

USPTO's Track One A Reliable Patent Pathway Amid Backlog

By **Ryan Schermerhorn** (September 24, 2025)

Patent applicants and intellectual property practitioners should be aware of the U.S. Patent and Trademark Office's recently expanded Track One program, especially in light of the USPTO's backlog problem.

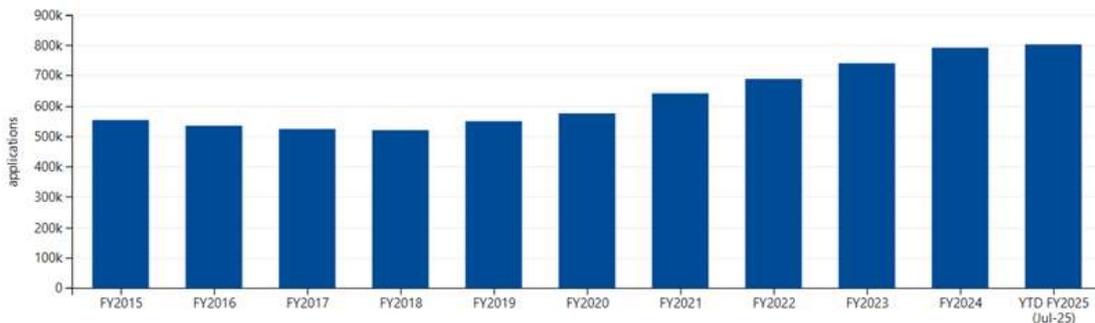
In fiscal year 2018, the USPTO reported a total of 522,149 unexamined utility, plant and reissue patent applications.[1] Since 2018, however, this number has steadily increased, and in July, the USPTO reported a total of 802,659 unexamined UPR patent applications, the highest number on record.



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This increase in the total number of unexamined patent applications translates into a significant rise in first office action pendency, which is the average number of months from filing until the USPTO first examines the application and issues a first office action — which includes so-called first action allowances. The pendency increased from 14.7 months in fiscal year 2019 to 22.8 months in August.

In other words, patent applicants can now expect to wait almost two full years before their utility, plant and reissue patent applications are even examined by the USPTO, much less granted — a process that often takes up to two additional years.



While most stakeholders acknowledge that some backlog is necessary and even beneficial, the current backlog is too large, seemingly even according to the USPTO. Therefore, the agency has introduced several new initiatives and terminated underutilized ones in recent years, in an effort to reduce the total unexamined UPR inventory.

Recent Efforts to Shorten Review Times

The USPTO has implemented and continues to roll out various artificial intelligence-based search tools to help examiners examine patent applications more quickly and efficiently.

In late 2022, the federal agency introduced its similarity search tool, allowing examiners to input a patent application into a trained AI model that returns similar patent documents.[2]

In July, the USPTO launched DesignVision, an AI-powered image search tool that lets examiners find U.S. and foreign designs by uploading images and reviewing new design

applications based on visual similarity.[3]

At the same time, since January, the USPTO has terminated or not renewed the Climate Change Mitigation Pilot Program, the Semiconductor Technology Pilot Program, the First-Time Filer Expedited Examination Pilot and the Cancer Moonshot Expedited Examination Pilot Program, all pilot programs that accelerated the examination of qualifying patent applications at no additional cost to filers.

These efforts appear to have helped — the USPTO reports that the current total unexamined UPR inventory of 802,659 is down from a high of 837,928 in January — but it is unclear if the USPTO will be able to further reduce the backlog, or how it will be able to do so, particularly given the numerous staffing challenges faced by the agency.[4]

Too Many Applications, Not Enough Examiners

Since the start of the COVID-19 pandemic, the USPTO has faced elevated attrition.

The challenge has been compounded by a recent executive order, which requires federal employees to return to the office, disrupting an agency where 80%-85% of examiners previously worked remotely.

Earlier this year, many experienced examiners accepted buyouts offered by the Office of Personnel Management, further reducing the agency's capacity to address its backlog.

As of July, the USPTO reported 8,348 UPR examiners, down from 8,599 in September 2024.[5] The situation is further complicated by a governmentwide hiring freeze that has stalled the USPTO's plan to add 1,600 examiners in 2025.

However, the agency announced in June that it would begin hiring again, albeit with limited hiring for nonremote positions.

Consequences for Startups and Investors

Accordingly, absent significant structural changes at the USPTO, it seems likely that the USPTO's backlog will remain high for at least the next several years.

For some patent applicants, this will not be an issue, as the delay will allow them time to see how the market develops before having to invest further in the patent procurement process.

