

UK Intellectual Property Office Fast Track Consultation



A CONSULTATION ON:

FAST TRACK PROCESSING OF PATENTS & TRADE MARKS

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Introduction:

1. In December 2005, the Chancellor of the Exchequer asked Andrew Gowers to conduct an independent review into the UK Intellectual Property Framework. The Review was published on 6 December 2006. Two of the recommendations outlined in the Review focussed on the speed at which patents and trade marks are processed and granted and suggested that fast track processing, subject to the payment of a higher fee, should be pursued in order to speed up the process, when required by the applicant in a particular case.

2. The Government agreed to take forward all of the recommendations made in the Gowers Review. This consultation relates to the specific measures the United Kingdom Intellectual Property Office ("the Office") proposes in relation to the "fast track" recommendations. Due to the different manner in which patents and trade marks are processed, this consultation document will, to a large extent, be broken down between the proposed processes for the two types of rights.

Executive Summary:

Patents

3. To meet the Gowers recommendation we propose a new single simple process for accelerating the processing of a patent application where, for an additional fee, Office actions will be fast-tracked so that a patent could be granted within a year from the date of filing.

4. We would welcome your general comments on the proposed service, and also in particular on:

- Which of the two alternative fee structures proposed in paragraph 28 is likely to better meet the needs of users.
- Whether the three month period for filing third party observations could be reduced to two or even one month with no detrimental effects on the quality of granted patents (paragraph 31).
- Whether the removal of the requirement to provide reasons for requesting accelerated processing and the increased profile of our fast-track services would significantly increase the take-up from current levels, and also what effect the proposed fee would have on usage of the system (paragraph 34).

Trade Marks

5. To meet the Gowers recommendation we propose to introduce a premium rate 'fast-track' examination process under which, for an additional fee, the Office undertakes to examine applications within 10 working days of receiving a correctly completed application with correct fee.

6. We particularly welcome your views on some of the specific proposals:

- Do the proposed conditions for applying for a fast track application (see paragraph 44) represent a workable balance between ensuring that we can offer the speed required of a fast track service and between the ability of businesses to access the service?
- Do you agree that the level of fee will have the result of ensuring that fast track requests do not become the norm (paragraph 53)?
- Do you agree with our estimate on possible take-up (10% of applications – see paragraph 53)?

We would appreciate your views on these questions together with any other general comments that you may have on any aspect of the proposals.

Responding to the consultation:

7. We welcome your views on the proposals contained in this consultation document. Please e-mail any views you may have to consultation@ipo.gov.uk. Alternatively, please send us your views in writing to the following postal address:

Ben Micklewright
UK Intellectual Property Office
Concept House
Cardiff Road
Newport NP10 8QQ

Tel: 01633 813744
Fax: 01633 814491

8. In line with the Government's code of practice on consultations (see Annex A), please let us have your comments by **14 December 2007**.

9. Responses are welcomed from any individual, organisation, company or firm. Copies of this document, including large print versions, are available from the contact address given above. A full list of the organisations and individuals being sent this document is given at Annex B.

Impact assessment

10. Partial impact assessments (IAs) have been produced and are reproduced in Annex C. The IAs set out our initial assessment of the impact that the new procedures will have on our users. Please take the time to read these documents and let us have any comments you may have on any aspect of their contents. After considering any comments we receive, if we decide to implement the proposals the IAs will be finalised and will accompany the legislation in order that the responsible Minister can confirm that the benefits of the legislation justify any costs that it will introduce.

Openness/Confidentiality

11. This is part of a review exercise, the results or conclusions of which may be published. As such, your response may be made public. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.

12. Information provided in response to this review, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you request to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

13. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding. The UK Intellectual Property Office will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

PART 1

A fast-track grant process for patents

Introduction:

14. The Gowers Review examined the possibility of fast track systems for patents and trade marks in paragraphs 5.33 to 5.38 of its Report and in relation to patents the following was stated:

“5.35 The Patent Office already provides a fast track service for accelerated examination, and combined patent search and examination (CSE) neither of which incur a greater fee. In 2005-06, a third of applications going through examination were for combined search and examination or accelerated examination not under the CSE process. Lack of use of this system may result from a lack of knowledge of the availability of the process or from strategic decisions by business in order to delay grant. Some businesses may prefer a slower process as this establishes their priority date over an idea, and gives them extra time to develop their product before deciding whether to incur the full costs of registration. Others will seek fast grants to provide certainty.

5.36 The EPO project BEST (Bringing Examination and Search Together) is similar to the CSE available at the UK Patent Office. This is intended to improve efficiency at the EPO and reduce backlogs. This has allowed applicants to have a single point of contact and thus improved end-to-end service. It was used for 124,000 searches and 30,500 examinations in 2004

5.37 Clearly, to some extent there is a trade-off between awarding rights quickly and awarding rights of a high quality. For example, it can take up to two years for relevant prior art to appear on external search databases, so speeding up the grant process means prior art cannot be fully assessed before grant. For this reason standard grant procedures carry less risk of an unpublished parallel application emerging after grant. The current patent fast track system available should be improved to allow for a comprehensive, “accelerated grant” process. This should enable rights to come into effect more quickly.

Recommendation 25a: Introduce accelerated grant process for patents to complement the accelerated examination and combined patent search and examination procedures.”

15. The Report indicated that a comprehensive “accelerated grant” process could be especially important in areas of fast-moving technology. In the light of this recommendation we have examined our procedures relating to accelerated processing of patent applications with a view to simplifying and rationalising them and to providing the comprehensive fast-track to grant process envisaged by the Report. Our proposals in this area are set out below.

Detail:

What we offer at the moment

16. Our current practice on accelerated processing is set out in a Notice which is published regularly in the Patents and Designs Journal (PDJ) and is reproduced in Annex D.

17. In summary, a request for an accelerated search and/or examination is allowed if the applicant gives adequate reasons for wanting accelerated processing. Accelerated publication is provided for in section 16(1) of the Patents Act 1977 and we do not require reasons when processing a request for accelerated publication. We also offer combined search and examination (CSE) where the first examination is carried out at the same time as the search. This allows an applicant to get the application in order for grant at an earlier date by replying promptly to the first examination report. No supplementary fee is currently required for any of these services. About 1% of standard examinations were subject to accelerated processing in 2005. In 2006 about 20% of applications were subject to combined search and examination.

