



USPTO Post Prosecution Pilot Program: What you need to know about the “P3” Process

On July 11, 2016 the U.S. Patent and Trademark Office began accepting applications to their [Post Prosecution Pilot Program](#) (or P3 for short), which offers another avenue once you’ve received a final rejection to your patent. This program may be of special interest to law firms and in-house IP departments who want to increase their “batting average” and get more patents accepted.

When You Might Use the P3 Program

Suppose that you’ve just received a “final rejection” for a patent and you’re planning to file a notice of appeal. You now have two options: you can go through the traditional process or you can use P3.

If you use P3, the decision will be quicker and the process for pleading that your patent be reconsidered will change, which may increase your chances of obtaining a grant.

[According to the USPTO](#), if you’re accepted into the P3 program, you’ll have a conference with a panel of three examiners who will review your response to the final rejection. This conference can be done [in-person or by phone](#). You’ll be given the option of amending your claims in your final rejection response (as long as they don’t broaden the patent) and the USPTO will provide a written explanation for the panel’s decision.

The USPTO hopes this will improve the patent process and provide more insight into rejections.

“It is our goal to illuminate the next available steps and offer an after final option that is more useful to you,” [the USPTO says in its blog](#).

This program is particularly helpful because it gives [a new means for expediting prosecution](#) before the Notice of Appeal deadline. More details about the process can be found [here](#).

Three Possible Outcomes of Your P3 Conference

If you participate in the P3 program, you’ll have three possible outcomes: an allowable application, reopened prosecution, or your final rejection will be upheld.

Allowable Application

The USPTO will mail a notice of decision indicating “allowable application,” sent concurrently with a Notice of Allowance.

Reopen Prosecution

For this outcome, the USPTO will send a notice of decision indicating “reopen prosecution,” which will state that the rejections are withdrawn and a new Office action is being mailed.

Final Rejection Upheld

If your final rejection is upheld, this doesn’t necessarily mean the end of the road, but you’ll have to respond quickly.

[According to the USPTO:](#)

“The time period for taking further action in response to the final rejection expires on (1) the mailing date of the notice of decision; or (2) the date set forth in the final rejection, whichever is later. To avoid abandonment, the applicant must file a notice of appeal or RCE within the statutory period for response to the final rejection. Extensions of time may be obtained under 37 CFR 1.136(a), but the period for response may not be extended beyond the six-month statutory period for response.

The decision is not petitionable, and the Office will not grant a petition seeking reconsideration of a panel decision upholding

a final rejection.”

How to Get Your Patent into the USPTO P3 Program

This program is open to everyone who has a recently rejected patent application that fits the criteria below. There is no fee for participating. Since the program is new, it's not yet known if it will improve the success rate of appealing a patent rejection. But companies or firms who do a high volume of patents will likely want to give this program a trial run. If it does indeed increase the likelihood of success, it could dramatically affect decisions in future cases.

However, getting into the program isn't easy.

First, the program is only open to “nonprovisional and international, utility applications filed under 35 USC 111(a) or 35 USC 371 that are under final rejection.” This means that reissue, design, and plant patent applications aren't eligible. Re-examination proceedings are also ineligible.

If your patent qualifies after these exclusions, you must still submit it within two months of the mailing date of the final rejection, and before filing a notice to appeal. Your request should include a response to the final rejection, a statement that you're available to participate in the conference, and optional non-broadening amendments to your claims.

Before you submit your patent, you'll need to make sure the program is still accepting applications. The USPTO states that applications will be accepted until 1,600 applications are approved or until six months have passed, whichever is sooner. That means the USPTO will accept applications until January 12, 2017 at latest.

But there's one more catch. Each individual technology center will accept a maximum of 200 compliant requests. If your request is filed after that maximum is reached, then your application will be automatically declined. On the bright side, as of September 19, 2016, no technology center has received the maximum number of requests yet. Requests range from 38 to 112. So if you file a valid application in the near future, your chance of being accepted is high.

The P3 program is part of the USPTO's Enhanced Patent Quality Initiative to strengthen the quality of the patent process. The patent office hasn't yet said what they will do after the P3 program ends. Future programs will likely be determined based on the results of this pilot program.