

Fast-Track Examination of Patent Applications under the New PCT-Patent Prosecution Highway Pilot Program

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Patent applicants can now take advantage of a new procedure that has the potential to greatly reduce the amount of time required by the U.S. Patent and Trademark Office (USPTO), the European Patent Office (EPO), or the Japan Patent Office (JPO) to issue a patent on an application. Because of the backlog of pending patent applications, examination of an application is sometimes greatly delayed, in many cases not occurring until 25 months or more after the date of filing. Under existing Patent Prosecution Highway (PPH) programs, the USPTO, EPO, and JPO have agreed to share work performed by the offices with the goal of reducing backlogs, eliminating redundant work, and generally examining applications more efficiently.

Current PPH programs allow applicants who receive a determination of patentability of an examined claim by one participating office to fast track the examination of corresponding claims in another participating office. Until recently, this program was based on work product produced only during examination of national or regional applications. Now, under the PCT-Patent Prosecution Highway (PCT-PPH) Pilot Program, applicants who have received a written opinion or an international preliminary examination report indicating novelty, inventive step, and industrial applicability of at least one claim in a Patent Cooperation Treaty (PCT) application can request a participating office to advance a corresponding national or regional application out of turn for examination. Statistics have shown that a U.S. application taking advantage of the existing PPH with the JPO will on average be examined within two to three months from filing, and will have twice the likelihood of receiving a notice of allowance compared to regularly examined applications.

To be eligible for the program, a U.S., European, or Japanese application in which substantive examination has not begun must be related to a corresponding PCT application in one of the following manners:

1. The U.S., European, or Japanese application is a national or regional phase entry of the corresponding PCT application.
2. The U.S., European, or Japanese application forms the basis for the priority claim of the corresponding PCT application.
3. The U.S., European, or Japanese application is a national or regional phase entry of a PCT application that claims priority to the corresponding PCT application.

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