

Terry Lee Torres
1428 7th Avenue
Neptune, New Jersey 07753
732-867-6476
tlt5139@yahoo.com
Pro Se Plaintiff

March 17, 2026

The Honorable Robert Kirsch
United States District Judge
District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: *Torres v. Squires*, No. 3:26-cv-01795-RK-RLS
Notice of Rejection of Government's Settlement Proposal and Response to Exhaustion
Argument

Dear Judge Kirsch:

I. NOTICE OF GOVERNMENT CONTACT AND REJECTION OF SETTLEMENT PROPOSAL.

On the evening of March 16, 2026 I received an email from Mr. Junis L. Baldon, Assistant United States Attorney, proposing that I voluntarily dismiss this lawsuit without prejudice and pursue my administrative remedies before the USPTO.

Mr. Baldon's email included the following warning: "If USPTO has to litigate this case, then it may seek to dismiss the complaint for lack of subject-matter jurisdiction due to failure to exhaust administrative remedies."

I respectfully reject that proposal. The reasons follow.

II. THE EXHAUSTION ARGUMENT IS LEGALLY UNTENABLE ON FIVE INDEPENDENT GROUNDS.

The exhaustion doctrine requires that an administrative remedy be *adequate*. Adequacy is not a formality. It requires that the remedy actually be capable of providing meaningful relief before the harm becomes permanent and irreversible. Mr. Baldon's proposal fails that test categorically - and the evidence proving it comes from the USPTO's own employees, on both their and my own recorded lines, and from the USPTO's own docket.

A. The Administrative Remedy Is Structurally Biased - Futility Is Documented.

On February 2, 2026, USPTO representative Rachel - a member of the Office of Petitions - confirmed on a recorded call that the petition challenging the penalty is reviewed by "the same team" that imposed it: the fraud mitigation unit. Three days after the penalty issued, a USPTO employee described the review structure in plain terms. That is not an allegation. That is an admission.

The agency then confirmed it in practice. When Plaintiff filed an emergency Petition for Reconsideration directed to the Director under 37 CFR §§ 1.181 and 1.182 - a Director-level appeal specifically designed to bypass OPET - the Director's office re-routed it back to OPET: the same unit whose determination was being challenged. The remedy designed to provide independent review was redirected to the body it was meant to review.

An adjudicative body that reviews its own decisions is not a neutral tribunal. *Withrow v. Larkin*, 421 U.S. 35, 47 (1975). Exhaustion is excused when the administrative remedy is biased. The bias here is not inferred - it is documented by the agency's own employee and confirmed by the agency's own act. Regardless of how the agency characterizes its internal organizational structure, the Director's own act of re-routing a Director-level emergency petition back to the office whose determination it was challenging is not a matter of organizational description. It is a documented fact in the agency's own docket.

B. The Administrative Remedy Cannot Conclude Before the Harm Becomes Permanent - Timing Inadequacy Is Documented in the Words of Four Separate USPTO Employees Across Three Separate Recorded Calls.

This is not Plaintiff's estimate of the administrative timeline. It is the USPTO's own estimate, repeated by four separate employees across three separate recorded calls, each independently confirming that the agency cannot process petitions before the April 2, 2026 abandonment deadline. The following admissions are on the administrative record:

Anonymous USPTO Agent, Office of Petitions, December 1, 2025 (Exhibit F): *"The turnaround time for revival is going to take between two to four months."* This agent, after reviewing Application No. 18/973,067 in real time, provided the agency's own processing estimate directly to Plaintiff.

Unnamed USPTO Agent, January 9, 2026, upon pulling Application No. 18/973,067 (Exhibit G): *"The petition takes three to five months to process."* This agent made this statement after looking up the specific application in the system, before transferring the call to Bousono. It is a direct, application-specific statement of processing time by a USPTO employee on a recorded line.

Bousono, Office of Petitions, January 9, 2026 (Exhibit G): *"We don't really have a way to force our office of petitions to respond to any type of petition within a specific time frame... even those do not guarantee that there will be a reply by a specific amount of time."* Bousono's statement is not limited to show cause proceedings. He stated explicitly that the Office of Petitions cannot commit to timelines for **any type of petition** - not some petitions, not most petitions, but any petition of any kind. This is an institutional admission of structural inability to provide timely relief across the entire Office of Petitions, made by a named employee on a recorded government line.

