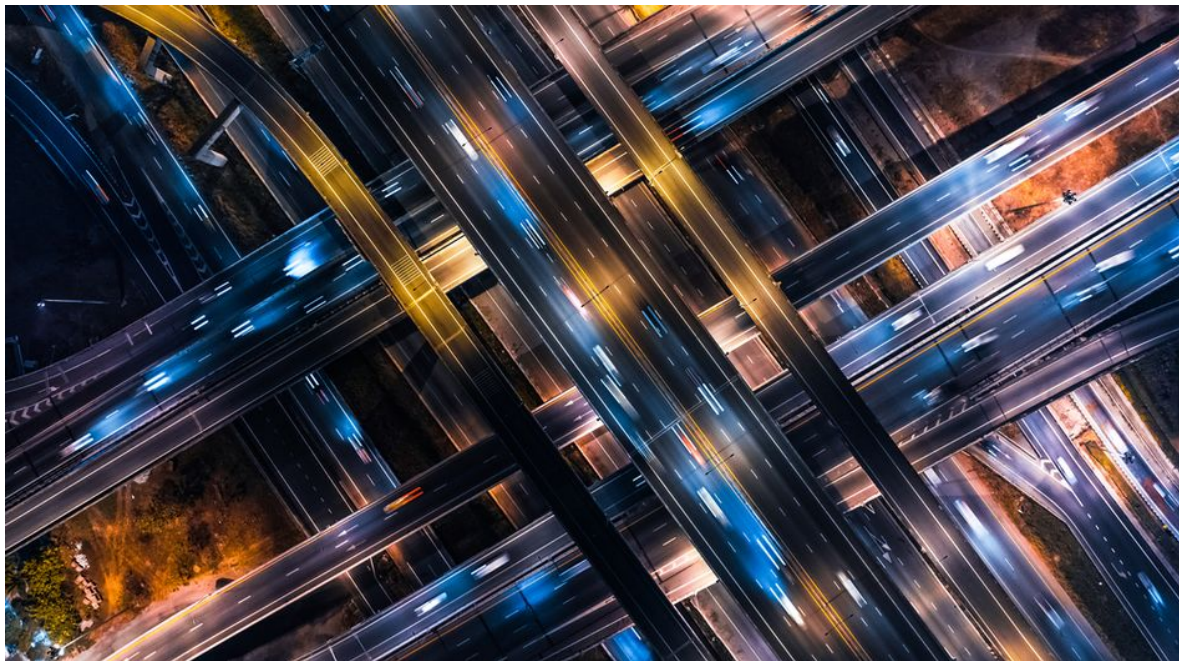




Mexico: how to streamline the prosecution process using the various acceleration routes

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In summary

This article explores patent acceleration programmes in Mexico. It details the mechanisms, benefits and requirements of each programme, including how they facilitate faster patent grants by utilising examination results published by other patent offices. It also addresses the handling of divisional applications and the differences in reciprocity among the programmes. The aim is to help applicants in making informed decisions on the most effective strategies to achieve quicker patent approvals.

Discussion points

- Mexico's first PPH pilot with the USPTO began in 2011, becoming permanent in 2012
- Around 45 per cent of patent applications filed in Mexico originate from US applicants
- IMPI has signed PPH agreements with major offices, including USPTO, EPO, JPO, CNIPA and others
- Nearly 80 per cent of PPH requests (particularly USPTO/EPO-based) obtain allowance within two to three months
- Since 2020, over 4,000 applications have been processed through the PPG programme
- The APG programme, launched in November 2023, exclusively applies to USPTO patents.

Referenced in this article

- Patent Prosecution Highway (PPH)
- Parallel Patent Grant (PPG)
- Accelerated Patent Grant (APG)

In the field of intellectual property, obtaining a patent quickly and efficiently can be crucial for protecting innovation and securing a competitive position in the market. Recognising this need, Mexico has implemented different mechanisms to expedite the patent-granting process. Particularly, these mechanisms include the Patent Prosecution Highway (PPH), the Parallel Patent Grant (PPG) and the Accelerated Patent Grant (APG).

Each of these programmes offers distinct advantages and requirements, addressing the specific needs of applicants. This article explores how these programmes function and compares their particularities to help applicants make informed decisions about the best strategy to accelerate the granting of their patent applications.

