11th Annual Patent Law Institute

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Director, West Coast Region
United States Patent and Trademark Office

April 27, 2017
2017 PTO Update: Agenda

• Quality Initiatives
• Pendency Reduction
• Examiner Training
• Funding
Update on Patent Quality Programs

http://www.uspto.gov/patentquality
Under the three pillars of patent quality:

**PILLAR 1: EXCELLENCE IN WORK PRODUCTS**
- Automated Pre-Examination Search Pilot
- Clarity of the Record Pilot
- ICR Training
- Post Grant Outcomes
- STIC Awareness Campaign
- Topic Submission for Case Studies

**PILLAR 2: EXCELLENCE IN MEASURING PATENT QUALITY**
- Master Review Form
- Quality Metrics

**PILLAR 3: EXCELLENCE IN CUSTOMER SERVICE**
- Design Patent Publication Quality
- Interview Specialist
- Post-Prosecution Pilot (P3)
- Reevaluate Quick Path Information Disclosure Statement (QPIDS)
Master Review Form
Variance, Consistency, & Quality

Consistency is a key driver of quality perceptions and there are numerous factors that contribute to potential inconsistencies.

1.5 million Office Actions
8,300 Examiners
45,000 Agents / Attorneys
530 Art Units
65 OPQA Reviewers
260,000 CPC symbols
Examiner Production Goals
15,000 pro se Applicants
Pilot Programs & Initiatives
Changes in law or policy

and other factors...
Master Review Form Background

- USPTO has a long history of reviewing its own work
  - Office of Patent Quality Assurance (OPQA)
  - Regular supervisor reviews
  - Other formal review programs
  - Informal feedback

- Reviews, using different formats, focused on correctness and provided feedback on clarity

- Review data was routinely analyzed separately
MRF Program Goals

• To create a **single, comprehensive** tool (called the Master Review Form) that can be used by all areas of the Office to **consistently** review final work product
  – Common review standard
  – Common data points

• To better collect information on the **clarity and correctness** of Office Actions

• To collect review results into a **single data warehouse** for more **robust analysis**
  – Increased precision in metrics
  – More granular levels of analyses to detect anomalies, inconsistencies, and hot spots
## MRF Design

**Modular designed smart-form**

- 20+ modules: Omitted/Made Rejections, Search, etc.
- 330 question library: Correctness, clarity, best practices
- Auto-populated case details
- Integrated system with sampling and workflow features

### Correctness

- **Overall, were the 35 U.S.C. 102 rejection(s) in compliance?**
  - [ ] Yes
  - [ ] In-Part
  - [ ] No

### Clarity

- **Overall, how was the clarity of the 35 U.S.C. 102 rejection(s)?**
  - [ ] Above Average
  - [ ] Average
  - [ ] Below Average

- **Examiner’s role in the rejection?**
  - [ ] Sufficient explanations were provided to clarify the basis of the rejection.
  - [ ] Appraiser explained their claim interpretation.

- **Effective date is sufficient?**
  - [ ] The Office action contained clear sufficiency rejections.
Looking Forward

The Master Review Form’s single data warehouse facilitates:

• Better quality metrics
• Case studies without the need for *ad hoc* reviews
• Rapid measurement of the impact of training, incentives, or other quality programs on our work product
• Quality monitoring tools, such as dashboards
Quality Metrics
Historical Perspective on Measuring Quality

1978: Patent Quality Review established
1983: Allowance error rate
2004: Office of Patent Quality Assurance
2005: In-Process error rate (Non-final and final rejections)
2007: External Quality Survey begins
2008: Quality Index Reports (QIR) begin; Final Disposition & In-Process Compliance Rates
2011: Quality Composite Score begins
FY 2017: Where are we today?

Supplemented with: regular supervisory reviews; formal review programs; informal feedback; ad-hoc studies
Quality Metrics - Redefined

**Product Indicators**
**Master Review Form**
Capturing both correctness and clarity of examiners’ final work product using uniform criteria gathered in a single database

**Process Indicators**
**Transactional QIR**
Tracking the efficiency and consistency of our processes (for example, to identify “churning”)

**Perception Indicators**
**Survey Results**
Continuing to internally and externally poll perceptions of patent quality
Key Product Indicators

- Correctness: Statutory Compliance
- Clarity
- Various levels of reporting
### Quality Metrics Website

[https://www.uspto.gov/patent/initiatives/quality-metrics-1#step2](https://www.uspto.gov/patent/initiatives/quality-metrics-1#step2)

