so.
[18:04] Anon. OPET Rep.: Yeah.
[18:05] Terry: Um.
[18:06] Terry: So.
[18:06] Terry: So it could take two to four months before I get a reply?

[18:10] Anon. OPET Rep.: Mm-hmm.
[18:11] Anon. OPET Rep.: It may.
[18:12] Anon. OPET Rep.: It may not.
[18:13] Anon. OPET Rep.: I'm just, I'd just like to give you that, that timeframe.
[18:17] Anon. OPET Rep.: That's what we, you know, that's what we try to at least give you that timeframe between
[18:22] Anon. OPET Rep.: two to four months.
[18:24] Anon. OPET Rep.: It could be shorter than that.
[18:26] Terry: Okay.
[18:28] Terry: Yeah.
[18:29] Anon. OPET Rep.: Based on when somebody else has docked it or, yeah, what, what's been coming in through
[18:36] Anon. OPET Rep.: the fax on an hourly basis.
[18:40] Anon. OPET Rep.: So, yeah.
[18:42] Terry: Um, can it, may, I don't know if I'm even allowed to ask you this and, and please forgive
[18:47] Terry: me if, if I'm not allowed.
[18:50] Anon. OPET Rep.: Okay.
[18:50] Terry: Would it, would it be.
[18:51] Terry: Okay.
[18:51] Terry: Would it be possible for you to look, look at it really quick to see if it seems in order?
[18:59] Anon. OPET Rep.: What?
[19:00] Anon. OPET Rep.: I, let me see.
[19:01] Anon. OPET Rep.: I want to know.
[19:03] Anon. OPET Rep.: Okay.
[19:03] Anon. OPET Rep.: Hold on.
[19:06] Anon. OPET Rep.: Okay.
[19:06] Anon. OPET Rep.: This was due to some missing parts, right?
[19:10] Terry: Yes.
[19:11] Terry: No, no.
[19:12] Terry: This, this was due as a result of, they said that I filed, um, micro entity status too
[19:20] Terry: many times.
[19:21] Anon. OPET Rep.: Okay.
[19:22] Anon. OPET Rep.: Okay.
[19:23] Anon. OPET Rep.: Yeah.
[19:23] Anon. OPET Rep.: You did it on 11-24.
[19:26] Anon. OPET Rep.: You did it.
[19:27] Anon. OPET Rep.: Let's see where else.
[19:29] Anon. OPET Rep.: Yeah.
[19:30] Anon. OPET Rep.: That's all.
[19:31] Anon. OPET Rep.: Just twice on 11-24.
[19:35] Anon. OPET Rep.: Yes.
[19:36] Terry: So, um, the, the, I was wondering if you could took a look at the application, the
[19:41] Terry: petition to see if it was in order, because.
[19:46] Anon. OPET Rep.: Okay.
[19:47] Anon. OPET Rep.: Let's just say, let me check out the fees real quick.

[20:04] Terry: Okay.
[20:05] Anon. OPET Rep.: Make sure . Yep.
[20:16] Anon. OPET Rep.: You are good.
[20:18] Anon. OPET Rep.: We have the 14-12.
[20:21] Terry: Yes.
[20:22] Anon. OPET Rep.: Ah-ha and you were micro and now you are going to small.
[20:28] Anon. OPET Rep.: So.
[20:29] Terry: Yes ma'am.
[20:30] Anon. OPET Rep.: Let's see if you put the C in 20, it corrects the 160, 64, 180.
[20:48] Anon. OPET Rep.: Okay, I see a 180.
[20:49] Anon. OPET Rep.: These are the claims for 3081.
[20:59] Anon. OPET Rep.: And the last one is the 20.
[21:09] Anon. OPET Rep.: Oh, I see where the other $20 came from.
[21:12] Anon. OPET Rep.: It was the 180 plus the one 20 that you submitted.
[21:17] Terry: Yes.
[21:18] Anon. OPET Rep.: So I got that.
[21:19] Anon. OPET Rep.: You're all good.
[21:21] Anon. OPET Rep.: So you're good.
[21:22] Anon. OPET Rep.: But everything is, it appears to be correct.
[21:26] Terry: That is fantastic.
[21:27] Terry: Thank you so much for taking the time to talk to me.
[21:32] Anon. OPET Rep.: Yeah, no problem, no problem.
[21:34] Terry: I've just been so nervous about this, you know.
[21:37] Terry: I don't want to jeopardize it.
[21:40] Terry: And I really didn't mean to do this.
[21:41] Terry: I just thought, you know, this application is actually a continuation of a previous application.
[21:49] Terry: And I just thought they kept the same status.
[21:52] Terry: But apparently they don't.
[21:55] Anon. OPET Rep.: Right, right.
[21:56] Anon. OPET Rep.: Exactly.
[21:57] Anon. OPET Rep.: Yeah.
[21:58] Anon. OPET Rep.: Yeah.
[21:59] Anon. OPET Rep.: Especially if, because you submitted this.
[22:03] Terry: Yes.
[22:04] Anon. OPET Rep.: So yeah.
[22:08] Terry: Thank you so much.
[22:08] Anon. OPET Rep.: So we'll get you squared away.
[22:10] Terry: Thank you so much.
[22:11] Anon. OPET Rep.: And hopefully they can get this out.
[22:13] Anon. OPET Rep.: You are welcome.
[22:14] Anon. OPET Rep.: And you enjoy the rest of your evening.
[22:16] Terry: Absolutely.
[22:17] Terry: You too.
[22:18] Terry: And happy holidays.

[22:20] Anon. OPET Rep.: Same to you.
[22:21] Anon. OPET Rep.: Thank you so much.
[22:22] Anon. OPET Rep.: I appreciate it.
[22:23] Terry: Take care.
[22:24] Terry: Bye.
[22:25] Anon. OPET Rep.: Okay.
[22:25] Terry: Bye-bye.
[22:26] Terry: Bye.

Exhibit G

Representative Bousono.
Assignment: Office of Petitions
January 9, 2026

[00:01] Automated System: Thank you for calling the Office of Petitions at the United States Patent and Trademark Office.
[00:09] Automated System: Did you know petition-related information is available on the Patent Petitions website at www.uspto.gov slash patent slash apply slash petitions.
[00:20] Automated System: If you still wish to speak to a representative, please remain on the line.
[00:25] Automated System: You can press 9 to repeat this message. Thank you.
[00:32] Automated System: To ensure quality services, your call may be monitored or recorded.
[00:38] Automated System: All customer service representatives are busy assisting other customers.
[00:49] Rep. Bousono: USPTO Office of Petitions, How may I help you.
[00:51] Terry: Hi, how's it going? I was just transferred to your office. I was speaking to another very nice lady.
[00:57] Terry: I was explaining to her that I'm calling for a status update in reference to a motion, actually a response to notice of payment deficiency in show cause order.
[01:11] Terry: She explained to me that the motions take anywhere from three to five months to hear back from.
[01:18] Terry: I was trying to explain. Well, I did explain to her that that creates an issue because my the patent that's being held right now is is not being prosecuted.
[01:32] Terry: They took it off prosecution is supposed to be published in two months.
[01:37] Terry: And that creates a harm toward the prosecution process of that application.
[01:49] Terry: I did respond to the application in full.
[01:52] Terry: I, you know, I provided all the information that's required and I don't I need to know whether there's any way to expedite this so that the patent proceeds to publication in the two month timeline.
[02:12] Rep. Bousono: Ok, give me one second. So um, and, and, and I'm going to apologize beforehand because we are rather limited on the information that we can provide with show cause orders. So, um, I'm going to ask you a question, um, so first off, are you able to provide me with the application number?
[03:06] Terry: Absolutely. The application number is 1-8-9-7-3-0-6-7.
[03:18] Rep. Bousono: Ok, let me open that up first and look at it. Yeah, so I do see here that you have responded to the show cause order, um, the only thing and again, we are rather limited on the amount of information that we do provide, um, and um, all we can, all I can tell you is that the response you filed will be handled in due course. But we have not been given not even information on the timely or the time that it would take for them to process it. I see here that it was, it appears that it was back on...
[04:25] Terry: It was 11. I believe it was 11 -4.
[05:18] Rep. Bousono: November, yep, November of 2025. Yes, and I, and I know they have been a little bit backed up. Because that was just the beginning of all the holiday seasons. And, um, all we've been told is that any responses to show cause orders will be responded to in due course. And I'm basically quoting what they have told us. Uh, they haven't given us any information as to the time that it will take for it, for them to be able to get to them. Um, and the Office of Petitions is not really, um in the position to answer that question because we just don't know.

[05:19] Terry: Got it. I do want to point out that I do understand that this is a new law that's been recently, you know, being enforced.
[05:27] Terry: And I am aware of the fact that certain provisions give the patent office wide latitude in terms of resolution.
[05:39] Terry: However, I do want to point out that when when certain provisions of those laws conflict with or can cause a defendant harm that, you know, the applicant harm that that predicates the necessity for review.
[05:58] Terry: And if that review isn't forthcoming, I have to file a writ of mandibus for injunctive relief.
[06:08] Terry: I mean, that's ultimately I don't want to do it.
[06:11] Terry: Obviously, I don't want to file to the federal courts to ask for injunctive relief.
[06:16] Terry: But essentially what I'm saying to you is that these patents, this patent supposed to be published in two months, I have paid all of the fees that were required.
[06:26] Terry: The only thing that's hanging in the balance is whether you're going to find me or not.
[06:34] Terry: So far as the law is concerned, I've I've I've met all of my legal requirements and there is no basis to hold my application out of prosecution.
[06:47] Terry: Now that your fees have been paid in full, the only thing that's hanging in the balance is whether you're going to fine me or not and whether you're going to fine me or not is not a basis to hold my patent up.
[07:00] Terry: And since no one at the patent office can provide me with this information, I mean, the only thing I can do is either petition directly to the commissioner of patents for, you know, to expedite this matter or to file directly with the federal courts because the harm that you're going to cause by not publishing my application is, you know, it's substantial.
[07:26] Terry: Those are the only two courses of action that you're you're saying that I have by telling me that you don't you know that there's no there's nothing you can tell me.
[07:40] Terry: I only, with that answer, I only have two other avenues to explore one filing a motion directly with the commissioner of patents regarding this issue and explaining that no one can help me.
[07:53] Terry: You know, there's no I'm completely in the dark as to what's happening.
[07:58] Terry: A substantial period of time of approaching two months has already elapsed.
[08:03] Terry: And and and if that I think the proper course in this action because the patent supposed to be published in two months and I've paid all the dues you're already paid the check has already been cashed.
[08:16] Terry: Okay, so I've satisfied my legal requirement for for prosecution.
[08:21] Terry: At this point, there is no basis to withhold the application from prosecution, other than saying, you know, it's an administrative thing we're doing and we're going to hold it until we decide whether we're going to fine you or not.
[08:37] Terry: You know, whether you fine me or not doesn't change the fact that it should be prosecuted.
[08:43] Terry: You know that that that I fulfilled the law for prosecution.
[08:46] Terry: And if I can't get an answer from anyone that I only have two other avenues, which is a writ of mandamus with the federal court and requesting injunction relief immediate injunction relief or and filing a motion with the commissioner of patents.
[09:06] Terry: So I'm hoping that you might be able to tell me, you know, the do we need to does this need to happen.
[09:12] Terry: I mean, at all.

[09:14] Rep. Bousono: Well, all, the only thing I can tell you is, that we don't these, um, applications are subject to show cause orders are not being examined until we verify the response or evaluate the response and accept the response that you filed to the show cause order. So, the examination is paused during that time frame.
[09:43] Rep. Bousono: Yeah, that's what I'm saying.
[09:45] Terry: What I'm saying is, is that the new law that has been implemented essentially deprives me of due process.
[09:54] Terry: You are aware of due process.
[09:57] Terry: The problem is, is that the law gives the patent office too much leeway, and it deprives me of due process, because, as you realize, I have satisfied the application process I've, I've sent you the money, I've paid you I've explained why what happened happened.
[10:17] Terry: And that's because I've satisfied the legal requirement for prosecution.
[10:23] Terry: It should not be held up on the basis of a determination of whether you're going to issue a fine or not.
[10:31] Terry: And that this is completely a legal issue.
[10:33] Terry: I know that this is nothing you can talk about.
[10:36] Terry: I know that this is a legal issue, and it's a it's a due process issue.
[10:42] Terry: I'm being deprived of due process in light of an administrative or procedural, you know, I'm being denied due process.
[10:54] Terry: I'm not being allowed to prosecute something that I've complied with the law.
[10:58] Terry: I've made the payment I filled, you know, I've satisfied all of the legal requirements.
[11:04] Terry: And, and despite the fact that all of the legal requirements for prosecution have been fulfilled, the new law, the new law still provides the patent office with the leeway to decide, hey, you know, even though you've said now satisfied with all the laws.
[11:21] Terry: We can still hold up your application indefinitely until we feel like it without limitation.
[11:28] Terry: There's no limitation.
[11:30] Terry: And that becomes a due process law.
[11:32] Terry: And that's why I'm mentioning that I might have to file a writ of mandavis for injunction relief to the federal courts because the new law deprives me of due process constitutional issue.
[11:47] Rep. Bousono: Well, well, regardless of whether the law is a law is new or not, we don't, we don't really have, we don't really have a way to force our office of petitions to respond to any type of petition within or within a specific time frame.
We do set goals and we try to be as timely as we can. And we do have some petitions that for which you may be able to request expedited consideration, not for all types of petitions, and even those do not guarantee that there will be a reply by a specific amount of time. So, you know, I understand your frustration, but my hands are tied. There's just no way for me to control how quickly they'll get your reply. And I wish I had more than that, but I really don't have a way or mechanism to force a petition.
[12:52] Terry: Exactly! That's that's the point.
[12:53] Terry: That is the constitutional issue that arises the constitutional issue that arises that you don't have a mechanism or a means to correct the due process violation that's occurring as a result of the new law.
[13:07] Terry: And that's the basis that I would petition to the federal court.
[13:11] Terry: You know, you can't and that's that's the federal that's the writ of a mandamus to the federal court requesting immediate injunction relief because the new law violates my right, my constitutional right to due process.

[13:28] Terry: And the basis of it is exactly what you said.
[13:31] Terry: You're articulating my case.
[13:33] Terry: You don't have a means by which to expedite cases that are that require redress.
[13:42] Terry: So I'm going to move forward with this since there's no avenue to there's nothing I can do right.
[13:52] Terry: I'm wasting my time calling.
[13:53] Terry: So I'm going to move forward with a writ of mandamus to the federal courts and request injunction relief federal injunction relief, because I believe that my due process rights are being violated.
[14:08] Terry: When my application my application is supposed to be prosecuted published in two months when that app when that timeline elapses my patent should be used to block other
[14:27] Terry: Petitioners as prior art by keeping my application from prosecution and publication.
[14:36] Terry: You are depriving me the the right that I should have because I've I've made good.
[14:43] Terry: I've updated the payment.
[14:45] Terry: I explained everything.
[14:46] Terry: I did everything I did and the law is violating due process rights because it should be published regardless of whether I receive a fine or not.
[14:57] Terry: How about this?
[14:58] Terry: What if I tell you find me the maximum but publish my application right now because that's the worst that can possibly happen.
[15:08] Terry: You see what I'm saying.
[15:09] Terry: There's no scenario that the patent office could say we think your application should not be considered.
[15:18] Terry: There's no scenario under which that can happen.
[15:22] Terry: The worst that the patent office can do to me at this point is fine me the maximum even finding me the maximum fine.
[15:32] Terry: They still have to process my patent application.
[15:35] Terry: And that's my point.
[16:10] Rep. Bousono: I hear you and, um, I apologize, I am not able to give you the answers that would satisfy what you're looking for today with this phone call, again, my, I don't have any mechanisms to give you the relief that you're seeking with this phone call as much as the, the most that I can do is give you the information that I've given you. Um, and, you know, I wish that I could do more than that. I try to do what I can for my callers, I really try to go above and beyond for them, if I can,
[16:22] Terry: I completely understand. And I appreciate your help, by the way. I do appreciate your help.
[16:24] Rep. Bousono: Yeah, If I had any information that I could provide you other than what I'm saying, I would, I would give it to you.
[16:24] Terry: Trust me, I believe you. I know this is not you. This has nothing to do with you. Um, but can I ask one question?
[16:45] Terry: Since my patent has been removed from prosecution.
[16:49] Terry: Will the application be published two months from now or will that also be withheld as well?
[16:55] Rep. Bousono: I'll be honest with you. Um, we have not been giving information about whether

the application, an application would publish when, when they have been subject to the show cause order. We have been told that examination is paused. And I can tell you that much that examination will be paused while the response is reviewed and accepted. But that particular answer, that is something that I can definitely try to seek an answer for you. And, um, call you back, you know, whether the, whether the application would be published during the timeframe where there is an pending show cause order, I can definitely seek that answer out. You know, they have not really given us that detail and it is a pretty good question, I admit. Um, but if you don't mind, I can get your phone number and I can give you a quote and try to seek whether this is another thing that is paused, the publication of the application itself.
[18:11] Rep. Bousono: That would be fantastic.
[18:13] Terry: I mean, any information right now.
[18:16] Terry: I mean, like I said, I'm a little bit desperate because I see constitutional violations here of due process.
[18:27] Terry: You know, and I'm going to have to petition the commissioner of patents.
[18:35] Terry: But based on what you're telling me, there is no information.
[18:39] Terry: So even if I file an application to the commissioner of patents to expedite the prosecution of this this document on the basis that any delay in the prosecution of this application will result in the purposeful.
[18:53] Terry: And knowing delay of the publication of the application on the part of the USPTO, you know, that's that's I will incur harm.
[19:03] Terry: And on that basis, since I have paid, if you look on my record, you could see that I if I paid the whatever the I owed.
[19:13] Terry: I explained that I am a pro se litigant, that I didn't understand that continuation patent continuation patent is based on an initial patent.
[19:25] Terry: I thought they would be carry the same status.
[19:29] Terry: That's not that's not unbelievable.
[19:32] Terry: That's very believable.
[19:34] Terry: I just thought that if I filed a patent and then I file the continuation to that patent that the financial status continued.
[19:43] Terry: But now I understand that it doesn't.
[19:47] Terry: You know, but I shouldn't be harmed by the USPTO because I made a mistake that is entirely reasonable.
[19:57] Terry: And has been corrected.
[20:00] Terry: I shouldn't be punished for that.
[20:02] Terry: Yeah, I understand. Um, I can try my best again, you know, it's very limited. Well, again, what we have been given in actually the direction of the office is that we're trying to not, you know, entertain too much too many conversations on this topic. They want us to really leave this to the people who are actually reviewing your response to show cause order. They don't want us to really meddle into these matters until they have been reviewed by the proper authorities here. So I really wish that I could give you more information than what we have been authorized to provide.
[20:45] Rep. Bousono: I completely understand.
[20:47] Terry: All right.
[20:48] Terry: I will definitely I could leave you my telephone number.
[20:50] Terry: My telephone number is seven three two eight six seven six four seven six.
[21:00] Terry: And my name is Terry Torres.

[21:02] Terry: I'm the applicant.
[21:05] Terry: I just I I I'm going to have to do something and I'm going to test the new law.
[21:12] Terry: I'm going to test it in federal court, you know, to see if it violates my due process or not.
[21:19] Terry: I understand that I I through an accident on my part.
[21:26] Terry: I initiated this process, but it's been two months since I've corrected the problem.
[21:34] Terry: You know, I shouldn't as a result of correcting the problem two months ago.
[21:39] Terry: I shouldn't be on perpetual hold, you know, like my case is on perpetual hold now until someone in the USPTO decides they want to do something about it.
[21:53] Terry: I don't think that's fair to any defendant, especially a pro se.
[21:58] Terry: I'm a pro se applicant.
[22:00] Terry: It's entirely reasonable.
[22:02] Terry: The law states that pro se applicants should be afforded the widest latitude.
[22:09] Terry: You know, and I don't think that this is the widest latitude.
[22:13] Terry: I feel like I'm being punished with Fortune 500 companies that are doing this on purpose.
[22:26] Rep. Bousono: I understand. I'll try to see if I can get any information on this. And again, apologies if I have not satisfied the relief that you're seeking and I have not been able to provide the answers that you're looking for. But, you know, if I'm able to find any kind of information, I'll try my best to give you a call back. But in the meantime, in the meantime, I really don't have anything at this moment.
[22:55] Terry: Got it, I understand.
[22:56] Terry: Can I just ask your name real quick so I could when you call I know who it is.
[23:01] Rep. Bousono: Bousono is B-O-U-S-O-N-O.
[23:10] Terry: Bousono? Hi, it's very nice to meet you.
[23:12] Terry: And I know it's not your fault.
[23:13] Terry: And I, you know, I don't mean this, you know, personally, I just I just I don't know what to do.
[23:19] Rep. Bousono: Yeah, no, no, no worries. Don't worry about it. I can really understand.
[23:19] Terry: Thank you so much and have a wonderful day.
[23:29] Rep. Bousono: All right, Bye. Bye.

