

## Track Three Pilot Program

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**PRACTICES** Intellectual Property, Patents, Patent Office Trials

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On May 26, 2023, the United States Patent and Trademark Office (USPTO) announced it would be taking public comments on a proposed Track Three Pilot Program.<sup>1</sup> This program, if enacted, would permit micro entity applicants to delay payment of the search fee and the examination fee for 30 months from the earliest filing date claimed, if additional requirements are satisfied.<sup>2</sup>

A micro entity applicant is an application that meets the criteria of a small entity, has not been listed on more than four previously filed applications, and qualifies for the gross income or a higher education basis.<sup>3</sup> The gross income basis states that the applicant's gross income for the previous year cannot exceed three times the median household income for that year.<sup>4</sup> The higher education basis states a micro entity can include an applicant if their employer is an institution of higher education or the applicant has assigned, granted, or conveyed a license or other ownership interest to an institution of higher education.<sup>5</sup>

In order to apply for the program, applicants would need to

1. Properly establish micro entity status,
2. File a non-provisional utility or plant application during the term of the pilot program that is in condition for publication,
3. Submit a request to participate in the program, and
4. Pay the basic patent filing fee only (i.e., the search fee and examination fee have not been paid).<sup>6</sup>

In addition, the application cannot claim priority or benefit to any other prior-filed application, other than a provisional application.<sup>7</sup> Also, the applicant cannot have submitted a nonpublication request.<sup>8</sup>

The USPTO is also considering allowing micro entity applicants to receive a pre-examination search report prior to the deadline for the payment of the examination fee.<sup>9</sup> This will give applicants additional information potentially useful for commercialization and valuation of the invention.<sup>10</sup> This pre-examination search report would also provide micro entity applicants a cost-effective early glimpse into potential patentability issues and possible amendments in much the same way an International Search Report in a PCT application does.

The USPTO will continue to receive comments about this program, and the proposed pre-examination search report addition, until July 25, 2023. Although this program may not have broad applicability, the USPTO hopes this program will lower the barrier to patent protection and reinforce the Office's goal of "the best and most accessible intellectual property system in the world."<sup>11</sup>

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<sup>1</sup> *Request for Comments on a Proposed Track Three Pilot Program With a Pre-Examination Search Option*, THE DAILY JOURNAL OF THE UNITED STATES GOVERNMENT (May 26, 2023), [https://www.federalregister.gov/documents/2023/05/26/2023-11349/request-for-comments-on-a-proposed-track-three-pilot-program-with-a-pre-examination-search-option?utm\\_campaign=subscriptioncenter&utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www.federalregister.gov/documents/2023/05/26/2023-11349/request-for-comments-on-a-proposed-track-three-pilot-program-with-a-pre-examination-search-option?utm_campaign=subscriptioncenter&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

<sup>2</sup> *Id.*

<sup>3</sup> 35 U.S.C. § 123(a)-(d).

<sup>4</sup> *Id.* at 123(a)(3).

<sup>5</sup> *Id.* at 123(d)(1)-(2).

<sup>6</sup> *Request for Comments on a Proposed Track Three Pilot Program With a Pre-Examination Search Option*, THE DAILY JOURNAL OF THE UNITED STATES GOVERNMENT (May 26, 2023), [https://www.federalregister.gov/documents/2023/05/26/2023-11349/request-for-comments-on-a-proposed-track-three-pilot-program-with-a-pre-examination-search-option?utm\\_campaign=subscriptioncenter&utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www.federalregister.gov/documents/2023/05/26/2023-11349/request-for-comments-on-a-proposed-track-three-pilot-program-with-a-pre-examination-search-option?utm_campaign=subscriptioncenter&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*