

Intellectual Property & Technology



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New Fast-Track Appeals Pilot Program for U.S. Patent Applications

On July 2, 2020 the U.S. Patent and Trademark Office announced a new pilot program to expedite *ex parte* appeals. Under the pilot program, the Patent Trial and Appeal Board (“PTAB”) will issue a decision on appeals in U.S. patent applications in six months, which is significantly shorter than the current average appeal pendency of about 14 months. This program provides patent applicants a viable route for timely prosecuting patent applications in which there is a genuine dispute with the examiner. Because of the expedited timeline, more patent applicants are likely to appeal rejections by patent examiners, especially in cases in which patent protection is needed rapidly and in the computer art units where appeals have been taking in excess of 14 months.

The prioritized examination program, known as Track 1, has been successful, however, the prioritized status of the application does not carry through to any appeal. The pilot program fills this gap, allowing for an applicant to expedite most appeals, including those involving applications examined under Track 1. The pilot program is available for any original utility, design, or plant non-provisional application. The program is not available for any application already treated as special during appeal such as reissue applications, re-examination proceedings, appeals made special due to the age or health of the applicant, or appeals subject to any other pilot program that advances an appeal out of turn.

The pilot program is only open for the first 500 appeals accepted for the program (125 per quarter) or one year, whichever is earlier. To enter the pilot program, an appellant must file a petition and pay a \$400 fee. The petition can be filed any time after the PTAB issues a notice that the appeal has been docketed to the PTAB.

While oral argument is permitted under the program, the appellant must opt out of the pilot program if they wish to change the date or time of oral argument selected by the PTAB. The appellant may also waive the hearing and continue under the pilot program. Once a notice of hearing is received, the appellant cannot seek to relocate the hearing, but may request to attend the hearing by videoconference or phone.

The fast-track status is maintained until the PTAB’s jurisdiction ends. Subsequent activities, such as reopened prosecution, will not be treated as subject to fast-track status.

For additional information, please contact:

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