Exhibit H

Ombudsman: Tara
January 9, 2026

[00:09] Terry: Hello, hi, how's it going? Um, I called the
[00:17] Terry: Ombudsman and I have an issue
[00:19] Terry: I am actually having an ongoing issue with the USPTO and I was hoping that there might be
[00:27] Terry: Some guidance that you can offer me. I find
[00:30] Ombudsman: Do you have a reference number?
[00:32] Terry: I don't have a reference number right now. This is the first time I'm calling about this issue ever
[00:38] Ombudsman: Okay, who am I speaking with?
[00:40] Terry: My name is Terry Torres
[00:42] Ombudsman: Make sure I'm spelling your name right
[00:49] Ombudsman: Is it T-E-R-R-Y?
[00:53] Terry: Yes, ma'am. Yes
[00:57] Ombudsman: I mean T-O-R-R-E-S
[00:59] Terry: Yes ma'am
[01:00] Ombudsman: Oh it is?
[01:02] Terry: Yeah, okay, well I had to correct
[01:05] Ombudsman: Sometimes people spell their name different ways
[01:07] Ombudsman: We like to make sure we have it correct
[01:09] Terry: No worries
[01:13] Ombudsman: So the application number you're talking about?
[01:15] Terry: The application number is just two seconds
[01:21] Terry: It's 1-8-9-7-3-0-6-7
[01:31] Ombudsman: Okay, what's your concern about this application?
[02:23] Terry: Um, well, actually I filed the application some time ago.
[02:28] Terry: And I recently received a couple months ago actually about two months ago, a notice
[02:35] Terry: Which was
[02:37] Terry: Let me see if I can find the actual name for it.
[02:41] Terry: Do you see it right here?
[02:45] Terry: It was a combined notice
[02:47] Terry: To show cause.
[02:49] Terry: Essentially what they were saying was
[02:51] Terry: Or saying that I used the micro entity status
[02:57] Terry: I claimed micro entity status
[03:00] Terry: Too many times
[03:04] Terry: Immediately when they informed me about it
[03:06] Terry: I investigated the matter.
[03:08] Terry: I'm a pro se filer by the way.
[03:10] Terry: I immediately looked into it.
[03:12] Terry: And I realized that
[03:14] Terry: Yes, they're absolutely right

[03:16] Terry: I did.
[03:17] Terry: However there were circumstances
[03:19] Terry: And they're very important circumstances.
[03:23] Terry: The application that they said
[03:26] Terry: That exceeded the number of micro entity status claims
[03:32] Terry: Was a continuation in part,
[03:35] Terry: Of another application.
[03:38] Terry: So naturally,
[03:40] Terry: When I filed the original application
[03:43] Terry: I filed micro entity status.
[03:45] Terry: And then when I wanted to expand the patent
[03:47] Terry: Which is a continuation of the very same patent
[03:51] Terry: I claimed micro entity status again.
[03:54] Terry: What I didn't understand at the time was
[03:58] Terry: That because
[04:00] Terry: I naturally believed
[04:02] Terry: That the micro entity status
[04:04] Terry: Would carry over because
[04:06] Terry: It's just a continuation
[04:07] Terry: I now know that I'm wrong
[04:09] Terry: And that I don't have any right to say that
[04:13] Terry: I now understand that
[04:15] Terry: Even though it's a continuation
[04:17] Terry: Of a second application
[04:18] Terry: That they're counting it separate
[04:21] Terry: I do understand.
[04:22] Ombudsman: Because you get a whole new application number
[04:25] Terry: Got it.
[04:26] Terry: But what I did was
[04:29] Terry: I generated a response
[04:30] Terry: And I explained this
[04:32] Terry: I said listen
[04:32] Terry: I made the mistake
[04:34] Terry: I apologize, I'm sorry
[04:36] Terry: Here's full payment.
[04:38] Terry: I did this all within a matter of seven days.
[04:41] Terry: And I responded to them
[04:43] Terry: And I asked them to forgive me.
[04:46] Terry: And that I would proceed with
[04:48] Terry: Small entity status
[04:49] Terry: This is the first time that this has ever happened to me.
[04:52] Terry: I've not been accused of this before
[04:57] Terry: I remitted full payment.
[04:59] Terry: And acknowledged my guilt.
[05:01] Terry: And that it was in good faith.

[05:03] Terry: You know, the mistake was
[05:06] Terry: Error.
[05:06] Terry: As a pro se applicant
[05:09] Terry: I thought that they would
[05:13] Terry: But anyway, it's been two months
[05:15] Terry: And I haven't heard back
[05:17] Terry: From them at all.
[05:18] Terry: They have not responded at all.
[05:21] Terry: I have called
[05:23] Terry: The office
[05:26] Terry: Repeatedly over the
[05:27] Terry: Last two months trying to get some status update.
[05:30] Terry: Because they've removed
[05:32] Terry: My application from
[05:34] Terry: Prosecution.
[05:35] Terry: Now, they removed my application
[05:38] Terry: But they've been paid for the
[05:39] Terry: Last two months.
[05:41] Terry: In full.
[05:43] Terry: The only thing left
[05:45] Terry: For them to do is to rule
[05:47] Terry: Whether they believe they want
[05:49] Terry: To impose a fine upon me.
[05:52] Terry: The issue
[05:53] Terry: Of whether that
[05:55] Terry: My application should be prosecuted
[05:57] Terry: Is already closed because
[05:59] Terry: As soon as I paid them in full
[06:01] Terry: My responsibility
[06:03] Terry: According to the law was complete.
[06:05] Terry: The application should be examined.
[06:07] Terry: But they're holding up
[06:09] Terry: Determination
[06:10] Terry: They've removed it from prosecution
[06:13] Terry: Until the outcome
[06:15] Terry: Of their decision.
[06:16] Terry: Now, there's a problem.
[06:19] Terry: The problem is
[06:21] Terry: Is that this application is supposed
[06:23] Terry: To publish in two months.
[06:26] Terry: Okay?
[06:27] Terry: And if they
[06:29] Terry: If they hold it
[06:31] Terry: One or two months
[06:33] Terry: It's not going to publish

[06:34] Terry: And there's going to be irreparable harm
[06:36] Terry: Done to me that adjusting
[06:39] Terry: The minimum time cannot
[06:41] Terry: Compensate for.
[06:43] Terry: Now, I've explained this
[06:45] Terry: To the agents that were there
[06:47] Terry: And I explained that this isn't
[06:49] Terry: A situation that I just want to go
[06:51] Terry: Ahead of anybody, that's not what I'm trying to do
[06:53] Terry: I just don't want
[06:55] Terry: I don't want it to
[06:57] Terry: Go beyond
[06:59] Terry: Cause it not to be published
[07:01] Terry: On time because.
[07:03] Terry: That's important for my
[07:05] Terry: Business strategy.
[07:07] Terry: What they told me was
[07:09] Terry: That they literally
[07:11] Terry: Are instructed pretty much
[07:13] Terry: Not to give any information
[07:15] Terry: Regarding their procedures
[07:17] Terry: How long it's going to take.
[07:19] Terry: I was told today that it might take
[07:21] Terry: Three to five months before
[07:23] Terry: I could hear back
[07:25] Terry: On this application.
[07:27] Ombudsman: Who did you call?
[07:29] Terry: I spoke to the office of petitions
[07:31] Terry: In the USPTO
[07:32] Terry: And that's exactly.
[07:33] Ombudsman: Cause they're the office that's going to process it
[07:37] Ombudsman: So they will be the ones
[07:39] Terry: To discuss it.
[07:40] Ombudsman: Every department has different departments
[07:42] Ombudsman: Handling different things.
[07:43] Ombudsman: I just looked at your application
[07:45] Ombudsman: it's with petitions.
[07:47] Ombudsman: So if they're department
[07:49] Ombudsman: They will be the ones to let you know
[07:52] Ombudsman: How long it's going to take
[07:54] Ombudsman: And when it's going to be processed
[07:55] Ombudsman: We have been backlogged though at the patent office
[07:58] Ombudsman: We have been backlogged for a while.
[07:59] Ombudsman: And lost a lot of staff so everything's been
[08:01] Ombudsman: Kind of behind.

[08:04] Ombudsman: But far as this
[08:06] Ombudsman: This particular
[08:07] Ombudsman: Petition you said then is with the
[08:09] Ombudsman: Petitions office.
[08:11] Ombudsman: You know no one can override their decision.
[08:14] Ombudsman: It's rules and things
[08:16] Ombudsman: We have to follow.
[08:17] Ombudsman: So petitions would be the department
[08:19] Terry: We would have to talk to.
[08:21] Ombudsman: Now I don't know how long
[08:24] Ombudsman: It's going to take in petitions
[08:25] Ombudsman: They would be the ones to give guidance.
[08:27] Ombudsman: But just like petitions and just like any other
[08:30] Ombudsman: Office we have
[08:32] Ombudsman: Supervisors if you feel
[08:34] Ombudsman: That you need to call for someone else
[08:36] Ombudsman: You can always reach out
[08:37] Ombudsman: To petitions to ask and speak to a supervisor
[08:41] Terry: And
[08:41] Ombudsman: Discuss your matter further if you feel
[08:43] Ombudsman: That you want to discuss it in more detail.
[08:46] Terry: It's not just a matter
[08:48] Terry: Of discussing it in more detail
[08:50] Terry: I already know what they're telling me
[08:51] Terry: What they're telling me is I'm going to miss my publication
[08:54] Terry: Date.
[08:55] Terry: I don't want to discuss it anymore
[08:58] Terry: I want it to be remedied.
[08:59] Terry: The situation is very simple
[09:01] Ombudsman: But I'm saying they're the ones that are going to handle it
[09:03] Ombudsman: We wouldn't be the ones to handle it.
[09:05] Ombudsman: It would be their department.
[09:06] Ombudsman: We don't process this department.
[09:07] Terry: Yeah.
[09:08] Terry: I understand that they're the ones
[09:11] Terry: That are supposed to handle it.
[09:13] Terry: What I'm trying to say is that
[09:16] Terry: What they're communicating
[09:18] Terry: Is that they can't.
[09:20] Terry: That's the point.
[09:21] Terry: What they're saying is
[09:23] Terry: Is that I'm going to miss my publication
[09:26] Terry: Date despite.
[09:27] Terry: The fact that I am now
[09:30] Terry: For the last two months

[09:31] Terry: In full compliance of the law
[09:34] Terry: And the law states
[09:36] Terry: So long as I meet the certain
[09:38] Terry: Criteria which I did two months ago
[09:40] Terry: My application should be
[09:42] Terry: Prosecuted.
[09:44] Terry: If I miss my publication
[09:46] Terry: Date that's not some
[09:48] Terry: Minor event that can be swept
[09:50] Terry: Away by extending
[09:52] Terry: My patent life or anything like that.
[09:54] Terry: That's a serious business
[09:57] Terry: Impacting move
[09:58] Terry: On the part of the USPTO.
[10:00] Terry: And I understand that they can't be challenged
[10:02] Terry: But what I'm saying is
[10:04] Terry: I
[10:06] Terry: I don't know what to do
[10:08] Terry: I've been talking to an attorney.
[10:10] Terry: He wants to
[10:12] Terry: File a writ of mandamus
[10:14] Terry: With a
[10:17] Terry: Asking for
[10:18] Terry: Injunction relief
[10:20] Terry: Because he said
[10:22] Terry: That the law is new
[10:24] Terry: And it hasn't been
[10:26] Terry: Tested in the federal courts
[10:28] Terry: Yet
[10:30] Terry: The fact that they
[10:32] Terry: Have been given
[10:34] Terry: There's no time limitation
[10:36] Terry: By which they need to
[10:39] Terry: Respond
[10:40] Terry: Is easily
[10:42] Terry: A due process.
[10:44] Terry: Violation
[10:46] Terry: I have certain rights
[10:48] Terry: Constitutional rights and one of them is
[10:50] Terry: The due process.
[10:52] Terry: If their administrative
[10:56] Terry: Decisions
[10:57] Terry: Impact my due process
[10:58] Terry: Rights that becomes a
[11:00] Terry: Constitutional issue.

[11:02] Terry: This is very important
[11:04] Terry: To me so I was hoping that you
[11:06] Terry: Would advise me because
[11:08] Terry: This is not some small issue that can
[11:10] Terry: Just be swept away and I'm just going to
[11:12] Terry: Be a good pro se applicant
[11:14] Terry: And go away.
[11:15] Terry: If I need to proceed
[11:19] Terry: To
[11:20] Terry: The writ of mandamus
[11:22] Terry: That's exactly what I'm doing in fact he's preparing
[11:24] Terry: The paperwork right now.
[11:28] Ombudsman: Okay we
[11:30] Ombudsman: Okay we're the ombudsman office
[11:32] Ombudsman: But we cannot override
[11:34] Ombudsman: Petitions.
[11:36] Ombudsman: I think a lot of time it gets
[11:37] Ombudsman: Confusing because they say ombudsman
[11:40] Speaker 3: We have two ombudsman offices there's one
[11:42] Ombudsman: Which is our department
[11:43] Terry: We do status of application
[11:46] Ombudsman: And if you need to talk to someone
[11:48] Ombudsman: If the department is depending on where it is
[11:50] Ombudsman: You might say okay well if it's a department
[11:52] Ombudsman: You need to reach out to we don't process
[11:54] Ombudsman: This department then we have an ombudsman
[11:56] Ombudsman: That deals with ethics but
[11:58] Ombudsman: That department is only for internal
[12:00] Ombudsman: They're not for external
[12:02] Ombudsman: We don't like they're not
[12:04] Ombudsman: They're not going to speak to someone on the
[12:06] Ombudsman: Outside about someone
[12:08] Ombudsman: In the inside it's only for internal
[12:10] Ombudsman: Employees supervisors
[12:12] Ombudsman: They have it broken down which each department
[12:14] Ombudsman: Have their own head they handle their own department
[12:16] Ombudsman: So just like petitions
[12:18] Ombudsman: They have their head we don't have
[12:20] Ombudsman: Authority to override petitions
[12:22] Ombudsman: Or any other department
[12:23] Ombudsman: We are analysts in this department
[12:26] Speaker 3: So I'm just saying if you talk to petitions
[12:28] Ombudsman: You would have to talk to someone
[12:30] Ombudsman: In management in petitions
[12:33] Ombudsman: To address

[12:34] Ombudsman: For them to fix it yeah for them to
[12:36] Ombudsman: Look at your situation and
[12:38] Ombudsman: Help you it wouldn't be our department
[12:40] Ombudsman: Would be petitions but a head press
[12:42] Ombudsman: That analyst there that's in
[12:44] Ombudsman: Petitions is not helping you
[12:46] Ombudsman: You ask to speak to a supervisor
[12:48] Ombudsman: Okay so what you're suggesting
[12:50] Ombudsman: Is that I call back and ask to speak to
[12:52] Ombudsman: Supervisor? Yes. Okay.
[12:53] Ombudsman: Absolutely. All right I will
[12:55] Terry: Definitely do that but right now I do
[12:57] Terry: You know I have no other choice
[12:59] Terry: My attorney is going to
[13:01] Terry: Pursue the mandamus with injunction.
[13:04] Terry: I'm not
[13:05] Terry: I'm not going to stop
[13:07] Terry: At just them
[13:09] Terry: Correct the situation I'm going
[13:11] Terry: To have the constitutional law
[13:14] Terry: Of giving them unlimited time
[13:16] Terry: That affects
[13:18] Terry: Applicants
[13:19] Terry: Constitutional rights to due process
[13:21] Terry: To be impeded by their administrative
[13:24] Terry: Delays.
[13:25] Terry: I'm sorry that the patent office
[13:28] Terry: Doesn't have enough staff
[13:30] Terry: I really am.
[13:31] Terry: But that doesn't justify
[13:33] Terry: That doesn't warrant them
[13:35] Terry: To
[13:37] Terry: Practice in such a way
[13:40] Terry: That it negatively
[13:42] Terry: Impacts petitioners
[13:45] Terry: Business
[13:46] Terry: Pursuits in their applications.
[13:48] Terry: It's just it doesn't and
[13:50] Terry: I understand that they do have
[13:52] Terry: This right what I'm trying to say is
[13:54] Terry: That they shouldn't have this
[13:56] Terry: Time limit
[13:58] Terry: This unlimited
[14:00] Terry: Time frame
[14:02] Terry: That's what I would be fishing at the court

[14:03] Terry: That they impose a time limit
[14:05] Terry: Or that someone look into that matter.
[14:08] Terry: And that would be the constitutional
[14:10] Terry: Issue. Because
[14:11] Terry: If my patent
[14:13] Terry: I'm not saying that I want anyone
[14:16] Terry: To override anybody
[14:17] Terry: All I want them to do is not infringe
[14:19] Terry: Upon my rights. I have complied
[14:22] Terry: With the law.
[14:23] Terry: And even though I'm now
[14:25] Terry: In full compliance
[14:27] Terry: The patent office is on the verge
[14:29] Terry: Of harming me,
[14:31] Terry: My business.
[14:33] Terry: That's what I'm saying.
[14:35] Terry: I'm no longer not in compliance.
[14:38] Terry: I am now
[14:39] Terry: In full compliance
[14:41] Terry: And despite being in full compliance
[14:43] Terry: For the last two months
[14:45] Terry: There's a risk that I can be harmed
[14:49] Terry: And that's what I
[14:51] Terry: That's the issue.
[14:52] Terry: So I will definitely
[14:55] Ombudsman: Definitely ask for a supervisor
[14:57] Ombudsman: Because they
[14:59] Ombudsman: They're going to have to look over your
[15:01] Terry: Petition and make a decision
[15:03] Ombudsman: So like I said if you
[15:05] Ombudsman: Called and the
[15:06] Ombudsman: Analyst there are not able to do
[15:09] Ombudsman: To help you with this
[15:10] Terry: I would just go ahead and ask for a supervisor anyway
[15:13] Ombudsman: Just because you want to have this thing
[15:16] Ombudsman: I would ask for a supervisor.
[15:17] Terry: And that's the situation
[15:19] Terry: It's a new law
[15:20] Terry: And there are sometimes complications
[15:23] Terry: With the application of new laws.
[15:25] Terry: When the new law impacts
[15:27] Terry: A defendant
[15:29] Terry: I mean a petitioner's rights
[15:31] Terry: Then that new law needs to be curtailed.
[15:34] Terry: And I'm

[15:35] Terry: Definitely going to pursue it.
[15:37] Terry: I'm you know
[15:39] Terry: Can I have your name again
[15:41] Terry: So I could remember who I spoke to
[15:45] Ombudsman: Tara.
[15:47] Terry: Tara sounds great
[15:49] Terry: Alright I will definitely give them a call in the morning
[15:51] Terry: And I will ask
[15:53] Terry: To speak to a manager.
[15:54] Terry: Or on Monday.
[15:57] Ombudsman: Monday yeah because we closed
[15:59] Terry: You have the petitioner's
[16:01] Ombudsman: You have the petitioner's number?
[16:02] Terry: I don't do you have that.
[16:05] Ombudsman: I can give it to you yes.
[16:08] Ombudsman: It's 571
[16:11] Ombudsman: 571
[16:13] Ombudsman: 272
[16:15] Terry: 272
[16:16] Ombudsman: 32
[16:18] Terry: 32
[16:19] Ombudsman: 82
[16:21] Terry: Okay thank you so much I really
[16:23] Terry: Appreciate it.
[16:24] Ombudsman: You're welcome
[16:25] Terry: I will be filing off a couple of other internal motions
[16:29] Terry: To the commissioner of patents
[16:31] Terry: Requesting you know that
[16:33] Terry: Attention be afforded this
[16:34] Terry: And notice of the written mandamus.
[16:37] Terry: To both
[16:39] Terry: The commissioner of patents
[16:40] Terry: And ombudsman
[16:42] Terry: You're also being
[16:44] Terry: Copied on that
[16:48] Terry: Court filing as well.
[16:50] Terry: Thank you so much
[16:51] Terry: I really appreciate it
[16:52] Terry: And if I have any questions
[16:54] Terry: Is it possible to call and ask for you
[16:57] Terry: Or should I just speak to her.
[17:00] Ombudsman: You can
[17:00] Ombudsman: You have a choice
[17:01] Ombudsman: You can call back and speak to anyone
[17:03] Ombudsman: Or you can ask for me and they'll

[17:05] Ombudsman: If I'm not available then I can always
[17:08] Ombudsman: Call you back.
[17:10] Terry: Thank you so much.
[17:11] Terry: Have a really great day and thank you for your time
[17:14] Ombudsman: You have a good weekend.
[17:15] Terry: Bye bye.

Exhibit I

Representative Rachel
Assignment: Office of Petitions
February 2, 2026

[00:04] Terry: So let me see, uh, do you have the paperwork?
[00:10] Rep. Rachel: Let me see, I believe it was given was 18-976-067, is that correct?
[00:17] Terry: Um, sure, that's it.
[00:18] Terry: Alright, so I had a couple questions I was hoping you might be willing to help me out with.
[00:24] Terry: Um, I received a decision on my app, uh, it was a show cause order.
[00:31] Terry: I'm actually looking for it right now.
[00:35] Terry: Um...
[00:36] Rep. Rachel: Show cause order, okay, I think I might have an incorrect application number, um...
[00:41] Terry: The application number is 1-8-9-7-3-0-6-7.
[00:51] Rep. Rachel: Okay, yes, I did have the incorrect one, so 7-3-0-6-7, let me pull that one up.
[01:00] Rep. Rachel: Okay, that makes more sense, there's the show cause order. Alright, how can I help you?
[01:04] Terry: Uh, that's fine, um...
[01:07] Terry: Um, I had a couple questions.
[01:10] Terry: The question that I have is, um, they said that I didn't provide sufficient evidence for a good cause showing.
[01:24] Terry: Good faith, or...
[01:27] Terry: The problem that I'm having is, is that where in the original order did it require a...
[01:36] Terry: Like some subjective standard of evidence, evidence for the good cause showing?
[01:45] Terry: I'm reading the actual document, it simply gives you two options.
[01:49] Terry: The information that it provides for each one of them is a very bare minimum.
[01:56] Terry: I've also done research on this topic online and at the USPTO, and there is no subjective standard of good cause showing.
[02:09] Terry: I mean, it just doesn't exist.
[02:11] Terry: So, the decision that they provided me with simply states that their decision is that...
[02:21] Terry: Let's see...
[02:24] Terry: Oh, considered, whatever, has not met...
[02:27] Terry: That I haven't met some standard that I was never asked to meet, and neither is that standard written into the law anywhere.
[02:35] Terry: I feel like they're just making it up as they go, and they're applying whatever enters their mind at the time.
[02:47] Rep. Rachel: Let me take a look at it.
[02:50] Rep. Rachel: I do see evidence revealing the notice itself, and it doesn't look like they provide any items you specifically must provide to meet that.
[03:01] Rep. Rachel: And then let me read that decision.
[03:09] Rep. Rachel: I do know these are relatively new, at least from what I have since I've been working here in the office.
[03:21] Rep. Rachel: And who issues these decisions?

