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Expediting patent application examination at the U.S. Patent & Trademark Office

The Prioritized Examination program is picking up steam and emerging as a favorite method to expedite prosecution

Need a U.S. patent and need one fast? For many technology companies, particularly small, early-stage companies, patent protection is critical and often near the top of the list of necessities for attracting investors and/or collaborators. A patent-less technology company will often find itself starving for attention in the business world, and this article highlights the programs available at the U.S. Patent & Trademark Office (USPTO) that are designed to speed up the patent process. By taking advantage of these programs, patent applicants may capitalize on their exclusive patent rights sooner than through conventional examination, especially in areas where the technology is rapidly evolving.

What are the options at the USPTO for expediting patent application examination?

The USPTO currently offers three programs that provide applicants with the opportunity to expedite examination of their patent applications:

- Prioritized Examination (PE; also known as “Track One”)
- Accelerated Examination (AE)
- The Patent Prosecution Highway (PPH)

The following table, also found on the [USPTO's website](#), highlights the key requirements and features of each program:

Prioritized Examination	Accelerated Examination	Patent Prosecution Highway
\$4000 fee (\$2000 small entity fee, \$1000 micro entity fee)	\$140 petition fee (\$70 small entity fee, \$35 micro entity fee)	No additional fee
Limited to four independent claims and no more than 30 total claims	Limited to three independent claims and no more than 20 total claims (no multiple dependent claims)	No claim limit (Normal excess claim fees apply)

Prioritized Examination	Accelerated Examination	Patent Prosecution Highway
No examination support documents required	Requires preexamination search documents and an examination support document	Entry based upon at least one allowable claim in counterpart foreign application
Follows normal interview practice	Examiner interview required before issuing an Office Action	Follows normal interview practice
Continuations and RCEs are eligible for the program	Continuations are eligible for the program	Continuations are eligible for the program (before first action is issued)
Number of applications admitted to the program limited to 10,000 per fiscal year	No limit on number of applications admitted to the program per year	No limit on number of applications admitted to the program per year

With respect to the speed with which the USPTO tends to act on a particular application, applicants generally receive a first action on the merits of the patent application in less than 5 months and a final decision from the examiner within 12 months from the grant of the request for the PE and AE programs. In the PPH program, applicants receive a first action on the merits within 2 to 3 months from the grant of the request. For fiscal year 2013, the PE, AE and PPH programs had average first action pendency's (i.e., the time period from grant of the request to receipt of a first office action) of 3.9, 4.9 and 13.1 months, respectively, compared to 18.4 months when conventional prosecution was used.

Which option is best for me?

As noted above, to enter into one of the USPTO's expedited examination programs, applicants must satisfy certain requirements largely focused on the size of the application as well as payment of an additional fee. Aside from costs, additional considerations will play a role in pushing an applicant towards one program over another. For example, in the AE program, applicants must conduct a search on the patentability of the filed patent application claims and also prepare an accelerated examination support document which identifies the references most closely related to the claims, and sets forth the applicant's arguments for patentability. In essence, the applicant is admitting to the relevance of specific references and the relation of these references to the claims, without first being given a rejection from the USPTO. An applicant should therefore evaluate the risk of such submissions before proceeding with the AE program.

Prioritized Examination certainly appears to be the trendy program at the USPTO. The following statistics were available on the USPTO website as of the writing of this article.

Total prioritized examination requests

	Pending	Granted	Dismissed	Total
FY2014	986	2645	143	3774
FY2013	14	6333	525	6872
FY2012	0	4666	358	5024
FY2011	3	827	25	855

It should be noted that the options discussed in this article lead to faster *examination*, not necessarily to a faster *allowance*. In this author's experience, the PE program is most valuable when the applicant is willing to pursue relatively narrow claims designed to protect a specific product rather than pursuing very broad claims.

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