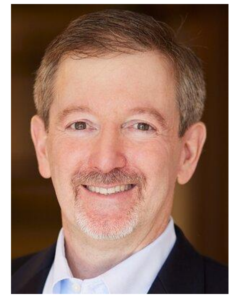
The Risks And Rewards Of 3 Patent Review Pilot Programs

By **David Gass** (July 23, 2026)



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As of June, the U.S. Patent and Trademark Office was managing more than 757,000 unexamined patent applications, according to the USPTO's patents dashboard, and a total patent application inventory exceeding 1.24 million.

Average first-action pendency currently is 21 months, with total pendency this year averaging 33.5 months. For Patent Cooperation Treaty, or PCT, national phase applications filed under Title 35 of the U.S. Code, Section 371, first-action pendency exceeds 36 months in some technologies.

Against this backdrop, the USPTO has introduced new pilot programs ostensibly aimed at reducing this backlog. Two programs — the Applicant Predocketing Notice, or PDN, Pilot Program and the PCT Informed Examination Request, or PIER, Pilot Program — operate before substantive examination begins and, among other options, invite applicants to abandon their applications. A third, the Streamlined Claim Set Pilot Program, encourages applicants to present a smaller, focused claim set to facilitate more efficient examination.

The Applicant Predocketing Notice Pilot Program: Regular U.S. Applications

The PDN program, launched May 29, applies to pending utility nonprovisional patent applications filed under Section 111(a) of Title 35 of the U.S. Code, but not U.S. national phase applications under the PCT.

Approximately three months before the USPTO assigns an application to one of its examiner's dockets, the USPTO issues a predocketing notice reminding applicants to review the application. The notice advises that examination will soon begin. Although the notice is informational in nature and no formal response is required, the notice encourages applicants to:

- Verify inventorship and ownership, correcting or updating as needed;
- Take steps to improve examination efficiency, such as file preliminary amendments, information disclosure statements or other papers that may improve examination efficiency; and
- Consider express abandonment if patent protection is no longer desired.

Patent Term Adjustment Considerations

The U.S. patent statute provides for an award of patent term adjustment, or PTA, for certain USPTO examination delays to mitigate the effects of USPTO delays, with a caveat that certain applicant actions can reduce or eliminate PTA awards.

Applicants should carefully consider the potential PTA consequences before filing preexamination submissions as examination approaches. Under Title 37 of the Code of Federal Regulations, Section 1.704(c)(6), a preliminary amendment or other preliminary paper filed less than one month before a first office action or notice of allowance may significantly reduce accrued PTA if it requires the examiner to issue a supplemental office action or notice of allowance.

Because many applications have already spent years awaiting examination, the resulting PTA reduction can be substantial and, in some cases, eliminate most accumulated PTA. Applicants should carefully consider potential consequences before filing a preliminary amendment or certain other papers in response to a predocketing notice, particularly where patent term is commercially important. In some cases, submitting the same materials after the examination process begins, e.g., as part of a response to a restriction requirement, may avoid any PTA reduction.

Fee Recovery Opportunity

Applicants who expressly abandon an application before examination on the merits may recover previously paid search fees and excess claim fees by timely requesting a refund. This opportunity exists under current USPTO rules regardless of whether a PDN has been issued.

Strategic Considerations

The PDN provides a useful preexamination reminder to review an application, address informalities, align U.S. prosecution strategy with current objectives, submit information disclosure statements citing recently identified prior art or abandon to recoup fees. These portfolio management steps, however, need not await issuance of a PDN, and delaying them may increase the risk of unnecessary PTA loss.

The PIER Pilot Program: National Stage Applications

The PIER Pilot Program, launched April 8 and scheduled to run through April 9, 2027, applies exclusively to national stage applications filed under Section 371. The USPTO began issuing the first requirements for information, or RFIs, under the program on May 21.

Applicants cannot opt in, opt out or withdraw from the program. The USPTO selects applications at its sole discretion, focusing on applications in high-pendency technology areas that it expects to docket for examination within five to six months. Preference is given to applications in which the international search report identifies potential patentability issues through citation of prior art references classified as "X" or "Y," which is suggestive of potential novelty or inventive step issues.

The Requirement for Information

Selected applicants receive an RFI under Title 37 of the Code of Federal Regulations, Section 1.105, referencing PCT international phase work product: the international search report, the written opinion of the International Searching Authority, and, where available, the international preliminary report on patentability. The RFI directs the applicant to choose one of three options using new USPTO Form PTO/SB/478:

- Proceed with examination. A preliminary amendment may be filed to place the application in better condition for examination, but the RFI does not explicitly require this.

- Delay examination for 12 months.

- Expressly abandon the application.

Mandatory Response

Unlike the PDN program, the PIER RFI requires a response. Applicants have two months to respond, with extensions of up to six months available upon payment of USPTO extension fees. Failure to respond results in abandonment. Extensions may reduce any eventual PTA award.

Practical Considerations

A decision to proceed with examination will likely be the most common election. Although the RFI encourages applicants to review PCT work product, the current pilot program does not explicitly require substantive responses to issues raised during the international phase. Applicants remain free to file preliminary amendments before examination, as they could before PIER.