Tara, USPTO Ombudsman, January 9, 2026 (Exhibit H): *"We have been backlogged though at the patent office. We have been backlogged for a while and lost a lot of staff, so everything's*

been kind of behind.” The USPTO’s own designated escalation office - the Ombudsman - independently confirmed the institutional backlog, attributing it to staffing losses and describing it as an ongoing, systemic condition.

The April 2, 2026 abandonment deadline is fifteen days away. Two to four months from the date of petition filing extends to March or May 2026. Three to five months extends to June or July 2026 at the earliest. By every timeline provided by every USPTO employee who addressed the question, the application will have been permanently abandoned for months before the administrative remedy concludes.

A remedy that arrives after the harm is permanent is not an adequate remedy. *Cheney v. U.S. District Court for D.C.*, 542 U.S. 367 (2004); *Weinberger v. Salfi*, 422 U.S. 749 (1975). Mr. Baldon cannot simultaneously rely on that administrative process as an adequate remedy while four of his own agency’s employees, across three separate recorded calls, have confirmed it cannot resolve in time.

C. The Agency Manufactured the Exhaustion Impossibility and Cannot Now Invoke It as a Defense.

This is the most fundamental flaw in Mr. Baldon’s argument, and it goes to the integrity of the exhaustion doctrine itself.

The USPTO issued the Show Cause Order on November 4, 2025. Plaintiff responded within 14 days - on November 18 - paying the full fee deficiency and submitting a complete written response. The agency then took **73 days** to issue its determination, delivering the penalty on January 30, 2026 - 27 days before the mandatory publication deadline and 62 days before the April 2 abandonment deadline. Plaintiff filed an emergency petition to the Director on February 12, with an explicit 10-day response request. The agency allowed that window to expire without response.

The agency set a 2-month payment window - knowing, as its own employees confirmed on recorded calls, that its petition process takes 2 to 5 months. It created a penalty deadline that expires before its own review process concludes. It then argues Plaintiff has not exhausted the remedy it structurally guaranteed he could never complete in time.

An agency cannot manufacture the conditions that make exhaustion impossible and then invoke exhaustion as a jurisdictional shield. *Mathews v. Eldridge*, 424 U.S. 319 (1976). That is not exhaustion doctrine. That is a procedural trap, and federal courts do not reward it.

D. The Agency Demonstrated It Cannot Be Relied Upon to Meet Deadlines - Responsiveness Failure, Deliberate Information Withholding, and Awareness Are All Documented on the USPTO's Own Docket and Record.

On February 12, 2026, Plaintiff filed an emergency Petition for Reconsideration directed to the Director of the USPTO under 37 CFR §§ 1.181 and 1.182, using doc code **PET.RELIEF** - the USPTO's own designation for Director-level emergency matters - with an explicit 10-day response request tied to the February 26 publication deadline. Plaintiff selected that doc code intentionally because the petition was directed to the Director. On February 17, 2026, Plaintiff filed a Supplemental Submission correcting an error in the original petition, also using doc code **PET.RELIEF** - again intentionally, for the same reason. The supplemental filing explicitly identified the original February 12 petition by date and type in its own text, discussing the correction of an error in the original filing.

On February 25, 2026, Plaintiff captured a screenshot of the Patent Center wrapper for Application No. 18/973,067, attached hereto as Exhibit A. That screenshot documents three things simultaneously, each in the USPTO's own system:

First - the February 12 original petition, filed under doc code **PET.RELIEF**, had been reclassified by the USPTO to doc code **PET.OP** - a standard Office of Petitions designation - without notice, without explanation, and without any communication to Plaintiff. The Director-level emergency

petition had been routed to standard OPET processing: the same office whose determination it was challenging.

Second - the February 17 supplemental filing still bore doc code **PET.RELIEF**, unprocessed after thirteen days. The supplemental that explicitly referenced and identified the original petition had not yet been reviewed. This thirteen-day processing lag on a short supplemental filing is not an anomaly. It is a snapshot of the same institutional backlog that four USPTO employees confirmed across three recorded calls: an agency that has lost staff, fallen behind, and cannot commit to timelines for any petition of any kind. The supplemental sat in that backlog while the publication deadline - the following day, February 26 - approached and passed.

