Clarity of the Record Pilot Implementation Guidance

Description:

I.   PURPOSE AND GOALS

The purpose of the Pilot is to develop best examiner practices for enhancing the clarity and completeness of the Official Record during prosecution. We will also study the practicality of implementing some or all of the practices developed during the Pilot. This Pilot has the following goals:

1) **Enhance the clarity of the record** – to improve the clarity of the record, providing a deeper understanding of the Office's positions during prosecution, leading to compact prosecution and greater certainty to the reasons for allowance and the scope of protection afforded at the time of patenting.

   The Pilot will focus on four areas of the Official Record. During the Pilot period, Examiners will provide enhanced clarity (more information) for the following areas:

   a) **Explicit Claim Interpretation**
      i)   Special definitions of claim terms
      ii) Optional language
      iii) Functional language
      iv) Intended use or result (preamble and body of claim)
      v)   Non-functional descriptive material
      vi) "Means-plus-function" (35 U.S.C. §112(f))
      vii) Computer-implemented functions that invoke 35 U.S.C. §112(f) ("specialized" or "non-specialized")
   b) **Reasons for Allowance,** if applicable, to clearly summarize at the time of Notice of Allowability, the reasoning as to why the Office has indicated that all of the pending claims are now allowable.
   c) **More Detailed Interview summary**
   d) **Pre-search interviews at the Examiner's option**

2) **Advanced education of Examiners** – throughout the Pilot examiners will be provided with guidance and assistance on best practices to enhance the clarity of the record.

3) **Quality Enhancement Meetings (QEMs)** – as a part of the Pilot Examiners will be required to participate in QEMs to help develop additional best practices on clarity.

4) **Determine practicality of and provide recommendations for corps-wide implementation of the Pilot's best practices** – results from the Pilot will help determine whether and how to implement best practices.

II.   **PROCESS**

1) **Participants:**

   a) **Managers**
      i)   Managers (SPEs, QAS, SPE Trainers) – Managers in each TC will be selected to identify cases to be examined in the Pilot, review cases for clarity/completeness and to provide training and assistance on clarity.
      ii) TQAS POC – At least one TQAS per TC will be available to answer questions and to help assist with Quality Enhancement Meetings (QEMs).
   b) **Examiners**
      i)   GS-11 through GS-15 Examiners with at least two years of patent examination experience from all utility areas, who meet the eligibility requirements for participation, may be invited through a random selection process to participate in the Pilot. Invited examiners may then volunteer to participate in the Pilot. A minimum of 30 volunteer examiners and up to approximately 150 volunteer examiners will be selected to participate in the Pilot. In addition, POPA may recommend one POPA participant, who meets all requirements for participation, from each utility Technology Center to participate in the Pilot.
      ii) The selection goal will be to represent all utility areas and primary/non-primary examiners proportionately. In the event that the number of volunteers in a utility Technology Center needs to be reduced because the number of volunteers exceeds the number of

permissible participants based on available resources, selection will be based on achieving a proportionate distribution of participants based on the following factors in the order noted below:

1. Technology Center
2. Primary/Non-Primary
3. Available Resources (Managers), and finally
4. Time/Date of Volunteering (1st come, 1st served)

c) In order to be eligible to participate in the Pilot, examiners must have a rating of record and year-to-date performance of at least Fully Successful. Examiners on performance warnings, safety zones and performance abeyance agreements, and examiners who have been suspended pursuant to a disciplinary or adverse action within the last 12 months or who are under an active investigation or proposal for disciplinary or adverse action for misconduct that would warrant suspension will not be eligible to participate. Any examiner who is selected to participate and, during the course of the Pilot program becomes ineligible for one of these reasons (except for year-to-date performance below Fully Successful) may be removed from the Pilot. Once selected, examiners may opt out of the Pilot at any time at the start of the next PALM pay period after providing written notice to the Pilot SPE. Pilot management may determine to remove an examiner participant at any time at the start of the next PALM pay period after providing written notice to the examiner.

2) **Non-Production Time:**

The time chart below outlines the enhanced recordation activities for which participants may record non-production time:

Activities Permitting Non-Production Time for Enhanced Recordation*

Element
- Special definitions of claim terms   - Optional language   - Functional language   - Intended use or result (preamble and body of claim)   - Non-functional descriptive material   "Means-plus-function" (35 U.S.C. §112(f))

- Computer-implemented functions that invoke 35 U.S.C. §112(f) ("specialized" or "non-specialized")

| Reasons for Allowance (Time only given at time of allowance) |
| More Detailed Interview Summary |
| Pre-search Interview at the examiner's option (Examiner Initiated – Limited to Recordation) (Examiner-initiated Interview Time Code should be used) |

*Examiner records actual time spent to enhance recordation of the preceding elements.

