

From: [name and email redacted]

Sent: Tuesday, March 10, 2015 1:16 PM

To: WorldClassPatentQuality

Subject: Proposed Crowd-Sourced process to improve Patent Quality

See attachment on a proposed process to improve patent quality:

“Crowd-Sourced Patent Correction-Challenge with Re-opened Prosecution”

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[name redacted]

Crowd-Sourced Patent Correction-Challenge with Re-opened Prosecution (Patent Quality):

Summary:

A correction-challenger receives a reward (\$5K TBD) when their challenge results in the correction of bad independent claim(s) in an issued patent.

If the USPTO accepts a challenge, patent prosecution is re-opened to fix the claim(s).

If prosecution is re-opened, Applicant receives two free rounds of prosecution response.

Bad claims are found & fixed soon after original issue (~6 months TBD).

Challenge awards & challenge process are funded using a small percentage (~3% TBD) of the USPTO patent budget.

Note: TBD = To be determined (or adjusted as necessary).

Philosophy:

Both the public and the Applicant are hurt when the Patent Office has mistakenly issued a patent with bad claims. The Patent Office error(s) should, be detected and corrected as quickly as possible. Because the Patent Office is responsible for the claim error(s) and has harmed the Applicant, it is unfair to the Applicants to simply invalidate the patent. Rather, Applicants should be made whole by the correction of the claim(s) in the patent as quickly as possible.

By: EFA8F06D46662454CD9547FFD2361F6DE4008954F150EEFF0E9005EEA117AF66

Process Overview (TBD):

- 1) Challenger presents an correction-challenge with evidence of error within a 3 months of patent issue (challenge window). Challenge can be for 102, 103, and/or 112. 101 TBD.
- 2) Within 1 month (TBD) after close of challenge window for each patent, a Challenge Board reviews all challenges and votes (> 2 of 5 TBD) on re-opening patent prosecution. Applicant faces a maximum of one combined challenge if patent prosecution is re-opened. When prosecution is re-opened, issued patent is flagged as re-opened for prosecution.
- 3) When prosecution is re-opened, application is re-assigned to the same GAU (or possibly a special challenge unit TBD) for prioritized USPTO examination. An Office Action is created within 2 months (TBD) with either an allowance that confirms the original claims or new rejection(s).
- 4) If Office Action is not an allowance, Applicant receives two new free rounds of Applicant response. USPTO prioritizes all their actions. Normal Applicant prosecution timelines/rules apply (extensions of time, RCE, continuations, ...).
- 5) Challenger receives a challenge reward when the corrected patent has narrower independent claim(s) or further prosecution of the application is abandoned.

Additional Process Details (all TBD):

Challenge occurs soon after issue, when Applicant & USPTO are still familiar with case.

Patents without challenges or challenges unaccepted by the USPTO, are "cleared" in about 4 months (TBD).

Challengers rewarded only if challenge ultimately succeeds against independent claim(s).

Challengers may specialize in monitoring issued patents and are paid for finding & helping to correct bad patent claims.

Challengers are expected to specialize in art areas.

Challengers may be drawn from ranks of patent searchers, agents, attorneys, retired examiners, or others in the general public,

Challenge reward is set large enough that a significant number of challengers will specialize in making correction-challenges, either part-time or full-time such that the independent claims in almost all patents are reviewed to determine if there are any bad independent claims.

Challenge submissions are held in secret until the challenge window has closed (TBD).

If redundant challenges, only first challenge is eligible for reward. Incentivizes speed.

To incentivize challenge quality, there is a re-fundable challenge fee (\$300 TBD) to file each challenge.

The USPTO may provide "n" free challenges to each "qualified challenger" per time period. ["n" possibly based on challenger qualifications and/or financial disadvantage] TBD.

Challenger is refunded the challenge fee or free challenge, whenever a challenge is successful.

Re-opened prosecution is prioritized in the USPTO, so Applicant can quickly recover from the USPTO issue error, as quickly as possible.

Applicant timeline is same as the normal patent prosecution timeline, so Applicant is not overburdened by the USPTO error.

Applicant costs for re-opened prosecution are similar to rounds of normal patent prosecution and much less than other processes (re-examination, etc).

Optional: Owners of older patents (issued before the challenge program starts) have option to open a one-time correction-challenge window (publicized by USPTO). No charge to owner (TBD).

Optional: Possible option for an applicant to optionally offer an additional reward bonus (beyond the USPTO bonus) for a successful challenge (TBD).

Optional: Longer term, it may be possible to combine the proposed correction-challenge with Ex-parte re-examination.

Optional: If PGR and CBM can be re-oriented to correcting bad claims (rather than invalidation) then it may be possible in the longer term to combine with the proposed correction-challenge.

Adjustable controls available to improve quality of the Correction-Challenge process:

Reward amount. Increase if not enough challengers are active or if not enough challenges.

The higher the challenge reward amount, the greater the USPTO confidence in patent quality.

Challenge fee amount: Increase if too many poor quality challenges. Decrease if not enough challenges. Increase number ("n") of free challenges per time period to increase challenges.

