



DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO-P-2026-0265]

Standards Participation and Representation Kudos (SPARK) Pilot Program

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

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is launching the Standards Participation and Representation Kudos (SPARK) Pilot Program to incentivize meaningful participation in standards development organizations (SDOs) by U.S. small and medium-sized businesses, universities, and non-profit organizations. Under the pilot program, examination of certain patent applications and *ex parte* appeals to the Patent Trial and Appeal Board (PTAB) may be expedited if the U.S.-domiciled juristic applicant meaningfully participated in a voluntary consensus-based SDO and meets the requirements specified in this notice. The application or appeal being expedited does not need to be related to the SDO participation. The expedited examination or appeal provides additional tangible value for the time and resources invested in standards development. Applications accepted into the pilot program for expedited examination will be advanced out of turn, that is, accorded special status, for examination until a first Office action is issued, and *ex parte* appeals accepted into the pilot program will be advanced out of turn before the PTAB. This notice sets forth the requirements of the pilot program and describes how the pilot program will be administered.

DATES: *Pilot Duration:* The SPARK Pilot Program will accept petitions requesting expedited examination or appeal beginning June 3, 2026 until either June 3, 2027 or the date the USPTO grants a total of 200 petitions, whichever is earlier. The USPTO may, at its sole discretion, terminate the pilot program for any reason, including factors such as workload and resources needed to administer the program, feedback from the public, and the effectiveness of the

program. If the pilot program is terminated, the USPTO will notify the public. The USPTO, on its website, will specify the number of petitions filed and the number of petitions granted under the pilot program.

FOR FURTHER INFORMATION CONTACT: For questions or comments regarding this pilot program, please contact Susy Tsang-Foster, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571-272-7711; or Brannon Smith, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571-270-1601; or SPARKprogram@uspto.gov. For questions on electronic filing, please contact the Patent Electronic Business Center (EBC) at 866-217-9197 (during its operating hours of 9 a.m. to 8 p.m. ET, Monday-Friday) or ebc@uspto.gov. For questions related to a particular petition requesting expedited examination of an application, please contact the Office of Petitions at 571-272-3282. For questions related to a particular petition requesting expedited *ex parte* appeal of an application, please contact the Patent Trial and Appeal Board at 571-272-9797.

SUPPLEMENTARY INFORMATION: The USPTO is launching the Standards Participation and Representation Kudos (SPARK) Pilot Program to incentivize meaningful participation in standards development organizations (SDOs) by U.S. small and medium-sized businesses, universities, and non-profit organizations. Technical standards are a key component of the innovation ecosystem—from telecommunications and artificial intelligence to manufacturing and cybersecurity—and American leadership in standards development is essential to innovation, competitiveness, and national security. Small and medium-sized businesses, universities, and non-profit organizations bring critical expertise and innovative thinking to standards development. However, resource constraints often prevent smaller U.S. entities from meaningfully participating in SDOs, where standards are developed that can determine market access and shape the competitive landscape. The SPARK program helps to lessen these constraints by offering expedited examination for applications and expedited appeals to the

PTAB to certain U.S.-domiciled juristic applicants that have made technical contributions to or otherwise meaningfully participated in SDO activities. The application or appeal being expedited under the program does not need to be related to the SDO participation.

The initial design of the pilot program envisioned a two-step process for eligible applicants to receive expedited examination of patent applications or appeals to the PTAB. *See Press Release, USPTO to launch SPARK Pilot Program to strengthen U.S. standards development leadership* (January 13, 2026), www.uspto.gov/about-us/news-updates/uspto-launch-spark-pilot-program. The first step offered redeemable certificates for expedited examinations or appeals if participants met certain requirements, and the second step allowed successful participants to redeem these certificates to expedite an examination or appeal before the USPTO. The program has been redesigned as a one-step petition process to enable eligible participants to immediately request expedited examinations and appeals. Earlier review of patent applications and appeals offered under the program to eligible participants provides additional tangible value for the time and resources invested in standards development.

