

DSMER Pilot Form Paragraph.

¶ 99.01 Invitation to Participate in DSMER Pilot Program

Invitation to Participate in DSMER Pilot Program

The present application satisfies the criteria for participation set forth in the Federal Register Notice entitled “Deferred Subject Matter Eligibility Response (DSMER) Pilot Program.” Therefore, the examiner invites applicant to participate in the DSMER pilot program.

An applicant who accepts the invitation to participate in this pilot program must still file a reply to every Office action mailed in this application, but may defer presenting arguments or amendments in response to subject matter eligibility (SME) rejection(s) until the earlier of final disposition of the application, or the withdrawal or obviation of all other outstanding non-SME rejections. A final disposition for purposes of this pilot program occurs upon the earliest of: mailing of a notice of allowance; mailing of a final Office action; filing of a notice of appeal; filing of a request for continued examination; or abandonment of the application. Other than applicant’s ability to defer responding to SME rejections, participation in the DSMER pilot program does not alter the normal examination process (e.g., as outlined in MPEP 700), and applicant must still respond to all non-SME rejections when replying to Office actions.

Further information about the pilot program, including an explanation of the criteria for receiving an invitation, and the conditions of participation, is provided in the Federal Register Notice announcing the program, which is available on the pilot program website [https://www-uspto.gov/patents/initiatives/patent-application-initiatives/deferred-subject-matter-eligibility-response](https://www.uspto.gov/patents/initiatives/patent-application-initiatives/deferred-subject-matter-eligibility-response).

Applicant has two choices with respect to this invitation:

- (1) Applicant may elect to participate in the DSMER pilot program. To effect this choice, applicant **MUST** accept this invitation by filing a completed request form PTO/SB/456 with a timely response to this Office action. The DSMER Pilot request form must be signed in accordance with 37 CFR § 1.33(b) by a person having authority to prosecute the application, and must be submitted via the USPTO’s patent electronic filing systems (EFS-Web or Patent Center). The form is available on the pilot program website <https://www-uspto.gov/patents/initiatives/patent-application-initiatives/deferred-subject-matter-eligibility-response>. If the form is properly completed and timely received, the application will be entered into the pilot program.
- (2) Applicant may decline to participate in the pilot program. No action is required from applicant to effect this choice, because if applicant does not timely file a properly completed form PTO/SB/456, the application will not be entered into the pilot program.

Examiner Note:

1. This form paragraph should only be used in an application that satisfies the criteria set forth in the Federal Register Notice announcing the program (87 FR 776), which published on January 6, 2022.
2. This Office action must contain at least one subject matter eligibility (SME) rejection, and at least one non-SME rejection.