

[3510-16-P]

**DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

[Docket No.: PTO-P-2014-0018]

**Patents for Humanity Program**

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (USPTO or Office) recently concluded a twelve-month pilot program called Patents for Humanity to incentivize the use of patented technologies for humanitarian purposes, culminating with an awards ceremony in April 2013. Following the success of this pilot, the USPTO is continuing Patents for Humanity as an annual awards competition. The USPTO will announce an application period each year of the competition. For 2014, applications will be accepted from April 15 to September 15, 2014. Participants will submit program applications describing what actions they have taken with their patented technology to either address humanitarian needs among an impoverished population or further research by others on humanitarian technologies. Applications will be accepted in five categories: (1) Medicine, (2) Nutrition, (3) Sanitation, (4) Household Energy, and (5) Living

Standards. Independent judges will review the program applications, and Federal employees from other agencies will recommend awards based on these reviews.

For the 2014 competition, two types of awards will be made: Patents for Humanity Awards and honorable mentions. The Patents for Humanity Award is the top award for applicants best representing the Patents for Humanity principles. Patents for Humanity Award recipients in 2014 will receive a certificate to accelerate select matters before the USPTO and public recognition for their efforts, including an award ceremony sponsored by the USPTO. Honorable mentions in 2014 will receive accelerated examination of one patent application and a featured writeup on the USPTO Web site. A portion of honorable mentions may be awarded for the best up and coming technologies. The USPTO expects to award roughly ten Patents for Humanity Awards and up to twenty honorable mentions in 2014. The exact number of awards may vary depending on the number and quality of program applications received. Types of awards for subsequent years will be announced with the application period in the Federal Register.

Patents for Humanity certificates awarded through the 2014 competition can be redeemed to accelerate one of the following matters: an ex parte reexamination proceeding, including one appeal to the Patent Trial and Appeal Board (PTAB) from that proceeding; a patent application, including one appeal to the PTAB from that application; or an appeal to the PTAB of a claim twice rejected in a patent application or reissue application or finally rejected in an ex parte reexamination, without accelerating the underlying matter which generated the appeal. Inter partes reexaminations and interference

proceedings are not eligible for acceleration, nor are post-grant reviews, inter partes reviews, covered business method reviews, derivation proceedings, or supplemental examinations. Certificates awarded are not transferable to other parties.

**DATE:** Program applications for 2014 will be accepted from April 15 to September 15, or until 300 applications are received, whichever comes first.

**FOR FURTHER INFORMATION CONTACT:** For questions about the program, contact Edward Elliott, Office of Policy and International Affairs, by telephone at 571-272-7024; or by facsimile transmission to 571-273-0123; or by mail addressed to: Patents for Humanity Program, Attention: Edward Elliott, Office of Policy and International Affairs, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

**SUPPLEMENTARY INFORMATION:** In September 2010, the USPTO requested comments from the public on proposals to incentivize the development and distribution of technologies that address humanitarian needs. See Request for Comments on Incentivizing Humanitarian Technologies and Licensing Through the Intellectual Property System, 75 FR 57261 (September 20, 2010), 1359 Off. Gaz. Pat. Office 121 (October 12, 2010). A pilot program was announced in February 2012. See 77 FR 6544 (February 8, 2012).

## **Application Process**

The remainder of this notice describes the terms and conditions of the annual program and details for 2014. To enter the competition, applicants must submit program applications describing how their actions satisfy the competition criteria given below. Program applications are not patent applications but separate documents created for this program. The term “application” throughout this notice shall mean program application, rather than patent application, unless otherwise noted. Likewise, “applicant” shall mean program applicant, rather than patent applicant, unless otherwise noted.

Each year, the USPTO will announce an application period for submitting Patents for Humanity applications. Applications for 2014 will be accepted from April 15 to September 15, 2014, or until 300 applications are received, whichever occurs first. That is, if that limit is reached before the application deadline, then the application period will close. Applications must be submitted electronically to an on-line application portal by following the instructions posted at <http://www.uspto.gov/patentsforhumanity>. Submissions will be publicly available on the application portal after being screened for inappropriate material. Submissions containing incomplete or inappropriate material will not be considered.

For consistent and timely evaluation, applications will consist of a core section and supplements. Application forms will be available from the USPTO Web site at <http://www.uspto.gov/patentsforhumanity>. The core section will address how the

applicant meets the defined competition criteria within a strict five-page limit.

Applications exceeding this limit may be removed from consideration. Applicants may supplement the core section with any supporting material they wish to provide, such as project brochures, adoption data, case studies, published articles, or third party testimonials. Judges will review the core section of every application they evaluate.