New patent applications ordinarily are taken up for examination in the order of their U.S. filing date or national stage entry date (*see* sections 708 and 1893.03(b) of the Manual of Patent Examining Procedure (MPEP) (9th Edition, Rev. 01.2024, November 2024)), and appeals to the PTAB are normally taken up for decision in the order in which they are docketed (*see* USPTO Standard Operating Procedure 1 (June 12, 2024), available at www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/resources). The USPTO has procedures to advance out of turn, that is, accord special status to, the examination of a utility application, provided that the applicant files (1) a petition to make special, or (2) a request for prioritized examination. *See* 37 CFR 1.102 and *Discontinuation of the Accelerated Examination Program for Utility Applications*, 90 FR 24324 (June 10, 2025) (final rule). A small number of appeals are advanced out of turn due to a special status accorded to the application throughout prosecution without the need to separately petition the PTAB for special status. For example, appeals in

reexamination proceedings and reissue applications are treated as special because reexamination proceedings are handled by the USPTO with “special dispatch,” and reissue applications are treated as special throughout their pendency. *See* Section 708.01 of the MPEP. Applications that have been “made special” during examination through a petition based on the age or health of the inventor or a joint inventor, or for other reasons listed in 37 CFR 1.102 (a)-(d), also maintain their special status through any appeal. *See* MPEP 1203(II). Furthermore, for the same reasons, an appellant may also petition the PTAB to have an application on appeal made special. *See id.*

In order for an applicant to participate in the program, the applicant must file a petition under the program and meet all the requirements detailed in Part I of this notice. To expedite examination under this program, the applicant must file a petition to make special under 37 CFR 1.102(d) in an original (non-reissue) nonprovisional utility application using form PTO/SB/479a (see Part I.F. below). Applications accepted into the program will be advanced out of turn, that is, accorded special status, until a first Office action under 35 U.S.C. 132 (hereinafter “first Office action”), which may be a written restriction requirement, is issued. After the first Office action, the application will no longer be treated as special during examination. To expedite an appeal under this program, the appellant must file a petition under 37 CFR 41.3 in an original (non-reissue) nonprovisional utility application under appeal using form PTO/SB/479b (see Part I.F. below). Appeals accepted in the program will be taken out of turn for assignment to a PTAB panel. Based on the special procedure specified in this notice, the petition fee requirements of 37 CFR 41.3 and 37 CFR 1.102(d) are hereby waived. No petition fees are required to file a petition requesting participation in the program. In addition, all of the other requirements for a petition under 37 CFR 1.102(d) as set forth in MPEP 708.02(a) are also waived by this program.

I. Requirements to Participate in the SPARK Pilot Program

The application or appeal and the petition must meet the following requirements.

A. Applicant Eligibility

To qualify for this program, the applicant must meet the following requirements as of the

date the petition under the program is filed. The term “applicant” is inclusive of applicants and appellants throughout this notice.

i. Small Entity Qualifications

The applicant must be a juristic entity (for example, an organizational assignee) and must certify in the petition that it is a small business concern or a nonprofit organization (including a university or other institution of higher education) and that it qualifies as a small entity under 37 CFR 1.27 at the time of filing the petition under the program. The petition must also certify that the application is in a discounted fee status, that is, the applicant has already asserted small entity status or certified micro entity status.

The term “small business concern” is defined under section 3 of the Small Business Act. For purposes of USPTO fee discounts and this program, a small business concern must satisfy the requirements of 37 CFR 1.27(a)(2) including the size standards set forth in the Small Business Administration (SBA) rules 13 CFR 121.801 through 121.805. These SBA rules require, *inter alia*, that the concern’s “number of employees, including affiliates, does not exceed 500 persons.” In this regard, SBA rules 13 CFR 121.103 and 121.106 set forth how affiliation is determined and how to calculate the number of employees. Questions relating to standards for a small business concern may be directed to the Small Business Administration, Office of Size Standards, 409 Third Street, S.W., Washington, DC 20416, or by telephone at (202) 205-6618, or by email at sizestandards@sba.gov.

