

Suspension of Expedited Examination of Design Patent Applications

Suspension: Pursuant to 37 CFR 1.183, the United States Patent and Trademark Office (USPTO) is *sua sponte* suspending expedited examination of design applications under 37 CFR 1.155 effective April 17, 2025 (the “effective date”), which is three days after this notice was signed. The USPTO has seen a significant increase in the number of requests for expedited examination of design applications under 37 CFR 1.155, and this increased workload is negatively impacting the pendency of all design applications.

In addition, the USPTO has seen a significant increase in applications by inventors claiming micro entity status under 37 CFR 1.29 for design patent applications. The increase in micro entity filings has been accompanied by a significant increase in the number of erroneous micro entity certifications filed by inventors who do not qualify for micro entity status. The problem is particularly pervasive among design applications undergoing expedited examination under 37 CFR 1.155. The heavy use of the expedited examination procedure by applicants filing erroneous micro entity certifications leads to longer wait times for all applicants seeking design patents, including legitimate micro entity applicants. It also means the loss of fee revenue for the USPTO due to the improper payment of fees at the reduced amount (currently an 80% reduction for micro entities for most patent-related fees).

Suspension of the expedited examination procedure for design applications will support the USPTO’s efforts to reduce the pendency of unexamined design applications, which will benefit all design patent applicants. The suspension will also facilitate the USPTO’s efforts to address the problem of erroneous micro entity certifications, as well as the USPTO’s broader efforts to mitigate and protect against threats to the intellectual property system. Therefore, in its discretion, the USPTO has determined that an extraordinary situation exists, and justice requires the suspension of expedited examination of design applications under 37 CFR 1.155.

Discussion: 37 CFR 1.155 provides an expedited examination procedure for design applications provided the application is in condition for examination and includes a complete request meeting the requirements of 37 CFR 1.155 (including the fee specified at 37 CFR 1.17(k)). Under this procedure, such applications are examined with priority and undergo expedited processing through the entire course of prosecution in the USPTO (referred to as “rocket docket filings”). Rocket docket filings account for a significant portion of available design examining resources.

For the first few years following the introduction of expedited examination of design applications under 37 CFR 1.155, requests for expedited examination of a design application were less than 1% of total design application filings. In recent years, requests for expedited examination of design applications have increased by 560%, and this increased workload is negatively impacting the pendency of all design applications. The pendency for regular design applications is growing faster than the pendency for applications undergoing expedited examination under 37 CFR 1.155. In fiscal year 2024, close to 20% of design applications were applications undergoing expedited examination under 37 CFR 1.155. Furthermore, because examiners are given additional examining time for applications undergoing expedited examination under 37 CFR 1.155, suspension of the expedited examination procedure for design applications would result in a savings of roughly 36,000 examination hours per year. Therefore,

suspension of the expedited examination procedure for design applications will permit the USPTO to reallocate these hours to the examination of the inventory of unexamined design applications and help reduce pendency for all design applicants.

The USPTO has also seen a significant increase in applications from inventors claiming micro entity status for design patent applications. For example, from fiscal year 2019 to fiscal year 2024, applications for design patents filed with micro entity certifications increased by 170%, and that percentage continues to rise. In addition, applications undergoing expedited examination under 37 CFR 1.155 with micro entity certifications increased by over 1,400% during that same period.

While an increase in micro entity filings alone is not problematic, this recent rise has also been accompanied by a significant increase in the number of erroneous micro entity certifications filed by inventors who do not qualify as micro entities. Many of the erroneous micro entity certifications are from applicants that have been named on more than four previously filed applications and/or patents and, therefore, do not qualify for micro entity status. These erroneous micro entity certifications, and the heavy use of the expedited examination procedure under 37 CFR 1.155 by these applicants, have led to longer wait times for all applicants seeking design patents, including legitimate micro entity applicants. Additionally, these erroneous micro entity certifications result in the USPTO not collecting the proper fees (i.e., small entity or undiscounted fees). To address these erroneous micro entity certifications, the USPTO has been mailing fee deficiency notices in affected applications; however, the volume of rocket docket filings continues to grow. Suspension of the expedited examination procedure for design applications will support the USPTO's efforts to reduce the pendency of unexamined design applications, which will benefit all design patent applicants. The suspension of the expedited examination procedure for design applications will also facilitate the USPTO's efforts to address the problem of erroneous micro entity certifications, as well as the USPTO's broader efforts to mitigate and protect against threats to the intellectual property system.

Although expedited examination of design applications under 37 CFR 1.155 will be suspended, design patent applicants still have the ability to advance the examination of a design application in certain limited circumstances. Specifically, under 37 CFR 1.102(c)(1), a petition to make an application special may be filed without a fee where the basis of the petition is the applicant's age or health. See Manual of Patent Examining Procedure (9th Edition, Rev. 01.2024, November 2024) 708.02, subsections I and II.

The USPTO plans to undertake rulemaking to remove the provisions of 37 CFR 1.155 and 37 CFR 1.17(k). Any request for expedited examination of a design application filed on or after the effective date will not be granted. The phrase "any request" encompasses initial and renewed requests. Accordingly, a renewed request filed on or after the effective date will not be granted, irrespective of the filing date and time of the initial request and whether the USPTO's dismissal of the initial request afforded the applicant an opportunity to submit a renewed request to rectify the deficiency. The USPTO will *sua sponte* refund the fee under 37 CFR 1.17(k) associated with any request filed on or after the effective date of this notice.

The USPTO will remove form PTO/SB/27, titled "REQUEST FOR EXPEDITED EXAMINATION OF A DESIGN APPLICATION (37 CFR 1.155)," from the USPTO's website and decommission the corresponding document code—ROCKET—in Patent Center. Applicants should not submit stored copies of form PTO/SB/27 on or after the effective date.

Contact Information: Inquiries concerning requests for expedited examination under 37 CFR 1.155 filed prior to the effective date may be directed to Christian McLean, Supervisory Patent Examiner, Art Unit 2923, at 571-270-1996. Inquiries concerning this notice may be directed to Erin Harriman, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7747.

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Acting Director of the United States Patent and Trademark Office