However, for other patent applicants, particularly those operating in highly competitive or investor-driven sectors such as biotech, telecommunications and artificial intelligence, not being able to obtain a granted patent for three or more years will be highly problematic, even fatal in some cases.

Indeed, potential investors will often only choose to invest in a startup company if that company has obtained a granted patent for its technology.

Many are probably familiar with ABC's television show "Shark Tank," which features entrepreneurs seeking investment from a panel of five investors to grow their business.

When the entrepreneurs have a tangible product, "Sharks" like Mark Cuban immediately ask if that tangible product is patent-protected. On many occasions, they refuse to invest when

patent protection has not been obtained or is not possible.

The Patent Office's Express Lane

Patent applicants in these highly competitive or investor-driven sectors should, in turn, strongly consider leveraging the USPTO's Track One prioritized examination program for utility and plant patent applications.

A request for participation in the Track One program must be filed with the application, or with a request for continued examination, and requires the payment of an additional fee of \$4,515 for large entities, \$1,806 for small entities or applicants having less than 500 employees, or \$903 for micro entities, including many institutions of higher education.

While this fee may seem steep, and it is in addition to the standard filing fees owed to the USPTO — approximately \$2,000 for large entities, \$800 for small entities and \$400 for micro entities — the cost could be worth it for several reasons.

The Track One program significantly expedites the examination of utility and plant patent applications. On average, the first office action is issued in about 2.7 months, compared to 23.1 months for standard applications.[6] Similarly, Track One applications are typically processed within five months, compared to roughly 30 months under the regular process.

In short, the program enables applicants to secure a granted patent within months rather than the two to four years — or more — normally required. It is essential to note that with a Track One application, the applicant also promises to proceed promptly and not delay prosecution.

Participation in the Track One program also offers other benefits not readily reflected in the USPTO's data. In most cases, Track One applications are often assigned to examiners with longer tenure, whose broader background lends greater consistency and predictability to the process.

While all examiners approach their work with professionalism, senior examiners' perspectives can add efficiencies. They tend to identify and proficiently apply the prior art at the outset, which enables patent applicants to quickly assess both the likelihood of obtaining a patent and its potential scope.

These examiners also tend to be more willing to advance applications by conducting interviews and pinpointing allowable subject matter. Because they possess signing authority — unlike junior examiners who require senior approval — experienced examiners can often provide a path to allowance more efficiently.

Patent applicants will surely appreciate that a cleaner and more compact prosecution process, along with quicker allowance, will yield cost savings. In many cases, these cost savings will more than offset the initial fee for participating in the Track One program.

The Track One program can yield additional cost savings when patent applicants pursue foreign patent protection simultaneously. In fact, applicants can use the Track One program to obtain a quick allowance and then use the claims allowed in the U.S. to pursue expedited examination, and likely a faster allowance, in various foreign countries through the Patent Prosecution Highway, or PPH.[7]

Implemented in 2014, the PPH was created to enhance patent quality and reduce the

workload for participating patent offices by facilitating accelerated examination of patent applications that have claims deemed patentable in another patent office.

In this situation, the applicant can, at no cost, obtain accelerated examination in the patent offices of major markets such as Australia, Brazil, Canada, China, members of the European Union, South Korea, Japan and Singapore using the claims determined to be patentable by the USPTO via the Track One program.

In summary, while the USPTO's record backlog and staffing challenges pose significant hurdles for many patent applicants, the agency's Track One prioritized examination program offers a practical and effective solution for those who cannot afford lengthy delays.

While the Track One program requires an upfront investment, it often pays off through expedited examination, greater predictability and consistency, and long-term cost savings both in the U.S. and abroad.

In turn, Track One has become an increasingly valuable tool, particularly for applicants in fast-moving, investor-driven industries where early patent protection can determine whether a venture succeeds or fails, something that the USPTO itself seems to appreciate by virtue of the fact that the agency just recently increased the annual limit of accepted Track One requests from 15,000 to 20,000.

Ultimately, unless the USPTO implements more structural reforms to address its backlog, Track One will remain one of the few reliable pathways for innovators to secure timely and enforceable intellectual property rights.

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[1] <https://www.uspto.gov/dashboard/patents/production-unexamined-filing.html>.

[2] <https://www.uspto.gov/sites/default/files/documents/ai-sim-search.pdf>.

[3] <https://www.uspto.gov/about-us/news-updates/uspto-launches-new-design-patent-examination-ai-tool>.

[4] <https://www.uspto.gov/dashboard/patents/>.

[5] <https://www.uspto.gov/dashboard/patents/production-unexamined-filing.html>.

[6] <https://www.uspto.gov/dashboard/patents/track-one.html>.

[7] <https://www.uspto.gov/patents/basics/international-protection/patent-prosecution-highway-pph-fast-track>.