

## The USPTO Again Extends the Fast Track Program for COVID-Related Inventions

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On January 3, 2021, the US Patent & Trademark Office (USPTO) [announced](#) an extension of the modified COVID-19 Prioritized Examination Pilot Program. Compliant requests filed on or before March 31, 2022, will be accepted.

We covered this modified Pilot Program in our [post](#) three months ago, and we covered the original program in prior posts ([here](#) and [here](#)). The USPTO's notice published in September extended the Pilot Program to December 31, 2021, and removed the limit on the number of applications that could receive prioritized examination. The current notice now extends the program for three additional months.

When the COVID-19 Pilot Program commenced, Former USPTO Under Secretary of Commerce for Intellectual Property and Director Andrei Iancu noted that “independent inventors and small businesses are often the difference makers when it comes to cutting-edge innovation and the growth of our economy [and]... are also in most need of assistance as we fight this pandemic.” As he explained, “Accelerating examination of COVID-19-related patent applications, without additional fees, will permit such innovators to bring important and possibly life-saving treatments to market more quickly.”

Prioritized examination allows an application to be advanced out of turn and accorded special status for examination. Applicants of any size can request prioritized examination using Track One examination under [Rule 1.102 \(e\)\(1\)](#) for any invention, at any time, but this requires a substantial fee (\$4,200 for Large Entity; \$2,100 for Small Entity). On the other hand, the COVID-19 Pilot Program allows small and micro entity applicants to request prioritized examination **without payment of the prioritized examination fee and associated processing fee** if the following conditions are met:

- The application's claim(s) covered a product or process related to COVID-19
- The product or process was subject to an applicable Food and Drug Administration (FDA) approval for COVID-19 use

- The applicant met other requirements noted in [the COVID-19 Track One Notice](#)

The USPTO's most recent announcement emphasizes that Track One examination under [Rule 1.102 \(e\)\(1\)](#) does not have the restrictions of the COVID-19 Prioritized Examination Pilot Program on the types of inventions for which special status may be sought. Also, delays associated with the determination of whether an application presents a claim that covers a product or process related to COVID-19 and whether the product or process was subject to an applicable FDA approval for COVID-19 use may be avoided under the Track One Program.

As of November 29, 2021, a total of 180 patents had issued from applications granted prioritized status under the pilot program. The average pendency, including time consumed by continued examination, from filing date to issue date for those applications was 276 days. The shortest pendency from filing date to issue date for those applications was 75 days.

Applicants are encouraged to file requests for prioritized examination under the extended COVID-19 program on or before March 31, 2022, as any continued extension beyond that date is uncertain. Unless the pilot program is further extended by a subsequent notice, following the expiration of this extension, the pilot program will be terminated. Congruent with the September Notice, the USPTO said that even if the pilot program is terminated, applications accepted into the pilot program on or before the programs termination will retain their prioritized status until that status is terminated for one or more reasons as set forth in the COVID-19 Track One Notice.

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