# FAST TRACK PATENTS

There are ways to get an examiner's answer sooner, **but unless you're a special case, they will cost extra money.**

You begin work on a patent application and have to hurry because of an impending trade show for your team's new product. There are meetings with management, company forms to fill out, meetings with patent attorneys, reviewing, editing, and re-editing. Finally, the patent application is filed.

And you wait. And wait. It might be two to three years before you hear anything from the U.S. Patent and Trademark Office examiner in charge of your patent application. When you do finally hear something, it's usually bad news: your patent application is rejected. Eventually, you and your attorney's technical and legal arguments convince the examiner he was wrong and now, finally, three to four years after an application for a patent is made, you receive your patent.

Has anyone ever thought about speeding it up a little? Yes.

There are now several Patent Office programs designed to speed up the patent pending process. You might have heard about these programs as a way to obtain a patent in a year, but that's not entirely correct. The Patent Office states that it is a goal to complete examination of an application within 12 months. This means first, it's only a goal, and second, complete examination doesn't necessarily mean issuing a patent. The Patent Office, for example, counts the one year goal as being met if a Patent Office examiner issues a final rejection to your patent application within a year of its filing.

The Navy SEALs have a saying, "Don't run to your death." The same might be true in the world of patents: using a fast track process might just be a quicker way to get rejected by the Patent Office.

The various fast track programs include Accelerated Examination, Track I, and the petition to "Make Special." Most have severe requirements. Accelerated examination, for example, requires a prefiling patent search to be conducted and documented. A position paper must also be drafted pointing out how the invention differs from what was found in the search. Hiring a patent attorney to complete these tasks can cost a lot and also take a fair amount of time. Maybe that is why Patent Office statistics reveal this particular program is not being used much.

Those special documents aren't required for the relatively new Track I program but the

## THE NAVY SEALS HAVE A SAYING,

## "DON'T RUN TO YOUR DEATH." THE SAME MIGHT BE TRUE IN THE WORLD OF PATENTS.

fee to play is hefty: $4,800 (cut in half for small businesses) in addition to the regular patent application filing fees.

The petition to make your patent application special has been around for a while but it is limited to certain applicants (senior citizen inventors or inventors with medical problems) or special subjects (like green technology and homeland security applications).

Twenty-year-plus patent attorney Bruce D. Jobse of the Boston law firm Burns & Levinson hasn't used the accelerated examination program much but loves the Track I process. In his experience, the Patent Office examiners worked fast and were willing to negotiate on the phone. Bruce's clients who were seeking funding or who had a particular patent licensee in mind have come to appreciate Track I.

Still, he admits that the use of any fast track program is dependent on a lot of factors which should all be carefully weighed in each individual circumstance. **ME**

**KIRK TESKA** is the managing partner of Iandiorio Teska & Coleman, an intellectual property law firm in Waltham, Mass.

---

### FAST PATENTS

# QUICK FACTS

### ACCELERATED EXAMINATION
Requirements include a patent search conducted and documented before filing and a paper detailing how the invention differs from what was found in the search. Attorney's fees can be high.

### TRACK I
Applicants must pay a fee to play of $4,800 (cut in half for small businesses) in addition to the regular patent application filing fees.

### "MAKE SPECIAL"
This option is open to certain applicants (senior citizens or inventors with medical problems) or special subjects (like green technology and homeland security applications).