



## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

[Docket No. PTO-P-2025-0007]

RIN 0651-AD84

### Discontinuation of the Accelerated Examination Program for Utility Applications

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** In order to efficiently allocate examination-related resources to address pendency, and in view of the low number of requests for Accelerated Examination and the availability of a statutory program to expedite the prosecution of applications (Track One, prioritized examination), the United States Patent and Trademark Office (USPTO) is discontinuing the Accelerated Examination program for utility applications. The USPTO is also modifying the rules of practice to clarify the grounds for which a petition to make special may be granted and when a fee is required for such petition.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. The USPTO will no longer accept petitions under the Accelerated Examination program filed on or after [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] in utility applications.

**FOR FURTHER INFORMATION CONTACT:** Pinchus M. Laufer, Senior Patent Attorney, Office of Patent Legal Administration, at 571-272-7726; or Brannon Smith, Legal Advisor, Office of Patent Legal Administration, at 571-270-1601.

#### SUPPLEMENTARY INFORMATION:

**I. Background:** USPTO regulations at 37 CFR 1.102 provide that patent applications may be advanced out of turn for examination based on a “petition to make an application

special.” In June 2006, the USPTO published a notice to implement the Accelerated Examination program (2006 AE Notice) under which an application would be advanced out of turn for examination if the applicant filed a petition to make special with the appropriate showing (“Accelerated Examination Petition”). See *Changes to Practice for Petitions in Patent Applications To Make Special and for Accelerated Examination*, 71 FR 36323 (June 26, 2006). The 2006 AE Notice explained that petitions to make special (except those based on applicant’s health or age) would be processed and examined under the new Accelerated Examination program. 71 FR 36324. The Accelerated Examination program proved to be relatively popular as it was one of the few options for applicants to receive expedited examination. The program was 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 (often referred to as “Track One”) provided for in the 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 provides the ability to advance any utility or plant application out of turn, regardless of subject matter, by paying a fee and without an applicant having to meet several of the requirements of the Accelerated Examination program, such as performing a pre-examination search and supplying an examination support document. See 37 CFR 1.102(e).

The introduction of the Track One program has greatly reduced participation in the Accelerated Examination program. In each of the fiscal years 2014 to 2024, fewer than 100 applicants have taken advantage of the Accelerated Examination program.

In contrast, Track One has become a significantly more popular program than Accelerated Examination. Due to the steady increase in the number of requests for prioritized examination under Track One, the USPTO raised the annual limit on the number of prioritized examination requests that may be accepted from 10,000 to 12,000 in 2019, and to 15,000 in

2021. See *Increase of the Annual Limit on Accepted Requests for Track I Prioritized Examination*, 84 FR 45907 (September 3, 2019), and *2021 Increase of the Annual Limit on Accepted Requests for Track One Prioritized Examination*, 86 FR 52988 (September 24, 2021).

The USPTO anticipates further raising the annual limit on the number of prioritized examination requests that may be accepted from 15,000 to 20,000 in 2025.

As opposed to the more straightforward Track One program, the resource demands of the Accelerated Examination program are in tension with the USPTO's broader efforts to reduce overall pendency (i.e., the time that the application is pending or awaiting a decision). First-action pendency has increased since 2019, impacting the USPTO's ability to reduce the incidence of patent term adjustments, which are required if first-action pendency reaches 14 months (see 37 CFR 1.703(a)(1)). In particular, the overall first-action pendency in fiscal year 2019 was approximately 14.7 months but rose to approximately 19.9 months in fiscal year 2024. Petitions for Accelerated Examination are decided by technology centers. Deciding the petitions and monitoring compliance with program requirements throughout prosecution requires extensive evaluation and diverts substantial technology center resources that could be applied more efficiently to the examination of older applications. In addition, many petitions for Accelerated Examination are ultimately denied and the applications examined in their ordinary turn, thereby incurring costs with little benefit to applicants or the public. In fiscal year 2024, for example, approximately one-third of finally decided petitions for Accelerated Examination were denied. Further, reducing the number of programs involving special handling reduces administrative overhead and improves overall processing efficiency. Finally, the low number of applicants requesting Accelerated Examination indicates that the Track One program can accommodate applicants who require expedited examination for utility applications. Thus, discontinuing the Accelerated Examination program for utility applications allows more examining resources to be devoted to older, unexamined utility applications, thereby reducing

the number of these applications and supporting the USPTO's broader efforts to reduce pendency.