Why change?

18. Our current accelerated procedures have developed in a rather *ad hoc* manner and there is no clear single fast-track procedure from application to grant. Moreover it is not always clear what reasons are adequate to allow a request for accelerated search or examination. The aim of this proposal is, in implementing the Gowers recommendation, to provide a simpler more consistent approach to accelerated processing from which will emerge a comprehensive fast-track grant process.

Proposed new system

19. We propose to replace the above procedures with a single fast-track service for prosecution of a patent application. We would welcome views on this proposed system.

Making the request

20. In the proposed new system a request for fast-track processing may be made at any time. Provision for this could be through a new Patents Form especially for the purpose or by some other means, e.g. the addition of tick-boxes on the Form 9A/77 and Form 10/77, the statutory forms used for requesting search and substantive examination respectively.

21. It will still be possible to make requests for accelerated publication for cases where a fast-track search has not been requested.

22. We will no longer require reasons for requesting the fast-track service but we do propose a fee system (see below). Under the proposal, what was previously offered as combined search and examination at no extra charge will be considered a fast-track process and therefore attract a fee. This is explained in more detail in paragraphs 28-30 below.

What the Office will do

23. In such a system the Office will expect to:

- Issue a first search and/or examination report within three months of request.
- Process amendments within five working weeks of receipt.
- Expedite processing using telephone and/or email.

24. If this first objective is not met (i.e. the Office does not issue the search and/or examination report within three months of the request), the fee for the fast-track service will be refunded. No refund will be given if, for example, the claims require amendment before a search can be performed. See below for further details on what we are proposing to charge for the fast-track service.

What the applicant can do

25. The applicant can also help to speed up the process, particularly during the period between issuing the first examination report and grant, for example by:

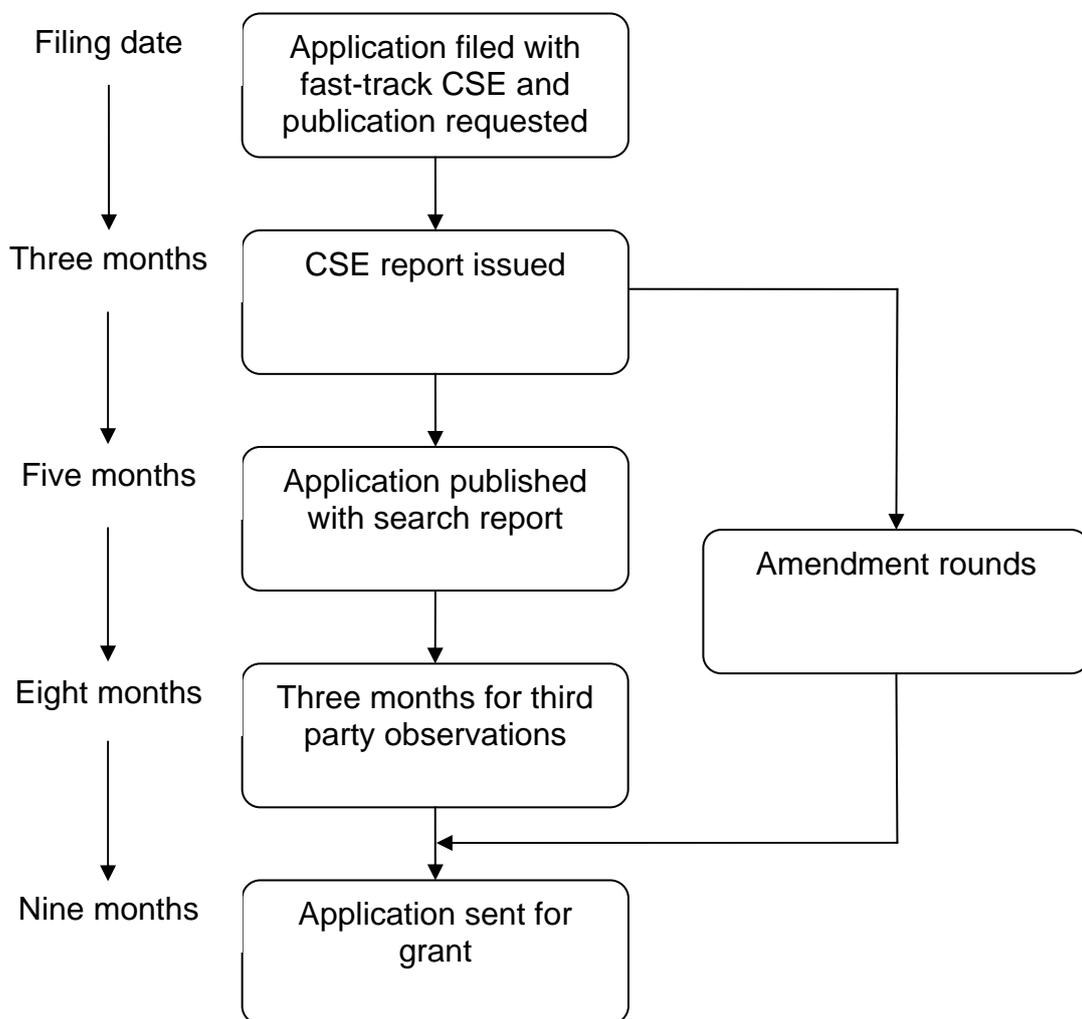
- Filing good quality applications.
- Responding to opinions issued at the search stage.
- Replying promptly to examination reports and not making use of extensions of time.
- Answering all the examiner's objections and therefore reducing the number of amendment rounds necessary for the application to be in order for grant.
- Communicating informally with the examiner by telephone and email, for example to agree amendments acceptable to the examiner in advance of submitting formal amendments.

26. The last of these points may be particularly useful in cutting down the number of rounds of amendments and in bringing the application into order for grant at an earlier stage.

