

# USPTO Implements Prioritized Examination

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Applicants now have additional opportunities to expedite patent prosecution under the USPTO's prioritized-examination program. Prioritized examination was established by provisions of the Leahy-Smith America Invents Act passed in September 2011 and is available for both new applications and applications in which a request for continued examination (RCE) has been filed.

## How Prioritized Examination Works

Applications satisfying all formal requirements for prioritized examination will be accorded special status and be placed on the examiner's special docket until a final disposition such as, for example, a Notice of Allowance or a Final Office Action, is reached. The USPTO aims to attain final disposition within one year, on average, of the date prioritized status is granted. The USPTO currently limits prioritized examination to 10,000 granted requests per fiscal year.

Although prioritized examination is terminated upon final disposition, a new request for prioritized examination can be filed in connection with a continuation application or an RCE. In addition, Applicants must comply with certain procedural requirements in order to avoid losing the prioritized status prior to final disposition. For example, if applicants file a petition for extension of time or amend the application in contravention of the claim requirements, prioritized examination will be terminated.

## Cost

\$4,800 (\$2,400 for small entities)

## Eligibility and Formal Requirements

### New Applications

- The application must be an original utility or plant non-provisional patent application filed under 35 U.S.C. 111(a).
  - Prioritized examination does not currently apply to new international applications (including national-stage applications), design applications, reissue applications, provisional applications, and reexamination proceedings.
  - Applicants can work around the exclusion of national-stage applications by filing a bypass continuation under 35 U.S.C. 111(a) instead of a national-stage application under 35 U.S.C. 371.
- The application must be complete upon filing with all fees paid.
- The application must have four or fewer independent claims, thirty or fewer total claims, and no multiple dependent claims.
- A request for prioritized examination (with fee) must be filed with the application.

### RCEs

- The RCE must be in an original utility or plant non-provisional application filed under 35 U.S.C. 111(a) or that has entered the national stage under 35 U.S.C. 371.
- A request for prioritized examination must be filed prior to the mailing of a first Office Action after the filing of the RCE.
- At the time of the request for prioritized examination, the application must contain or be amended to contain four or fewer independent claims, thirty or fewer total claims, and no multiple dependent claims.

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