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Sent: Wednesday, April 29, 2015 3:53 PM

To: WorldClassPatentQuality

Cc: Michael Denver Frakes ([email redacted])

Subject: Enhanced Patent Quality Initiative Comments

Attached please find our first set of comments regarding the Enhanced Patent Quality Initiative.

Best,

Melissa

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April 28, 2015

To Office of the Commissioner for Patents:

Policymakers have long posited that the Patent and Trademark Office may be allowing too many low quality patents in part because patent examiners are not given sufficient time to conduct high-quality review of patent applications. Such sentiments have been echoed by patent examiners themselves, which on average spend 19 hours conducting the examination process. Because patent applications are presumed to comply with the patent requirements when filed, a patent examiner who is given insufficient examination time may conduct limited review of applications and grant patents that fail to meet the patentability standards.

In a NBER working paper, we set out to comprehensively test whether the time allocated to review patent applications may be causing patent examiners to allow low quality patents (this article can be downloaded at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2467262](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2467262)). To do so we follow individual examiners throughout the course of their career and track the evolution of examination behavior—including their grant rates—as they experience promotions that diminish the amount of examination time at their disposal. Through various methodological techniques, we find evidence that the examiner time allocations to review patent applications are causing patent examiners to allow low quality patents. More specifically, we find that as examination time is cut roughly in half (i.e., as an examiner rises from GS-7 to GS-14 along the General Schedule scale, controlling for changes in years of experience), grant rates rise by as much as 9 to 19 percentage points, or by roughly 13 to 28 percent. Considering the distribution of examinations across GS levels, our findings imply that if all examiners were allocated as many hours as are extended to GS-7 examiners, the Patent and Trademark Office's overall grant rate would fall by roughly 14 percentage points, or nearly 20 percent.

What do our results suggest regarding Patent Office policy? Our results suggest the Patent and Trademark Office should reconsider its scaling of time allocations upon examiner promotion. We acknowledge it seems prudent that examiners who have repeatedly demonstrated their ability to provide high quality patent examination, and are rewarded for their admirable behavior by promotion, are likely to be able to complete a review of an application faster than an examiner

who has yet to demonstrate this competency. Nevertheless, our results suggest that the current scaling of the time allotments upon promotion—a scaling that leaves GS-14 examiners with nearly half the time to review applications relative to GS-level 7 examiners—are too aggressive to reflect these efficiency gains. As a result, we suggest that the Patent and Trademark Office change the scaling factor associated with examiner workload upon promotion. More specifically we suggest that examiners who are promoted face new time allocations that are less than a 10 to 15% decrease from their previous quotas. Alternatively, the Patent and Trademark Office could consider easing patent examiners into their new time allocations upon promotions. One interesting finding from our study suggests that the longer a patent examiner stays at a GS-level the more her grant rate decreases. One interpretation of this result is those patent examiners learn over time to adjust to their new time allotments. By easing examiners into their new time allotments over a one year time period (rather than the next bi-week), the Patent and Trademark Office may be able to take advantage of this learning process and increase the quality of issued patents for newly promoted examiners.

Finally, we recognize that the Patent and Trademark Office must balance examination capacity against the hours allotted to examiners to review patent applications. That is, taking the budget as given, if the Agency increases the time given to examiners to review applications it necessarily decreases the number of applications the Agency can process. The Agency, however, has the ability to set its own fees to cover its aggregate costs. If the Agency cannot absorb an increase in examination cost that will occur by increasing the time allocations of some examiners within its current budget, we suggest that the Patent and Trademark Office increase its examination fees to cover the additional costs associated with giving patent examiners more time to review applications.

Thank you very much for your time and consideration.

Sincerely,

Michael Frakes, Associate Professor of Law at Northwestern University School of Law and a Faculty Research Fellow at the National Bureau of Economic Research

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