

Agreement between the U. S. Patent and Trademark Office and the  
Patent Office Professional Association on the  
Track 1 Prioritized Examination

**September 26, 2011**

**Preamble:**

The U.S. Patent and Trademark Office (USPTO) and the Patent Office Professional Association (POPA or union) agree to a program to implement the prioritized examination track (Track 1) of the enhanced examination timing control procedures. Management has determined that the Agency will implement this program as outlined herein. The terms of the agreement are as follows:

**1. Participants:** The program participants consist of examiners who have on their docket an application for which an applicant has filed a request and met the conditions for prioritized examination under 37 CFR 1.102(e) for an original utility or plant non-provisional patent application under the requirements of the Track 1.

**2. Size of Program:** The provisions of this agreement cover a maximum of 10,000 requests accepted for prioritized examination under 37 CFR 1.102(e) during the remainder of fiscal year 2011 and for each fiscal year thereafter.

**3. Duration of Program:** An evaluation will be made of this program. The Office and the Union will consider any revisions to the program and fiscal year cap during the fourth quarter of each fiscal year pursuant to paragraph 10 below.

**4. Examiner's New Case Docket:** Applications for the Track 1 program will be considered as a special application under the Special Programs New docket management category under the docket management element of the new PAP once it is implemented for the purposes of generating a First Office Action on the Merits (FAOM). An examiner is expected to act on one Special application per qualifying pay period, absent explicit waiver by the supervisor (a "qualifying pay period" is one in which the examiner has a number of examining hours equal to or greater than 40 or the examiner's actual goal whichever is greater). An examiner with multiple applications docketed is expected to move at least one Special Programs New application per qualifying pay period, beginning with the oldest application as identified on the examiner's docket management reports. Prior to the implementation of the docket management element, treatment of applications under the Track 1 program will be the same as applications filed under the Green Technology Initiative, the FLASH Pilot, and Project Exchange. In general, examiners will be required to move the oldest application (as indicated on their docket reports) of any of these four programs during a qualifying pay period.

**5. Examiner's Amendment Docket:** Applications under the Track 1 program which have amendments will be placed in the Amendments (56-day) component under the docket management element of the new PAP which is expected to be implemented before any amendments under this program are received. These Track 1 applications will be denoted on an examiner's Amended docket by an asterisk or other identifying mark. For purposes of the docket management element of the new examiner PAP:

- Amendments on Track 1 applications completed within 28 days will count as zero days for purposes of the docket management calculation,
- Amendments on Track 1 applications completed after 28 days will begin accruing time as a 29 day case for purposes of the docket management calculation.

**6. Program Data:** Summary data collected during the program will be shared with POPA. This data may include information such as the number of applications filed under Track 1, in which areas those applications

are being docketed, and the average times to complete a first action and final disposition. Upon request, POPA will be provided the full data collected.

**7. Periodic Meetings to Evaluate and Discuss Changes:** At the request of either party, the parties shall meet to discuss the progress of the Track 1 program to determine if any changes to the initiatives should be considered. Changes to the program will be implemented upon agreement of the parties.

**8. Additional Considerations:** Should implementation of this program result in situations that cannot be resolved by the provisions set forth above, the parties shall meet together to jointly address the situation with the goal of reaching a reasonable resolution in an expedient manner. If a reasonable resolution is not agreed upon, changes will not be implemented until negotiations are completed (including any necessary mediation and Impasses Panel actions) to the extent required by law.

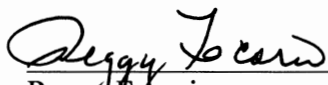
**9. Termination for the Proper Functioning of the Agency during the Term of the Agreement:** Notwithstanding other provisions of this program, the Agency may stop granting requests under Track 1, at its sole discretion, for the proper functioning of the Agency without the need to complete negotiation prior to termination. In this instance, POPA will be notified promptly of the Agency's decision and will have ten days to request bargaining to the extent required by law regarding the decision.


**10. Modification of Final Rule:** If management determines to modify the Final Rule attached to this agreement and the parties do not agree to the revision, management may either terminate the program or request formal negotiations with POPA over the change. Changes will not be implemented until negotiations are completed (including any necessary mediation and Impasses Panel actions) to the extent required by law.

**11. Attachments:**

Final Rule: Changes to Implement the Prioritized Examination Track (Track 1) of the Enhanced Examination Timing Control Procedures under the Leahy-Smith America Invents Act.

Signatures

 9/26/2011  
Peggy Focarino  
Deputy Commissioner for Patents  
U.S. Patent and Trademark Office

 9/26/2011  
Robert D. Budens  
President  
Patent Office Professional Association