

FIRST ACTION INTERVIEW PROGRAM TO DISCONTINUE IN THE NEW YEAR

Hodgson Russ Intellectual Property & Technology Alert
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The United States Patent and Trademark Office (“USPTO”) has announced that the First Action Interview Pilot Program (“Program”) will end on January 15, 2021. The Program provides an applicant with an interview prior to their first Office Action on the merits with further modified prosecution procedures, including: (1) a condensed pre-interview communication from an examiner citing relevant prior art and identifying proposed rejections or objections; and (2) an opportunity for an applicant to submit proposed amendments and/or arguments. Although various iterations of the First Action Interview Pilot Program have been around since 2008, the current Program has been used sparingly by applicants – with the USPTO observing just 0.2% usage of eligible applications despite the potential value it adds.

Interviews are a popular practice among applicants to discuss an examiner’s view on the merits of an application, thereby gaining insights that may not be apparent through written exchanges. The percentage of applications having at least one interview has risen from 19.6% at the beginning of FY 2010 to 38.1% at the end of FY 2020. Recent data also shows that applications with at least one interview had an allowance rate 10% higher than those with no interview, demonstrating that interviews can help place claims in a condition for allowance. Interviews, both telephonic and video, will continue to be an important part of prosecution practice, especially due to COVID-19 and its subsequent closing of physical premises of the USPTO.

While the First Action Interview Pilot Program will sunset on January 15, 2021, the USPTO will continue to receive requests to participate in the Program until the last day of its existence. Any interested applicant should keep this date in mind and take full advantage of the Program before it is taken down to ensure speedy and effective protection of their intellectual property rights.

[Click here to view the USPTO’s announcement.](#)

If you have questions regarding the First Action Interview Pilot Program, or would like assistance with other Intellectual Property matters, please contact Charles Rauch (716.848.1675).

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