The 12-month delay option may be appropriate for applicants wishing to defer prosecution costs or further assess commercial viability of an invention. However, the election cannot be withdrawn, and it remains unclear whether it will materially delay first office actions, given existing examination backlogs. The net delay will depend on the relative speed with which the USPTO examines "proceed" versus "delay" elections.

The express abandonment option adds little, because applicants have always had the right to expressly abandon a pending application. Because the USPTO is treating its RFI as an office action under Title 35 of the U.S. Code, Section 132, no fee refunds can be requested.

PTA Considerations

The USPTO treats the RFI as an "office action under 35 U.S.C. § 132," so the USPTO considers that its RFI ends accrual of A-delay PTA under Title 35 of the U.S. Code, Section 154(b)(1)(A)(i), based on failure to issue a first office action within 14 months of the national stage commencement date, even though no USPTO examiner has begun examination. After a timely response, however, PTA may begin accruing again under Section 154(b)(1)(A)(ii) if the USPTO takes more than four months to issue its next office action.

Accordingly, applicants who timely elect to proceed with examination should not necessarily experience a net PTA loss, although the result will depend on the timing of the RFI and subsequent examination. In most cases, the PIER program may reduce A-delay by four months. However, if PIER lengthens the total examination process, then additional B-delay may accrue to the applicant's benefit.

A 12-month delay election in response to the RFI will reduce any accrued PTA by 12 months, because the USPTO treats the delay as an applicant's failure to engage in reasonable efforts to conclude examination under Title 35 of the U.S. Code, Sections 154(b)(2)(C)(i) and (iii), and Title 37 of the Code of Federal Regulations, Section, 1.704(c).

Information Disclosure Statement Practice

The USPTO treats the RFI as an office requirement under Title 35, Section 132, (tolling the accrual of PTA), but does not consider the RFI as a first action on the merits, so the RFI should not affect the timing or fees associated with filing an information disclosure statement.

Comparing the Two Preexamination Programs

FEATURE	PREDOCKETING NOTICE	PIER PILOT PROGRAM
Application type	Regular U.S. utility (Section 111(a))	PCT national stage (Section 371)
Nature of communication	Informational notice	Requirement for information (Title 37 of the Code of Federal Regulations, Section 1.105)
Response required?	No	Yes — failure to respond = abandonment
Response deadline	None	2 months (extendable to 6 months with fees)
Applicant can opt out?	N/A (informational)	No
Fee refund on abandonment?	Search fee + excess claim fees, with separate request	No
Option to delay examination?	No	Yes — 12 months, nonterminable, reduces PTA
PTA risk?	Yes, depending on timing of optional submission	RFI stops 14-month clock; 4-month clock starts on reply; delay option reduces PTA; extensions of time reduce PTA

The most important difference between the programs is that a PIER RFI requires a timely response, while a PDN does not. Overlooking a PDN has no procedural consequence; failing to respond to a PIER RFI results in abandonment. Practitioners should configure their docketing systems to flag PIER RFIs as deadline-driven action items.

The Streamlined Claim Set Pilot Program: Now Fee-Free

The USPTO's Streamlined Claim Set Pilot Program seeks to reduce examination time that its examiners must spend on an application by encouraging applicants to present a focused claim set.

Launched on Oct. 27, 2025, the program offers expedited examination, including advancement out of turn for a first office action, for eligible utility nonprovisional applications filed under Section 111(a) before Oct. 27, 2025. (Neither national stage applications filed under Section 371 nor continuation applications are eligible.) Applicants may bring existing applications into compliance by filing a preliminary amendment with a claim set that contains no more than one independent claim and 10 total claims, with no multiple dependent claims.

On June 10, the USPTO waived its petition fee for the program to encourage participation. The program remains open until Oct. 27, 2026, or until each Technology Center has docketed approximately 200 pilot applications.

Practical Takeaways

Monitor national stage applications closely.

The PIER program is involuntary and carries abandonment consequences. RFIs carry a short initial response period, and practitioners should ensure that docketing systems flag PIER RFIs and treat them as action items requiring a timely response.

Do not overreact.

For most PIER-selected applications, the response can be simple. The most common election will likely be to proceed with examination without a preliminary amendment, a response that requires checking the appropriate boxes on Form PTO/SB/478.

Use the PDN as a strategic window — but be cautious about PTA.

The three-month advance notice of impending examination is an opportunity to align U.S. prosecution with outcomes at other offices and with commercial objectives, and to prune portfolios while fee recovery is available. However, practitioners should be mindful of the potentially devastating PTA reduction risk under Section 1.704(c)(6) before filing a preliminary amendment in response, particularly for applications with significant accrued PTA.

Think carefully before electing the PIER delay option.

The 12-month delay is nonterminable, will reduce PTA and may not result in a meaningful postponement of examination, given existing pendency timelines for national stage applications.

Take advantage of fee-free accelerated examination.

Evaluate the Streamlined Claim Set option for eligible applications. For applications that can be brought to a single independent claim and 10 total claims, an applicant can obtain accelerated examination and avoid the USPTO surcharge — as high as $4,515 — for filing a formal request for prioritized examination. The window closes Oct. 27.

Do not change your filing strategy based on the PIER program.

Practitioners and clients who prefer national stage filings over bypass continuations — or vice versa — should not view the PIER program as a fundamental reason to change that preference. The procedural burden of responding to a PIER RFI is minimal, and the program does not materially alter the substantive prosecution of the application.

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