Third - the application status field in that same screenshot reads: **“Application Involved in Court Proceedings 02/25/2026.”** The federal complaint was filed February 24, 2026. The USPTO updated the application status to reflect active federal litigation on February 25, 2026 - the day after the complaint was filed and the same day Plaintiff captured this screenshot.

The implications of these three simultaneous facts cannot be overstated. On February 25, 2026, the USPTO knew about the federal lawsuit - it updated the status field within 24 hours of filing. It knew the February 12 Director-level petition was unresolved - it was sitting in the standard OPET queue under a reclassified doc code. It knew the February 17 supplemental was unprocessed - it still bore the PET.RELIEF designation thirteen days after filing. The agency had actual knowledge of all three simultaneously. It took no action on any of them.

The USPTO cannot now argue it was unaware of the February 12 Director-level petition. The February 17 supplemental - which the agency received, docketed, and left bearing the Director-level designation - explicitly identified the original petition by date and type. An agency cannot simultaneously acknowledge a filing through its supplement and claim ignorance of the filing itself. Nor can it claim the reclassification was inadvertent: the supplemental retained PET.RELIEF while the original was changed to PET.OP. A system error would have treated both identically. A selective change to only one of two identically designated documents is a

routing decision - made without notice, without explanation, and without the knowledge of the applicant whose property rights were at stake.

The agency's conduct compounded this exhaustion impossibility in a second and independent way. Plaintiff made repeated requests - across five contacts over three months, documented on recorded calls - to be informed of whether Application No. 18/973,067 would publish on its statutory date of February 26, 2026. The agency refused to provide that information. Bousono confirmed on a recorded call that employees had not been given information about whether applications subject to show cause orders would publish. The institutional directive to withhold that information - confirmed as the deliberate direction of the office - meant Plaintiff could not determine whether emergency judicial intervention was necessary until it was nearly too late to obtain it.

The exhaustion doctrine assumes an applicant has sufficient information to evaluate whether the administrative remedy is adequate before seeking judicial relief. When the agency's own institutional blackout policy withholds that information - confirmed on a recorded line as the deliberate direction of the office - the applicant is not bypassing the administrative process. He is responding rationally to an information vacuum the agency deliberately created. An agency cannot withhold the information necessary to assess the adequacy of its own remedy and then invoke exhaustion as a defense against the judicial relief that withholding made necessary.

Exhaustion is not required when the agency has demonstrated by its own conduct that it will not provide meaningful or timely review. *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). This screenshot does not merely document a reclassification. It documents a frozen queue - an agency so backlogged that a supplemental filing remained unprocessed for thirteen days while an irreversible publication deadline passed the following morning, while a federal lawsuit was filed and acknowledged the same day, and while the original Director-level petition sat reclassified in a standard queue with no response, no timeline, and no notice to the applicant whose abandonment deadline was then 35 days away.

E. The Agency's Own Documented Backlog Made Administrative Resolution Before Either Hard Deadline Institutionally Impossible - Exhaustion by Institutional Incapacity.

The agency took 73 days to rule on a 14-day submission. Four separate USPTO employees confirmed across three recorded calls that the petition process runs 2 to 5 months. On February 25, 2026 - one day before the publication deadline and 35 days before the April 2 abandonment deadline - Plaintiff documented, without any notice from the agency, a Director-level petition sitting reclassified in a standard queue alongside an unprocessed supplemental filing that had been waiting thirteen days. The USPTO's own docket confirmed the agency knew about the federal lawsuit. It acted on none of it.

This is not a case of a plaintiff who bypassed administrative remedies prematurely. Plaintiff waited. He documented. He recorded. He petitioned. He filed a supplemental petition. He requested emergency Director-level review. He sought repeatedly to obtain the single piece of information - whether his application would publish - that would have told him whether emergency judicial intervention was even necessary. The agency refused to provide it. He monitored the wrapper independently and captured the evidence when the agency's own docket revealed what had happened. He concluded that no administrative remedy would resolve before either hard deadline only after the USPTO's own system confirmed it. That conclusion was not premature. It was mathematically inevitable and documentarily proven.

