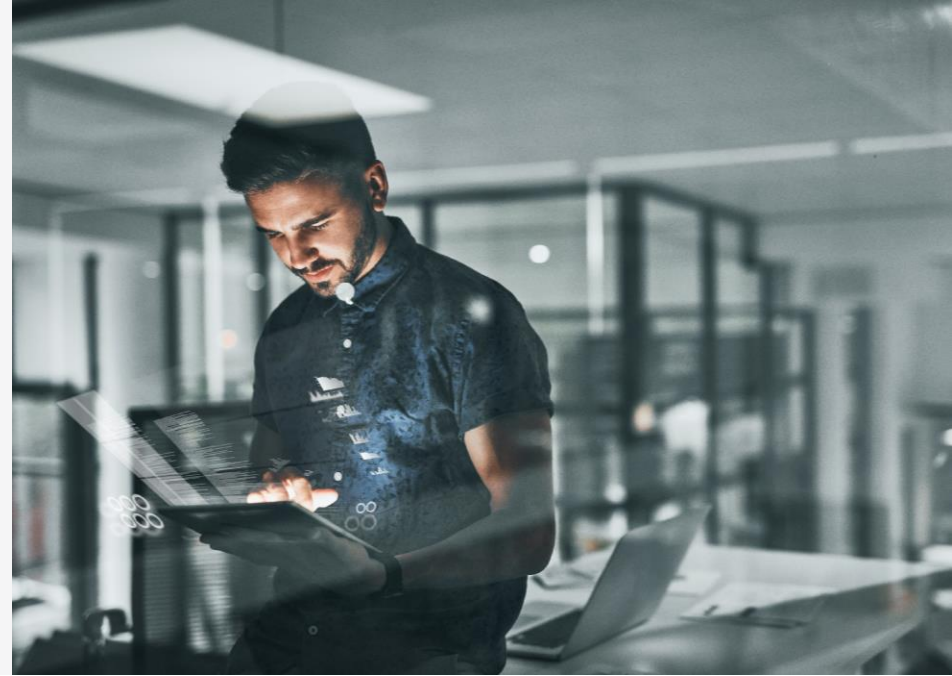


# Trends in Patent Prosecution: Don't Get Left Behind

October 10, 2023



# Trends in Patent Prosecution: Don't Get Left Behind

## **During today's webinar, we will discuss:**

- Insights into deciphering emerging patterns in patent prosecution.
- Strategies to proactively manage client expectations using data-driven insights.
- Techniques to optimize time utilization and enhance returns on investment.
- Best practices for resource allocation in patent prosecution endeavors.

# Trends in Patent Prosecution: Don't Get Left Behind

## Today's Panel



**Mercedes Meyer**

Partner  
Banner Witcoff



**Theodore Wood**

Patent Attorney/ Owner  
Wood IP



**Sivon Kalminov**

Director, Intellectual Property Division  
Canon U.S.A., Inc.

# Trends in Patent Prosecution: Don't Get Left Behind

## Moderator & Presenter



**Gene Quinn**  
Founder and CEO,  
IPWatchdog



**Katie Brown**  
Customer Success Manager,  
LexisNexis

# Fast track applications at the USPTO

## Definition for today's discussion

- Fast track applications are patent applications filed at the USPTO that are using a method to prioritize examination and accelerate prosecution, including Track One, Accelerated Examination and Patent Prosecution Highway
- Research conducted using PatentAdvisor studied published applications filed since October 2018

# Fast track applications at the USPTO

## Benefits

- **Increased allowance rate across all Technology Centers**
- Most beneficial for **1600**, Biotechnology and Organic Chemistry: **85%** allowance rate for fast track applications vs. **70%** without fast track
- Least beneficial for **2100**, Computer Architecture and Software: **93%** allowance rate for fast track applications vs. **88%** without fast track