The term “nonprofit organization” is defined in 37 CFR 1.27(a)(3), and includes universities and other institutions of higher education, organizations of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), and nonprofit scientific or educational organizations qualified under a State nonprofit organization statute. For more information about nonprofit organizations for purposes of USPTO fee discounts and this program, see section 509.02, subsection III, of the MPEP.

If the juristic applicant has established either small entity status or micro entity status in the application at the time the petition is filed, then the applicant has met the small entity qualification. In order to qualify for micro entity status, an applicant must necessarily qualify for small entity status. See 37 CFR 1.29 and MPEP 509.04 for information on establishing micro entity status.

ii. Domicile Requirement

The applicant must be domiciled in the United States or its territories and must make this certification in the petition. For purposes of this program, the domicile of a juristic applicant is the principal place of business of the applicant. The domicile of a juristic applicant will normally be determined based on the mailing address made of record that was provided in the Applicant Information section of the Application Data Sheet (ADS). If the mailing address of record is not the applicant's principal place of business, applicant should file a corrected ADS to update the mailing address to match its domicile no later than the date the petition under the pilot program is filed.

iii. Application Must Name a Single Juristic Entity as the Applicant

Since the expedited examination of the application or appeal is based on a single juristic entity's meaningful participation in SDO activities in developing a technical standard, the application must name a single juristic entity as the applicant. If more than one juristic entity is named as the applicant or if a juristic entity and an individual are named as the applicant, the application is not eligible for this program. For example, an application naming Company A and University B as the applicant is not eligible for the pilot program. Similarly, an application naming Company A and Inventor X as the applicant is not eligible for the pilot program.

B. SDO-Related Requirements for Meaningful Participation in an SDO

i. Voluntary Consensus-Based SDOs

The applicant must certify in the petition that it meaningfully participated (as explained below in Part I.B.iii.) in developing a technical standard with a voluntary consensus-based SDO.

Voluntary consensus-based SDOs facilitate broad representation in the standards setting process by being open to all interested stakeholders. Non-exhaustive examples of voluntary consensus-based SDOs include SDOs accredited by the American National Standards Institute or international SDOs operating under the principles of openness, balance, due process, and an appeals process. Furthermore, the United States promotes voluntary consensus-based standards. See, for example, 15 U.S.C. 272(b)(3), which, in discussing the functions of the National Institute of Standards and Technology (NIST), emphasizes “where possible the use of standards developed by private, consensus organizations.” See also OMB Circular A-119 (revised 2016) at www.nist.gov/standardsgov/key-federal-law-and-policy-documents-ntta-omb-119.

ii. Identification of the Technical Standard

The technical standard must be completely identified in the petition. The technical standard should be identified by including its alpha-numeric designation along with its title in the space provided in the petition form (form PTO/SB/479a or form PTO/SB/479b). Typically, the format for identifying a technical standard includes a prefix containing the acronym of the SDO(s) (the prefix may also contain other acronyms about the standard or its status) followed by the unique identifier for the standard (which is usually numeric but can be alpha-numeric), the year of its publication, and the title of the standard. If the SDO does not have an acronym, the applicant should provide the full name of the SDO before the unique identifier. The following is an example of how the technical standard should be identified in the petition form: ISO/IEC 42001:2023 Information technology – Artificial intelligence – Management system. This example is a joint standard developed by the SDOs ISO and IEC as indicated by the prefix ISO/IEC. The unique identifier is 42001 (also referred to as the standard number), its publication year is 2023 (some SDOs use a hyphen instead of a colon between the unique identifier and the publication year), and the title of the standard is “Information technology – Artificial intelligence – Management system.”

If the technical standard is a new standard currently under development, the applicant should indicate “202x” for the publication year. If a permanent unique identifier for the standard has not been assigned for the new standard currently under development, the applicant should list the temporary identifier assigned by the SDO. For example, if the new technical standard is currently under development and is unpublished, the technical standard should be identified as “[prefix containing acronym for SDO(s)] XXXXXX-202x [title]” where XXXXXX is the temporary identifier assigned by the SDO.

