



## USPTO Patents for Humanity Program: Response to the COVID-19 Pandemic

### Terms and Conditions 2021

This document contains the terms and conditions of the United States Patent and Trademark Office's (USPTO) Patents for Humanity Program for the 2021 cycle, specifically for innovations that address the COVID-19 pandemic.

#### What's new in 2021

- We will only accept applications related to the COVID-19 pandemic.
- Patents for Humanity Acceleration Certificates may be transferred, including by sale, to other parties.

### USPTO Patents for Humanity Program 2021

#### Summary

Since 2013, the USPTO has conducted the Patents for Humanity Program to incentivize the use of patented technologies or patent pending technologies for humanitarian purposes, culminating with an awards ceremony. For 2021, applications will be accepted beginning April 1, 2021. Participants will submit program applications describing what actions they have taken with their patented or patent pending technology to address the COVID-19 pandemic. Independent judges will review the program applications, and federal employees from other agencies will recommend awards based on these reviews.

For the 2021 competition, two types of awards may be made: Patents for Humanity Awards and honorable mentions. The Patents for Humanity Award is the top award for applicants best representing the Patents for Humanity principles. Patents for Humanity Award recipients will receive an acceleration certificate to accelerate select matters before the USPTO and public recognition for their efforts, including an award ceremony sponsored by the USPTO. Honorable mentions will receive accelerated examination of one patent application and a featured write-up on the USPTO website. The exact number of awards may vary depending on the number and quality of program applications received.

The Patents for Humanity acceleration certificates awarded through the 2021 competition can be redeemed to accelerate one of the following matters: an ex parte reexamination proceeding, including one appeal to the Patent Trial and Appeal Board (PTAB) from that proceeding; a patent application, including one appeal to the PTAB from that application; or an appeal to the PTAB of a claim twice rejected in a patent application or reissue application or finally rejected in an ex parte reexamination, without accelerating the underlying matter that generated the appeal. Inter partes reviews and post-grant reviews are not eligible for acceleration, nor are covered business method reviews, derivation proceedings, supplemental examinations, inter partes reexaminations, or interference proceedings. Acceleration certificates may now be transferred, including by sale, to other parties. For more information about the award, please see the Patents for Humanity webpage at [www.uspto.gov/ip-policy/patent-policy/patents-humanity](http://www.uspto.gov/ip-policy/patent-policy/patents-humanity).

### **Application Process**

The remainder of this notice describes the terms and conditions and details for the 2021 cycle. To enter the competition, applicants must submit program applications describing how their actions satisfy the competition criteria given below. Program applications are not patent applications but separate documents created for this program. Throughout this notice, the term "application" shall mean "program application" rather than "patent application," unless otherwise noted. Likewise, "applicant" shall mean "program applicant" rather than "patent applicant," unless otherwise noted.

The USPTO will accept applications beginning April 1, 2021 for the 2021 Patents for Humanity Program, with a specific deadline to be announced later. Applications must be submitted electronically to an online application portal by following the instructions posted at <https://2021p4hccovid19.skild.com/>. Submissions containing incomplete information, such as not having a valid patent application number, or inappropriate material will not be considered.

For consistent and timely evaluation, applications will consist of a core section and supplements. The core section will address how the applicant meets the defined competition criteria within a strict 7,000-character limit. Applicants may supplement the core section with any supporting material they wish to provide, such as project brochures, adoption data, case studies, published articles, or third-party testimonials. Judges will review the core section of every application they evaluate. Judges may review any, all, or none of each application's supplementary material at their discretion.

The USPTO will provide advance notice of the closing date for applications for the 2021 program on the Patents for Humanity webpage, which can be found at [uspto.gov/ip-policy/patent-policy/patents-humanity](http://uspto.gov/ip-policy/patent-policy/patents-humanity). After the application period ends, judges will review and score the applications. Based on these reviews, the USPTO will forward the top-scoring applications to reviewers from participating federal agencies who will then recommend award recipients. Final decisions on awards are made at the discretion of the Director of the USPTO. The program's goal is to complete the recommendation process within 90 days of the close of the application period.

Once the awards have been determined, the USPTO will notify the awardees and schedule a public awards ceremony.

