

Patent Office Delays Track 1 Prioritized Examination Indefinitely

In a follow up to our Client Alert of April 7, 2011, the Patent and Trademark Office has delayed implementation of Prioritized Examination, also known as Track 1. Implementation was previously slated for launch on May 4th. The Office has cited a need to revise its patent examiner hiring plan in view of funding limitations. The revised hiring plan does not permit the Patent Office to hire new examiners, which effectively limits the Office's ability to meet the 12-month pendency goal for Track 1 prioritized examination.



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Client Alert

April 7, 2011

U.S. Patent and Trademark Office to Accept Prioritized Examination Requests

Effective May 4, 2011, the United States Patent and Trademark Office will begin accepting requests for prioritized examination. Prioritized examination is intended to provide final disposition of a patent application within 12 months of prioritized status being granted.

Prioritized examination can be requested for new original utility or plant non-provisional applications filed on or after May 4, 2011. Prioritized examination may be requested for a continuing application, including continuation and divisional applications, but not reissue applications. The patent application must be electronically filed and contain no more than four independent claims and 30 total claims.

The fee for filing a request for prioritized examination is set at \$4,000. The total filing fees for the application will typically be about \$5,500 for a large entity and about \$4,900 for a small entity, though a further reduction for small entities is being considered.

The Patent Office will limit the number of prioritized examination applications to a maximum of 10,000 during fiscal year 2011, which ends September 30. The Patent Office intends to evaluate the limit at the end of the fiscal year to determine what an appropriate maximum should be, if any, for future years.

Prioritized examination represents Track 1 of the Patent Office's 3-Track program announced last year. Track 2 will provide for examination under the current examination procedures, while Track 3 will permit an applicant to request a delay in docketing the patent application for examination for up to 30 months.

The 3-Track program is designed to provide applicants with greater control over when patent applications are examined. The Patent Office has decided to implement Track 1 now, while it considers revisions to other portions of the 3-Track program. Track 3 is expected to be available to applicants by September 30, 2011.

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