

From: Mark Greenstein [Email Redacted]
Sent: Monday, May 04, 2015 8:14 PM
To: WorldClassPatentQuality
Subject: Comment on patent quality

This responds to your request for comments on your quality initiatives.

While a “clear error” standard of review may be appropriate in most cases, in some limited cases it may facilitate continued errors by examiners which do not rise to this level. In limited cases, where there is substantial statistical evidence to question an examiner’s performance, a different standard may be appropriate. One instance is where an examiner’s allowance rate substantially differs from others examining the same type of patents. For example, if an examiner has a 12.5% allowance rate over a number of years and a material number of examinations, as compared to a 50% rate for other examiners in the same art unit, this is evidence that there may be a serious problem.

In such instances, perhaps the assumption should be reversed when reviewing patent prosecutions by the examiner and the dispositions, taken together, should be presumed not be correct unless it is clear that there is not error. If such a review shows a problem the examiner should be sent for further training and the applicants whose patents have been examined by the examiner should be afforded an opportunity for a new review by a different examiner.

Thank you for engaging in this initiative and for the opportunity to comment.

Very truly yours,