

Gentlemen,

Review of the above referenced form suggests that there is a fundamental defect in the approach to Examiner review being taken by the Office.

Specifically, pages 1-10 of the form deal with rejections that should have been made by the Examiner, but were not made.

Analysis of rejections that were actually made by the Examiner begins only on page 11.

This encourages reviewers to second guess Examiners by doing their own search and analysis.

Such practice is detrimental to both Examiners and Applicants because it penalizes Examiners for not doing something that a reviewer (presumably spending far less time on the case than the Examiner), thinks should have been done instead of objectively evaluating the work done by the Examiner. This contributes to an atmosphere of paranoia which leads to generation of dubious rejections by Examiners.

By placing the emphasis on "missed rejections" the form degrades and demeans the legitimate efforts of Examiners to formulate rejections.

By the time the reviewer reaches page 11 of the form (which deals with rejections actually made), they are unlikely to have sufficient time or interest to analyze the actual rejections made.

My experience with Examiners is that they make a sufficient number of rejections of various statutory types (112; 101; 102 and 103) in nearly every case.

It is these actual rejections made by Examiners which should be the primary focus of quality review.

Only in those cases where a specific rejection type (e.g. 103 or 101) is not made should reviewers be permitted to suggest potential rejections according to the relevant section of 35 U.S.C.

The way to achieve this goal is simple:

- 1) Reorganize the review form so that the reviewer must relate to rejections actually made first (current form pages 11-21 first);
- 2) Add an instruction section explaining to the reviewer that their job is to support the Examiner, not replace the Examiner, so that they should only suggest new rejections based on a specific section of 35 U.S.C. for a claim (or claims) not rejected according to that section; and
- 3) Present current form pages 1-10 of the review to facilitate item (2).

Current form pages 22 to 23 are extremely important and should be integrated into item 1 so that the reviewer evaluates not only the Examiner's initial rejection, but the Applicant's response, and how the Examiner relates to it, in an integrated manner. This contributes much more to the review process than independent searching and analysis by the reviewer.

In addition, the Office may wish to consider making internal review part of the public record.

Thank you for consideration of these remarks.

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