A fast-track process from application to grant

27. The advantages of the above system become particularly apparent when an applicant requests fast-track search, examination and publication at the time of filing the application. We envisage that a typical application could be granted in under a year, as the illustrative time-line below demonstrates. It is not possible for the Office to guarantee grant in less than a year as there are a complexity of issues, such as the applicant's behaviour in responding to examination reports and the possibility of a hearing, which could prevent the application from being ready for grant in this timescale.

Optimal timeline for a fast-tracked patent application



Fees

28. We propose to charge a fee for the fast-track service. This will enable us to manage demand so that our standard service is not adversely affected. There are two possible options as follows:

- a. Charge a separate fee of say £300 for each of fast-track search and fast-track examination. So an applicant could request the full fast-track service for an additional fee of £600 on top of the usual fees associated with search and examination, or alternatively could opt for only the search or only the examination to be fast-tracked for an additional fee of £300. The fast-track service would start from the moment the request is made, so that, for example, a request for fast-track examination made before the search is carried out would result in the examination being conducted at the same time as the regular search, and a combined report issued. The current practice of automatically conducting a CSE at no extra charge if search and examination are requested together would be discontinued.
- b. Charge a single one-off fee of say £400 and allow applicants to choose which (or all) elements of the process are to be fast-tracked. If fast-track search only is requested but an applicant decides later to fast-track the examination, no additional fee would be incurred. As with option (a), if this is done before the search is completed, a combined report would be issued, but the current practice of automatically conducting a CSE at no extra charge if search and examination are requested together would be discontinued.

29. A request for accelerated publication only, without an accompanying request for fast-track search or examination, would not attract any additional fee. If fast-track to grant is chosen this will include accelerated publication.

30. We would be interested in views on which of the above alternatives is likely to better meet the needs of users.

Period for third party observations

31. The possibility, before grant, for third parties to file observations on patentability under s.21 of the Act was recognised by the Gowers Review to be an important factor in maintaining patent quality. At present, to allow for observations to be filed, even for accelerated applications, no patent will be granted until a period of at least three months has elapsed since publication of the application. The three-month period itself is not required by law, but has become established by practice over a number of years. However we have little evidence on the appropriateness of the length of this period and would therefore be interested in views on whether it could be reduced to two or even one month with no detrimental effects on the quality of granted patents. Any change, if adopted, would be applied to all applications, but would obviously have the most significant effect in the case of those subject to fast-track processing.

Risks

Quality implications

32. The Gowers Review in paragraph 5.37 acknowledged that to some extent there is a trade-off between awarding rights quickly and awarding rights of a high quality. It is not that a quicker process would cause the Office or the examiner to cut corners; the time spent working on the case will be the same. Rather, there is a risk, for example, that the databases used by the examiner are not fully up to date concerning documents published before the filing or priority date of the application so that potentially invalidating documents are not on the database before the patent is granted. This may not be large as in general the patent databases used by examiners are considered up-to-date three months after the filing or priority date.

Revocation after grant

33. So-called secret prior art, namely earlier applications not published at the time of filing of the patent application, may not be available by the time the application is granted. In such circumstances the examiner will complete the search for such earlier applications after the application is granted and the Office may then, using powers provided in section 73(1) of the Patents Act 1977, revoke a granted patent should a piece of prior art in this category be found. The Office will always in such circumstances give the applicant an opportunity to make observations and/or to amend the specification to avoid the relevant subject matter. An early grant of a patent increases the risk of revocation under section 73(1) but in most cases it is thought that the benefits of an early grant will outweigh the small risk of revocation after grant.

Usage of the system

34. There is a risk that the take-up of the system may become so great that it becomes impossible for the Office to meet the fast-track timetable. We would welcome any views you may have on whether the removal of the requirement to provide reasons for requesting accelerated processing and the increased profile of our fast-track services would significantly increase the take-up from current levels, and also what effect the proposed fee would have on usage of the system.

35. Our aim is for a standard search report to be issued within four months of request and for patents to be granted within two-and-a-half years of requesting examination. This, we believe, will be fast enough for the majority of our users. Furthermore, the imposition of a fee for fast track will ensure that users think twice about using the fast-track service and will only do so when required. All of this should balance demand. We estimate that fast-track processing will be requested in less than 20% of cases. Staffing levels and organisational structures within the Office will be able to deal with this degree of fast-track input.

36. There is also a risk that unrepresented applicants will request fast-track processing without fully understanding the implications of, for example, accelerated publication. We propose to make clear in our advertising of the system that a fast-track to grant process is only useful in certain situations, for example when the applicant is aware of a potential infringer.

37. We would welcome any views on the importance of these factors in a fast-track to grant process.

PART 2

Fast track examination of trade mark applications

Introduction:

38. The Gowers Review examined the possibility of fast track systems for patents and trade marks in paragraphs 5.33 to 5.37 of its report and in relation to trade marks stated:

“5.38 In today’s fast moving business environment products are regularly launched within short timescales. The Patent Office recently consulted on ending the practice of refusing applications on the (relative) grounds that the mark applied for conflicts with an earlier trade mark. The Review supports the proposal of the Patent Office to end such refusals and to continue searches for the purpose of notifying applicants and others. The Review also notes that this will potentially make it possible to speed up the processing of applications. The Review proposes that a fast track system (in addition to the normal system) should be available to allow for trade marks to be examined and accepted within 10 days of the application being filed. Once the application is accepted it can be published and thereafter the 3-month opposition period would begin. This fast track system should be accompanied by a higher fee.

Recommendation 25b: Introduce fast track registration for trade marks.”

Detail:

What we offer at the moment

39. At the moment no form of accelerated or fast track examination of trade mark applications is offered by the Office. Applications are simply examined in the order in which they are received. The current time to first examination stands at approximately 4-6 weeks from the time of filing. This is, of course, subject to the application being filed correctly and the fee being paid at the time of filing rather than utilising the 2 month period of grace for paying filing fees.

Why change?

40. As mentioned in the Gowers Review, businesses often wish to launch new products to market within short timescales. There may be other reasons, such as a desire to secure more speedy registration in order to launch legal proceedings, all of which mean that early examination (and acceptance if the requirements for registration are met) may be desirable.

