

Strategies to Consider with USPTO's New Fast-Track Examination Pilot Program

January 7, 2026 Kalyani Joshi, Jeffrey Morton

PRACTICES Patents, Patent Prosecution and Counseling, Intellectual Property

On Oct. 27, 2025, the U.S. Patent and Trademark Office (USPTO) announced it is offering a [Streamlined Claim Set Pilot Program](#) in an effort to further accelerate examination of currently pending applications with a limited number of claims. This Pilot Program supplements the Track One program, which remains in place.

To qualify, a patent applicant must file a timely petition to make special under this new Pilot Program. Based on the limited information in the Federal Register Notice that announced the Pilot Program, there are some unanswered questions about the Pilot Program, but the essentials are as follows:

- The applicant must have filed an original (non-reissue), noncontinuing utility application before Oct. 27, 2025. Importantly, national stage applications filed under 35 U.S.C. § 371 are not eligible.
- A petition to make special must be filed prior to the issuance of a first office action (which includes a written restriction requirement). As noted in the Federal Register Notice, the USPTO will generally dismiss petitions filed after the application has been docketed to an examiner at the time the petition is up for decision.
- The application must contain no more than one (1) independent claim, and no more than ten (10) total claims. A preliminary amendment may be filed before or with the petition to qualify for the Pilot Program.
- The application cannot contain multiple dependent claims, and the dependent claims must be directed to the same statutory class of invention as the independent claim.
- No inventor/joint inventor can be named as the inventor/joint inventor on more than three (3) other nonprovisional patent applications in which a petition under this Pilot Program has been filed.
- Any non-publication request must be rescinded.

The Pilot Program will accept petitions through Oct. 27, 2026, or until each Technology Center that examines utility applications has docketed at least 200 applications into the Pilot Program. The petition to make special must be filed with a \$150 fee (\$60 for small entities).

Applications accepted by the USPTO into the Pilot Program will receive expedited examination for the first office action only; after the first office action (including any written restriction requirement), the application will return into the examiner's regular docket. The agency may consider as non-responsive any later amendments that violate the Pilot Program's claim limits or dependency format.

Comparison to the Track One Prioritized Examination Program

While both the Pilot Program and the Track One Prioritized Examination Program (Track One) offer avenues for expedited examination, there are a few key differences of note between these

programs.

Notably, Track One has broader eligibility requirements. It accepts a maximum of four independent claims, 30 total claims and no multiple dependent claims at the time the USPTO reviews the request to participate in the Track One program. Furthermore, Track One accepts original, non-provisional utility and plant patent applications – including, for example, continuation applications that are not eligible for the new Pilot Program.

While the fees for the Track One are significantly higher (currently \$4,515 for a large entity; \$1,806 for a small entity), an application receives prioritized examination during the full course of prosecution under Track One – unlike the Pilot Program, which offers a faster examination speed through the first office action only.

Strategic Considerations

The Pilot Program may prove to be useful for a patent applicant that has a smaller budget, a focused claim set and would benefit from an expedited patent prosecution.

Startups or smaller companies may benefit from rapid allowance through the Pilot Program for an application meant to prove up or launch new products, help raise capital by spurring investor confidence or to get patent protection ahead of various licensing agreements. While Track One offers fully expedited examination, the Pilot Program provides a lower cost option to applicants that:

1. May not have the resources to file under Track One; or
2. Are operating in the early stages of a new market and may not see the value of expediting examination past the first office action.

Applicants should consider whether filing under the Pilot Program may be sufficient for a lead embodiment – for example, for a life science company, a lead compound. Expedited allowance of that lead embodiment, followed by continuation application filings for the remaining (and potentially broader) embodiments may be an ideal avenue to rapid commercialization of lead products, while still maintaining patent protection for other embodiments and the ability to delay prosecution if needed. The slower examination rate of the Pilot Program relative to the Track One may also be ideal for applicants looking for initial feedback from the USPTO while maintaining sufficient time to craft a broader patent family through such continuation applications for other embodiments.

Though the Pilot Program is limited to applications filed before Oct. 27, 2025, because applicants may file a preliminary amendment to present an eligible claim set under the Pilot Program, applicants should carefully review their pending applications to identify potential embodiments that may benefit from review under the Pilot Program, as well as fallback embodiments in the application to pursue later in prosecution.