Judges may review any, all, or none of each application's supplementary material at their discretion.

After the application period ends, judges will review and score the applications. Based on these reviews, USPTO will forward the top-scoring applications to reviewers from participating Federal agencies to recommend award recipients. Final decisions on awards are made at the discretion of the Director of the USPTO. The program's goal is to complete the recommendation process within 90 days of the close of the application period.

The USPTO will endeavor to balance the number of awards in each category to reflect the quality of applications received. The USPTO may reassign applications to other categories or modify categories as needed. The actual number of awards given may vary depending on the number and quality of submissions.

Once awards have been determined, the USPTO will notify the awardees and schedule a public awards ceremony. The USPTO will attempt to notify awardees four weeks before the ceremony date if circumstances permit.

This program involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The collection of information involved in this program has been reviewed and approved by OMB under 5 CFR 1320.13.

### **Judging Process**

Applications will be reviewed by independent judges chosen from outside the USPTO. The qualifications for judges are described below. Each judge will review a set of applications based on the judging criteria and selection factors below, and then submit their scores and evaluations to the USPTO.

Each application will be reviewed by multiple judges. To encourage fair, open, and impartial evaluations, judges will perform their reviews independently, and the reviews will not be released to the public as permissible by law. After awards have been made, applicants may request from the USPTO a copy of the reviews for their application with the judges' names redacted. Reviews will be sent to either the address on file with the application or another address verified as belonging to the applicant.

After judges have submitted their evaluations, the top scoring applications will be forwarded to reviewers from participating Federal agencies to make recommendations on awards. The USPTO will request these recommendations be provided within 90 days of the end of the application period, if possible. After the recommendations are received

and final recipients chosen, the USPTO will notify winners and schedule a public awards ceremony.

All awards are subject to the approval of the Director of the USPTO. Results may not be challenged for relief before the USPTO.

### **Eligibility**

The competition is open to any patent owners, patent applicants, or patent licensees, including inventors who have not assigned their ownership rights to others, assignees, and exclusive or non-exclusive licensees. Each program application must involve technology that is the subject of one or more claims in an issued U.S. utility patent or a pending U.S. utility patent application owned or licensed by the applicant. If using a patent application as the basis for the program application, applicants must show that a Notice of Allowance for one or more claims from that patent application has been issued before any certificate will be awarded. Honorary recognition may be given without this showing at the Director's discretion. Inventions from any field of technology applied to one of the competition categories may participate.

Applicants may team together to submit a single joint application covering the actions of multiple parties. At least one applicant in a joint application must meet the eligibility criteria above. Only one certificate will be issued to a team of joint applicants selected for an award, and the certificate can be redeemed only in one matter (e.g., a single patent application examination, a single ex parte reexamination proceeding, etc.). Joint

applications must designate a single applicant as the recipient for any acceleration certificate awarded on their application, and that recipient must meet the applicant eligibility criteria described in this notice. The designated recipient may be changed at any time before a certificate is issued by written consent of all parties to the application.

Licensees and patent owners may team together to submit a joint program application where both parties contributed to a humanitarian endeavor. Alternatively, patent owners or licensees may apply on their own based on actions they have performed without the other party. For applications which do not list a patent owner as a joint applicant, the licensee must notify the patent owner and provide them a copy of their completed application before the close of the application period. Within 14 days of being notified, patent owners may submit a two-page written statement regarding such an application with any additional information they wish the judges to consider. The lack of such a statement will not prejudice an application.

There is no preset limit on the number of awards that can be given per technology or per program applicant. Applicants can determine how many program applications to submit and which actions and technologies to cover in each application. However, the diversity requirement discourages granting multiple awards to the same technology or applicant.

See *Selection Factors*, below, for more information.

## **Competition Criteria**

Program applications must demonstrate how the applicants' actions have increased the use of patented technology to address humanitarian issues. For this competition, a *humanitarian issue* is one significantly affecting the public health or quality of life of an impoverished population. Judges will examine whether the criteria have been met for a humanitarian issue based on the description in the application.

Applicants will select which category best fits their application, chosen from the following: (1) Medicine, (2) Nutrition, (3) Sanitation, (4) Household Energy, and (5) Living Standards. Medicine encompasses technology for any medical treatment or service, including medicines and vaccines, diagnostic equipment, medical devices, implants, assistive devices, epidemiology, and preventive medicine. Nutrition includes not only agricultural technology like drought-resistant crops, more nutritious crop strains, and farming equipment, but also technologies which improve food production, processing, preservation and storage, or preparation. Sanitation includes not only issues with clean water and waste treatment, but also other environmental issues with a demonstrable impact on human health, such as air pollution, toxic substances, chemical exposure, or land mines. Household Energy involves providing power to homes and communities for light, heating, cooking, or other basic needs in areas without reliable electricity. Living Standards encompasses a wide range of issues that empower people to escape poverty, such as education, literacy, access to information, communications, internet access, access to markets, and microfinance. Technologies in this category

include portable computers, cell phones, or internet access devices being used to foster literacy, education, or other life-changing knowledge.

