

# INTERVIEW PRACTICES FOR PRODUCTIVE PATENT PROSECUTION

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The materials presented herein may not represent official USPTO policy



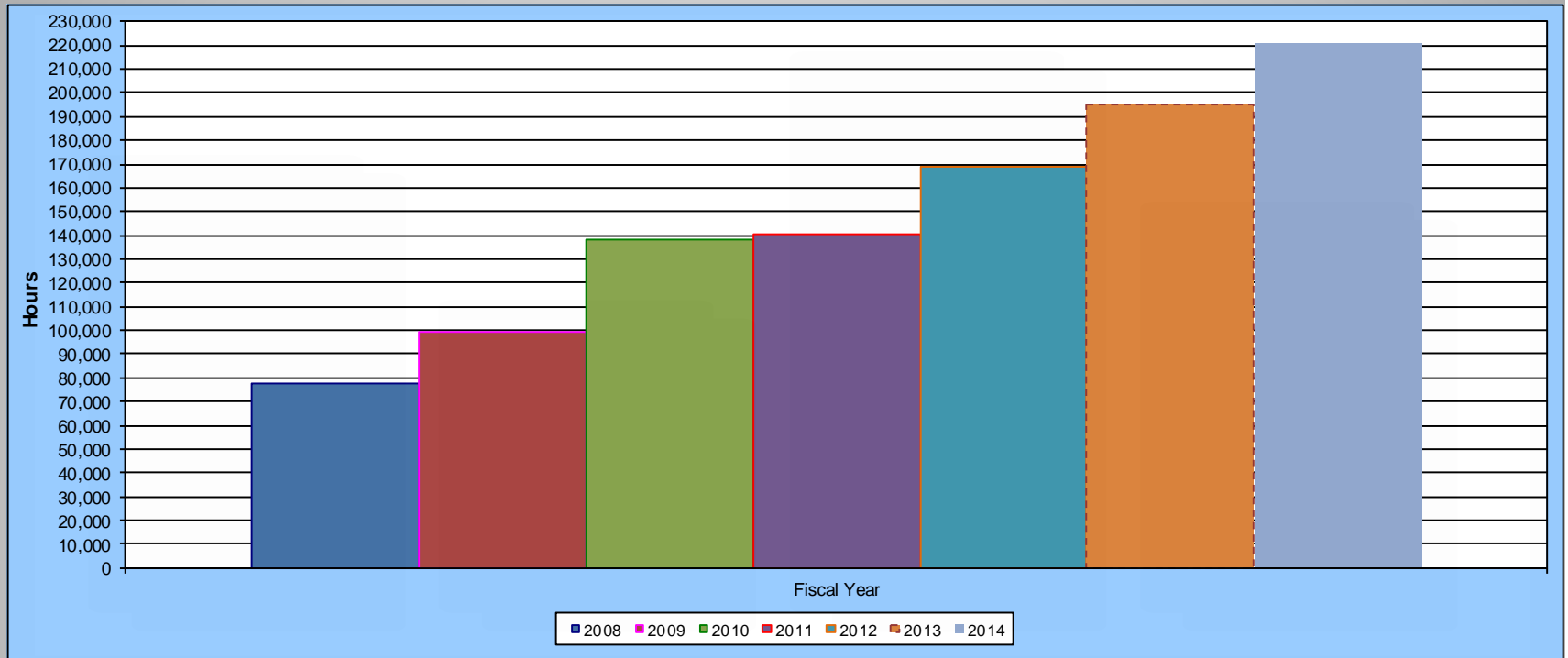
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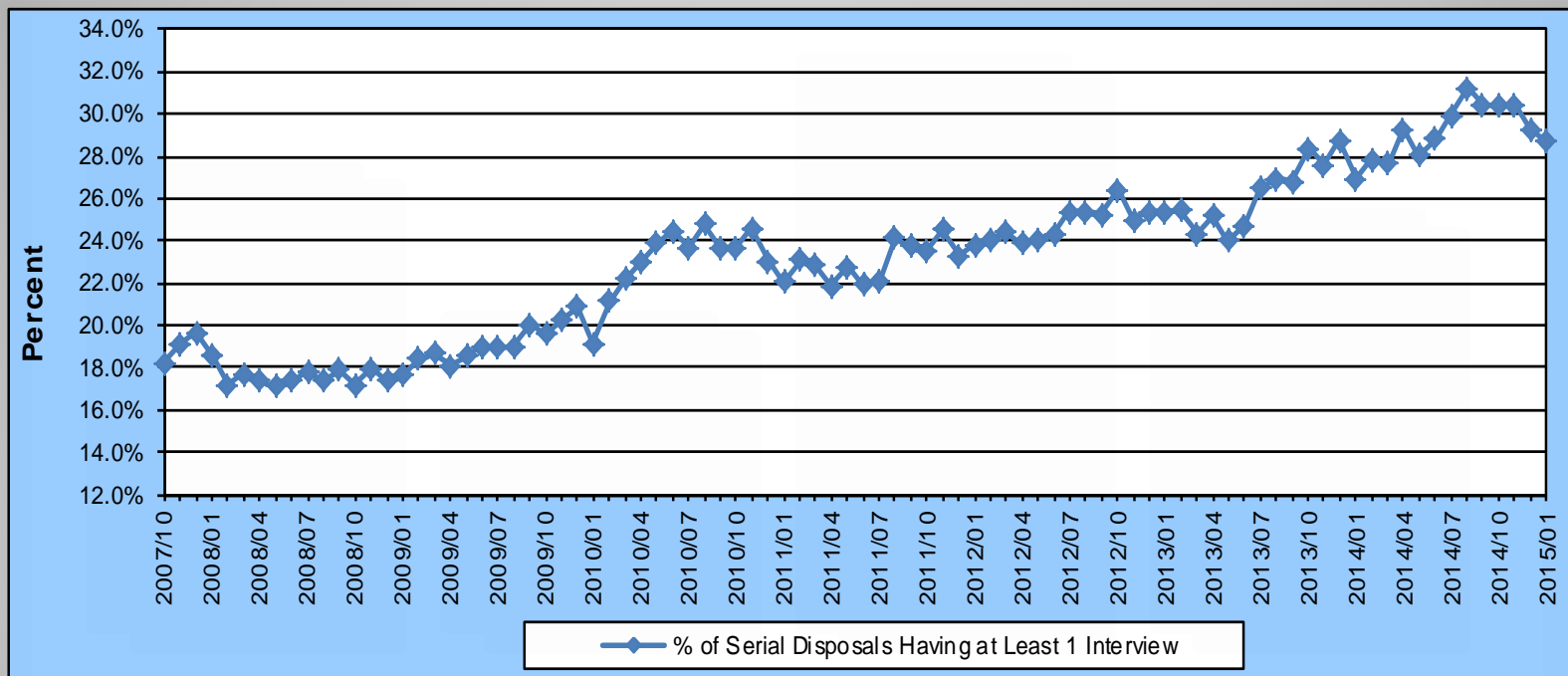
# Benefits

