Patents and PTAB Collaborations

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Patent Public Advisory Committee quarterly meeting
Patents & Patent Trial and Appeal Board (PTAB) collaborations

• Patents & PTAB collaborate to help ensure consistency between Patents & PTAB and for continuous quality improvement

• Areas of collaboration include
  – Training
  – Stakeholder engagement
  – Data Studies
Training collaborations

• Revised subject matter eligibility guidance
  – Patents and PTAB engaged regularly on development and implementation of the revised subject matter eligibility guidance

• Examiner Quality Chat Series
  – Patent Quality and PTAB are partnering on delivering training to examiners via the Patent Examiner Quality Chat Series
  – Trainings are designed to build examiner’s skill set and knowledge for more successful outcomes at appeal
Training collaborations

– Two trainings were delivered in FY2019 and one in FY2020
  • Providing rationale in obviousness rejections
  • Considerations that impact success in appeals (e.g. effectively supporting your position, claim interpretation, etc.)
  • Introduction to PTAB Trials

– Additional planned trainings for FY2020 include
  • AIA trials – Institution standards, 35 U.S.C. 325(d)
  • Precedential Opinion Panel (POP) Process
  • Precedential and informative decisions
Training collaborations

• Patent Quality Chats and Boardside Chats
  – Patents and PTAB each host a webinar chat series to inform stakeholders of relevant initiatives, best practices, and to gather feedback and address questions on specific topics
  – Patent employees occasionally are featured at Boardside Chats, and vice versa, for broader outreach
  – Presentation material and videos from the chats are made available as a resource for those unable to attend the webinar
Training collaborations

• Technology Center Training
  – TCs work with PTAB to provide technology relevant training and feedback to examiners based on decisions in appeal

• Hearings
  – Patents and PTAB have partnered to allow employees to attend hearings as a way to provide education on these types of proceedings
  – PTAB invited reps from Patents to attend a Precedential Opinion Panel (POP) oral hearing (Hulu v. Sound View)
  – Examiners are now able to virtually attend PTAB oral hearings covering different technology areas
Training collaborations

• Career development opportunities
  – PTAB offers several developmental detail opportunities for patent examiners and patents employees
    • Assist Administrative Patent Judges (APJs) with the performance of their duties

• Judicial Law Clerk Program
  – In 2018, PTAB created a law clerk program modeled off the judicial clerk program used in federal courts
  – Law clerks serve a one year term
  – Current law clerk class includes 2 former patent examiners
Stakeholder collaborations

- Patents has partnered with PTAB on roadshows designed to inform stakeholders of Office updates and initiatives.
- Recent roadshows were done in partnership with AIPLA with sessions held in Seattle, Houston, and Boston.
- Topics included:
  - USPTO quality initiatives
  - Tips to improve patent quality
  - Revised subject matter eligibility guidance
  - Providing rationale in obviousness rejections
  - Overview and updates on AIA Trials and trial procedure
  - Best practices in trial proceedings
Data study collaborations

• 35 USC 325(d)
  – OPQA partnered with PTAB on a study related to 35 USC 325(d)
  – OPQA reviewed cases and collected data where the patent owner argued that reference(s) were previously considered by the examiner during prosecution

• Data consistency
  – Statisticians from Patents and PTAB are engaged in conversations on how best to collect and report out data
  – The goal is to provide consistent data, that is usable and understandable to internal and external stakeholders
Data study collaborations

• AIA trial study – prior art
  – OPQA partnered with PTAB to obtain data from AIA Trials
  – OPQA is reviewing these trials to better understand prior art trends and the prior art gap between prosecution and litigation
  – Comparing prior art trends in prosecution vs AIA trials (e.g. types of prior art and the frequency in which they are relied upon, etc.)
Questions and comments

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