Due to the need to reduce overall first-action pendency, the low usage of the Accelerated Examination program, 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 Manual of Patent Examining Procedure 708.02(a)), the Accelerated Examination program does not provide a sufficient benefit to the public or the patent system to justify the cost of continuing the program for utility applications. Accordingly, the USPTO is discontinuing the Accelerated Examination program for utility applications. The Accelerated Examination program will remain in effect for design applications, which do not currently have an alternative expedited examination program. Any petition or request for reconsideration of a petition to make special under the Accelerated Examination program filed with a utility application on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** will not be granted, irrespective of the filing date and time of any prior Accelerated Examination petition and without regard to the USPTO's determination that applicant was afforded an opportunity to correct a prior deficient Accelerated Examination petition under the program. The effective date of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** will provide sufficient time for applicants currently preparing an Accelerated Examination petition to complete it prior to the elimination of the Accelerated Examination program.

Under the Accelerated Examination program, petitions to make special for inventions enhancing the quality of the environment, contributing to the development or conservation of energy resources, or contributing to countering terrorism would be granted if the petition complied with the requirements of the Accelerated Examination program including performing a pre-examination search and drafting an examination support document. For these inventions,

pursuant to 37 CFR 1.102(c)(2), the 37 CFR 1.17(h) fee for a petition to make special was not required.

After the Accelerated Examination program is discontinued for utility applications, applicants can still receive expedited examination of their applications directed to these inventions without having to prepare and file an examination support document by taking advantage of the Track One program under 37 CFR 1.102(e). Instead of preparing and filing an examination support document, Track One applicants pay a fee to receive expedited examination. Qualified small and micro entity applicants receive discounts for the prioritized examination fee of 60% and 80%, respectively. Accordingly, 37 CFR 1.102(c) is being amended to remove the grounds listed in § 1.102(c)(2). The grounds found in 37 CFR 1.102(c)(1) (age and health), which are available without a fee, are retained and are moved into 37 CFR 1.102(c).

Additionally, to reflect changes in law and practice due to the Leahy-Smith America Invents Act (AIA), Public Law 112–29, 125 Stat. 284 (2011), the rules of practice are revised to clarify that it is the inventor’s or a joint inventor’s age or health (not the applicant’s age or health) that is relevant to 37 CFR 1.102(c) when filing a petition to make special.

## **II. Discussion of Specific Rules**

Title 37 of the Code of Federal Regulations, part 1, is amended as follows:

Section 1.102: Section 1.102(c)(2) is removed to reflect that advancement of examination for inventions on the grounds that they materially enhance the quality of the environment, contribute to the development or conservation of energy resources, or contribute to countering terrorism is no longer available without a fee. After the 2006 AE Notice, petitions to advance examination of these inventions were subsumed under the Accelerated Program and were no longer independent grounds for obtaining special status. These types of invention were accepted into the Accelerated Examination program without requiring the fee under § 1.17(h) upon appropriate showing. Instead, applicants can seek advancement of examination of these

types of inventions under the Track One program. Small and micro entities can pay reduced fees for Track One applications.

Further, § 1.102(c) is amended to state that the inventor's or a joint inventor's age or health may be a ground to file a petition to make special without a fee. Previously, the rule stated that a petition to make special may be filed without a fee if the basis for the petition is applicant's age or health. However, after the passage of the AIA, the terms "inventor" and "applicant" are no longer synonymous and, thus, an applicant may be an entity or individual other than the inventor. Therefore, to clarify that it is the inventor's or a joint inventor's age or health that is relevant, § 1.102(c) is amended accordingly. Section 1.102(c) now only permits the petition to make special without a fee for petitions based on an inventor's or a joint inventor's age or health.