Applicants will designate the category in which they wish their application to be considered. The Office may reassign an application to another category at its discretion. Categories may be altered when awards are made to better reflect the applications received that year.

Within the selected category, each application must address either one of two sets of judging criteria: (1) humanitarian use or (2) humanitarian research. The *humanitarian use* criteria recognize those who apply eligible technologies to positively impact a humanitarian issue. Examples of technologies with potential humanitarian uses include treatments for disease, medical diagnostics, water purification, more nutritious or higher-yield crops, off-grid solar lighting, and education or literacy devices, among others. The focus is on demonstrable real-world improvements in the lives of the poor. Applicants must show:

- i) Subject Matter – the applicant’s technology, which is claimed in a U.S. utility patent in force at the time or a pending U.S. utility patent application, effectively addresses a recognized humanitarian issue.
- ii) Target Population – the applicant’s actions target an impoverished population affected by the humanitarian issue.
- iii) Contribution – the applicant took meaningful actions to make the technology more available for humanitarian uses. This only includes actions taken by the applicant.

- iv) Impact – the applicant’s contributions have significantly advanced deployment of the technology to benefit the target population. This includes downstream actions by third parties building on the applicant’s contributions.

Alternatively, the *humanitarian research* criteria recognize increasing the availability of patented technologies to other researchers for conducting research with a humanitarian purpose. Examples of technologies with potential to advance humanitarian research include patented molecules, drug discovery tools, gene sequencing or splicing devices, special-purpose seed strains, data analysis software, or other patented research material. The focus is on contributing needed tools to areas of humanitarian research lacking commercial application. Applicants under this criteria must demonstrate:

- i) Subject matter – the applicant’s technology, which is claimed in a U.S. utility patent in force at the time or a pending U.S. utility patent application, effectively supports research by others, e.g., as a tool or input.
- ii) Neglected Field – the research by others clearly targets a humanitarian issue in an area lacking significant commercial application.
- iii) Contribution – the applicant took meaningful actions to make the technology more available for research by others in the neglected field. This only includes actions taken by the applicant.
- iv) Impact – the research by others has a high potential for significant impact on the neglected field. This includes downstream actions by third parties using the applicant’s contributions.

## **Selection Factors**

In addition to the competition criteria, a number of selection factors will be considered in choosing recipients. Unlike judging criteria, selection factors are not items that applicants address in their applications. Rather, they are guiding principles for administering the competition.

Three neutrality principles apply. First, the program will be technology neutral, meaning applications may be drawn to any field of technology with patentable subject matter applied to one of the five competition categories. Second, it will be geographically neutral, meaning the impoverished population benefiting from the humanitarian activities can be situated anywhere in the world. Third, evaluations will be financially neutral, meaning the underlying financial model for the applicant's actions (for-profit or otherwise) is not considered. The focus is only on the ultimate humanitarian outcome.

Diversity of awarded technologies will also factor into selections. Part of the program's mission is to showcase the numerous ways in which the patent community contributes to humanitarian efforts. Just as no single technology addresses every humanitarian issue, no single contribution model will work in every situation. Selected awardees should therefore encompass a range of technologies, types and sizes of entities, and models of contributions.

The decision to award a certificate rests solely within the Director's discretion and cannot be challenged before the USPTO or any Federal agency.

## **Selection of Judges**

Judges will be selected by the USPTO each award cycle. Candidates with the following qualifications will be preferred:

- 1) Recognized subject matter expertise in medicine, science, engineering, economics, business, law, public policy, or a related field.
- 2) Demonstrated understanding of technology commercialization.
- 3) Experience with peer review processes such as grant applications or academic journal submissions.
- 4) Knowledge of humanitarian issues, especially the practical challenges presented with delivering goods and services to areas with inadequate transportation, electricity, security, government, or other infrastructure.

Additionally, judges will be chosen to minimize conflicts of interest, e.g., by avoiding candidates employed by, or with clients in, industries relevant to this program.

Candidates from academia are desired. A conflict of interest occurs when a judge (a) has significant personal or financial interests in, or is an employee, officer, director, or agent of, any entity participating in the competition, or (b) has a significant familial or financial relationship with an individual who is participating. When a conflict of interest does arise, the judge must recuse himself or herself from evaluating the affected applications.

