

INTELLECTUAL PROPERTY INFORMATION MEMO

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Beating the Wait: Practical Tips to Shorten Patent and Trademark Pendency

It is taking longer to get a patent. Since 2020, the average time from patent filing to receiving the first action from the U.S. Patent and Trademark Office (USPTO) has risen from 14 months to 21 months, a 50% increase in only five years.¹ Total pendency, which includes time from filing to an allowance or an abandonment, has risen by three months in the same period.²

Recognizing the problem, the USPTO has taken multiple steps to slow the steadily increasing pendency. Some of these steps have been practical, like ensuring that patents are routed to examiners with the correct technical backgrounds or introducing new tools to streamline the examining process.³ But beyond these measures, the USPTO has acknowledged that bringing pendency down means it needs more examiners reviewing applications, and that means increasing examiner hiring and decreasing examiner attrition.⁴ Simply put: more examiners in, fewer examiners out.

To that end, the USPTO hired more than 2,000 new examiners in the past three years, with 500 of those hired as recently as October 2024.⁵ And to incentivize examiners to stay, the USPTO secured an increase in pay for some examiners—something that had not happened in nearly 15 years—and extended working hours to provide better schedule flexibility.⁶

For the first time since 2019, time to first action dropped in fiscal year 2024: from 20.5 months to 19.9 months.⁷ Although 2025 saw an uptick again, the momentary dip could evidence that the USPTO's efforts have begun to yield results.⁸

The USPTO has taken similar measures to reduce the pendency of trademark applications. Since October 2024, the USPTO hired 56 trademark examining attorneys and optimized the Trademark Academy training program for new examiners.⁹ As a result, the average first-action pendency times

1 Patents Pendency Data February 2025, UNITED STATES PATENT AND TRADEMARK OFFICE, <https://www.uspto.gov/dashboard/patents/pendency.html> (last accessed March 25, 2025).

2 *Id.*

3 Working together to tackle patent and trademark pendency, UNITED STATES PATENT AND TRADEMARK OFFICE, <https://www.uspto.gov/blog/working-together-tackle-patent-and-trademark-pendency> (last accessed March 25, 2025).

4 *Id.*

5 Patent pendency goals: A road map for the future, UNITED STATES PATENT AND TRADEMARK OFFICE, <https://www.uspto.gov/blog/patent-pendency-goals-road-map-future> (last accessed March 25, 2025).

6 Working together to tackle patent and trademark pendency, UNITED STATES PATENT AND TRADEMARK OFFICE, <https://www.uspto.gov/blog/working-together-tackle-patent-and-trademark-pendency> (last accessed March 25, 2025).

7 Patents Pendency Data February 2025, UNITED STATES PATENT AND TRADEMARK OFFICE, <https://www.uspto.gov/dashboard/patents/pendency.html> (last accessed March 25, 2025).

8 *Id.*

9 USPTO Should Address Risks to Its Pendency Reduction Efforts for Trademark Applications, UNITED STATES PATENT AND TRADEMARK OFFICE, Final Report No. OIG-25-002-A, https://www.oig.doc.gov/OIGPublications/OIG-25-002-A_Final%20report.pdf (October 24, 2024).

decreased for the first time since fiscal year 2022.¹⁰ As of December 2024, the average first action pendency was 6.1 months, down from 8.5 months in 2023.¹¹

But the Trump Administration's efforts to reduce government spending has threatened to stymie this temporary progress. Only three days after the USPTO announced it had hired 500 new patent examiners in 2025, the White House announced a hiring freeze across the Executive Branch.¹² Adding further uncertainty, the Trump Administration ordered remote federal workers to return to the office, while offering a "deferred resignation" program in exchange for exemption from return-to-work requirements until Sept. 30, 2025.¹³ With nearly 13,000 of the USPTO's 14,000 employees working remotely, the USPTO does not have nearly enough office space sufficient to house its remote workers.¹⁴ Compounding the issue, the USPTO relinquished two of its buildings in 2024 at its headquarters in Alexandria, Virginia as more employees were working remotely.¹⁵ As a potential warning sign, the time to receive a first office action for a patent application has increased from 20.3 months in December 2024 to 21.3 in February 2025, a significant increase during this initial period of uncertainty.¹⁶

For the time being, most examiners are not required to return to the office because of a collective bargaining agreement.¹⁷ But the Trump administration has argued that these agreements are not enforceable, so it is unclear how this will resolve.¹⁸ A branch-wide order to return could significantly disrupt the USPTO's efforts to slow attrition of examiners. Remote work has been a key incentive in the USPTO's hiring process, something it has relied upon since 1997, with some examiners living as far away as Alaska and Hawaii.¹⁹

The implications of these executive orders and the current administration's actions are unclear. Clients can hedge against risk of extended pendency by taking simple actions:

10 Trademarks Data Q1 2025 at a glance, UNITED STATES PATENT AND TRADEMARK OFFICE, <https://www.uspto.gov/dashboard/trademarks/> (last accessed March 25, 2025).