41. In recent years we have attempted to examine all applications within two months. However, over recent months most applications have been examined between 4-6 weeks from filing; our aim is to examine all applications within one month from now on. This compares favourably with

the time taken by other registration authorities to examine new trade mark applications. However, the new fast track procedure will guarantee examination in a considerably shorter time if the applicant so wishes. The resulting system means that standard examination will be fast in itself, but, for those that need it, an even faster examination can be obtained through the fast track procedure.

Proposed new system

42. We propose the introduction of a premium rate fast track examination procedure under which, for an additional fee, the Office will examine new trade mark applications within 10 business days of receiving a correctly completed application together with the correct fee. Current application fees for a trade mark are £200 for an application (covering one class) and a fee of £50 for each additional class requested. For a fast track application we are proposing a fee of £500 for the application (covering one class); the cost for an additional class will remain at £50. The fast track premium for this service therefore equates to **£300**.

43. Additions and amendments will be made to the Trade Mark Rules 2000 to enable the Office to administer the fast track system. We propose that the new system will work in the manner described below:

Making the request

44. The following points will need to be observed and adhered to by the applicant:

- a) An application for fast track examination will only be able to be filed electronically via completion of an on-line version of Form TM3 on the Office's web-site.
- b) The fee (both the standard cost of the application and the premium fee) must be paid electronically at the time of completion of the on-line form. The 2 month period of grace for paying application fees will therefore not apply to fast track applications. Payment will be able to be made by credit or debit card, or through a deposit account held with the Office.
- c) Fast track applications will be limited to one trade mark. It will not be possible to request registration of a series of marks in a fast track application.

45. The above features are necessary to ensure that the Office is able to meet the fast track request; these conditions attempt to deal with issues that will slow down the time to first examination. It is proposed that if the applicant completes an application for fast track examination but the above requirements are not met, the application will be converted into a standard application. The fast track fee (but not the basic application or class fees) will be returned in these circumstances. We would welcome views on whether these proposed conditions for applying for a fast track application represent a

workable balance between ensuring that we can offer the speed required of a fast track service and between the ability of businesses to access the service.

46. Applications that meet the above requirements but are then subject to an objection under the filing requirements of the Act (for example, if the sign does not meet the requirements for graphical representation) will inevitably be delayed in proceeding to formal examination. In these circumstances the applicant will (subject to the objection under the filing requirement being overcome) be given the choice of either proceeding with the application as a standard application (in which case the premium fee will be returned) or to still proceed with the case as a fast track application but on the basis that the 10 day period will not commence until the business day following the day on which the filing objection was overcome.

What the Office will do

47. The Office will issue the results of the search for earlier conflicting marks, and any objections to the registration of the trade mark, within 10 business days of the receipt of the application. This 10 (business) day period will commence on the business day following the day on which the application is received; this is because many applications are received after business hours and therefore work cannot commence on them until the next business day. The Office will be deemed to have issued its examination report (and so have met its fast track obligation) on the day that its report is sent to the applicant. All non business days of the Office will be excluded from the calculation of this 10 day period.

48. If the Office informs an applicant who has requested fast track examination of an objection to registration, or provides the results of a search for earlier marks, after the end of the specified period, the fast track fee (but not the basic application and class fees) will be remitted back to the applicant.

49. The Office will also aim to deal with any correspondence following examination as quickly as possible and to arrange hearings in an expedited manner if one is requested. This should further speed up the time it takes to secure a registration.

How the applicant can help

50. It is crucial that if fast track examination is desired then the applicant must adhere to and comply with the criteria detailed in paragraph 44 above. If it is not, the application will be considered as a standard application and will be examined within our normal timeframe.

51. The applicant can also help, particularly in the period between examination and publication, by responding to any official objections as quickly as possible and ensuring that all the objections raised by the examiner are responded to. This will assist in bringing the application to a final conclusion more quickly. Additionally, if the only information in the examination report relates to the notification of earlier conflicting trade marks

identified during the search, the two month period allowed for the applicant to decide whether to run the risk of proceeding with the application may be dispensed with at the applicant's request.

Risks

Usage of the system

52. There is a risk that if the Office is inundated with fast track requests then we may be unable to meet our 10 day obligation.

53. We are confident that the above scenario will not occur. Our aim is for the standard service to be one month. We expect most of our users to feel that they do not need the saving of two or three weeks to the examination report enough to merit the premium fee. The fee should balance demand, and we estimate that fast track examination will be requested in no more than 10% of cases. Staffing levels and organisational structures within the Office will be able to deal with this degree of fast track input. We would welcome your views on whether the level of fee will have the result of ensuring that fast track requests do not become the norm and with our estimate on possible take-up (10% of applications).

Quality of examination

54. There is clearly a risk that having to deal with cases more quickly will lead to a degradation in quality. Again, we are confident that this will not happen. We will deliver the fast track examination report by eliminating time when the application is awaiting the examiner's attention, not by reducing the time he or she gives to it. Systems will be in place to ensure that examiners will have the same length of time to carry out their examination duties as they do now. The Office will continue to monitor the quality of the examination work it conducts. An agency target of ensuring that correct decisions are taken on 98.5% of applications is in existence. This target will not change and will still be met and we intend to publicly report specifically on this in relation to the fast track cases, as well as generally.

Annex A

Cabinet Office Code of Practice on Consultations

- 1 Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- 2 Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- 3 Ensure that your consultation is clear, concise and widely accessible.
- 4 Give feedback regarding the responses received and how the consultation process influenced the policy.
- 5 Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
- 6 Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the [Cabinet Office's website](#) .

