

**Title:**

Number of references used for 103 rejections as an indication of quality among art units.

**Proposal for study:**

Comparing quality of 103 rejections in various art units by considering number of references cited.

**Explanation:**

In my experience as a patent practitioner, some art units use more references than others for 103 rejections. I firmly believe that the use of a large number of references for rejections is highly correlated with impermissible hindsight. Although a high number of references is not necessarily evidence of non-obviousness, it is an indication that the references and/or the rationales for modification are weak. The weak rejections are particularly notable in technical fields where the invention involves a combination of known building blocks. It is established that the 6 simple machines do not obviate all complex machines using the features of the [6 simple machines](#). Similarly, inventions involving complex machines and processes are not necessarily unpatentable because their more complex building blocks can be found in other processes or machines. I have noticed, for example, that when three or more references are involved in a rejection, the rationale for modification is frequently internally inconsistent. Often, such rejections are easily traversed through argument alone. However, many still do not proceed to grant. Rather, in my experience, when excessive references are used and the rationale is successfully traversed, still more references are used for additional non-final rejections. This is time-consuming for practitioners and for USPTO personnel. Correlation between the number of references and quality of examination might be measured by comparing number of references used in a rejection against subsequent non-final rejections. Alternatively, the number of references used in appealed rejections might be measured against the outcome of the appeals. Discovery of a correlation between number of references and quality of rejections might lead to the identification of specific art units in need of better training and ultimately lead to better searching and examination, which would improve the efficiency of patent prosecution for all parties.

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