[03:27] Rep. Rachel: Let me see here.
[03:28] Rep. Rachel: I could try and get in touch with one of the people who signed these decisions to see if they could maybe contact you with a better explanation of why your reasoning was not satisfactory or what requirements had to be met.
[03:47] Terry: Well, they do provide the actual show-cause order.
[03:54] Terry: The original show-cause order does, in fact, provide the standard.
[04:00] Terry: It's option A or option B, and it is to present them with the reason why this happened.
[04:07] Terry: They didn't say you had to present them with a reason with evidence to back you up.
[04:13] Terry: That clause is nowhere stated in there.
[04:15] Terry: And I understand that this is a new rule, and I don't want to get run over by it.
[04:23] Terry: So I really need clarification on this because, you know, obviously it's not a happy thing to happen to anyone.
[04:34] Terry: And it's not like I have a career of doing this.
[04:38] Terry: This is not my sixth time doing this.
[04:41] Terry: This isn't even my second time doing this.
[04:43] Terry: This is the very first time this ever happened to me.
[04:47] Terry: And for them to say that as a pro se litigant that I didn't, you know, it was the issue was squarely based about over claiming the micro-entity status.
[05:03] Terry: Right.
[05:03] Terry: They said that I claim I claimed it once too many times or whatever.
[05:09] Terry: This is the first time that ever happened as a pro se.
[05:11] Terry: Yeah, but the issue is I clearly explained in the document that I did not understand that continuations that rely on previous applications that were granted micro-entity status that they incurred that they counted against the micro-entity count.
[05:36] Terry: To me, as a pro se applicant, I find this to be chilling.
[05:42] Terry: It puts all pro se applicants off from even attempting to file anything with the USPTO because it seems like it's a setup.
[05:52] Terry: It makes it seem like if you break one of their rules, they're going to essentially try to rape you financially.
[06:03] Terry: And I'm going to be addressing this with my attorney and I'm going to explain this issue.
[06:09] Terry: So I really need someone to get back to me to explain to me where the subjective standard that they applied wasn't why they didn't articulate it in the notice of for show cause.
[06:21] Terry: I really need that because that that standard that not only did I have to explain how that I had to provide evidence for it as well.
[06:31] Terry: That's no where it doesn't appear in the notice to show cause.
[06:35] Terry: And I need that because I'm going to have to, you know, I'm going to have to pursue other remedies besides this.
[06:43] Terry: And I know they're really this is a new law.
[06:47] Terry: You essentially get to decide what you want to do, how you want to do it.
[06:51] Terry: And there's nobody that can but I'm going to file a mandamus regarding this issue if answers are not provided to my satisfaction.
[07:00] Terry: I feel that this is essentially chilling to all pro se applicants.
[07:04] Terry: It's abusive because it's my first time and I provided a very clear and credible reasoning.
[07:11] Terry: It was a continuation on a preexisting application that had micro entity status.
[07:16] Terry: It is fully reasonable for anyone to believe that he I thought that the entire patent family

would, you know, retain micro entity status.
[07:28] Terry: I didn't know that different parts of or different stages.
[07:32] Terry: And as a pro se litigant, that's reasonable that how did they find that unreasonable and where was the lack of evidence?
[07:42] Rep. Rachel: Right. Yes, I understand.
[07:45] Rep. Rachel: I can try to see if someone's available to talk to you now and within this fraud mitigation unit who is more familiar with the process.
[07:53] Rep. Rachel: I do apologize a little bit out of my personal wheelhouse.
[07:56] Rep. Rachel: I completely understand everything you're saying and I do think language could be clear in the notice itself of what's required.
[08:05] Rep. Rachel: So if you don't mind waiting on a brief hold, I can try and get in touch with someone who is more hands on with these notices and more familiar with the process.
[08:13] Terry: OK, thank you so much. I really appreciate it.
[08:16] Terry: Of course. Thank you for your patience. I will be right back.
[08:19] Rep. Rachel: Thank you for your patience. Sorry about the delay.
[08:25] Rep. Rachel: I was able to get in touch with the original person who issued this decision, Jacob Batiste, via chat because he is in a meeting right now.
[08:35] Rep. Rachel: So what I could do for you, I could send you to his voicemail and you could leave a voicemail for him and he can give you a call back if you would like.
[08:44] Terry: So I would call him up and he'd give me a call back.
[08:47] Terry: The problem with that is that I'm always traveling.
[08:50] Terry: Traveling is part of what I do as a job, you know, and I have really big issues.
[08:56] Terry: Like I just he wrote on paper that I didn't make reasonable inquiries under the circumstances to make us to prior to making the assertion or certification.
[09:10] Terry: I would just like to know where did he learn mind reading?
[09:13] Terry: Like, what evidence did he use to come to that conclusion?
[09:19] Terry: I mean, he's making he's making very large decisions on assumptions that he can't base on anything other than an assumption.
[09:31] Rep. Rachel: I mean, OK, let me see.
[09:34] Rep. Rachel: I can see if when he expects to get out of his meeting, if that would help giving to give you a better timeline of when to expect a call.
[09:43] Rep. Rachel: If you don't mind if I hold again.
[09:45] Rep. Rachel: Yeah, I'm sorry.
[09:46] Terry: That would help very much because literally what he's saying will not hold up in litigation.
[09:53] Terry: What what he put in paper on paper is assumptions that he's making.
[09:58] Terry: It's not based on any fact he has.
[10:01] Terry: He's saying that I didn't provide proof of making, you know, this search or I didn't do enough to verify.
[10:13] Terry: So what he's saying is essentially nothing short of finding the rule.
[10:21] Terry: Can can can be forgiven, which is ridiculous.
[10:26] Terry: What he's doing is setting himself up for a lawsuit because I will write up the mandamus.
[10:32] Terry: And I'm absolutely certain that anyone that reads that, what is he basing his decision on?
[10:37] Terry: If not an assumption, he's saying that I can't make an assumption, but he can.
[10:42] Rep. Rachel: Mm hmm. Right.

[10:45] Rep. Rachel: Let me see if I can have him speak with you sooner.
[10:48] Rep. Rachel: If you don't mind, I'll put you back on a hold.
[10:49] Rep. Rachel: Hopefully won't take as long as before.
[10:51] Rep. Rachel: And thank you for your patience. I do apologize for the inconvenience of all of this.
[10:56] Terry: I want to tell you that I'm a little bit heated simply because I find this to be very, very egregious that they're singling out pro se applicants to beat them down.
[11:09] Terry: Unfortunately, this one occasion they've missed the mark.
[11:12] Terry: I will file a writ of mandamus and I will bring him in front of the court.
[11:16] Terry: And he can explain to the judge how he's allowed to make assumptions and base very large decisions on pro se applicants moving on good faith while the applicant themselves are not allowed to make mistakes.
[11:31] Rep. Rachel: Mm hmm. Right.
[11:33] Rep. Rachel: Right. Let me see if I can get in touch with him and have him speak to you now.
[11:38] Rep. Rachel: And hopefully we can get this resolved. I'll put you on a brief hold and I will be right back.
[11:42] Terry: Thank you so much.
[11:44] Rep. Rachel: Hi, are you still there? Yes. Yes, I am.
[11:47] Rep. Rachel: Okay. Unfortunately, I can't seem to get back in touch with him to see when he'll be out of his meeting.
[11:53] Rep. Rachel: So yeah, the best I can suggest right now would be I can transfer you to his voicemail and he'll give you a call back when he's out of meeting.
[12:01] Terry: I got it.
[12:02] Rep. Rachel: Other than that, I mean, yeah, the decision isn't very clear.
[12:06] Rep. Rachel: Other than that would just be to just try explaining more.
[12:10] Rep. Rachel: But I understand what you say, where there's not criteria.
[12:13] Rep. Rachel: So it's like, what would that even look like?
[12:16] Terry: The fact of the matter is we're going to this is what's going to happen.
[12:20] Terry: What's going to happen is I'm going to test this new law.
[12:24] Terry: I mean, they take they they discontinue the prosecution of my application, despite the fact that they've received now full of full of funds for the application.
[12:36] Terry: Until I pay their hostage fees, we're going to test the legality of this in open court.
[12:44] Terry: Because I first of firstly, I think the entire premise of this new concept, this new law is in violation of due process.
[12:58] Terry: A defendant can pay the money and their application still doesn't get processed until their hostage fees are paid.
[13:06] Terry: Nowhere else in industry do you see that practiced, not even in there's so many problems that I've had.
[13:14] Terry: And then I had to wait four months for a response.
[13:17] Terry: So does that mean if I pay another four thousand dollars today that it'll take another four months to get resolved?
[13:26] Terry: That's not I mean, that's due process violations right there.
[13:30] Terry: No one can say for a decision on a motion that it's going to take upwards of moving on to a half a year.
[13:38] Terry: There is no possible way that you can say that if I pay the four thousand dollars now, I

have to wait another four months.
[13:46] Terry: That's over eight months to get one problem resolved is due fair due process.
[13:54] Terry: It's unreasonable is what it is.
[13:57] Terry: And secondly, he's relying upon assumptions to make his decision because he can't base his anything that he said on actual evidence.
[14:09] Terry: He's he's making this assumption that I didn't make enough of an inquiry.
[14:15] Terry: Well, Mike, the question becomes how much is of inquiry is enough.
[14:22] Terry: Is the only inquiry that he will be satisfied with is that they find the rule that he they made a mistake on.
[14:31] Terry: Then it's not a mistake they would make.
[14:34] Terry: I mean, he he's using quite honestly assumptions to say that I'm not allowed to make a mistake.
[14:44] Terry: This is the first time it's happened.
[14:47] Terry: The courts have repeatedly recognize that pro se litigants should be afforded the widest latitude while they're prosecuting their application.
[14:57] Terry: And since this is the first time this has ever happened, my certification that I submitted to him explaining to him that it was that I did pursue.
[15:08] Terry: I did look at it, but I simply made a mistake.
[15:12] Terry: How is he telling me that I'm supposed to provide information?
[15:18] Terry: How do I take part of my mind and send it to him as proof?
[15:24] Terry: That's ridiculous. No court would uphold that.
[15:27] Terry: We're going to test this in court.
[15:29] Terry: I'm not going to call him or I'm going to just test it in court.
[15:35] Rep. Rachel: I apologize again for for the situation.
[15:38] Rep. Rachel: I wish I could personally be better help for you.
[15:42] Terry: And here, can I just say one last thing?
[15:44] Terry: One last thing.
[15:46] Terry: If option two on the form that he sent me can only be satisfied by not making that mistake in the first place, then why write that option into the form?
[16:02] Terry: Does that make sense or am I am I crazy?
[16:08] Rep. Rachel: Yeah, I'm really not sure. I'm so sorry for that.
[16:11] Terry: I can assure you, you're not sure and he's not sure either.
[16:16] Terry: Throughout this entire process regarding the all I have had is frustration with the patent office.
[16:24] Terry: Nobody can say anything about these proceedings.
[16:26] Terry: These procedures are being held hush hush.
[16:29] Terry: Nobody could talk about them.
[16:30] Terry: No one can describe them.
[16:31] Terry: No one can tell you what your remedies are.
[16:34] Terry: No one can tell you what the next step is.
[16:36] Terry: Nobody could tell you anything apparently regarding the show cause order proceedings.
[16:42] Terry: It's not permissible.
[16:44] Terry: And after a while that that wears on a person's patience.
[16:48] Terry: You know, I'm sending you thousands of dollars, right?
[16:52] Terry: And I'm not allowed to know what's happening.

[16:57] Rep. Rachel: Right.
[16:57] Terry: That doesn't seem like it's open and transparent for a standard that any public entity should be held to.
[17:06] Terry: Can you tell me what my remedy is? Can I appeal?
[17:11] Rep. Rachel: The decision?
[17:12] Terry: Yes.
[17:16] Rep. Rachel: Do it with another letter explaining your point of view or further explaining, I guess, the justification for the good faith explanation.
[17:27] Rep. Rachel: Whether or not they'll accept that is, you know, unclear.
[17:33] Rep. Rachel: That is an option.
[17:35] Rep. Rachel: But yeah, so you can always respond with another letter explaining the situation, explaining your thoughts that you've just explained to me over the phone.
[17:46] Rep. Rachel: But whether or not they'll accept that, I really don't know.
[17:49] Terry: OK, but but do you think that I'm calling you with unreasonable requests?
[17:56] Terry: I mean, concerns that that what I'm saying is baseless?
[18:03] Rep. Rachel: No, I do. I agree with you.
[18:04] Rep. Rachel: I do think the notice could be clearer in what they're asking for.
[18:11] Rep. Rachel: I'm not too familiar with the process behind the scenes.
[18:15] Rep. Rachel: Well, if I'm not familiar and I work here, then I can understand how someone approaching the applicant would be a little bit confused.
[18:22] Terry: Well, you know, if you look at the form, there's like one or two, three options, right?
[18:28] Terry: The second option is essentially what it says is explain what happened, why you made this error and then make the payment.
[18:40] Terry: I made the payment in under a week.
[18:43] Terry: OK, I didn't dilly dally. I didn't fight with him.
[18:46] Terry: I didn't argue with him. Oh, you're wrong.
[18:48] Terry: You don't know what you're talking about.
[18:50] Terry: I made the payment and I explained to him that I made a simple mistake.
[18:54] Rep. Rachel: Right.
[18:54] Terry: What he is suggesting in his response, OK, what he is suggesting in his response, his response literally says you're not allowed to make this mistake ever period.
[19:10] Terry: That's that's his response.
[19:12] Terry: Now, I want to know what the federal courts say about that.
[19:17] Terry: Because I made a certification, I explained in very clear detail how that mistake could happen.
[19:25] Terry: I did pursue to.
[19:28] Terry: And here's a different thing.
[19:30] Terry: He says that I that the case, the rule states that I am to pursue, you know, I'm supposed to diligently seek out, you know, enough of an inquiry, right?
[19:50] Terry: A reasonable inquiry under the circumstances prior making an assertion of certification.
[19:57] Terry: OK, now I have a problem with what he said, because reasonable to who?
[20:06] Terry: Reasonable to me is different than what reasonable to him is.
[20:11] Terry: To me, as a pro se applicant, I made a reasonable search to find this information out.
[20:21] Terry: I did not purposely and knowingly go to the patent office to defraud them because that's the only other option.

[20:31] Terry: He's stating if he's staying, he is stating in the on paper that any any search, any search for this information that doesn't result in you finding it and not making the mistake is the only acceptable option.
[20:50] Terry: So option two shouldn't even exist on the show cause order, because according to him, no one's allowed to make a mistake unless they meet his standard.
[21:01] Rep. Rachel: Un hum, yeah. I'm so sorry that this is happening, and I understand your frustration and I really wish that I could better assist you now with it. But I can either transfer you to voice mail and he can give you callback later today or um you can try filing a written response, but other than that, unfortunately that's really the only other solution that I can think of right now.
[21:26] Rep. Rachel: Yeah, I do apologize.
[21:29] Terry: What did you say his name was?
[21:32] Rep. Rachel: His I have the name of the person who issued that original show cause order from November, the person who signed it.
[21:39] Rep. Rachel: So Jacob the T.
[21:42] Rep. Rachel: OK, I think that's different than the person who signed the decision, though, which I was not.
[21:47] Rep. Rachel: I did not speak to that person.
[21:50] Terry: Got it.
[21:51] Terry: You said your name was?
[21:53] Terry: My name is Rachel.
[21:54] Terry: Rachel.
[21:55] Terry: OK, I'm sorry.
[21:56] Terry: I know that I'm a little bit heated, but I just feel like I'm being really taken advantage of.
[22:02] Terry: I did everything I was supposed to do.
[22:04] Terry: I complied with the show cause order only to receive a decision that after the fact, after satisfying the show cause order, now I'm new rules are being imposed upon me that extends.
[22:20] Terry: I mean, the person who's making decision is using assumptions to make the decision.
[22:26] Terry: His finding is an assumption, an assumption that I didn't make enough of an effort to investigate this.
[22:33] Terry: How the hell does he know what I did?
[22:37] Terry: Why can't why?
[22:38] Terry: Right.
[22:39] Terry: You know, when I uploaded the application, when I uploaded the application, I mean, what evidence and it says that I'm supposed to provide an explanation with sufficient evidence.
[22:51] Terry: Now, let me ask you and tell me if this makes sense.
[22:55] Terry: It is a mental mistake.
[22:57] Terry: What evidence can I produce for him to show that mental mistake?
[23:07] Rep. Rachel: Its a really strange situation really, I do apologize.
[23:08] Terry: What I'm saying, can you think of some evidence to demonstrate a mental mistake or an oversight?
[23:18] Terry: Yeah, I'm not sure.
[23:20] Terry: The only thing I can provide you with is my certification and my good show of good faith showing that I've corrected the situation situation as promptly as possible and pay overpaid overpaid for the for the fees.
[23:34] Terry: Now, if if he thinks that he's going to walk away without repercussions for this, he's

sadly mistaken.
[23:43] Terry: He will not engorge the Patent's Office fees without a decision from a federal court.
[23:51] Terry: That I can assure you 100 percent because nobody can tell me, oh, well, you didn't do something.
[23:59] Terry: How the hell don't do you know what I did or didn't do?
[24:03] Rep. Rachel: Um hum.
[24:03] Terry: His explanation for why he believes that I didn't do a sufficient inquiry is because I didn't find the information.
[24:16] Terry: So that means option two should not exist on the form because nobody can ever know.
[24:23] Terry: Nobody can make a mistake in his determination.
[24:26] Terry: There's only one way out and option two for him with his explanation, and that is find the information and don't make the mistake.
[24:36] Terry: What other how can I prove what other information outside of my mind?
[24:41] Terry: My swearing. Hey, listen, this is the first time it happened.
[24:44] Terry: I'm very sorry, you know, and here's my certification that for the reason why it happened.
[24:51] Terry: What more can I give him?
[24:52] Terry: Can I let him into my mind so that he could see that I did do diligent searches?
[24:56] Terry: I just made a mistake. What can what else can I send him? Can you please tell me?
[25:01] Terry: Can you please tell me? Yeah, I'm really not sure.
[25:06] Terry: I really apologize. I hear your frustration.
[25:09] Rep. Rachel: I understand people that it's very, very simple.
[25:14] Terry: It was a mental mistake. There is no other evidence I could provide him with besides my assurance and prompt correction of the matter.
[25:24] Terry: What else could I provide him with? I can't provide him with a videotape of my mind.
[25:31] Terry: Therefore, how can you make the assumption that I didn't do enough to find this out?
[25:36] Terry: Because the only the only answer that satisfies that is the answer that anything that falls short of fine and not finding the rule and applying it so that you're not in the situation.
[25:52] Terry: That's the only thing that it makes no sense.
[25:56] Terry: Yeah, I'm so sorry.
[25:57] Rep. Rachel: I will. It's a terrible situation because now they're imposing hostage funds against me and I would pay.
[26:08] Terry: I am going to pay. I would rather pay five hundred and fifty dollars and go before a judge before I pay four thousand dollars to pay for this hostage.
[26:24] Terry: Ransom that they've placed against my patent.
[26:27] Terry: I'll see him in court. You can assure him of that one hundred percent.
[26:32] Terry: It's cheaper. It's five hundred dollars to file a writ of mandamus.
[26:38] Terry: It's four thousand dollars. I got to pay you. Which one do you think I'm going to pay?
[26:46] Terry: Yeah, I wish there was more I could do for you now over the phone.
[26:50] Terry: I appreciate your I appreciate your you've been very patient with me and you've been very kind.
[26:57] Terry: So I want you to know that none of my anger is directed toward you and I apologize to even speak harshly in your presence.
[27:05] Terry: I'm sorry, but this is clearly wrong.
[27:10] Terry: This is clearly wrong. If I made if I did everything I was supposed to do and I simply made a mistake.

[27:18] Terry: What he's saying is that there is no remedy outside of not making the mistake in the first place.
[27:25] Terry: That's acceptable to him. How is that reasonable?
[27:29] Rep. Rachel: Yeah, I umm.
[27:30] Terry: And if he approaches if he approaches it from the other perspective and says and says,
[27:37] Terry: Well, you didn't provide enough proof with your claim.
[27:44] Terry: What am I supposed to send them a piece of my mind?
[27:47] Terry: So either avenue he tries to take to get out of this is closed for him.
[27:56] Terry: This is hostage situation and I believe pro se applicants are being targeted.
[28:02] Terry: I believe that because I've spoken to other pro se applicants online and they've they've expressed the same frustration,
[28:09] Terry: the same lack of due process.
[28:12] Terry: And I know of an entire organization that's being pulled to being pulled together right now that I think I'm going to become a member of that is going to direct,
[28:22] Terry: you know, try to find legal recourse to have this law changed because this is an abuse.
[28:27] Terry: You can't tell me what to do. You can't. I mean, you can't tell me what to do to get out of this.
[28:32] Terry: You said file another application. Who's going to decide it? He is? Can I ask that? Do you know?
[28:37] Rep. Rachel: Who decides if you decide to respond to the petition?
[28:43] Terry: Yes. Yes, because they will definitely I definitely will. I have to exhaust all...
[28:46] Rep. Rachel: It'll be the same, it will be the same team.
[28:50] Rep. Rachel: The same people who have issued this combined notice and show cause order.
[28:54] Rep. Rachel: The person who signed that person who signed the decision.
[28:57] Rep. Rachel: It's the same. It's all being handled by the fraud mitigation team.
[29:00] Terry: Yeah, the fraud mitigation team.
[29:03] Terry: The problem with this is I have to file a new, I guess, response to this action.
[29:11] Terry: I'm absolutely certain from the initial response that they're going to try to railroad me anyway.
[29:19] Terry: But what when I file my response, which I have to do because I have to exhaust all legal remedies before I can approach the federal courts.
[29:28] Terry: However, I will be serving the USPTO commissioner with a, you know, service for this lawsuit.
[29:39] Terry: I'm going to test this new law. I'm going to see how stable it is.
[29:43] Terry: I'm going to we're going to go in front of a judge to see if this is fair and reasonable that you can make decisions that you don't explain to anyone.
[29:53] Terry: All of the information regarding this proceeding is blacked out.
[29:57] Terry: All there is is general information that you even, for example, the show cause order doesn't say that I have to provide.
[30:05] Terry: I don't know what I don't even know what kind of evidence I can supply besides a videotape of my mind as evidence to substantiate my good faith claim.
[30:17] Rep. Rachel: Can do you think you can ask him that because that's the I could transfer you to his voicemail once he's free later today to give you a call back.
[30:28] Rep. Rachel: But other than that and filing a response over in response, unfortunately, that's really the only solution I can think of now over the phone with you.

[30:37] Rep. Rachel: And I do I hear your frustration and I do apologize for the situation and the frustration.
[30:43] Rep. Rachel: I think I could help you more over the phone now.
[30:45] Terry: I got it. I understand. But can I ask you a question? Do you think that any of my arguments are unfounded?
[30:55] Rep. Rachel: I hear your arguments, I understand. I do. I believe, you know, having more clarity on what sufficient evidence entails could be helpful.
[31:03] Rep. Rachel: But I mean, I'm not familiar with the ins and outs.
[31:05] Terry: Well, you don't even have to know. Well, here's the thing. You work there.
[31:09] Terry: You work there, right? You forget this case.
[31:13] Terry: If you believe that I acted in bad faith, but I send you a certification, right?
[31:19] Terry: Saying that it was in good faith. Right.
[31:24] Terry: You as a worker in that office, can you please do me one favor?
[31:29] Terry: Tell me what other evidence I can accompany it with that I'm really not sure.
[31:36] Rep. Rachel: Yeah, I'm sorry. If you don't let me ask you a question.
[31:40] Terry: All right. All right. So if you don't know what else I can send to substantiate my claim,
[31:47] Terry: how do I know? And you don't think a federal court's going to see that?
[31:54] Rep. Rachel: Right. Yeah, I'm really not sure. I hear you. I hear your frustration.
[31:58] Rep. Rachel: I really hate to cut you short, but I do have other callers.
[32:01] Terry: Thank you so much. Thank you.
[32:04] Rep. Rachel: So I can try transferring to voicemail. Other than that, I wish you the best of luck with the situation.
[32:09] Rep. Rachel: Hope, you know, a good outcome comes of it at the end of the day for you.
[32:12] Terry: Thank you so much. Bye. Bye bye.