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please tell the UK-IPO Consultation Co-ordinator, who is:

Geoff Miller
Consultation Co-ordinator
UK Intellectual Property Office
Concept House
Cardiff Road
Newport NP10 8QQ

Tel: +44(0)1633 811195
Fax: +44(0)1633 814232
E-mail: consultation@ipo.gov.uk

Annex B

Organisations and individuals to whom the consultation has been sent

ABPI
Agricultural Engineers Association
Allvoice
Anti-Counterfeiting Group
Arnander Irvine & Zietman
Ashurst Morris Crisp
Association of British Chambers of Commerce
Association of British Insurers
Association of British Pharmaceutical Industry
AURIL
Babcock International Ltd
Baker & McKenzie
Bar Council
BBA
Belron International Limited
Beresford & Co
Berwin Leighton Paisner
Bharat Electronics Ltd
Biotechnology and BSRC
BMR
Boulton Wade Tennant
BPP Leeds
BPP Leeds IP Group
British Brands Group
British Generics Manufacturers Association Ltd
British Library
British Pharmaceutical Group Ltd
British Poultry & Meat Federation
British Retail Consortium
BT
Cardiff Law School
Centre of Research for Intellectual Property and Technology (SCRIPT)
Chartered Society of Designers
Chemical Industries Association
CIMMYT
CIPA
Clifford Chance
Competition Law Association
Compuserve
Confederation of British Industry
Consumers' Association Ltd
Crafts Council
Cranfield University
Crestco

Crop Protection Association
Cruikshank & Fairweather
CSSA
Davenport Lyons
DCF
Deloitte & Touche
DMA
DTI
Dyson
EC Laws Committee - LES Britain & Ireland
Eureka Manufacturing Co. Ltd
Europe Analytica
Federation of the Electronics Industry
Federation of Small Businesses
FEI
FICPI
Frank B Dehn
Freshfields
FSB
Galleon & Co
Gill Jennings & Every
Greenpeace
Harbottle & Lewis
Howrey Simon Arnold & White
ICIA
Incorporated Society of British Advertisers
Institute of Practitioners in Advertising
Institute of Information Scientists (Patent and Trade Mark Group)
Intellectual Property Institute
International Chambers of Commerce
International Federation of Industrial Property Attorneys
Inventorslink Inc
IPLA
ITMA
Lancaster University
LIBA
Licensing Executives Society
Linklaters
Linklaters & Paines
LinuxUser Magazine
Lodestar Translations
London Chamber of Commerce and Industry
Lovells
Magister Ltd
Marketforce Communications
Marks & Clerk
Mewburn Ellis
Microsoft Ltd
Ministry of Defence
Mishcon de Reya

MoD
Motorcycle Action Group
National Consumers Council
Norton Rose
Office of Government Commerce
Olswang
Pfizer Limited
Pilkington Technology Centre
PJB Publications
Practical Law Company
Preventative Medicines Tech Inc
Reddie & Grose
RWS Group
SCRIPT
SIBLE University of Sheffield
Simmons & Simmons
Society of Numismatic Artists & Designers
State Patent Bureau of the Republic of Lithuania
Taylor & Meyer
The Appointed Persons
The Council on Tribunals
The British Brands Group
The British Motorcyclists Federation
The Institute of Patentees and Inventors
The Law Society
The Law Society of Scotland
The Patent Judges
The Whitehouse Consultancy Ltd
Theodore Goddard
TJG
TMPDF
University of Alicante
University of Cambridge
University of London Queen Mary & Westfield College
University of Oxford
University of Strathclyde
Urquhart-Dykes & Lord
Vereenigde
Visteon Global Technologies
Wedlake Bell

ANNEX C

Patent Fast Track Impact Assessment

&

Trade Mark Fast Track Impact Assessment

Summary: Intervention & Options

Department /Agency:
**Department of
Innovation, Universities
and Skills**

Title:
**Impact Assessment of the fast-track processing of
patent applications**

Stage: Consultation

Version: 1

Date: 20 August 2007

Related Publications:

Available to view or download at:

<http://www.ipo.gov.uk>

Contact for enquiries: Ben Micklewright

Telephone: 01633 813744

What is the problem under consideration? Why is government intervention necessary?

The United Kingdom Intellectual Property Office (UK-IPO) grants patents faster than many of the other large patent granting authorities. However there are circumstances when an applicant may wish to process their patent application through to grant at an even faster rate, e.g. when they are aware of potential infringers at an early stage. Government intervention is therefore required to provide a single fast-track procedure for processing a patent through to grant.

What are the policy objectives and the intended effects?

The policy objective is to provide a single fast-track system for processing patent applications through to grant. It will provide an applicant for a patent with a one-stop shop for accelerating any or all of the various actions which must take place for a patent to be granted. A fast-tracked patent application could be granted in less than a year compared to an average of 28 months for current standard patent applications, although this is subject to complexities such as the behaviour of the applicant in responding to official reports and the possibility of a hearing.

What policy options have been considered? Please justify any preferred option.

We can either introduce a new fast-track system as proposed or, alternatively, continue with existing ad hoc procedures for accelerating various actions during processing of the patent application. Some of these procedures are not available as of right (an adequate reason is required). We believe that the proposal has merits. It gives all applicants the choice (subject to payment of a fee of £400-£600) as to whether they wish their application to be fast-tracked through to grant. If they choose the fast-track option their patent could be granted in under a year in some cases.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The success of the fast-track system will be continually reviewed, but a formal review will take place one year after implementation.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option: 1	Description: Fast-track processing of patents applications
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The "affected group" is the number of applications. Estimate 3000 requests per year at £400 per application. This is an optional rather than a compulsory cost.
	One-off	Yr	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£ 1200000		Total Cost (PV) £ 1200000
Other key non-monetised costs by 'main affected groups' Accelerated processing not available to all applicants, only those who can demonstrate sufficient reasons.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' groups' The proposal may bring a monetised benefit as, for example, the ability to launch a product to market more quickly could result in earlier sales success. This is, however, difficult to quantify. Therefore, readers during consultation stage are encouraged to provide quantitative information on this aspect.
	One-off	Yr	
	£ 0		
	Average Annual Benefit		
	£ 0		Total Benefit (PV) £ 0
Other key non-monetised benefits by 'main affected groups' The objective is that those applicants who wish to have their applications searched, examined and granted more quickly are able to do so. This is a benefit because sometimes an applicant will wish to have a patent granted as quickly as possible.			

Key Assumptions/Sensitivities/Risks We estimate that at most 20% of applicants will request fast-track processing.