#### USPTO Correctness Indicators for Q4 of FY 2016

<table>
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<tr>
<th>Quality Metric Category</th>
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<th>Count</th>
<th>Percent</th>
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<td>35 USC 101 (including utility and eligibility)</td>
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#### 35 USC 112 Statutory Compliance Metrics

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Quality Metrics FY17 Targets

35 USC 101 Compliance
98%-93%
>98%
98%-93%
Expected performance based on current resources and initiatives
< 93%

35 USC 112 Compliance
92%-87%
>92%
92%-87%
< 87%

35 USC 102 Compliance
95%-90%
>95%
95%-90%
< 90%

35 USC 103 Compliance
93%-88%
>93%
93%-88%
< 88%
Quality Metrics - Next Steps

- Publish Clarity Data
- Develop Dashboards for Monitoring
- Quality Assurance Action Plans
- Evaluate Perception Indicators
Post Grant Outcomes
Post Grant Outcomes Program

• This program is to develop a process for providing post grant outcomes from various sources, such as the Federal Circuit and Patent Trial and Appeal Board (PTAB), to the examiner of record and the examiners of related applications.

• Post Grant Outcomes Pilot: April-August, 2016
  – Identify those patents being challenged at the PTAB under the AIA trials that have pending related applications in the Patent Corps
  – Provide the examiners of those pending related applications access to the contents of the AIA trial
Post Grant Outcomes Looking Forward

Next Steps
- Develop training and best practices collected from pilot
- Implement the program corps-wide
- Continue to collect suggestions from stakeholders about how to improve the program

For more information
- Webpage http://www.uspto.gov/patent/initiatives/post-grant-outcomes-pilot
- Email is at PostGrantOutcomes@uspto.gov

More information at the Pilot home page:
http://www.uspto.gov/patent/initiatives/post-grant-outcomes-pilot
Post-Prosecution Pilot (P3)
Post-Prosecution Pilot (P3) Goal

• Developed to impact patent practice during the period subsequent to final rejection and prior to the filing of a notice of appeal

• Adding to current programs:
  – After final Consideration Pilot (AFCP 2.0)
  – Pre-appeal Brief Conference Pilot
Post-Prosecution Pilot (P3) Overview

• Retains popular features of the Pre-appeal Brief Conference Pilot and AFCP 2.0 programs:
  – Consideration of 5-pages of arguments
  – Consideration of non-broadening claim amendments
  – Consideration by a panel

• Adds requested features:
  – Presentation of arguments to a panel of examiners
  – Explanation of the panel’s recommendation in a written decision after the panel confers
P3 Looking Forward

**Metrics for Consideration**
- Internal and external survey results
- Formal comments from FR Notice
- Stakeholder feedback about the program from other sources

**Program Decision**
- Whether to continue the program, optionally with modifications

**For more information**
- Email us at [PostProsecutionPilot@uspto.gov](mailto:PostProsecutionPilot@uspto.gov)
Update on Pendency
Key Statistics

- FY 2016 End of Year Statistics

  UPR First Action pendency finished at 16.2 months
  - compare to FY 2015 17.3 months
    (FY 2017: Through March, 2017 – 16.1 months)

  UPR Total Pendency finished at 25.3 months
  - compare to FY 2015 26.6 months
    (FY 2017: Through March, 2017 - 25.7 months)

  537,655 Unexamined Applications
  - compare to FY 2015 553,221
    (FY 2017: Through March, 2017 – 543,251)

  Allowance rate finished at approximately 57%
  (FY 2017: Through March, 2017 – 52%)
FY 2016 Filings

• Total UPR filings up 5.1%
  – Serialized filings up 1.6% (418,506 filings)
  – RCE filings up 13.6% (190,049 filings)
• Prioritized Examination filings up 7.8% (10,011 filings)
• Design filings up 7.1% (40,406 filings)
• Provisional filings down 1.9%
Track One

• Pendency continues to be extremely low
  – Average time from Filing to Petition grant: 1.4 months
  – Average time from petition grant to first action: 2.1 months
  – Average time from petition grant to final disposition: 6.5 months

• Annual cap reached for first time in FY 2016

See Slide 24
## Track One Filings

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Update on Examiner Training
Common Triggers for Training

• New Law
  – *e.g.*, America Invents Act (AIA)

• New Court Case
  – *e.g.*, *Alice Corp.*

• Office Input
  – *e.g.*, uptick in errors relating to a particular point of law