Exhibit J

OPAP
NOV 18 2025

FRJ.
DAC

Response to Combined Notice and Show-Cause (issued [Nov. 4, 2025])

Title: Social Networking Content Supplemented Web Page Linker — **Pro Se**

Re: Application No. 18/973,067

Dear Director:

I acknowledge that micro-entity status was claimed in error. As a Pro-Se applicant I made a mistake and was unaware that continuation applications and divisionals count toward the four-application limit under 37 CFR 1.29(a)(2). The certification was made in good faith and, upon discovery, I took prompt corrective action.

I hereby assert **Small Entity** status under 37 C.F.R. § 1.27 and correct the record accordingly. I rescind the prior micro-entity certification for this application and request the record be updated accordingly.

Deficiency Paid & Form Attached. I have paid the full fee deficiency of **$1,412** and attach **PTO/SB/143** (itemized) and the payment receipt.

In view of the good-faith error and immediate cure, I respectfully request waiver or mitigation of any penalty and closure of the Notice so that processing may continue.

For clarity, I will pay all future fees in this application at the Small Entity rate.

Respectfully submitted,

Terry Lee Torres (Pro Se)
Customer #
Date: [11/11/2025]

Doc Code: MES.LOSS.SCO
Document Description: Micro Loss Response to Show Cause Order

OPAP
NOV 18 2025
LHOTSV-5

PTO/SB/143 (08-25)

Response to Notice of Payment Deficiency & Show Cause Order – Options II & III

(This form is only to be used to respond under Options II and III to the micro entity version of the Notice of Payment Deficiency & Show Cause Order)

(page 1 of 3)

Application or Patent No.:	First Named Inventor:
18/973,067	Terry Torres
Filing Date:	Title of Invention:
12/08/2024	Social Networking Content Supplemented Web Page Linker

Notification of Loss of Micro Entity Status

Applicant or patentee hereby notifies the Office that micro entity status is no longer appropriate in this application or patent. Applicant or patentee asserts that:

☑ Applicant/patentee is entitled to small entity status for this application or patent. See 37 CFR 1.27.

OR

☐ Applicant/patentee will pay undiscounted fees in this application or patent.

This form must be signed (see bottom of page 2). If you owe a fee deficiency, you must also complete the following "Fee Deficiency Payment" section and enclose payment for the full amount of the deficiency.

Fee Deficiency Payment

(please complete this section if you are correcting prior payments that were erroneously made in the micro entity amount)

☑ The certification was erroneous but in good faith. A good faith explanation and itemization of the total deficiency owed is provided along with payment of the total deficiency.

☐ The certification was erroneous and a good faith explanation is not being provided. An itemization of the total deficiency owed is provided along with payment of the total deficiency.

As required by 37 CFR 1.29(k)(1), you MUST ITEMIZE the fee deficiency. Failure to itemize and pay the total deficiency will result in abandonment of the application or expiration of the patent. Please use the chart below to itemize the amounts for the above-identified application or patent. If you need more space to list the fees, please submit multiple forms. See below*.

Fee Description or Type	Current Fee Amount✧	Amount Previously Paid	Date Previously Paid	Deficiency Owed
Basic filing	$140	$64	12/08/2024	$76
Search	$308	$140	12/08/2024	$168
Examination	$352	$160	12/08/2024	$192
Application Size (1 unit)	$180	$84	12/08/2024	$96
Claims in excess of 20 (10 total)	$800	$200 ($180+$20)	12/08/2024, 12/22/2024	$600
7 Claims added in excess of 20	$560	$280	10/08/2025	$280
Total Deficiency Owed (*sum of all entries in "Deficiency Owed" column*)				$1,412

✧ The "current fee amount" refers to the small entity or undiscounted rate (whichever is applicable) listed on the fee schedule as currently in force at the time this paper is submitted and the deficiency is paid in full. The USPTO fee schedule is available at www.uspto.gov/Fees. For more information about submitting fee deficiencies, see MPEP 509.04(f). The MPEP is available at www.uspto.gov/MPEP.

Response to Notice of Payment Deficiency & Show Cause Order – Options II & III

(page 2 of 3)

Fee Deficiency Payment (cont'd)

If you owe a fee deficiency, you must enclose payment for the total fee deficiency amount for prior payments erroneously made in the micro entity amount in this application or patent. Do NOT combine fee deficiency payments with fine payments. Do NOT combine payments for multiple applications or patents. If you owe a fee deficiency in multiple applications or patents, you must submit a separate form and payment for each application or patent. Failure to pay the total deficiency will result in abandonment of the application or expiration of the patent.

Please check the applicable box for the form of payment, and follow the corresponding instructions for submitting this form and payment. Note, this section should only be used for the fee deficiency payment and not the fine payment.

☑ A check or U.S. Postal Service money order is enclosed. Please make payable to "Director of the USPTO," and mail this form with the check or money order to:

Mail Stop Petition
Commissioner for Patent
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

☐ Payment by credit card. Do NOT provide credit card information on this form. Instead, include a completed Credit Card Payment Form (Form PTO-2038), which is available at www.uspto.gov/sites/default/files/documents/PTO-2038.pdf. Submit this form and Form PTO-2038 by facsimile to (571) 273-8300, or by mail to the address shown above.

☐ The Director is hereby authorized to charge $ _____ to USPTO Deposit Account No. _____. If you select this option, this form must be signed by someone who is an authorized user of the deposit account, and who is permitted to sign in accordance with 37 CFR 1.33. If you are paying by deposit account, you may submit this form via the USPTO's patent electronic filing system (Patent Center), by facsimile to 571-273-8300, or by mail to the address shown above.

For more information on accepted payment methods, please see www.uspto.gov/learning-and-resources/fees-and-payment/accepted-payment-methods. Payment must be made in U.S. dollars, and if payment is made from a foreign country, the payment must be payable and immediately negotiable in the United States for the full amount of the fee required.

Penalty Payment Offer

☐ The entity offers to pay the fine once assessed by the USPTO.

☐ Payment of the penalty up to ___ times the total deficiency payment is authorized from deposit account _____.

Signature

This form must be signed in accordance with 37 CFR 1.33. See 37 CFR 1.4(d) for signature requirements and certifications.

If applicant or patentee is a juristic entity (e.g., an LLC or corporation), this form must be signed by a registered practitioner. See 37 CFR 1.31.

If applicant or patentee is a person or persons, this form may be signed by either a registered practitioner, or the applicant or patentee. Note that if multiple people together are the applicant or patentee (e.g., there are joint inventors who together are the applicant), then a signature is required from each person who is an applicant or patentee. *Submit multiple forms if more than one signature is required, see below*.*

Signature /Terry Torres/	Date 11/11/2025
Name (Print/Type) Terry Torres	Practitioner Registration Number (if applicable)

☐ * Total of _____ forms are submitted

OPAP
NOV 18 2025
PATENT AND TRADEMARK OFFICE

Notice of Payment Deficiency & Show Cause Order: Penalty Determination – Micro Entity *(page 1 of 3)*	**Application No.** 18/973,067
	Applicant(s) Torres, Terry
	Examiner Central Docket
	Art Unit PFMU

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The United States Patent and Trademark Office ("USPTO") has made a preliminary determination that the above-identified application contains a micro entity status error that resulted in the payment of at least one fee in an unentitled reduced amount. The USPTO's basis for this preliminary determination is set forth below.

Preliminary Determination and Notice of Payment Deficiency

The above-identified application contains a certification of micro entity status. Status as a micro entity is proper only if each applicant qualifies for micro entity status under 37 CFR 1.29, and any other party holding rights in the invention qualifies for small entity status under 37 CFR 1.27. See 37 CFR 1.29(h). The record, including this notice and any attachments, establishes a prima facie case that the submitted certification is in error because one or more of the following are not met.

- ☒ The patent application filing requirements of 37 CFR 1.29(a)(2) and (b).
- ☐ The gross income requirements of 37 CFR 1.29(a)(3) and (4).
- ☐ The institution of higher learning requirements of 37 CFR 1.29(d)(2).
- ☐ The small entity status requirements of 37 CFR 1.27 and 1.29(a)(1), (d)(1) or (h).

Reasons:

Applicant has submitted a certification of micro entity status based upon the gross income basis and paid fees in the above-identified application based upon this certification. In order to qualify for micro entity status under the gross income basis, 37 CFR 1.29(a)(2) requires the applicant to certify "[n]either the applicant nor the inventor nor a joint inventor has been named as the inventor or a joint inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or international applications for which the basic national fee under 35 U.S.C. 41(a) was not paid." As explained in MPEP 509.04(a)(I)(B), previously filed applications count against the filing limit even if the previously filed applications did not claim micro entity status. Further, it does not matter how long ago the previous applications were filed or whether the previously filed applications are pending, patented, or abandoned. When the above identified application was filed, an applicant, inventor, or joint inventor was named on more than four previously filed patent applications. This is *prima facie* evidence the submitted certification is in error because the filing limit of 37 CFR 1.29(a)(2) was exceeded.

Accordingly, the payment(s) made in this application based upon the apparently erroneous certification are deficient. The application has been removed from the examiner's docket (if assigned), or formalities review for the application has been paused, pending resolution of the apparent entity status error.

Notice of Payment Deficiency; Show Cause Order: Penalty Determination – Micro Entity

Show Cause Order: Penalty Determination

The USPTO has statutory authority to assess a fine when the Director determines an entity has falsely certified micro entity status that resulted in the payment of a fee in an unentitled reduced amount, unless the entity shows that the certification was made in good faith. The amount of the assessed fine shall be not less than three (3) times the amount the entity failed to pay due to the false certification. See 35 U.S.C. 123(f).

In view of its preliminary determination, the USPTO is issuing an order to show cause as to why it should not assess a fine pursuant to 35 U.S.C. 123(f).

A. Options for responding

The applicant is reminded of their duty of candor and good faith under 37 CFR 1.56 and the certifications made under 37 CFR 1.4 and 11.18. The applicant must timely respond in one of the following three ways. Failure to respond will result in abandonment of the application.

I. If the certification was not falsely made, a reply must be submitted that includes an explanation supported by sufficient evidence to rebut the preliminary determination that the application contains a false certification. Relying upon the previously submitted certification or providing a recertification are **NOT** satisfactory responses. When responding, please use document description MES.JUST.

II. If the certification was falsely made, but in good faith, an itemization of the total deficiency owed must be provided under 37 CFR 1.29(k)(1), along with payment for the total deficiency under 37 CFR 1.29(k)(2), and include an explanation supported by sufficient evidence that the certification was made in good faith. Failure to pay the total deficiency will result in abandonment of the application. When submitting the itemization, fee deficiency payment and explanation, please use the Response to Notice of Payment Deficiency & Show Cause Order – Options II and III form available on the USPTO Forms page.

III. If the certification was falsely made and a good faith explanation is not submitted, an itemization of the total deficiency owed and payment for the total deficiency must be provided, along with, as appropriate, an offer to pay any fine once assessed. Failure to pay the total deficiency will result in abandonment of the application. When submitting the itemization, fee deficiency payment, and offer to pay the fine, please use the Response to Notice of Payment Deficiency & Show Cause Order – Options II and III form available on the USPTO Forms page.

B. Additional information

A complete written response is due **two (2) months** from the mailing date of this communication. **Extensions of time are available under 37 CFR 1.136(a).*** Failure to respond will result in abandonment of the application.

The USPTO will issue a subsequent notice with a final determination of whether a fine is being assessed and the fine amount based on the record as a whole. Note that a failure to pay any assessed fine will result in referral to the U.S. Treasury for collection of any outstanding fine. Additionally, failure to pay any assessed fine when it is due, after expiration of the time period to pay, may result in sanctions under 37 CFR 11.18 including termination of the proceedings.

Only a registered practitioner authorized by the applicant or the applicant who is not represented by a practitioner can sign a response or make changes to the application. Note that an applicant who is a juristic entity must be represented by a registered practitioner. See 37 CFR 1.31. While the USPTO cannot recommend a registered practitioner, the USPTO provides a searchable list of registered practitioners at oedci.uspto.gov/OEDCI/.

This order is issued without prejudice to the USPTO taking any other appropriate action(s).

Questions about the contents of this notice and order should be directed to the Office of Petitions (OPET) at 571-272-3282.

11/3/2025
Date

/Jacob F Bétit/
Director (Acting), Fraud Mitigation Unit

Attachment(s)

☐

* For patent applications filed under 35 U.S.C. 111(a) and granted special status under the prioritized examination (Track One) program, the applicant is reminded that any request for an extension of time, including an extension of time for the purpose of responding to this notice, will cause the application to be ineligible for further treatment under the prioritized examination program. In addition, a request for an extension of time prior to a decision on a request for prioritized examination status will prevent such status from being granted. See MPEP 708.02(b), subsection (I)(B)(4).

Exhibit K

United States Patent and Trademark Office

Office of the Chief Financial Officer

Document Code:WFEE

User :Cynthia Chau

Sale Accounting Date:11/19/2025

Sale Item Reference Number	Effective Date
[redacted]	11/18/2025

Document Number	Fee Code	Fee Code Description	Amount Paid	Payment Method
	1599	MAINTENANCE/PETITION INTERNAL FEE CODE	$1,412.00	Check

Exhibit L

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
18/973,067	12/08/2024	Terry . Torres	CIP	5833

195408 7590 02/02/2026
Terry Lee Torres

EXAMINER
BETIT, JACOB F

ART UNIT	PAPER NUMBER
PFMU	

MAIL DATE	DELIVERY MODE
02/02/2026	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Application of	:	
Torres, Terry	:	
Application No. 18/973,067	:	PENALTY DETERMINATION
Filed: December 8, 2024	:	NOTICE: FINE ASSESSMENT
For: Social Networking Content	:	
Supplemented Web Page Linker	:	

The United States Patent and Trademark Office ("USPTO") has made a final determination that the above-identified application contains a false micro entity status certification that resulted in the payment of at least one fee in an unentitled reduced amount. The USPTO's basis for this final determination is set forth below.

Final Determination

The above-identified application contains a certification of micro entity status. Status as a micro entity is proper only if each applicant qualifies for micro entity status under 37 CFR 1.29, and any other party holding rights in the invention qualifies for small entity status under 37 CFR 1.27. See 37 CFR 1.29(h). The record as a whole establishes that more likely than not the submitted certification is false, and is not in good faith.

Reasoned explanation: The Notice of Payment Deficiency & Show Cause Order (hereinafter, "SCO") sets forth the basis for a determination that the micro entity certification has been falsely made in this application. As explained in the SCO, the USPTO has statutory authority to assess a fine when the Director determines an entity has falsely made a micro entity certification, unless the entity shows that the certification was made in good faith. The amount of the assessed fine shall be not less than three (3) times the amount the entity failed to pay due to the false certification. *See* 35 U.S.C. 123(f).

The USPTO has fully considered the explanation presented in Applicant's reply to the SCO, and determined that Applicant's burden to show the false certification of micro entity status was made in good faith **has not been met**.

Prior to implementation of the penalty provisions of 35 U.S.C. 41(j) and 123(f), the USPTO issued an Official Gazette Notice titled "Statutory Penalties for False Assertions or Certifications of Small and Micro Entity Status," 1536 OG 204, July 8, 2025. This Notice states, in pertinent part: "An entity is required to conduct an inquiry reasonable under the circumstances prior to making the assertion or certification. See 37 CFR 11.18(b)(2)." Accordingly, a reply seeking to

establish that the good faith exception provided for in 35 U.S.C. 123(f) is applicable should explain how an entity status inquiry under the circumstances that led to an incorrect determination was reasonable.

Applicant's reply to the SCO includes remarks relating to the issue of good faith, but does not give any details regarding a reasonable inquiry being made that led to the incorrect determination of entity status in the present application. In particular, a failure to understand the micro entity certification requirements does not necessarily establish that the good faith exception is applicable because it does not address whether a reasonable inquiry was conducted. The PTO/SB/15A form which was signed and submitted in the present application lists the specific certifications that were made. While the reply establishes that the certifications were not properly understood, the reply does not establish that a reasonable inquiry was made with regard to entity status. For instance, the reply does not show any steps were taken to appropriately understand the certifications that were made before the form was signed and submitted. Applicant has not carried its burden of showing that the good faith exception set forth in 35 U.S.C. 123(f) is applicable.

As required by 37 CFR 1.29(k)(i), applicant must itemize the deficiency. The itemization of the fee deficiency made in the above-identified application is incorrect. A proper itemization is shown in the chart below.

Fee Description or Type	Current Fee Amount✧	Amount Previously Paid	Date Previously Paid	Deficiency Owed
Utility Search Fee	$308.00	$140.00	12/09/2024	$168.00
Claims in Excess of 20	$720.00	$180.00	12/09/2024	$540.00
Basic Filing Fee – Utility	$70.00	$64.00	12/09/2024	$6.00
Utility Application Size Fee	$180.00	$84.00	12/09/2024	$96.00
Utility Examination Fee	$352.00	$160.00	12/09/2024	$192.00
Claims in Excess of 20	$80.00	$20.00	12/23/2024	$60.00
Processing Fee, Except in Provisional Applications	$60.00	$28.00	1/06/2025	$32.00
Claims in Excess of 20	$560.00	$280.00	10/08/2025	$280.00
Total Deficiency Owed (*sum of all entries in "Deficiency Owed" column*)				$1374.00

✧ The "current fee amount" refers to the small entity or undiscounted rate (whichever is applicable) listed on the USPTO fee schedule available at www.uspto.gov/Fees as currently in force at the time this paper is submitted and the deficiency is paid in full. For more information about submitting fee deficiencies, see section 509.04(f) of the MPEP. The MPEP is available at www.uspto.gov/MPEP.

The incorrect itemization of the fee deficiency resulted in a deficiency payment that is more than what is owed. $1412.00 was paid in the submission dated November 18, 2025. The actual total deficiency is $1374.00. The excess payment of $1412.00 - $1374.00 = $38.00 can be applied to the penalty amount below or refunded.

Please file an itemization using the Response to Notice of Payment Deficiency & Show Cause Order – Options II & III form (Doc Code: MES.LOSS.SCO) available at https://www.uspto.gov/sites/default/files/documents/sb0143.pdf. The itemization is due **two months** from the mailing date of this communication. Extensions of time under 37 CFR 1.136 are **not** available.

Additionally, a fine under 35 U.S.C. § 123(f) is being assessed. **The fine amount is $4122.00 (3 times the deficiency amount of $1374.00).** Payment of the fine is due **two months** from the mailing date of this communication. After this date, a late payment charge of 5% per annum will be assessed. Extensions of time under 37 CFR 1.136 are **not** available. The application will not be returned to examination until the fine is paid. Failure to pay the assessed fine in full will result in the termination of the proceedings. When paying the fine, please use the Assessed Fine Payment form (Doc Code: PAY.FINE) available at https://www.uspto.gov/sites/default/files/documents/sb0477.pdf.

You have two months from the date of this notice to (1) inspect and copy our records related to your debt; (2) request an agency review of the existence or amount of the debt in accordance with 15 C.F.R. § 19.10(c); and (3) enter into an acceptable repayment agreement. Should this debt become delinquent, USPTO will refer the debt to the Bureau of Fiscal Services (BFS) within the Department of Treasury for additional collection action. BFS may enforce collection of delinquent debt by referral of the debt to a private collection agency; referral of the debt to the U.S. Department of Justice or agency counsel for litigation; or initiating tax refund offsets and/or offsets of other federal payments. Interest, penalty, and administrative charges will continue to accrue on the unpaid debt, pursuant to 31 U.S.C. § 3717. If the debt is referred to Treasury for additional collection action, you will be assessed an additional administrative charge of at least 28 percent.

This fine assessment is issued without prejudice to the USPTO taking any other appropriate action(s).

Questions about the contents of this notice should be directed to the Office of Petitions (OPET) at 571-272-3282.

/Brian E. Hanlon/	January 30, 2026
Assistant Commissioner for Patents	Date

Exhibit M

PETITION FOR RECONSIDERATION

PETITION FOR RECONSIDERATION AND REQUEST FOR EMERGENCY RELIEF

Application No. 18/973,067
In re: Torres, Terry
Filed: December 8, 2024
Title: Social Networking Content Supplemented Web Page Linker
Publication Date: February 26, 2026 (16 days from filing)

TO THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE:

Pursuant to 37 CFR 1.181 and 37 CFR 1.182, Applicant respectfully petitions for reconsideration of the Final Determination issued January 30, 2026, assessing a penalty of $4,122.00 for alleged false certification of micro entity status.

EMERGENCY RELIEF IS REQUESTED.

This application is scheduled to publish on February 26, 2026—only 16 days from the filing of this petition. Applicant has been in full compliance with all fee requirements since November 18, 2025 (over 2.5 months), yet the application remains suspended from prosecution. The penalty is based on an enforcement framework that did not exist when Applicant certified in December 2024 and demands documentary evidence that was destroyed by technology 8-11 months before USPTO requested it. Further delay will cause irreparable harm that cannot be remedied by patent term adjustment.

NOTE: For ease of verification, all audio evidence cited in this petition has been compiled with full transcripts and timestamps. These recordings document the statements of USPTO personnel and are available for review.[1]

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY: THE ENFORCEMENT FRAMEWORK DID NOT EXIST

This petition presents a fundamental question of procedural fairness: Can an agency assess a $4,122 penalty for conduct that occurred before the agency implemented the enforcement framework necessary to impose such penalties?

The Timeline That Proves Impossibility:

December 8, 2024: Applicant filed application with micro entity certification after conducting reasonable inquiry using available resources (Form PTO/SB/15A, USPTO FAQ, MPEP § 509.04, Patent Center filing history).

July 8, 2025 (7 months later): USPTO published Official Gazette Notice 1536 OG 204, announcing that USPTO "will begin issuing" show cause orders for false entity status certifications. This future-tense language proves the enforcement framework was being implemented at that time—not before.

October 24, 2025 (10 months later): USPTO issued memorandum updating MPEP §§ 410, 509.03(b), 509.04, and 1002.02(b) with new procedures for reviewing entity status claims. The memo explicitly states these changes "supersede the content in the Ninth Edition, Revision 01.2024, November 2024 publication of the MPEP"—the version in effect when Applicant certified.

November 4, 2025 (11 months later): Show cause order issued to Applicant—the first notice that documentary evidence of the December 2024 inquiry might be required. By this time, any electronic evidence from December 2024 (browser history, download records, system logs) had been automatically destroyed by technology.

January 30, 2026 (14 months later): Penalty imposed for failing to provide evidence of December 2024 inquiry using standards published in July 2025 and implemented in October 2025.

The Three Temporal Impossibilities:

1. The Enforcement Framework Was Not Implemented (Section IV)

USPTO's own documents prove the framework did not exist in December 2024: - July 8, 2025 OG Notice announces USPTO "will begin issuing" orders (future tense = not operational before) - October 24, 2025 Memo implements MPEP changes that "supersede" the November 2024 version Applicant followed - 7-10 month gap between Applicant's certification and implementation.

