

## Fast Tracking Your Ex Parte Patent Appeals May Be Appealing: United States Patent & Trademark Office (USPTO) Announces New Pilot Program

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**PRACTICES** Intellectual Property, Patents, Patent Prosecution and Counseling

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Starting July 2, 2020, *ex parte* appeals to the Patent Trial and Appeal Board (PTAB) can be expedited under the new Fast-Track Appeals Pilot Program. It currently takes approximately 15 months for the PTAB on a typical appeal when decisions are issued in the order that the appeals are docketed, and this delay is often longer for certain technology centers. The new Pilot Program advances an appeal out of turn, and guarantees that the PTAB will issue a decision within 6 months of the appeal's entry into the program.

*Ex parte* appeals are available to patent applicants whose claims have been twice rejected during examination, which typically happens when an examiner issues a final rejection. Such appeal requires that the applicant file a Notice of Appeal and Brief on Appeal, as well as pay the Notice of Appeal fee and pay the appeal forwarding fee after the Examiner's Answer is issued. The applicant also has the option to file a reply brief after the Examiner's Answer, which is particularly useful when the Examiner raises new issues at this late stage. The PTAB obtains jurisdiction over the appeal once any reply brief is filed and the appeal forwarding fee is paid, or the time period to file the reply brief expires. The appeal is then docketed, and the PTAB issues an appeal docketing notice.

Appeals can be fast-tracked under the Pilot Program once the appeal docketing notice has been issued, and entry into the Pilot Program requires a separate \$400 fee and a petition that the USPTO recommends be electronically filed. Fast-track appeals are available only in original non-provisional applications (utility, design, and plant), excluding reissue applications and reexamination proceedings.

Oral hearings may be conducted in fast-track appeals under the PTAB's normal procedures. Unlike other appeals, however, the date, time, and office location of the oral hearing in a fast-track appeal cannot be changed. This could pose a concern during pandemic travel restrictions, but alternatively, the oral hearing can be held by videoconference or telephone.

The USPTO will allow 125 appeals to be fast-tracked every three months, and the Pilot Program will run until the earlier of July 2, 2021, or once 500 appeals have entered, with the USPTO authorized to exercise its discretion to modify, terminate, or extend the Pilot Program.

The Pilot Program may be an appealing option for patent applicants interested in accelerating patent protection on valuable commercial inventions. The Pilot Program complements the existing Track One Prioritized Examination Program by offering expedited review from the second rejection of the claims up through the PTAB's review of an appeal.

Additional information about the Pilot Program can be found on the USPTO's website [here](#).