The role of the patent examiner

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August 8, 2019
Topics to be covered

- How examiners are trained
- How productivity is measured
- How examiners are awarded for their work
How examiners are trained

• Several training programs offered by the Office of Patent Training (OPT):
  – New examiner training
  – Legal, practice & procedure training
  – Technical training
  – Corps-wide training
New examiner training

- USPTO’s Patent Training Academy (PTA) provides entry-level examiners an in-depth review of U.S. statutes and rules pertaining to patent examination.
- Classroom studies include exercises and coursework focused on patent examination practice and procedures, automation tools, soft skills, and technical training.
- Two-phase, 12-month training program
Legal, practice & procedure training

• Examiner refresher training program
  – Enhances examination knowledge and skills in procedural and legal topics

• Master class training program
  – Delves deeper into specific topics touched on in refresher training

• Patent Quality Chats
  – Webinars that target a component(s) of a larger procedural or legal concept

• Legal lecture series
  – Based on major court decisions and USPTO policies

• Patent Law and Evidence course
  – Covers authoritative court decisions on statutory issues and the handling of evidence during examination
Technical training

• Patent Examiner Technical Training Program (PETTP)
  – Scientists, engineers, and other technology experts volunteer their time and travel expense to speak with USPTO employees to provide relevant technical training and expertise to patent examiners.

• Site Experience Education Program (SEE)
  – Designed to provide patent examiners with an opportunity to visit organizations and learn about the state of the art technology developments.
Corps-wide training

• Training provided to the entire examining corps on significant updates to examination practice and procedures due to case law or administrative policy.

• Developed collaboratively by the Office of Patent Training (OPT), the Office of Patent Legal Administration (OPLA), and Patent Operations,

• FY19 corps-wide training topics:
  – Subject matter eligibility training
  – Examining computer-implemented functional claim limitations for compliance with 35 U.S.C. 112
  – Claim interpretation
  – 35 U.S.C. 112(a) written description for design examiners
  – Restriction
Examiner training plans

• Each examiner is allotted up to 25 hours in FY 2019 to attend elective training that falls within the following categories:
  – Legal, policy and procedure training
  – Technical training
  – Automation training
  – Leadership training

• Mandatory training does not count toward the 25-hour allotment.
Training through career advancement

• The examiner performance appraisal plan requires additional competencies as examiners become more senior.

• In particular, to achieve the senior position of primary examiner, an examiner must complete the Signatory Authority Program.
  – During this nearly two-year program, the examiner's work is reviewed and evaluated to determine if the examiner should be permanently delegated the independent authority to sign all actions.
Training through career advancement, cont.

• While not training per se, successfully completing the Signatory Authority Program is a foundational component of an examiner’s career.
  – Independently signing an Office Action represents the position of the USPTO at that point in time.
  – It is the culmination of many years – typically at least five years – of training and preparation.
  – It is often a stepping stone to training and mentoring of junior examiners.
Training on a regular basis

• The examiner’s performance appraisal plan (PAP) includes a critical element focusing on quality, which sets forth what is required of examiners, at various grade levels, with respect to the quality of submitted work products.

• All examiner work products must be reviewed, approved, or authored by someone with signatory authority, which requires a demonstration of the legal and technical competencies of patent examination in accordance with the examiner’s PAP.
Training on a regular basis, cont.

• **Quality Enhancement Meeting (QEM)**
  – Examiners meet on a routine or as-needed basis to cover a particular topic or area of interest
    • Can serve as just-in-time training to supplement corps-wide training on policy or legal changes (e.g. recent 101 guidance)
  – Format can be either examiner-led meetings or discussions coordinated by examiners’ supervisor
    • Opportunities for direct collaboration and knowledge exchange between examiners
Examiner Productivity
How productivity is measured

• An examiner’s production goal achievement in a given period depends on:
  – Examining time or the number of hours spent on examination
  – Calculated production hours or the amount of work produced by the examiner during the period
How production hours are calculated

• Production hours are primarily based on:
  – Examiner’s grade level
    • Lower-graded employees (typically less-experienced, newer employees) are provided more time to complete office actions
    • Higher-graded employees are more senior with more experience
    • The examiner’s grade level is identified by a “position factor” which is included in the productivity equation
  – The production credit or count value associated with the office action that was submitted, and
  – The expectancy (i.e. time) assigned to the application (based on its technology) for which the office action was completed
Application expectancy (i.e., time)

- The application’s expectancy is the amount of time in which the examiner is expected to prosecute the application from the first action on the merits (FAOM) to application disposal.
  