This program involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The

collection of information involved in this program has been reviewed and approved by OMB under 5 CFR 1320.13.

### **Judging Process**

Applications will be reviewed by independent judges chosen from outside the USPTO. The qualifications for judges are described below. Each judge will review a set of applications based on the judging criteria and selection factors below, and then submit their scores and evaluations to the USPTO.

Each application will be reviewed by multiple judges. To ensure fair, open, and impartial evaluations, judges will perform their reviews independently, and the reviews will not be released to the public, as permissible by law. After the awards have been made, applicants may request from the USPTO a copy of the reviews for their application with the judges' names redacted. Reviews will be sent to either the address on file with the application or another address verified as belonging to the applicant.

After the judges have submitted their evaluations, the top scoring applications will be forwarded to reviewers from participating federal agencies to make recommendations on awards. After the recommendations are received and final recipients chosen, the USPTO will notify winners and schedule a public awards ceremony.

All awards are subject to the approval of the Director of the USPTO. Results may not be challenged for relief before the USPTO.

### **Eligibility**

The competition is open to any patent owners, patent applicants, or patent licensees, including inventors who have not assigned their ownership rights to others, assignees, and exclusive or non-exclusive licensees. Each program application must involve technology that is the subject of one or more claims in an issued U.S. utility patent or a pending U.S. utility patent application owned or licensed by the applicant. If using a patent application as the basis for the program application, applicants must show that a Notice of Allowance for one or more claims from that patent application has been issued before any acceleration certificate will be awarded. Honorary recognition may be given without this showing at the Director's discretion.

Applicants may team together to submit a single joint application covering the actions of multiple parties. At least one applicant in a joint application must meet the eligibility criteria above. Only one acceleration certificate will be issued to a team of joint applicants selected for an award, and the acceleration certificate can be redeemed only in one matter (e.g., a single patent application examination, a single ex parte reexamination proceeding, etc.). Joint applications must designate a single applicant as the recipient for any acceleration certificate awarded on the application, and that recipient must meet the applicant eligibility criteria described in this notice. The designated recipient may be changed at any time before an acceleration certificate is issued by written consent of all parties to the application.

Licensees and patent owners may team together to submit a joint program application when both parties contributed to addressing the COVID-19 pandemic together. Joint applicants must indicate in their application who will receive the award if they are selected as an award winner or honorable mention. Alternatively, patent owners or licensees may apply on their own based on actions they have performed without the other party. For applications that do not list a patent owner as a joint applicant, the licensee must notify the patent owner and provide them a copy of the completed application before the close of the application period. Within 14 days of being notified, patent owners may submit a two-page written statement regarding such an application

with any additional information they wish the judges to consider. The lack of such a statement will not prejudice an application.

There is no preset limit on the number of awards that can be given per technology or per program applicant. Applicants can determine how many program applications to submit and which actions and technologies to cover in each application. However, the diversity requirement discourages granting multiple awards to the same technology or applicant. See the Selection Factors below for more information.

### **Competition Criteria**

Program applications must demonstrate how the applicants' inventions address humanitarian issues. For this competition, the humanitarian issue is the COVID-19 pandemic. The inventions should involve, but are not limited to, tracking, diagnosing, preventing, or treating COVID-19. Applicants should identify whether their invention is a humanitarian use or humanitarian research invention.

For a humanitarian use application, applicants must show:

1. Subject matter – The applicant's invention, which is claimed in a U.S. utility patent in force at the time or a pending U.S. utility patent application, effectively addresses the COVID-19 pandemic.
2. Target population – The applicant's invention targets those affected by the COVID-19 pandemic.
3. Contribution – The applicant took meaningful actions to make the technology more available to address the COVID-19 pandemic. This only includes actions taken by the applicant.
4. Impact – The applicant's contributions have significantly advanced the deployment of the technology to benefit the public. This includes downstream actions by third parties building on the applicant's contributions.

Alternatively, the humanitarian research criteria recognize increases in the availability of technologies to other researchers for conducting research related to the COVID-19 pandemic. Examples of technologies with the potential to advance this type of humanitarian research include molecules, drug discovery tools, gene sequencing or splicing devices, special-purpose seed strains, data analysis software, or other research material.

