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USPTO's Operation of the Patent Prosecution Highway Unlawfully Prejudices U.S. Patent Applicants

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1 Introduction

The Patent Prosecution Highway (PPH) is a framework in which a patent application having claims determined to be patentable by a PPH-member patent Office of Earlier Examination (OEE), is eligible to go through a prioritized (accelerated) examination in another PPH-member Office of Later Examination (OLE) upon the applicant's petition.

The PPH is characterized as a work-sharing program between national patent offices to provide efficiencies in prior art searches and examination. However, as this article shows, the USPTO operates the PPH to prioritize examination fee-free without statutory authority. This practice prejudices U.S. applicants, violates Federal law, while potentially undermining U.S. national security by awarding financial assistance to Chinese military companies by fee waivers on prioritized (accelerated) examination.

This article relies on publicly-available data on the PPH, including through Freedom of Information Act (FOIA) requests to the USPTO filed by US Inventor, Inc. This disclosure under the FOIA facilitated the detailed analysis reported in this article.

This article describes in section 2 the requirements for entering the PPH program at the USPTO, including requiring that all claims in the USPTO application must sufficiently correspond to allowable/patentable claim(s) in the corresponding participating foreign patent OEE. The structural and financial incentives created by the USPTO in favor of foreign PPH applicants are detailed in section 2.1. The USPTO also enables the entry of *unqualified* applications by inexplicably eliminating the requirement to submit copies and English translations of the allowed claims from the PPH participating office.

Statistical data on use of the PPH program is provided in section 3, where it is shown that PPH applications originating from China have dominated the filings under the program. Section 4 describes how China exploits the PPH program at the USPTO by having its patent office allow domestic patent applications within weeks on technologies the central Chinese government deems important to their national interest. Chinese PPH applicants rely on such claim allowances at the Chinese Patent Office to enter the PPH program at the USPTO to preemptively obtain early U.S. patents on those technologies. Section 5 describes how the USPTO appears to aid China in this process by procedural lapses and by treating China-originated PPH applications as most favorable under all examination attributes. This includes evidence showing that China-originated PPH applications enjoyed the *highest* favorable first-action rate and the *highest* allowance rate in the PPH program. Evidence also shows that China-originated PPH applications had a shorter average pendency compared to that of US-originated PCT applications in the PPH program.

Serious national security risks are implicated by the USPTO's acceptance of Chinese military companies' patent applications to the PPH program as discussed in section 5.1. The U.S. Dept. of Defense created under law the list of Chinese military companies to ensure government agencies deny Federal awards or benefits to such listed entities. The USPTO as a Federal agency, awards credits and benefits to 27 Chinese military companies through the PPH program. There thus exists substantial question as to the statutory basis on which such legal restrictions are inapplicable to this Federal assistance and why the prioritized examination benefit the USPTO confers on such listed entities falls outside the broad categories of governmental value that Congress has elsewhere directed Federal agencies to deny those entities.

The detailed reasons why the USPTO violates the law by waiving the fees the law requires it to charge for prioritized examination is discussed in section 6 and its subsections. It is shown that the USPTO lacks substantive rulemaking authority to waive PPH fees; that the USPTO operates four international work-sharing programs other than PPH with foreign patent offices with substantial benefits in efficiency without prioritizing examination; and that work-sharing does not require, nor authorize fee-free prioritized examination. In any event, no deference is due to the USPTO's interpretation of the relevant statutes for finding authority to charge no fees for prioritized examination. Finally, section 6.4 discusses the prejudice to U.S. applicants, particularly small business inventors, by the USPTO's unlawful incentives to PPH applicants.

This article concludes in section 7 with specific proposals for the revision of the PPH program to bring it into compliance with law and remove the unfair preferential treatment of foreign applicants seeking prioritized examination. Those include stop waiving the fees for prioritized examination in the PPH program; adjusting such fees downwards for *all* USPTO applicants for prioritized examination so as to "level the playing field" for U.S. and foreign applicants seeking prioritized examination at the USPTO; reestablish the requirement that PPH applicants submit copies and verified English translation of the allowed claims in the PPH participating OEE; and establish regular and transparent quality assurance audits of the PPH request grants and examination on the merits.

2 Requirements for entering the PPH program at the USPTO

Under USPTO normal procedures, examiners take up patent applications for examination in the order they were filed. 37 C.F.R. § 1.102(a); MPEP § 708. Under the PPH, the USPTO as the OLE advances examination of PPH applications out of turn, but does not charge fees for the petition fee, prioritized examination fee, or processing fee which it charges Track-I prioritized examination applicants. The USPTO's justification for the PPH procedure is the benefit of work-

sharing with other national patent offices. It states that "the PPH promotes patent application processing efficiency by allowing the examiner in the office of later examination (OLE) to reuse the search and examination results from the office of earlier examination (OEE), thereby reducing workload and duplication of effort."[1] Notwithstanding the prior art search at the OEE, however, substantive search and examination at the OLE is nonetheless required, including under distinct national patentability laws and regulations.

For authority to conduct the PPH program, the USPTO cites to the mere foreign priority statute in 35 U.S.C. § 119 and its implementing regulation in 37 CFR §§ 1.55, and to 37 CFR § 1.102(a),[2] the latter being the regulation authorizing prioritized examination out of turn "to expedite the business of the Office." Neither this statute, nor these regulations provide for selective prioritized treatment of foreign applicants with no fees, let alone identify the PPH. The USPTO promulgated no regulations to govern the PPH program, notwithstanding the fact that under the Administrative Procedures Act (APA) definition, agency requirements such as those for entering the PPH program and any fee waiver are considered a "rule." 5 U.S.C. § 551(4). Despite operating the program for nearly two decades, the USPTO failed to publish its PPH rules in the Federal Register as required under 5 U.S.C. § 552(a)(1). Instead, it published on the internet what it called a "pilot" program—a "pilot" that is running for nearly two decades, with a mere summary of the purpose of the program provided briefly in MPEP § 708.02(c).

A grantable request to participate in the PPH program at the USPTO as the OLE requires a petition to make special and the satisfaction of the following requirements:[3]

"1. The U.S. application for which participation in the PPH pilot program is requested must have the same earliest date, whether this is the priority date or filing date, as that of a corresponding national or regional application filed with another PPH participating office or a corresponding PCT international application for which one of the PPH participating offices was the International Searching Authority (ISA) or the International Preliminary Examining Authority (IPEA);

2. Applicant must:

a. Ensure all the claims in the U.S. application must sufficiently correspond or be amended to sufficiently correspond to the allowable/patentable claim(s) in the corresponding Office of Earlier Examination (OEE) application and
b. Submit a claims correspondence table in English;

3. Examination on the merits of the U.S. application has not begun;

4. Applicant must submit:

a. Documentation of prior office action:

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[1] USPTO, "Implementation of the Global and IP5 Patent Prosecution Highway (PPH) Pilot Programs with Participating Offices," 1400 *Official Gazette* 172 (Mar. 18, 2014), reproduced in the Consolidated Notices as Item 178 (Dec. 30, 2014).

[2] USPTO submission to OMB under the Paperwork Reduction Act (PRA), *Supporting Statement, Patent Prosecution Highway (PPH) Program*, OMB Control No. 0651-0058 (07/19/2024), Table 1, p.2.

[3] These requirements are listed as a preamble in each decision to grant the PPH petition, which is bookmarked in the prosecution history as "Patent Prosecution Highway decision on request/petition to make special." These appear to summarize the requirements published in "Implementation of the Global and IP5 Patent Prosecution Highway (PPH) Pilot Programs with Participating Offices," 1400 *Official Gazette* 172 (Mar. 18, 2014), reproduced in the Consolidated Notices as Item 178 (Dec. 30, 2014).

i. a copy of the office action(s) just prior to the "Decision to Grant a Patent" from each of the PPH participating office application(s) containing the allowable/patentable claim(s) or;
ii. if the allowable/patentable claims(s) are from a "Notification of Reasons for Refusal" then the Notification of Reasons for Refusal or
iii. if the PPH participating office application is a first-action allowance then no office action from the PPH participating office is necessary should be indicated on the request/petition form or
iv. the latest work product in the international phase of the OEE PCT application;

b. An English language translation of the PPH participating office action or work product from (4)(a)(i)-(ii) or (iv) above; and

5. Applicant must submit:

a. An IDS listing the documents cited by the PPH participating office examiner in the PPH participating office action or work product (unless already submitted in this application) and
b. Copies of the documents except U.S. patents or U.S. patent application publications (unless already submitted in this application)."

2.1 USPTO's structural incentives in favor of foreign applicants under the PPH

The PPH program selectively awards preferential treatment to foreign applicants by taking their applications out of turn for examination, prejudicing other U.S. applicants whose applications are pushed back in the examination queue, or otherwise must pay thousands of dollars for prioritizing the examination. For the PPH program enabling foreign applicants to obtain prioritized examination, the USPTO did *not* set the fees it normally charges other applicants for requests for prioritized examination known as "Track-I" pursuant to 37 C.F.R. § 1.102(e) under 37 C.F.R. § 1.17(c), nor its related "processing fee" under 37 C.F.R. § 1.17(i). And in 2010, the USPTO already waived the petition fee for PPH applications that it normally charges other applicants under 37 C.F.R. § 1.17(h) for such petitions to make special.[4] The disparity in the fees paid under the two prioritized examination regimes is shown in Table 1 below. It shows that *foreign* applicants using the PPH program to accelerate examination are favored by a total of $4,815 in undiscounted fees over other applicants seeking accelerated examination under Track-I.