Price Base Year 2006/07	Time Period 1	Net Benefit Range (NPV) £ -800000 to -1400000	NET BENEFIT (NPV Best estimate) £ -1200000
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	2008				
Which organisation(s) will enforce the policy?	UK-IPO				
What is the total annual cost of enforcement for these	£ 0				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£				
What is the value of changes in greenhouse gas emissions?	£				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro 50</td> <td style="width: 25%; text-align: center;">Small 100</td> <td style="width: 25%; text-align: center;">Medium 250</td> <td style="width: 25%; text-align: center;">Large 500</td> </tr> </table>	Micro 50	Small 100	Medium 250	Large 500
Micro 50	Small 100	Medium 250	Large 500		

Are any of these organisations exempt?	No	No	N/A	N/A
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Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of	£ 0	Decreases	£ 0	Net	£ 0

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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Evidence Base (for summary sheets)

Summary

The UK-IPO is an executive agency of the Department for Innovation, Universities and Skills and is responsible, amongst other things, for granting patents valid in the UK. Some 25,000 new patent applications are received each year. Requests for search are received for about 15,000 of these applications. Before they are granted they are examined to ensure they satisfy the relevant legal requirements, governed by the Patents Act 1977. This is a complex task involving a comprehensive prior art search and substantive examination of the application. A patent application may be subject to a number of rounds of amendments made in response to objections raised by the examiner in order to bring the application into order for grant.

Most applications are searched within four months of receiving the request for a search. The application is normally published after eighteen months. Substantive examination normally takes place at a later date. A case is normally granted within two and a half years of the request for examination. This is regarded as relatively fast compared to the speed of processing at some other patent offices. In 2005 the average time from application to grant was 28 months. It is possible to accelerate certain aspects of this process in certain circumstances. But a recent independent review of the UK Intellectual Property Framework was commissioned by the Chancellor of the Exchequer and was conducted by Andrew Gowers. One of the Review's recommendations was that an accelerated grant process be introduced for patents.

Proposal

The proposal is to provide an option for patent applicants to request fast-track processing of their patent application. The Office will issue a first search and/or examination report (depending on the stage at which fast-track is requested) within three months from the date of request. A fast-track application will be subject to a "premium" fee. There are two fee structures proposed. The first allows individual elements of the patent granting process to be fast-tracked for a fee of £300 each (or £600 for fast-tracking the whole process). The second has a single £400 fee for accelerating any or all elements of the granting process. The fast-track service will be regulated by amendments to the Patents (Fees) Rules and a code of practice published by the Office which together will set out a framework under which accelerated processing will operate.

Detail

The current time to grant is fast enough to satisfy the needs of most applicants and thus the fast-track service is not intended to become the norm. The relatively low number of requests for accelerated processing we receive under our current procedures demonstrates this. The fee premium for fast-track processing will help to ensure that the fast-track option will be the exception rather than the rule.

There are a number of circumstances in which an applicant may wish to speed up the processing of their patent application through to grant. Firstly, an applicant may wish to have an early search report and examination report so as to form a more detailed view of the patentability of their invention before taking on the cost of filing patent applications worldwide. An applicant has twelve months from the date of filing of their initial application to decide which other countries to file in. Our standard search reports are normally issued in plenty of time to make this decision but on occasions applicants may want a quicker search report to give them more time to consider the matter or an early examination report to give a fuller analysis of the prior art cited in the search report.

Another reason an applicant may request fast-track processing is because they become aware of a potential infringer of their application. Faster grant of their patent application will enable them to take action at an earlier stage.

A fee must be charged in order to manage the demand for the fast-track service, so that the exception does not become the rule. If there was no fee then a large proportion of applicants would request the fast-track service which would remove the differential between the two services and which would lead to a demand that could not be satisfied. We are content, although this is clearly a question for consultation, that £400 or £600 (dependent on the particular fee structure – the £600 option sets separate £300 fees for fast-tracking search and substantive examination separately) represents the right balance between affordability for all interested parties and a desire to ensure that interested parties think twice before requesting fast-track. We estimate that, whichever fee structure is eventually chosen, the income will be on average £400 per fast-tracked application (based on the estimate that for the latter option of setting separate fees for search and examination, a single £300 fee will be levied on some fast-tracked applications rather than the full £600 fee).

Although the imposition of a fee introduces an additional cost, it must be borne in mind that this cost will not be forced onto anyone. The standard service is regarded as more than sufficient in the majority of cases. The fast-track service merely provides an additional option should an applicant wish to obtain a quicker result.

Our initial estimate is that fast-track processing will be requested for a maximum of 20% of applications. This equates to 3000 applications which will all cost on average an additional £400 compared to the standard service (which itself costs £200). This estimate is based on the number of requests the UK-IPO currently receives for accelerated processing or combined search and examination under present procedures. The consultation should help to inform on the accuracy of this estimation.

We could, of course, leave the system unchanged. However, we believe that there are circumstances where fast-track processing is desirable and that giving applicants a choice will benefit the business community at large. No one will be compelled to request (and consequently pay for) fast-track processing and the UK-IPO will continue to ensure that high standards of speed and quality of its standard service are maintained. The fast-track service will simply guarantee faster processing when it is important to do so.

Specific impact tests

The nature of the proposal and the manner in which it will operate means that no issues surrounding legal aid, sustainable development, carbon or other environmental issues, health, race equality, disability equality, gender equality, human rights or rural matters have any significance. These issues have none the less been considered in full; no impact will arise.

Competition assessment has taken place and we consider that the changes, given their nature, will have no effect on competition between right holders or between firms of legal representatives. We do not consider that a company or firm will be placed at a disadvantage as a result of the changes; neither do we consider that any new start up company or firm will be prevented from entering the marketplace.

Small firms impact assessment is on-going and will be developed further during consultation. Our initial views are that the fast-track system will not have a significant or disproportionate impact on small businesses. The fast-track process is optional and no party will be disadvantaged from not using it due to the already fast standard service. If a small business does, however, wish to make use of it then they are able to do so and we do not consider the fee to be so high to prevent this in the exceptional cases where it is considered necessary.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Summary: Intervention & Options

Department /Agency: Department for Innovation, Universities and Skills	Title: Impact Assessment of the fast track processing of trade mark applications	
Stage: Consultation	Version: 1	Date: 9 July 2007
Related Publications:		

<http://www.ipo.gov.uk>

Oliver Morris

01633 814287

What is the problem under consideration? Why is government intervention necessary?