• Public Input
  – *e.g.*, suggestion by the public for improving a particular examination practice
Delivery of Training

• Modes include:
  – Lecture-Style (Power-point or CBT)
  – Hands-On Workshops (Worksheets and small interactive sessions)
  – Quality Enhancement Meetings (Art Unit meetings/small workgroup discussions)
  – Information Campaigns (Flyers/Posters)
Improving Clarity and Reasoning – ICR Training Program Goals

• To identify particular areas of prosecution that would benefit from increased clarity of the record and develop training

• To enhance all training to include tips and techniques for enhancing the clarity of the record as an integral part of ongoing substantive training
ICR Training Courses

35 U.S.C. 112(f): Identifying Limitations that Invoke § 112(f)

35 U.S.C. 112(f): Making the Record Clear

35 U.S.C. 112(f): Broadest Reasonable Interpretation and Definiteness of § 112(f) Limitations


35 U.S.C. 112(f): Making the Record Clear

35 U.S.C. 112(f): Broadest Reasonable Interpretation and Definiteness of § 112(f) Limitations


35 U.S.C. 112(f): Making the Record Clear

35 U.S.C. 112(f): Broadest Reasonable Interpretation and Definiteness of § 112(f) Limitations


Examining Functional Claim Limitations: Focus on Computer/Software-related Claims

Examining Claims for Compliance with 35 U.S.C. 112(a): Part I Written Description

Examining Claims for Compliance with 35 U.S.C. 112(a): Part II – Enablement

35 U.S.C. 112(a): Written Description Workshop

§ 112(b): Enhancing Clarity By Ensuring That Claims Are Definite Under 35 U.S.C. 112(b)

2014 Interim Guidance on Patent Subject Matter Eligibility

Abstract Idea Example Workshops I & II

Enhancing Clarity By Ensuring Clear Reasoning of Allowance Under C.F.R. 1.104(e) and MPEP 1302.14

35 U.S.C. 101: Subject Matter Eligibility Workshop III: Formulating a Rejection and Evaluating the Applicant’s Response


Advanced Legal Training Part I: Understanding Case Law and the Federal Court System

Advanced Legal Training Part II: How to Analyze and Respond to Case Law Related Arguments
Guidance and Training Materials Are Available to the Public

PETTP - Patent Examiner Technical Training Program

• Voluntary assistance from technologists, scientists, engineers, and other technical experts from industry and academia to participate as guest lecturers

• Provide technical training and expertise to patent examiners regarding the state of the art

• In-person presentations
  – Alexandria, Detroit, Denver, Dallas, Silicon Valley

• Virtual presentation from their own location
## PETTP – FY 16

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<td>Total % of Examiners</td>
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<td>Average Hours per Examiner</td>
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SEE – Site Experience Education

USPTO funds travel costs for patent examiner Site Experience Education to commercial, industrial and academic institutions within the continental US for technical training

– Help us improve the quality of the patent examination process by hosting a site visit

– Your chance to interact directly with patent examiners

– Showcase your real-world technologies

– An opportunity to conduct on-site training
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Update on Patent Trial and Appeal Board (PTAB)

PTAB Procedural Reform Initiative
Update on Funding
FY 2017 Status

• The current Continuing Resolution (CR) is through April 28, 2017

• The USPTO was under a 90 day hiring freeze that began on January 22, 2017
  – Currently evaluating next steps
FY 2017 Fee Collections

• As of January 31, 2017
  – End of year projected fee collections of $3.16B
    • Patents: $2.86B, Trademarks: $306.2M
  – End of year projected spending of $3.29B
    • Patents $2.98B, Trademarks: $311.7M
  – End of year projected operating reserve of $365.9M
    • Patents: $259.0M, Trademarks: $106.8M
Fee Setting and Adjusting

• On October 3rd, 2016, the USPTO issued a notice of proposed rulemaking (NPRM) proposing to set or adjust certain patent fees as authorized by AIA
  – The last major patent fee setting using AIA became effective in March 2013
  – The Office solicited comments on both the individual patent fee proposals and the rulemaking goal objectives
Fee Review and Rulemaking

- USPTO is in the process of finalizing a draft of its rulemaking
- The Administration will review the rulemaking and determine if USPTO will proceed with a final rule
  - If the USPTO proceeds with a final rule, the anticipated date of the fee changes is September 2017
- USPTO started its biennial fee review in January 2017
Update on Regulatory Reform

Executive Orders 13771 & 13777
Thank you.