PPH

The PPH is a cooperative initiative among several patent offices worldwide. It allows for expedited examination processes for corresponding patent applications that have already received a favourable result from the examination performed by another patent office. Essentially, if a patent application is deemed patentable in one member country, it can be fast-tracked in another, reducing redundancy and speeding up the process. This means that another office can reduce the work needed to examine the same invention by utilising the examination result from the initial office.

This agreement has gained significant popularity in recent years because it reduces the time each office spends analysing and examining patent applications, which are increasing globally each year.

Mexico's involvement with the PPH

Mexico's involvement with the PPH began as a way to streamline patent processes and increase the efficiency of the Mexican Institute of Industrial Property (IMPI). The first PPH agreement in Mexico was signed by IMPI in March 2011 as a pilot programme with the United States Patent and Trademark Office (USPTO), becoming a permanent programme in 2012.

Given that the United States is Mexico's principal trading partner, and that around 45 per cent of the patent applications filed in Mexico last year came from US applicants, this programme has proven to be an excellent mechanism for accelerating the examination of patent applications in Mexico when a favourable result is obtained from the USPTO.

Evolution of PPH agreements

Due to the success of this programme, IMPI has signed PPH agreements with many of the world's major patent offices over the years, reducing the time needed to grant a patent among the participating offices. Initially, the PPH was restricted to applications claiming priority from countries that had signed the agreements. However, the PPH has evolved to include three key types:

- PPH: allows the applicant to request accelerated examination in the Office of Second Filing using the examination results from the Office of First Filing;
- PPH Mottainai: allows the applicant to request accelerated examination in the Office of Later Examination using the examination results from the Office of Earlier Examination, regardless of which office conducted the first filing; and
- PCT-PPH: allows an applicant who has obtained a favourable result in the international phase under a PCT application to request accelerated examination of the corresponding application in an Office of Later Examination.

PPH agreements signed by IMPI with each office are different, so it is necessary to consult the applicable rules for each of them.

Mexico has established PPH agreements with several foreign patent offices, including:

- Pacific Alliance (Colombia, Chile and Peru);
- Austria (Austrian Patent Office – APO);
- Canada (Canadian Intellectual Property Office – CIPO);
- China (China National Intellectual Property Administration – CNIPA);
- Korea (Korean Intellectual Property Office – KIPO);
- Spain (Oficina Española de Patentes y Marcas – OEPM);

- United States of America (United States Patent and Trademark Office – USPTO);
- France (Institut National de la Propriété Industrielle – INPI);
- Japan (Japan Patent Office – JPO);
- Europe (European Patent Office – EPO); and
- Singapore (Intellectual Property Office of Singapore – IPOS).

In practice, IMPI's criteria often align with the results from the USPTO or the EPO, resulting in the issuance of a Notice of Allowance in most cases. This contrasts with PPH requests based on patents granted by other offices with PPH agreements, where it is common to receive a substantive office action requesting additional clarifications before issuing the Notice of Allowance.

Conditions for PPH participation

In general terms, to request the participation of a Mexican patent application in a PPH agreement, the following conditions must be met.

- The Mexican application must have already been published, the two-month period for third-party observations must have passed and the substantive examination by IMPI must not have begun.
- The claims of the Mexican application must sufficiently correspond to those considered patentable by the Office of Earlier Examination. It is possible to submit an amendment along with the PPH request so that the claims match those considered patentable by the corresponding foreign office. Additionally, this opportunity can be used to amend any other part of the application if necessary. In the context of sufficient correspondence, it is important to note that US patents often contain claims directed to non-patentable subject matter in Mexico, such as methods of treatment or software. For software claims, they must be amended to eliminate any references to software, computer programmes, executable instructions or applications. For method of treatment claims, these should be reformulated under the format of purpose-limited product claims or Swiss-type claims. If these amendments are not made, IMPI will issue a substantive office action objecting to these claims, and the applicant will need to amend the claims in response to this office action.

While accelerated routes such as the PPH often lead to the issuance of a Notice of Allowance, this is not always the case. If IMPI considers that the subject matter does not fulfil the patentability requirements under Mexican law, instead of issuing a Notice of Allowance, a first substantive office action would be issued. In this scenario, the applicant is required to address the examiner's objections by filing a timely response with the necessary clarifications, amendments or arguments.