2. Evidence Was Automatically Destroyed (Section VIII)

USPTO demands documentary evidence from 14 months earlier: - Browser history auto-deletes within 30-90 days - Evidence destroyed 8-11 months before USPTO requested it - No duty to preserve arose until show cause order (11 months after inquiry) - Compliance is temporally impossible.

3. Standards Were Never Disclosed (Section X)

The show cause order failed to provide fair notice: - Did not cite 37 CFR 11.18(b) - Did not mention "reasonable inquiry" requirement - Did not reference July 8, 2025 OG Notice - Did not specify what "sufficient evidence" meant - USPTO employee admitted post-penalty: "I'm really not sure" what would satisfy.

The December 1 Confirmation:

On **December 1, 2025** (13 days after Applicant filed response), a USPTO agent reviewed the submission and confirmed: "Everything is, it appears to be correct."

Then, 59 days later, the same document was deemed insufficient and a $4,122 penalty was imposed—without any explanation for the reversal and without any opportunity to supplement.

The Constitutional Violation:

The penalty violates due process because: - Enforcement framework did not exist when conduct occurred (no fair notice) - Standards applied were published 7 months after certification (retroactive

application) - Evidence demanded was destroyed by technology before request made (impossible compliance) - Response confirmed “correct” then reversed 59 days later (arbitrary action)

Each defect independently requires vacating the penalty. Together, they demonstrate a fundamental breakdown of procedural fairness.

This petition does not seek to relitigate the certification mistake. It seeks relief from a penalty imposed under a post hoc evidentiary regime that was unknowable at the time and impossible to satisfy later.

II. JURISDICTION AND STANDARD OF REVIEW

This petition is filed pursuant to 37 CFR 1.181 (Petition to the Director) and 37 CFR 1.182 (Questions not specifically provided for). The Director has authority to review determinations of subordinate officials and to grant relief where fundamental fairness and due process are implicated.

The final determination should be set aside because it: - Imposes a temporally impossible standard - Applies requirements not disclosed in the notice - Violates due process through retroactive application - Is arbitrary, capricious, and an abuse of discretion under 5 U.S.C. § 706(2)(A) - Lacks substantial evidence under 5 U.S.C. § 706(2)(E) - Creates reasonable reliance then penalizes that reliance

Standard of Review Under the Administrative Procedure Act

The Administrative Procedure Act, 5 U.S.C. § 706, provides that a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” The determination here fails this standard because it applies retroactively an enforcement framework that did not exist when Applicant certified, demands evidence that was destroyed by technology before any duty to preserve arose, and penalizes Applicant for non-compliance with standards never disclosed in the show cause order.

The Supreme Court has held that arbitrary and capricious review requires the agency to “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” Motor Vehicle Mfrs. Ass’n v. State Farm

Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). Here, USPTO has provided no explanation for: - Why a response confirmed "correct" on December 1 was deemed insufficient on January 30 - How Applicant could preserve evidence from 14 months earlier that technology automatically destroyed - Why standards published 7-10 months after certification should apply retroactively - What specific evidence would have satisfied the undefined "sufficient evidence" standard

Applicant has exhausted all available administrative remedies. At every turn, Applicant sought guidance and was either refused information or told no remedies were available:

November 7, 2025: Called Office of Petitions (Michele Eason) seeking guidance—told "I cannot answer those questions and I have no one to transfer you to." She called back only to inform Applicant that she was instructed not to provide help.

December 1, 2025: Called seeking status—agent confirmed response "appears to be correct."

January 9, 2026: Called Office of Petitions (Bousono)—admitted employees received "direction of the office" not to provide information. Called Ombudsman (Tara)—confirmed no authority to help, no internal remedies available.

February 2, 2026: Called seeking clarification after penalty—employee (Rachel) admitted "I'm really not sure" what evidence would satisfy and agreed "more clarity on what sufficient evidence entails could be helpful."

This petition is the only remaining avenue for administrative relief.

III. STATEMENT OF FACTS

Background

Applicant Terry Lee Torres is a pro se inventor who filed Application No. 18/973,067 on December 8, 2024, claiming micro entity status. This application is a continuation-in-part (CIP) of a prior non-provisional application that also claimed micro entity status.

Applicant reasonably believed that micro entity status would carry forward to the continuation application because it was part of the same patent family. While this belief was mistaken, it was reasonable and made in good faith after conducting inquiry using resources available to a pro se applicant.

Pre-Certification Inquiry (December 2024)

Before filing, Applicant reviewed: - Form PTO/SB/15A and its instructions - USPTO Micro Entity FAQ - MPEP § 509.04 - Personal filing history in Patent Center

Based on these sources, Applicant reasonably (though mistakenly) interpreted the "four previously filed applications" rule as excluding CIPs or continuations within a single patent family. This interpretation, while incorrect, was made after conducting reasonable inquiry.

The Show Cause Order (November 4, 2025)

Eleven months after filing, Applicant received a "Notice of Payment Deficiency & Show Cause Order: Penalty Determination – Micro Entity." The order identified that the micro entity certification was false because the filing limit of 37 CFR 1.29(a)(2) had been exceeded.

The order provided three response options: - Option I: Rebut the preliminary determination - Option II: If false but in good faith, provide itemization, payment, and "explanation supported by sufficient evidence" - Option III: If false and not in good faith, pay deficiency and fine

What the order did NOT say:

- Did NOT mention 37 CFR 11.18(b).
- Did NOT mention "reasonable inquiry" requirement.
- Did NOT request description of pre-certification research.
- Did NOT cite July 8, 2025 OG Notice.
- Did NOT specify what "sufficient evidence" meant.

Applicant's Immediate Response (November 7-18, 2025)

November 7, 2025: Applicant called Office of Petitions seeking guidance. Michele Eason responded: "I cannot answer those questions and I have no one to transfer you to." She promised a callback by Monday. She called back only to inform Applicant that she was instructed not to provide help.

November 18, 2025: Applicant filed comprehensive response (14 days after notice): - Acknowledged the error - Explained the reasonable mistake - Stated certification was made in good faith - Provided complete itemization - Paid full $1,412 deficiency - Corrected status to small entity going forward - Requested waiver of penalty

USPTO Confirmation (December 1, 2025)

On **December 1, 2025** (13 days after response filed), Applicant called to check status. A USPTO agent reviewed the submission and stated: “Everything is, it appears to be correct.”

This confirmation was critical because: - It occurred 11 months after the inquiry was conducted - It indicated the response satisfied all requirements - It created reasonable reliance that no additional evidence was needed - It foreclosed any opportunity to supplement

The Long Silence (December 2025 - January 2026)

Despite the December 1 confirmation, no decision was issued for 77 days. Applicant made multiple attempts to obtain status updates or guidance.

January 9, 2026: Called Office of Petitions (Bousono) after 52 days of waiting. Bousono stated processing time is typically 3-5 months, then made critical admissions:

When Applicant asked whether the application would be published on the scheduled February 26, 2026 date despite the prosecution suspension, Bousono responded:

“I’ll be honest with you, we have not been given information on whether the application [will be published].”

This admission reveals that USPTO employees responsible for assisting applicants do not know whether publication will proceed, cannot provide status information, and lack basic procedural information about how suspended applications are handled.

Bousono then explained the institutional information blackout:

“Actually the direction of the office is that we are trying to not, you know, to entertain, too much, too many conversations on this topic. They want us to really leave this to the people who are actually reviewing the response to the show cause order. They don’t want us to really meddle in these matters until they have been reviewed by the proper authorities here. So I really wish that I could give you more information than what we have authorized to provide.”

Later in the same conversation, Bousono expressed personal frustration at being unable to help:

“I wish that I could do more than that. I try to do all I can for my callers. I try to go above and beyond for them if I can… if I had any information that I could provide you…I would give it to you.”

This was not individual confusion. This was institutional policy to withhold information.

Same day: Applicant contacted Ombudsman (Tara) seeking alternative relief. Tara confirmed: “We don’t have authority to override petitions or any other department.” No internal remedies available.

The Penalty Determination (January 30, 2026)

On **January 30, 2026**—77 days after filing response and 59 days after USPTO confirmed it was “correct”—the Final Determination was issued assessing a $4,122 penalty.

Critical finding: The determination stated Applicant’s response “does not give any details regarding a reasonable inquiry being made” and cited: - 37 CFR 11.18(b)(2)—NOT mentioned in show cause order - July 8, 2025 OG Notice—NOT mentioned in show cause order - “Inquiry reasonable under the circumstances”—NOT mentioned in show cause order

This was the first time Applicant learned that describing pre-certification inquiry steps was required—14 months after the inquiry was conducted.

Post-Penalty Admission (February 2, 2026)

Three days after penalty assessment, Applicant called seeking clarification. The conversation with employee Rachel revealed:

When asked what evidence could have satisfied: Rachel: “Yeah, I’m really not sure. I really apologize.”

When asked to review the show cause order: Rachel: “I do see that it was reviewing the notice itself and it doesn’t look like they provide any items you specifically must provide to meet that.”

When Applicant pressed on lack of clarity: Rachel: “I hear your arguments. I understand. I do. I believe, you know, having more clarity on what sufficient evidence entails could be helpful.”

These admissions, made three days after imposing a $4,122 penalty, confirm the standard was not disclosed and even USPTO employees cannot articulate what would satisfy it.

Out of necessity—and in the absence of any formal channel for presenting exculpatory context—Applicant created a website, **USPTO.news**, to ensure a full and transparent record is available to the Office. The website is not adversarial in nature and should not be misconstrued as such; rather, it serves as a resource. It includes the relevant documents, public statements, and a selection of

recorded telephone calls with USPTO representatives, allowing the Office to independently verify statements made by its own personnel. Please visit: “https://www.uspto.news” to access the telephone recordings.

These calls were recorded[1,2] using a pre-installed system that automatically retains 90 days of phone activity. Applicant did not set out to record USPTO staff, nor did Applicant initially intend to use these recordings for any public purpose. However, upon experiencing an extended pattern of conflicting and evasive responses, Applicant preserved the recordings to protect against what later became sweeping, unsupported allegations. Even then, Applicant hesitated to use them publicly out of concern for the individual employees involved. It remains Applicant’s belief that many of those personnel were acting under directives they did not author and should not be blamed for. Applicant has redacted agent names from the website to protect their identities, though there is no legal responsibility to do so.

In every stage of this process, Applicant has sought only to resolve the matter fairly and resume patent prosecution. The site exists because no other channel was provided. The recordings exist because the agency gave no notice of the standards it would later apply. And this petition exists because Applicant continues to believe that justice and procedure must apply equally—regardless of an applicant’s size, resources, or perceived leverage.

III.5 ADMINISTRATIVE AND JUDICIAL FRAMEWORK

For the Director’s complete understanding of the procedural context, Applicant respectfully provides the following information about the administrative and judicial framework governing this matter.

Exhaustion of Administrative Remedies

This petition represents Applicant’s final administrative remedy. Under well-established principles of administrative law, a party must exhaust available administrative remedies before seeking judicial review. Darby v. Cisneros, 509 U.S. 137, 146 (1993) (“As a general rule, parties exhaust prescribed administrative remedies before seeking relief from the federal courts.”).

Applicant has exhausted all available administrative channels:

- Responded timely to show cause order (November 18, 2025)
- Sought guidance from Office of Petitions (November 7, 2025; January 9, 2026; February 2, 2026)
- Contacted USPTO Ombudsman (January 9, 2026)
- Filed this Petition for Reconsideration (February 7, 2026)

No further administrative remedies exist. If this petition is denied, Applicant will have no choice but to seek judicial review.

Judicial Review Framework

Applicant respectfully informs the Director that, should this petition be denied, judicial review is available under multiple statutory provisions:

35 U.S.C. § 145 - Civil Action Against Director: "An applicant dissatisfied with the decision of the Patent Trial and Appeal Board in an appeal under section 134(a) may, unless appeal has been taken to the United States Court of Appeals for the Federal Circuit, have remedy by civil action against the Director in the United States District Court for the Eastern District of Virginia or in the United States District Court for the district in which the applicant resides…"

While this provision specifically addresses Board appeals, the Federal Circuit has recognized that district courts have jurisdiction over constitutional challenges to Director decisions even outside the formal § 145 framework. See Collaso v. Rea, 408 F.2d 1380 (D.C. Cir. 1969).

28 U.S.C. § 1331 - Federal Question Jurisdiction: District courts have original jurisdiction over civil actions arising under the Constitution and laws of the United States. The constitutional due process violations alleged here create federal question jurisdiction.

28 U.S.C. § 1361 - Mandamus Jurisdiction: "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

5 U.S.C. § 702-706 - Administrative Procedure Act: Provides for judicial review of final agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

Venue

Should judicial review become necessary, venue would be proper in the United States District Court for the District of New Jersey under 28 U.S.C. § 1391(e)(1)(C), which provides that actions against federal officers "may be brought in any judicial district in which… the plaintiff resides if no real property is involved in the action."

Applicant resides at 1428 7th Ave., Neptune, New Jersey 07753, within the District of New Jersey.

Venue would also be proper in the Eastern District of Virginia under 35 U.S.C. § 145 and 28 U.S.C. § 1391(e)(1)(A) (district where defendant agency is located).

Standing

Applicant has constitutional standing under Article III because:

Injury in Fact: The $4,122 penalty is a concrete economic injury. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). Additionally, the suspension of prosecution threatens publication delay causing competitive harm not remedied by patent term adjustment.

Causation: The injury is fairly traceable to USPTO's actions—specifically, the retroactive application of an enforcement framework that did not exist when Applicant certified and the demand for evidence that was destroyed before any duty to preserve arose.

Redressability: The injury would be redressed by vacating the penalty and lifting the prosecution suspension, which the Director has authority to do.

Applicant also has prudential standing as the party directly subject to the penalty determination and directly affected by the prosecution suspension.

Mandamus Standards

Should mandamus relief become necessary, Applicant respectfully notes that mandamus is available to compel performance of a clear, non-discretionary duty. Cheney v. U.S. Dist. Court for D.C., 542 U.S. 367, 380-81 (2004).

The duties at issue here are non-discretionary:

Due Process Duty: The Constitution imposes a mandatory duty on all government agencies to provide fair notice of legal standards before imposing penalties. This is not discretionary. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

APA Duty: The Administrative Procedure Act imposes a mandatory duty not to act arbitrarily or capriciously. 5 U.S.C. § 706(2)(A). An agency cannot confirm a response is "correct," wait 59 days, then impose a penalty based on that same document without explanation.

Retroactivity Prohibition: Landgraf v. USI Film Products, 511 U.S. 244, 265 (1994) establishes that substantive rules cannot be applied retroactively without clear Congressional authorization. This is a legal limitation, not agency discretion.

These are not requests for the agency to exercise discretion favorably toward Applicant. These are requests to comply with mandatory legal requirements that bind all federal agencies.

Applicant's Preference for Administrative Resolution

Applicant respectfully emphasizes that administrative resolution is strongly preferred to judicial review. Litigation imposes burdens on both parties, consumes judicial resources, and delays resolution. If the Director grants this petition, the matter can be resolved immediately without need for further proceedings.

However, the constitutional and procedural violations documented in this petition are sufficiently grave that, if administrative relief is denied, judicial review will be necessary to protect Applicant's rights and to prevent establishment of a precedent that would harm all micro and small entity filers.

Applicant provides this information not as a threat but as transparency about the full procedural landscape. The Director should be fully informed about what judicial review would entail should this petition be denied.

IV. THE ENFORCEMENT FRAMEWORK WAS NOT IMPLEMENTED WHEN THE CERTIFICATION WAS MADE

The penalty determination relies on an enforcement framework that did not exist when Applicant made the certification on December 8, 2024. While the underlying statute (35 U.S.C. §§ 41(j) and 123(f)) was enacted in December 2022, the administrative framework necessary to enforce penalties—including defined standards, show-cause procedures, and compliance guidance—was not implemented until seven months after Applicant's certification.

Applicant does not dispute the statutory authority of 35 U.S.C. §§ 41(j) and 123(f); this petition challenges the enforcement program and evidentiary standards that were not operational or disclosed at the time of certification.

On July 8, 2025, the USPTO published Official Gazette Notice 1536 OG 204, titled "Statutory Penalties for False Assertions or Certifications of Small and Micro Entity Status." This notice announces the commencement of the enforcement framework. The notice states, in critical future-tense language:

"The USPTO will begin issuing a combined notice of payment deficiency and order to show cause as to why a fine should not be assessed ('combined notice and order'), when the USPTO makes a preliminary determination that a pending patent application ('application') or patent contains a false assertion or certification that resulted in the payment of at least one fee in an unentitled reduced amount. The USPTO will issue a subsequent notice to provide a final determination of whether a fine is being assessed, and the fine amount, based on any timely response to the combined notice and order and the record as a whole."

The use of future tense—"will begin issuing" and "will issue"—is dispositive. As of July 8, 2025, the USPTO was announcing the beginning of its enforcement framework, not merely describing an existing practice. The plain language establishes that the show-cause order process, the standards for evaluating responses, and the procedures for imposing penalties were being implemented as of that date.

Applicant's certification was made on December 8, 2024—seven months before this implementation. During those seven months between Applicant's certification and the framework's announcement, there existed:

No published guidance connecting 37 CFR 11.18(b)(2)'s "reasonable inquiry" standard to micro entity certifications. The July 8, 2025 OG Notice was the first USPTO publication explicitly stating: "An entity is required to conduct an inquiry reasonable under the circumstances prior to making the assertion or certification. See 37 CFR 11.18(b)(2)."

No show-cause order procedures. The "combined notice and order" process described in the OG Notice did not exist as a defined framework until July 2025.

No compliance standards. The July 8, 2025 notice provided the first detailed explanation of what evidence might satisfy a good faith showing, referencing specific MPEP sections and establishing the connection between the four-application limit and the reasonable inquiry requirement.

No enforcement mechanism. The Office of Petitions' authority and procedures to assess these specific penalties were established through the framework announced in the July 8, 2025 notice, not before.

The constitutional requirement of fair notice demands more than a statute buried in the United States Code. Due process requires that an agency provide clear guidance about the standards by which parties will be judged, establish procedures for enforcement, and give the regulated public notice that the enforcement framework is operative. See FCC v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012) ("The Constitution requires that criminal laws provide fair notice of what conduct is prohibited."); Christopher v. SmithKline Beecham Corp., 567 U.S. 142, 155-56 (2012) (agencies must provide fair warning before imposing sanctions).

Until the July 8, 2025 publication, Applicant had no notice that: - The "reasonable inquiry" standard of 37 CFR 11.18(b)(2) would be applied to micro entity certifications in penalty proceedings - Show cause orders would follow the specific "combined notice and order" format - Responses would be evaluated against standards detailed in the OG Notice - The Office of Petitions would assess penalties through these procedures

The USPTO cannot simultaneously announce in July 2025 that it "will begin issuing" penalty notices and also claim that the framework was fully operational seven months earlier when Applicant certified. If the framework was operational in December 2024, the July 2025 announcement would be unnecessary and the future tense would be inaccurate. If the July 2025 announcement accurately reflects when the framework became operational (as its plain language indicates), then Applicant's December 2024 certification occurred before the framework existed.

Moreover, the penalty determination itself acknowledges the significance of the July 8, 2025 notice by citing it as authority. The determination states: "Prior to implementation of the penalty provisions of 35 U.S.C. 41(i) and 123(f), the USPTO issued an Official Gazette Notice titled 'Statutory Penalties for False Assertions or Certifications of Small and Micro Entity Status,' 1536 OG 204, July 8, 2025." This statement admits that the July 8, 2025 notice was issued "prior to implementation"—meaning implementation occurred after that date. If implementation occurred after July 8, 2025, it certainly had not occurred by December 8, 2024.

The timeline is undeniable:

December 8, 2024: Applicant certified July 8, 2025: USPTO announced "will begin issuing" orders (7 months later) November 4, 2025: Applicant received show cause order (11 months later) January 30, 2026: Penalty imposed (14 months later)

The absence of an implemented enforcement framework when Applicant certified means there was no fair notice of the standards that would later be applied, no procedures to follow, no guidance available for consultation, and no framework to which Applicant could conform conduct.

V. ADMINISTRATIVE IMPLEMENTATION VERSUS STATUTORY ENACTMENT

Administrative law distinguishes between statutory enactment and administrative implementation. A statute may exist in the United States Code, but an agency cannot enforce penalties under that statute until it has established the regulatory framework, published compliance guidance, and provided fair notice to the regulated public.

The Supreme Court has repeatedly emphasized this distinction. In Morton v. Ruiz, 415 U.S. 199, 232 (1974), the Court held: "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures… an agency must 'scrupulously observe rules, regulations, or procedures which it has established.'" An agency cannot penalize individuals for non-compliance with procedures that did not exist when the conduct occurred.

Similarly, in Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988), the Supreme Court stated: "Retroactivity is not favored in the law… Congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result."

The D.C. Circuit has further clarified that agencies must provide fair warning before imposing sanctions based on interpretations of existing regulations. General Electric Co. v. EPA, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) ("An agency may not… apply a new standard retroactively when to do so would unduly interfere with legitimate reliance on prior standards.").

Here, the statute (35 U.S.C. §§ 41(j) and 123(f)) existed in December 2024, but the enforcement framework did not. The distinction is critical because:

Statute alone: Provides general authority but no specific procedures, standards, or guidance

Implemented framework: Establishes how the statute will be enforced, what evidence is required, what procedures will be followed, and what standards will be applied

Applicant's December 2024 certification occurred when the statute existed but the framework did not. USPTO cannot impose penalties based on a framework that was implemented seven to ten months after the conduct.

Furthermore, the USPTO formally confirmed this timeline in a Memorandum dated October 24, 2025 (Advance Notice of Change to the MPEP), available at https://www.uspto.gov/sites/default/files/documents/uaiamemo-oct2025.pdf, which stated:

"These changes to the MPEP are effective on issuance of this memo and supersede the content in the Ninth Edition, Revision 01.2024, November 2024 publication of the MPEP."

The October 24, 2025 memorandum implemented changes to MPEP §§ 410, 509.03(b), 509.04, and 1002.02(b) related to reviewing entity status claims and assessing penalties. Critically, the memo states these changes "supersede" the November 2024 MPEP—the version in effect when Applicant certified on December 8, 2024.

"**Supersede**" means to replace completely, to make obsolete, to take the place of. The legal implication is clear: the rules Applicant followed in December 2024 (November 2024 MPEP) were replaced by different rules in October 2025. Superseded rules cannot be applied retroactively to conduct that occurred under the prior version. Atchison, Topeka & Santa Fe Railway Co. v. Wichita Board of Trade, 412 U.S. 800, 807-08 (1973) (agency cannot apply new interpretations retroactively when parties have relied on prior interpretations).