# Fast track applications at the USPTO

## Benefits

- **Significantly decreased prosecution time (but not number of office actions!) across all Technology Centers**
- Technology Centers **1700**, Chemicals and Materials Engineering, and **3700**, Mechanical Engineering, Manufacturing, Products saw the largest time savings
- 1700 and 3700 fast track applications both received a **first OA** and **final disposition 13-14 months faster** on average than non-fast track applications
- 2600, Communications, and 2800, Semiconductors, benefitted least but still saw time savings of 10 months to both first OA and final disposition

# Fast track applications at the USPTO

## Trends in utilization of fast track strategies

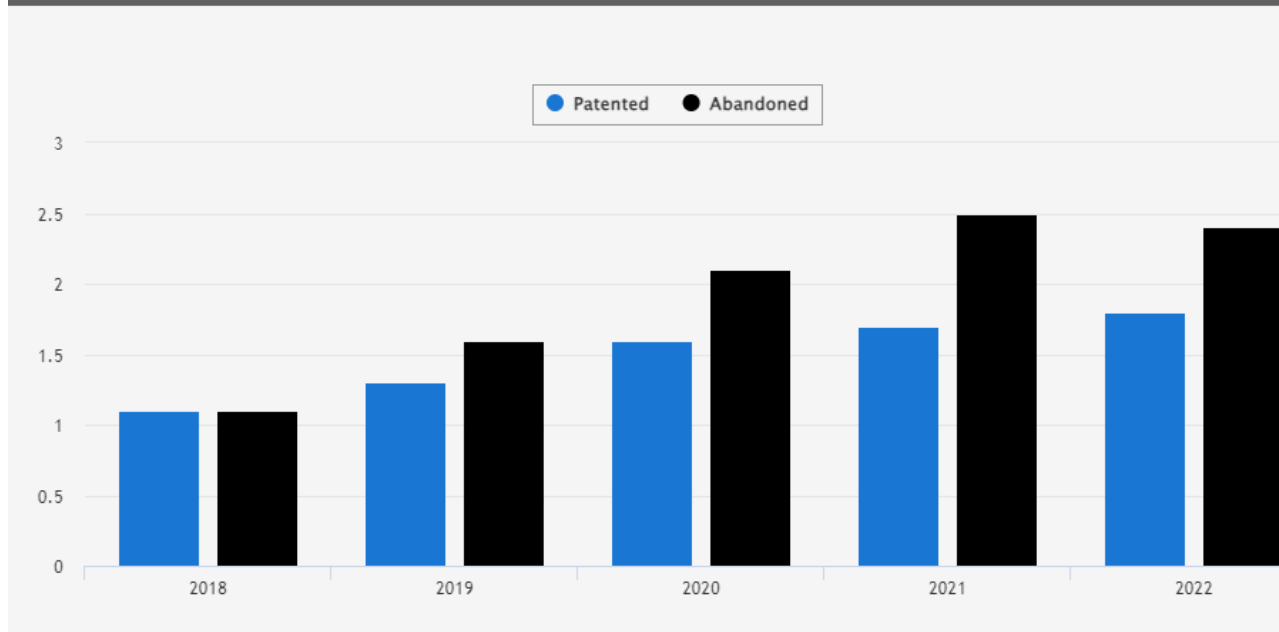
- Fast track is **most frequently utilized** in **1600**, Biotechnology and Organic Chemistry: **8%** of all applications use fast track
- **2800**, Semiconductors, has the **lowest** percentage of applications using fast track: **3%**



# Fast track applications in Technology Center 1600, Biotechnology and Organic Chemistry

## Average number of Office Actions has increased over time

AVERAGE NUMBER OF OFFICE ACTIONS BETWEEN FILING DATE BEFORE PATENT ISSUANCE/ABANDONMENT (INCLUDING BOTH NON-FINAL AND FINAL) - YEAR-OVER-YEAR BREAKDOWN



# Technology Center 1600, Biotechnology and Organic Chemistry

## Examiner Time Allocation (ETA) Distribution and Allowance Rate in 1600

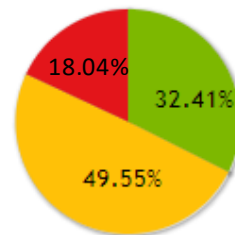
### ETA DISTRIBUTION

This shows the number of examiners of each color in the group.



