

the **FOR FURTHER INFORMATION CONTACT** section of this Notice for special instructions.

FOR FURTHER INFORMATION CONTACT:

Carolyn Kosowski, Senior Legal Advisor, at 571-272-7688; Nalini Mummalaneni, Senior Legal Advisor, at 571-270-1647; or Matthew Sked, Senior Legal Advisor, at 571-272-7627, all with the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents.

SUPPLEMENTARY INFORMATION: On July 17, 2024, the USPTO published a notice on patent subject matter eligibility titled “2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence” to address innovation in critical and emerging technologies, especially artificial intelligence. See 89 FR 58128.

The USPTO is extending the written comment period until October 16, 2024, to ensure that all stakeholders have a sufficient opportunity to submit comments on the examination guidance presented in the July 17, 2024, notice. The USPTO is extending the written comment period only once.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO-P-2021-0042]

Extension of the Patent Trial and Appeal Board Motion To Amend Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is extending the Motion to Amend (MTA) pilot program, initiated on March 15, 2019, and previously extended up to September 16, 2024. The MTA pilot program provides additional options for a patent owner who files an MTA before the Patent Trial and Appeal Board (PTAB). In particular, the MTA pilot program provides a patent owner who files an MTA with options to request preliminary guidance from the PTAB on the MTA and to file a revised MTA. The MTA pilot program also provides timelines for briefing to accommodate these options.

DATES: *Applicable Date:* September 17, 2024. *Duration:* The MTA pilot program will run until March 31, 2025, or earlier if replaced by a permanent program after notice-and-comment rulemaking. The USPTO may extend the MTA pilot program (with or without modification) on either a temporary or a permanent basis or may discontinue the MTA pilot program, after that date.

FOR FURTHER INFORMATION CONTACT:

Miriam L. Quinn, Acting Vice Chief Administrative Patent Judge, or Melissa Haapala, Vice Chief Administrative Patent Judge at 571-272-9797 (*Miriam.Quinn@uspto.gov* or *Melissa.haapala@uspto.gov*, respectively).

SUPPLEMENTARY INFORMATION: A patent owner in an America Invents Act (AIA) trial proceeding may file an MTA as a matter of right. See 35 U.S.C. 316(d)(1), 326(d)(1). After receiving public feedback about the PTAB’s MTA practice, including some concerns regarding the low grant rate of claim amendments in AIA trial proceedings, in October 2018, the USPTO published a Request for Comments in the **Federal Register** seeking written public comments on a proposed amendment process in AIA trials that would involve preliminary guidance from the PTAB on the merits of an MTA and an opportunity for a patent owner to file a revised MTA. Request for Comments on MTA Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 83 FR 54319 (Oct. 29, 2018). The majority of comments supported the PTAB issuing preliminary guidance in cases involving an MTA and commenters were almost evenly mixed in supporting or opposing the opportunity for a patent owner to file a revised MTA.

On March 15, 2019, in response to these public comments, the USPTO issued a Notice detailing the MTA pilot program. Notice Regarding a New pilot program Concerning Motion to Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 84 FR 9,497 (Mar. 15, 2019). The MTA pilot program provides a patent owner with two options not previously available: (1) a patent owner may choose to receive preliminary guidance from the PTAB on its MTA; and (2) a patent owner may choose to file a revised MTA after receiving petitioner’s opposition to the original MTA and/or the PTAB’s preliminary guidance (if requested). If a patent owner does not elect either option, then AIA trial practice, including MTA practice, is essentially

unchanged from the practice prior to the MTA pilot program.

The USPTO has extended the MTA pilot program twice. The first extension on September 16, 2021 ran through September 16, 2022, and the second extension currently runs until September 16, 2024. The USPTO continues to present results of the MTA pilot program yearly, with the most recent report based on data up through March 31, 2024, in Installment 9 of the Motions to Amend Study. The most recent information and statistics related to MTAs are available on the USPTO’s website at <https://www.uspto.gov/patents/ptab/motions-amend-study>.

After four years of experience with the MTA pilot program and development of Federal Circuit case law concerning burden allocation in the MTA context, the USPTO issued a Request for Comments to seek feedback on the public’s experience with the program and the burden-allocation rules that apply to MTAs. See Request for Comments Regarding MTA Pilot Program and Rules of Practice to Allocate the Burdens of Persuasion on Motions to Amend in Trial Proceedings Before the Patent Trial and Appeal Board, 88 FR 33063 (May 23, 2023) (2023 RFC). Then on March 4, 2024, after consideration of the received comments and based on the experience of the Board with the MTA pilot program, the USPTO published a Notice of Proposed Rulemaking concerning Motion to Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board. 89 FR 15531 (“2024 NPRM”). The USPTO proposed to revise its rules of practice to provide for issuance of preliminary guidance in response to an MTA and to provide a patent owner with the option for filing a revised MTA. While the USPTO finalizes rules in this regard, the USPTO is extending the MTA pilot program for a third time. The MTA pilot program is hereby extended through March 31, 2025. The requirements for the MTA pilot program remain as set forth in the original Notice without modification at this time.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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