UNITED STATES
PATENT AND TRADEMARK OFFICE

# Patent Public Advisory Committee Quarterly Meeting

# Examination Time Analysis (ETA)

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August 3, 2017

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# Examination Time Analysis (ETA)

- **Comprehensive analysis of examination time.**
- **Goals:**
  - Enable the organization to have a better comprehension of factors that impact examination time
  - Make more informed decisions about examination time
  - Devise methodologies to streamline future updates to examination time

# Why?

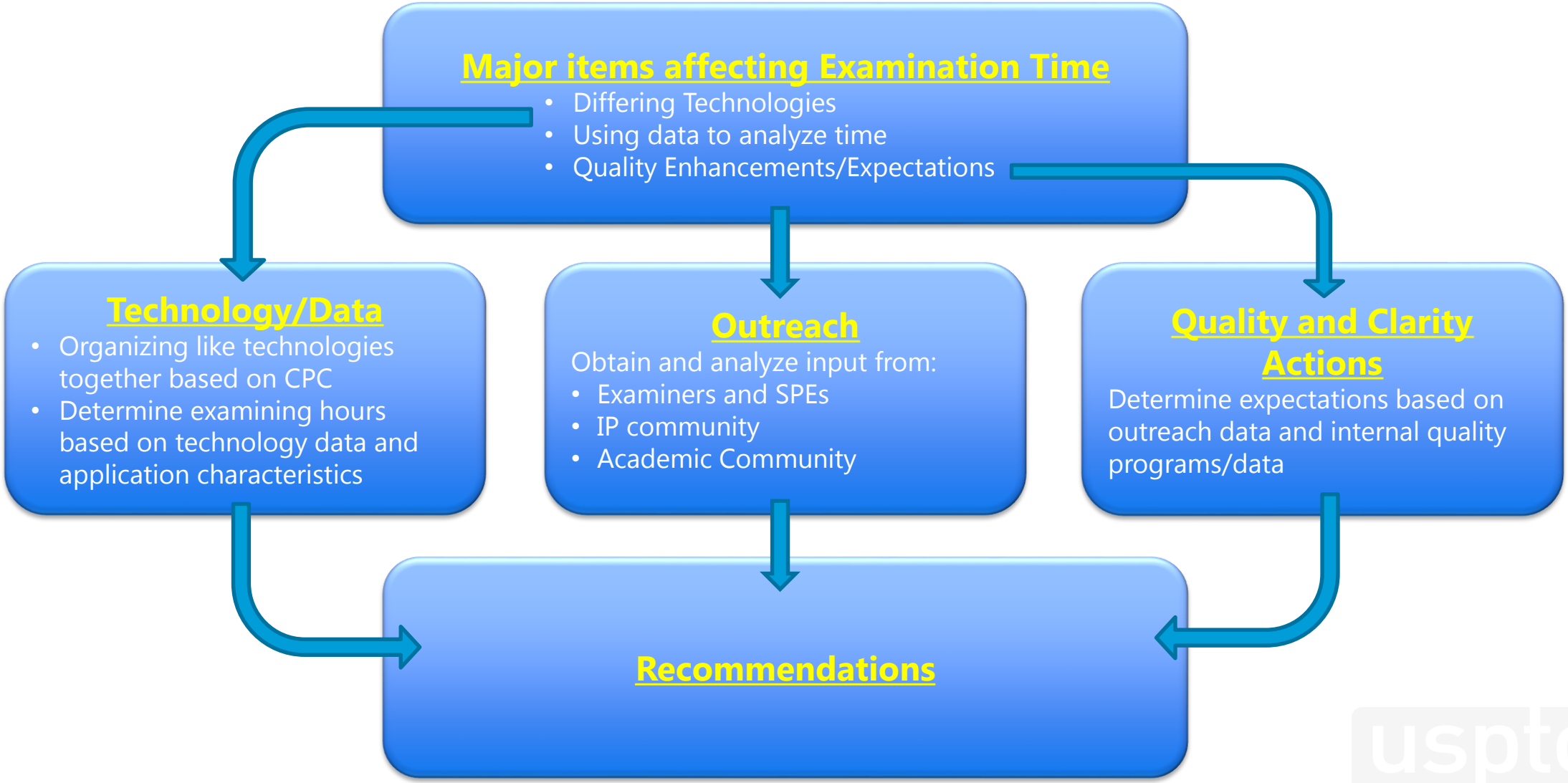
*"We will establish the optimal pendency and quality levels for both patents and trademarks that will enable us to operate efficiently and effectively in a steady-state maintenance mode, while considering the expectations of the IP community."*