Critically, Bousono's statement that the Office of Petitions cannot commit to timelines for **any type of petition** was not a statement about show cause proceedings specifically. It was a categorical institutional admission covering every petition of every kind. The Office of Petitions does not have a fast lane for petitions challenging show cause penalties. It does not have an emergency track. It has no mechanism - in Bousono's own words - to guarantee a reply within any specific time frame for any petition. The screenshot proves that statement operationally: a Director-level emergency petition sat unresolved alongside an unprocessed supplemental while the agency updated a status field to note a federal lawsuit and returned to its backlog.

Exhaustion is excused when the administrative remedy cannot provide effective relief. *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). The agency's own documented operational backlog - confirmed by four employees on three recorded lines and proven operationally by its own docket - made it institutionally incapable of providing any remedy before either hard deadline regardless of good faith on anyone's part. This is exhaustion futility by institutional incapacity: not bias, not delay in the abstract, but a documented operational reality confirmed in the agency's own words and its own system.

Mr. Baldon argues that Plaintiff failed to exhaust administrative remedies. Plaintiff respectfully asks this Court to consider precisely when, in Mr. Baldon's view, Plaintiff should have filed in federal court. The agency took 73 days to rule on a 14-day submission. Four USPTO employees confirmed across three recorded calls that the petition process runs 2 to 5 months. The USPTO's own docket shows a Director-level emergency petition reclassified without notice, a supplemental filing unprocessed after thirteen days, and an application status updated to reflect federal litigation - all captured simultaneously in a single screenshot on February 25, 2026. The agency refused across five contacts over three months to answer the single question that would have told Plaintiff whether judicial intervention was necessary at all. The February 26 publication deadline was the next day. The April 2 abandonment deadline was 35 days away. This Court - operating on emergency footing - has itself taken more than 20 days without ruling on the pending emergency motion. If Plaintiff had waited any longer to file, the remedy from both hard deadlines would have been mathematically impossible regardless of which forum he chose.

The exhaustion doctrine was designed to prevent premature bypass of administrative remedies. It was not designed to require a party to wait until his property rights are permanently destroyed before seeking judicial relief. The window between Plaintiff's filing and the permanent destruction of his property rights is now 15 days. That window exists only because Plaintiff filed when he did. Waiting any longer - as Mr. Baldon implies he should have - would have eliminated even that. There is no version of Mr. Baldon's exhaustion argument that does not require Plaintiff to have allowed his patent application to be permanently abandoned before this

Court could act. That is not exhaustion doctrine. That is the elimination of judicial review entirely.

III. NOTICE OF PAYMENT UNDER PROTEST.

As stated in my letter of March 14, 2026, I will pay the \$4,122 penalty before April 2, 2026 under protest and under duress, solely to prevent the irreversible permanent abandonment of Application No. 18/973,067. That payment does not constitute admission of the penalty's validity, does not waive any claim pending before this Court, and does not moot this case. Prosecution remains suspended. The constitutional violations occurred. The institutional blackout is documented. The penalty is contested.

The compelled payment is itself evidence of the unconstitutional conditions violation already before this Court. The government cannot force a party to choose between keeping his property and challenging an unlawful government action. *Frost v. Railroad Commission*, 271 U.S. 583 (1926). Plaintiff is living that violation in real time and documenting it simultaneously.

IV. REQUEST FOR RULING.

The exhaustion argument Mr. Baldon intends to raise has now been fully addressed in this letter and was previously briefed in the TRO Memorandum at Count XII. This Court has everything before it that it needs to rule on the pending emergency motion. The five independent grounds excusing exhaustion - structural bias, timing inadequacy confirmed by four USPTO employees across three recorded calls, agency-manufactured impossibility, documented non-responsiveness and deliberate information withholding proven by the USPTO's own docket and recorded admissions, and institutional incapacity - are each independently sufficient and each is established by the USPTO's own employees in their own words and the USPTO's own system on its own recorded lines and docket entries.

Plaintiff respectfully requests that this Court rule on the pending TRO motion before April 2, 2026.

Respectfully submitted,

/s/ Terry Lee Torres
Terry Lee Torres
Pro Se Plaintiff
1428 7th Avenue
Neptune, New Jersey 07753
732-867-6476
tlt5139@yahoo.com

Consistent with Plaintiff's practice of maintaining a publicly accessible record of these proceedings at <https://www.uspto.news>, this letter will be added to that repository upon filing with the Court.