If the technical standard under development is a revision of an existing standard, the applicant should provide the technical standard being revised in parentheses immediately after identifying the standard under development on the petition form. The applicant should indicate on the petition form the alpha-numeric designation of the existing standard being revised in parentheses as follows: (*revision of* [prefix containing acronym for SDO(s)] [unique identifier] [year of publication]).

iii. Meaningful Participation with a Voluntary Consensus-Based SDO

The applicant must certify in the petition that it meaningfully participated in developing the technical standard identified in the petition with a voluntary consensus-based SDO. For the purposes of this pilot program, meaningful participation with a voluntary consensus-based SDO in developing the technical standard means completing 40 or more hours of active participation with the voluntary consensus-based SDO. Non-limiting examples of active participation with a voluntary consensus-based SDO include drafting and submitting proposals or technical contributions, participating in a working group or technical committee, and providing public comments on a draft technical standard. The meaningful participation must have taken place on or after January 13, 2026, which is the date that the pilot program was first announced.

C. Eligible Applications and Appeals

The pilot program is available for original (non-reissue) nonprovisional utility applications filed under 35 U.S.C. 111(a) and any *ex parte* appeals of these applications.

Applications entering the national stage under the Patent Cooperation Treaty (PCT) as set forth in 35 U.S.C. 371 are not eligible for this program.

To be eligible for expedited examination under the program, the application must not have been previously granted special status under any other program. For example, if an application was previously granted special status under prioritized examination as provided for in 37 CFR 1.102(e) (also known as Track One), the application will not be eligible for expedited examination under this program. Similarly, the application will not be eligible for expedited examination under this program if it received special status due to the age or health of the inventor or a joint inventor. To be eligible for expedited appeal to the PTAB under this program, the appeal must not be currently granted special status under any program. If an appeal of the application is currently under special status due to the age or health of the inventor or a joint inventor or the appeal is currently subject to any other pilot program that advances the appeal out of turn (for example, the Fast-Track Appeals Pilot Program), the appeal would not be eligible for this pilot program. See MPEP 708.01 for a complete list of cases that are treated as special during appeal. Special status previously granted to an application does not bar expedited appeal of that application under this program if the application is currently not under special status when on appeal to the PTAB.

D. Claim Limits and No Multiple Dependent Claims

The application must contain no more than three independent claims and no more than 20 total claims (“program claim limits”) and must not contain any multiple dependent claims. If an application exceeds three independent claims or 20 total claims, or if it contains any multiple dependent claims, the applicant should file a preliminary amendment in compliance with 37 CFR 1.121 (for petitions to expedite examination of an application) or an amendment in compliance with 37 CFR 41.33 (for petitions to expedite an appeal) to cancel any excess claims or multiple dependent claims no later than the date the petition under the pilot program is filed. Any

amendment to the claims submitted after the filing date of the petition will not be considered in deciding the petition.

After an application has been granted special status under the pilot program, any amendment that does not comply with the program claim limits or adds a multiple dependent claim is not permitted. The examiner may refuse entry of any amendment filed in reply to an Office action that, if entered, would result in a set of pending claims that exceeds the program claim limits or adds a multiple dependent claim. See Part III.A. of this notice.

The petition to expedite examination must include a statement that applicant agrees not to present an amendment with more than three independent claims, more than 20 total claims, or a multiple dependent claim during the remainder of prosecution if the application is accepted into the program. Form PTO/SB/479a contains the required statement.

E. Petition Filing Limit and Only One Granted Petition Per Technical Standard

The applicant must certify in the petition that (1) it has not submitted any other petition under this program based on the same technical standard identified in the petition that either was granted or is currently undecided, and (2) it has not submitted more than two other petitions under this program. In other words, no more than one petition under the program based on applicant's participation in developing the same technical standard may be granted or be currently undecided, and the applicant may file no more than three petitions under the program, which includes petitions that are currently undecided, granted, or dismissed.

