THE USPTO ENHANCED FIRST OFFICE ACTION "INTERVIEW" PROGRAM

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The Enhanced First Action Interview Pilot Program available now at the U.S. Patent and Trademark Office (USPTO) (October 1, 2009 - April 1, 2010) expands on the original program which ended in June and offers eligible applicants an opportunity to interview the examiner before the first office action. Early interview provides the applicant enhanced interaction with the examiner in order to resolve patentability issues at the beginning of the prosecution process and facilitates advancement of prosecutions for possible early allowance. The eligibility of an application to take part in the program depends on the application's filing date and art unit. The USPTO has the option to extend, revise, or terminate the program after evaluating its effectiveness.

Under the enhanced pilot program procedures, the applicant has great latitude to choose among various options on how to proceed. First, the examiner conducts a prior art search and provides the applicant with a pre-interview communication that includes a preview of objections or rejections against an application. Then, the applicant has 30 days, which could be extended for another 30 days, to choose whether to have a first action interview with the examiner. If the applicant chooses not to have an interview, the examiner will issue the first action Interview office action, and the applicant will have 30 days to reply. If the applicant chooses to schedule an interview, the applicant will need to file proposed amendments or arguments to facilitate discussion on the patentability of the claims. If the examiner and the applicant cannot reach an agreement on all claims in the interview, the examiner will issue the First Action Interview office action and the applicant will have 1 month to reply, with limited extensions. This office action will also be considered the first action on the merits. The applicant also has the option to waive this office action by converting the submitted draft amendments to a formal amendment, and proceed to the second substantive examination directly.

<u>Practice Tip</u>: First action interviews provide applicants the benefits and flexibilities of substantial interaction with the examiner to resolve patentability issues early in the prosecution process. The result is a potential saving in time and costs for obtaining a patent. For further information, please contact us.