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2026, a copy of this letter was served upon counsel for Defendant by the following means:

By electronic mail addressed to Mr. Junis L. Baldon, Assistant United States Attorney, at junis.baldon2@usdoj.gov; and

By certified mail, return receipt requested, addressed to:

Junis L. Baldon
Assistant United States Attorney
402 East State Street, Room 430
Trenton, New Jersey 08608

/s/ Terry Lee Torres
Terry Lee Torres
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18/973,067 | CIP: Social Networking Content Supplemented Web Page Linker PRIVATE VIEW

Application # 18/973,067	Confirmation # 5833	Attorney Docket # CIP Edit	Patent # -	Filing or 371 (c) date 12/08/2024	Status Application Involved in Court Proceedings 02/25/2026
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Application Data

Documents & Transactions

Continuity

Patent Term Adjustment

Foreign priority

Fee payment history

Address & Attorney/Agent Information

Supplemental Content

Assignments

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Documents & transaction history

Documents Transactions

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None selected

Showing 1 to 63 of 63 entries

Mail room date	Doc code	Doc description	Pages		Quick download	File size (KB)	<input type="checkbox"/>
02/17/2026	PET.RELIEF	Relief in Emergency Situations Determined by Director	6	Preview	PDF	360	<input type="checkbox"/>
02/17/2026	N417	Electronic Filing System Acknowledgment Receipt	2	Preview	PDF	120	<input type="checkbox"/>
02/12/2026	LET.	Miscellaneous Incoming Letter	2	Preview	PDF	120	<input type="checkbox"/>
02/12/2026	PET.OP	Petition for review by the Office of Petitions	105	Preview	PDF	6300	<input type="checkbox"/>
02/12/2026	N417	Electronic Filing System Acknowledgment Receipt	2	Preview	PDF	120	<input type="checkbox"/>
02/02/2026	PETDEC	Petition Decision	4	Preview	PDF / XML / DOCX / PNG	240 / 23 / 29 / 5	<input type="checkbox"/>
12/30/2025	LET.	Miscellaneous Incoming Letter	3	Preview	PDF / XML / DOCX	180 / 28 / 12	<input type="checkbox"/>
12/30/2025	N417	Electronic Filing System Acknowledgment Receipt	2	Preview	PDF	120	<input type="checkbox"/>
12/03/2025	IDS.R197.REL	Letter specifying the conditions for filing under 37 CFR 1.97	2	Preview	PDF / XML / DOCX	120 / 5 / 37	<input type="checkbox"/>
12/03/2025	IDS	Information Disclosure Statement (IDS) Form (SB08)	2	Preview	PDF / XML	120 / 43	<input type="checkbox"/>
12/03/2025	REF.OTHER	Other reference-Patent/Application/Search Documents	5	Preview	PDF	300	<input type="checkbox"/>
12/03/2025	REF.OTHER	Other reference-Patent/Application/Search Documents	1	Preview	PDF	60	<input type="checkbox"/>
12/03/2025	REF.OTHER	Other reference-Patent/Application/Search Documents	6	Preview	PDF	360	<input type="checkbox"/>
12/03/2025	REF.OTHER	Other reference-Patent/Application/Search Documents	2	Preview	PDF	120	<input type="checkbox"/>
12/03/2025	N417	Electronic Filing System Acknowledgment Receipt	3	Preview	PDF	180	<input type="checkbox"/>
11/24/2025	MES.LOSS.SCO	Micro Loss Response to Show Cause Order	4	Preview	PDF	240	<input type="checkbox"/>
11/24/2025	MES.LOSS.SCO	Micro Loss Response to Show Cause Order	4	Preview	PDF	240	<input type="checkbox"/>
11/24/2025	N417	Electronic Filing System Acknowledgment Receipt	2	Preview	PDF	120	<input type="checkbox"/>
11/19/2025	WFEE	Fee Worksheet (SB06)	1	Preview	PDF	60	<input type="checkbox"/>
11/18/2025	PET.OP	Petition for review by the Office of Petitions	6	Preview	PDF	360	<input type="checkbox"/>
11/04/2025	MES.CNSC	Combined Notice and Show Cause under 35 USC 123(f) Micro	4	Preview	PDF / XML / DOCX	240 / 19 / 26	<input type="checkbox"/>
10/08/2025	CLM	Claims	14	Preview	PDF / XML / DOCX	840 / 48 / 24	<input type="checkbox"/>
10/08/2025	REM	Applicant Arguments/Remarks Made in an Amendment	13	Preview	PDF / XML / DOCX	780 / 50 / 32	<input type="checkbox"/>

