

### Spain

In 2003, the Spanish Patent and Trademark Office (OEPM) launched a program expediting the issuance of prior art search reports. It undertook to make search reports available to patent applicants who requested expedited search reports within no more than ten months from the filing date of the application. It therefore enables the applicants to assess the patentability of their invention and, where appropriate, to consider extending protection to other countries by claiming the right of priority. In 2013, this program was extended to encompass the accelerated grant of national patents.

*Grounds/Qualification:* In accordance with Law 24/2015 and the Resolution of the Head of OEPM concerning the subject issued in 2017, the accelerated grant program applies to Spanish patent applications or those international applications under the PCT entering the national phase. To benefit from the accelerated grant, applications cannot claim priority of a previous application.

*Conditions & Fees:* In order to request admission into the program, applicants must expressly state that they wish to do so, by checking the corresponding box on the application form, when filing a patent application. The expedited examination procedure takes the following steps.

- When an applicant submits a request to benefit from the program to accelerate the grant of patents (CAP program), the first step is to verify that:
  - the relevant fees have been paid.
  - the application in question does not claim the priority of an earlier application.
- In two to three days following the receipt of the application, the minimum requirements for establishing the filing date are examined, and payment of fees is verified. In addition, the examination of the application for its possible national defense implications is conducted.
- After the completion of that stage and within 10 days from filing, the Office verifies that the patent application contains no errors revealed by the *ex officio* examination of formalities, given that the compliance therewith is necessary for the consistency in publication.
  - Where errors are detected, the Office notifies the applicant and grants them a period set under the Regulations (two months), within which the applicant is required to correct them.
  - Where that deadline passes and the corrections have not been made, the application under the expedited grant program is deemed not to have been filed. It is rejected for failure to correct the formal errors and, thereafter, the standard procedure is followed.
- The prior art report and written opinion are drafted immediately after the formality examination was conducted. The report will be made available to the applicant no later than 10 months from the filing date. The Office then proceeds to publish the patent application and the report. Under the expedited procedure, publication occurs within 18 months from the filing date. Applicants will be aware of this, as it is so stipulated in the Resolution.
- Once the application is published, the applicant has three months to reply or comment on the objections included in the written opinion. The Office decides whether to grant or refuse the patent as promptly as possible.

No extra fees are required for an applicant to request participation in the accelerated grant program. However, admission to the program requires that all necessary fees related to the patent application, the prior art report request, and the substantive examination be paid up front.

The applicants are made aware of the fact that prompt completion of all the formalities will contribute to shortening the process. In that regard, the accelerated grant procedure includes drafting of the prior art report and the examination of compliance with the patentability requirements. It does not extend to the procedure for opposition, which, under the current Spanish patent law, takes place only after the patent is granted.

*Reduced Pendency:* While prior art reports are meant to be issued within no later than 10 months from the filing date, the issuance of the final decision is subject to the applicant's response time and promptness to comply with the requirements.

#### *Green technology applications and applications related to COVID-19*

In April 2010, the Spanish government approved a strategic plan for promoting industrial property in Spain. To implement the plan, steps were taken in the green technology sector, encouraging Spanish firms to use tools for industrial property protection and boosting their competitiveness. One initiative was to promote green patent applications through an expedited procedure for granting such patents within 12 months.

A series of measures were taken to meet those objectives, which concern only applications filed under the program to accelerate the grant of patents (CAP program), in particular for inventions in the field of technologies relating to environmental protection and renewable energies. In this green technology program, all patent and utility model applications could be processed from the date of filing, without having the two-month secrecy delay (for inventions with potential national defense implications). The Office tags eligible green technology applications during the admission process for priority and expedited processing. It also urges the applicants to perform the required procedure promptly.

Although there are provisions that allow certain technologies (mainly “green” technologies<sup>1</sup>) to be examined with priority, the provision within Law 24/2015 that could potentially extend the benefits of expedited processing to COVID-19 related applications has yet to be regulated and put into practice. Consequently, a possible provision that would have the effect of allowing “applications for patents and utility models relating to key areas of public health” to be examined out of turn as part of the program to accelerate the grant of patents is being proposed. The amendments have yet to be approved. Thus, for the time being, COVID-19 related applications are not eligible to be processed under this program.

*Statistics:* In 2021, 175 national applications and one PCT international application in the national phase in Spain benefited from the CAP program. The corresponding figures in 2020 were 184 national applications and three PCT international applications in the national phase.<sup>2</sup>

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<sup>1</sup> As defined and identified by the International Patent Classification, especially concerning applications classified within the “IPC Green Inventory”, available at: <https://www.wipo.int/classifications/ipc/green-inventory/home>.

<sup>2</sup> More detailed statistics are available in the presentation made by the Delegation of Spain during SCP/34. See [https://www.wipo.int/edocs/mdocs/scp/es/scp\\_34/scp\\_34\\_i\\_quality.pdf](https://www.wipo.int/edocs/mdocs/scp/es/scp_34/scp_34_i_quality.pdf).