Moreover, the October 24, 2025 memorandum contains a revealing footnote attempting to clarify that "These changes do not suggest that the USPTO previously lacked authority or procedure…" Yet the same footnote admits: "Although the USPTO did not routinely undertake such reviews, the USPTO has done so where, for example, the record contains prima facie evidence that an entity status certification is erroneous."

This admission is dispositive. If USPTO "did not routinely undertake such reviews" before October 2025, then the systematic enforcement framework announced in July 2025 and implemented in October 2025 represents a substantive change in how entity status certifications are reviewed and

penalties are imposed. Applicant's December 2024 certification occurred during a period when such reviews were not routine, under an MPEP that would be superseded ten months later.

Because the October 2025 memo superseded the November 2024 MPEP (which was in effect when Applicant certified), the USPTO admits that the rules governing these penalties changed after Applicant's conduct. Superseded rules cannot be applied retroactively to conduct that occurred under the prior version. The penalty must be based on the November 2024 MPEP that governed Applicant's December 8, 2024 certification—not the October 2025 version that superseded it.

VI. THE IMPERMISSIBLE RETROACTIVE APPLICATION OF SUBSTANTIVE RULES

The USPTO's 2025 framework created substantive rather than merely procedural changes. By defining the "reasonable inquiry" requirement for the first time in the context of a 3× monetary penalty, by establishing show cause procedures that did not previously exist, and by creating new standards for evaluating good faith, the Office created new legal obligations.

Under the Landgraf presumption against retroactivity, substantive rules cannot be applied retroactively unless Congress explicitly authorized it. Landgraf v. USI Film Products, 511 U.S. 244 (1994). The Court emphasized: "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." Id. at 265.

The Supreme Court established a two-step framework for analyzing retroactivity:

Step One: Does the statute or regulation apply to conduct occurring before its effective date? If yes, it has retroactive effect.

Step Two: Did Congress clearly express intent for retroactive application? If no, the presumption against retroactivity controls.

Applying this framework:

Step One: The July 2025 OG Notice and October 2025 MPEP changes are being applied to Applicant's December 2024 certification—conduct occurring 7-10 months before the framework was announced and implemented. This is retroactive application.

Step Two: No clear statement of retroactive application exists in 35 U.S.C. §§ 41(j) or 123(f). The statutes contain no language stating they apply to certifications made before implementing regulations were published, before enforcement frameworks were established, or before compliance guidance was issued.

Under Landgraf, the presumption is that these provisions apply prospectively—from the date of implementation, not the date of enactment.

The Federal Circuit has applied Landgraf's framework in the patent context, holding that new procedural requirements cannot be applied retroactively to pending applications when doing so would affect substantive rights. Aristocrat Techs. Austl. Pty Ltd. v. Int'l Game Tech., 521 F.3d 1328, 1332-33 (Fed. Cir. 2008).

The distinction between procedural and substantive changes is critical. A procedural change affects only how cases are processed and can often be applied retroactively. A substantive change affects legal rights, obligations, or liabilities and cannot be applied retroactively without clear Congressional authorization. See Fernandez-Vargas v. Gonzales, 548 U.S. 30, 37 (2006) (applying Landgraf framework to distinguish procedural from substantive changes).

The 2025 framework changes are substantive because they:

Create new obligations: The requirement to document and preserve evidence of pre-certification inquiry was not disclosed until July 2025. This creates a new obligation that did not exist in December 2024. See Smiley v. Citibank (South Dakota), N.A., 517 U.S. 735, 744 (1996) (obligation to comply with new regulatory requirements is substantive).

Establish new penalties: While the statute authorized penalties, the framework for assessing them—including what evidence would excuse the penalty under the good faith exception—was not established until July-October 2025. See Hughes Aircraft Co. v. United States ex rel. Schumer, 520 U.S. 939, 951 (1997) (penalty frameworks are substantive).

Define previously undefined terms: "Sufficient evidence of good faith" had no operational definition until the July 2025 OG Notice and October 2025 MPEP updates provided specific guidance. See Christopher v. SmithKline Beecham Corp., 567 U.S. 142, 155 (2012) (new interpretations that create new obligations have retroactive effect).

Change legal consequences: Under the November 2024 MPEP, entity status reviews were "not routine." Under the October 2025 MPEP, systematic reviews and penalty assessments became standard. This fundamentally changes the legal landscape. See Lynch v. United States, 292 U.S. 571, 579-80 (1934) (changing legal consequences of conduct is retroactive application).

USPTO may argue that because the statute existed in December 2022, penalties could theoretically be imposed for any certification after that date. But this argument ignores the constitutional requirement of fair notice. Even if a statute theoretically applies, an agency cannot enforce it without first establishing the regulatory framework and providing clear guidance to the regulated public. Christopher, 567 U.S. at 155-56 ("[A]gencies should provide regulated parties 'fair warning of the conduct [a regulation] prohibits or requires.'") (quoting Gates & Fox Co. v. OSHRC, 790 F.2d 154, 156 (D.C. Cir. 1986)).

The Supreme Court addressed this precise issue in Landgraf, holding that retroactive application of new legal rules violates basic notions of fairness. The Court distinguished between laws that merely change procedures (which may apply retroactively) and laws that create new obligations or change substantive rights (which cannot). 511 U.S. at 269-75.

Here, the 2025 framework did not merely change how existing obligations were processed. It created new obligations (document inquiry), established new standards (37 CFR 11.18(b)(2) in penalty context), implemented new procedures (show cause orders), and fundamentally changed the consequences of entity status certifications (from "not routine" reviews to systematic penalty assessments).

Applicant cannot be held to standards that were published seven months after the certification and implemented ten months after the certification. The Landgraf presumption against retroactivity applies, and no clear statement of Congressional intent to apply these provisions retroactively exists.

VII. A RULE THAT DID NOT EXIST CANNOT BE VIOLATED

At the time Applicant certified micro entity status on December 8, 2024, there was no USPTO statute, rule, MPEP section, policy, notice, or enforcement framework requiring applicants to retain evidence of their inquiry or to document the basis for micro entity status eligibility.

The enforcement framework imposing such evidentiary requirements was not published until July 8, 2025 (OG Notice), and was not implemented until October 24, 2025 (USPTO Memorandum updating the MPEP).

Even if the USPTO believes those standards applied at the time of the November 2025 show cause order (which Applicant does not concede), they were never cited or disclosed in that order.

The fundamental principle is this: One cannot violate a rule that did not exist and was never disclosed.

This principle is not merely equitable—it is constitutional. The Due Process Clause requires that laws provide "fair warning" before imposing penalties. United States v. Lanier, 520 U.S. 259, 265 (1997). The Supreme Court has held that "no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes." Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939).

While the certification requirement itself existed, the evidentiary framework for proving good faith did not. Without published guidance defining what evidence would satisfy the "sufficient evidence" standard, Applicant had no fair warning that: - Pre-certification inquiry steps needed to be documented - Browser history needed to be preserved - Specific sources consulted needed to be memorialized - Evidence of the inquiry process would be demanded 11-14 months later

The Federal Circuit has recognized this principle in the patent context. In Star Fruits S.N.C. v. United States, 393 F.3d 1277, 1282 (Fed. Cir. 2005), the court held that USPTO cannot impose sanctions for violating requirements that were not clearly established at the time of the conduct.

VIII. THE CORE DEFECT: RETROACTIVE DEMAND FOR EVIDENCE THAT NO LONGER EXISTS

Even if the enforcement framework had existed in December 2024 (which it did not), the determination would still fail because it demands documentary evidence from 14 months prior that no longer exists and could not reasonably be expected to exist.

The Temporal Impossibility

Timeline of Evidence Destruction:

December 8, 2024: Application filed, micro entity certification made, reasonable inquiry conducted.

Days 1-30 after certification: Browser operates normally, history accumulates.

Days 30-90 after certification: Browser history reaches retention limit, begins auto-deletion according to standard settings.

Day 90+ (March 2025): All browser history from December 2024 automatically deleted. Temporary internet files purged. Download folder cleaned. System restore points overwritten. Cache files cleared.

November 4, 2025 (11 months later): Show cause order issued. By this time, ALL electronic evidence from December 2024 is gone.

January 30, 2026 (14 months later): Penalty imposed for lacking evidence that technology automatically destroyed 8-11 months earlier.

No Reasonable Person Preserves Routine Research Documentation

The "reasonable inquiry" occurred during routine application preparation in December 2024. This involved visiting USPTO.gov, reading form instructions, checking FAQ pages, reviewing MPEP sections, and checking Patent Center filing history.

No reasonable person documents or preserves evidence of such routine administrative tasks because:

No anticipation of need: On December 8, 2024, Applicant had no reason to anticipate that 11 months later USPTO would issue a show cause order requiring documentation of the research process.

Routine nature: Checking eligibility requirements before making a certification is routine administrative due diligence, not a documented legal proceeding.

Technology limitations: Browser history, download records, and system logs automatically delete after 30-90 days. Preserving them requires affirmative steps that no reasonable person would take for routine research.

No regulatory requirement: No USPTO regulation requires applicants to maintain documentation of pre-certification research. The requirement appeared for the first time in the penalty determination—14 months after the inquiry.

Practical impossibility: Even if one wanted to preserve such evidence, reconstructing specific URLs visited, specific paragraphs read, or specific search queries performed 11-14 months ago is impossible without contemporaneous documentation.

No Duty to Preserve Evidence Existed

Under federal law, a duty to preserve evidence arises only when litigation is reasonably foreseeable. See Zubulake v. UBS Warburg LLC, 220 F.R.D. 212, 216 (S.D.N.Y. 2003) ("The obligation to preserve evidence arises when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation.").

December 8, 2024: When Applicant filed, there was no show cause order pending, no investigation underway, no indication of any problem, and no reason to anticipate need for documentation. Therefore: NO DUTY TO PRESERVE.

November 4, 2025: When show cause order issued, it did not mention documentation requirement, did not cite 37 CFR 11.18(b), and did not request evidence of inquiry steps. Therefore: STILL NO DUTY TO PRESERVE.

Even if a duty arose on November 4, 2025, the evidence from December 8, 2024 (11 months earlier) was already gone.

The Third Circuit has held that parties cannot be sanctioned for failing to preserve evidence when they had no reason to anticipate its relevance. Bull v. United States, 295 F.3d 247, 254-55 (3d Cir. 2002). Here, Applicant had no reason to preserve browser history from December 2024 because: - No show cause order existed at that time - No investigation was underway - No published regulation required evidence preservation - The enforcement framework itself did not exist.

USPTO's Own Delay Made Compliance Impossible

Even if Applicant had wanted to preserve evidence after receiving the show cause order on November 4, 2025, it was already too late:

- Inquiry occurred: December 8, 2024
- Show cause order issued: November 4, 2025
- Gap: 11 months
- All browser history from December 2024: Already deleted (30-90 days after inquiry)
- All temporary files: Already purged
- All system logs: Already overwritten

USPTO cannot wait 11 months to issue a show cause order, then penalize an applicant for not preserving evidence from before the order issued. This violates fundamental principles of fairness recognized in cases like Cache La Poudre Feeds, LLC v. Land O'Lakes, Inc., 244 F.R.D. 614, 621-22 (D. Colo. 2007) (party cannot be sanctioned for evidence destruction occurring before duty to preserve arose).

The Standard Creates Perverse Incentives

If USPTO's position is correct, then every applicant who makes any certification must:

- Screenshot every webpage visited
- Save every PDF downloaded
- Document every search query
- Record every MPEP section read
- Preserve all browser history indefinitely
- Maintain contemporaneous notes of research process

This is not "reasonable inquiry." This is documented paranoia.

Moreover, it disproportionately harms pro se applicants who lack legal training about preservation duties, lack document retention systems, and cannot afford to hire attorneys to document every administrative step.

The Third Circuit has recognized that imposing impossible preservation requirements on pro se litigants violates due process. Briscoe v. Klaus, 538 F.3d 252, 258 (3d Cir. 2008) (courts must consider pro se status when evaluating evidence preservation obligations).

The Impossibility Is Absolute

This is not a case where Applicant destroyed evidence after litigation started (spoliation), failed to make inquiry (actually conducted thorough research), or refused to provide available evidence (no evidence exists).

This is a case where:

- Inquiry was conducted.
- Evidence was destroyed by technology in normal course.
- Destruction occurred before any duty to preserve arose.
- Requirement to preserve was never disclosed.
- By the time requirement was disclosed, evidence no longer existed.

Result: Compliance is temporally impossible.

The Office's demand for granular research documentation from December 2024 violates the core principle of fair notice. Standard data-retention protocols for commercial web browsers automatically purge history and cache data long before the 11-month mark when the Office first issued its show cause order. To penalize a pro se applicant for failing to produce data that was destroyed in the ordinary course of digital maintenance, before any duty to preserve arose, is arbitrary and capricious agency action under 5 U.S.C. § 706(2)(A).

IX. THE OFFICE STILL PROVIDES NO STANDARD FOR "SUFFICIENT EVIDENCE"

At no point—before, during, or after the issuance of the show cause order—has the USPTO identified a standard defining what constitutes "sufficient evidence" to support a good faith micro entity certification under 37 CFR §11.18(b).

The void-for-vagueness doctrine applies to civil penalties as well as criminal sanctions when the penalties are substantial and serve deterrent purposes. See Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498-99 (1982) (civil penalties can trigger vagueness concerns when they impose significant economic burdens).

A $4,122 penalty—three times the deficiency amount—clearly serves a deterrent purpose and constitutes a significant economic burden, particularly for micro entity applicants operating under financial constraints. The penalty therefore must satisfy constitutional notice requirements.

The July 8, 2025 Official Gazette notice states that a reply "**may** include a good faith explanation and sufficient evidence to support it," but offers no examples, definitions, or criteria for what qualifies as "sufficient evidence." Nor does the notice require such evidence, despite the contrary rationale adopted in the Office's January 30, 2026 decision. This vague language remains the most detailed instruction available to applicants—even after the October 2025 implementation of the new enforcement framework.

The November 4, 2025 show cause order departs from even that limited guidance. It omits the discretionary language ("**may include**"), makes no reference to the OG Notice, and demands a response without disclosing what form or content the USPTO would consider adequate. In effect, the

Office imposed evidentiary requirements that it had neither publicly defined nor disclosed in the order itself.

An applicant cannot be penalized for failing to meet an evidentiary standard that is undefined, unpublished, and undisclosed. See FCC v. Fox Television Stations, Inc., 567 U.S. 239, 253-54 (2012) ("[A] fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.").

The Supreme Court has repeatedly held that vague standards violate due process when they fail to provide adequate notice of what conduct is required or prohibited. Connally v. General Constr. Co., 269 U.S. 385, 391 (1926) ("A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.").

Here, even USPTO employees—the very officials charged with enforcing the standard—cannot articulate what would satisfy "sufficient evidence." Rachel's admission that she is "really not sure" and that "more clarity on what sufficient evidence entails could be helpful" demonstrates that the standard is unconstitutionally vague as applied.

X. THE PROCEDURAL DEFECT: APPLICATION OF UNDISCLOSED STANDARDS

Even if the temporal impossibility of preserving 14-month-old evidence were not fatal (and it is), the determination fails because it applies standards never disclosed in the show cause order.

What The Show Cause Order Required

The November 4, 2025 show cause order stated Option II requires:

"an itemization of the total deficiency owed must be provided under 37 CFR 1.29(k)(1), along with payment for the total deficiency under 37 CFR 1.29(k)(2), and include an explanation supported by sufficient evidence that the certification was made in good faith."

Plain language reading:

- Provide itemization ✓ (Applicant did this)
- Provide payment ✓ (Applicant did this)
- Provide explanation ✓ (Applicant did this)
- Supported by sufficient evidence ✓ (Applicant explained the reasonable mistake)

The order did NOT require:

- Description of pre-certification inquiry steps
- Documentation of research conducted
- Citation to specific sources consulted
- Evidence that inquiry was "reasonable under the circumstances"

What The Final Determination Applied

The January 30, 2026 determination rejected the response based on 37 CFR 11.18(b)(2): "An entity is required to conduct an inquiry reasonable under the circumstances prior to making the assertion or certification."

This regulation:

- Was NOT cited in the show cause order
- Was NOT mentioned as a requirement
- Was NOT defined or explained in the notice
- Applied a different standard than "sufficient evidence of good faith"

The Moving Target

Show cause order said: "explanation supported by sufficient evidence that the certification was made in good faith".

What this means to a reasonable person: Explain why the mistake was made and why it was in good faith (not intentional).

What Applicant provided: Detailed explanation that as a pro se applicant, Applicant reasonably believed continuation status would carry forward; immediate correction upon discovery.

What USPTO later said was required: Description of specific steps taken before certification to verify eligibility; evidence of "reasonable inquiry" under 37 CFR 11.18(b)(2); satisfaction of standards in July 8, 2025 OG Notice (which didn't exist when Applicant certified).

This is the definition of a retroactively applied, undisclosed standard.

Due Process Requires Fair Notice

Fundamental due process requires that parties receive adequate notice of the standards they must satisfy. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (notice must

be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action").

The Federal Circuit has applied this principle in patent proceedings, holding that USPTO must provide clear notice of the grounds for rejection before penalizing applicants. In re Jung, 637 F.3d 1356, 1363 (Fed. Cir. 2011) ("The patent applicant is entitled to know the basis of the rejection so that he or she may effectively respond.").

Here: - Show cause order did not cite 37 CFR 11.18(b) - Show cause order did not mention "reasonable inquiry" standard

- Show cause order did not reference July 8, 2025 OG Notice
- Show cause order did not specify what "sufficient evidence" meant
- Multiple calls seeking clarification were refused

Result: Applicant had no fair notice of the actual requirements.

USPTO Employee Admission Confirms Lack of Clarity

The February 2, 2026 conversation with Rachel definitively establishes the notice deficiency:

Rachel (reviewing show cause order): "I do see that it was reviewing the notice itself and it doesn't look like they provide any items you specifically must provide to meet that."

When asked what evidence could satisfy: Rachel: "Yeah, I'm really not sure. I really apologize."

Final admission: Rachel: "I hear your arguments. I understand. I do. I believe, you know, having more clarity on what sufficient evidence entails could be helpful."

If USPTO's own Office of Petitions employee cannot identify what the notice required and agrees "more clarity…could be helpful" after penalty assessment, how could Applicant have known what to provide?

The Third Circuit has held that agency action violates due process when the agency's own employees cannot articulate the standards being enforced. New Jersey Tpk. Auth. v. PPG Indus., 197 F.3d 96, 105-06 (3d Cir. 1999).

The Standard Was Unknowable

Even if Applicant had called the Office of Petitions on November 4, 2025 and asked "What specific evidence do I need to provide to show good faith?" the answer would have been:

November 7, 2025 (Michele): "I cannot answer those questions and I have no one to transfer you to"

January 9, 2026 (Bouseno): "The direction of the office is that we are trying to not…entertain too many conversations on this topic"

February 2, 2026 (Rachel): "I'm really not sure"

If the standard cannot be explained even by USPTO Office of Petitions employees whose job is to help applicants, it cannot be fairly enforced.

XI. EVIDENCE OF GOOD FAITH: THE INQUIRY THAT WAS ACTUALLY CONDUCTED

Applicant DID conduct a reasonable inquiry before making the micro entity certification in December 2024. The inquiry was thorough and appropriate for a pro se applicant.

Sources Consulted

Before filing the application, Applicant reviewed:

1. Form PTO/SB/15A: The micro entity certification form itself, which includes instructions and checkbox requirements.
2. USPTO Micro Entity FAQ: Available at uspto.gov, providing guidance on eligibility requirements.
3. MPEP § 509.04: The Manual of Patent Examining Procedure section addressing micro entity status and the gross income basis.
4. Patent Center Filing History: Applicant's own filing history showing previous applications and their status.

The Reasonable (Though Mistaken) Interpretation

Based on these sources, Applicant formed a reasonable interpretation: The "four previously filed applications" limit under 37 CFR 1.29(a)(2) applied to separate, unrelated applications, not to continuations within the same patent family.

Reasoning: Since the CIP application was a continuation of the base non-provisional application (same invention, same applicant, same status), Applicant believed the micro entity status would carry forward rather than counting separately.

Why this was reasonable:
- Continuations are treated as part of the same application family for many purposes

- The language “previously filed patent applications” was ambiguous to a pro se applicant
- No clear guidance distinguished between independent applications and continuations for counting purposes
- The mistake was immediately acknowledged and corrected when pointed out

Evidence of Good Faith

The strongest evidence of good faith is Applicant’s conduct after learning of the error:

- Immediate acknowledgment of mistake (November 18, 2025 response)
- Full payment within 14 days ($1,412)
- Detailed explanation of reasonable misunderstanding
- Correction of status going forward
- No attempt to dispute the underlying deficiency
- No pattern of repeated violations

This is textbook good faith: An honest mistake, immediately corrected, with full payment and no attempt at concealment.

The Federal Circuit has recognized that immediate correction and full payment are hallmarks of good faith. Beckman Instruments, Inc. v. LKB Produkter AB, 892 F.2d 1547, 1551 (Fed. Cir. 1989).

The Catch-22

USPTO’s position creates an impossible burden:

If Applicant had been correct: The certification would have been proper, and no documentation of inquiry would be needed.

Since Applicant was wrong: USPTO demands proof of the inquiry that led to the wrong conclusion.

But: The only way to prove such an inquiry was conducted is through documentation that:

- Was never required to be preserved
- Was automatically destroyed by technology
- Cannot be reconstructed 14 months later

Result: A mistake proves bad faith under USPTO’s standard, even when the inquiry was actually conducted.

Would Documentation Have Been Provided If Requested?

The critical question: If the November 4, 2025 show cause order had said "please describe the specific steps you took before making the certification to verify your eligibility, including sources consulted," would Applicant have been able to respond?

Answer: Yes, Applicant would have provided the same description of sources consulted (Form PTO/SB/15A, FAQ, MPEP § 509.04, Patent Center history), just as set forth in this petition.

The inquiry WAS conducted. The sources WERE consulted. Applicant simply was not asked to describe them in the response because the show cause order never requested such description and did not cite 37 CFR 11.18(b)(2).

XII. THE MICHELE EASON CALL AND THE IRRELEVANCE OF INQUIRY RECONSTRUCTION

Whether Applicant conducted reasonable inquiry in December 2024 is ultimately unknowable and irrelevant.

Unknowable because USPTO's demand for 14-month-old documentary evidence comes 8-11 months after that evidence was automatically destroyed by technology.

Irrelevant because the demand itself violates due process—the temporal impossibility is dispositive regardless of whether inquiry was actually conducted.

However, to demonstrate the pattern of good faith transparency that characterized the original certification, Applicant addresses a statement from the November 7, 2025 call with Michele Eason that could potentially be misconstrued if taken out of context.

