

Navigating the Post-Accelerated Examination Landscape: Strategic Considerations for Expedited U.S. Patent Procurement

By Kisuk Lee

Although the United States Patent and Trademark Office (USPTO) discontinued the Accelerated Examination (AE) Program for utility patent applications on July 10, it is not expected that this will materially affect expedited examination strategies in the United States. Unlike other expedited examination options, the AE Program imposed a significant burden on applicants by requiring a comprehensive prior art search and a detailed explanation of patentability. As a result, its use declined sharply after the introduction of the more accessible Track One prioritized examination program, ultimately contributing to AE's discontinuation.

However, four other options remain available: the Track One prioritized examination, the Patent Prosecution Highway program, the Streamlined Claim Set Pilot Program, and a petition to make special for inventor's age or poor health. Applicants should carefully evaluate the advantages and limitations of each option to determine the most suitable strategy for their particular case.

EXPEDITED EXAMINATION OPTIONS FOR U.S. UTILITY PATENT APPLICATIONS

Track One Prioritized Examination

Track One is currently one of the most effective and widely used expedited examination options because it does not require supporting documents and provides significantly faster processing than standard examination. It primarily requires that:

1. The application is a utility or plant non-provisional application under 35 U.S.C. §

111(a), including continuation, divisional, and continuation-in-part (CIP) applications, or that it is filed with a Request for Continued Examination (RCE) for a currently pending application;

2. The Track One request is made at the time of filing the application or incident to filing a request for continued examination (PE-RCE);
3. The application contains no more than four independent claims, no more than 30 total claims, and no multiple dependent claims;
4. The patent application includes at least one claim and any necessary drawings, and must be filed with the inventor's oath or declaration under 37 CFR §§ 1.63 or 1.64; and
5. The applicable government fee (currently, \$4,515 for a large entity) must be paid.¹

There is an annual cap for accepting Track One petitions, which the USPTO increased from 15,000 to 20,000, effective as of July 8, 2025.² Once the cap is reached, the USPTO disables the Track One electronic filing option. Track One remains highly attractive because unlike the discontinued AE, it does not require a pre-examination search or any supporting documents.

The Patent Prosecution Highway (PPH) Program

PPH accelerates examination based on positive examination results from a qualifying foreign counterpart. It mainly requires that:

1. The U.S. application has a corresponding application filed in an Office of Earlier Examination (OEE) that shares a common earliest priority date;

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2. The OEE has at least one claim that is patentable in the corresponding application, including a national or regional office action, Patent Cooperation Treaty written opinions, or International Preliminary Reports on Patentability (IPRPs);
3. All U.S. claims sufficiently correspond to the allowable claims in the counterpart application and a claim-correspondence table is provided;
4. Copies of the OEE action and its cited references, if any, are submitted, typically via an information disclosure statement; and
5. The PPH request is filed before U.S. substantive examination begins.³

No USPTO petition fee is required for a PPH request.

The Streamlined Claim Set (SCS) Pilot Program

The SCS Pilot Program, launched on October 24, 2025 provides an additional expedited examination. Its requirements are that:

1. The application be an original nonreissue, non-continuing, utility nonprovisional application under 35 U.S.C. § 111(a) filed before October 27 without a priority claim to any prior U.S. nonprovisional or PCT application – continuation, divisional, continuation-in-part, and national stage applications under 35 U.S.C. § 371 are not eligible;
2. The application include one independent claim and no more than nine dependent claims, with no multiple dependent claims;
3. A petition to make special is filed with a \$150 petition fee before issuance of the first office action;
4. The application has been electronically filed using Patent Center;
5. The specification, claims, and abstract have been submitted in DOCX format at the time of filing;

6. If a nonpublication request was submitted, it is rescinded prior to or concurrently with the petition; and
7. The applicant certifies that they are not named as an inventor or joint inventor on more than three other nonprovisional U.S. applications filed under this pilot program.

This pilot program runs until October 27, 2026, or until each Technology Center has accepted approximately 200 pilot applications.⁴

Petition to Make Special for Inventor's Age or Poor Health

This petition is available for a patent application naming an inventor who meets certain age or health requirements. To be eligible, (1) at least one named inventor must be 65 years of age or older at the time of the petition, or (2) at least one named inventor must be in such poor health that they may be unavailable to assist in the prosecution if the application proceeds normally. The petition must include evidence showing the inventor's age or a doctor's certificate or other medical documentation of the inventor's health status.⁵ This petition requires no fee.

