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# Enhancing Patent 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

# 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*

- **Post-Prosecution Pilot (P3)**
- **Reevaluate QPIDS**
- **Design Patent Publication Quality**

# Topic Submission for Case Studies

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# Background

- Federal Register Notice initiated the program on December 21, 2015
- USPTO invited stakeholders to submit patent quality-related topics for study
- Submissions were accepted through February 12, 2016

| <b>Selected Topic</b>  | <b>Completion</b> |
|--|-------------------|
| 1. Compliance of rejections with 35 U.S.C. 101 Official Guidance                   | 9/30/16           |
| 2. Consistency of application of 35 U.S.C. 101 across Art Units/Technology Centers | 12/9/16           |
| 3. Use of compact prosecution when making 35 U.S.C. 101 rejections                 | 8/29/16           |
| 4. Correctness and clarity of motivation statements in 35 U.S.C. 103 rejections    | 11/23/16          |
| 5. Enforcement of 35 U.S.C. 112(a) written description in continuing applications  | 1/20/17           |
| 6. Consistent treatment of claims after May 2014 35 U.S.C. 112(f) training         | 3/24/17           |

# **Clarity and Correctness Data Capture (Master Review Form or MRF)**

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# Program Goals

- To create a ***single, comprehensive*** tool (called the Master Review Form) that can be used by all areas of the Office to ***consistently*** review final work product
- To better collect information on the ***clarity and correctness*** of Office actions
- To collect review results into a ***single data warehouse*** for more ***robust analysis***

# Federal Register Notice

- Published on March 25, 2016 and comment period closed on May 24, 2016
- Requested feedback on the Master Review Form, especially how to objectively assess quality
- Feedback was used to improve the Master Review Form

# Master Review Form

## Implementation of MRF

- MRF Version 1.0
  - OPQA Implemented November 2015
- MRF Version 2.0
  - OPQA Implemented June 2016
  - All Reviews conducted by use of MRF July 2016

# Reviews

## **FY 2015**

- Completed 7,900

## **FY 2016**

- Projected to complete 12,000
- Data now captured at TC Level

## **FY 2017**

- Projection of 18,500 Reviews

# Quality Metrics

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# Quality Metrics Redefined

## FY 2011 – FY 2015

Final Disposition Compliance

In-Process Compliance

First Action (FAOM) Review

Search Review

Quality Index Reporting (QIR)

External Quality Survey

Internal Quality Survey

Composite Score

## Moving Forward

### Product Indicators

#### Master Review Form

Capturing both correctness and clarity of examiners' final work product using uniform criteria gathered in a single database

### Process Indicators

#### Transactional QIR

Tracking the efficiency and consistency of our processes (for example, to identify "churning")

### Perception Indicators

#### Survey Results

Continuing to internally and externally poll perceptions of patent quality

Composite Score

# Product Indicators

FY 2016

## Product Indicators Master Review Form

Capturing both correctness and clarity of examiners' final work product using uniform criteria gathered in a single database

### Process Indicators

#### Transactional QIR

Tracking the efficiency and consistency of our processes  
(for example, to identify "churning")

### Perception Indicators

#### Survey Results

Continuing to internally and externally poll  
perceptions of patent quality

FY 2016 Key Product Metrics

Correctness

Clarity

# Process Indicators

**FY 2016**

Product Indicators

Master Review Form

Capturing both correctness and clarity of examiners' final work product using uniform criteria gathered in a single database

Process Indicators

**Transactional QIR**

Tracking the efficiency and consistency of our processes  
(for example, to identify "churning")

Perception Indicators

Survey Results

Continuing to internally and externally poll perceptions of patent quality

**FY 2016 Key Process Indicators**

**Reopening Prevention**

**Rework Reduction**

**Consistency of  
Decision-Making**

# Perception Indicators

**FY 2016**

Product Indicators  
Master Review Form

Capturing both correctness and clarity of examiners' final work product using uniform criteria gathered in a single database