- Facilitate communications between applicant and the PTO
- Clarify and resolve issues
- Negotiate claim language
- Advance examination

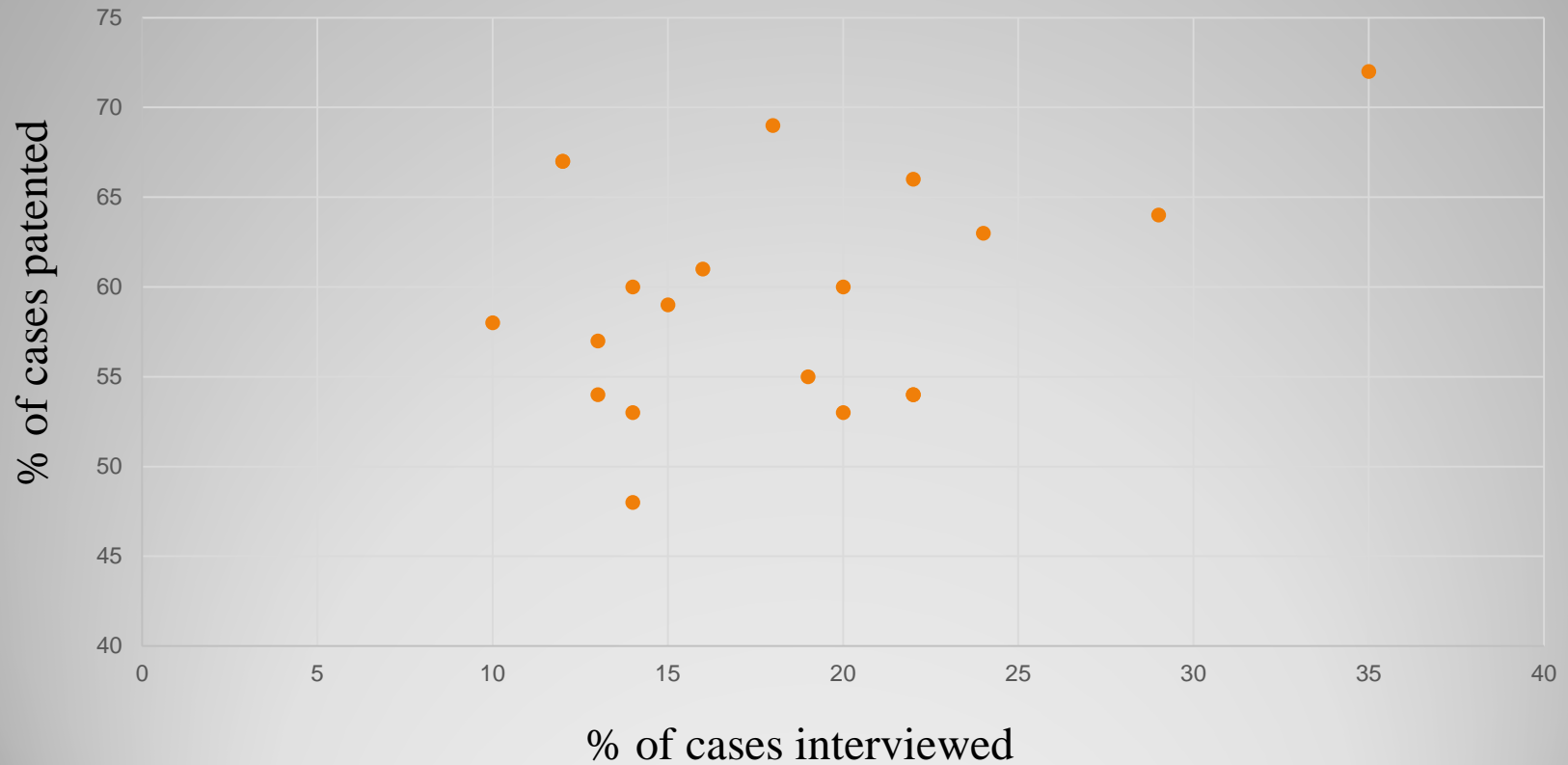
# Inteview time (2008-2014)



# Percent of disposals having at least one interview (2008-2015)



# Data from top 20 filing organizations



<https://patentlyo.com/jobs/2009/07/the-effectiveness-of-examiner-interviews.html>

# Practices for productive prosecution

- When to interview?
- First Action Interview Program
- After Final Consideration Pilot 2.0
- Inventor
- Analytics

# When to Interview?

- Preferably early during the prosecution history – before final office action
- Interesting statistics (<https://patentlyo.com/jobs/2009/07/the-effectiveness-of-examiner-interviews.html>)
  - Interviews before final Office action had the same grant rate as those that did not.
  - Interviews after final had a much higher grant rate than applications with final Office action but no interview (74% v. 60%)

# Scheduling of interview

- Call Examiner
- Automated Interview Request (AIR)
- Examiner may request an agenda