STRATEGY CONSIDERATION FOR CHOOSING AN EXPEDITED EXAMINATION IN THE UNITED STATES

Speed of Examination

Track One is the most effective option for achieving the fastest overall allowance. It places the application into a dedicated prioritized examination queue with specific internal processing targets. Under this program, the USPTO expedites every stage of examination, including second and subsequent office actions and allowances.

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In contrast, the other three expedited options accelerate only the issuance of the first office action. After that, the application reverts to the regular examination timeline.

Therefore, Track One is the most appropriate choice when the goal is the quickest possible allowance because it provides expedited processing at every stage, unlike the alternatives. The USPTO advertises a goal of reaching a final disposition within approximately 12 months from the grant of the petition, and applicants frequently see much quicker issuances within five to eight months.

Budget Considerations

Track One is currently highly effective, but its government fee is significantly higher than those of the other available programs. Therefore, PPH (which is free of charge) or the SCS program (with a fee of \$150 per case) may be attractive alternatives for applicants with tight patent budgets. Companies managing large patent filing portfolios may choose different expedited paths for different cases to balance cost efficiency with speed.

Application Type Limitations

Track One is not available for PCT national phase applications. However, applicants may file a bypass continuation instead of entering the national phase to become eligible for Track One. The PPH program does not impose application-type restrictions but does require a foreign counterpart application with a positive examination result. The SCS program, on the other hand, is limited to original, nonreissue, noncontinuing utility applications; PCT national phase applications are not eligible, and there is no available workaround.

Filing Timing

A Track One request must be made at the time of filing or with an RCE, whereas the other options can be requested after filing but before the first office action. Generally, the need for expedited examination should be evaluated well before filing the patent application. For an already-filed application, it is still possible to file a continuation application or PE-RCE to request Track One, but this approach significantly increases filing costs because continuation/RCE filing fees must be paid in addition to the hefty Track One fee.

Strategy for Expedited Prosecution

For expedited examination, it is generally advantageous to present a compact claim set, particularly because both Track One and SCS impose strict

limits on the number of claims. Generally, it is not advisable to include multiple independent claims in different categories of inventions because doing so may trigger a restriction requirement, causing delays in substantive examination. For rapid issuance, applicants may strategically pursue narrower genus claims or specific species-level claims while maintaining a continuation strategy to preserve opportunities for broader protection.

Expedited examination is typically pursued for important business reasons such as licensing and patent enforcement; thus, robust patent protection remains desirable. When a species or narrow genus claim is allowed, the applicant will likely need to file a continuation application to secure broader protection. Therefore, when preparing for an expedited examination, the applicant should also carefully set up a continuation strategy for both a fast allowance of the first application and broader protection with follow-up applications.

REASONS FOR PURSING EXPEDITED EXAMINATION

An expedited examination for a U.S. patent application is often necessary for several strategic and business reasons.

Patent Enforcement

When an infringer or competitor is developing a product in the same field, obtaining an issued patent quickly is crucial to enable enforcement actions such as infringement litigation or cease-and-desist letters. Earlier patent issuance can also increase the size of potential damage awards because the period for calculating reasonable royalties or lost profits begins sooner, starting from the earlier issue date. Accordingly, early patent issuance helps maximize competitive advantage, particularly during the early stages of commercial development and market entry.

Licensing and Monetization

A granted patent provides legal certainty and enforceable rights, making the underlying technology more attractive to potential licensees or business partners. Patent examination outcomes are generally unpredictable, and recent case law trends reflect stricter patentability standards. Consequently, an issued patent carries significantly more value than a pending application. This enhanced value strengthens an applicant's position in negotiations and deals.

Patent Term Extension and Regulatory Incentives

For pharmaceutical and biotechnology companies, securing extended patent protection for high-value products such as drugs and medical devices is a critical business objective. Although the patent term is 20 years from the earliest nonprovisional filing date, patent term extension (PTE) provides a mechanism to compensate for regulatory delays by extending the term by up to five years. Such extended protection can represent hundreds of millions of dollars in revenue as FDA-approved drug products often generate multimillion or even billion-dollar annual sales. Because the extension period is calculated from the patent issuance date to the date of regulatory approval, earlier issuance can result in a longer PTE, maximizing recovery for regulatory delays.

