Patent Public Advisory Committee Quarterly Meeting

Patent Examination Quality

Greg Vidovich  
Associate Commissioner for Patent Quality

Martin Rater  
Chief Statistician, Office of Patent Quality Assurance

November 8, 2018
Customer Perceptions

# of Customers citing quality as Good/Excellent for every customer that reported quality as Poor/Very Poor

Source: Semi-Annual External Quality Survey – FY18Q4
Customer Perceptions

Overall Examination Quality by Perceived Change in Quality

<table>
<thead>
<tr>
<th>Quality</th>
<th>Direction</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good/Excellent</td>
<td>Improved</td>
<td>14%</td>
</tr>
<tr>
<td></td>
<td>Stayed the Same</td>
<td>35%</td>
</tr>
<tr>
<td></td>
<td>Declined</td>
<td>2%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>51%</strong></td>
</tr>
<tr>
<td>Fair</td>
<td>Improved</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>Stayed the Same</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td>Declined</td>
<td>7%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>42%</strong></td>
</tr>
<tr>
<td>Poor/Very Poor</td>
<td>Improved</td>
<td>0%</td>
</tr>
<tr>
<td></td>
<td>Stayed the Same</td>
<td>3%</td>
</tr>
<tr>
<td></td>
<td>Declined</td>
<td>4%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>7%</strong></td>
</tr>
</tbody>
</table>

Source: Semi-Annual External Quality Survey – FY18Q4
The 103 rejections were found to have the highest odds ratio against Overall Examination Quality. That is, if a respondent rated the 103 rejections to be correct “most/all the time”, the respondent is 4.47 times more likely to rate the Overall Examination Quality as good/excellent.
Office Action Characteristics

% Non-Final and Final Office Actions with Type of Rejection Made

- 35 USC §101: 16%
- 35 USC §112(a): 13%
- 35 USC §112(b): 30%
- 35 USC §102: 33%
- 35 USC §103: 76%
- Non-Statutory Double Patenting: 12%

Source: OPQA Random Sample of 14,270 Office Actions

The 103 rejections were found to have the highest odds ratio against Overall Examination Quality. That is, if a respondent rated the 103 rejections to be correct “most/all the time”, the respondent is 4.47 times more likely to rate the Overall Examination Quality as good/excellent.
Application Quality Perceptions

To what extent did applicants and/or their agents/attorneys facilitate high-quality patent prosecution with respect to:

- Clarity/Completeness of Specifications: 69%
- Clarity of Claims: 59%
- Claims Capture Concept of Invention: 56%
- Art Cited in IDS is Material to Patentability: 42%
- Claims Vary Reasonably in Scope from Broad to Narrow: 62%

Source: Semi-Annual Internal Quality Survey – FY18Q4
Perceived Change in Quality: FY17-FY18

<table>
<thead>
<tr>
<th>Category</th>
<th>Net % Change in Customer Perceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chemical</td>
<td>2%</td>
</tr>
<tr>
<td>Electrical</td>
<td>1%</td>
</tr>
<tr>
<td>Mechanical</td>
<td>3%</td>
</tr>
<tr>
<td>Overall</td>
<td>2%</td>
</tr>
</tbody>
</table>
OPQA Quality Reviews

Data-Driven Opportunities for Improvement

<table>
<thead>
<tr>
<th>Top Issues Raised by OPQA</th>
<th>Corrective Actions Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Improper 35 USC §103 Rejections</td>
<td>• Corps-wide training conducted</td>
</tr>
<tr>
<td>2. Improper 35 USC §102 Rejections</td>
<td>• Corps-wide training conducted</td>
</tr>
<tr>
<td>3. Omitted 35 USC §112(b) Rejections</td>
<td>• 112 training scheduled for FY19</td>
</tr>
</tbody>
</table>

Key Finding
Making 35 USC §101 Eligibility Rejections
• 16% of non-final and final rejections contained a 35 USC §101 rejection
• Volume of 35 USC §101 rejections made, relative to total rejections made, has declined by nearly 25% since issuance of Berkheimer Memo in April 2018.

Source: OPQA Random Sample of 14,270 Office Actions
Compliance: 35 USC §101

- Non-Final Rejection: 95.8%
- Final Rejection: 96.5%
- Allowance: 98.2%
- All Actions: 96.7%
Compliance: 35 USC §112

- Non-Final Rejection: 90.6%
- Final Rejection: 92.6%
- Allowance: 95.9%
- All Actions: 92.8%
Compliance: 35 USC §102

- Non-Final Rejection: 93.1%
- Final Rejection: 95.5%
- Allowance: 97.7%
- All Actions: 95.1%
Compliance: 35 USC §103

- Non-Final Rejection: 89.0%
- Final Rejection: 88.2%
- Allowance: 98.4%
- All Actions: 91.8%
Preventive/Corrective Actions

- **32,390** hours of technical training provided to examiners by technology experts
- **5,288** hours of examination practice and procedure training provided to 225 external stakeholders
- **15,008** hours of refresher class training provided to examiners to enhance skills in procedural and legal topics
  - Most Popular Topics:
    - 35 U.S.C. 112(a), Written Description
    - Double Patenting
    - Appeal Practice
    - 35 U.S.C. 112(a), Enablement
    - Search Strategy
- **3,988** hours of Quality Chats, covering 10 topics and attended by 7,976 examiners
Questions and Comments

patentquality@uspto.gov
Questions and Comments

Greg Vidovich
Associate Commissioner for Patent Quality
(571) 272-4415
Greg.Vidovich@USPTO.GOV

Martin Rater
Chief Statistician, Office of Patent Quality Assurance
571-272-5966
Martin.Rater@USPTO.GOV