For purposes of this pilot, a revised standard is not the "same technical standard" as an earlier version of the standard. Furthermore, the applicant may have up to two petitions granted under the program in the same application that are based on its meaningful participation for different technical standards (that is, a first petition to expedite examination based on its meaningful participation in developing technical standard TS1, and a second petition to expedite an appeal in the same application based on its meaningful participation in developing a second technical standard TS2).

The following examples illustrate the petition filing limit of three petitions under the program (both petitions to expedite examination and petitions to expedite appeals under this pilot program count towards this limit) and the prohibition of more than one granted petition based on the same technical standard.

- Company A, named as the applicant on the application, files a first petition to expedite examination under the program based on its meaningful participation in developing technical standard TS1. It should not file any other petition under the program based on technical standard TS1, including a petition under the program to expedite examination of another application or a petition to expedite the appeal in the same application or in another application. Company A may file another petition based on its meaningful participation in developing standard TS2 to expedite examination in another application and another petition based on its meaningful participation in developing standard TS3 to expedite an appeal in an application. If Company A files a fourth petition under the program based on its meaningful participation in developing standard TS4 to either expedite examination of an application or an appeal, the petition will be dismissed because Company A has already filed three petitions under the program.
- Company B, named as the applicant on the application, files three petitions—one based on the technical standard TS1 and two based on the technical standard TS2. Only two of the petitions based on technical standards TS1 and TS2 may be granted and the third petition based on technical standard TS2 will be dismissed because another petition based on the same technical standard was granted. If Company B files a fourth petition based on technical standard TS3, the petition will be dismissed because Company B has already filed three petitions under the program.

F. Petition Requirements

i. USPTO Form Required for Filing Petition

To request expedited examination under this pilot program, an applicant must file a petition to make special under 37 CFR 1.102(d) using USPTO form PTO/SB/479a, titled “CERTIFICATION AND PETITION TO MAKE SPECIAL UNDER THE STANDARDS PARTICIPATION AND REPRESENTATION KUDOS (SPARK) PILOT PROGRAM TO EXPEDITE EXAMINATION OF AN APPLICATION” (available at www.uspto.gov/PatentForms).

To request expedited appeal under this pilot program, appellant must file a petition under 37 CFR 41.3 using USPTO form PTO/SB/479b, titled “CERTIFICATION AND PETITION UNDER THE STANDARDS PARTICIPATION AND REPRESENTATION KUDOS (SPARK) PILOT PROGRAM TO EXPEDITE AN APPEAL TO THE PATENT TRIAL AND APPEAL BOARD (PTAB)” (available at www.uspto.gov/PatentForms). The petition under 37 CFR 41.3 must identify the application and appeal by application number and appeal number, respectively.

The USPTO forms PTO/SB/479a and PTO/SB/479b contain all the certification statements required to participate in the pilot program. Use of the USPTO forms will enable the USPTO to quickly identify and timely process the petitions. In addition, use of the USPTO forms will help applicants understand and comply with the petition requirements of the pilot program. The USPTO has submitted change worksheets to the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

ii. Electronic Filing of the Petition Required

The petition requesting expedited examination under the program may only be made by filing form PTO/SB/479a, which must be filed electronically using the USPTO patent electronic filing system, which is currently Patent Center (at www.uspto.gov/PatentCenter). Applicants must file the petition using the document description “Petition to make application special under the SPARK pilot.”

The petition requesting expedited appeal to the PTAB under the program may only be made by filing form PTO/SB/479b, which must be filed electronically using the USPTO’s Patent

Center. Appellants must file the petition using the document description “Petition to expedite an appeal under the SPARK pilot and Rule 41.3.”

iii. Time for Filing the Petition Under the Program

The petition to request expedited examination using USPTO form PTO/SB/479a must be filed before a first Office action, including an action containing only a written restriction requirement, is issued in the application. An applicant should not file a petition to make special under the pilot program in an application that is already docketed to an examiner. Because preparing a first Office action may begin soon after an application is docketed to an examiner, the USPTO will generally dismiss a petition under the pilot program if the application has already been docketed to a particular examiner in a Technology Center at the time the petition is taken up for decision.

