

New USPTO Pilot Program Provides Appeal Decisions Within Six Months

Alert

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Organizations that are considering appealing a final rejection of a patent application should take note—the United States Patent and Trademark Office (USPTO) has a path to reducing appeal times by 60%. (Even organizations with pending appeals can seek the same path.) On July 2, 2020, the USPTO announced a new [Fast-Track Appeals Pilot Program](#) to resolve appeals of rejected patent applications within six months. The pilot program presents an alternative to the current appeal process in which appeals are handled on a first-come, first-served basis with an average appeal pendency of about 15 months.

To request fast-track status using the new pilot program, an applicant must submit a petition and pay a \$400 fee.

The USPTO is limiting the number of cases that will be granted fast-track status to 125 per quarter. Once 125 fast-track petitions are granted in a quarter, the USPTO will hold any additional petitions in abeyance until the next quarter when they will be decided in order of receipt. The yearly maximum total of 500 granted fast-track petitions is about 8% of the total number of appeals filed in the average year.

The USPTO expects to render decisions granting or denying the petition within one month of the petition being filed. If the petition is granted, the Patent Trial and Appeal Board's (PTAB) goal is to render a decision in the appeal no later than six months from the date the petition was granted. The \$400 fee is non-refundable, even if the petition is denied.

The petition requesting entry into the program can be submitted in any appeal which has been transferred to the PTAB. This includes new appeals and appeals which have already been pending at the PTAB. Thus, an applicant can file a petition to request fast-track status in an appeal that has already been pending at the

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PTAB for a significant period of time to try and move the appeal up to the front of the line.

Due to the limited number of cases that will be granted fast-track status, applicants will need to move quickly to decide if they want to take advantage of this pilot program as the slots are expected to fill up fast. With the possibility of receiving a decision nine months faster than a typical appeal, applicants should immediately consider whether to enter the program for their rejected patent applications. Such a quick resolution to an appeal may be desirable for applicants struggling to work with an examiner to get an application allowed or with applications in fast moving technology industries.

Given the relatively low cost of filing the petition, the program provides a viable alternative for applicants who were otherwise hesitant to file appeals due to the long waiting times at the PTAB. Given this new pilot program, it may be more practical to appeal a rejection instead of continuing a challenging prosecution through continued examination.

Because the petition to enter the program can only be filed after control of the case has passed over to the PTAB, an applicant will not be able to file its petition at the time of filing the appeal. The timing of the appeal filings (e.g., appeal brief, examiner's answer, reply brief) remains unchanged by the pilot program. The applicant will have to wait until after these filings before submitting the petition, which will typically be six months or more from the time the appeal was initially filed.

The pilot program is set to run for one year at which point the USPTO will reevaluate the program to determine if it should be made permanent.

For more information on this new Fast-Track Appeals Pilot Program, please contact [Steven Levitt](#), Samir Mehta or the Stinson LLP contact with whom you regularly work.

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