

Advocacy Requests that USPTO Consider Impact on Small Entities as it Considers Establishing Three Patent Processing Tracks

On August 20, 2010, the Office of Advocacy (Advocacy) filed a letter with the U.S. Patent and Trademark Office (USPTO) in response to the agency's request for comments on the "Enhanced Examination Timing Control Initiative," which would establish three "tracks" for patent application review. Small entities have expressed concern regarding the proposal and Advocacy has asked the agency to consider their concerns as the agency proceeds. A complete copy of Advocacy's letter may be accessed at: <http://www.sba.gov/advo/laws/comments/misc.html>.

- USPTO's initiative would create three "tracks" for patent application review. These would include a prioritized track for rapid examination (Track I), a track allowing up to a 30-month delay (Track III), and examination under the current procedures (Track II). The USPTO noted additional costs that would be included in order to utilize certain tracks, including a "substantial" fee required in order to access Track I, and other limitations/requirements that may accompany the use of Track I and Track III. The initiative also prevents the review of prior foreign-filed applications until USPTO receives the first office action and search report, if any, from the foreign office, as well as any reply.
- While small entities have expressed interest in having the option for both a rapid examination track and an up to 30-month delayed examination track, the entities have also expressed concern about their ability to fully utilize these tracks due to costs and other conditions. In particular, small entities and their representative have expressed concern regarding the fees attached to Track I, the limiting of claims attached to Track I, and the mandatory publication attached to Track III.
- Advocacy noted the small entities interest in these track options, and stressed the importance of making these tracks accessible to small entities, including supporting the agency's suggestion of a small and micro entity fee reduction. In addition to urging the agency to consider the concerns of small entities as this initiative progresses, Advocacy also requested additional information from the agency on the proposed costs, and other conditions for use of each track.

For more information, visit Advocacy's website at <http://www.sba.gov/advo> or contact Kate Reichert at 202-205-6972.