

### Related Lawyers

Gary D. Colby, Ph.D.

### Related Practices

Intellectual Property

### Media Contact

Sara Pacitto  
Marketing Coordinator  
Direct (215) 575-7397  
Philadelphia, PA  
spacitto@dilworthlaw.com

## U.S. PATENT OFFICE "FAST TRACK" PROCEDURE UNVEILED

March 03, 2011

The United States Patent and Trademark Office (PTO) is implementing a prioritized examination ("Fast Track") procedure, under which patent applicants may pay a fee to obtain faster resolution of their applications. Participation in the Fast Track is optional, and does not affect existing patent examination programs.

The PTO currently has a large backlog of patent applications that are awaiting consideration by patent examiners. In many art units, nearly two years elapse between the filing date of a patent application and the time when substantive consideration of the application commences. For that reason, pendency times for patent applications can be two to four years or more and is growing.

Patent rights can be enforced only after a patent has issued, meaning that patent applicants can be deprived of important exclusive rights during the 'patent pending' period. In some instances, patent applicants can benefit tremendously from being able to enforce their patents as soon as possible, such as when a competitor is copying the applicant's products or services or when a business transaction is dependent upon obtaining an issued patent. Under the new Fast Track procedure, such applicants may be able to obtain an issued patent more quickly, such as within one year of filing a patent application.

### Eligibility

The Fast Track procedure is available only for patent applications filed on after the date the Fast Track procedure is implemented (expected to be shortly after 7 March 2011). In order to enter the Fast Track, a request and fee (currently \$4,000, in addition to ordinary filing fees) must be submitted at the time the application is filed, and the application must be filed electronically. Unlike other accelerated examination procedures available through the PTO, there is no requirement that any prior art search be performed or that any comments pertaining to the prior art be submitted.

When an application is placed in the Fast Track, it will be considered by the Examiner prior to other patent applications not having prioritized status. The PTO's goal is that examination of Fast Track applications will reach a final resolution (e.g., allowance, appeal, or abandonment) within one year from the filing date. If the PTO is able to achieve this, patentability decisions may be obtained substantially more quickly than they presently are.

### Limitations

The Fast Track procedure is available only for newly-filed utility and plant patent applications -- not for design patent applications. Currently pending applications may not enter the program (other than

by filing a new “continuation” or other related application for which Fast Track processing is requested).

Fast Track applications may include only a limited number of claims (4 independent claims, and no more than 30 total claims). Furthermore, applications will lose their Fast Track status if a response to any PTO communication is not timely filed (i.e., if a Petition for an Extension of Time is needed).

Presently, the PTO will grant Fast Track status for no more than 10,000 applications per year, presumably on a first-come, first-served basis.

### **Other Considerations**

Patent applications for which Fast Track status is not requested (and any for which such status is denied) will continue to be examined in the ordinary course of PTO business. Existing accelerated and special examination programs remain available and unchanged. Notwithstanding the PTO’s public statements to the contrary, adoption of the Fast Track procedure may delay examination of patent applications for which Fast Track status is not requested.

Most patent-related tactics and strategies are highly fact-specific, and you should consider consulting a qualified patent attorney in connection with any decision to enter the Fast Track program.

Dilworth Paxson patent attorneys are highly experienced, having worked with a wide variety of clients to prepare, file, and prosecute many patent applications. Please contact any of our patent attorneys if you would like more information about the new Fast Track procedure or any other patent matter.