Applicants under these criteria must demonstrate:

1. Subject matter – The applicant's invention, which is claimed in a U.S. utility patent in force at the time or a pending U.S. utility patent application, effectively supports research by others, e.g., as a tool or input.
2. COVID-19 field – The research by others clearly targets the COVID-19 pandemic.
3. Contribution – The applicant took meaningful actions to make the technology more available for research by others working on the COVID-19 pandemic. This only includes actions taken by the applicant.
4. Impact – The research by others has a high potential for significant impact in the COVID-19 field. This includes downstream actions by third parties using the applicant's contributions.

## Selection Factors

In addition to the competition criteria, a number of selection factors will be considered in choosing recipients. Unlike the competition criteria, selection factors are not items that applicants address in their applications. Rather, they are guiding principles for administering the competition.

Two neutrality principles apply. First, evaluations will be geographically neutral, meaning the target population benefiting from the humanitarian activities can be located anywhere in the world. Second, evaluations will be financially neutral, meaning the underlying financial model for the applicant's actions (for-profit or otherwise) is not considered. The focus is only on the ultimate humanitarian outcome as it relates to the COVID-19 pandemic.

The decision to award an acceleration certificate rests solely within the Director's discretion and cannot be challenged before the USPTO or any federal agency.

## Selection of Judges

Judges will be selected by the USPTO for each award cycle. Candidates with the following qualifications are preferred:

1. Recognized subject matter expertise in a technical field, such as medicine, science, engineering, economics, business, law, public policy, or a related field
2. Demonstrated understanding of technology commercialization
3. Experience with peer review processes such as grant applications or academic journal submissions
4. Knowledge of humanitarian issues, especially the practical challenges presented with delivering goods and services to groups in need

Additionally, judges will be chosen to avoid conflicts of interest, e.g., by avoiding candidates employed by, or with clients in, industries relevant to this program. Candidates from academia are desired. A conflict of interest occurs when a judge (a) has significant personal or financial interests in, or is an employee, officer, director, or agent of, any entity participating in the competition, or (b) has a significant familial or financial relationship with an individual who is participating. If a conflict of interest does arise, the judge must recuse himself or herself from evaluating the affected applications.

## Awards

Winners of the 2021 competition will receive recognition for their humanitarian efforts at a public awards ceremony with the Director of the USPTO or other executive branch official. They will also receive an acceleration certificate that can be redeemed to accelerate select matters before the USPTO. For the 2021 competition, eligible matters include one of the following: (1) an ex parte reexamination proceeding, including one appeal to the PTAB from that proceeding; (2) a patent application, including one appeal to the PTAB from that application; or (3) an appeal to the PTAB of a claim twice rejected in a patent application or reissue application or finally rejected in an ex parte reexamination. When redeemed for a patent application or an ex parte reexamination, only the first appeal to the PTAB arising from that matter will be accelerated. Alternatively, the acceleration certificate may be used to accelerate an appeal to the PTAB of a final rejection in a patent application or reissue application without accelerating the underlying matter that generated the appeal. Inter partes reviews and post-grant reviews are not eligible for acceleration, nor are covered business method reviews, derivation proceedings, supplemental examinations, inter partes reexaminations, or interference proceedings.

Pursuant to the Patents for Humanity Improvement Act (H.R. 7259, Pub. L. No. 116-316, Jan. 5, 2021), acceleration certificates awarded in the program are transferable, including by sale, to other parties.

Honorable mentions will receive an acceleration certificate for accelerated examination of one patent application and a featured write-up on the USPTO website. Honorable mention accelerations will only result in the acceleration of a patent application examination, and not any subsequent appeal from that application.

Each acceleration certificate may be redeemed only once and only toward one matter. Acceleration certificates must be redeemed within 12 months of their date of issuance. Acceleration certificates not redeemed within 12 months of issuance will expire and may not be redeemed. Holders of expiring or expired acceleration certificates may petition that the USPTO extend the redemption period of their acceleration certificate for an additional 12 months beyond the original expiration date. This petition incurs no fee. Petitioners should explain why the additional time is needed, such as not having a suitable matter or expecting a pending matter that is not yet ripe for acceleration certificate redemption. The decision whether to extend the redemption period of an acceleration certificate rests solely within the Director's discretion and cannot be challenged before the USPTO or any federal agency. Once an acceleration certificate has been redeemed, it is no longer eligible for extension.