### LOTTERY MAP

The lottery map shows your chances of ending up with a particular color examiner, based on their share of application disposals (grants and abandonments) in the past year.



### ALLOWANCE RATE

71.1%

Are fast track applications assigned to more experienced examiners?

## Examiner ETA of fast track applications in 1600

- **No significant difference** in Examiner Time Allocation (ETA) score distribution between fast track applications and overall
- Slightly higher share of applications handled by yellow examiners and fewer handled by green, with little difference in red



## Comparisons by Art Unit in 1600

### 1641

9,133 total cases  
45% allowance rate

AE: 2 cases  
100% allowance

Track One: 90 cases  
78% allowance

PPH: 75 cases  
79% allowance

Petition to Make Special  
(Age): 28 cases  
92% allowance

### 1651

14,935 total cases  
52% allowance rate

AE: 6 cases  
83% allowance

Track One: 219 cases  
77% allowance

PPH: 111 cases  
67% allowance

Petition to Make Special  
(Age): 80 cases  
62% allowance

### 1621

22,626 total cases  
71% allowance rate

AE: 19 cases  
47% allowance

Track One: 290 cases  
82% allowance

PPH: 82 cases  
84% allowance

Petition to Make Special  
(Age): 53 cases  
82% allowance

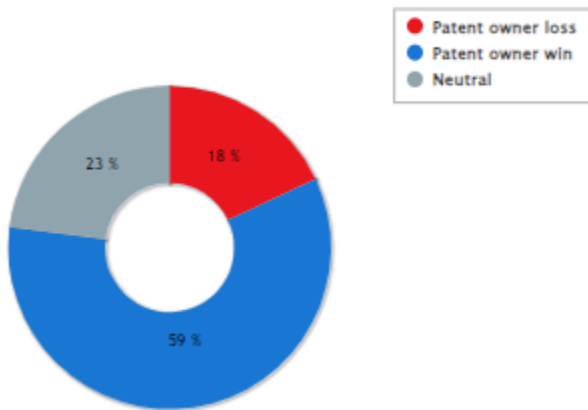
## Litigation outcomes in 1600

### Fast track applications are litigated more often, but also upheld more often

#### Without fast track

0.4% of patents with at least one proceeding

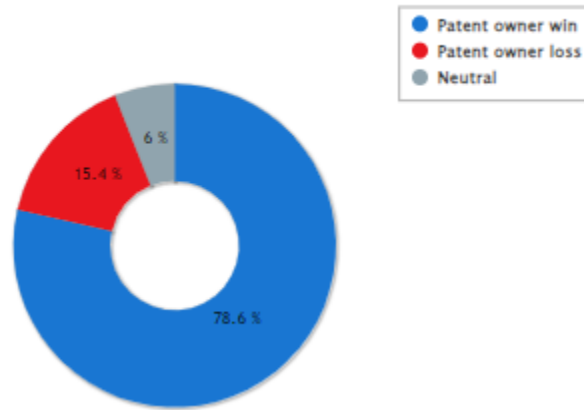
LITIGATION OUTCOME



#### With fast track

6% of patents with at least one proceeding

LITIGATION OUTCOME



## Chances of winning on appeal with fast track applications

Chances of winning on appeal are lower in almost every Technology Center

- **The largest discrepancy is in 3600: Transportation, Construction, Electronic Commerce, Agriculture, National Security and License & Review**
  - Chances of winning on appeal with no accelerated process: **72%**
  - Chances of winning on appeal with fast track applications: **59%**
  - Applications on appeal in 3600 had a higher prevalence of 101 and 112 rejections

Q&A



# Thank you for joining us!



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