There can be no justification for this disparity in favor of foreign applicants, as the prioritized examination fee charged for Track-I examination is not set to cover any *extra* USPTO costs for such accelerated examination—filing, search, and examination costs are *the same* whether or not the application is advanced out of turn for examination. In any event, these costs are recovered by fees under 35 U.S.C. §§ 41(a) and (d)(1) for both tracks.

[4] USPTO, Notice Regarding the Elimination of the Fee for Petitions To Make Special Filed Under the Patent Prosecution Highway (PPH) Programs, 75 Fed. Reg. 29312 (May 17, 2010).

Category		Track-I Prioritized Examination	PPH Program
37 CFR §	**Fees per 37 CFR §§ 1.102(d), (e)**		
1.17(h)	Petition to Make Special Fee	$150	NA
1.17(c)	Prioritized Examination Fee	$4,515	NA
1.17(i)	Processing Fee	$150	NA
	Total Fees	$4,815	$0
	Claim limits per 37 CFR § 1.102(e)		
	Number of Independent Claims	4	NA
	Number of Total Claims	30	NA
	Number of multiple dependent claims	0	NA

Table 1. Comparison of undiscounted fees for prioritized examination in Track-I and the PPH program.

Rather, as the USPTO admits, the prioritized examination fee under 37 C.F.R. § 1.17(c) is not based on any of its costs, and the cost is listed accordingly as "n/a" in its unit cost table for fees.[5] Therefore, the fees under § 1.17(c) *cannot* be based on the catchall provision in 35 U.S.C. § 41(d)(2) for recovering "the estimated average cost to the Office *of such processing, services, or materials*." This is because there is no "cost *to the Office* of such processing*"* that merely advances examination out of turn. Moreover, the prioritized examination fee can no longer be said to recover any USPTO costs for expanding and training the examiner corps, as it initially asserted in 2011.[6] That expansion for handling up to 10,000 prioritized applications per year as set in 2011 by § 11(h)(1)(B)(iii) of the AIA, while maintaining timely examination of all other applications, has already occurred since then. Any costs for that expansion have long been expended, and since then the USPTO acquired sufficient examination resources to even increase the prioritized examination annual limit to 12,000 applications in 2019[7] and to 15,000 applications in 2021.[8]

[5] See USPTO Unit cost table for FY2025 fees at: www.uspto.gov/sites/default/files/documents/Patent-Fees-Current-Final-Unit-Cost-FR-2025.xlsx, entry for § 1.17(c).

[6] *Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures, Notice of Proposed Rulemaking*, 76 *Fed. Reg.* 6369, 6372 (February 4, 2011) ("The prioritized examination fee is being proposed to be set at a level to recover the full cost of the resources necessary to increase the work output of the Office so that the non-prioritized applications would not be delayed due to resources being diverted to examine the prioritized applications. Specifically, the Office will use the revenue generated by the fees paid for Track I applications to hire a sufficient number of additional examiners above planned examiner hires to offset the production time used to examine prioritized applications.")

[7] *Increase of the Annual Limit on Accepted Requests for Track I Prioritized Examination*, 84 Fed. Reg. 45907, 45908 (Sep-3-2019) ("[T]he Office has determined that the program may be further expanded to permit more applications to undergo prioritized examination while maintaining the ability to timely examine all prioritized applications. … Accordingly, the Office is expanding the availability of prioritized examination by increasing the limit on the number of prioritized examination requests that may be accepted in a fiscal year from 10,000 to 12,000.")

[8] *2021 Increase of the Annual Limit on Accepted Requests for Track One Prioritized Examination*, 86 Fed. Reg. 52988, 52989 (Sep-24-2021) ("[T]he Office has determined that the program may be further expanded to permit more applications to undergo prioritized examination while maintaining the ability to timely examine all prioritized applications. … Accordingly, the Office is further expanding the

Instead, the prioritized examination fee was set by statute in the AIA at the level originally planned by the USPTO,[9] and as further described in section 6. That fee limits the number of applications taken out of turn that delay all other applications. That said, the PPH program has the same effect of taking up applications out of turn at the expense of others, but does so at *no cost to the foreign applicants*. The result is an unfair structural incentive to foreign PPH applicants over Track-I applicants on two grounds: (a) they obtain accelerated examination at no additional charges, and (b) they obtain this benefit without having to limit their application to 4 independent claims, 30 total claims and no multiple dependent claims.

Note that in order to verify compliance with the foundational requirement to enter the PPH in (2)(a) above—that all the claims in the U.S. application "sufficiently correspond" to the allowable/patentable claim(s) in the corresponding OEE application—the USPTO must often compare the *translated* English version of the foreign claims to the actual claims in the U.S. application. But when the USPTO modified the PPH program into what it called "PPH 2.0," the Office abandoned its duty to verify such compliance and instead stated in the Official Gazette that the "applicant will no longer need to submit a copy of the allowed claims from the application filed in the PPH 2.0 participating office or any English translation thereof."[10] This raises the question: if the Global Dossier already gives the PTO the foreign prosecution record electronically, and PPH 2.0 eliminated the need even to furnish the foreign allowed claims and translations, what incremental PTO work is supposedly being saved by the PPH petition itself?

For the most part, Chinese PPH applicants take advantage of this "simplification" and avoid submission to the USPTO copies of allowed claims translated to English.[11] This "simplifying" change *without any USPTO explanation or reasoning* has *no parallel* at other participating offices that process PPH applications from China.[12] Because the USPTO PPH 2.0 notice was not

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availability of prioritized examination by increasing the limit on the number of prioritized examination requests that may be accepted in a fiscal year to 15,000.")

[9] 76 *Fed. Reg.*, at 6370 ("If legislation is passed providing a fifty percent fee reduction for providing prioritized examination under 37 CFR 1.102(e) for small entities under 35U.S.C. 41(h)(1) and that the prioritized examination fees be set to recover the estimated cost of the prioritized examination program, the Office would set the prioritized examination fee at $4,800 ($2,400 for small entities)").

[10] USPTO, "Requirements for the Patent Prosecution Highway (PPH) Program to Implement PPH 2.0," 1395 *Official Gazette* 204 (October 15, 2013) (emphasis in original).

[11] See Attachment A, showing under heading "OEE Documents not submitted in English" that in the sample of 11 PPH grants from China, 8 *do not* contain in the record any English translation of the claims purportedly allowed in the OEE decision by the Chinese patent office.

[12] Other PPH offices affirmatively require verifiability of "sufficient correspondence" to allowed claims. *See e.g.*, EPO, PPH Requirement C(4) ("submit a copy of the patentable/allowable claim(s) from the OEE application(s) and a translation thereof in one of the EPO official languages."); JPO, Requirement 2(b) (Submit "[c]opies of all claims determined to be patentable/allowable by the OEE, and translations of them."); IP Australia, *Global PPH Pilot Program: Requirements and Procedures*, p. 5 ("A copy … of the claims examined by the OEE and copies of subsequent amended claims found to be allowable/patentable by the OEE. … Where the relevant documents are in a language other than English you are required to file verified English language translations."); KIPO, *Requirements and Documents to be Submitted for Participation in the PPH*, ("Documents to be submitted: 1. Copies and translations of claims which are deemed patentable in an OFF."); UKIPO, *Required documents for accelerated examination under the GPPH pilot program at the UKIPO* ("(c) a copy of the claims found to be patentable by the OEE. … (d)

published in the Federal Register subject to public comments, the public was denied the opportunity to reject this structural invitation for abusing the PPH by unchecked entry into an accelerated examination process free of charge.

These are not the only structural incentives the USPTO put in place that enable foreign applicants to unfairly obtain free accelerated examination. A sample of several issued PPH U.S. applications originating from China reveals that petitions to enter the PPH were granted at the USPTO even in cases where the PPH applicant *admitted* that the submitted U.S. claims have been amended from the original claims allowed by the Chinese Patent Office. These PPH petitions for free accelerated examinations were nevertheless granted without having any evidence verifying that the claims "sufficiently correspond."[13] That the PPH petition approval process at the USPTO lacks the necessary scrutiny and expertise on the merits is further borne out from the following additional evidence:

First, the OG PPH Requirement A(3) explains: "A claim is considered to sufficiently correspond where, accounting for differences due to claim format requirements, the claim is of the same or similar scope as an allowable/patentable claim in the corresponding OEE application."[14] Verifying that all the claims in the U.S. application "sufficiently correspond" to the allowable/patentable claim(s) in the corresponding OEE application requires a *legal* finding of *substantial similarity* of the claims. The Federal Circuit held that the standard for finding claims "substantially similar" is by *materiality* as found by a "reasonable examiner." *Dayco Products, Inc. v. Total Containment*, 329 F.3d 1358, 1368 (Fed. Cir. 2003). Therefore, to meet that standard, a skilled "reasonable examiner" must *interpret* the claims *and* their translation, and make a *legal* determination that they are "substantially similar" in *material respects*.