The acceleration certificate may be applied to an eligible matter for any patent or patent application in which the acceleration certificate holder has an ownership interest, not just those related to the recipient's Patents for Humanity submission. Acceleration certificate holders may not redeem an acceleration certificate to accelerate the matter of another patent owner or patent applicant. However, the acceleration certificate may be transferred to another party, including by sale.

### **Acceleration Certificate Redemption Process**

When redeeming an acceleration certificate, the certificate holder must notify the USPTO with the acceleration certificate number, the relevant application serial number or ex parte reexamination control number, and any other pertinent information, such as the appeal number, if assigned. The USPTO will determine whether the acceleration certificate may be redeemed by checking that the acceleration certificate is valid, that the redeeming party is the acceleration certificate holder or its agent, that the matter is eligible for certificate acceleration, and that the USPTO has sufficient resources to accelerate the matter without unduly impacting others. The USPTO will promptly notify the acceleration certificate holder whether the redemption is accepted. If the redemption fails for lack of ownership interest in the patent application at issue or insufficient USPTO resources, the certificate holder retains the certificate and may redeem it in another matter subject to the same constraints.

Under this program, there will be a limit of 15 acceleration certificate redemptions per fiscal year to accelerate ex parte reexaminations. This limit is due to the smaller overall number of reexamination proceedings handled by the USPTO compared to the larger overall number of patent applications and appeals concurrently handled by the USPTO. Only the first 15 accepted redemption requests for an ex parte reexamination in a given fiscal year will receive accelerated processing. Any number of acceleration certificates up to the number issued may be redeemed to accelerate patent applications or appeals to the PTAB without accelerating the underlying matter that generated the appeal (including appeals from ex parte reexaminations).

Acceleration certificates redeemed for accelerated appeals to the PTAB will receive the following treatment. Accelerated appeals will be taken out of turn for assignment to a panel. Other processing in the matter will

proceed normally. The USPTO's goal in accelerated cases already docketed to the PTAB, i.e., having an appeal number, is to proceed from acceleration certificate redemption to a decision in under six months if no oral arguments are heard in the case, or within three months of the date of an oral argument. For acceleration certificates redeemed in appeals not already docketed to the PTAB, the goal is to reach a decision in under six months from the date of the appeal number assignment if no oral arguments are heard in the case, or within three months of the date of an oral argument. For the last six months of calendar year 2020, the average pendency from an appeal number assignment to a decision was just over 13 months. Pendency also varies significantly by technology area.

Acceleration certificates redeemed in ex parte reexamination proceedings will receive the following treatment. If redeemed with a request for reexamination, the request will be decided with a goal of two months rather than the three months provided by statute. Acceleration certificate redemption at the filing of a reexamination request will be treated as a waiver by the patent owner of the right to make a Patent Owner's Statement under 37 CFR 1.530 after a grant of proceeding. If the statement is waived and the request granted, a first Office action on the merits will accompany the order granting reexamination. If the reexamination request is denied, the certificate is not considered redeemed and may be applied to another matter. Patent owners may preserve the right to file a Patent Owner's Statement by redeeming the certificate during the statutory window for filing the Patent Owner's Statement after the reexamination proceeding has been granted. Subsequent Office actions in accelerated reexaminations will be taken out of turn as the next item to be worked on from the reexamination specialist's docket. Petitions filed in the matter will be decided within a period of time consistent with the accelerated proceeding. An appeal to the PTAB of a final rejection in an accelerated reexamination will be taken out of turn for assignment to a PTAB panel. Any resulting Notice of Intent to Issue Ex Parte Reexamination Certificate (NIRC) will receive expedited processing to the extent possible. Accelerated ex parte reexaminations will normally not be merged with other co-pending proceedings, including ex parte reexaminations, inter partes reexaminations, and reissue proceedings. Where required by statute, an accelerated matter may be terminated by a decision issued in another USPTO proceeding, such as post-grant review.

