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Sent: Wednesday, May 06, 2015 1:15 PM
To: WorldClassPatentQuality
Cc: Lezak, Angel; Franklin, Thomas; Almon, Rich; Kitces, Matt; Gaudry, Kate
Subject: Patent Quality Comment: Training for Examiners on Compact Prosecution – Interview/Mediation Training

To Whom It May Concern:

Thank you for accepting comments as part of your Quality Initiative. Please see the attached comment. This particular comment does not specifically correspond to any of the six identified proposals but instead outlines another proposed program to improve examination and patent quality. Please let me know if you have any questions.

Best regards,
Adam J. Gianola



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Comments for Submission

United States Patent and Trademark Office

Enhanced Patent Quality Initiative

Submitted to: WorldClassPatentQuality[at]uspto.gov

May 26, 2015

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Proposal: Training for Examiners on Compact Prosecution – Interview/Mediation

Training

The USPTO should offer training to Examiners specific to techniques for reducing application prosecution time. As one example, Examiners should be offered advanced interview training and mediation training in order to properly prepare Examiners to make the most effective use of interviews.

Holding interviews with Examiners in person, via video conference, or via telephone conference can be useful for quickly discussing one or more issues facing an application and advancing the application to final disposition, whether it is allowance or abandonment. For example, a single interview can eliminate multiple issues at once, which might otherwise require several written Office Actions and Responses/RCEs before resolution.

Many Examiners, and particularly new Examiners, however, are somewhat reluctant to hold interviews and would prefer to only discuss issues in writing. It is anticipated that this reluctance may stem, at least in part, from Examiners not having sufficient training and experience in holding interviews. It is understood that only limited interview training is currently available for Examiners.

We propose that the USPTO expand the current interview training program and provide Examiners with advanced interview training and mediation training.

Training of this nature may benefit all Examiners, and particularly new Examiners, with the end results of having Examiners be more comfortable in scheduling and holding interviews and improving the efficiency gains and reduction in prosecution time that can be achieved by holding interviews. While the additional training should be mandatory for new Examiners, current Examiners should be offered the opportunity to participate and expand their skills, if desired. As an incentive, credit should be provided to Examiners that participate in advanced interview and mediation training.

One focus of advanced interview training, for example, could be for the Examiners to get real world type experience internally at the USPTO, such as through simulated interviews. In this way, Examiners can gain experience in interviewing with limited performance pressures.

The USPTO should also offer patent practitioners the opportunity to participate in simulated interviews with Examiners as part of an advanced interview training program. Participation by

real patent practitioners may further improve the benefits that can be achieved through simulated interviews, for example, by allowing Examiners to become accustomed to facing unknown practitioners who may exhibit a variety of different personality types.

Another focus of advanced interview training may be for new or inexperienced Examiners to observe and participate in interviews being held by more experienced Examiners with Applicants/practitioners in a “live” interview. Participating as a bystander in which no pressure is put on an observing Examiner may allow the observing Examiner to get the experience of participating in interviews without the risk of being put on the spot, and allow the observing Examiner to become more comfortable with interview practice. Again, participation with various practitioners, as well as various other Examiners, may provide observing Examiners with the experiences of a range of interview styles and identify those techniques which are effective and those that are ineffective.

Simulated interviews and interview observation can provide Examiners with a range of experiences, including helping Examiners to become more comfortable with having an interview with an adversarial Applicant/practitioner. When one party takes an adversarial position, this may put the other party on the defensive and result in both parties taking adversarial positions. Even if an Examiner does not take an adversarial position in an interview, the risk of facing an adversarial Applicant/patent practitioner may make the Examiner uncomfortable and reluctant to accept interview requests.

Further, when either or both the Applicant/practitioner and the Examiner assumes an adversarial position during an interview, this that can result in the interview being unproductive or even counterproductive. For example, when either side is unwilling to alter their position, truly understand the other side’s position, or explore options for advancing an application, little headway towards moving an application to final disposition may be gained.

Mediation training may also benefit all Examiners in this respect. For example, providing Examiners with training on mediation and negotiation theory may result in Examiners gaining additional skills and tools needed to be comfortable and make more effective use of interviews, particularly when facing adversarial Applicants/patent practitioners.

For example, teaching materials on mediation and principled negotiation methods, such as from the Harvard Negotiation Project, should be offered to Examiners to better illustrate the roles that interviews can play in the examination of a patent application and how interviews can be used to move an application to final disposition in a more compact manner.

For example, this training could help Examiners learn to better prepare for interviews, such as by understanding and limiting the effects of emotions, identifying the importance of thoroughly understanding the Applicant’s position prior to the interview, developing options (before the interview) for advancing the application with the mutual goal of final disposition, etc.

In addition, such training could better position Examiners to face a strongly adversarial Applicant/practitioner and/or to provide Examiners with the tools needed to convert an adversary

into a collaborator for solving the mutual problem of how to get a patent application to final disposition quickly.

As a further benefit of advanced interview and mediation training, the USPTO's public image among Examiners, practitioners, Applicants and the public may be improved. For example, the USPTO may be able to publicize these trainings as an effort to not only promote compact prosecution, but also as an effort to have a more highly trained and experienced workforce. For example, the Office could promote these training efforts as preparing Examiners to work with Applicants in a collaborative fashion in order to get patent applications of appropriate scope to grant quickly.

In summary, advanced interview and mediation training should be offered to Examiners with goals of reducing application prosecution time.

Thank you for your consideration.

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