Patent examination quality

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Chief Statistician for Patent Quality
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Measuring patent quality at the USPTO

- Reviews conducted by the Office of Patent Quality Assurance
- Customer perceptions
- Examiner perceptions
- Process indicators
Statutory compliance

Rejections (both non-final and final) and allowances are reviewed for statutory compliance by evaluating whether the office action made the correct determinations for every pending claim based on the four patentability statutes:

- 35 U.S.C. §101;
- 35 U.S.C. §112;
- 35 U.S.C. §102; and

Every rejected claim in an office action is reviewed to ensure that the rejection of the claim was proper for each statute under which the claim is rejected. Rejections, at a minimum, must correctly identify the claim and relevant statute and set forth sufficient evidence to put a person skilled in the art on notice as to why the claim is unpatentable. Additionally, every claim in an office action is evaluated for rejections that should have been made under a statutory basis (“omitted rejections”).
Frequency of rejections made

% 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
Statutory compliance

<table>
<thead>
<tr>
<th>Act</th>
<th>FY17 Compl.</th>
<th>FY18 Compl.</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>35 USC §102</td>
<td>94.5%</td>
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<td>35 USC §103</td>
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<td>35 USC §101</td>
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<td>96.8%</td>
<td>96.5%</td>
<td>96.8%</td>
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</table>

Legend:
- Corps: FY17
- Corps: FY18
Customer perceptions of overall examination quality

<table>
<thead>
<tr>
<th>Year</th>
<th>Good or Excellent</th>
<th>Poor or Very Poor</th>
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</thead>
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<tr>
<td>FY09</td>
<td>28%</td>
<td>72%</td>
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<tr>
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<tr>
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</tr>
<tr>
<td>FY18</td>
<td>51%</td>
<td>49%</td>
</tr>
</tbody>
</table>
Perceptions about correctness

- 35 USC §102 Rejections: Rarely 3%, Some of the time 4%, Most of the time 69%
- 35 USC §103 Rejections: Rarely 3%, Some of the time 4%, Most of the time 46%
- 35 USC §112(a) Rejections: Rarely 3%, Some of the time 4%, Most of the time 62%
- 35 USC §112(b) Rejections: Rarely 3%, Some of the time 4%, Most of the time 69%
- 35 USC §101 Rejections: Rarely 3%, Some of the time 4%, Most of the time 30%
Perceptions about clarity

- 35 USC §102 Rejections: 82% rarely, 17% some of the time, 1% most of the time
- 35 USC §103 Rejections: 54% rarely, 40% some of the time, 6% most of the time
- 35 USC §112(a) Rejections: 71% rarely, 23% some of the time, 6% most of the time
- 35 USC §112(b) Rejections: 77% rarely, 18% some of the time, 5% most of the time
- 35 USC §101 Rejections: 37% rarely, 38% some of the time, 25% most of the time
Perceptions about consistency

35 USC §102 Rejections
- Rarely: 74%
- Some of the time: 20%
- Most of the time: 2%

35 USC §103 Rejections
- Rarely: 56%
- Some of the time: 38%
- Most of the time: 6%

35 USC §112(a) Rejections
- Rarely: 65%
- Some of the time: 26%
- Most of the time: 6%

35 USC §112(b) Rejections
- Rarely: 70%
- Some of the time: 22%
- Most of the time: 6%

35 USC §101 Rejections
- Rarely: 30%
- Some of the time: 39%
- Most of the time: 31%
Key drivers of perceptions

Odds ratio of correctness of rejections against overall quality

- 35 USC §103 Rejections - Correctness: 4.47
- 35 USC §102 Rejections - Correctness: 4.30
- 35 USC §101 Rejections - Correctness: 3.01
- 35 USC §112(b) Rejections - Correctness: 2.88
- 35 USC §112(a) Rejections - Correctness: 2.85

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%
Corrective and preventive actions in FY18

- **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
  - 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