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Patent Public Advisory Committee Quarterly Meeting

The role of the patent examiner

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Topics to be covered

- How examiners are trained

- How productivity is measured

- How examiners are awarded for their work

How examiners are trained

- Several training programs offered by the Office of Patent Training (OPT):
    - New examiner training
    - Legal, practice & procedure training
    - Technical training
    - Corps-wide training

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New examiner training

- USPTO's Patent Training Academy (PTA) provides entry-level examiners an in-depth review of U.S. statutes and rules pertaining to patent examination.

- Classroom studies include exercises and coursework focused on patent examination practice and procedures, automation tools, soft skills, and technical training.

- Two-phase, 12-month training program

Legal, practice & procedure training

- Examiner refresher training program
  - Enhances examination knowledge and skills in procedural and legal topics
- Master class training program
  - Delves deeper into specific topics touched on in refresher training
- Patent Quality Chats
  - Webinars that target a component(s) of a larger procedural or legal concept
- Legal lecture series
  - Based on major court decisions and USPTO policies
- Patent Law and Evidence course
  - Covers authoritative court decisions on statutory issues and the handling of evidence during examination

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Technical training

- Patent Examiner Technical Training Program (PETTP)
  - Scientists, engineers, and other technology experts volunteer their time and travel expense to speak with USPTO employees to provide relevant technical training and expertise to patent examiners.

- Site Experience Education Program (SEE)
  - Designed to provide patent examiners with an opportunity to visit organizations and learn about the state of the art technology developments.

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Corps-wide training

- Training provided to the entire examining corps on significant updates to examination practice and procedures due to case law or administrative policy.

- Developed collaboratively by the Office of Patent Training (OPT), the Office of Patent Legal Administration (OPLA), and Patent Operations,

- FY19 corps-wide training topics:

  – Subject matter eligibility training

  – Examining computer-implemented functional claim limitations for compliance with 35 U.S.C. 112

  – Claim interpretation

  – 35 U.S.C. 112(a) written description for design examiners

  – Restriction

Examiner training plans

- Each examiner is allotted up to 25 hours in FY 2019 to attend elective training that falls within the following categories:

  - Legal, policy and procedure training

  - Technical training

  - Automation training

  - Leadership training

- Mandatory training does not count toward the 25-hour allotment.

Training through career advancement

- The examiner performance appraisal plan requires additional competencies as examiners become more senior.

- In particular, to achieve the senior position of primary examiner, an examiner must complete the Signatory Authority Program.

  - During this nearly two-year program, the examiner's work is reviewed and evaluated to determine if the examiner should be permanently delegated the independent authority to sign all actions.

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Training through career advancement, cont.

- While not training per se, successfully completing the Signatory Authority Program is a foundational component of an examiner's career.

  - Independently signing an Office Action represents the position of the USPTO at that point in time.

  - It is the culmination of many years – typically at least five years – of training and preparation.

  - It is often a stepping stone to training and mentoring of junior examiners.

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Training on a regular basis

- The examiner's performance appraisal plan (PAP) includes a critical element focusing on quality, which sets forth what is required of examiners, at various grade levels, with respect to the quality of submitted work products.

- All examiner work products must be reviewed, approved, or authored by someone with signatory authority, which requires a demonstration of the legal and technical competencies of patent examination in accordance with the examiner's PAP.

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Training on a regular basis, cont.

- Quality Enhancement Meeting (QEM)
  - Examiners meet on a routine or as-needed basis to cover a particular topic or area of interest
    - Can serve as just-in-time training to supplement corps-wide training on policy or legal changes (e.g. recent 101 guidance)
  - Format can be either examiner-led meetings or discussions coordinated by examiners' supervisor
    - Opportunities for direct collaboration and knowledge exchange between examiners

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Examiner Productivity

How productivity is measured

- An examiner's production goal achievement in a given period depends on:
  - Examining time or the number of hours spent on examination
  - Calculated production hours or the amount of work produced by the examiner during the period

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How production hours are calculated

- **Production hours are primarily based on:**
  - Examiner's grade level
    - Lower-graded employees (typically less-experienced, newer employees) are provided more time to complete office actions
    - Higher-graded employees are more senior with more experience
    - The examiner's grade level is identified by a "position factor" which is included in the productivity equation
  - The production credit or count value associated with the office action that was submitted, and
  - The expectancy (*i.e.* time) assigned to the application (based on its technology) for which the office action was completed

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Application expectancy (i.e., time)

- The application's expectancy is the amount of time in which the examiner is expected to prosecute the application from the first action on the merits (FAOM) to application disposal.