10/08/2025	TRAN.LET	Transmittal Letter	2	Preview	PDF	120	<input type="checkbox"/>
10/08/2025	N417	Electronic Filing System Acknowledgment Receipt	2	Preview	PDF	120	<input type="checkbox"/>
10/08/2025	N417.PYMT	Electronic Fee Payment	2	Preview	PDF	120	<input type="checkbox"/>
04/12/2025	CLM	Claims	7	Preview	PDF / XML / DOCX	420 / 23 / 22 / 14	<input type="checkbox"/>
04/12/2025	N417	Electronic Filing System Acknowledgment Receipt	2	Preview	PDF	120	<input type="checkbox"/>
04/12/2025	TRAN.LET	Transmittal Letter	2	Preview	PDF	120	<input type="checkbox"/>
04/12/2025	A.PE	Preliminary Amendment	3	Preview	PDF	180	<input type="checkbox"/>
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03/27/2025	APP.FILE.REC	Filing Receipt	4	Preview	PDF	240	<input type="checkbox"/>
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01/05/2025	N417.PYMT	Electronic Fee Payment	2	Preview	PDF	120	<input type="checkbox"/>
01/05/2025	N417	Electronic Filing System Acknowledgment Receipt	2	Preview	PDF	120	<input type="checkbox"/>
01/05/2025	ADS.CORR	Application Data Sheet to update/correct info	4	Preview	PDF	240	<input type="checkbox"/>
12/31/2024	WFEE	Fee Worksheet (SB06)	1	Preview	PDF	60	<input type="checkbox"/>
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12/17/2024	WFEE	Fee Worksheet (SB06)	1	Preview	PDF	60	<input type="checkbox"/>
12/17/2024	NTC.MISS.PRT	Notice to File Missing Parts	2	Preview	PDF	120	<input type="checkbox"/>
12/17/2024	WELCOME.LET	Welcome Letter from USPTO Director and Deputy Director	1	Preview	PDF	60	<input type="checkbox"/>
12/10/2024	APP.TEXT	Application body structured text document	13		DOCX	26	<input type="checkbox"/>
12/10/2024	REM	Applicant Arguments/Remarks Made in an Amendment	1	Preview	PDF / XML / DOCX	60 / 5 / 14	<input type="checkbox"/>
12/10/2024	CLM	Claims	12	Preview	PDF / XML / DOCX	720 / 45 / 22	<input type="checkbox"/>
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12/10/2024	TRAN.LET	Transmittal Letter	2	Preview	PDF	120	<input type="checkbox"/>
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12/08/2024	APP.TEXT	Application body structured text document	132		DOCX	129	<input type="checkbox"/>
12/08/2024	N417.PYMT	Electronic Fee Payment	2	Preview	PDF	120	<input type="checkbox"/>
12/08/2024	MES.GIB	Certification of Micro Entity (Gross Income Basis)	2	Preview	PDF	120	<input type="checkbox"/>
12/08/2024	ABST	Abstract	1	Preview	PDF / XML / DOCX	60 / 3 / 9	<input type="checkbox"/>
12/08/2024	TRNA	Transmittal of New Application	2	Preview	PDF	120	<input type="checkbox"/>
12/08/2024	N417	Electronic Filing System Acknowledgment Receipt	2	Preview	PDF	120	<input type="checkbox"/>
12/08/2024	SPEC	Specification	126	Preview	PDF / XML / DOCX	7560 / 465 / 125	<input type="checkbox"/>
12/08/2024	CLM	Claims	6	Preview	PDF / XML / DOCX	360 / 16 / 16	<input type="checkbox"/>
12/08/2024	OATH	Oath or Declaration filed	2	Preview	PDF	120	<input type="checkbox"/>
12/08/2024	ADS	Application Data Sheet	6	Preview	PDF	360	<input type="checkbox"/>
12/08/2024	DRW	Drawings-only black and white line drawings	3	Preview	PDF	180	<input type="checkbox"/>
12/08/2024	SCORE	Placeholder sheet indicating presence of supplemental content in Supplemental Complex Repository for Examiners(SCORE)	1	Preview	PDF	60	<input type="checkbox"/>

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