This part of the process is of utmost importance because, even though the examination route is accelerated, IMPI retains full discretion to ensure compliance

with Mexican patentability standards. Consequently, the issuance of a first office action should not be seen as a failure of the acceleration route, but rather as part of the regular prosecution process in which applicants must carefully adapt their claims to align with Mexican practice.

Under Mexican practice, IMPI is entitled to issue up to four substantive office actions before either granting or rejecting an application. This means that, despite using an accelerated route, applicants should expect the possibility of further office actions being issued during prosecution.

Notwithstanding this possibility, practice shows that nearly 80 per cent of applications invoking the PPH obtain a Notice of Allowance within two to three months of filing the request, particularly when the request is based on patents granted by the USPTO or the EPO.

Finally, it should be noted that applicants may file up to two PPH requests for the same Mexican patent application. Beyond this limit, the application must continue under the regular examination process.

Benefits and drawbacks of the PPH

The PPH offers significant advantages for both applicants and patent offices. For applicants, the primary benefits are faster processing times and reduced examination costs. This accelerated process can be critical for businesses needing timely protection to stay competitive in fast-moving markets. For patent offices, the PPH helps manage workloads by taking advantage of examination work already done by other offices, promoting collaboration and consistency in patent examination.

However, there are also disadvantages. Not all patent applications are eligible for the PPH, and specific procedural requirements can be barriers. The PPH does not apply to utility models or industrial designs, limiting its scope. Coordination between different patent offices can require additional administrative efforts and costs. There can also be inconsistencies in how different offices interpret patentability criteria even with the standardised process.

PPG

The PPG programme is designed to strengthen technical and strategic cooperation between IMPI and the USPTO or the EPO to accelerate the patent grant process in Mexico by reusing search and examination results from these offices. The agreement with the USPTO came into effect on 28 January 2020, and the agreement with the EPO on 15 November 2019.

The PPG applies to Mexican patent applications claiming priority from a US application or a European application. It is a collaborative agreement between industrial property offices, meaning that no application for participation is required from the applicant. Instead, participation in this programme is through an invitation issued by IMPI when, during the substantive examination, a granted patent or

allowed application related to a Mexican application is identified. In this case, IMPI will issue a substantive office action requesting that the claims be amended according to what was granted or allowed by the USPTO or the EPO.

If the applicant agrees to participate in the programme, they must respond to the office action by amending the pending claims to conform to the claims approved by the USPTO or the EPO. Once the response is submitted, the estimated response time from IMPI is approximately three months, after which the applicant will receive the notice of allowance. If the patentability requirements established in Mexican legislation are not met, IMPI will issue a substantive office action with objections, and the application will follow its normal course.

Alternatively, if IMPI does not invite the applicant to participate through a substantive office action, the applicant can participate in the programme by submitting a voluntary amendment aligning the claims to those approved by the USPTO or the EPO. This voluntary participation can be done at any stage of prosecution but before the issuance of the Notice of Allowance, provided that the patentability requirements of Mexican legislation are met.

Since the implementation of the PPG, over 4,000 patent applications have been processed under this programme, according to information provided by the National Institute for Access to Information (INAI).

APG

The APG programme aims to accelerate the patent grant process in Mexico by relying on the examination results from the USPTO through collaboration between IMPI and the USPTO.

To benefit from the APG, applicants must meet the following requirements:

- claim priority under the Paris Convention from a US application or have a common priority with the corresponding US application;
- the corresponding US patent must have been published in the USPTO Patent Gazette;
- ensure all claims in the Mexican patent application correspond to those in the United States granted patent or amend them accordingly;
- complete the necessary formalities and have the Mexican application published in the Industrial Property Gazette, with the two-month period for third-party observations having passed; and
- the deadline to participate in the programme is within the period granted to respond to an eventual third substantive office action. The office action must be responded to, and the APG request must be submitted independently.

Additional considerations

Below are some additional considerations:

- Utility model and industrial design applications, as well as patent applications containing non-patentable subject matter, are not eligible for the APG programme.
- Acceptance of the participation request for an initial patent application does not automatically transfer to a divisional application. A new request must be submitted for each divisional application, meeting all established conditions.
- There is no limit on the number of attempts to participate in the APG programme, and requests can be submitted even if the substantive examination has already begun.
- The APG programme is not reciprocal and applies only to patents granted by the USPTO.