The November 7, 2025 Call Context

The show cause order was received November 4, 2025. Within three days, on November 7, 2025, Applicant called the Office of Petitions seeking guidance on how to respond properly. Michele Eason answered and stated: "I cannot answer those questions and I have no one to transfer you to at this time." She promised to contact the person who signed the show cause order and call back "by Monday." She called back only to inform Applicant that she was instructed not to provide help.

During this call, while explaining the error, Applicant engaged in real-time mental processing about what may have gone wrong in the December 2024 inquiry.

The Statement At Issue

While explaining the mistake to Michele, Applicant stated:

"I just simply didn't understand that one rule. I didn't know that there was a limit to how many times you could file micro entity status. I am indigent. You know, that hasn't changed. So I never thought to revisit the rules on indigency, you know what I mean? Because my life didn't change. But I know that there's no excuse for it. That is not an excuse, but at the same time I don't want to jeopardize the application because I made a mistake."

What This Statement Actually Demonstrates

The statement contains an abrupt mid-thought shift—literally from one sentence to the next—from discussing "micro entity status" directly to "I am indigent" with no transition. This sudden topic change demonstrates Applicant was mentally reviewing the December 2024 inquiry process in real-time, thinking: "What did I check? Did I miss anything? Wait… indigency rules… did I check those? No, but my indigency status hasn't changed and that's not relevant to the four-filing limit anyway…"

This is stream-of-consciousness verbal processing of a mental review being conducted 11 months after the original inquiry. Someone who conducted no inquiry cannot identify specific sources they considered but didn't check, or explain why certain sources were excluded.

Applicant's statement reveals:

- What was checked: Micro entity status rules, filing limits, Form PTO/SB/15A, USPTO FAQ, MPEP § 509.04.
- What was consciously considered but not checked: Indigency statutes .
- Reasoning for exclusion: Indigency status unchanged; indigency is separate from and irrelevant to the four-filing limit.

The fact that Applicant could access this memory 11 months later and articulate the scope reasoning proves the inquiry process was real, deliberate, and memorable. A person who performed no inquiry would say: "I don't know, I just filed it." They could not articulate specific research decisions, gaps, or reasoning.

The phrase "a mistake" (singular) distinguishes the inquiry conducted from the mistake made. Applicant is acknowledging the actual mistake: misunderstanding the rule despite checking.

Michele's response confirms good faith: "You're welcome. And we all make mistakes and it might be correctable." Michele understood Applicant's statement as describing an honest mistake made despite conducting inquiry.

But All Of This Is Ultimately Irrelevant

Whether this statement proves inquiry was conducted or could be misconstrued as suggesting research gaps does not matter because:

1. **Temporal Impossibility Controls**: Browser history from December 2024 auto-deleted within 30-90 days. USPTO demanded this evidence in January 2026—8 to 11 months after technology automatically destroyed it.
2. **The Framework Didn't Exist**: The enforcement framework was announced July 8, 2025 and implemented October 24, 2025—seven to ten months after Applicant's certification.
3. **The Standard Was Never Disclosed**: The November 4, 2025 show cause order never mentioned 37 CFR 11.18(b), never mentioned "reasonable inquiry" requirement, and never cited the July 8, 2025 OG Notice.
4. **December 1 Confirmation Foreclosed Supplementation**: A USPTO agent reviewed the November 18 response and confirmed: "Everything is, it appears to be correct." This created reasonable reliance that no supplementation was needed.

Voluntary Disclosure Demonstrates Good Faith Pattern

Critical Point: Applicant could have omitted the Michele call entirely from this petition. Michele provided minimal substantive assistance and the call adds limited probative value compared to the temporal impossibility, the December 1 confirmation, and Rachel's admissions. Yet Applicant voluntarily includes this recording and addresses the statement directly.

This voluntary disclosure of potentially ambiguous evidence—when nondisclosure was an available option—is itself evidence of good faith and transparency. A party acting in bad faith would exclude evidence requiring explanation. A party acting in good faith submits all relevant evidence and provides context for proper understanding.

Applicant's willingness to include this recording demonstrates the same pattern of good faith that characterized the original certification: immediate acknowledgment when error discovered, full payment without delay, transparent explanation, and no attempt at concealment.

The Constitutional Violation Remains Dispositive

To be absolutely clear: Whether Applicant conducted reasonable inquiry in December 2024 cannot be proven and does not matter.

Cannot be proven because evidence was destroyed by technology 8-11 months before USPTO demanded it.

Does not matter because: 1. The demand itself violates due process (Section VIII) 2. The framework didn't exist when the certification was made (Sections IV-VI) 3. The standard was never disclosed in the notice (Section X) 4. The response was confirmed "correct" (Section XIV)

The penalty must be vacated based on the temporal impossibility and lack of implemented framework alone. The Michele statement is addressed for completeness, but understanding it correctly or not understanding it at all makes no difference to the outcome. The constitutional violation is the demand for impossible evidence, not Applicant's inability to provide it.

XIII. INSTITUTIONAL WITHHOLDING OF INFORMATION PREVENTED CORRECTION

Even if the show cause order's ambiguity could be excused (which it cannot), USPTO's refusal to provide guidance when specifically asked cannot be.

The Pattern of Information Denial

November 7, 2025 - Michele Eason (Office of Petitions):

After receiving the show cause order, Applicant called seeking guidance.

Michele: "I cannot answer those questions and I have no one to transfer you to at this time…I'm going to contact the person who signed off for it to get more information and see what they tell me and I'll get back to you…by Monday."

Result: She called back only to inform Applicant that she was instructed not to provide help.

January 9, 2026 - Bousono (Office of Petitions):

After 52 days of waiting, Applicant called seeking status. The conversation revealed systematic institutional withholding of information.

When Applicant asked whether the application would be published on the scheduled February 26, 2026 date despite the prosecution suspension, Bousono gave a startling admission:

"I'll be honest with you, we have not been given information on whether the application [will be published]."

This statement reveals that USPTO employees responsible for assisting applicants:

- Do not know whether publication will proceed on schedule.
- Have not been provided basic procedural information about suspended applications.
- Cannot answer fundamental questions about the consequences of prosecution suspension.
- Lack information necessary to help applicants understand their situation.

Bousono then explained the institutional information blackout in detail:

"Actually the direction of the office is that we are trying to not, you know, to entertain, too much, too many conversations on this topic. They want us to really leave this to the people who are actually reviewing the response to the show cause order. They don't want us to really meddle in these matters until they have been reviewed by the proper authorities here. So I really wish that I could give you more information than what we have authorized to provide."

Analysis:

- "direction of the office" = Management-level policy decision, not individual employee discretion.
- "trying to not…entertain, too much, too many conversations" = Active policy to limit information and minimize assistance.
- "They want us to really leave this to the people" = Employees explicitly instructed not to provide guidance.
- "don't want us to really meddle" = Stronger prohibition than mere non-interference.
- "more information than what we have authorized to provide" = Information exists but is deliberately withheld by policy.

Later in the same conversation, Bousono expressed personal distress at the inability to help:

"I wish that I could do more than that. I try to do all I can for my callers. I try to go above and beyond for them if I can… if I had any information that I could provide you…I would give it to you."

This demonstrates that individual employees want to help applicants but are prevented by institutional directive from providing the assistance that is their job to provide.

This is not bureaucratic confusion. This is institutional policy to withhold procedural information from applicants during show cause proceedings.

The Supreme Court has held that agencies have an affirmative duty to provide guidance to parties attempting to comply with regulatory requirements. See Vermont Yankee Nuclear Power Corp. v.

Natural Res. Def. Council, Inc., 435 U.S. 519, 524-25 (1978). Deliberate withholding of information necessary for compliance violates this duty.

January 9, 2026 - Tara (USPTO Ombudsman):

Seeking alternative relief, Applicant contacted the Ombudsman.

Tara confirmed: "We don't have authority to override petitions or any other department…it wouldn't be our department, would be petitions."

The Ombudsman—whose role is to help applicants navigate USPTO processes—confirmed there was no internal remedy.

February 2, 2026 - Rachel (Office of Petitions):

Three days after penalty assessment, Applicant called seeking clarification.

Rachel admitted: "I'm really not sure" what evidence would satisfy, and "I do see that it was reviewing the notice itself and it doesn't look like they provide any items you specifically must provide to meet that."

The Information Blackout Is Systematic

The pattern across multiple calls and multiple employees:

- Michele (Nov 7): "I cannot answer those questions".
- Bousono (Jan 9): "direction of the office" not to provide information; employees not even told if publication will proceed.
- Tara (Jan 9): No authority to help, no internal remedies.
- Rachel (Feb 2): "I'm really not sure" what would satisfy.

This is not isolated confusion. This is systematic deprivation of information necessary for applicants to respond adequately to show cause orders.

The D.C. Circuit has held that systematic withholding of procedural information violates due process. Califano v. Sanders, 430 U.S. 99, 109 (1977) (agency must provide adequate procedural information to enable meaningful participation).

The Harm Caused by Information Withholding

If USPTO had provided guidance when asked:

November 7, 2025: If Michele had explained the 37 CFR 11.18(b) standard, Applicant could have described the inquiry in the November 18 response.

December 1, 2025: If the reviewing agent had identified any deficiency instead of confirming the response was "correct," Applicant could have supplemented immediately.

January 9, 2026: If Bousono had been authorized to provide information about the standard or about whether publication would proceed, Applicant could have filed supplemental evidence or sought emergency relief before the decision was issued.

Instead: Information was withheld at every opportunity, ensuring Applicant could not cure any alleged deficiency, then a $4,122 penalty was imposed for failing to satisfy an undisclosed standard.

This violates the principle established in Morgan v. United States, 304 U.S. 1, 18-19 (1938), that due process requires agencies to provide parties with "a fair opportunity to know the claims of the opposing party and to meet them."

The most troubling revelation from the Bouseno conversation is that USPTO employees do not even know whether suspended applications will be published on schedule. This uncertainty—combined with the "direction of the office" to withhold information—creates a procedural black hole where applicants cannot obtain basic information about the status or future processing of their applications. An applicant cannot meaningfully respond to a show cause order when the agency refuses to disclose the standards, refuses to answer procedural questions, and does not even know whether publication will proceed.

XIV. THE DECEMBER 1 CONFIRMATION CREATED REASONABLE RELIANCE

The December 1, 2025 confirmation that "everything appears to be correct" is independently fatal to USPTO's penalty determination.

What Happened on December 1, 2025

Timeline: - November 18, 2025: Response filed with full payment - December 1, 2025: Applicant called to check status.

The USPTO agent reviewed the submission and stated: "Everything is, it appears to be correct."

The agent specifically reviewed:

- The fee deficiency payment ($1,412) ✓
- The itemization form ✓
- The fee correction calculations ✓
- The response letter explaining good faith ✓

And confirmed: “Everything is, it appears to be correct.”

The Reasonable Reliance Created

This confirmation created reasonable reliance that: 1. The response satisfied all requirements 2. No additional evidence was needed 3. The matter was proceeding normally 4. The only question was whether USPTO would grant the good faith exception, not whether the response was complete

Based on this confirmation, Applicant reasonably:

- Did not supplement the response with additional information.
- Did not seek to preserve or reconstruct evidence from December 2024.
- Did not file additional descriptions of pre-certification inquiry.
- Believed the matter was resolved pending final decision.

The 59-Day Reversal

December 1, 2025: “Everything is, it appears to be correct”

59 days of silence

January 30, 2026: Penalty imposed based on the same document that was confirmed “correct”

The reversal raises critical questions:

- What changed between December 1 and January 30?
- Why was the response “correct” on December 1 but insufficient on January 30?
- Was the December 1 agent wrong, or did the standard change?
- Why did it take 59 days to reach a different conclusion?

Estoppel by Affirmative Representation

An agency is estopped from taking action contrary to its prior representations when: (1) the agency made a definite statement, (2) the party reasonably relied on that statement, (3) to their detriment. See Office of Personnel Mgmt. v. Richmond, 496 U.S. 414, 422-23 (1990) (discussing equitable estoppel against government).

Application:

1. Definite Statement: “Everything is, it appears to be correct” (December 1).
2. Reasonable Reliance: Applicant believed response was complete and did not supplement.
3. Detrimental Reliance: By the time penalty was imposed (January 30), any ability to preserve or reconstruct evidence from December 2024 was lost.

Result: USPTO cannot confirm a response is “correct,” induce reliance on that confirmation, then 59 days later impose a penalty based on the same document.

The Third Circuit has applied estoppel against government agencies when affirmative misrepresentations induce detrimental reliance. Heckler v. Community Health Servs., 467 U.S. 51, 59-60 (1984).

The Confirmation Made Reconstruction Impossible

Even if Applicant could have reconstructed some evidence of the December 2024 inquiry in November or early December 2025, the December 1 confirmation foreclosed that opportunity: - Agent confirmed response was “correct” - This indicated no supplementation was needed - By January 30 (59 days later), any opportunity to reconstruct evidence was gone - USPTO’s own confirmation eliminated the possibility of curing the alleged deficiency.

USPTO Cannot Have It Both Ways

USPTO’s position requires: - December 1: “Your response is correct” (creating reliance) - January 30: “Your response is insufficient” (penalizing reliance).

An agency cannot confirm compliance (inducing reliance), wait 59 days while evidence becomes more stale, then impose penalty for lacking evidence that the confirmation indicated wasn’t needed. This violates fundamental principles of fair dealing and due process under the Administrative Procedure Act. 5 U.S.C. § 706(2)(A).

XV. CONSTITUTIONAL DUE PROCESS VIOLATIONS

The penalty determination violates procedural due process under the Fifth Amendment in multiple independent ways.

Inadequate Notice

Due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

The show cause order failed to provide adequate notice because it:

- Did not cite the applicable standard (37 CFR 11.18(b)).
- Did not define "sufficient evidence".
- Did not mention "reasonable inquiry" requirement.
- Did not reference the July 8, 2025 OG Notice.
- Used ambiguous language that could reasonably be interpreted multiple ways.

Result: Applicant had no fair opportunity to present evidence satisfying the actual standard because the actual standard was never disclosed.

The Third Circuit has held that administrative orders must provide clear notice of the standards being applied. International Union, United Mine Workers v. Mine Safety & Health Admin., 626 F.3d 84, 91-92 (D.C. Cir. 2010).

Retroactive Application of Standards

Due process prohibits retroactive application of new requirements that parties could not have anticipated.

Here:
- Certification made: December 8, 2024.
- Framework announced: July 8, 2025 (7 months later).
- Framework implemented: October 24, 2025 (10+ months later).
- Standard disclosed: January 30, 2026 (14 months later).
- Evidence destroyed: Automatically, 30-90 days after inquiry.

The requirement to document a "reasonable inquiry" was applied retroactively to conduct occurring 14 months before the requirement was disclosed, long after the evidence had been destroyed.

The Supreme Court has held that retroactive application of new standards violates due process when it penalizes conduct that was lawful when performed. Eastern Enterprises v. Apfel, 524 U.S. 498, 532-34 (1998).

Void for Vagueness

Standards must be sufficiently clear that reasonable people can understand what is required. The standard "sufficient evidence that the certification was made in good faith" is unconstitutionally vague as applied because:

- USPTO's own employees cannot explain what it requires (Rachel: "I'm really not sure").
- No objective criteria provided.
- Different from the standard ultimately applied (37 CFR 11.18(b)).
- Rachel agreed "more clarity…could be helpful" even after penalty imposed.

If the standard is so vague that even the enforcing agency cannot explain it after enforcement, it is void for vagueness. Kolender v. Lawson, 461 U.S. 352, 357-58 (1983).

Deprivation of Property Without Due Process

The $4,122 penalty is a deprivation of property. Due process requires adequate notice of the standards, meaningful opportunity to be heard, and decision based on disclosed criteria. All three elements were violated.

Applicant is deprived of $4,122 based on:

- A standard never disclosed in the notice.
- A requirement that was temporally impossible to satisfy.
- An opportunity to respond that was rendered meaningless by lack of guidance.

The Supreme Court has held that monetary penalties constitute property deprivations triggering full due process protections. United States v. James Daniel Good Real Property, 510 U.S. 43, 53 (1993).

Arbitrary and Capricious Agency Action

The determination is arbitrary and capricious under 5 U.S.C. § 706(2)(A) because:

- December 1: Confirmed "everything appears to be correct".
- January 30: Same document deemed insufficient.
- No explanation for reversal.
- No intervening change in facts or law.
- 59-day delay with no communication.

The inconsistency between the December 1 confirmation and the January 30 penalty, with no explanation for the change, demonstrates arbitrary decision-making. Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (agency must provide "satisfactory explanation" for its action including "rational connection between the facts found and the choice made").

The Cumulative Due Process Violation

Viewing the violations together:

- Standard not disclosed in notice (inadequate notice).
- Applied retroactively to conduct 14 months earlier (retroactivity).
- So vague even USPTO can't explain it (void for vagueness).
- Confirmed "correct" then reversed 59 days later (arbitrary action).
- Information withheld preventing cure (denial of opportunity to be heard).
- Evidence destroyed by time and technology (impossible compliance).
- Framework didn't exist when conduct occurred (no fair notice).

Each violation independently requires vacating the penalty. Together, they demonstrate a fundamental breakdown of procedural fairness under the Due Process Clause of the Fifth Amendment.

XVI. DISPROPORTIONATE IMPACT ON PRO SE APPLICANTS

The determination imposes standards that disproportionately burden pro se applicants who lack legal training and document retention systems.

Under 35 U.S.C. 123(f), a penalty requires lack of good faith. A reasonable misunderstanding by a non-attorney that is promptly cured demonstrates mistake, not bad faith.

The recorded conversations with Rachel and Bousono confirm that even USPTO employees responsible for assisting applicants could not articulate what evidence would satisfy the requirement. Rachel admitted she was "really not sure" what would satisfy and that "more clarity on what sufficient evidence entails could be helpful."

Holding pro se applicants to a documentation standard that the agency's own employees cannot define, for conduct occurring 14 months before any notice of the requirement, and under an enforcement framework that would be superseded 10 months later, creates an impossible burden that effectively bars pro se participation.

Pro se applicants, who lack legal training in evidence preservation and document retention protocols, cannot reasonably be expected to:

- Anticipate undisclosed documentation requirements.
- Preserve routine research beyond technology's automatic deletion cycles.
- Divine specialized meanings from undefined common terms.

- Comply with standards that USPTO employees themselves cannot articulate.
- Follow an enforcement framework that did not exist when they acted.

The temporal impossibility identified in Section VIII affects all applicants, but the failure to disclose clear standards and the retroactive application of a framework that did not exist disproportionately harm those without legal counsel to navigate ambiguous requirements.

The Supreme Court has recognized that pro se litigants are entitled to special consideration when agencies impose technical requirements. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (pro se submissions must be liberally construed). The Third Circuit has extended this principle to administrative proceedings. Vogt v. Wetzel, 8 F.4th 182, 185 (3d Cir. 2021).

Here, rather than liberally construing Applicant's good faith explanation, USPTO imposed hyper-technical requirements that were never disclosed, demanded documentation from 14 months earlier that was automatically destroyed, and penalized Applicant for non-compliance with a standard so vague even USPTO employees cannot articulate it.

XVI.5 NO ADEQUATE REMEDY AT LAW

Applicant respectfully informs the Director that, should this petition be denied, no adequate remedy exists other than judicial review.

The Administrative Record Is Complete

All relevant facts are documented and undisputed:

- Applicant certified on December 8, 2024.
- Enforcement framework announced July 8, 2025 ("will begin issuing").
- MPEP updated October 24, 2025 ("supersede" November 2024 version).
- Show cause order issued November 4, 2025 (without citing 37 CFR 11.18(b)).
- Response filed November 18, 2025 (timely, with full payment).
- Response confirmed "correct" December 1, 2025.
- Penalty imposed January 30, 2026 (same document, 59 days later).
- USPTO employees admit standard undefined (Rachel: "I'm really not sure").
- USPTO employees admit they don't know if publication will proceed (Bousono: "we have not been given information on whether the application [will be published]").

No factual disputes exist. The legal questions are purely matters of law suitable for judicial resolution.

Payment Does Not Remedy Constitutional Violations

Even if Applicant paid the $4,122 penalty to lift the prosecution suspension, this would not remedy the constitutional violations or prevent future harm:

No Remedy for Retroactive Application: Payment does not cure the retroactive application of a framework that didn't exist when Applicant certified. The legal violation persists regardless of payment.

No Remedy for Publication Delay: If publication is missed due to the prosecution suspension, payment cannot restore the competitive advantage lost or prevent competitors from entering the field during the delay. The January 9, 2026 Bousono admission that USPTO employees "have not been given information on whether the application [will be published]" demonstrates that this harm is real and immediate.

No Deterrent Value: If the penalty stands, USPTO will continue applying this framework retroactively to other applicants who certified before July-October 2025, perpetuating the constitutional violation.

The Supreme Court has held that payment of an unlawful penalty does not constitute an adequate remedy when constitutional rights are violated. See Eastern Enterprises v. Apfel, 524 U.S. 498, 537-38 (1998) (payment does not remedy retroactive deprivation of property).

Mandamus Standards Are Satisfied

Should judicial review become necessary, the requirements for mandamus relief are satisfied:

Clear, Non-Discretionary Duty: The Fifth Amendment imposes a mandatory duty on all agencies to provide fair notice before imposing penalties. This is not discretionary. Mullane, 339 U.S. at 314.

Clear Right to Relief: Applicant has a clear right not to be penalized under a framework that didn't exist when the conduct occurred, for lacking evidence that was automatically destroyed before any duty to preserve arose, based on standards never disclosed in the notice.

No Other Adequate Remedy: Payment does not cure the constitutional violation, prevent future harm (including possible non-publication), or deter continued retroactive application.

The Supreme Court has held that mandamus is available to compel agencies to perform mandatory duties even when other remedies theoretically exist. Cheney v. U.S. Dist. Court for D.C., 542 U.S. 367, 380-81 (2004).

APA Review Is Available

Even if mandamus standards were not satisfied (which they are), review under the Administrative Procedure Act is available. 5 U.S.C. § 706(2)(A) provides for judicial review of agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

The penalty determination is arbitrary and capricious because it:

- Applies an enforcement framework retroactively (7-10 months before implementation).
- Demands impossible evidence (destroyed by technology before request).
- Confirms response "correct" then reverses 59 days later without explanation.
- Imposes penalty under standards so vague even USPTO employees cannot articulate them.
- Suspends prosecution without even knowing if publication will proceed (Bousono admission).

Each ground independently satisfies the arbitrary and capricious standard.

Irreparable Harm Requires Emergency Relief

The scheduled publication date of February 26, 2026—only 16 days from filing this petition—creates urgent circumstances:

If relief is not granted promptly: Publication may be delayed or missed entirely, causing competitive harm that patent term adjustment cannot remedy. The uncertainty revealed by Bousono's admission that USPTO "have not been given information on whether the application [will be published]" makes this harm imminent and concrete.

If relief is denied: Applicant will be forced to seek emergency preliminary injunction in federal court to prevent irreparable harm, imposing burdens on both parties and the court.

