

# USPTO Announces Fast-Track Appeals Pilot Program

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On July 1, 2020, the United States Patent and Trademark Office (USPTO) announced a new program to expedite *ex parte* appeals before the Patent Trial and Appeal Board (PTAB). Under the "Fast-Track Appeals Pilot Program," appellants can petition to have their appeals advanced out of turn and decided in a prioritized fashion. Indeed, once such a petition is granted, the USPTO has tasked the PTAB with issuing a decision within six months, which is significantly quicker than the current average pendency period of about 14 months for *ex parte* appeals. In recent years, some appeals have taken two to three years to be decided, so this Pilot Program is likely to provide a great benefit to patent applicants seeking to speed up patentability determinations for important inventions.

The Pilot Program launched on July 2, 2020, and is expected to run for one fiscal year. An eligible appellant can file a petition to request fast-track review of an *ex parte* appeal and pay a \$400 petition fee. To qualify for fast-track status under the Pilot Program, the application must be an original utility, design, or plant nonprovisional application and an *ex parte* appeal must already be pending before the PTAB (i.e., a notice of appeal has been filed and a PTAB docketing notice has been issued) when the petition is filed. If the appellant's petition is granted, the appeal, including an oral hearing, will be expedited. However, once scheduled, hearings will not be rescheduled or relocated.

The USPTO has limited the number of granted petitions to 125 per quarter (three months), for a maximum of 500 petitions for the duration of the Pilot Program. These thresholds were selected to encourage participation in the Pilot Program without compromising the PTAB's ability to handle other pending appeals in a timely manner. If the number of petitions filed within a quarter exceeds the limit, excess petitions will be held in abeyance and decided, in order of receipt, in the subsequent quarter. However, the PTAB may exercise discretion to grant a small number of petitions above the 125-petition limit in a quarter.

The USPTO will evaluate the Pilot Program at the conclusion of its one-year period, or once the 500-appeal threshold is met, to determine if the Program should be made permanent. At that time, the USPTO will consider any changes that may be needed to provide a sustainable mechanism for advancing appeals out of turn without adversely affecting the pendency of other appeals before the PTAB. Similarly, if the Pilot Program is not sufficiently used, it may be modified or terminated.



Public Notice of the USPTO's Fast-Track Appeals Pilot Program, and more specific details on the program are provided here.

Lathrop GPM's IP Practice Group can help navigate through the USPTO's resources to ensure that your rights are properly secured and fully protected. For more information, please contact Tucker Griffith or your Lathrop GPM contact.