The United Kingdom Intellectual Property Office (UK-IPO) is one of the fastest registering authorities at examining new trade mark applications. However, there are circumstances when an applicant may wish to secure an even faster time to first examination e.g. in order to launch a product to market within a short timeframe. Government intervention is therefore required to provide a mechanism for applicants to request accelerated examination of a particular trade mark when required.

What are the policy objectives and the intended effects?

The policy objective is to provide a fast track service, upon request by the applicant, in the examination of new trade mark applications.

What policy options have been considered? Please justify any preferred option.

We can either introduce a fast track system as proposed, or, alternatively, to simply let all applications be examined within the same standard timeframe (which is already regarded as relatively fast). We believe that the proposal has merit as it gives an applicant the choice (subject to the payment of a fee of £300) as to whether they wish their application to be examined more quickly. If fast track examination is requested, the application will be examined within 10 business days.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The success of the fast track system will be continually reviewed, but, a formal review will take place after one year from implementation.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The "affected group" is the number of applications. Estimate 10% (4,000) will be fast-tracked @ £300 per application. This is an optional rather than compulsory cost.
	One-off (Transition) Yrs	
	£ 0	
	Average Annual Cost (excluding one-off)	
	£ 1,200, 000	Total Cost (PV) £ 1, 200, 000
Other key non-monetised costs by 'main affected groups' There are no non-monetised costs.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' The proposal may bring a monetised benefit as, for example, the ability to launch a product to market more quickly could result in earlier sales success. This is, however, difficult to quantify. Therefore, readers during consultation stage are encouraged to provide quantitative information on this aspect.
	One-off Yrs	
	£ 0	
	Average Annual Benefit (excluding one-off)	
	£ 0	Total Benefit (PV) £ 0
Other key non-monetised benefits by 'main affected groups' The objective is that those applicants who wish to have their applications examined more quickly are able to do so. This is a benefit because sometimes an applicant will wish to have the results of the examination as quickly as possible in order to speed up the registration process.		

Key Assumptions/Sensitivities/Risks We estimate that, at the most, 10% of applicants will request fast track examination.

Price Base Year 2006/7	Time Period Years 1	Net Benefit Range (NPV) £ -10,000 to -120,000	NET BENEFIT (NPV Best estimate) £-100,000
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	6 April 2008			
Which organisation(s) will enforce the policy?	UK-IPO			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	Net Impact £ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Summary

The UK-IPO is an executive agency of the Department for Innovation, Universities and Skills and is responsible, amongst other things, for granting trade mark registrations at national level. Some 40,000 new applications are received each year which, before they are accepted for registration, are examined to ensure that they satisfy the requirements for registration. This can be a complex task; many judgments of the UK Courts and the European Court of Justice have to be taken into account during this examination process.

Most applications are examined between 4-6 weeks after they are filed. This, compared to the speed of other registering authorities, is regarded as a relatively fast turnaround. The UK-IPO is also aiming to reduce this standard time to conduct examination to one month from the date of filing. Irrespective of all this, a recent independent review, commissioned by the Chancellor of the Exchequer, was conducted by Andrew Gowers into the UK Intellectual Property Framework. One of the recommendations, which was subsequently accepted by the Government, was that fast track processing, subject to the payment of a higher fee, should be pursued in order to speed up the process, when required, by the applicant in a particular case.

Proposal

The proposal is that if a request is made for fast track examination the UK-IPO will examine it within 10 business days of the application being filed. A fast track application will be the subject of a "premium" fee which will equate to an additional £300 per application. The fast track service will be regulated by amendments to the trade mark rules which will set out the framework under which accelerated examination will operate.

Detail

The fast track service is not intended to become the norm. The current time to first examination is already a competitive one comparing favourably with other registering authorities. Furthermore, the aim is for the standard service to be provided even more quickly (within one month). Users have told us that in most cases the standard service is more than sufficient. It should be borne in mind that in order to achieve registration every application must go through a statutory 3 month opposition period beforehand; this cannot be removed. Therefore, the reduction from one month (standard service) to a 10 day (fast track service) period in terms of first examination is only a part of the overall time it takes to secure registration. This means, together with the fact that a fee will be charged, that the fast track option will be the exception rather than the rule. It will only be required when time really is of the essence for the applicant.

Time could be of the essence in a number of circumstances. Firstly, an applicant may wish to have early examination in order to ascertain whether objections exist to his mark or whether there are earlier conflicting marks in existence that may lead to opposition against his application. If the "all clear" is received then the applicant may elect to commence use of his mark there and then and, thus, will enable an earlier entry into the market. Although the risk of opposition still exists, he will, having had the examination report, have been able to assess this risk. Furthermore, faster examination will in any event reduce the length of time to registration and again assist in getting products to market more quickly. Quicker registration is also a factor in the second circumstance, namely, the desire to launch legal proceedings against a potential infringer. The launch of legal proceedings on the basis of an earlier mark cannot be entertained until the mark is registered, therefore, quicker registration, even if by a matter of weeks, may be desirable.

A fee must be charged in order to ensure that the exception does not become the rule. If there was no fee then all applicants would request the fast track service which would negate the

differential between the two and, furthermore, would lead to a demand which could not be satisfied. We are content, although this is clearly a question for consultation, that £300 represents the right balance between affordability for all interested parties and a desire to ensure that interested parties think twice before requesting fast track.

The Gowers' review recommended a fast track system following its "call for evidence" and, furthermore, the UKIPO does receive the occasional request that an application is examined more quickly. Although, as stated above, we do not consider the demand to be great but simply necessary in some circumstances.

Although the imposition of a fee introduces an additional cost, it must be borne in mind that this cost will not be enforced on anyone. The standard service is regarded as more than sufficient in the majority of cases. It merely provides an additional option should an applicant wish to obtain a quicker result.