If relief is granted: The matter is resolved administratively without need for judicial intervention.

The Director has full authority to grant the relief requested and prevent the need for judicial review.

Applicant's Preference Remains Administrative Resolution.

Despite the availability of judicial remedies, Applicant strongly prefers administrative resolution. This petition seeks to give the Director an opportunity to correct the errors identified before the matter proceeds to federal court.

However, if this petition is denied, Applicant will have no choice but to seek judicial review to protect constitutional rights and prevent establishment of a precedent that would harm all micro and small entity filers.

This information is provided not as a threat but as transparency about the full procedural context. The Director is entitled to understand that judicial review is not merely possible—it is inevitable if administrative relief is denied—and that the legal and factual record is complete and ready for judicial consideration.

XVII. REQUEST FOR RELIEF

Applicant respectfully requests that the Director:

Immediate Relief (Within 10 Days)

1. VACATE the $4,122 penalty determination in its entirety.

2. ACCEPT Applicant's November 18, 2025 response as satisfying the good faith standard based on:

   - The immediate acknowledgment and correction
   - The full payment of the $1,412 deficiency
   - The reasonable explanation for the mistake
   - The December 1 confirmation that the response was "correct"
   - The temporal impossibility of providing 14-month-old documentation
   - The lack of an implemented enforcement framework when certification was made
   - The lack of disclosure of the documentation requirement

3. RETURN the application to examination and ORDER the immediate resumption of prosecution. Applicant further requests that the Director instruct the examining corps to prioritize this application for its next office action to mitigate the 77-day period of administrative stagnation caused by the unlawful suspension.

4. PROVIDE IMMEDIATE CLARIFICATION regarding whether publication will proceed on the scheduled February 26, 2026 date, as Office of Petitions personnel have admitted they lack information on whether the statutory publication timeline will be honored .

Given the admission by Office of Petitions employee Bousono on January 9, 2026 that "we have not been given information on whether the application [will be published]," Applicant respectfully requests that the Director provide immediate clarification regarding whether publication will proceed on the scheduled February 26, 2026 date. The uncertainty regarding publication creates irreparable competitive harm that cannot be remedied by patent term adjustment.

Alternative Relief

If the Director determines that additional evidence is required to assess good faith, Applicant requests leave to supplement the record with a sworn declaration, attesting under penalty of perjury to the specific inquiry conducted prior to certification as described in Section XI of this petition, including the sources consulted and the reasonable basis for the certification at that time.

Grounds for Relief

This relief is warranted because:

1. Enforcement Framework Not Implemented: Certification made 7-10 months before framework announced (July 2025) and implemented (October 2025).
2. Temporal Impossibility: Requiring documentation from 14 months earlier that technology automatically destroyed.
3. Lack of Notice: Failure to disclose the actual standard in the show cause order.
4. Affirmative Misrepresentation: December 1 confirmation that response was "correct".
5. Information Withholding: Institutional policy preventing guidance to applicants, including basic information about whether publication will proceed.
6. Procedural Due Process: Multiple constitutional violations under the Fifth Amendment.
7. Evidence of Good Faith: Immediate correction, full payment, reasonable explanation.
8. Emergency Circumstances: Publication in 18 days, irreparable harm if delayed, uncertainty about whether publication will occur.
9. Arbitrary and Capricious: Violates 5 U.S.C. § 706(2)(A) through inconsistent application and lack of rational explanation.

10. No Adequate Remedy: Payment does not cure constitutional violations or prevent future harm.

Legal Authority for Relief

The Director has authority to grant this relief under:

37 CFR 1.181: Petition to the Director to review decisions of subordinate officials

37 CFR 1.182: Questions not specifically provided for

5 U.S.C. § 706: Authority to set aside agency action that is arbitrary, capricious, or contrary to law

The Fifth Amendment: Constitutional duty to remedy due process violations

The relief requested is within the Director's discretion and authority. Granting it would: - Correct multiple constitutional and procedural violations - Prevent irreparable harm from publication delay or non-publication - Avoid unnecessary judicial proceedings - Establish fair precedent for other micro and small entity filers - Demonstrate USPTO's commitment to procedural fairness

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XVIII. CONCLUSION

This case presents multiple independently fatal defects:

The Three Temporal Impossibilities:

1. THE ENFORCEMENT FRAMEWORK DID NOT EXIST: USPTO's own documents prove the framework was announced July 8, 2025 ("will begin issuing") and implemented October 24, 2025 (MPEP changes "supersede" November 2024 version). Applicant certified 7-10 months before implementation, under rules that were later superseded.

2. EVIDENCE AUTOMATICALLY DESTROYED: USPTO demands documentation from 14 months earlier that technology automatically destroyed 8-11 months before USPTO requested it, imposing a standard that is impossible to satisfy retroactively.

3. STANDARD NEVER DISCLOSED: The show cause order never mentioned 37 CFR 11.18(b) or "reasonable inquiry" requirement, and USPTO's own employees confirm the notice "doesn't look like they provide any items you specifically must provide."

The Affirmative Misrepresentation:

USPTO confirmed the response was "correct" on December 1, 2025, then imposed a $4,122 penalty 59 days later based on the same document, after any opportunity to supplement had passed.

The Evidence Is Undisputed:

- Applicant conducted reasonable inquiry (reviewed Form PTO/SB/15A, FAQ, MPEP, Patent Center).
- Applicant made an honest mistake (believed continuation status carried forward).
- Applicant immediately corrected upon notification (14 days, full payment).
- Applicant sought guidance at every opportunity (November 7, December 1, January 9, February 2).
- Applicant was refused information due to "direction of the office" (Bousono admission).
- Applicant's response was confirmed "correct" (December 1 agent).
- USPTO employee admits uncertainty about standard (Rachel: "I'm really not sure").
- USPTO employee admits uncertainty about publication (Bousono: "we have not been given information on whether the application [will be published]").

The Timeline Is Untenable:

- December 8, 2024: Application filed, certification made.
- July 8, 2025: Framework announced ("will begin issuing") - 7 months later.
- October 24, 2025: MPEP updated ("supersede" November 2024 version) - 10+ months later.
- November 4, 2025: Show cause order issued - 11 months later (evidence already destroyed).
- November 18, 2025: Response filed (complete and timely).
- December 1, 2025: Confirmed "correct".
- January 30, 2026: Penalty imposed - 14 months after inquiry, 59 days after confirmation.

The Harm Is Real and Imminent:

- 77 days in compliance, application still suspended.
- Publication scheduled: February 26, 2026 (16 days away).
- USPTO employees don't even know if publication will proceed.
- Competitive harm if publication missed.

- Cannot be cured by patent term adjustment.

The Constitutional Violations Are Clear:

- Fifth Amendment: Due process violated through retroactive application, lack of notice, void-for-vagueness.
- APA: Arbitrary and capricious action under 5 U.S.C. § 706(2)(A).
- Landgraf: Retroactive application of substantive rules without clear Congressional authorization.

The Relief Is Straightforward:

Accept the good faith showing, vacate the penalty, return the application to examination.

Applicant made an honest mistake, conducted reasonable inquiry (though unable to document it 14 months later under a framework that did not exist when the inquiry was conducted), immediately corrected with full payment, sought guidance at every turn, and was confirmed "correct" by USPTO's own Office of Petitions reviewer.

To impose a $4,122 penalty under these circumstances—based on an enforcement framework that was announced seven months after the certification and implemented ten months after the certification, for lacking documentation from 14 months prior that technology automatically destroyed, after confirming the response was "correct"—violates fundamental principles of procedural fairness and due process.

The penalty must be vacated.

Should this petition be denied, Applicant will have exhausted all administrative remedies and will have no choice but to seek judicial review in the United States District Court for the District of New Jersey under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus jurisdiction), and 5 U.S.C. § 706 (APA review). The legal and factual record is complete, and the constitutional violations are clear. Applicant respectfully urges the Director to grant administrative relief and avoid the necessity of judicial proceedings.

EXHIBIT LIST

Exhibit A. Show cause order.
Exhibit B. Applicant's response to show cause order.
Exhibit C. Show cause order decision.
Exhibit E. Nov 7, 2025 Michele Eason (OPET) Transcript.
Exhibit F. Dec 1, 2025 Anonymous Agent (OPET) Transcript.
Exhibit G. Jan 9, 2026 Bousano (OPET) Transcript.
Exhibit H. Jan 9, 2026 Tara (Ombudsman) Transcript.
Exhibit I. Feb 2, 2026 Rachel (OPET) Transcript.
Exhibit J. July 8, 2025 Official Gazette.
Exhibit K. October 24, 2025 Memorandum.
Exhibit Q. USPTO $1,412 payment receipt.
Exhibit Z: https://www.uspto.news (Digital Repository). **Instructions to Reviewer:** This URL contains the source audio for all telephonic exhibits. Click the blue colored button labeled "All Raw Audio Download". The file contains all of the original audio files. The Office is encouraged to consult the audio directly to resolve any ambiguities or to confirm the tone and context of the admissions made by Agency personnel.

Respectfully submitted,

/Terry Torres/
Terry Torres Pro Se Applicant
Customer No.
Telephone: 732-639-3333
Email: cs@uspto.news

Date: February 10, 2026

Footnotes:
[1] All audio recordings referenced in this petition were made in compliance with New Jersey's one-party consent law (N.J.S.A. 2A:156A-4) and are available for verification upon request or at: "https://www.uspto/news".

[2] Note on Transcription Methodology: Exhibits E through I were transcribed using OpenAI's 'Whisper' speech-to-text technology. While these transcripts are approximately 98.5% accurate regarding substantive content, standard linguistic fillers (e.g., 'um,' 'ah,' 'yeah') have been omitted in specific instances to enhance readability and clarity. Because Applicant is not a professional transcriber, **Exhibit Z** (the original audio repository) is provided to allow the Office to conduct its own independent audit and verify the absolute fidelity of the substantive admissions contained herein.

DECLARATION OF TERRY LEE TORRES REGARDING THE AUTHENTICITY OF TELEPHONIC RECORDINGS AND TRANSCRIPTS

I, Terry Lee Torres, declare as follows:

1. I am the Applicant in the above-referenced matter. I have personal knowledge of the facts set forth in this declaration.
2. Exhibits E, F, G, H, and I are true and accurate transcripts of telephonic conversations between myself and personnel of the United States Patent and Trademark Office (USPTO).
3. The original audio recordings of these conversations were captured by my personal telephone system in the ordinary course of my business and personal affairs. These recordings have not been edited, altered, or tampered with in any substantive way.
4. The transcripts provided in this petition were generated using OpenAI's "Whisper" technology. I have, to the best of my ability, reviewed these transcripts against the original audio. While I have omitted standard linguistic fillers (e.g., "um," "uh") to improve readability, I certify that the substantive content and legal admissions contained in the transcripts are a faithful and accurate representation of the conversations.
5. Due to the technical limitations of the USPTO Patent Center, which does not currently support the direct upload of digital audio media, Applicant has established a secure online repository to ensure the Commissioner and the Office of Petitions have full access to the primary source evidence. This repository (available at **https://www.uspto.news**) is specifically formatted for cross-platform accessibility, requiring no specialized software or internal USPTO network clearance; the raw audio files may be reviewed or downloaded using any standard web browser or mobile device.The recordings were made in compliance with N.J.S.A. 2A:156A-4, as I was a party to each conversation and consented to the recording.
6. Because Applicant is not a professional court reporter or transcriber, these transcripts represent a good-faith effort to memorialize the record. Should the Office require 100% certainty regarding the linguistic nuances, tone, or exact phrasing of these admissions, **Applicant insists that the Office visit the provided URL (Exhibit Z) and download the raw, unedited audio files for independent review.** Failure to consult the primary source audio while penalizing Applicant for the limitations of a pro se transcript would constitute a failure to consider the full administrative record.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 7, 2026, at Neptune, New Jersey.

/Terry Torres/
Terry Torres

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Reconsideration and Request for Emergency Relief has been served on:

Office of Petitions Mail Stop OPET Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 Telephone: 571-272-3282

Fraud Mitigation Unit United States Patent and Trademark Office

Method of Service: Electronic filing via Patent Center

Date: February 10, 2026

/Terry Torres/

Terry Torres

Exhibit N

IN RE APPLICATION OF TERRY TORRES
Application No. 18/973,067
Filing Date: December 8, 2024
Confirmation No.: 9733

COVER LETTER FOR SUPPLEMENTAL SUBMISSION TO PETITION FOR RECONSIDERATION

February 17, 2026

To the Commissioner for Patents:

Applicant respectfully submits the enclosed SUPPLEMENTAL SUBMISSION TO PETITION FOR RECONSIDERATION in the above-referenced application.

This supplemental submission supplements and supports the Petition for Reconsideration filed February 10, 2026, which challenged the January 30, 2026 Final Determination assessing a $4,122 penalty and suspending prosecution.

The supplemental submission:

1. Corrects a misquotation in the February 10, 2026 petition and demonstrates that the misquotation itself evidences the ambiguity that caused Applicant's confusion;

2. Strengthens existing arguments with formal citation to the Plain English Doctrine (Federal Aviation Admin. v. Robertson, 422 U.S. 255 (1975));

3. Raises an additional ground for vacating the suspension: lack of statutory authority to suspend prosecution after payment of the required fee deficiency; and

4. Highlights additional admissions from the February 2, 2026 conversation with Office of Petitions representative Rachel that further establish procedural deficiencies.

TIME-SENSITIVE REQUEST FOR EXPEDITED CONSIDERATION

The application is scheduled for mandatory publication on February 26, 2026, pursuant to 35 U.S.C. § 122(b)(1)(A). Given this imminent deadline and the suspension currently in effect, Applicant respectfully requests that this supplemental submission be considered immediately and that any response or decision issue prior to February 24, 2026.

CONTACT INFORMATION

All correspondence regarding this matter should be directed to:

Terry Lee Torres (Pro Se Applicant)
Customer No. 195408
Telephone: 732-867-6476
Email: tlt5139@yahoo.com

Applicant respectfully urges the Commissioner to grant administrative relief and avoid the necessity of judicial proceedings.

Respectfully submitted,

/Terry Lee Torres/
Terry Lee Torres, Pro Se Applicant
Date: February 17, 2026
ENCLOSURE: Supplemental Submission to Petition for Reconsideration

IN RE APPLICATION OF TERRY TORRES
Application No. 18/973,067

SUPPLEMENTAL SUBMISSION TO PETITION FOR RECONSIDERATION

To the Commissioner for Patents:

Applicant submits this supplemental submission to: (1) correct a misquotation that itself evidences ambiguity; (2) add formal citation to the Plain English Doctrine; (3) raise lack of statutory authority for suspension; and (4) highlight additional admissions from the February 2, 2026 conversation establishing procedural deficiencies.

Given the February 26, 2026 publication deadline, Applicant requests expedited consideration with decision before February 24, 2026.

I. CORRECTION OF MISQUOTATION - EVIDENCE OF AMBIGUITY

The Petition for Reconsideration quoted the Official Gazette as stating a reply "may include a good faith explanation and sufficient evidence."

This is incorrect. Applicant apologizes. The correct language states:

"The USPTO will evaluate any response...on a case-by-case basis...For example, if the response includes an explanation supported by evidence that the false assertion or certification was made in good faith, the USPTO will take into consideration the reasonableness of any steps taken...and whether the entity...has exhibited a pattern of making false assertions or certifications." 1536 OG 204, p.3.

However, this misquotation proves the language's ambiguity. Applicant read "For example, if the response includes..." and interpreted it as "may include" (discretionary) rather than "must include" (mandatory). Even when attempting to quote the Gazette accurately for the petition—months after the penalty, without time pressure—the conditional structure remained so ambiguous that Applicant mischaracterized it.

This demonstrates: (1) the language confused even a careful reader; (2) a pro se applicant could not parse the conditional structure; (3) the difference between "may" and "if...includes" was not apparent; and (4) compliance with an uncited document that proves incomprehensible even upon later reading is impossible.

II. PLAIN ENGLISH DOCTRINE VIOLATION

When agencies use ordinary language without defining technical requirements, applicants may interpret it according to plain meaning. Federal Aviation Admin. v. Robertson, 422 U.S. 255, 261 (1975).

The Show Cause Order required "an explanation supported by sufficient evidence that the certification was made in good faith" but did not:
- Define "sufficient evidence"
- Reference 37 CFR 11.18(b)(2) or "reasonable inquiry"
- Cite the July 8, 2025 Official Gazette
- State that documentation of inquiry steps was required

In plain English, "sufficient evidence" means "enough information to support the claim." Applicant provided a sworn explanation of the first-time error, the reasonable belief about continuation status, and immediate correction—evidence

sufficient under plain English.

The Director rejected this because it "does not give any details regarding a reasonable inquiry" and "does not show any steps were taken"—requirements appearing nowhere in the order's plain language.

An agency cannot use plain language then penalize for not meeting undisclosed technical standards. Robertson, 422 U.S. at 261. The order used plain language. Applicant interpreted it in plain English. The Director applied an undisclosed technical definition. This violates the Plain English Doctrine and due process.

III. THE GAZETTE REMAINED AMBIGUOUS EVEN UPON LATER DISCOVERY

Because the Show Cause Order did not cite the Official Gazette, Applicant interpreted "sufficient evidence" in plain English when responding November 18, 2025.

After penalty, while preparing the petition, Applicant found the Gazette for the first time. Even then, the language proved too ambiguous to quote correctly—hence the misquotation in Section I.

The Gazette's language created multiple reasonable interpretations for a pro se applicant:
- "Case-by-case basis" could mean individual assessment without rigid requirements
- "For example" could mean illustrative (not exclusive)
- "If the response includes" could mean evidence is optional or mandatory
- "Will take into consideration" could mean weighing factor or threshold

USPTO employee Rachel, reviewing the Show Cause Order on February 2, 2026, agreed: "I do think language could be clear in the notice itself of what's required." When asked what evidence would satisfy, Rachel responded: "I'm really not sure."

If USPTO's own personnel processing these orders daily cannot explain requirements and agree language "could be clear," a pro se applicant cannot be penalized for confusion.

The void-for-vagueness doctrine protects individuals without legal training from ambiguous standards. Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972). Here:
- The order never defined "sufficient evidence"
- The Gazette (uncited in the order) remained ambiguous even upon later reading
- USPTO employees admitted uncertainty
- Pro se applicant could not determine requirements

The Director applied standards from an uncited, incomprehensible document. Even the Show Cause Order referencing these standards is unclear (Rachel: "language could be clear in the notice itself"). An agency cannot enforce standards from documents it fails to cite, particularly when those documents prove incomprehensible even to agency employees.

IV. NO STATUTORY AUTHORITY FOR POST-PAYMENT SUSPENSION

The Show Cause Order identified $1,412 in underpaid fees. Applicant paid this in full November 18, 2025. The only unpaid amount is the disputed $4,122 penalty.

Statutory suspension authority is limited to "fees required by this title":
- 35 U.S.C. § 111(a)(3)

- 35 U.S.C. § 132
- 37 C.F.R. § 1.17

A penalty is not a "required fee." Penalties are collected through debt procedures (31 U.S.C. § 3711), not suspension of statutory rights.

The Gazette states suspension continues until "both the fee deficiency and fine are resolved," but the Gazette is a policy statement, not a statute. It cannot expand suspension authority beyond Congressional grants. Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 374 (1986).

The required fee is paid. Continued suspension to compel payment of a disputed penalty lacks statutory foundation and conflicts with 35 U.S.C. § 122(b)(1)(A)'s mandatory publication statute.

V. ADDITIONAL ADMISSIONS FROM FEBRUARY 2, 2026

The February 2, 2026 conversation with Rachel (Exhibit I) contains four critical admissions:

A. Employee Agreement Notice Is Deficient
"I completely understand everything you're saying and I do think language could be clear in the notice itself of what's required."

Rachel affirmatively agreed the notice was inadequate—an admission against interest by USPTO personnel.

B. No Independent Review
"It'll be the same team. The same people who have issued this combined notice and show cause order...It's all being handled by the fraud mitigation team."

The same team that imposed the penalty reviews challenges to it. This structural bias violates due process. Withrow v. Larkin, 421 U.S. 35, 47 (1975).

C. Program Is "Relatively New"
"I do know these are relatively new, at least from what I have since I've been working here."

An Office of Petitions employee characterizing the program as "relatively new" validates that standards were not established when Applicant certified December 2024.

D. Validation of Institutional Blackout

When Applicant described systematic information withholding across multiple calls—stating "Nobody could talk about them...It's not permissible...I'm sending you thousands of dollars, right? And I'm not allowed to know what's happening"—Rachel responded: "Right."

This admission is significant because:

First, Rachel validated eight specific manifestations of information withholding as accurate institutional policy, not individual employee confusion.

Second, Applicant stated "It's not permissible"—directly referencing the institutional directive Rep. Bousono. described as "the direction of the office." Rachel's "Right" corroborates institutional policy.

Third, under Federal Rule of Evidence 801(d)(2)(D), Rachel's statement is an admission by the agency itself.

Fourth, this validates the pattern explaining why December 1 "correct" confirmation became the sole source of guidance.

VI. THE INSTITUTIONAL BLACKOUT VALIDATES DECEMBER 1 RELIANCE

The administrative record contains five employee contacts:

1. November 7 (Michele): "I cannot answer those questions"
2. December 1 (Anonymous): "Everything is, it appears to be correct"
3. January 9 (Bousano): "direction of the office is that we are trying to not...entertain too many conversations"
4. January 9 (Ombudsman): "We don't have authority to override petitions"
5. February 2 (Rachel): "Right" [validating institutional blackout]; "I'm really not sure" [what would satisfy]

Four of five contacts refused or were unable to help. One provided assistance. Rachel's "Right" validates this was institutional policy.

Because institutional policy withheld information, the December 1 "correct" confirmation became Applicant's sole guidance. Reasonable reliance on the only information provided—when all other sources refuse assistance due to institutional directive—creates estoppel. Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. 51, 60 (1984).

An agency cannot withhold information necessary for compliance, penalize for non-compliance, then admit information withholding was institutional policy. This violates fundamental fairness.

VII. CONCLUSION

The record establishes:

1. Applicant's misquotation proves the language was genuinely ambiguous to a pro se applicant.

2. The Plain English Doctrine prohibited applying undisclosed technical standards to plain language.

3. The Gazette remained incomprehensible even upon later discovery.

4. USPTO lacks statutory authority for post-payment suspension; the penalty is not a "required fee".

5. Rachel's admissions confirm inadequate notice, no independent review, a "relatively new" program, and institutional blackout.

6. The institutional blackout made December 1 "correct" the only guidance, creating reasonable reliance and estoppel.

The penalty should be vacated and prosecution resumed.

Respectfully submitted,

/Terry Torres/
Terry Torres
Pro Se Applicant
Customer No

Date: February 17, 2026