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The USPTO's COVID-19 Prioritized Examination Pilot Program

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On May 14, 2020, the United States Patent and Trademark Office (USPTO) began accepting requests for prioritized examination of up to 500 patent applications without requiring payment of certain fees associated with prioritized examination. Under this pilot program, the USPTO will advance out of turn certain patent applications related to COVID-19 for examination. The aim of the program is to provide final disposition of patent applications in the pilot in one year or less after prioritized status is granted. The USPTO has stated that final disposition could be achieved in six months if applicants provide more timely responses to notices and actions by the Office.

To qualify for the new program, the claims of an application must cover a product or process that is subject to U.S. Food and Drug Administration (FDA) approval for use in the prevention and/or treatment of COVID-19. In addition, the applicant must be entitled to small or micro entity status. Large entities do not qualify for this COVID program. USPTO Director Andrei Iancu noted that the new pilot program is intended to help independent inventors and small businesses, noting that "[a]ccelerating examination of COVID-19-related patent applications, without additional fees, will permit such innovators to bring important and possibly life-saving treatments to market more quickly." The Office does note that it will periodically evaluate the program to determine whether its coverage should be expanded or narrowed.

Qualifying applications must be (1) non-continuing, original, nonprovisional utility or plant patent applications filed with an acceptable request to participate in the program, (2) original, nonprovisional utility or plant applications making a benefit claim under 35 U.S.C. 120, 121, or 365(c) to one prior nonprovisional application or one prior international application designating the United States filed with an acceptable request to participate, or (3) utility or plant applications, including the national stage of a prior international application, in which an acceptable request to participate has been filed with or after a request for continued examination (RCE), if no prior RCE was granted prioritized examination status. Any application that claims the benefit of the filing date of two or more previously filed non-provisional U.S. applications or international applications designating the United States under 35 U.S.C. 120, 121, or 365(c) is not eligible for participation in this pilot, but the applicant may request prioritized examination under 37 CFR 1.102(e).

The requests must include a certification that the applicant qualifies for either small or micro entity status and an executed Application Data Sheet (ADS) meeting the requirements of 37 CFR 1.53(f)(3)(i). The requests must be filed using the USPTO patent electronic filing system (EFS-Web or Patent Center) if filing the request in a utility application. And similar to Track One prioritized application, COVID-19 pilot program applications can only contain no more than four independent claims, with a total of 30 total claims, and no multiple dependent claims.

Participation in the pilot program is not free. While the prioritized examination fee and processing fee are waived, an applicant must still pay all other fees associated with filing a patent application, such as the basic filing, search, and examination fees, in addition to any extra claim fees. If any fee is missing when the request is made, the request will be denied. Applicants are encouraged to use form PTO/SB/450, "Certification and Request for COVID-19 Prioritized Examination Pilot Program under 37 CFR 1.102(e)," to ensure that the proper certifications are made and the proper documents are filed.

As with other pilot programs, the USPTO may extend the COVID pilot program (with or without modifications) or terminate it depending on factors such as feedback from the public and the effectiveness of the program. Comments on the USPTO Notice should be sent by email to Covid19PrioritizedExamPilot@uspto.gov. To ensure comments are considered, they should be forwarded to the Office by July 13, 2020.

For more information, please contact:



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