The USPTO's goal for processing accelerated reexaminations is less than six months from certificate redemption to final disposition, excluding time taken by the applicant for responses and any time on appeal. For Fiscal Year 2020, the average pendency from filing a request for ex parte reexamination to an NIRC was 22 months, including applicant time.

Acceleration certificates redeemed to accelerate examination of a patent application will receive the following treatment. Patent applicants must present their acceleration certificate to receive accelerated examination. If any appeal to the PTAB arises from the examination accelerated with this certificate, the first appeal will also be accelerated according to the procedures for accelerated appeals to the PTAB described herein. Accelerations for honorable mentions will follow the same rules and procedures, except that no appeals will be accelerated. The USPTO's goal in examinations accelerated by certificate is a final disposition within 12 months of accelerated status being granted, not including the time for any appeals to the PTAB. For Fiscal Year 2020, the average pendency for Track One prioritized examinations was 11.1 months from filing to issue or abandonment, compared to the 23.3-month average pendency for all applications.

### **Acceleration Certificate Transfer Process**

Acceleration certificates awarded under this program may be transferred to other parties, including by sale.

The transferring party must notify the USPTO within 30 days of transfer. The transferring party must provide the e-voucher number along with authorization of the transfer and the contact information of the new recipient. The transferring and receiving parties may need to supply additional information to the USPTO as needed to confirm the transfer. The acceleration certificate will not be able to be used by another party, other than the transferring party, until the USPTO has confirmed the transfer. Transferred acceleration certificates have the same expiration date as that prior to the transfer. The new recipient has the same rights as the original owner to petition to extend the voucher for 12 months (see Awards section). Acceleration certificates may be transferred more than once. After the acceleration certificate has been awarded, recipients will receive further details on how to register the transfer of an acceleration certificate to another party.

### **Acceleration Requirements**

In order to receive acceleration, the patent owner or patent applicant must agree to the following conditions. Accelerated patent applications may not contain at any time more than four independent claims, more than 30 total claims, or any multiple dependent claims. An acceleration certificate can be redeemed in a patent application appeal or reissue application appeal to the PTAB at any time after a docketing notice has issued and before the matter is assigned to a PTAB panel. An acceleration certificate can only be redeemed for reexamination acceleration at the following points: (1) with the request for reexamination; (2) during the period for patent owner comment after a grant of proceeding; or (3) when a final rejection is appealed to the PTAB. Acceleration certificates will not be accepted for reexamination proceedings at other times. During an accelerated reexamination, no more than three new independent claims and 20 total new claims may be added. New claims are those beyond the number contained in the patent at the time of the reexamination request. Claims may be added without triggering this limit by canceling an equal number of existing claims. All submissions in accelerated examinations must be filed electronically via EFS-Web. Petitions for Revival and Requests for Continued Reexamination may not be filed. Failure by the applicant to abide by these conditions may result in the acceleration being revoked without return of the acceleration certificate and the matter reverting to normal processing.

### **Acceleration Recommendations**

To receive the greatest benefit from acceleration in an ex parte reexamination proceeding, the applicant is asked to do the following. The Patent Owner's Statement will be considered to be waived when an acceleration certificate is filed with a request for reexamination. If the patent owner desires to reserve the right to make a statement, however, the acceleration certificate should be filed instead during the statutory window for filing the Patent Owner's Statement after the reexamination proceeding has been granted. Acceleration will proceed from that point forward.

Even where submissions in the accelerated matter are not required to be filed electronically, those submissions should be filed electronically. Conducting more than one examiner interview during prosecution should be avoided. Responses to all Office actions should be submitted within one month of receiving the Office action. Petitions should be avoided as much as possible. Failure to meet these conditions may result in longer processing times by the USPTO than the goals given above, but the matter will continue to receive accelerated processing as described herein to the extent possible.

In all instances, acceleration certificate redemption is subject to available USPTO resources and the Director's discretion. If accelerating the matter would negatively impact others, the USPTO may decline to redeem the acceleration certificate.