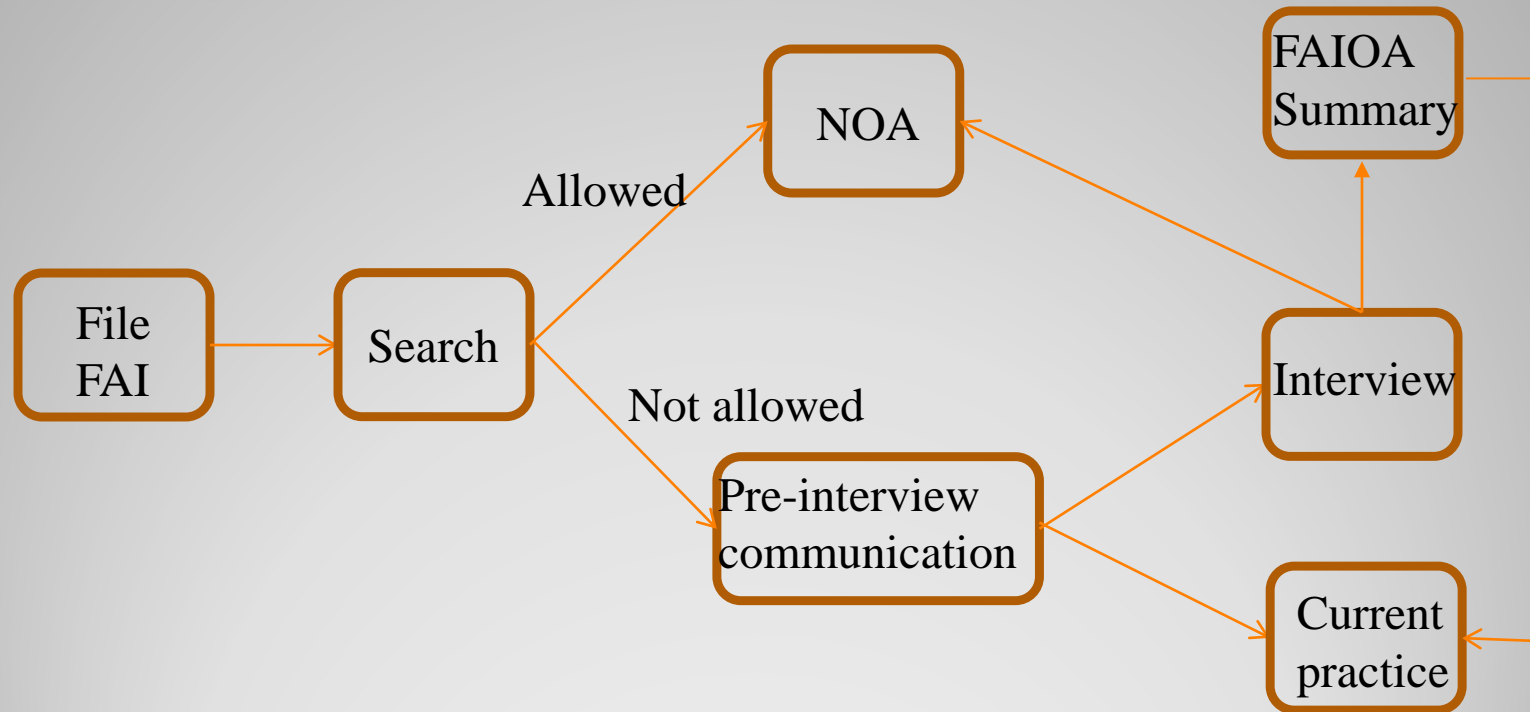
# PTO programs encouraging interviews

- First Action Interview Program
- After Final Consideration Pilot 2.0

# First Action Interview Program

- File request before first Office action on the merits
- No more than 20 claims and no more than 3 independent claims
- No traversal of restriction

# FAIP(cont.)



# Efficiency of FAIP

	FAI	Overall average
1 <sup>st</sup> OA allowance*	29%	13%
Issuance rate**	90%	60%
Number of action**	0.7	1.9

\*<https://www.uspto.gov/corda/dashboards/patents/main.dashxml?CTNAVID=1007>

\*\*Kate Gaudry, *A Look at the Results of USPTO's Interview Program*, Law360, Jan. 9, 2014.

