

Streamlined Expedited Patent Appeal Pilot for Small Entities (S-EPAP)

Frequently Asked Questions

1. What is the purpose the S-EPAP for Small Entities?

The purpose of the S-EPAP is to provide an opportunity for small entities to secure expedited review of an *ex parte* appeal.

2. What is the benefit of an expedited review?

While the nature of judicial administration does not afford precise estimates, the current average pendency of an *ex parte* appeal is roughly 30 months. Appeals accepted for this pilot would typically be decided within 6 months from the filing date of the petition.

3. Can large entities use the S-EPAP program to secure expedited review of an *ex parte* appeal?

No. This pilot is specifically designed to allow small entities to secure expedited review without further processing fees. The S-EPAP program was developed in response to input received from the public about the Expedited Patent Appeal Pilot (EPAP) program. Members of the public noted that small entities having only one appeal pending before the PTAB would not be able to take advantage of the EPAP program to secure expedited review of an *ex parte* appeal. The S-EPAP program provides a mechanism by which such small entities can obtain expedited review of an *ex parte* appeal.

4. If a small entity has several *ex parte* appeals pending before the PTAB as of the start date for the pilot, can it apply to use the S-EPAP program for more than one pending appeal?

No. The pilot requires the applicant to certify that they have only one *ex parte* appeal pending as of the start of the pilot (i.e., September 18, 2015).

5. What does the S-EPAP program require of the small entities?

The Appellant must file a petition to participate in the S-EPAP program. The PTAB has created a simple fillable form (Form PTO/SB/441) to apply to participate in the pilot. The petition requires that the Appellant agree that the claims on appeal will stand or fall based upon one representative claim to be selected by the PTAB for each ground of rejection. The representative claim is typically the broadest claim in the application subject to each ground of rejection. Also, note that appeals containing rejections under 35 U.S.C. § 112 are not eligible for the pilot. The petition requires that the Appellant also certify that he/she qualifies as a small entity; that he/she has only a single pending *ex parte* appeal; and, that the appeal was pending as of the start of the pilot (i.e., September 18, 2015).

6. Are all appeals eligible for the S-EPAP program?

No, appeals containing rejections under 35 U.S.C. § 112 are not eligible for the pilot.

7. Can I still request an oral hearing for the appeal I request to be expedited?

No. To be approved to participate in the S-EPAP program, no oral hearing can be requested and, if it has been requested, the request must be withdrawn.

8. How long will the S-EPAP program be available?

Unless the pilot is extended, it will end on September 17, 2016 or remain in effect until 2,000 *ex parte* appeals are accepted under the program, whichever occurs first.

9. Is there a fee associated with applying to participate in the S-EPAP program?

No. Although the request to participate in this pilot is made by way of a petition to the Chief Judge under 37 C.F.R. § 41.3, the Office has waived the petition fee.