



ARE Patent Law Alert: U.S. Patent and Trademark Office Announces New Fast-Track Appeals Pilot Program

Author(s): Charles R. Macedo, Brian Amos, Ph.D.,

On July 2, 2020, the United States Patent and Trademark Office (USPTO) launched the Fast-Track Appeals Pilot Program, a new program designed to expedite appellate review of patent applications that have been subjected to a final rejection. The pilot sets a target for the Patent Trial and Appeal Board (PTAB) to reach a decision on ex-parte appeals within six months from the date an appeal is accepted into the Pilot Program.

This is a significant improvement on the timing of the current appeals process, which on average takes about 15 months for the PTAB to render a decision, depending on art unit. The pilot is scheduled to run for one year (until July 2, 2021) or until 500 appeals are accepted into the program, whichever occurs earlier.

Entering the Fast-Track Appeals Pilot Program is straightforward. Once a notice of appeal for a utility, design, or plant non-provisional application has been filed, appeal briefing completed, and an appeal docketing notice mailed to the appellant by the PTAB, an appellant can file a petition to seek fast-track status for the appeal. The petition fee is \$400, which is non-refundable regardless of whether the petition is granted.

As noted above, the USPTO has set a maximum number of appeals to be accorded fast-track status under the program—125 appeals per quarter, and 500 appeals during the one-year duration of the program. These thresholds were chosen to allow for robust participation in the program without compromising the PTAB's ability to meet pendency goals in non-fast-tracked appeals.

The PTAB will communicate the number of granted petitions for fast-track appeal on the [PTAB website](#), which appellants should consult before deciding to pursue fast-track status for their appeals. Given the restriction on the number of appeals to be accepted in the program, appellants should act quickly to ensure their appeals will be accepted into the pilot. The PTO has set a one-month goal for the time to decide a petition.

Once a petition is granted, the appeal proceeds under fast-track status provided the appellant does not cause any delays, such as requesting extensions of time or additional briefing. Further, if an oral hearing is requested, the hearing date and time cannot be rescheduled. Appellant delay would result in termination of fast-track status of the appeal without refund of the petition fee.

The full text of today's announcement can be viewed [here](#).



We will continue to monitor and report on developments in this area. In the meantime, please feel free to contact us to learn more.

***About the Author(s)**

[Charles R. Macedo](#) is a partner, [Brian Amos](#) is senior counsel, and [Albert J. Boardman](#) is an associate at Amster, Rothstein & Ebenstein LLP. Their practice focuses on patent prosecution and other intellectual property matters.