The petition to request expedited appeal to the PTAB using USPTO form PTO/SB/479b must be filed between (1) the date when the PTAB issues a notice that the appeal has been docketed to the PTAB, and (2) the date at which the appellant withdraws the appeal, a final decision is rendered by the PTAB under 37 CFR 41.50, or PTAB jurisdiction ends under 37 CFR 41.35. Petitions may be filed for *ex parte* appeals regardless of whether the appeal is newly docketed or was previously docketed.

iv. Signature Requirements for the Petition

Juristic applicants must be represented by a patent practitioner. *See* 37 CFR 1.31. The petition for the program must be properly signed by a registered patent practitioner in accordance with 37 CFR 1.33(b) and 11.18.

G. Limits on the Number of Petitions Granted Under the Pilot Program

The limits on the number of petitions granted under the program include both the petitions granted to expedite examination and petitions granted to expedite an appeal to the PTAB. The number of petitions granted under the program is limited to 50 granted petitions per quarter, and a total of 200 granted petitions. In addition, no more than 50 petitions may be

granted to expedite appeals under the program, and no more than 50 petitions may be granted to expedite examination under the program for each Technology Center (TC) that examines utility applications. Once a quota for a quarter or for the program is reached, the remaining petitions, even those filed in new applications undergoing pre-examination processing, will generally be dismissed. The start and end dates for each quarter will be posted on the program webpage, and each quarter will span approximately three months. Before filing a petition under the program, applicant should check the program webpage to see whether the PTAB, TC, and quarterly petition grant limits have been reached.

II. Handling of Petitions Under the Pilot Program

A. Petitions Filed To Expedite Examination of an Application

If the applicant files a petition to expedite examination under the pilot program, the USPTO will usually decide the petition in the order received. A petition to expedite examination under this program is grantable only during the time period after the application has completed pre-examination processing and before a first Office action is issued. If the petition is granted, the application will be accorded special status under the pilot program. The application will be placed on an examiner's special docket until the first Office action (which may be a written restriction requirement) is issued. After the first Office action, the application will no longer be treated as special during examination. For example, if an amendment is filed in response to a first Office action, it will be placed on the examiner's regular amended docket.

Meeting the requirements in Part I of this notice will not ensure acceptance of the application into the pilot program. The USPTO will generally dismiss a petition under the pilot program to expedite examination if the application has already been docketed to an examiner in a Technology Center at the time the petition is being reviewed for decision or if a program quota as set forth in Part I.G. of this notice has been reached. If the petition to expedite examination under the pilot program does not comply with the requirements set forth in this notice, the applicant will be notified by a decision dismissing the petition. In view of the limited duration of

the pilot program and the limited number of applications being accepted into the pilot program, an applicant will not have an opportunity to correct deficiencies in the petition after a petition is dismissed on the merits. However, if a petition was dismissed solely because a quota was reached, that is, the petition was not dismissed on the merits, then applicant may file another petition to expedite examination under the pilot program in the same application during the next quarter of the program but both of these filings count towards applicant's petition filing limit.

B. Petitions Filed To Expedite an Appeal to the PTAB

Petitions to expedite an appeal under this program will be decided in the order they are received. Meeting the requirements in Part I of this notice will not ensure acceptance of an appeal into the pilot program. The USPTO will generally dismiss a petition to expedite an appeal under the program if a program quota as set forth in Part I.G. of this notice has been reached. Petitions meeting the requirements listed above for entry into the pilot program including program quota limits will be granted, and the appellant will be notified by a decision granting the petition of the special status accorded to the appeal. Petitions not meeting the requirements will be dismissed, and the appellant will be notified by a decision dismissing the petition. In view of the limited duration of the pilot program and the limited number of appeals being accepted into the pilot program, an appellant will not have an opportunity to correct deficiencies in the petition after a petition is dismissed on the merits. However, if a petition was dismissed because a quota was reached, then appellant may file another petition to expedite an appeal under this program in the same application under appeal during the next quarter of the program, but both of these filings count towards appellant's petition filing limit.