## **Awards**

Winners of the 2014 competition will receive recognition for their humanitarian efforts at a public awards ceremony with the Director of the USPTO or other executive branch official. They will also receive an acceleration certificate which can be redeemed to accelerate select matters before the USPTO. For the 2014 competition, eligible matters shall be one of the following: (i) an ex parte reexamination proceeding, including one appeal to the PTAB from that proceeding; (ii) a patent application, including one appeal to the PTAB from that application; or (iii) an appeal to the PTAB of a claim twice rejected in a patent application or reissue application or finally rejected in an ex parte reexamination. When redeemed for a patent application or an ex parte reexamination, only the first appeal to the PTAB arising from that matter will be accelerated.

Alternatively, the certificate may be used to accelerate an appeal to the PTAB of a final rejection in a patent application or reissue application without accelerating the underlying matter which generated the appeal. Inter partes reexaminations and interference proceedings are not eligible for acceleration, nor are post grant reviews, inter partes reviews, covered business method reviews, derivation proceedings, or supplemental examinations.

Certificates awarded in the program are not transferable to other parties.

Honorable mentions will receive a certificate for accelerated examination of one patent application and a featured writeup on the USPTO Web site. Honorable mention accelerations will only result in the acceleration of a patent application examination, and

not any subsequent appeal from that application. A portion of honorable mentions may be awarded for the best up and coming technologies.

Each certificate may be redeemed only once and only towards one matter. Certificates must be redeemed within 12 months of their date of issuance. Certificates not redeemed within 12 months of issuance will expire and may not be redeemed. Holders of expiring or expired certificates may petition that the USPTO extend the redemption period of their certificate for an additional 12 months beyond the original expiration date. This petition incurs no fee. Petitioners should explain why the additional time is needed, such as not having a suitable matter or expecting a pending matter which is not yet ripe for certificate redemption. The decision whether to extend the redemption period of a certificate rests solely within the Director's discretion and cannot be challenged before the USPTO or any Federal agency. Once a certificate has been redeemed, it is no longer eligible for extension.

The certificate may be applied to an eligible matter for any patent or patent application in which the certificate holder has an ownership interest, not just those related to the recipient's Patents for Humanity submission. Certificate holders may not redeem a certificate to accelerate the matter of another patent owner or patent applicant. Types of awards for subsequent years will be announced with the application period in the Federal Register.

## **Certificate Redemption Process**

When redeeming a humanitarian certificate, the certificate holder must notify the USPTO with the certificate number, the relevant application serial number or ex parte reexamination control number, and any other pertinent information, such as the appeal number, if assigned. The USPTO will determine whether the certificate may be redeemed by checking that the certificate is valid, that the redeeming party is the certificate holder or its agent, that the matter is eligible for certificate acceleration, and that the Office has sufficient resources to accelerate the matter without unduly impacting others. The USPTO will promptly notify the certificate holder whether the redemption is accepted. If the redemption fails for lack of ownership interest or insufficient Office resources, the certificate holder retains the certificate and may redeem it in another matter subject to the same constraints.

Under this program, there will be a limit of 15 certificate redemptions per fiscal year to accelerate ex parte reexaminations. This limit is due to the smaller overall number of reexamination proceedings handled by the Office compared to the larger overall number of patent applications and appeals concurrently handled by the Office. Only the first 15 accepted redemption requests for an ex parte reexamination in a given fiscal year will receive accelerated processing. Any number of certificates up to the number issued may be redeemed to accelerate patent applications or appeals to the PTAB without accelerating the underlying matter which generated the appeal (including appeals from ex parte reexaminations).

Certificates redeemed for accelerated appeals to the PTAB will receive the following treatment. Accelerated appeals will be taken out of turn for assignment to a panel. Other processing in the matter will proceed normally. The USPTO's goal in accelerated cases already docketed to the PTAB, i.e., having an appeal number, is to proceed from certificate redemption to decision in under six months if no oral arguments are heard in the case, or within three months of the date of an oral argument. For certificates redeemed in appeals not already docketed at the PTAB, the goal is to reach decision in under six months from the date of the appeal number assignment if no oral arguments are heard in the case, or within three months of the date of an oral argument. For the first quarter of FY 2014, the average pendency from appeal number assignment to decision was 27 months. However, these numbers are expected to rise in coming quarters as there has been a sharp increase in appeal requests in recent months. Pendency also varies significantly by technology area.

