

Canada

The Canadian Intellectual Property Office (CIPO) implements a deferred examination system where applicants have four years from filing to request examination of their applications. To allow for accelerated examination of patent applications in certain cases, CIPO promotes the use of four main examination programs¹, which are:

- Advanced examination
 - Also referred to as “Special Order”, it is provided for in Rule 84(1)(a) of Canada’s Patent Rules.
- Green technology
 - Set forth in Rule 84(1)(b) of the Patent Rules. The application must be related to technologies that help resolve or mitigate environmental impacts or conserve the natural environment and resources.
- Patent Prosecution Highway (PPH)
- COVID-19 relief
 - Application must support the health-related response to COVID-19.

Detailed information about each of these programs is provided below.

Advanced examination under a special order

Grounds/Qualification: These advanced examination requests can be filed in relation to all types of patent applications and are available to anyone who believes the failure to advance the examination of a patent application is likely to prejudice their rights.

Conditions & Fees: The applicant must submit the request with an accompanying statement, where they explain why their rights are likely to be prejudiced if the application is examined under the regular processing time. In terms of operational affairs, these applications are assigned higher examination priority. Such a status can be removed if the applicant requests an extension of time or causes the application to be deemed abandoned. In addition, applicants must pay a fee when submitting the request².

Reduced Pendency: In these cases, CIPO commits to issuing a first office action within seven months after receiving a request, compared to a service standard of 20 months for standard applications. The average pendency of applications in this program is on average, 373 days, which is less than half the pendency for regular applications. Also, the pendency from the request to the first office action is around 109 days, which is 30 per cent less than the average for regular applications.

Statistics: In 2021, CIPO received 416 of these requests. It is estimated that the grant rate of these applications is around 85 per cent, compared to the 69 per cent average grant rate for standard applications.

¹ See the information provided in CIPO’s website, at: <https://ised-isde.canada.ca/site/canadian-intellectual-property-office/en/patents/expedite-your-patent-application>.

² According to CIPO, the payable fees are \$526.29 for requests made in 2023 and \$694.00 for requests made in 2024.

“Special Order” statistics at a glance

✓ 1st action: 7 months

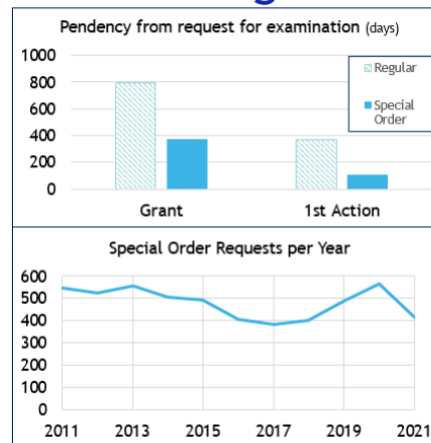
(regular service standard: 20 months)

✓ Requests: 416 in 2021

✓ Grant rate: 85%

(Granted/Disposed 2011-2021; regular 69%)

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Advanced examination for green technologies

Grounds/Qualification: Applicants may request advanced examination under the green technologies program, if their patent application relates to a green technology that either helps resolve or mitigate environmental impacts or conserves the natural environment and resources. Any applicant may submit a request under this program.

Conditions & Fees: To take advantage of this advanced examination process, the applicant must submit a letter that includes:

- (i) a request for advanced examination;
- (ii) a statement indicating that the application relates to technology that, if commercialized, would help to resolve or mitigate environmental impacts or to conserve the natural environment or natural resources;
- (iii) an early laid open date; This indication is only needed if the request is made before the application has been opened to public inspection (usually 18 months after the filing date).³

Once the advanced examination is approved, the application is assigned a higher examination priority. This status can be removed for the same reasons as “Special Order” applications. Applicants are not required to pay additional fees.

Reduced Pendency: CIPO commits to issuing a first office action within three months of processing a request for advanced examination. The average total pendency of Green patents is 380 days. The average pendency from the request to the first action is around 122 days.

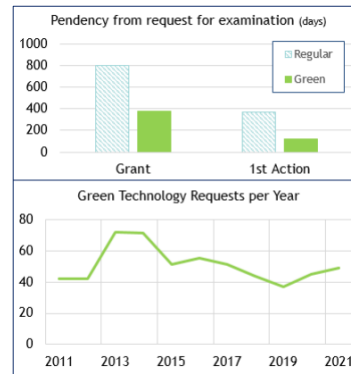
Statistics: In 2021, CIPO received 49 Green Technology requests. According to the information provided, applications examined under this program have had a 95 per cent grant rate, compared to the 69 per cent grant rate for standard applications.

³ The request for advanced examination for a green technology must be sent to CIPO by following the communication procedures found in Chapter 2 of Canada’s Manual of Patent Office Practice, available at: https://manuels-manuals.opic-cipo.gc.ca/w/ic/MOPOP-en#1b/c_2.

“Green” statistics at a glance

- ✓ 1st action: 3 months
(90% of the time)
- ✓ Requests: 49 in 2021
- ✓ Grant rate: 95%
(Granted/Disposed 2011-2021; regular 69%)

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Expedited examination of patent applications related to COVID-19 relief for small entities

Grounds/Qualification: This program is available to applications that support the health/related response to COVID-19.⁴ A person can apply for accelerated examination on these grounds if:

- (i) they have a new or existing patent application for an invention that supports the health-related response to COVID-19; and
- (ii) they qualify as a small entity which is a business employing 50 or fewer employees or a university.⁵

Conditions & Fees: CIPO will accelerate examination under this program if a claimed invention is currently approved or has been subjected to a Health Canada approval process, including but not limited to:

- a Medical Device License;
- a Medical Device Establishment License (MDEL);
- an authorization under the Interim Order respecting the importation and sale of medical devices for use in relation to COVID-19;
- an investigational testing authorization (ITA);
- an authorization under the Interim Order Respecting Clinical Trials for Medical Devices and Drugs Relating to COVID-19;
- No Object Letter (NOL) for clinical trials;
- Notice of Compliance (NoC); and,
- an authorization under Interim Order Respecting the Importation, Sale and Advertising of Drugs for Use in Relation to COVID-19.

Submitting a request to benefit from this expedited examination program does not require the payment of additional fees. To benefit from this program, the applicant must submit a letter to CIPO that includes:

- (i) a statement that the technology is medical and related to COVID-19 and that an approval for its use has been submitted to or has been obtained from Health Canada;
- (ii) a small entity declaration;

⁴ This program aims to accelerate examination of up to 50 patent applications and will remain in effect until otherwise indicated by CIPO.

⁵ See the Manual of Patent Office Practice, Chapter 10.02.01.

- (iii) a request for an early laid open date (if appropriate); Applicant must include this only if the statement is made before the application has been opened to public inspection, which usually occurs 18 months after the filing or priority date;
- (iv) a request for examination (if this has not been done at that point), which requires payment of the associated examination fee.

Other applicable conditions are the same as the “Advanced examination under a special order” program.

Reduced Pendency: CIPO commits to issuing a first office action within three months of processing a request for advanced examination.