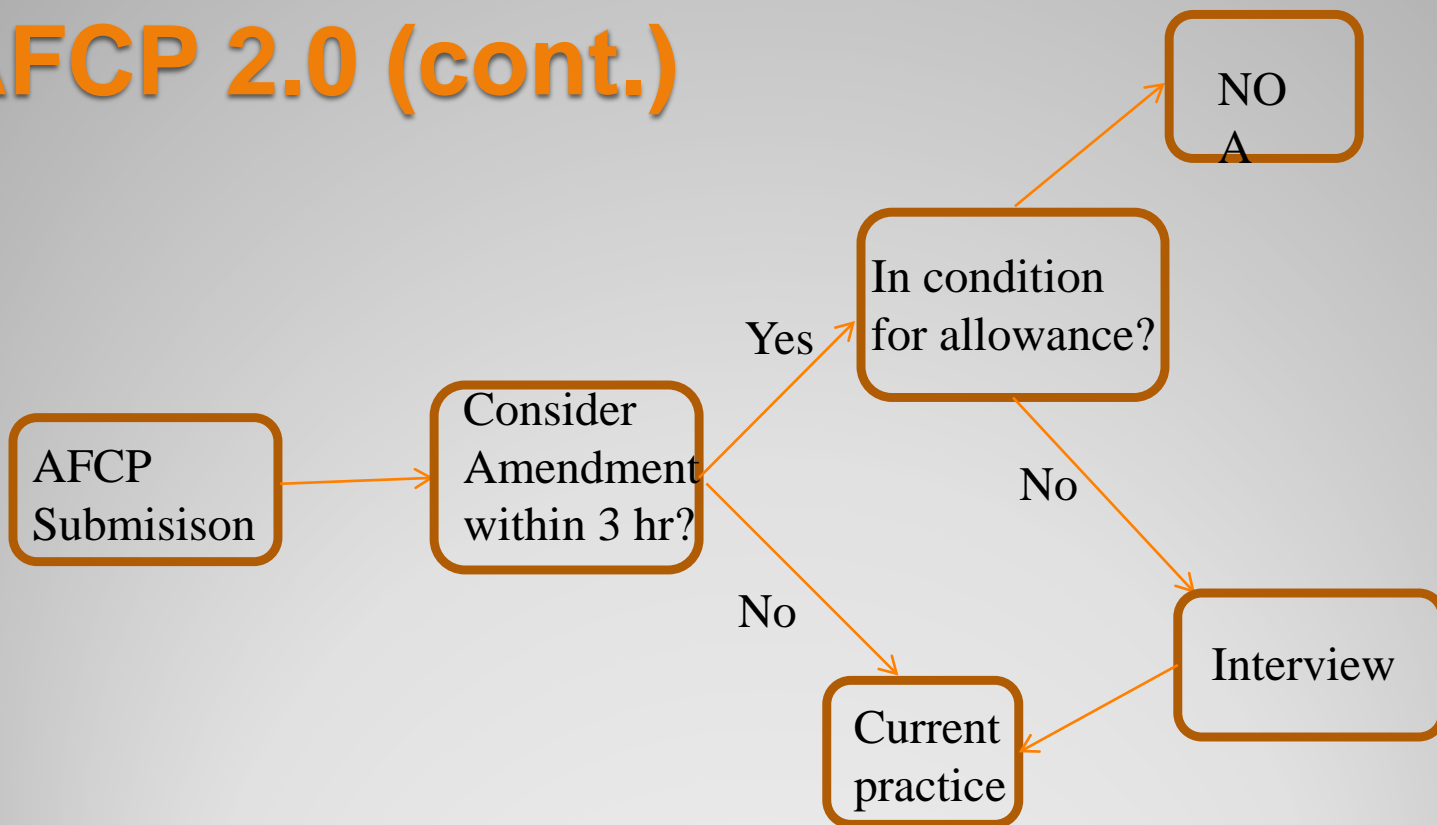
# Possible improvements to FAIP

- Allow applicant to file amendment as a matter of rights after interview and before 1<sup>st</sup> Action Interview Office Action Summary
- Replace 1<sup>st</sup> Action Interview Office Action Summary with a full Office action

## After Final Consideration Pilot 2.0

- Non-broadening amendment one independent claim
- Applicant willing and available to participate in an Examiner's requested interview
- If Examiner deems the amendment not in condition for allowance, s/he will request an interview

# AFCP 2.0 (cont.)



# Efficiency of AFCP 2.0

- 30% result in allowance
- 30% result in advisory action
- 40% were denied consideration

Kate Gaudry, *The After Final Consideration Program: Allowance Prospects*, Law360, June 17, 2015.



# Consider bringing an inventor

- Very helpful if the inventor has a compelling story on product development
- Must prepare inventor

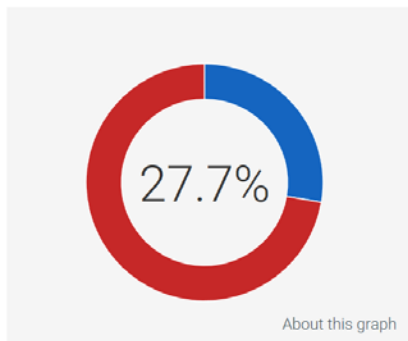
## Consider using analytics

- Several websites provides analytics on patent prosecution (e.g. Examiner Ninja, Examiner Reports)
- Statistics may be useful for applicant to decide whether to interview

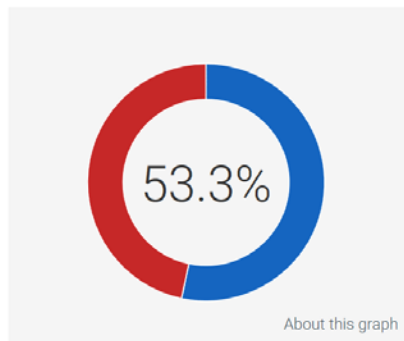
# Sample analytics (Examiner Ninja)

## Interviews

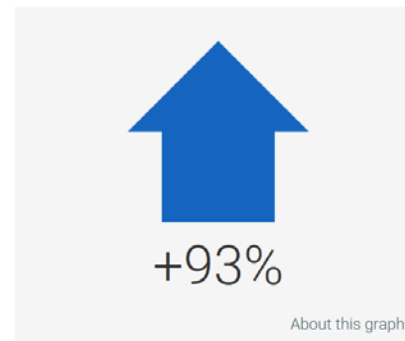
Allowance Rate With No Interview



Allowance Rate With Interview



Relative Benefit of Interview



# QUESTIONS?

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