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Intellectual Property Alert: Cutting the Line to the Appeal Board: A New Pilot Program to Expedite PTAB Decisions

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In a complement to the other fast-track programs offered by the United States Patent and Trademark Office (USPTO), the *Ex Parte* appeals process before the Patent Trial and Appeal Board (PTAB) has been similarly revamped recently with a new pilot program that offers faster patent appeals decisions for a modest fee.

During patent examination, claims that have been twice rejected by the USPTO can be challenged by appealing to the PTAB. In normal course, an applicant can file a Notice of Appeal, which starts a two-month deadline to file an appeal brief. Upon receipt of the appeal brief, an examiner has two months to issue a reply brief, at which point the applicant can respond to the examiner's reply brief (which is often followed by a supplemental examiner reply), or pay a fee to forward the appeal to the PTAB for consideration. Following a decision favorable to the applicant, examiner rejections can be overruled or modified, which can lead to the re-opening of prosecution or, in some cases, allowance of claims.

The appeals process is often a genuine last resort for intractable examiners or issues of legal interpretation, but has historically been a time-consuming process that takes on average 14 months to receive a final disposition from the PTAB.

The "Fast-track Appeals Pilot Program," enacted July 2, 2020, seeks to decrease pendency for the last step in the appeal process by prioritizing appeals for applicants who file a petition and a modest \$400 fee when forwarding the appeal to the PTAB. The Fast-track Pilot Program will not affect the timeline prior to submission to the PTAB, which remains on the order of about 9-12 months if extensions of time are utilized. However, the Program has targeted a final decision from the PTAB within 6 months.

In the pilot stage, the USPTO has limited the number of granted petitions to 125 per quarter for the duration of the Fast-Track Appeals Pilot Program, which is expected to run for one year.

Accordingly, the fast-track path may be a worthwhile option for expediting appeals, particularly for applicants willing to brave the uncertainty of appeal, but not the exceptional wait times.