USPTO Strategic Plan 2014-2018

# Why now?

- Properly calibrated examination time is critical for establishing optimal pendency and quality levels.
- Patent prosecution has substantially changed since goals were established.
- Oversight bodies, such as the General Accounting Office and Office of the Inspector General, have recommended that the USPTO reevaluate examination time.

# Major Items Affecting Examination Time



# OUTREACH EFFORTS

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# ETA Examiner & SPE Survey

- **Gather the ideas, experiences, and priorities concerning individual productivity and the production system**
  - Examiner point of view – impediments and enhancements to effectively examine in a timely manner
  - SPE point of view – impediments and enhancements to effectively manage in the current production system
- **All examiners and SPEs were invited to participate in the survey.**
  - Examiner Respondents: 6,912 (83% of examiners)
  - SPE Respondents: 425 (68% of SPEs)

# Productivity and Ability to Examine in a Timely Manner

| | |
|---|---|
| Tasks/characteristics/resources that **most enhance** | 1. Well drafted applications<br>2. Appropriate number of claims<br>3. Relevant Information Disclosure Statements (IDS)<br>4. Related cases<br>5. International search reports. |
| Activities/examining parameters that **most impair** | 1. Evolving application complexity<br>2. Poor application quality (e.g. poorly written specification or claims)<br>3. Changes in examination policy or practice<br>4. IT issues<br>5. Multiple inventions present in an application |

# Indicators of Time Requirements

| | |
|---|---|
| Variables that indicate an application will take **more time** than average to examine | 1. Greater than the typical number of claims<br>2. Complexity of application subject matter<br>3. Poor claim quality (e.g. 112 issues)<br>4. Greater than typical number of independent<br>5. Extensive claim amendments |
| Variables that indicate an application will take **less time** than average to examine | 1. Fewer than the typical number of claims<br>2. RCE<br>3. Part of application family (continuation, divisional)<br>4. Pertinent IDS<br>5. Personal expertise in the claimed art |

# Additional Survey Takeaways

- **Quality improvements can best be achieved by investing more time early in prosecution, in particular, in performing the initial search**
- **Top benefits/advantages for enhancing productivity**
  - Flexibility (e.g. work schedules, ability to plan work)
  - Personal expertise in the claimed art
  - Effective management/staff support
- **Dissatisfied with time allotted for tasks after final rejection**

# Goals of Public Outreach

- Gather public feedback regarding expectations of the IP community
- Understand interests regarding quality, pendency, and cost for services
- Shed light on characteristics of patent applications which lead to a more time-consuming examination

# Public Outreach Approach

- **Published a Federal Register Notice**
- **Conducted 4 roundtables in Alexandria and the USPTO regional offices in Dallas, Denver, and San Jose**
  - Approximately 90 participants
- **Collected written comments:**
  - 36 emailed (27 individuals, 6 companies, 3 IP Organizations)
  - 6 comments on IdeaScale
- **Analyzed comments from the roundtable events and written submissions to identify trends**

# Priorities from Public Comments

- Measurable quality
- Thorough, high-quality searches
- Effective oral communication, including formal interviews and calls/discussions, early and throughout prosecution
- Examiners with a thorough understanding of the examined technology and applicable law