11 *Id.*

12 Hiring Freeze, THE WHITE HOUSE, <https://www.whitehouse.gov/presidential-actions/2025/01/hiring-freeze/> (last accessed March 25, 2025).

13 Return to In-Person Work, THE WHITE HOUSE, <https://www.whitehouse.gov/presidential-actions/2025/01/return-to-in-person-work/> (last accessed March 25, 2025); Federal Deferred Resignation Program: What You Need to Know Before Resigning, NATIONAL SECURITY LAW FIRM, <https://www.nationalsecuritylawfirm.com/federal-deferred-resignation-program-what-you-need-to-know-before-resigning/> (last accessed March 25, 2025).

14 USPTO year in review: In March, USPTO transitions 13,000 employees to remote work without missing a beat, UNITED STATES PATENT AND TRADEMARK OFFICE, <https://www.uspto.gov/about-us/news-updates/uspto-year-review-march-uspto-transitions-13000-employees-remote-work-without> (last accessed March 25, 2025).

15 Memorandum: Advance Notice of Change to MPEP – Updating Addresses Based on Relinquishment of the Randolph and Remsen Buildings, UNITED STATES PATENT AND TRADEMARK OFFICE, <https://www.uspto.gov/sites/default/files/documents/memo-mpep-oct2024.pdf> (October 2, 2024).

16 Patents Pendency Data February 2025, UNITED STATES PATENT AND TRADEMARK OFFICE, <https://www.uspto.gov/dashboard/patents/pendency.html> (last accessed March 25, 2025).

17 USPTO Exempted From Remote Work Executive Order: Kathi Vidal Discusses Impact with MLex, WINSTON & STRAWN LLP, <https://www.winston.com/en/insights-news/uspto-exempted-from-remote-work-executive-order-kathi-vidal-discusses-impact-with-mlex> (last accessed March 25, 2025).

18 Limiting Lame-Duck Collective Bargaining Agreements That Improperly Attempt to Constrain the New President, THE WHITE HOUSE, <https://www.whitehouse.gov/presidential-actions/2025/01/limiting-lame-duck-collective-bargaining-agreements-that-improperly-attempt-to-constrain-the-new-president/> (last accessed March 25, 2025).

19 Telework Annual Report, UNITED STATES PATENT AND TRADEMARK OFFICE, https://www.uspto.gov/sites/default/files/documents/TAR_2022.pdf (last accessed March 25, 2025).

General Tips:

- **File Early:** Starting your application process as early as possible will prepare for potential delays. The earlier you file, the sooner your application can be reviewed.
- **Respond Promptly:** Respond as quickly as possible to all communications, including Office Actions, from the USPTO. Delays in response time can extend processing times.

Patent Tips:

- **Convert Provisional Applications Early:** Provisional applications establish a filing date but are not examined. Converting the provisional to a non-provisional before the one-year deadline will begin the examination process sooner.
- **Schedule Examiner Interviews:** Once examination has begun, scheduling interviews with the examiner can provide useful feedback to applicants to find shorter paths to an allowance.
- **Consider Prioritized Applications:** The USPTO offers prioritized examinations for a fee (known as Track One), as well as for applicants 65 years or older. These will be taken up for examination sooner than non-priority applicants.

Trademark Tips:

- **Ensure Accuracy of Trademark Goods and Services:** Review your application for completeness and accuracy and utilize the USPTO's ID Manual to ensure that your goods and services are correctly identified. Incomplete or incorrect applications can lead to delays.
- **When in Doubt, Call the Examining Attorney:** Calling an examining attorney is often the quickest way to clear up confusion regarding a refusal, particularly regarding the identification of goods and services. Following a brief phone call, examining attorneys are often willing to speed up the examination process by entering amendments to clear up minor issues without requiring a formal response.
- **Confirm Specimens of Use Meet USPTO Requirements:** In an effort to crack down on fraudulent applications, examining attorneys have increased scrutiny regarding specimens of use. Submitting an unclear specimen or a specimen of questionable connection to the identified goods or services can lead to additional delays.

For more information on trade dress registration, contact [Jonathan Gray](#), [Daniel Carosa](#), [Jéla Paul](#) or any attorney in Bond's [intellectual property practice](#).