### **III. Rulemaking Considerations**

*A. Administrative Procedure Act:* This final rule revises the procedures available to expedite the prosecution of patent applications. The changes in this final rule do not change the substantive criteria of patentability. Therefore, the changes in this rulemaking involve rules of agency practice and procedure and/or interpretive rules and do not require notice-and-comment rulemaking, pursuant to 5 U.S.C. 553(b)(A)). See *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97, 101 (2015) (explaining that interpretive rules "advise the public of the agency's construction of the statutes and rules which it administers" and do not require notice-and-comment when issued or amended); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336-37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice"); *In re Chestek PLLC*, 92 F.4th 1105, 1110 (Fed. Cir. 2024) (noting that rule changes that "do[] not alter the substantive standards by which the USPTO evaluates trademark applications" are procedural in nature and, thus, "exempted from notice-and-comment rulemaking."); and *JEM Broadcasting Co. v. F.C.C.*, 22 F.3d 320, 328 (D.C. Cir. 1994) ("[T]he

‘critical feature’ of the procedural exception [in 5 U.S.C. 553(b)(A)] ‘is that it covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency.’” (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)).

**B. Regulatory Flexibility Act:** As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. See 5 U.S.C. 603.

**C. Executive Order 12866 (Regulatory Planning and Review):** This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

**D. Executive Order 13563 (Improving Regulation and Regulatory Review):** The USPTO has complied with Executive Order 13563 (January 18, 2011). Specifically, and as discussed above, the USPTO has, to the extent feasible and applicable: (1) reasonably determined that the benefits of the rule justify its costs; (2) tailored the rule to impose the least burden on society consistent with obtaining the agency’s regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens while maintaining flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

***E. Executive Order 14192 (Deregulation):*** This regulation is not an Executive Order 14192 regulatory action because it has been determined to be not significant.

***F. Executive Order 13132 (Federalism):*** This rulemaking pertains strictly to Federal agency procedures and does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

***G. Executive Order 13175 (Tribal Consultation):*** This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian Tribal governments; or (3) preempt Tribal law. Therefore, a Tribal summary impact statement is not required under Executive Order 13175 (November 6, 2000).

***H. Executive Order 13211 (Energy Effects):*** This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

***I. Executive Order 12988 (Civil Justice Reform):*** This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996).

***J. Executive Order 13045 (Protection of Children):*** This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (April 21, 1997).

***K. Executive Order 12630 (Taking of Private Property):*** This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1988).

***L. Congressional Review Act:*** Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO

will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

***M. Unfunded Mandates Reform Act of 1995:*** The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

***N. National Environmental Policy Act of 1969:*** This rulemaking will not have any effect on the quality of the environment and is, thus, categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

***O. National Technology Transfer and Advancement Act of 1995:*** The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

***P. Paperwork Reduction Act of 1995:*** The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. The collections of information involved in this final

rule have been reviewed and previously approved by OMB under control numbers 0651-0031 and 0651-0059. In view of this final rule, the USPTO will submit an update to the 0651-0059 information collection in the form of a nonsubstantive change request. This final rule does not materially change the information collections approved under OMB control number 0651-0031. Therefore, the USPTO will not submit an update to the 0651-0031 information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

***Q. E-Government Act Compliance:*** The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### **List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

#### **PART 1 — RULES OF PRACTICE IN PATENT CASES**

1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. Section 1.102 is amended by revising paragraph (c) to read as follows:

**§ 1.102 Advancement of examination.**

\* \* \* \* \*

(c) A petition to make an application special may be filed without a fee if the basis for the petition is the inventor's or a joint inventor's age or health.

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**Coke Morgan Stewart,**

*Acting Under Secretary of Commerce for Intellectual Property and  
Acting Director of the United States Patent and Trademark Office.*

[FR Doc. 2025-10498 Filed: 6/9/2025 8:45 am; Publication Date: 6/10/2025]