Certificates redeemed in ex parte reexamination proceedings will receive the following treatment. If redeemed with a request for reexamination, the request will be decided with a goal of two months rather than the three months provided by statute. Certificate redemption at the filing of a reexamination request will be treated as a waiver by the patent owner of the right to make a Patent Owner Statement under 37 CFR 1.530 after grant of proceeding. If the statement is waived and the request granted, a first Office action on the merits will accompany the order granting reexamination. If the reexamination request is denied, the certificate is not considered redeemed and may be applied to another matter. Patent owners may preserve the right to file a Patent Owner

Statement by redeeming the certificate during the statutory window for filing the Patent Owner's Statement after the reexamination proceeding has been granted. Subsequent Office actions in accelerated reexaminations will be taken out of turn as the next item to be worked on from the reexamination specialist's docket. Petitions filed in the matter will be decided in time consistent with the accelerated proceeding. An appeal to the PTAB of a final rejection in an accelerated reexamination will be taken out of turn for assignment to a PTAB panel. Any resulting Notice of Intent to Issue Ex Parte Reexamination Certificate (NIRC) will receive expedited processing to the extent possible. Accelerated ex parte reexaminations will normally not be merged with other co-pending proceedings, including ex parte reexaminations, inter partes reexaminations, and reissue proceedings. Where required by statute, an accelerated matter may be terminated by a decision issued in another USPTO proceeding, such as post grant review.

The USPTO's goal for processing accelerated reexaminations will be under six months from certificate redemption to final disposition, excluding time taken by the applicant for responses and any time on appeal. For the fourth quarter of FY 2013, the average pendency from filing a request for ex parte reexamination to an NIRC was 21.7 months, including applicant time.

Humanitarian certificates redeemed to accelerate examination of a patent application will receive the following treatment. Patent applicants must present their certificate to receive accelerated examination. If any appeal to the PTAB arises from the examination accelerated with this certificate, the first appeal will also be accelerated according to the

procedures for accelerated appeals to the PTAB described herein. Accelerations for honorable mentions will follow the same rules and procedures, except that no appeals will be accelerated. The USPTO's goal in examinations accelerated by certificate will be a final disposition within 12 months of accelerated status being granted, not including the time for any appeals to the PTAB. As of January 2014, the average pendency for Track One prioritized examinations was 5.1 months from petition grant to allowance, while the average pendency for all applications was 28.3 months.

### **Acceleration Requirements**

In order to receive acceleration, the patent owner or patent applicant must agree to the following conditions. Accelerated patent applications may not contain at any time more than four independent claims, more than thirty total claims, or any multiple dependent claims. A humanitarian certificate can be redeemed in a patent application appeal or reissue application appeal to the PTAB at any time after a docketing notice has issued and before the matter is assigned to a PTAB panel. A certificate can only be redeemed for reexamination acceleration at the following points: (i) with the request for reexamination; (ii) during the period for patent owner comment after grant of proceeding; or (iii) when a final rejection is appealed to the PTAB. Certificates will not be accepted for reexamination proceedings at other times. During an accelerated reexamination, no more than three new independent claims and 20 total new claims may be added. New claims are those beyond the number contained in the patent at the time of the reexamination request. Claims may be added without triggering this limit by canceling an equal number of existing claims. All submissions in accelerated examinations must be

filed electronically via EFS-Web. All petitions filed in the matter must be filed in good faith. Petitions for Revival and Requests for Continued Reexamination may not be filed. Failure by the applicant to abide by these conditions may result in the acceleration being revoked without return of the certificate and the matter reverting to normal processing.

### **Acceleration Recommendations**

To receive the greatest benefit from acceleration in an ex parte reexamination proceeding, the applicant is requested to do the following. The Patent Owner's Statement will be considered to be waived when a certificate is filed with a request for reexamination. If the patent owner desires to reserve the right to make a statement, however, the certificate should be filed instead during the statutory window for filing the Patent Owner's Statement after the reexamination proceeding has been granted. Acceleration will proceed from that point forward.

Even where submissions in the accelerated matter are not required to be filed electronically, those submissions should be filed electronically. Conducting more than one examiner interview during prosecution should be avoided. Responses to all Office actions should be submitted within one month of receiving the Office action. Petitions should be avoided as much as possible. Failure to meet these conditions may result in longer processing times by the USPTO than the goals given above, but the matter will continue to receive accelerated processing as described herein to the extent possible.

In all instances, certificate redemption is subject to available USPTO resources at the Director's discretion. If accelerating the matter would negatively impact other applicants, the USPTO may decline to redeem the certificate.

Date: \_\_\_\_\_

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Michelle K. Lee  
Deputy Under Secretary of Commerce for Intellectual Property and  
Deputy Director of the United States Patent and Trademark Office