Patent Public Advisory Committee
Quarterly Meeting

After Final Programs

Dan Sullivan
Director, Technology Center 1600

Jerry Lorengo
Director, Technology Center 3700

February 1, 2018
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Overview

• Recap of After Final programs
• After Final program statistics
Traditional After Final Practice

• A response filed under 37 CFR §1.116
• Can include remarks, amendments or both
• Option to request an interview consistent with MPEP 713
• Examiners make determination whether or not to enter amendments
After Final Consideration Pilot (AFCP) 2.0*

- A response filed under 37 CFR §1.116, which includes:
  - a request for consideration under the pilot, and
  - an amendment to at least one independent claim that does not broaden the scope of the independent claim in any aspect
- Authorizes additional time for examiners to search and/or consider responses after final rejection, and to schedule and conduct an interview
- Examiners use their professional judgement to decide whether the response can be fully considered under the program

*Extended through September 30, 2018
Pre-Appeal

• A request for a panel of examiners to formally review the legal and factual basis of the rejections prior to the filing of an appeal brief
  – Must file the request with the filing of a notice of appeal in compliance with 37 CFR 41.31 and before filing of an appeal brief
  – Arguments may not exceed five pages
  – Request may not include amendments

• Consideration by the panel of the merits of each ground of rejection for which appeal has been requested

• Based upon panel outcome, a written decision is issued as to the status of the application, with a determination if an issue for appeal is present in the record
Post Prosecution Pilot (P3)*

- A response filed under 37 CFR §1.116, which included:
  - P3 request form with a statement that the applicant was willing and available to participate in a conference with a panel of examiners,
  - no more than five pages of arguments, and
  - optionally, a non-broadening claim amendment

- Submissions were reviewed by a panel consisting of the examiner of record, the examiner’s supervisor and a third party having expertise in the issue to be considered

- Applicant was informed of the panel’s decision in writing, with one of three outcomes indicated:
  - Final Rejection Upheld
  - Allowable Application
  - Reopen Prosecution

*Ran from July 11, 2016 through January 12, 2017
Submissions were limited to 200 per Technology Center
AFTER FINAL PROGRAM OUTCOMES

July 11, 2016 - January 12, 2017

- Traditional AF: 36% Rejections Maintained, 4% Reopen Prosecution, 61% Allowance/Quayle
- AFCP 2.0: 26% Rejections Maintained, 1% Reopen Prosecution, 72% Allowance/Quayle
- PreAppeal*: 24% Rejections Maintained, 7% Reopen Prosecution, 69% Allowance/Quayle
- P3: 25% Rejections Maintained, 12% Reopen Prosecution, 63% Allowance/Quayle
- AFCP 2.0 Considered: 38% Rejections Maintained, 2% Reopen Prosecution, 60% Allowance/Quayle

*Panel decision
SUBSEQUENT RCE FILING

July 11, 2016-January 12, 2017
**TIME INVESTMENT**

July 11, 2016-January 12, 2017

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Questions and Comments

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