# Impacts to Complexity, Time, & Quality

| | |
|---|---|
| **Examiner-related factors** | • Experience in the technology<br>• Time in office/seniority<br>• Sufficiency of expectancy<br>• Legal training<br>• Search training |
| **Applicant-related factors** | • Interdisciplinary inventions<br>• Claim breadth<br>• Length of the application<br>• Language used to describe the invention<br>• Globalization – filing in multiple countries |
| **Office-influenced factors** | • Proper classification of the application<br>• Consistent application of statutes<br>• Consistent consideration of evidence<br>• Degree of supervisory oversight |
| **The court system** | • New case law (101) |
| **Rapidly developing technology** | • Established field/terminology<br>• Volume of prior art |

# Common Observations Across Examiners, SPEs, & IP Community

- Benefit of examiners' expertise in the claimed art
- Importance of clear communication between applicant and examiner
- Importance of thorough search
- Many factors can influence the complexity of an application, the time needed to prosecute the application, and the quality of the examination

# Academic Outreach

- ETA Team and Chief Economist's Office collaborated to host an information gathering session with scholars with expertise in personnel economics, business and human resource management, and organizational incentive mechanisms.

- Goals of outreach:
  - To find out what is currently known in the academic literature about incentives for knowledge workers, such as examiners
  - To get ideas about how to improve our current incentive system
  - To get ideas about how empirical studies (i.e. data, research designs, and methods) could be used to analyze current and new incentives at USPTO

# Considerations Identified in Academic Outreach

- Trade-offs between examination time and examiner performance
- Variety of incentives available and potential impacts
- Impact of aligning quality measurements, monitoring mechanisms, and agency objectives
- Importance of effective management practices and employee-management relationships

# QUALITY & CLARITY of ACTIONS

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# Quality and Clarity of Actions

- Capture Quality Activities as they apply to today's examination practices
- Identify key priorities regarding quality and clarity
- Analyze potential impacts to examination time

# IMPACTS of TECHNOLOGY & CPC

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# Examination Complexity

- **Identify factors that influence examination complexity from historical data and input from examiners, SPEs, and IP community**
- **Considerations for Quantifying Complexity**
  - What is the best method for defining factors that impact complexity?
  - What factors increase or decrease complexity?
  - Do the factors or level of impact vary across technologies?
  - What other variables may impede or enhance an examiner's ability to effectively examine in a timely manner?

# Examples of Factors Affecting Complexity

## EXAMPLES

### Application Factors

- Specification
  - Number of Pages
- Claims
  - Total number
  - Total Pages
  - Number of Dependent/Independent
- Drawings
  - Number of sheets/figures
  - Number of pages
- Other
  - Entity Size
  - Number of Patents in Continuity Chain

### Search Factors

- CPC/USPC
  - Number of documents in relevant field (volume of search)
  - Number of CPC symbols
  - Pages/# of PTO-1449
  - Pages/# PTO-892
- Other
  - Number/Pages of Search Notes
  - Number/Pages of NPL
  - Number/Pages of Foreign Priority Documents
  - Number/Pages of Foreign References

### Prosecution Factors

- Restrictions
  - Number/Pages
- Applicant Remarks
  - Number/Pages
- Amendments
  - Number of CLM documents
  - Number of Amendments
  - Number/Pages of After finals
  - Number/Pages of Appeals
- Number of Interviews
- Office Actions
  - Number/pages of non-finals
  - Number/pages of Finals
  - Number/pages of Allowances
- Petitions
- Number of RCEs
- Actions in disposal

# CPC Considerations

**The ETA team is evaluating a number of approaches for assigning time in a manner compatible with Cooperative Patent Classification (CPC):**

- Application specific correlations between USPC and CPC
- Technology relationships between different CPC symbols within the scheme
- Diversity of CPC symbols on an application
- Fields of Search with CPC

# Next Steps

- Continue to evaluate factors impacting examination time
- Consider potential changes to examination time
- Seek to devise methodologies to streamline future updates to examination time

# Thank you!

*Thank you to the multiple, cross-functional ETA team members and support:*

- *TC Directors*
- *SPEs*
- *POPA representatives*
- *Patent Quality, International Patent Cooperation, Patent Examination Policy, and Patent Administration representatives*
- *PPAC, particularly members who participated in the public roundtable panels*

# Questions and Comments

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