Our initial estimate is that a maximum of 10% of applications will request fast track examination. This equates to 4000 applications which will each cost an additional £300 compared to the standard service. This estimate is based upon the fact that the Gowers Review found some evidence that fast track processing would be useful together with the fact that the UK-IPO receives a number of requests on an annual basis which at the moment cannot be met. Although the number of requests at the moment does not equate to 10%, the number of requests will no doubt increase significantly when we have an actual service to provide. The 10% estimate has been mentioned to groups of users who have not disagreed with our assessment. This is, however, a figure that the UK-IPO encourages readers of this document to comment on in order to ensure that we have assessed the level of demand correctly.

We could, of course, have simply let the system continue unchanged. However, we believe that there will be circumstances where accelerated examination is desirable and that giving applicants a choice will benefit the business community at large. No one will be compelled to request (and consequently pay for) fast track examination and the UK-IPO will continue to ensure that its standard service leads the way both in terms of speed and quality of service. This is simply about guaranteeing faster examination when it is really important to do so. It is not useful, in our opinion, for the requests that we currently receive to continue to be declined.

Specific impact tests

The nature of the proposal and the manner in which it will operate means that no issues surrounding legal aid, sustainable development, carbon or other environmental issues, health, race equality, disability equality, gender equality, human rights or rural matters have any significance. These issues have none the less been considered in full; no impact will arise.

Competition assessment has taken place and we consider that the changes, given their nature, will have no effect on competition between right holders or between firms of legal representatives. We do not consider that a company or firm will be placed at a disadvantage as a result of the changes; neither do we consider that any new start up company or firm will be prevented from entering the marketplace.

Small firms impact assessment is on-going and will be developed further during consultation. Our initial views are that the fast track system will not have a significant or disproportionate impact on small businesses. The fast track process is optional and no party will be disadvantaged from not using it due to the already fast standard service. If a small business does, however, wish to make use of it then they are able to do so and we do not consider the fee to be so high to prevent this in the exceptional cases where it is considered necessary.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annex D – Patents and Designs Journal Notice on Accelerated Processing of Patent Applications

Accelerated Processing of Patent Applications

Normal Processing

Once a request for preliminary examination and search (Patents Form 9/77) and claims have been filed, a search is made as soon as possible. The Office aims to issue a search report within six months from the date of filing the Patents Form 9/77; however, work pressures can cause delays in certain active areas.

After the expiry of eighteen months from the declared priority date or, where there is none, the filing date of an application, the application is published. Publication consists of the application as filed including the original claims and any new or amended claims subsisting immediately before the completion of preparations for publication.

Following receipt of a request for substantive examination (Patents Form 10/77), unless combined search and examination has occurred, an application will become due for examination at around 18 months after publication. Again, however, activity in certain areas can cause delays.

A patent is generally granted as soon as possible after it is reported that an application complies with the requirements of the Act and Rules. The grant process currently takes five weeks.

Combined Search and Examination

Substantive examination is undertaken at the same time as the search if the request for substantive examination (Patents Form 10/77) has been filed together with the request for preliminary examination and search (Patents Form 9/77). It is not necessary to make a specific request for this service. Exceptionally, search and examination will also be combined, where possible, if a search request only is initially filed, and then the applicant subsequently asks for the combined procedure in writing when filing the examination request on Form 10/77. However combined search and examination cannot be guaranteed unless the two Forms are filed together or a Form 10/77 is filed immediately after Form 9/77 together with a written request for the combined procedure.

When appropriate, a substantive examination report under section 18(3) will issue with the search report, setting out objections noted by the examiner. However, no report under section 18(4) that an application complies with the requirements of the Act and Rules will issue until at least three months after the application has been published under section 16. This is to allow third parties time to file observations under section 21 and to permit the search to be updated.

Fuller details of the combined search and examination procedure, including the Journal Notice of 21 June 1995 launching this service, are given in the *Manual of Patent Practice*, which is available on our website at:

<http://www.patent.gov.uk/patent/p-decisionmaking/p-law/p-law-manual/p-law-manual-practice.htm>

Accelerated Search

A request for an accelerated search to be performed will be allowed if an adequate reason is given. What constitutes an adequate reason may depend, in part, on the applicant's actions. For example, any delay in filing the Patents Form 9/77 may be taken into account, particularly if acceleration is being requested in order to obtain a search report before the end of the priority year, and filing a timely Patents Form 9/77 earlier in the year would have achieved this.

Applicants are advised to mark any such request with the words "REQUEST FOR ACCELERATED SEARCH", so that it may be identified more easily and dealt with promptly.

The timescale for receipt of the search report will be agreed with the applicant after the request has been accepted. Unless it is requested explicitly, we will assume that accelerated publication is not required.

Accelerated Publication

The comptroller may publish a patent application before the end of the eighteen month period mentioned above, if requested to do so by the applicant. However, an application will not enter the publication process prior to issue of the search report, nor prior to compliance with the formal requirements of the Rules, nor until after the provision of any necessary statement of inventorship etc on Patents Form 7/77 or of a copy of any application from which priority is sought. The publication process takes five weeks.

Applicants are advised to mark any such request with the words “REQUEST FOR ACCELERATED PUBLICATION”, so that it may be identified more easily and dealt with promptly.

Applicants should also note that a request for substantive examination must be made, and the examination fee paid, within six months of the actual date of publication of the application.

Accelerated Substantive Examination

A request for an application, not subject to combined search and examination, to be examined straightaway will be allowed if an adequate reason is given. Such a request should be marked “REQUEST FOR ACCELERATED EXAMINATION” to ensure prompt action.

Accelerated examination will be started as soon as possible after allowance of a request but, as with combined search and examination, no report under section 18(4) that the application complies with the requirements of the Act and Rules will issue until at least three months after publication of the application under section 16, so as to allow third parties the opportunity to file observations under section 21 and for the search to be updated.

If a request for accelerated examination is made before publication it must be made clear whether or not accelerated publication is also requested.

Early Grant

Combined search and examination allows for the possibility of early grant, with the timing of grant depending on whether accelerated publication has been requested. Similarly early grant can occur following accelerated substantive examination.

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Revised: Sep 07



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