However, the USPTO does not actually use patent examiners for granting PPH petitions. In its burden estimates of the PPH program, the USPTO represented to the OMB under the PRA that it employs high level GS-15, step 1 employees to process submissions of the PPH petitions; and it estimated that "it takes an employee 1 hour to process a request for participation in either the PPH or the PCT-PPH program."[15] However, the prosecution histories of the sample of recent PPH applications consistently reveals otherwise: all such PPH petitions were processed *not* by patent examiners of any grade, but by paralegals, essentially all being at midlevel paygrade of GS-11.[16] After all, this shortcut appears consistent with the USPTO treatment of PPH petitions as mere ministerial matter, given that it does not require PPH applicants to "submit a copy of the allowed claims from" the PPH participating office "or any English translation thereof."[17]

Second, in the apparent lax scrutiny of PPH petitions, the USPTO also occasionally ignores applicants' failure to meet Requirement (5)(b) above, where the "English language translation of the PPH participating office action or work product" has not been submitted or is entirely

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if the office actions and allowed claims, as noted above, are not in English and/or not available in English on a Dossier Access System then English language translations of the documents should be provided.")

[13] See Attachment A, under column heading "PPH claim similarity," three out of 11 sampled PPH applications have had such claims differ or amended from original claims.

[14] USPTO, OG Notice, Note 1 *supra*.

[15] USPTO, *Supporting Statement, Patent Prosecution Highway (PPH) Program*, OMB Control No. 0651-0058 (July19, 2024), p. 12.

[16] See Attachment A, the PPH decision maker's "Pay Grade."

[17] USPTO, PPH Requirements, note 10 *supra*.

missing.[18] The USPTO failed here on two levels: (a) despite the missing requisite documentation, the paralegal processing the PPH petition grants it anyway; and (b) the examiner who must evaluate the OEE actions that allowed the original claims, cannot review the action, and yet did not require the applicant to submit it to enable proper examination under the PPH program.

3 Usage of the PPH Program

Figure 1 shows the total number of PPH requests at the USPTO by the originating PPH Offices of Earlier Examination (OEE). Importantly, this figure shows that while the numbers of PPH requests at the USPTO from Japan (JPO) and Korea (KIPO) have declined in recent years (tracking similar decline of all U.S. applications filed by Japanese and Korean applicants), applications originating from the China National Intellectual Property Administration (CNIPA) have dominated the PPH program at the USPTO in recent years. Such filings rose with an exponential growth to about 3,900 applications in 2025.

Number of PPH requests to the USPTO as the Office of Later Examination (OLE) by the originating Offices of Earlier Examination (OEE)

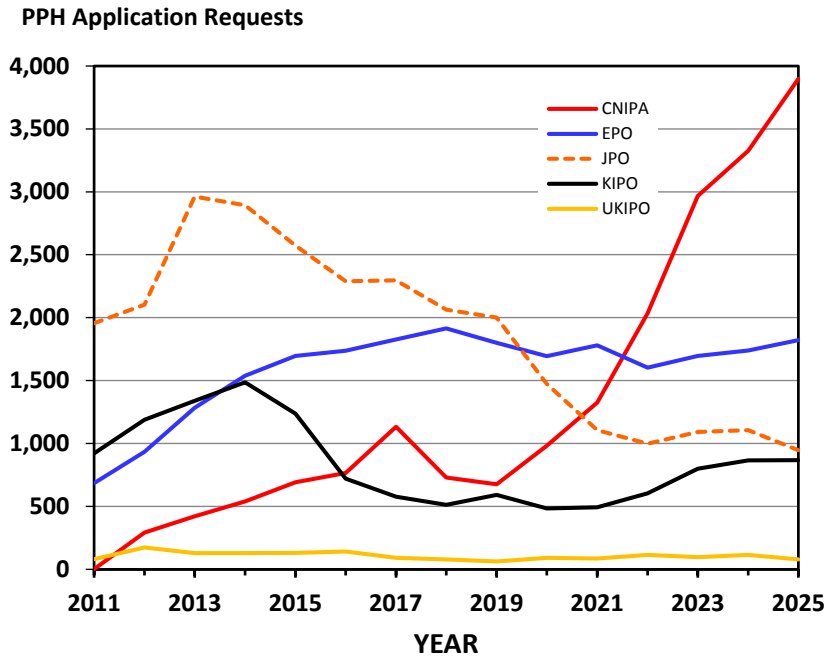


Figure 1 PPH requests to the USPTO. *Source*: www.jpo.go.jp/e/toppage/pph-portal/statistics.html.

The scale of that exponential growth is particularly of concern given that the USPTO appears to be singled out as the main *target* for major growth of PPH applications worldwide *originating* from China. This is shown in Figure 2, wherein PPH requests originating from China filed in other national participating offices are shown to be dwarfed by those filed in the USPTO. It therefore appears that Chinese applicants are exploiting the lax USPTO PPH process to predominantly target the U.S. market, and the USPTO appears supportive of that campaign.

[18] See Attachment A, showing three out of 11 PPH issued applications sampled wherein "OEE Documents not submitted in English" lists "OEE decision and claims."

Number of PPH requests originating in CNIPA (China) as the Office of Earlier Examination (OEE) by the target Office of Later Examination (OLE)

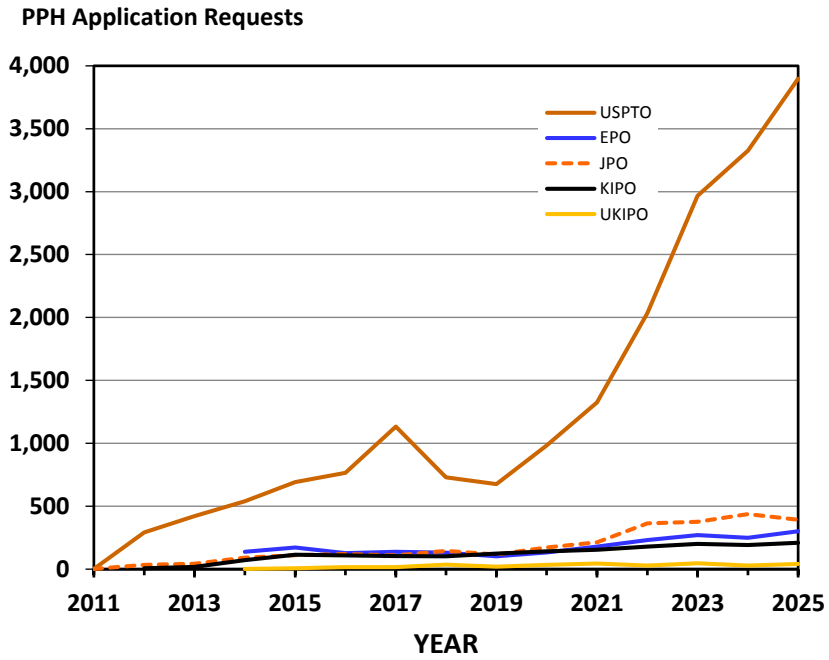


Figure 2. PPH requests from China. *Source*: www.jpo.go.jp/e/toppage/pph-portal/statistics.html.

4 China's exploitation of the USPTO PPH program

Through its patent office, the Chinese state promotes certain patent applications it originates for entry into the USPTO's PPH to exploit the program's preferential treatment. The PPH program between the USPTO and CNIPA started in January 2012.[19] Since then usage grew exponentially, far exceeding participation from other countries, as shown in Figure 1. The small sample of China-originated PPH applications issued recently by the USPTO reveals that their prior examination to claim allowance at CNIPA as the OEE took an average of 3.9 months.[20] This should be contrasted with CNIPA's normal average pendency of 15.5 months to allowance and grant.[21] This means that examination at CNIPA of all applications in this sample must have been accelerated substantially at CNIPA prior to their entry to the PPH program at the USPTO.

That observation should not surprise, as CNIPA created this favorable treatment on its own side: Only months after China entered the PPH agreement with the USPTO, on June, 2012, CNIPA (then SIPO) established its own domestic prioritized examination rule at no extra fees.[22] Under Article 4 of that rule, applications qualifying for CNIPA prioritized examination are patent applications: (1) "relating to technical fields covering energy saving and environmental protection, new generation information technology, biology, high-end equipment manufacturing, new energy, new materials, and new energy vehicles;" (2) "relating to technical fields favourable to green development such as low-carbon technologies and resources conservation;" (3) "that are

[19] USPTO, 1374 Off. Gaz. Pat. Office 118 (Jan. 10, 2012).
[20] See Attachment A, under "OEE Pendency (Days)" column, ensemble average pendency of 118 days.
[21] *IP5 Statistics Report 2024*, Figure 4.12, p. 77.
[22] *Administrative Measures for Prioritized Examination of Invention Patent Applications*, SIPO Order No. 65, (June 19, 2012).

first filed in China and subsequently in other countries or regions with respect to the same subject matter;" and (4) "applications of great significance to national or public interests." Essentially all PPH applications from China are directed at subject matter within these categories. Moreover, that pattern of accelerating examination at CNIPA is also accompanied by higher grant rates, particularly for technologies such as Artificial Intelligence.[23]

The fourth catchall criterion for prioritization—applications "of great significance to the national interest or public interest"—says it all: CNIPA can make the selection at its discretion, including for quickly positioning applications for entry into the USPTO PPH program. In addition to CNIPA offering fee-free prioritized examination, Chinese government entities actively subsidize patent filings as a state policy, driving a meteoric increase in U.S. patent applications from China.[24]

5 USPTO's preferential treatment of China-originated PPH applications

Beyond the procedural preference in entering the PPH that the USPTO accords China-originated applications as described above, evidence shows that such China-originated applications are treated more favorably by the USPTO during examination on the merits. In a recent study conducted at *Petition.ai* on all U.S. patent applications that contained (1) a PPH petition granted between November 2022 to April 2023, and (2) at least one USPTO action on the merits, 203 applications were identified, which constituted the ensemble under study.[25] Those included US-originating PPH applications filed by U.S. inventors or applicants through the PCT.

