

The USPTO Will Process Patents Within 12 Months In New “Track One” Program

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The United States Patent and Trademark Office (USPTO) announced that starting on May 4, 2011 it will begin accepting requests for prioritized examination of patent applications. The new Track One program, as it is called, allows inventors and businesses to have a final disposition on their patent applications within 12 months of prioritized status being granted. It currently takes an average of nearly three years to have a final disposition in the processing of a patent.

The Track One program provides patent applicants with the opportunity to accelerate the patent application process. This is of particular concern to businesses whose technology changes rapidly and hence cannot afford to wait 3-5 years to obtain patent protection. Under Track One, businesses whose technology includes, for example, software would benefit from obtaining patent protection within one year while the technology is still relevant in the market.

Filing a Track One request for prioritized examination requires a fee of \$4,000 in addition to the regular filing fees for the patent application. The USPTO does not currently have the authority to reduce the cost of the fee for small entities, however the Patent Reform bill working its way through Congress would give the USPTO such authority and thus a discount for small entities may be available in the future.

The USPTO has limited the number of requests under Track One to a maximum of 10,000 applications through the remainder of the fiscal year ending September 30, 2011. The USPTO may make adjustments to this limit for future years.

To be granted prioritized examination under Track One:

1. The application must be a new original non-provisional application or a continuing application (e.g., continuation or divisional) including a request for prioritized examination and the required fees including the \$4,000 prioritized examination fee;
2. The application must be complete including all fees paid on filing, and the application must be filed via the USPTO's electronic filing system (EFSWeb). Thus, the application must include an oath or declaration, the basic filing fee, the search fee, the examination fee, any excess claims fees, and any application size fee;
3. The application must contain no more than four independent claims and no more than thirty total claims and no multiple dependent claims;
- 4.

The request for prioritized examination must be filed with the application accompanied by the prioritized examination fee of \$4,000, the request processing fee of \$130, and the publication fee of \$300.

Track One is part of a new Three-Track system that is intended to provide applicants with greater control over when their applications are examined and promote greater efficiency in the patent examination process. Under the Three-Track program, patent applicants may request prioritized examination through Track One, traditional examination under the current procedures through Track Two, and delayed examination for up to 30 months and lower fees under Track Three. Track Three is expected to be available by September 30, 2011.

Additional Information

For additional information, please contact:

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