III. Prosecution of the Application Granted Special Status Under the Pilot Program

A. Replies by the Applicant Under the Pilot Program

The time periods set for reply in Office actions for an application granted special status under the pilot program will be the same as those set forth in section 710.02(b) of the MPEP. A reply to an Office action must be fully responsive to the rejections, objections, and requirements

made by the examiner. Any amendment filed in reply to an Office action may be treated as not fully responsive if it attempts to: (1) add claims that would result in more than three independent claims or more than 20 total claims pending in the application; or (2) add any multiple dependent claim(s).

If a reply to a non-final Office action is not fully responsive for failing to comply with the pilot program's claim requirements but is a bona fide attempt to advance the application to final action, the examiner may, at the examiner's discretion, issue a Notice of Non-Responsive Amendment and provide a shortened statutory period of two months for the applicant to supply a fully responsive reply. Extensions of this time period under 37 CFR 1.136(a) to the Notice of Non-Responsive Amendment will be permitted, but in no case can any extension carry the date for reply to this notice beyond the maximum period of six months set by statute (35 U.S.C. 133). However, any further non-responsive amendment typically will not be treated as bona fide, and as such, the time period set in the prior notice will continue to run.

B. After-Final and Appeal Procedures

Any amendment, affidavit, or other evidence after a final Office action and prior to appeal must comply with 37 CFR 1.116. During the appeal process, the application will be treated in accordance with the normal appeal procedure (*see* MPEP Chapter 1200) unless the appeal is granted special status under this program or another program.

C. Application Cannot Be Withdrawn From the Pilot Program

There is no provision to withdraw an application undergoing expedited examination from the pilot program. An applicant may abandon an application that has been granted special status under the pilot program in favor of a continuing application. A continuing application will not be granted special status based on the petition filed in the parent application. Each application (including each continuing application) must, on its own merit, meet all requirements for special status under the pilot program, and be accompanied by its own petition as detailed in Part I above.

IV. Conduct of Appeals Accepted into the Pilot Program

A. Hearings

A petition to participate in the pilot program may be filed for *ex parte* appeals in which the appellant seeks an oral hearing before the PTAB, that is, “heard” appeals, as well as those appeals for which no oral hearing is requested, that is, “on-brief” appeals. Hearings in *ex parte* appeals accorded special status under the pilot program will be conducted according to the standard PTAB hearing procedures. Appellants seeking an oral hearing should submit, along with the request for oral hearing, any preferences as to the time, date, or location of the hearing. The PTAB will make best efforts to schedule a hearing in accordance with such preferences. If the PTAB is unable to accommodate an appellant’s preferences, it will schedule the hearing in an available hearing room at any office, including a regional office. An appellant may waive the hearing and continue under the pilot program for consideration and decision on the briefs. An appellant may not reschedule the date or time of a hearing and remain in the pilot program. If an appellant in an *ex parte* appeal accorded expedited status must reschedule the date or time of a hearing and is not willing to waive the oral hearing, then the appellant may opt out of the pilot program, thereby regaining the ability to reschedule or relocate the hearing as per standard PTAB hearing procedures.

B. Termination of Expedited Status of Appeal

Under the pilot program, special status will be maintained in an *ex parte* appeal from the date the petition for inclusion in the pilot program is granted until the PTAB’s jurisdiction ends under 37 CFR 41.35(b). Activities subsequent to an appellant’s withdrawal from the pilot program or the PTAB’s decision, including any reopened prosecution, will not be treated as subject to expedited status, nor will filing a petition to expedite an appeal under the pilot program cause an application to be accorded expedited status outside the jurisdiction of the PTAB. Additionally, any request by an appellant causing a delay in the conduct of the appeal, such as for an extension of time under 37 CFR 1.136(b) or for additional briefing, will be cause

for removal of expedited status.

John A. Squires,

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

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