Compared to other PPH participating EEOs from five country groups in the full ensemble, the study found that:

(a) **Allowance rate**. China-originated PPH applications enjoyed the *highest* favorable first-action rate and the *highest* allowance rate, with 39.8% and 33.3% favorable first-action rate for China and the U.S. respectively, and with 60.5% and 53.4% allowance rate for China and the U.S. respectively.[26]

(b) **Pendency**. China-originated PPH applications had a shorter average pendency from PPH grant to favorable first-action of 70 days, compared to 84 days for US-originated

[23] Hermes, "Essential AI Patent and IP Resources for Foreign Businesses in China," *China Gateway*, (July 12, 2026) ("In 2023 alone, over 12,000 AI patent applications entered the priority examination channel, with a grant rate of approximately 85% – significantly higher than the average 60% for standard applications.")

[24] *See* USPTO, *Trademarks and patents in China: The impact of non-market factors on filing trends and IP systems*, p. 7 (Jan. 2021) (China uses various tools to induce patent filings: tax incentives, target metrics for institutional patenting, and monetary subsidies to patent filers.); *But see* Stephen Yang, "Ending Patent Subsidies in China," *Landslide* (Am. Bar Ass'n), (Jan. 2021) at 10 (CNIPA announced that by the end of June 2021, all central government funding for patent applications should have been canceled. Local governments may still provide financial incentives for granted invention patents (including foreign invention patents through PCT and other routes), but only after patent grant. Recipients should receive in total no more than 50% of the official fees they paid, with no subsidies provided for annuities or patent agency fees.)

[25] Julie Burke, "*USPTO's Speed On Some China Patents Bears A Closer Look*," Originally published on *Law360*, June 15, 2023.

[26] *Id*., Chart 1A.

applications; and average pendency from PPH grant to patent issue of 101 days compared to 125 days for US-originated applications.[27]

(c) **Favorable examiner treatment**. Examination scrutiny attributes were similarly consistent with China-originated PPH applications being favored: USPTO examiners wrote longer, or an average of 16.1-page, actions for US-originating applications and shorter, or an average of 9.9-page, actions for China-originated applications; the average number of references the examiner cited in examination were 6.2 for US-originated applications and only 3.8 for China-originated applications.[28] Prior art rejections under 102 and/or 103 were made in 59.3% of US-originated applications compared to only 41% of China-originated applications.

It should be noted that confounding explanatory factors for the disparity related to differing stages of prosecution are not present here because US-originated PPH applications through the PCT have similarly gone through prior OEE examination and allowance just like all other PPH applications. Moreover, the share of small-entity applications in the ensemble from China and the U.S. were of similar entity status shares,[29] suggesting that available applicant resource differences do not account for the examination difference, but other factors do.

The above *Petition.ai* study suggests two possibilities for the observed disparity: "either (1) claims in China PPHs are in better condition for allowance, while the claims in U.S. PPHs have more substantive problems requiring rejections, responses, argument, evidence or amendment, or (2) USPTO examiners are not examining China PPHs as thoroughly as other PPHs."[30] The first explanation appears at odds with the fact that the PPH claims at the USPTO must "sufficiently correspond" to the previously allowable/patentable claim(s) in the corresponding OEE application, also at the USPTO. The second explanation appears more plausible given the PPH procedural lapses at the USPTO for China-originated applications, allowing careless examination. This is as described above and further exemplified in the *Petition.ai* study by the egregious procedural lapses found in examining and issuing China-originated U.S. application S/N 17/905,166.[31] The conclusion is that the USPTO appears to aid Chinese applicants to exploit, if not abuse, the USPTO PPH program to get lower cost and higher yield prioritized examination, and obtain earlier patent issuance, including patents that likely should not have been issued.

For Chinese applicants, the PPH can produce benefits that extend beyond earlier resolution of the individual U.S. application: an earlier-issued U.S. patent can establish an enforceable U.S. patent position, facilitate licensing, investment, valuation, and commercialization, and provide an earlier basis for excluding competitors from the claimed technology. This advantage can be particularly consequential where the PPH patent is "a surrounding patent"— containing narrow claims directed to a specific implementation or even a relatively trivial variation of a foundational invention whose broader or more fundamental claims remain pending in other U.S. applications. In that circumstance, early issuance can give such PPH applicant enforceable rights in the specific implementation or variation *before the USPTO has resolved the pending claims directed to the underlying foundational invention.* This potentially may allow the PPH patentee

[27] *Id*., Chart 1B.
[28] *Id*., Chart 2.
[29] *Id*., Chart 3.
[30] *Id*.
[31] *Id*.

not only to secure commercial or licensing advantages during the intervening period, but also to *create barriers to later market entry by the applicant whose corresponding foundational patent remains pending*.

5.1 USPTO affords Chinese military companies the benefits of the PPH

The USPTO allows Chinese military companies to receive the benefits and financial assistance of the PPH program without scrutiny. As of January 10, 2026, there were more than 180 companies listed on the U.S. Department of Defense's Section 1260H list of Chinese military companies.[32] The names of those entities, their wholly-owned or controlled affiliates, their unique shortened identifications, or acronyms, were used to identify assignees listed in the USPTO dataset of PPH applications originated from CNIPA as Chinese military companies. Of the 12,390 PPH applications originating from CNIPA in the period covered by the dataset (2021-2025), 954 applications (7.7%) were filed by 27 military Chinese companies. See Table 2 below.

Concerns about the PPH applications from China appear to have risen even at the U.S. Department of Justice. Its Director of the Weaponization Working Group, Edward Martin, sent a letter on June 23, 2025 to the USPTO, expressing interest "in how the Patent Prosecution Highway (PPH) … were also weaponized to help the People's Republic of China create a mountain of U.S. patents during the Biden Administration."

On August 28, 2025, the President issued an amendment to Executive Order 12,171 adding the "Office of the Commissioner for Patents and subordinate units, Patent and Trademark Office" to the list of agencies under the National Security Exclusions from the federal labor-management relations statute.[33] This exclusion effectively terminates union representation for patent examiners by the Patent Office Professional Association (POPA). Then Acting USPTO Director, Coke Morgan Stewart, sent an internal message to staff stating that "the administration has determined that the Patents business unit and the Office of the Chief Information Officer (OCIO) business unit have 'as a primary function . . . national security work,'" rendering federal labor protections inconsistent with national security considerations.[34]

Given its above-stated national security role, the USPTO faces a substantial question as to its authority to provide prioritized PPH treatment at no charge to an entity designated as a Chinese military company under §1260H. Congress did not create §1260H merely as an internal Department of Defense classification: §1260H establishes a Federal list of Chinese military companies and directs that list to the heads of Federal departments and agencies. 10 U.S.C. §113

[32] DOD's "1260H list" is available at 91 *Fed. Reg*. 35189 (June 10, 2026). The National Defense Authorization Act (NDAA) for FY 2021, Pub. L. 116–283, § 1260H(d)(1)(B), 134 Stat. 3965 (Jan. 1, 2021), defines a "Chinese military company" as: an entity (i) owned or controlled by, or acting as an agent of or on behalf of the People's Liberation Army or any other component of the Central Military Commission of the Chinese Communist Party, or (ii) that is a "military-civil fusion contributor to the Chinese defense industrial base," and, in both cases, is engaged in providing commercial services, manufacturing, producing, or exporting. what constitutes a "military-civil fusion contributor to the Chinese defense industrial base is based upon one of multiple criteria related to an entity's cooperation or dealings with the Chinese government. As such, no company on the 1260H list can receive awards, be a supplier, a contractor, or in the supply chain, of many government agencies.

[33] President Donald J. Trump, "Further Exclusions from the Federal Labor-Management Relations Program" (August 28, 2025) (amending EO 12,171).

[34] Dennis Crouch, "Remote Work on the Chopping Block: How Union Exclusion Reshapes USPTO Employment," *PatentlyO* (August 28, 2025).

note, §1260H(a), (c). Congress has elsewhere demonstrated that, when it intends Federal agencies to withhold governmental value from §1260H entities, it uses deliberately broad terminology encompassing "any grant, contract, subcontract, award, loan, program, support, or other activity." 42 U.S.C. §18912(a)(2). And federal law recognizes that governmental "assistance" may consist of "the transfer of anything of value," or "financial assistance." 31 U.S.C. §6101(3)(A). The USPTO's PPH program arguably functions as a de facto transfer of value akin to a Federal "award," "support," "anything of value," or "financial assistance": it provides §1260H entities in the PPH program a credit of $4,815 for exploiting the scarce prioritized examination resources.