Funding Requirements

Investors typically require clear, verifiable evidence of patent filings or issued patents to confirm ownership and reduce risk, especially for tech companies. Startups often need issued patents to attract investors or satisfy due diligence requirements. In many cases, patent assets become a key component of funding agreements. As a result, investors tend to assign greater value to issued patents than to pending applications.

Early Market Protection or Competitive Advantage

Companies launching new products or technologies often need enforceable patent rights as early as possible to deter competitors and secure initial market share. An issued patent serves as public notice of protected technology, requiring follow-on competitors to design around the patented invention. Rapid issuance helps maintain a strategic lead in fast-moving industries where delayed patent protection can result in lost commercial and partnership opportunities.

POTENTIAL RISKS ASSOCIATED WITH EXPEDITED EXAMINATION

Not all patent applications require expedited examination, and applicants should carefully weigh the potential disadvantages of early patent issuance before pursuing it.

Early Disclosure Issues

The most significant risk is premature disclosure of a commercial candidate to competitors as expedited examination is often conducted with a relatively narrow claim scope. Such disclosure may enable competitors to analyze the core invention and devise circumvention strategies. For example, they may develop noninfringing alternatives and even file follow-on patent applications. Given the USPTO's heightened written description and enablement standards, obtaining broad genus protection after securing allowance of a narrowly scoped invention can be challenging. If the applicant is unable to secure broader protection following early species-level disclosure, competitors may gain greater freedom to design around the invention.

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Patent Prosecution Cost Issues

Early issuance typically entails substantial up-front costs associated with accelerated examination, including attorney fees and USPTO fees. In particular, the Track One fee is significant even for small entity applicants, who receive a 60% discount. Expedited examination may also require additional review and preparation, further increasing costs. Small companies or individual inventors may face budget-allocation challenges during early research and development stages, potentially making it impractical for these applicants to utilize expedited examination for all applications. Accordingly, applicants should conduct an internal review to identify which inventions merit prioritization for expedited examination.

Counterpart Foreign Patent Prosecution Issues

A negative examination outcome during expedited examination may influence foreign counterpart applications as foreign examiners frequently review U.S. counterpart prosecution and raise the same or similar issues. A strong prior art rejection is

highly likely to be repeated in foreign counterpart applications since novelty and obviousness determinations tend to be relatively consistent across jurisdictions. To mitigate these risks, assessing patentability before filing can help anticipate potential issues and maintain a cleaner overall prosecution history.

CONCLUSION

For applicants seeking a quick patent allowance, a petition to make special or participation in the SCS program may not be practical options due to their specific eligibility requirements. A petition to make special is limited to inventors who meet age- or health-based criteria, and the SCS program is a pilot initiative with a tentative end date, available only for applications filed before October 27, 2026. Accordingly, Track One and PPH remain the more common options for expedited examination. Between these two, Track One is more attractive because of its minimal threshold requirements and rapid examination timeline. Track One can be requested immediately, unlike the PPH program, which requires a qualifying foreign counterpart and a favorable examination result. For the fastest possible issuance, applicants

should use Track One as it accelerates every stage of examination.

Conversely, PPH is often more useful for foreign applicants who typically file a local application first and later pursue a U.S. application claiming priority to that local filing. By the time the U.S. examination begins, a positive local examination result is often already available, making PPH a natural pathway for such applicants. Global companies with foreign R&D divisions may also consider foreign-first filings to qualify for PPH for inventions requiring early issuance.

Notes

1. MPEP 708.02(b) Prioritized Examination.
2. https://www.uspto.gov/subscription-center/2025/uspto-announces-increase-annual-limit-accepted-requests-track-one?utm_source=chatgpt.com, USPTO announces an increase of the annual limit on accepted requests for Track One prioritized examination.
3. MPEP 708.02(c) Patent Prosecution Highway Program and <https://www.uspto.gov/patents/basics/international-protection/patent-prosecution-highway-pph-fast-track>.
4. 90 Federal Register 48579 (October 27, 2025).
5. 37 C.F.R. 1.102 Advancement of examination, and MPEP 708.02 Petition to make special.

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