  - Expectancy is based on the technology claimed in the application.
  
  - In general, more complex technologies have more time associated with them.
## Distribution of production credit*

<table>
<thead>
<tr>
<th>Action Type</th>
<th>Counts</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First Action On the Merits (FAOM)</strong></td>
<td>1.25 counts</td>
<td>Most credit available at FAOM stage to allow for reading the application and initial search</td>
</tr>
<tr>
<td><strong>Final Rejection</strong></td>
<td>0.25 counts</td>
<td>Prosecution-dependent (i.e. allowance or abandonment may follow FAOM)</td>
</tr>
<tr>
<td><strong>Disposal</strong></td>
<td>0.50 or 0.75 counts</td>
<td>Lesser count value if a final rejection has been made</td>
</tr>
<tr>
<td><strong>TOTAL CREDIT</strong></td>
<td>2.0 counts</td>
<td>Maximum associated with each application from FAOM to disposal</td>
</tr>
</tbody>
</table>

No production credit is available for written restrictions, non-final actions after the FAOM, 2nd or subsequent finals rejections, or advisory actions.

* For simplicity, only the count values for non-RCE applications are illustrated.
Examiner Awards
Examiner awards

• The USPTO’s patent examiner awards provide a cost-effective approach to increasing examiner productivity and timeliness that reduces the USPTO’s need to hire additional examiners.

• This provides a cost savings to those that utilize the patent system and therefore benefits the American public who fund the USPTO through user fees.
Production awards

• Gainsharing Productivity Award

  – Based on productivity over a complete fiscal year
  – Award amount is a percentage of annual base salary dependent upon percent achievement of the goal.

<table>
<thead>
<tr>
<th>Achievement of goal</th>
<th>Amount of current base salary</th>
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<tbody>
<tr>
<td>110-114%</td>
<td>2%</td>
</tr>
<tr>
<td>115-119%</td>
<td>3%</td>
</tr>
<tr>
<td>120-124%</td>
<td>4%</td>
</tr>
<tr>
<td>125-129%</td>
<td>5%</td>
</tr>
<tr>
<td>130-134%</td>
<td>6%</td>
</tr>
<tr>
<td>135% or more</td>
<td>7%</td>
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</table>
Production awards, cont.

• Special Achievement Award (SAA)
  – Requires 110% productivity over a period of four consecutive quarters
  – 3% of annual base salary
Production awards, cont.

- Examiner salary cost per **award production unit** in fiscal year 2018 was approximately **$600**.
  - Approximately 7.5% of the total production units were from production awards.
  - Without awards, the USPTO would need over **700 additional examiners** on board to achieve the same production, resulting in an added annual cost of approximately **$58 million** beyond what it would have cost to pay the production-based awards.

- Examiner salary cost per **non-award production unit** in fiscal year 2018 was approximately **$1,600**.
Docket management award

• Docket management (DM) is a critical element of examiners’ performance appraisal that requires conducting examining activities within set timeframes.

• DM award has three tiers of performance criteria and is assessed quarterly.
Docket management award, cont.

- Three tiers of performance criteria, assessed quarterly:
  - For each escalating tier, there are more requirements for examiners to be more timely in completing their work.

<table>
<thead>
<tr>
<th>Level of performance</th>
<th>Amount of current base salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entry Tier</td>
<td>.25%</td>
</tr>
<tr>
<td>Tier 1</td>
<td>.5%</td>
</tr>
<tr>
<td>Tier 2</td>
<td>.75%</td>
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Examiners who earn DM awards, particularly in the top tier, perform better in pendency throughout examination.

- Examiners who earned Tier 2 DM awards had a 60% lower turnaround time for turning in amendments as compared to non-award recipients.
- Examiners who earned Tier 1 DM awards had a 28% lower turnaround time for turning in amendments compared to non-award recipients.

All statistics above are based on FY18 data.
Questions and comments

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