DoD 1260H Entity	PPH Applications	Issued as U.S. Patents
Contemporary Amperex Technology Co., Ltd. (CATL)	376	318
Inspur Group Co., Ltd. (Inspur)	229	201
ChangXin Memory Technologies, Inc. (CXMT)	84	81
Huawei Investment & Holding Co., Ltd. (Huawei Holding)	61	56
China Electronics Technology Group Corp. (CETC)	33	29
Baidu, Inc. (Baidu)	25	17
Trina Solar Co., Ltd. (Trina Solar)	22	18
Hangzhou Hikvision Digital Technology Co., Ltd. (Hikvision)	18	18
CRRC Corporation Ltd. (CRRC)	17	15
China Construction Engineering Corp. Ltd. (CSCEC)	16	15
China Telecom Group Co., Ltd. (China Telecom)	12	12
SenseTime Group, Inc. (SenseTime)	10	9
China Three Gorges Corp. (CTG)[35]	7	6
Hesai Technology Co., Ltd. (Hesai Group)	6	6
TP-Link Technologies Co., Ltd. (TP-Link)	6	4
China State Shipbuilding Corp. Ltd., and its research institute (CSSC)	5	4
Quectel Wireless Solutions Co., Ltd. (Quectel)	5	3
Origincell Technology Co., Ltd. (Origincell Biological CRYO)	4	4
Zhejiang Dahua Technology Co., Ltd. (Dahua)	4	4
China National Offshore Oil Corp. (CNOOC)	3	2
China National Chemical Engineering Group Corp. (CNCEC)	2	2
EVE Energy Co., Ltd. (EVE Energy)	2	2
Tencent Technology Ltd. (Tencent Holdings)	2	2
BYD Company Ltd. (BYD)	2	1
Alibaba Group Holding Ltd. (Alibaba)	1	1
MGI Tech Co., Ltd. (MGI)	1	1
WuXi AppTec Co., Ltd. (WuXi AppTec)[36]	1	1
TOTAL for 27 entities	**954**	**832**

Table 2. List of Chinese military companies and number of their applications entered in the PPH in FY2021-2025, and the number issued as U.S. patents therefrom. ***Sources*:** PPH Application assignees**:** USPTO production in FOIA Request No. F-25-00430 on PPH applications filed FY2021-2025; 1260H Entity Identification List: U.S. Dept. of Defense, *Notice of Availability of Designation of Chinese Military Companies*, 91 *Fed. Reg*. 35189 (June 10, 2026)**.**

[35] Includes its affiliate China Yangtze Power Co., Ltd.
[36] Includes its affiliate WuXi Biologics, Ltd.

There thus exists substantial question as to the statutory basis on which Congress's §1260H restrictions are inapplicable to this Federal assistance and why the prioritized examination benefit the USPTO confers on §1260H-listed entities falls outside the broad categories of governmental value that Congress has elsewhere directed Federal agencies to deny those entities.

In Congress, legislation was introduced to go beyond banning the financial credit. See H.R.9142, "*Prohibiting Adversarial Patents Act of 2026,"* (Introduced June 4, 2026). The bill "would prohibit the issuance of a U.S. patent to any person or entity who is identified to be a threat to U.S. national security pursuant to the Non-SDN CMIC List, the 1260H List, or the FCC's Section 2 List. Any patent previously issued to companies on these lists would be unenforceable. This bill would also restrict such entities from participating in any expedited patent examination programs, including the USPTO's Patent Prosecution Highway program."[37]

6 The USPTO PPH fee waivers contravene the AIA and the APA

The USPTO operates the PPH program in contravention of Federal law. The PPH program does not merely expedite administrative processing. It gives participating applicants preferential access to the Office's substantive examination resources by advancing their applications "out of turn for examination." See 37 C.F.R. § 1.102(a). The PPH program thus confers a valuable procedural advantage: a participating applicant receives examination ahead of applications that otherwise stand ahead of it in the ordinary examination queue. By not charging the prioritizing fee, the petition and processing fees, the USPTO deliberately altered the economic terms for obtaining prioritized examination to induce applicants to participate in the favored program. The value of that benefit is substantial. As demonstrated in Attachment B, the USPTO's method of estimating the private patent value gain from reducing pendency described in the September 6, 2012 Regulatory Impact Analysis (RIA), the estimated average gain from PPH's earlier grant and the resulting longer patent term is approximately *$8,674 for a large-entity patent and $5,266 for a small-entity patent, in 2012 dollars*. Those amounts represent the estimated economic value to the PPH recipient that the USPTO provided without charge.

Congress subsequently enacted the AIA in 2011 with a specific statutory regime governing precisely this form of applicant-requested prioritized examination. AIA § 11(h)(1)(A)(i) commands: "A fee of $4,800 *shall be established* for filing a request … for prioritized examination of a nonprovisional application for an original utility or plant patent." Congress further prescribed that, "[i]n addition to the prioritized examination fee," the applicant must pay the filing, search, examination, processing, and publication fees. § 11(h)(1)(A)(ii). And Congress authorized the Director by regulation only to prescribe "conditions for acceptance" of a request and "a limit on the number of filings for prioritized examination that may be accepted." § 11(h)(1)(B)(i). The USPTO's own implementation after the enactment of the AIA confirms that Congress was regulating prioritized access to substantive examination. The Office's Track I rule accords an application "special status" and places it on the examiner's special docket "throughout its entire course of prosecution … until a final disposition is reached."[38] Whatever general authority the USPTO previously possessed under § 1.102 to advance applications out of turn, therefore, could not thereafter be exercised inconsistently with Congress's specific enactment

[37] Press release, "Fitzgerald, Moolenaar, and Issa Introduce Legislation to Prohibit Adversarial Chinese Patents," (June 4, 2026) ()

[38] *Changes To Implement the Prioritized Examination Track (Track I)*, 76 Fed. Reg. 59,050, 59,051 (Sept. 23, 2011). Final Rule.

governing an applicant's request for this substantive benefit. Section 2(b)(2)(C), which authorizes regulations that "facilitate and expedite the processing of patent applications," cannot reasonably be construed to authorize regulations "not inconsistent with law" that circumvent a later and more specific congressional command in § 11 of the AIA.

The contrary construction would render substantive provisions of AIA's § 11(h) superfluous. Congress did not merely mention a fee in passing. It prescribed a *$4,800 fee* based on USPTO request,[39] made it mandatory through the word *"shall,"*[40] required it **"***in addition to***"** other enumerated application fees, imposed conditions concerning the applications and claims eligible for prioritized examination, established a numerical ceiling for the number of prioritized applications that the PTO may accept, and limited the Director's delegated regulatory authority to specified matters. § 11(h)(1)(A)–(B). Allowing applicants to obtain free prioritized examination through the PPH, makes the $4,800 statutory fee optional, its conditions avoidable, and the Director may create, outside § 11(h), an alternative pathway to the very benefit for which Congress prescribed the fee and regulatory framework. Such a construction would deprive AIA's § 11(h) of substantial operative effect. The inconsistency is especially acute because Congress expressly knew how to authorize *fee-free applicant-requested prioritization*: In the same AIA enactment, Congress added 35 U.S.C. § 2(b)(2)(G) which permits the Director, at the applicant's request, to prioritize applications "for products, processes, or technologies that are important to the national economy or national competitiveness without recovering the aggregate extra cost" of that prioritization. Congress therefore demonstrated that when it intended to authorize financial incentives for applicant-requested prioritization, it knew how to say so.

The Supreme Court has cautioned that statutes should, if possible, be construed so that "no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). The specific authorization in § 2(b)(2)(G), juxtaposed with the mandatory $4,800 fee in AIA § 11(h), would be largely superfluous if the statute in § 2(b)(2)(C) and the rule in § 1.102 already gave the Director unrestricted authority to provide the same benefit without charge.

6.1 The USPTO lacks substantive rulemaking authority to waive PPH fees

The PPH fee waiver is independently invalid as an unauthorized *substantive rule*. Whereas the Director has the authority to *adjust* these fees for *all* applicants under section 10 of the AIA, the Director has *no* statutory authority to *waive* the prioritized examination fee or associated processing fee. But even after the enactment of the AIA, the USPTO does precisely that without rulemaking for prioritized (accelerated) examination of applications that enter the "pilot" PPH

[39] 76 *Fed. Reg.*, at 6370 ("If legislation is passed providing a fifty percent fee reduction for providing prioritized examination under 37 CFR 1.102(e) for small entities under 35U.S.C. 41(h)(1) and that the prioritized examination fees be set to recover the estimated cost of the prioritized examination program, the Office would set the prioritized examination fee at $4,800 ($2,400 for small entities)").

[40] The term "shall" here is imperative rather than permissive. *See SAS Inst., Inc. v. Iancu*, 138 S.Ct. 1348, 1354 (2018) (Holding that the word "shall" means "must" because it "generally imposes a nondiscretionary duty"); *Kingdomware Techs., Inc. v. United States*, 136 S.Ct. 1969, 1977 (2016) ("Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement."); *Farrel Corp. v. U.S. Int'l Trade Comm'n*, 949 F.2d 1147, 1153 (Fed. Cir. 1991) ("The use of 'shall' in a statute is 'the language of command'").

program.[41] Courts have held that calling an agency procedure a "pilot" cannot save it from being unlawful.[42]

The APA defines "rule" broadly to include an agency statement "of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. § 551(4). The PPH fee waiver satisfies that definition: it established generally applicable conditions under which a defined class of applicants could obtain prioritized examination without paying the fees otherwise required for such service. More importantly, it altered applicants' substantive economic position by conferring a valuable governmental benefit—worth, according to the USPTO's own 2012 estimation methodology, approximately *$8,674 for large entities and $5,266 for small entities*[43]—on PPH participants but not on similarly situated applicants outside the program. *Cooper Technologies Co. v. Dudas* explains that a substantive rule effects "a change in existing law or policy" affecting individual rights or obligations. 536 F.3d 1330, 1336 (Fed. Cir. 2008). The PPH fee waiver did precisely that. And the Federal Circuit has held that § 2(b)(2) "does not authorize the Patent Office to issue 'substantive' rules." *Id.*; *Merck & Co. v. Kessler*, 80 F.3d 1543, 1549–50 (Fed. Cir. 1996). The Office therefore could not create, by an administrative "procedure," a new substantive entitlement to prioritized examination on economic terms that Congress did not authorize. Nor could it evade the APA's rulemaking requirements by labeling the measure a "procedure" when the measure changed the substantive rights and economic obligations associated with obtaining prioritized examination.

