



[3510-16-P]

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO-P-2016-0054]

Request for Comments Regarding the Continuation of the Accelerated Examination Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is requesting comments from its stakeholders on whether the accelerated examination program should be retained. In an August 16, 2016 notice updating the program to reflect changes in the law and examination practice, the USPTO indicated that the number of accelerated examination requests has been quite low. In particular, in each of the fiscal years 2012-2015, fewer than 250 applications were accepted into the accelerated examination program. Accordingly, the USPTO seeks feedback from its stakeholders on whether the accelerated examination program provides a sufficient benefit to the public to justify the cost of implementation.

COMMENT DEADLINE: To be ensured of consideration, written comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. No public hearing will be held.

ADDRESSES FOR COMMENTS: Written comments should be sent by electronic mail addressed to AEcomments2016@uspto.gov. Comments may also be submitted by mail addressed to: Mail Stop Comments - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Pinchus Laufer, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the USPTO Internet Web site at <http://www.uspto.gov>. Because comments will be available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Pinchus M. Laufer, Senior Legal Advisor ((571) 272-7726) or Matthew Sked, Legal Advisor ((571) 272-7627), Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION: In August 2006, the USPTO implemented the accelerated examination program under which an application will be advanced out of turn for examination if the applicant files a petition to make special with the appropriate showing. See Changes to Practice for Petitions in Patent Applications To Make Special and for Accelerated Examination, 71 FR 36323 (June 26, 2006). The program proved to be relatively popular as it was one of the few options an applicant had to expedite examination. The program was recently updated on August 16, 2016, to reflect changes in the law and examination practice. See Changes in Accelerated Examination Practice, 81 FR 54564 (August 16, 2016).

On September 26, 2011, the USPTO implemented the prioritized examination program (referred to as “Track One”), provided for in the Leahy-Smith America Invents Act (AIA). See Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures under the Leahy-Smith America Invents Act, 76 FR 59050 (September 23, 2011). Track One also provides the ability to advance an application out of turn, but without an applicant having to meet the requirements of the accelerated examination program, such as performing a pre-examination search. Under Track One, applicants simply pay an additional fee. In each of the past few fiscal years since Track One was implemented (fiscal years 2012-2015), fewer than 250 applications have met the requirements to take advantage of the accelerated examination program. In contrast, Track One has become a much more popular program than accelerated examination in that the number of requests approaches 10,000 annually over this same time.

Additionally, over this period, the overall first action pendency for newly filed applications has dropped incrementally each year. In particular, the overall first action pendency in fiscal year 2015 was approximately 17 months. A lower first action pendency and lower accelerated examination numbers seem to indicate that applicants have less need for as many programs that expedite patent examination.

Due to the low usage of the accelerated examination program, the reduction in overall first action pendency, the popularity of the Track One program, and the inconvenience to practitioners and the USPTO of retaining a seemingly redundant program with its own special handling procedures (See MPEP 708.02(a)), it is unclear whether the accelerated examination program still provides a sufficient benefit to the public to justify the cost of implementation. Accordingly, the USPTO seeks comments from the public on whether the accelerated examination program should be retained or discontinued.

Dated: January 9, 2017_____

Michelle K. Lee
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

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