If needed, reward amount might be larger for more complex classes/subclasses (TBD).

If needed, the reward amount could be adjusted based on the number of independent claims (or dependent TBD) that are determined to be in error (TBD).

Challenge Board vote threshold (> 2 of 5 TBD) for re-opening patent prosecution can be adjusted to optimize process.

To prevent conflicts of interest or large entities picking on smaller applicants:

Challengers must be independent.

Challengers must not be related to, connected to or in communications with any USPTO personal (e.g., examiners).

Challengers must not have ties or conflicts of interest with competitors of the patent.

Challengers limited to small specialized entities (< \$10M TBD in size).

Record Keeping & Statistics (all TBD):

Overall USPTO challenge statistics publicized & ranked (indicators of quality over time).

Number of challenges and number of successful challenges.

Percentage of successful challenges. Provides an indicator of patent quality over time.

At end of challenge window, notice of unchallenged patent is recorded in patent's record.

The number of challenges & challenge details are publically available in each patent's record.

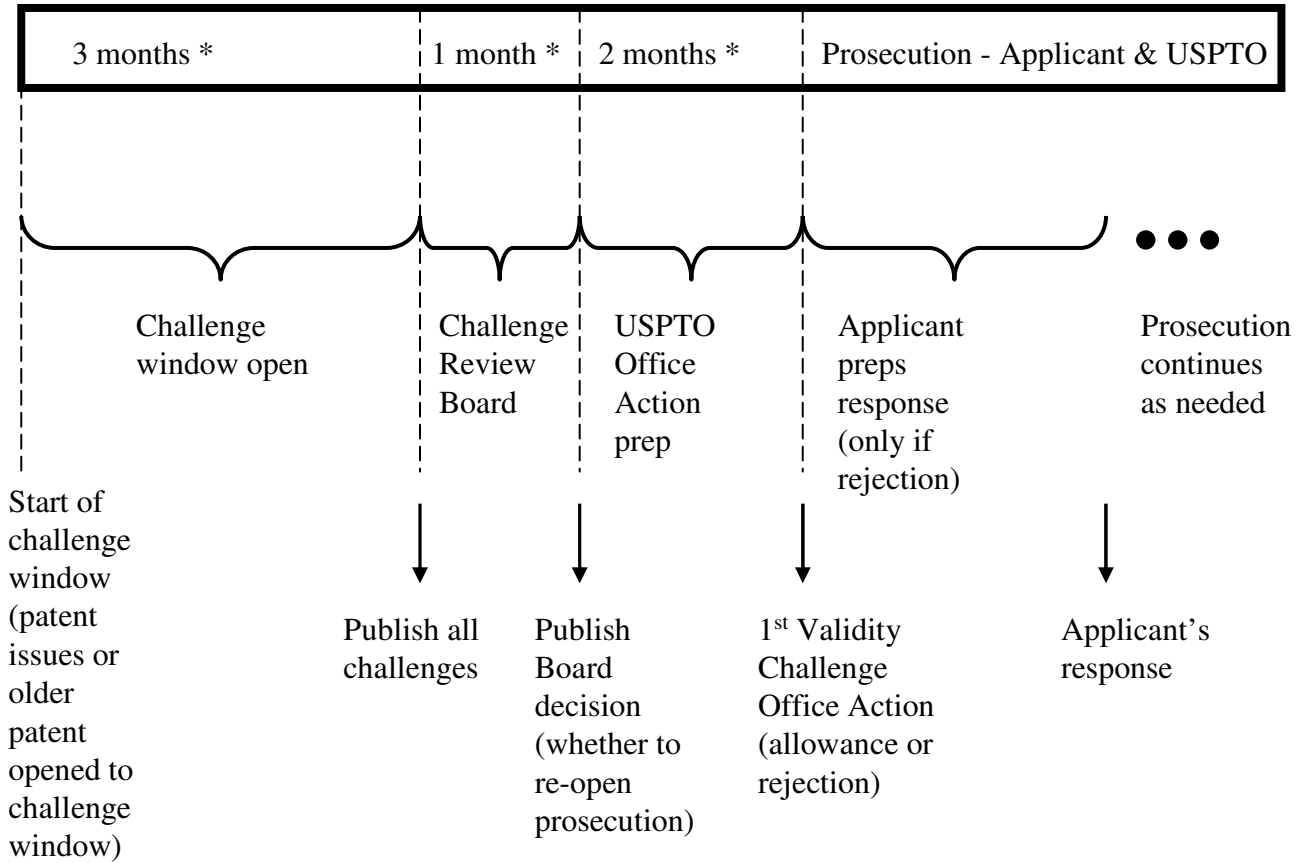
The vote & decision by the challenge board is publically available in each patent's record.

All re-opened prosecution is publically available in each patent's record.

Examiner challenge statistics publicized & ranked (incentivize examiner reputation).

Challenger challenge statistics publicized & ranked (incentivize challenger reputation).

Fig. 1



Notes: * = Adjust time period to optimize the Validity Challenge process.

Fig. 2

