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Outmaneuver the Competition With Accelerated Patent Prosecution

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Nobody loves the idea of waiting in line. Especially when it comes to seeking protection for your patentable inventions. Innovation may occur at the speed of light, but the bureaucratic processes for protecting innovations are frustratingly slow. While depositing additional funds into a government's coffers can reduce wait time at the local patent office, the typical response to this proposition is often: "Another fee, no thanks."

Leaving accelerated prosecution by the wayside can hinder your company's strategic advantages in the marketplace. The opportunity to holistically reduce overall prosecution expenses and provide early insights for pursuing the next big idea is perhaps even more important than a quickly issued patent.

Judiciously implemented, accelerated prosecution can satisfy both immediate, and long-term strategic client needs. Do not quickly pass on the opportunity to provide strategic value.

Benefits of Accelerated Prosecution

Accelerated prosecution encompasses the suite of options available at many patent offices across the globe that aim to reduce the time it takes to obtain a granted patent, sometimes reducing it by as much as 50% or more.

At some patent offices, accelerated prosecution guarantees a quick first-action or the reduction of total prosecution time, such as with the U.S. Patent and Trademark Office's (USPTO) Track One Prioritized Examination. In other cases, accelerated prosecution reduces examination time by leveraging the allowed or granted patent claims of a related application in another jurisdiction, such as with the Patent Prosecution Highway initiatives.

The benefits of maneuvering your patent application into the fast lane often far outweigh the upfront fees and requirements of accelerated prosecution programs. Accelerated prosecution often bears the

fruit of competitive business intelligence and cost reduction.

The extra initial effort increases the value of the resulting grant, enlarges the window of opportunity for enforcement, and provides earlier insight on making the “next-gen” system that ultimately reduces cost, and risk, both in the U.S and internationally. So instead of thinking: “Another fee, no thanks,” the savvy sometimes view accelerated prosecution as an investment to outmaneuver the competition.

Importance of Speed

The most obvious benefit is the early arrival of the first examination report or notice of allowance. But why is speed important?

Faster prosecution will help protect a product more quickly and provide notice to competitors to look elsewhere for products to copy. It also allows a company the option to protect its market by enforcing the patent sooner than later, sometimes years sooner.

Product lifecycles are notoriously short, especially in high-tech and consumer goods industries. The early-granted patent can provide protection during or even before sales reach a critical mass. Aligning the patent with the period of the greatest market success is an important goal.

Accelerated prosecution also builds business asset value. Regardless of whether a new product will hit the marketplace soon, an earlier resulting grant means a longer enforceable term. Generally, the term of a U.S. patent is 20 years from filing. Reducing the pendency of the application increases the balance of the 20 years that the patent can be enforced, which in turn may increase the value—what a third party is willing to pay—to purchase the business or license the patent.

Accelerated prosecution supports business objectives that build assets and company values for sale. For example, a company may spin off a division including products covered by a fast-tracked patent application in a few years—the sale may be enhanced by a book of granted patents, rather than patchwork of pending applications.

Often underappreciated is that accelerated prosecution provides competitive intelligence for forward-looking business decisions. Today’s invention may just be the warm-up for the next generation advances that will (hopefully) cement market dominance. Faster examination results in an early

assessment of technological art associated with an invention via an earlier-arriving examination report.

The report often indicates the specific art, patentability rejections, and patent examiner reception to the scope of claimed invention. A skilled patent practitioner synthesizes this information and gauges the difficulty in obtaining a grant and the anticipated scope of patent coverage for a product covered by the patent application. This information may also help guide research and development decisions by identifying both the proverbial patent thicket and gaps in competitor coverage for next gen advances.

How Accelerated Prosecution Can Reduce Costs

Non-intuitively, accelerated prosecution can reduce expenses throughout prosecution. Accelerated prosecution often means fewer examination reports, and accordingly less attorney time responding to examination reports. And when a U.S. application is pursued internationally, the results of the earlier U.S. prosecution can be leveraged to obtain patent coverage in target countries.

Many of the arguments used to advance the U.S. application to grant are likely applicable to advancing the application in a patent office of another jurisdiction, thus further saving costs by using the U.S. patent work as starting point for strategically advancing the application outside the U.S.

Options substantially increase by merging the patent application into the fast lane. You don't have to wait for patent protection.

Outmaneuver the competition with accelerated prosecution strategies that provide tangible business value and expand the avenues for marketplace protection of the next big idea.

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Author Information

[Lee Osman](#) is a partner at Dorsey & Whitney in its patent group. Spending almost 20 years as head of Dorsey's Patent Group has allowed Osman to gain invaluable insight into not only the Patent and Intellectual Property groups, but, just as importantly, Dorsey's other practice groups.

[Gina Cornelio](#) is a partner at Dorsey & Whitney. Cornelio works on all legal issues related to patents, including procuring patents, asserting patents to stop infringement and counterfeiting, and defending against patent infringement accusations.

[Kevin Duffy](#) is an associate at Dorsey & Whitney. Duffy draws on his experience as a project engineer in the energy industry and patent prosecution and portfolio management counsel to negotiate with the USPTO and obtain patent allowances.