Furthermore, in waiving fees that Congress enacted for prioritized examination, the USPTO violates the Constitutional separation of powers principle and impermissibly assumes the policymaking role of Congress. This is because fees set to achieve public interest *policy* goals by encouraging or discouraging a particular activity are *taxes.* In *National Cable Television Ass'n, Inc. v. United States*, 415 U.S. 336 (1974) (hereinafter "*NCTA*"), the Supreme Court explained that an agency's attempt to adjust assessments according to "public policy or interest served" may "make the assessment heavy if the lawmaker wants to discourage the activity; or it may make the levy light if a bounty is to be bestowed," but explained that such policymaking "carries an agency far from its customary orbit" and that "[s]uch assessments are in the nature of 'taxes' which under our constitutional regime are traditionally levied by Congress." *Id.* at 341. The D.C. Circuit applied that principle in *Seafarers International Union of North America v. United States Coast Guard*, explaining that "[s]uch policy decisions, whereby an agency could, for example, adjust assessments to encourage or discourage a particular activity," would carry an agency "far from its customary orbit and infringe Congress's exclusive power to levy taxes." 81 F.3d 179, 183 (D.C. Cir. 1996) (quoting *NCTA*; cleaned up).

The PPH fee waiver presents precisely the concern *NCTA* and *Seafarers* identified. The USPTO did not waive the fee because Congress had authorized a fee-free service. It did so for specific purpose, expressly stating that eliminating fees was expected to **"***encourage greater*

[41] USPTO, "Implementation of the Global and IP5 Patent Prosecution Highway (PPH) Pilot Programs with Participating Offices," 1400 *Official Gazette* 172 (Mar. 18, 2014), reproduced in the Consolidated Notices as Item 178 (Dec. 30, 2014).

[42] *Melwood Horticultural Training Center, Inc. v. United States*, Case No. 20-1884C, Slip Op. at 17 (Fed. Cl. 2021) (holding that an agency's "creation and adoption of its `Interim Test Pilot Procedures' cannot trump or replace the laws as written.")

[43] See Attachment B.

*PPH participation.***"** 75 *Fed. Reg*. at 29,313. The Office thus deliberately made the financial burden lighter as "a bounty" to induce the favored activity. And the "bounty" was not trivial: See Table 1. The PPH fee waiver is an agency-created financial incentive, conferring thousands of dollars in estimated value on identifiable recipients for the purpose of inducing participation in a USPTO-favored program with no statutory authority to do so.

6.2 International work-sharing does not require, nor authorize fee-free prioritized examination

None of the provisions in 35 U.S.C. § 2(b)(6), (8)–(13), § 2(c)(1) and § 119 on international matters authorize the USPTO to advance an application out of turn merely because it participates in an international work-sharing program, much less to do so without the fee Congress prescribed for prioritized examination. Section 2(b)(6) authorizes the Office to use the services, records, facilities, or personnel of foreign patent offices; §§ 2(b)(8)–(10) address the Office's advisory and international-policy functions; and §§ 2(b)(11)–(13) authorize various cooperative programs, exchanges, studies, and international activities. Section 2(c)(1) likewise concerns the Office's authority to make certain international payments, and § 119 recognizes priority rights arising from foreign applications. None of these provisions confers authority to alter the order in which U.S. patent applications are examined. Nor does any provision authorize the USPTO to convert participation in an international work-sharing program into an entitlement to prioritized examination.

The distinction is demonstrated by the Office's own international work-sharing activities other than PPH. As Table 3 shows, the USPTO has long participated in substantial work-sharing arrangements with foreign patent offices—including programs that facilitate the exchange and use of search and examination results—without giving participating applications a fee-free place ahead of other applications in the examination queue. The USPTO's own work-sharing programs demonstrate that foreign search and examination results can be obtained, transmitted, accessed, and utilized by U.S. examiners through standing bilateral and multilateral infrastructure. The USPTO expressly identifies the resulting benefits as reduced duplication, increased efficiency, improved quality, and more compact prosecution. Those mechanisms do not depend upon advancing the U.S. application out of its ordinary examination queue.

The USPTO reports an average of 2.4 actions per disposal for PPH applications, compared with an average of 2.8 actions for non-PPH applications—a reduction of only 0.4 actions.[44] The modest reduction in office actions reflected in the USPTO's PPH statistics cannot be attributable to more than non-PPH work-sharing mechanisms captured in Table 3. By contrast, the average PPH pendency reduction is approximately by 1.66 years compared to the non-PPH pendency of 2.6 years.[45] The magnitude of that difference indicates that the dominant mechanism producing the substantially shorter PPH pendency is PPH applications' *advancement out of turn for examination* rather than a modest improvement in examination efficiency. International work-sharing, therefore, does not require prioritization of the order of examination, and the existence of work-sharing benefits cannot supply statutory authority for the separate and materially different act of providing fee-free prioritized examination

[44] USPTO, *PPH, Monthly Statistics Report as of August 31, 2025*, PPT slide 19 (Feb. 2025), produced in FOIA Request No. F-25-00430.
[45] See Attachment B.

Program / infrastructure	Partnership	Work product / mechanism	Stated efficiency or prosecution benefit	Notice / Reference
Global Dossier	IP5 and WIPO CASE offices	One-stop access to dossier information for applications in a patent family; includes search and examination results available to USPTO examiners.	USPTO states: Global Dossier provides "time and cost savings using new efficiencies and worksharing opportunities." It does so "by enabling the exchange of patent information between foreign patent offices, patent examiners, and the public worldwide."	USPTO PPAC Meeting (Sept. 27, 2012) "Global Dossier." See also USPTO website presentation on Global Dossier.
Common Citation Document (CCD)	Multilateral IP5	Consolidated listing of references cited in related international patent applications; incorporated into the USPTO Examiner's Toolkit.	To "enable examiners and patent information users to see, in a single document, the prior art cited by each office for each patent family member."	Trilateral Press release, "Three Major Patent Offices Make Significant Advances in Work Sharing," 29th Annual Trilateral Conference, November 2011.
SHARE (**S**trategic **H**andling of **A**pplications for **R**apid **E**xamination)	Bilateral USPTO–KIPO; USPTO–UKIPO; and Trilateral USPTO–JPO–EPO	Office-of-first-filing search/examination work supplied to the office of second filing for use in its examination.	USPTO identified SHARE among its international-cooperation work-sharing initiatives to create efficiencies and reduce rework across offices.	USPTO PPAC 2011 Annual Report, Section IV.6.3 on SHARE.
PCT Collaborative Search & Examination (CS&E)	Multilateral IP5 / PCT	Examiners from participating IP5 offices collaborate on search and examination of a single PCT application and contribute to the ISR and written opinion.	USPTO describes CS&E as improving international worksharing by "streamlining examination and search procedures for patent examiners in multiple countries."	USPTO, "PCT Collaborative Search and Examination Pilot," updated July 1, 2020.

Table 3. International Work-Sharing Programs in which the USPTO participates.

6.3 No deference is due to the USPTO's interpretation of the relevant statutes

Finally, the USPTO cannot defend this departure from Congress's command by invoking its own interpretation of § 2(b)(2) or AIA § 11(h). The statutory language is mandatory: "A fee of $4,800 *shall be established*." Congress did not authorize the Director to waive that fee for applicants whom the Office independently deemed worthy of prioritized examination. Nor did it authorize an alternative applicant-requested mechanism that accomplishes the prioritized treatment without the fee. As the Supreme Court stated in *SAS Institute Inc. v. Iancu*, "[w]here a statute's language carries a plain meaning, the duty of an administrative agency is to follow its commands as written, not to supplant those commands with others it may prefer." 584 U.S. 357, 364–65 (2018). And after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394–95 (2024), the reviewing court—not the agency—must "decide all relevant questions of law" and "exercise [its] independent judgment" in determining whether the agency has acted within its statutory authority. The USPTO therefore is not entitled to deference on the question whether § 11(h) permits it to waive Congress's mandatory fee or to create an alternative fee-free route to prioritized examination.

The PPH fee waiver therefore exceeds the USPTO's substantive rulemaking authority, was not adopted through the rulemaking Congress required for a substantive rule, and—after the AIA enactment—conflicted directly with the specific statutory regime governing applicant-requested prioritized examination. The resulting agency action is "not in accordance with law," 5 U.S.C.

§ 706(2)(A), and is also "in excess of statutory jurisdiction, authority, or limitations," § 706(2)(C).