The APG represents a valuable tool for applicants seeking a quick and efficient grant of their patents in Mexico.

Since the implementation of the APG on 13 November 2023, very few applications have been submitted to participate in this programme, according to information provided by INAI.

Comparison of patent acceleration programmes in Mexico

Due to the similarities among the PPH, PPG and APG programmes, we present the following comparison table to help applicants determine which programme best suits their needs.

Comparative table of patent acceleration programmes

Criteria	PPH	PPG	APG
Request for participation	Requires a written request.	IMPI will invite applicants to participate, or the applicants can do so voluntarily.	Requires a written request.
Collaboration basis	Not limited to the USPTO. IMPI has PPH agreements with the most important foreign patent offices.	Limited to IMPI-USPTO or IMPI-EPO.	Limited to IMPI-USPTO.

Criteria	PPH	PPG	APG
Basis for acceleration	IMPI can use the results of different foreign offices with whom it has a PPH agreement. Can be based on a granted patent or an office action recognising patentable claims. Can be based on the results of patent offices in capacity as a national office or as PCT ISA/IPEA depending on each agreement. If Non-Patent Literature documents were considered in the foreign office's examination and IMPI does not have access to them, IMPI may request these documents to thoroughly analyse the subject matter.	Can be based on the positive search and examination results from the USPTO or EPO.	Can be based only on a published US patent.
Application stage	Only applies to Mexican applications whose substantive examination has not started.	Applies even if the substantive examination has started.	Applies even if the substantive examination has started. The final opportunity to request APG is within the response period for an eventual third substantive office action.
Approximate response time from IMPI	One to three months.	One to three months.	One to three months.
Attempt limit	Limited to two attempts.	No explicit limit.	No explicit limit.

Understanding the differences between the PPH, PPG and APG is essential for applicants aiming to expedite their patent applications in Mexico. While the PPH and the APG require a written request for participation, the PPG does not. Additionally, each programme varies in terms of collaboration basis, basis for acceleration, application stage and the number of attempts allowed. Selecting the most appropriate programme depends on the specific circumstances of the patent application and the strategic goals of the applicant.

Handling divisional applications within patent acceleration programmes

When seeking expedited examination of divisional applications under the PPH, PPG and APG programmes, there are additional considerations to keep in mind.

First, the acceptance of the participation request for an initial patent application does not automatically transfer to a divisional application. The applicant must submit an independent request or receive an invitation from IMPI (in the case of PPG) to participate in the divisional application and meet all established conditions.

For the APG specifically, if the patent application is divisional, participation in the programme will be suspended until the initial application has been definitively resolved. This restriction is unique to the APG, ensuring that the initial application must be resolved before the divisional application can proceed under the programme.

This requirement is not explicitly stated for the PPH and PPG programmes, which may offer more flexibility in handling divisional applications concurrently with the initial application.

Additionally, all other requirements of any of the three acceleration programmes apply equally to divisional applications as to parent applications.

Reciprocity

In terms of reciprocity, the PPH programme allows for mutual use of examination results between participating patent offices. This means that IMPI can rely on examination results from foreign offices, and vice versa.

In contrast, the PPG and APG programmes do not offer this mutual benefit. While the PPG and APG rely on search and examination results from foreign patent offices, such as the USPTO and the EPO, they do not provide an agreement for foreign patent offices to use IMPI's examination results.

Conclusion

Mexico's patent acceleration programmes provide valuable options for applicants seeking to shorten the time required to obtain a patent. The PPH programme, with its reciprocal nature, offers an efficient route for patents already deemed patentable in

other countries. On the other hand, the PPG and APG programmes, while relying on foreign examination results, do not offer mutual benefits but still provide significant advantages in reducing prosecution times.

Understanding the specific requirements of each programme is essential for applicants to choose the most appropriate strategy. Whether through mutual agreements, technical cooperation or using foreign examination results, these programmes improve the efficiency of the patent granting process in Mexico. By selecting the right programme based on the application's circumstances, applicants can better protect their innovations and secure their market positions more quickly.



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