  – Expectancy is based on the technology claimed in the application.

  – In general, more complex technologies have more time associated with them.

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Distribution of production credit*

Action Type	Counts	Notes
First Action On the Merits (FAOM)	1.25 counts	Most credit available at FAOM stage to allow for reading the application and initial search
Final Rejection	0.25 counts	Prosecution-dependent (i.e. allowance or abandonment may follow FAOM)
Disposal (allowance, Examiner's Answer, abandonment)	0.50 or 0.75 counts	Lesser count value if a final rejection has been made
TOTAL CREDIT	2.0 counts	Maximum associated with each application from FAOM to disposal

No production credit is available for written restrictions, non-final actions after the FAOM, 2nd or subsequent finals rejections, or advisory actions.

* For simplicity, only the count values for non-RCE applications are illustrated.

Examiner Awards

Examiner awards

- The USPTO's patent examiner awards provide a cost-effective approach to increasing examiner productivity and timeliness that reduces the USPTO's need to hire additional examiners.

- This provides a cost savings to those that utilize the patent system and therefore benefits the American public who fund the USPTO through user fees.

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Production awards

- Gainsharing Productivity Award

  – Based on productivity over a complete fiscal year

  – Award amount is a percentage of annual base salary dependent upon percent achievement of the goal.

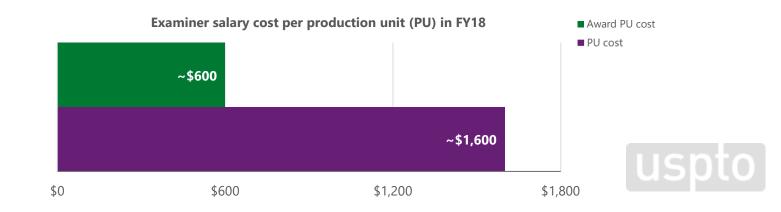| Achievement of goal	Amount of current base salary
110-114%	2%
115-119%	3%
120-124%	4%
125-129%	5%
130-134%	6%
135% or more	7%

Production awards, cont.

- **Special Achievement Award (SAA)**
  - Requires 110% productivity over a period of four consecutive quarters
  - 3% of annual base salary

Production awards, cont.

- Examiner salary cost per **award production unit** in fiscal year 2018 was approximately **$600**.

  - Approximately 7.5% of the total production units were from production awards.

  - Without awards, the USPTO would need over **700 additional examiners** on board to achieve the same production, resulting in an added annual cost of approximately **$58 million** beyond what it would have cost to pay the production-based awards.

- Examiner salary cost per **non-award production unit** in fiscal year 2018 was approximately **$1,600**.

Examiner salary cost per production unit (PU) in FY18

■ Award PU cost
■ PU cost

~$600

~$1,600

$0 $600 $1,200 $1,800

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Docket management award

- Docket management (DM) is a critical element of examiners' performance appraisal that requires conducting examining activities within set timeframes.

- DM award has three tiers of performance criteria and is assessed quarterly.

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Docket management award, cont.

- Three tiers of performance criteria, assessed quarterly:

Level of performance	Amount of current base salary
Entry Tier	.25%
Tier 1	.5%
Tier 2	.75%

- For each escalating tier, there are more requirements for examiners to be more timely in completing their work.

Docket management award, cont.

- Examiners who earn DM awards, particularly in the top tier, perform better in pendency throughout examination.

  – Examiners who earned Tier 2 DM awards had a 60% lower turnaround time for turning in amendments as compared to non-award recipients.

  – Examiners who earned Tier 1 DM awards had a 28% lower turnaround time for turning in amendments compared to non-award recipients.

All statistics above are based on FY18 data.

Questions and comments

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