6.4 Prejudice to U.S. applicants, particularly small business inventors, by the USPTO's unlawful incentives to PPH applicants

The USPTO's operation of the PPH incentives prejudices U.S. applicants who rely exclusively on domestic filings. Starting from 2013, in granting PPH applications priority examination status, the USPTO exceeded the 10,000 prioritized examination limit set by the AIA. As Figure 3 shows, PPH applications cause this condition to be exceeded by thousands of applications every year since then, with no statutory authority to divert examiner resources away from other applications in the queue. This prejudices all other patent applicants whose applications are held back in the examination queue. To the extent the USPTO instead hired and trained more examiners to take up the PPH workload, it did so without charging PPH applicants, without Congressional authority, but with funds from user fees collected from other applicants. Either way, non PPH applicants are prejudiced by the USPTO's unlawful incentives to PPH applicants.

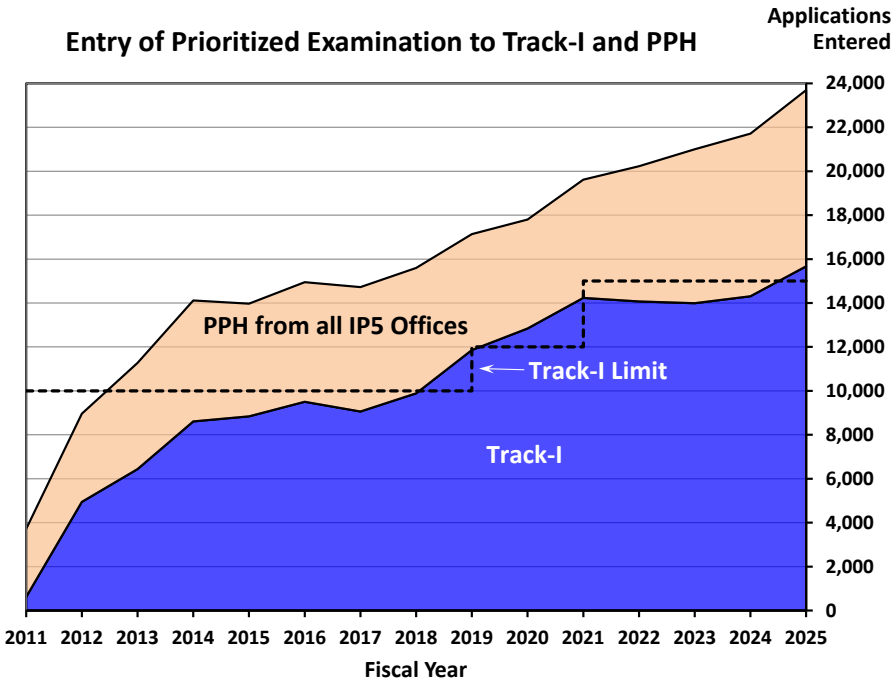


Figure 3. USPTO's granted entry to prioritized examination programs. Sources: PPH: Applications from all IP5 Offices granted PPH entry at the USPTO, production in FOIA Request No. F-25-00430; Track-I: USPTO Fee Collection Reports, President's Budget Requests.

Startup, small business, and independent inventors are highly dependent on obtaining early patent protection in their development, when their access to funds is particularly limited. The following *early* patent protection factors are particularly important for these categories of inventors for their business survival:

(a) Protect *investments* in development and commercialization *before* they are made;

(b) Capture "solutions" to market problems, to prevent others from doing so, and ensure "freedom to operate" without market exclusion;

(c) Ensure the inventions' *commercialization* and *coordination* with other market players and distributers; and

(d) *Deter* competitors from predatory market entry, and bolster market sector *dominance*.

This is why small and micro entities have a disproportionate share in seeking Track-I prioritized examination, as shown in Figure 4, despite the extra costs involved. As Figure 4 shows, small and micro entities filed 10,720 of the 15,670 Track-I applications in 2025. This 68% share is more than double their 29% share of all serialized utility patent applications for that year, as reported in the USPTO Fee Collection Report.

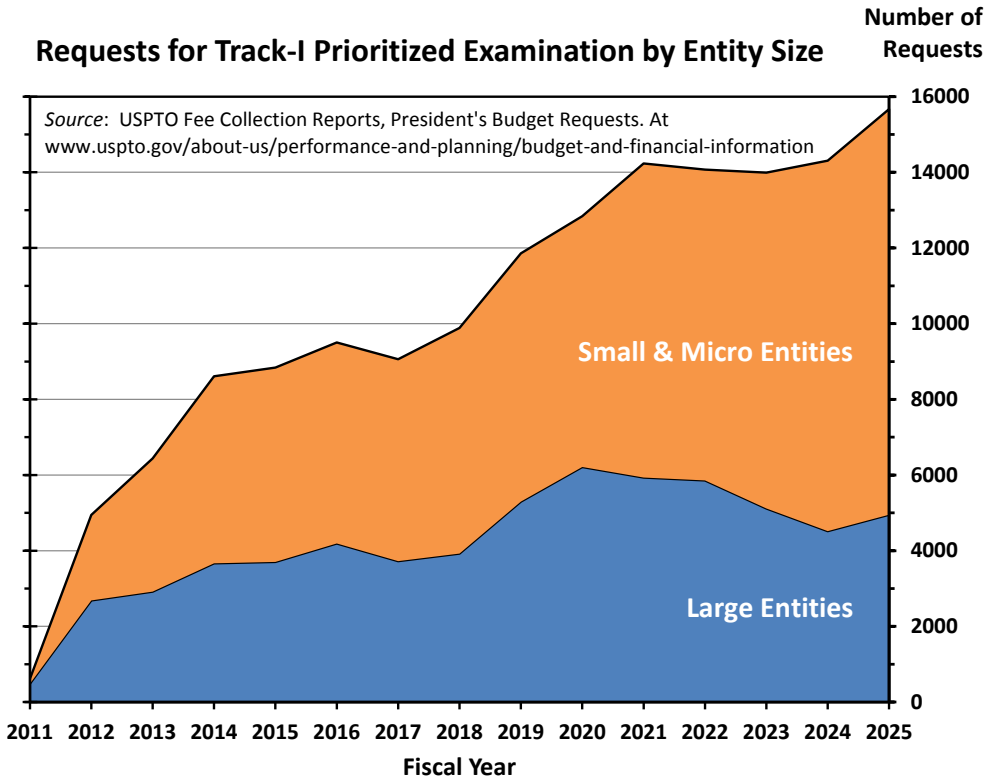


Figure 4. Participation in Track-I Prioritized Examination by applicant entity size.

Unfortunately, for many small business inventors, prioritized examination fees are prohibitive and they cannot avail themselves of that benefit, which PPH applicants get for free. The incentives the USPTO selectively bestows on foreign PPH applicants prejudices those U.S. small and micro entity inventors by denying them the head-start given to PPH applicants at no charge: The PPH program, dominated by China-originated patents, allows their owners at no extra cost to:

(a) Increase the USPTO prioritized examination burden at the expense of delaying all other applications;
(b) Obtain early patents to block others, who may be developing, but not yet patenting, similar subject matter; and
(c) Create higher risks for patent disputes that threaten domestic U.S. industries.

In 2025, the USPTO granted requests for prioritized examination in 8,025 PPH applications received only from five IP5 Offices, and in 15,670 Track-I applications (see Figure 3), for a total of nearly 24,000 applications. This latter number demonstrates the USPTO's capacity for

processing prioritized examination applications. This annual capacity can be maintained by equalizing the cost. Reducing Track-I fees would increase domestic demand, while lawfully charging those same fees for PPH applications would likely reduce PPH demand. This would rectify the unfairness to U.S. applicants and would "level the playing field" for U.S. and foreign applicants seeking prioritized examination at the USPTO, allowing more U.S. applicants to benefit from such procedure within the annual cap. It can be shown by a simple volume-constrained product-replacement price elasticity analysis that this revision would entail no loss of total revenue to the USPTO, but instead result in net revenue *increase*.

7 Conclusion

For the reasons explained above, the USPTO's operation of the PPH program contravenes current law to the prejudice of U.S. patent applicants, and it must promptly seek Congressional approval on how it runs it now, or revise the PPH program as follows:

(1) Withdraw the free prioritized examination components of the PPH program by applying the prioritized examination under the fee per 37 C.F.R. § 1.17(c) for PPH applications, and by rescinding the waivers of fees under 37 C.F.R. §§ 1.17(h) and (i) for petitions to Make Special and for processing;
(2) Lower the fees charged in 37 C.F.R. § 1.17(c) from *all* applicants for prioritized examination so as to maximize use of the service subject to the USPTO's actual capacity for timely processing of prioritized examination applications;
(3) Reestablish the requirement, which other PPH participating offices keep, that PPH applicants submit copies of the allowed claims from the application filed in the PPH participating EEO and the verified English translation thereof; and
(4) Promptly conduct an independent quality assurance audit on all PPH request grants and examination, make such audit report transparently available to the public, and establish regular Office of Patent Quality Assurance (OPQA) reviews of the PPH request grants and examination on the merits.

These revisions would allow applicants participating in the PPH program to choose whether or not to seek prioritize examination by meeting the requirements, petitioning to Make Special, and paying the corresponding fee. These revisions would not violate the USPTO's work-sharing obligations, the non-discrimination obligations under the Patent Cooperation Treaty (PCT), nor the Patent Law Treaty (PLT), because the requirements and fee charges to foreign applicants would be identical to those of U.S. applicants.

