

UNITED STATES
PATENT AND TRADEMARK OFFICE



Enhanced Patent Quality Initiative

PPAC - February 2016

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Topics for Discussion

- EPQI Updates
 - Clarity of the Record Pilot
 - Topic Submission for Case Studies
 - Post Grant Outcomes
 - Quality Metrics (PCT Operations agenda item)



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Evolving Programs

Focused on three implementation areas:



Data Analysis

Pillar 1

- Topic Submission for Case Studies

Pillar 2

- Clarity and Correctness Data Capture (Master Review Form or MRF)
- Quality Metrics

Examiners' Resources, Tools & Training

Pillar 1

- Automated Pre-Examination Search Pilot
- STIC Awareness Campaign
- Clarity of the Record Training
- Post Grant Outcomes

Pillar 3

- Interview Specialist

Changes to Process/Product

Pillar 1

- Clarity of the Record Pilot

Pillar 3

- Reevaluate AFCP2.0 and Pre-Appeal Conferences
- Reevaluate QPIDS
- Design Patent Publication Quality

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Patent Quality Pillars



Pillar 1 – Excellence in Work Products



Pillar 2 – Excellent in Measuring Patent Quality



Pillar 3 – Excellence in Customer Service



Clarity of the Record Pilot

Changes to Process/Product

Pillar 1

- **Clarity of the Record Pilot**

Pillar 3

- **Reevaluate AFCP2.0 and Pre-Appeal Conferences**
- **Reevaluate QPIDS**
- **Design Patent Publication Quality**



This program is to develop best examiner practices for enhancing the clarity of various aspects of the prosecution record and then to study the impact on the examination process of implementing these best practices.



Purpose and Goals

- Enhance the clarity of the record
- Provide deeper understanding of the Office's positions
 - During prosecution
 - Leading to compact prosecution
- Greater certainty
 - Reasons of allowance
 - Scope of protection afforded at the time of patenting

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Purpose and Goals

- Identify best practices
- Find the correct balance for appropriate recordation
- Use data/feedback to assist with development of Clarity and Correctness Data Capture Form (Master Review Form - MRF)
- Analysis available for use with post grant outcomes

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Clarity of the Record Pilot – Background



- Providing clarity in the prosecution record has long been a critical aspect of the job of patent examiners
- With the changing IP landscape, there is a need for **additional clarity of an examiner's analysis**

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Clarity of the Record Pilot – Areas of Focus



- Enhanced documentation of claim interpretation
- More precise reasons for allowance
- More detailed interview summaries
- Pre-search interview at examiner's option

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Clarity of the Record Pilot – Overview



- Partnered with POPA to develop Pilot
- Pilot runs for 12 biweeks (~6 months)
- Pilot will not change the criteria for examiner PAPs

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Clarity of the Record Pilot – Participants



- Examiners
 - 30 to approx. 150 participants
 - GS 11-15, with at least two years of experience
 - Randomly selected
- Pilot SPEs
 - Approx. 4 per TC
 - Cannot be Pilot SPE for their own examiners

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Clarity of the Record Pilot – Participant Duties



Examiners

- Attend Pilot-specific training and quality enhancement meetings (QEMs)
- Enhance clarity of Office actions for selected cases
- Record non-production time spent enhancing clarity



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Clarity of the Record Pilot – Participant Duties

Pilot SPEs

- Manage Pilot-specific QEMs and group training
- Review cases using a modified Clarity and Correctness Data Capture (CCDC/MRF) subset
- Provide individual feedback and assistance



Clarity of the Record Pilot – Evaluation



- Statistical data gathered from:
 - Reviews of Pilot and control cases using the modified CCDC/MRF subset
 - Times for enhanced recordation claimed by examiners
 - Surveys of Pilot examiners and managers
- Feedback received during QEMs and group-training sessions



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Topic Submission for Case Studies Pilot



Data Analysis

Pillar 1

- **Topic Submission for Case Studies**

- Seeks the assistance of our stakeholders
- Federal Register Notice (December 21, 2015) initiated the program
- Submissions will be accepted through February 12, 2016
- This program will be carried out by the Office of Patent Quality Assurance (OPQA)



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Program Overview

- Invites stakeholders to submit patent quality-related topics they believe should be the subject of a case study
- Allows the USPTO to broaden the scope of topics that it considers for study by leveraging stakeholder experience
- The USPTO will perform a case study on a selected topic as a pilot



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Program Goals

- Use study results to better understand and enhance quality of USPTO work products and processes by:
 - Identifying quality issues as well as examples of examination best practices
 - Improving patent work products and examination processes; and
 - Revealing areas where further training may be need



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What is a Case Study?

