

Publications

Highlights of USPTO Performances and Initiatives FY 2021–FY 2022

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Yesterday senior U.S. Patent and Trademark (USPTO) officials reported on performance of the Office before the Patent Public Advisory Committee (PPAC). The reports covered activities in FY 2021 (which occurred in an active pandemic) and expectations for FY 2022. These included trends in application filings, extensive continuation practice data, reexamination, reissue and ex parte appeals before the PTAB.

First, let's look at the surprises and then the highlights.

Five Surprises

1. 62% increase in the number of new requests for *ex parte* reexamination in FY 2021.
2. 17.6% increase in design patent application filings in FY 2021.
3. 3x – The number of continuation applications filed has tripled in a decade.
4. 9% decrease in the number of provisional applications filed.
5. 5% decrease in number of RCEs filed - on top of a 9% decrease the previous year.

<https://www.uspto.gov/sites/default/files/documents/20211116-PPAC-CRU-update.pdf>

More Highlights

Here are more highlights most relevant to companies, inventors, and stakeholders. The information falls into two buckets: *Metrics* and *Initiatives*.

Metrics FY 2021

Utility Applications

- Serialized growth rate of new applications was flat (-0.1%).

- After US, next largest countries of origin filers were: Japan, China and Germany.
- The number of Japanese originated applications filed was down 5.2%.
- The number of Chinese originated applications filed was down 1.4%.
- The number of Canadian originated applications filed was up 4.0%.
- The number of Indian originated applications filed was up 15.9%.
- The number of National stage originated applications filed was up 4.5%.

Continuation Practice

- Continuations have tripled in a decade.
- 25% of serialized filings are continuations.
- 80% of continuations have a patented parent.
- 21% of issued patents spawn a continuation.
- Use of bypass continuations has increased 600% since 2000.
- Bypass continuations are ~15% of all continuations.

See graphs and data at:

<https://www.uspto.gov/sites/default/files/documents/20211115-PPAC-FY21-pendency-stats-review.pdf>

Ex parte Reexamination

- CRU now has 74 Patent Reexamination Specialists at GS-15 level, avg. 15-20 yrs experience.
- 345 currently pending ex parte reexams (50% electrical arts).
- 62% **increase** in request filings.
- Average time to order (1.1 months).
- SNQ found 95.3% of cases.
- Average time to NIRC is 10.6 months for cases without appeals.
- Legacy inter partes reexams (one remains at CRU, 11 at CAFC, 15 PTAB)

Reissue

- 9.4 decrease in reissues filed.

See graphs and data at:

<https://www.uspto.gov/sites/default/files/documents/20211116-PPAC-CRU-update.pdf>

Initiatives

Ex parte Appeals

- Fast Track Appeal program is **fast**. 256 petitions to join received. Room for more. Two months is the average time from petition acceptance to decision!
- Backlog and Pendency Time to Decision are Down. Only 5,588 cases pending – down from 26,000. 8 months avg. time to decision.

PTAB Virtual Hearings

- Counts of PTAB Virtual hearings held to date: 1145 ex parte appeals, 756 AIA trials, 30 reexamination appeals, and 2 reissue appeals.
- PTAB Virtual Hearings are expected to continue and will likely be offered as an option even when Office transitions back to in person hearings.
- PTAB website now includes a new Appeal Brief writing tool.
- Motion to Amend pilot program extended through Sept. 16, 2022.

Resources and reports

More information and reports on Office performance and initiatives are available as follows:

1. USPTO Annual Report including FY2021, <https://www.uspto.gov/about-us/performance-and-planning/uspto-annual-reports>
2. PPAC Quarterly Meeting and Agenda, <https://www.uspto.gov/about-us/events/attend-patent-public-advory-committee-quarterly-meeting-9>
3. USPTO Enhanced Outreach to Historically Underserved Innovators, <https://www.uspto.gov/sites/default/files/documents/20211116-PPAC-Enhanced-outreach-programming-and-storytelling-initiatives.pdf>
4. Federal Legislative Activity Update, <https://www.uspto.gov/sites/default/files/documents/20211116-PPAC-Legislative-update.pdf>
5. Legal Updates WIPO/PCT, Brazil, China, Germany, Japan, <https://www.uspto.gov/sites/default/files/documents/20211116-PPAC-International-update.pdf>