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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO-P-2020-0027]

Extension and Modification of the Fast-Track Appeals Pilot Program

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is extending the Fast-Track Appeals Pilot Program, initiated on July 2, 2020, and previously extended on July 12, 2021, and October 4, 2022. The Fast-Track Appeals Pilot Program permits appellants with a docketed *ex parte* appeal before the Patent Trial and Appeal Board (PTAB or Board) to file a petition to expedite the review of the appeal. The Fast-Track Appeals Pilot Program previously set a target of reaching a decision on each *ex parte* appeal within six months from the date the appeal entered the program. Effective in this extension, the Fast-Track Appeals Pilot Program will set a target of reaching a decision on each *ex parte* appeal within four months from the date the appeal enters the program.

DATES: *Applicability Date:* May 6, 2026. *Duration:* The Fast-Track Appeals Pilot Program will run until May 6, 2028. After that date, the USPTO may temporarily or permanently extend the Fast-Track Appeals Pilot Program (with or without modification) or discontinue the program.

FOR FURTHER INFORMATION CONTACT: Megan Carlson, PTAB, by telephone at 571-272-9797 or by email at fasttrackappeals@uspto.gov.

SUPPLEMENTARY INFORMATION:

Ex parte appeals to the Board are normally taken up for decision in the order in which they are docketed. *See* USPTO Standard Operating Procedure 1, Rev. 16, Assignment of judges

to panels (June 12, 2024), available at www.uspto.gov/patents/ptab/resources. Currently, average appeal pendency is about 8.5 months, down from 15 months in 2020, and 30 months in 2015. *See* the PTAB statistics available at https://www.uspto.gov/dashboard/ptab/. A small number of *ex parte* appeals are advanced out of turn, for example, because the appealed case is a reissue application or a reexamination proceeding, or because the appealed case was accorded special status in light of an inventor's advanced age or poor health.

On July 2, 2020, the PTAB adopted, on a temporary basis, the Fast-Track Appeals Pilot Program, where appellants may have an *ex parte* appeal to the Board advanced out of turn by filing a petition under 37 CFR 41.3 and paying the petition fee specified in 37 CFR 41.20(a). *See* Fast-Track Appeals Pilot Program (85 FR 39888, July 2, 2020) (Fast-Track Notice). The PTAB extended the Fast-Track Appeals Pilot Program on July 12, 2021. *See* Extension of the Fast-Track Appeals Pilot Program (86 FR 36530, July 12, 2021) (First Extension). The PTAB again extended the Fast-Track Appeals Pilot Program on October 4, 2022. *See* Extension of the Fast-Track Appeals Pilot Program (87 FR 60135, October 4, 2022) (Second Extension). The Fast-Track Appeals Pilot Program permits appellants to accelerate the Board's decision on an *ex parte* appeal, hastening patentability determinations and the potential for commercialization of goods or services embodying those patented inventions. This helps contribute to follow-on innovation, economic growth, and job creation. The USPTO's form for the Fast-Track Appeals Pilot Program petition, Form PTO/SB/451, is available at https://www.uspto.gov/patents/apply/forms/.

The Fast-Track Notice required, among other things, that appellant(s) file a petition before July 2, 2021, to participate in the program. The Fast-Track Notice also set a maximum number of 500 appeals that may be advanced through Fast-Track petitions. The First Extension required that a petition be filed before July 2, 2022, to participate in the program. The Second Extension required that a petition be filed before July 2, 2024, to participate in the program. The First and Second Extensions removed the maximum number of 500 appeals, but they maintained

a maximum number of 125 Fast-Track petitions granted per quarter.

The Fast-Track Appeals Pilot Program is hereby extended to accept petitions for advancing *ex parte* appeals out of turn (i.e., providing "Fast-Track status") through May 6, 2028. The requirements for the program remain the same as those established in the Fast-Track Notice (*see* 85 FR 39888), with the following modifications regarding the petition limit and the target timeframe to reach a decision.

Consistent with the First and Second Extensions, there is no upper limit of 500 total granted Fast-Track petitions. However, to maintain the Board's ability to provide this faster appeal option while timely resolving other appeals, the number of granted petitions in the Fast-Track Appeals Pilot Program remains limited to 125 granted petitions per quarter. If a quarterly limit is reached, the PTAB retains the flexibility to accept additional petitions, either for consideration in that quarter or in the next quarter.

Effective in this extension, the Fast-Track Appeals Pilot Program will set a target of reaching a decision on each *ex parte* appeal within four months from the date the appeal enters the program.

Although the previous extension expired on July 2, 2024, the PTAB has been processing petitions to join the program as if the Second Extension period remained in effect. The PTAB will continue to do so under the terms provided in this notice.

The USPTO tracks the number of petitions it grants, the average time it takes to answer petitions, and the average time for the Board to render a decision on the merits of the *ex parte* appeal after a petition grant. These statistics may be viewed at www.uspto.gov/PTABFastTrack.

John A. Squires,
Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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