The home SPE will consult with the Pilot SPE prior to denying the additional time. If there is disagreement between the home SPE and Pilot SPE about whether the additional time should be granted, Robin Evans, Director of Technology Center 2800, will make the final decision on whether the additional time should be granted.

Non-production time for enhanced recordation activities counts toward examining time for purposes of awards and signatory programs.

III. IMPLEMENTATION:

1) Managers/Trainers will provide group training at the start of the Pilot.
2) Training will be provided both in person and via WebEx (WebEx sessions for PHP/teleworkers and regional office participants).
3) All interview summaries and reasons for allowances that are done by Pilot participants will be included in the Pilot pool of cases to be reviewed. All other actions will be part of the Pilot pool of cases only upon notification by the participant's Pilot SPE. Pilot SPEs will work with a statistician to select cases to be part of the Pilot pool, ensuring that a sufficient cross-section of cases is selected for statistical purposes. Pilot SPEs will not select 14-day clock cases to be part of the Pilot pool.
4) Non-production Time for training will be provided. Training will be mandatory. Selectees are expected to participate in all of the initial trainings or make arrangements to participate in a makeup session. Selectees who are not able to attend initial training or make up the training will not be able to participate in the program.

5) Participants will record time on WebT&A in hour increments (time code will be provided).

6) Participants will meet biweekly with their Pilot SPE to consult on their activities under the Pilot, including identification of best practices, "lessons learned," unanticipated obstacles, identification of cases to be examined under the Pilot, etc. As part of these consultations, Pilot SPEs will discuss any unusually low or high claims of non-production time with Pilot participants to explore the practices or situations that are influencing the non-production time claims and ensure that the Pilot's goals are being met.

7) Participants will complete and post cases as usual; counting will not be delayed because of (or for) Pilot purposes. Pilot will not change the criteria of examiner's PAP.

8) Managers and RQAS will review cases based on Clarity and Correctness Data Capture (CCDC) subset – items relating to clarity only.   Reviews will be used for training assistance and QEMs. Home SPEs will not review cases of their examiners (examiners for whom they normally sign cases or rate), and will not receive OPQA returns generated as part of the Pilot. Pilot reviewed cases will only be returned to the appropriate Pilot SPE for consideration. If a Pilot SPE needs clarification of OPQA findings, they may contact OPQA to obtain clarification prior to discussing the findings with the examiner. Otherwise, the Pilot SPE will discuss the findings with the examiner at the next biweekly consultation. The Pilot SPE may provide an appropriate response back to OPQA if the Pilot SPE disagrees with the findings after consultation with the examiner.

9) Managers/Trainers will provide group training and individual assistance as necessary based on reviewed cases.

10) QEMs will be held to allow Managers, Trainers and Examiners to enhance clarity through examples, communication and collaboration. QEMs will also allow the gathering of best practices. QEMs will have an in person and via WebEx component.

11) QEMs will have notes for participants to reference after the QEM. Participants are expected to attend QEMs. If participants cannot attend the QEM, they should inform the QEM point of contact prior to the QEM. After the QEM, participants should talk to QEM point of contact and review QEM meeting notes.

12) OPQA will review cases for statistical purposes (baseline, control group and data collection). OPQA will be collecting data for statistical analysis and may also provide feedback for QEMs.

13) Participants will be provided with notebooks and supplies for organizing their Pilot materials.

14) Pilot participants will be surveyed once during the Pilot and at the conclusion of the Pilot, regarding their experience in the Pilot. Any participant that leaves the Pilot, for any reason, will also be surveyed.

15) After completion of the Pilot, the Agency understands that participants may continue to encounter Pilot-related applicant arguments or other postliminary obligations related to their participation in the Pilot. In these instances, former participants may claim up to one hour per Office action for each Pilot case of additional non-production time. When such non-production time is claimed, the former participant will record the serial number of the relevant case in the remarks section of WebTA. Former participants may request amounts greater than one hour per Office action from their supervisor and reasonable time requests will be granted. If the supervisor denies the time, the former participant may appeal by following the normal managerial chain of command for resolution. Time from multiple Office actions may be added together to reach the full hour. Time granted for post-Pilot purposes will be coded under a separate non-production time code.

IV. DURATION

Recruitment and preparatory efforts may begin as of the execution of this MOU. Pilot operations will begin on February 21st, 2016 and end after twelve PALM pay periods. The USPTO may terminate the Pilot earlier at its sole discretion. Dates are subject to Pilot agreement.