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Patent Office Granting Patents Faster

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Historically, a common lament of inventors and tech companies has been that the patent process simply takes too long. In today's world, consumers expect a new smartphone to roll out annually, and redesigned car models to incorporate new bells and whistles each year. Some types of technology are essentially obsolete within a few years of development. This reality did not comport with established U.S. Patent Office (USPTO) practice. Back in 2010, the USPTO estimated the average pendency of an application from filing to grant was three years; an all-time high. Luckily, Congress and the USPTO both responded in force to reduce this duration by implementing a new acceleration procedure and hiring substantial numbers of new patent examiners. The result has been a steady drop in average pendency that is expected to continue into the future.

The new acceleration procedure is referred to as "Track One" prioritized examination. This procedure was implemented as part of the sweeping patent reform act of 2011 (officially titled the "America Invents Act") in an effort to encourage patent filings and stimulate our economy. Thus far, the procedure has been an express lane for patent grants. According to current USPTO statistics, when Track One is utilized, examiners have on average reviewed patent applications within about *three months* of the application being *filed* and granted applications within about *six months from filing*. This is a lightning fast procedure compared to the pace of 2010's standard examination. The premise is simple: the applicant pays an extra fee up front to move to the front of the examiner's docket. There are minimal other requirements needed to take advantage of this procedure. For example, the invention does not need to be related to a congressionally determined "important" area of technology such as superconductivity or countering terrorism, nor does the applicant need to provide a lengthy analysis of the patentability of the invention, both of which were requirements in old acceleration procedures. Essentially, the USPTO took the approach that they will work on an application faster if the applicant is willing to pay more money.

As such, the Track One procedure may be a valuable tool for inventors and companies that believe the value of a quickly obtained patent will offset the increased upfront fees. No other acceleration program offers the speed and flexibility of Track One, which means short-lived products and technologies have a greater chance of receiving patent protection during their lifespan. The USPTO has also attempted to make the new procedure accessible to smaller companies by offering small businesses a 50 percent discount on the added acceleration fee. Aware of the potential popularity of the new procedure, the USPTO has limited the number of requests that may be granted per fiscal year to 10,000, so applicants should confirm at filing whether this option is available to them.

Aside from implementing the Track One procedure, the USPTO has also worked to reduce the pendency of standard examination by hiring about 1,800 new patent examiners since 2010, which has increased the total number of examiners to approximately 7,930 as of September 2013. As a result, since 2010, the peak duration of a standard patent examination has been reduced by about six months, despite a more than 17 percent increase in the number of patent applications filed. The USPTO expects this pendency to continue dropping to nearly two years on average for the 2014 fiscal year, which equates to an astounding 33 percent reduction within a four-year span.

The number of examiners is also likely to increase in the future in order to fulfill the demands of the ever-increasing numbers of applications filed. In an effort to attract additional examiners from outside the D.C. metro area, the USPTO has endeavored to build satellite patent offices across the country. In order to establish a foothold in the Midwest and attract talent from Michigan and nearby states, a satellite patent office opened in Detroit in July 2012. The USPTO has similar plans for satellite offices in Dallas, Denver and Silicon Valley. Sites have already been selected in Dallas (Terminal Annex Federal Building) and Denver (Byron G. Rogers Federal Office Building). The three new offices are scheduled to open by September 2014, although the recent government shutdown and budget sequester may delay this schedule. Nevertheless, the USPTO remains committed to expanding its reach across the U.S. and views the satellite offices as a key method to keep examination pendency down. Inventors will be able to personally meet with

local examiners to discuss the merits of the invention, rather than having to travel across the country to do so. In addition, local patent examiners may be more effective when examining technology developed in the geographic region where they are stationed.

The USPTO has implemented a litany of other programs to reduce examination pendency as well. These programs include the First Action Interview Pilot, the Patent Prosecution Highway, the Ombudsman Program, the After Final Consideration Pilot 2.0 and the Quick Path Information Disclosure Statement. Although they will not be discussed in full within this article, the USPTO provided each of these programs to reduce examination pendency as much as possible and give applicants a clearer determination of patentability more quickly.

Despite the increasing workload, the USPTO has not attempted to discourage patent filings. Rather, as of January 1, 2014, the USPTO will reduce the patent issue fee payment amount by about 45 percent, reduce the patent publication fee from \$300 to \$0, and will extend discounts on international patent applications to small businesses. The USPTO also established further reduced fees for "micro-entities," which include patent applicants that have limited gross income. The USPTO appreciates that intellectual property is a key to driving innovation in the U.S., and seeks to extend the reach of patent protection to all parties that desire it.

The USPTO's streamlined procedures also reflect the world's increasing awareness of the value created by a patent. As an example, in 2011, Nortel Networks Corp. was folding in bankruptcy and offered to sell off approximately 6,000 of its patents and applications to the highest bidder. Google placed successive bids of \$900 million, \$1.9 billion, \$2.61 billion and \$3.14 billion (Google's homages to a few mathematical constants). However, Google did not top the \$4.5 billion winning bid put forth by a consortium of companies including Apple, Microsoft, Sony, Research in Motion, Ericsson and others, forming an entity called "Rockstar Bidco," which now refers to itself as the "Rockstar Consortium." This was a substantial sum, especially considering that the Wall Street Journal reported in 2009 that Nortel would probably not receive more than \$2 billion for its assets. Indeed, Nortel only received \$1.13 billion from Ericsson for the sale of its wireless network assets. So, what was the Rockstar Consortium's goal? Their plan was unveiled on October 31, 2013 when in the Eastern District of Texas, Rockstar filed suit against Google and other major companies in the Android smartphone space on a handful of the patents acquired from Nortel. The patents asserted against Google address Google's core technology of matching search terms to relevant advertising. It is certainly no stretch to imagine that the \$4.5 billion sum paid for these patents may pale in comparison to the potential damages and cost of market disruption associated with these suits.

Even if a business is not one of the Apples or the Microsofts of the world, it is clear that the value of a patent for market exclusion and licensing purposes remains as strong as ever. The USPTO is working to streamline procedures and issue patents faster to build the value of your patent portfolio. In sum, if you've been holding out on patent protection because it takes too long, it may be a time to reconsider. If you're already involved in the patent process, you should expect faster results and a more efficient USPTO going forward.

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