Attachment A – Sample China-originated U.S. Patents issued under the PPH

Attachment A

U.S. Pat. No.	Issue Date	Title	Assignee	U.S. App. Ser. No.	U.S. Filing Date	PTO Pendency (Days)	Priority App.	Priority Date	PPH Information									
									OEE App. S/N	OEE App. Date	OEE Decision Date	OEE Documents not submitted in English	OEE Pendency (Days)	PPH Decision Date	PPH decision maker	Pay Grade *	PPH claim similarity	Notice of Allowance Date	PPH Pendency (Days)
12196582	14-Jan-25	High-precision multi-pole magnetoelectric encoder	Tangshan Polytechnic University (Tangshan, CN)	18/929656	29-Oct-24	77	CN202210547924.8	20-May-22	CN202210547924.8	20-May-22	6-Jul-22		47	18-Nov-24	Jamice T Brantley, Paralegal Specialist	GS-11		26-Nov-24	8
12046789	23-Jul-24	Ferroelectric film phase shifter and wafer-level phased array chip system	Xidian University (Xi'an, CN)	18/648408	28-Apr-24	86	CN202310492361.1	4-May-23	CN202310492361.1	4-May-23	15-Nov-23	OEE decision and claims	195	15-May-24	Kimberly A Inabinet, Paralegal Specialist	GS-11		10-Jun-24	26
12037488	16-Jul-24	Liquid molding compound and preparation method thereof	Hubei Choice Technology Co., Ltd. (Ezhou, CN)	18/639612	18-Apr-24	89	CN202310462277.5	26-Apr-23	PCT/CN2023/092801	8-May-23	22-Oct-23	Spec.	167	13-May-24	Paula S Britton, Paralegal	GS-11	Differing claims	31-May-24	18
12037904	16-Jul-24	Rock burst active prevention and control mechanism	China University of Mining and Technology—Beijing (Beijing, CN)	18/638552	17-Apr-24	90	CN202310498496.9	6-May-23	CN202310498496.9	6-May-23	1-Jul-23	Spec. and claims	56	8-May-24	Irvin Dingle, Lead Paralegal Specialist	GS-12		3-Jun-24	26
12046990	23-Jul-24	Multi-phase high-precision current sharing control method applied to constant on-time control	Southeast University (Nanjing, CN)	18/641384	21-Apr-24	93	CN202211368355.7	3-Nov-22	PCT/CN2023/122090	27-Sep-23	3-Jan-24	Spec. and claims	98	20-May-24	Angela Walker, Paralegal Specialist	GS-11		12-Jun-24	23
12046594	23-Jul-24	Monolithically integrated GaN-based half-bridge circuit and half-bridge circuit	Southeast University (Nanjing, CN)	18/638735	18-Apr-24	96	CN202310553782.0	17-May-23	PCT/CN2023/124199	12-Oct-23	11-Dec-23	Spec. and claims	60	17-May-24	Angela Walker, Paralegal Specialist	GS-11	Claims amended from OEE	12-Jun-24	26
12057785	6-Aug-24	Three-level converter and control method thereof	Foxess Co., Ltd. (Wenzhou, CN)	18/653852	2-May-24	96	CN202310704136.X	14-Jun-23	CN202310704136.X	14-Jun-23	10-Aug-23	Spec. and claims	57	28-May-24	Dale A. Hall, Paralegal Specialist	GS-11	Claims amended from OEE	26-Jun-24	29
12091147	17-Sep-24	Ship hydrogen hybrid propulsion system based on double-rotor motor and method thereof	Shandong University of Science and Technology (Qingdao, CN)	18/739229	10-Jun-24	99	CN202410138558.X	1-Feb-24	CN202410138558.X	1-Feb-24	15-Apr-24	OEE Decision and claims Missing	74	22-Jul-24	Lashawn Marks, Paralegal Specialist	GS-11		2-Aug-24	11
12044531	23-Jul-24	Level instrument and method for surveying mining subsidence zone in coal mining area	Ping An Coal Mining Engineering Technology Research Institute Co., Ltd. (Huainan, CN); Huainan Mining (Group) Co., Ltd. (Huainan, CN)	18/633522	12-Apr-24	102	CN202310253279.3	13-Mar-23	PCT/CN2023/117987	11-Sep-23	13-Nov-23	Spec. and claims	63	16-May-24	Terri S Johnson, Paralegal Specialist	GS-11		13-Jun-24	28
12044085	23-Jul-24	Integrated multi-slip sidetracking setting device for ultra-deep well	Tang, Ming (Chengdu, CN)	18/633020	11-Apr-24	103	CN202310402812.8	17-Apr-23	CN202310402812.8	17-Apr-23	24-Oct-23	OEE decision and claims	190	7-May-24	Terri S Johnson, Paralegal Specialist	GS-11		6-Jun-24	30
12055448	6-Aug-24	Vibrating wire stress gauge and stress testing equipment suitable for use in low temperature environments	Institute of Rock and Soil Mechanics, Chinese Academy of Sciences (Wuhan, CN)	18/646672	25-Apr-24	103	CN202310553350.X	15-May-23	CN202310553350.X	15-May-23	1-Mar-24	Spec.	291	14-May-24	Kimberly A Inabinet, Paralegal Specialist	GS-11		20-Jun-24	37
												Average pendency	**118**						

Notes: This list was obtained from www.freepatentsonline.com for US patents issued after Jul-1-2024, using CN as the Assignee Country, sorting by ascending USPTO pendency with patents having the top 11 shortest pendency selected

* Source: https://openpayrolls.com/search/employees

Attachment B – "Value to the recipient" of patents issued under the PPH

The USPTO has itself in 2012 relied on its estimates of the private value conferred by reduced patent pendency for purposes of patent-fee rulemaking. In the AIA fee-setting analysis, the Office estimated the average increase in private patent value resulting from reduced pendency as a fraction of mean Baseline patent values of $115,684 for large-entity patents and $70,232 for small-entity patents in its Regulatory Impact Analysis (RIA).[46] The USPTO's analysis recognized two components of applicant economic gain from reduced pendency: gain from an earlier grant of the patent, and gain from the corresponding longer patent term. It subsequently incorporated that private-value analysis into its final fee-setting rulemaking. The same analysis is provided here for the reduced pendency of patents issued under the PPH program.

Average pendency reduction for the PPH

The average pendency for the PPH is reported in USPTO PPH statistics as "Application Filing to First Disposal" – 11.2 months.[47] That 2025 figure is compared to the USPTO's Traditional total pendency for FY 2025, given by 31.1 months (2.6 years).[48] Accordingly, the average pendency reduction at the PPH average is 31.1 – 11.2 = 19.9 months = **1.66 years**.

Gain from the earlier patent grant

Under the USPTO methodology (AIA at 181), the gain from an earlier grant is calculated by discounting the Baseline patent value forward by the number of years that pendency declines. In the PPH case, receiving a patent 1.66 years earlier increases its patent value resulting in a gain given by:

$$Earlier\ Patent\ Grant\ Gain = \mathrm{V}\,[\,e^{r\,T} - 1] = V\big[\,e^{0.03\,(1.66)} - 1\big] = \ 0.051\,V$$

where V is the Baseline patent value, r = 0.03 the annual discount rate, and T = 1.66 the duration in years of pendency reduction.

Gain from the longer patent term

The USPTO estimated the gain from longer patent term (RIA at 181-82) by treating patent value as an annuity with negative growth rate (i.e. a depreciating asset). The Office used a – 10 percent growth rate to calculate an annuity payment based on the Baseline patent value and patent term. The additional value generated during the extended patent term was subjected to continuous depreciation at 3 percent. Assuming a nominal average patent term of 17 years, the net gain simplifies to the following ratio of the original Baseline patent value:

$$Longer\ Patent\ Term\ Gain = V\ \frac{e^{-17(0.13)} - e^{-(17+1.66)(0.13)}}{1 - e^{-17(0.13)}} = 0.024\,V$$

[46] UPTO, *Regulatory Impact Analysis, Setting and Adjusting Patent Fees in accordance with Section 10 of the Leahy-Smith America Invents Act*, (September 6, 2012), at 179 (relying on Bessen (2008) and Serrano (2005) for empirical studies on private values of a patent for large and small entities respectively).

[47] USPTO, "PPH, Monthly Statistics Report as of August 31, 2025," PowerPoint slide 9, produced in FOIA Request No. F-25-00430.

[48] USPTO, Patents Dashboard, Traditional total pendency for FY 2025.

Adding the two gain components, the total gain from earlier grant and from longer patent term is thus the sum:

$$Total\ Gain = 0.051V + 0.024\,V = \ 0.075\,V$$

The USPTO's RIA of September 6, 2012 (AIA at 179) assumed average Baseline patent values of $115,684 and $70,232 for large-entity patents and small-entity patents respectively. Accordingly, the estimated average gain to PPH patentee from prioritized examination resulting in an earlier grant and a longer patent term by 1.66 years is therefore 0.075 × $115,684 = **$8,674**, and 0.075 × $70,232 = **$5,266** in 2012 dollars for large and small entities respectively.

Accordingly, these estimates are the "value to the recipient," *NCTA*, 415 U.S. at 341, which the PPH applicants enjoy, but the USPTO waives.