- Review of a single quality-related issue
- Distinct from standard OPQA reviews
- Tailored to the selected issue



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Submissions

- Can be any topic affecting the USPTO's ability to issue high-quality patents
- Should be more than a mere statement of an issue or problem
- Should propose a specific correlation or trend for study
 - If possible, suggest a methodology for its investigation
 - Explain how the results of the case study could be used to improve patent quality

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Submission Format

- Title
- Proposal for Study
 - Identify potential trends or correlations
 - If possible, suggest methodology for investigation
- Explanation
 - Need
 - Impact on USPTO and patent system
- ❖ **Do not include any application or examiner specific information**
 - ❖ **Outside the scope of this study**



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Example Submission

Title: "Pre-first action interviews and prosecution quality"

Proposal for Study: Do first action interviews result in a shorter time-to-issuance in applications that mature into patents?

Explanation: Pre-first action interviews can minimize claim misinterpretation, disagreements over teachings of art, etc.

- Resolving these issues at the outset may focus prosecution
- This might lead to a shorter overall prosecution
- *Suggested Methodology:* USPTO should study patented applications to determine any correlation between time-to-issuance and pre-first action interviews.

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How to Submit Topics

- By email to:
TopicSubmissionForCaseStudies@uspto.gov
- Submit on or before **February 12, 2016**



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Further Information

- Topic Submission for Case Studies Webpage:
<http://www.uspto.gov/patent/initiatives/topic-submission-case-studies-pilot-program>
- Enhanced Patent Quality Initiative Webpage:
<http://www.uspto.gov/patent/initiatives/enhanced-patent-quality-initiative>



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Post Grant Outcomes

Examiners' Resources, Tools & Training

Pillar 1

- **Automated Pre-Examination Search Pilot**
- **STIC Awareness Campaign**
- **Clarity of the Record Training**
- **Post Grant Outcomes**

Pillar 3

- **Interview Specialist**



This program is to develop a process for providing post-grant outcomes from sources, such as the Federal Circuit, District Courts, Patent Trial and Appeal Board (PTAB), and Central Reexamination Unit (CRU), to the examiner of record and the examiners of related applications.



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Objectives of Post Grant Outcomes

The purpose of this program is to learn from all post grant proceedings and inform examiners of their outcomes.

Propose **three** objectives to accomplish this:

- 1. Enhanced Patentability Determinations in Related Child Cases**
 - Providing examiners with prior art submitted during PTAB post grant proceedings
- 2. Targeted Examiner Training**
 - Data collected from the prior art submitted and examiner behavior will provide a feedback loop on best practices
- 3. Examining Corps Education**
 - Provide examiners a periodic review of post grant outcomes focusing on technology sectors

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Objective 1 - Enhanced Patentability Determinations in Related Child Cases

- Identify those patents being challenged at the PTAB under the AIA Trials that have pending related applications in the Patent Corps
- Provide the examiners of those pending related applications access to the prior art submitted with the IPR petition



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Objective 2 – Targeted Examiner Training

- Data collected from the prior art submitted and resulting examiner behavior will provide a feedback loop on best practices
- Educate examiners
 - Prior art search techniques
 - Sources of prior art beyond what is currently available
 - Claim interpretation



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Objective 3 – Examining Corps Education

- Leverage results of all post grant proceedings to educate examiners on the process and results
 - Provide examiners a periodic review of post grant outcomes focusing on technology sectors
 - Utilize the proceedings to give examining corps a fuller appreciation for the process



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Post Grant Outcomes Summary

- Learn from the results of post grant proceedings
- Shine a spotlight on highly relevant prior art uncovered in post grant proceedings
- Enhance patentability of determination of related child cases
- Build a bridge between PTAB and the examining corps



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Next Steps

- Proposed Pilot Program
 - Educate examiners on access to PTAB Trial Proceedings
 - IT routing being considered for future pilots
 - Monitor the usage and effectiveness of associated references
 - Develop targeted training based on trends
 - Projected to launch in Spring 2016



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Questions

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