Process Indicators  
Transactional OIR

Perception Indicators  
Survey Results

Continuing to internally and externally poll perceptions of patent quality

**FY 2016 Key Perception Indicators**

**Root Cause Analysis**

**Validation/Verification**

# **Clarity of the Record Training: Improving Clarity and Reasoning in Office Actions (ICR)**

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# Overview

- The purpose of the program is to include tips and techniques for enhancing the clarity of the record as part of ongoing substantive training
- Planned or Completed Training
  - 35 USC §112(a), (b) (completed)
  - 35 USC §101 (completed)
  - Reasons for Allowance (completed)
  - Advanced writing techniques (planned, fall 2016)
    - Clarifying complex legal analysis
    - Properly utilizing/addressing case law

# Post Grant Outcomes

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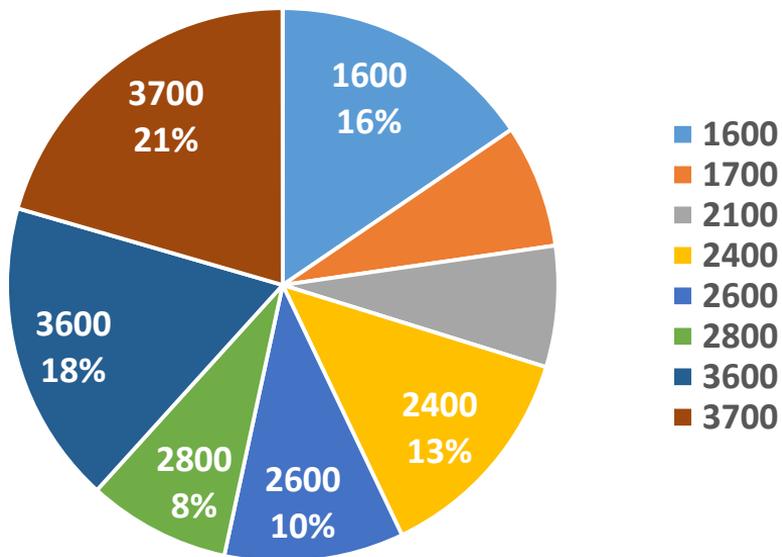
# Objectives of Post Grant Outcomes

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:
  - **Enhanced Patentability Determinations in Related Child Cases**
    - Provide examiners with prior art submitted during PTAB AIA trial proceedings
    - Other petition information, expert testimony, declarations, interpretations...
  - **Targeted Examiner Training**
    - Data collected from the prior art submitted and examiner behavior will provide a feedback loop on best practices
  - **Examining Corps Education**
    - Provide examiners a periodic review of post grant (and post examination) outcomes focusing on technology sectors

# Pilot Statistics

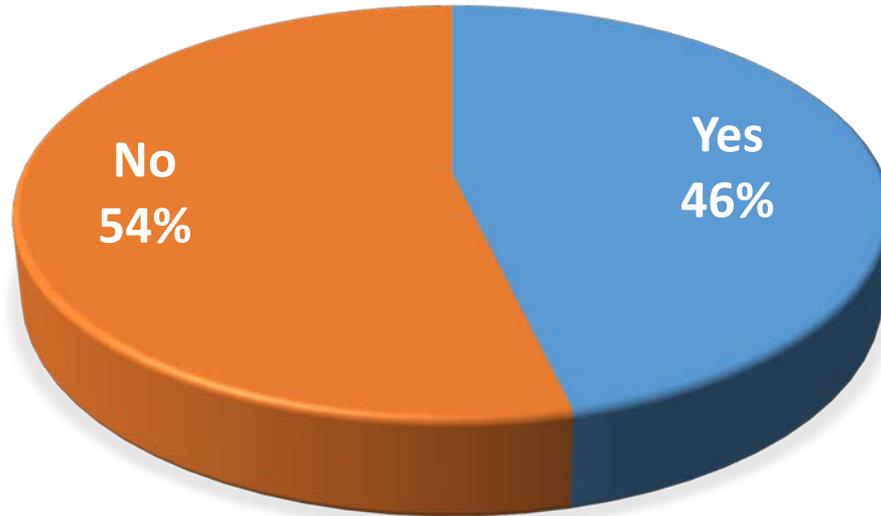
DISTRIBUTION OF PILOT APPLICATIONS  
BY TECHNOLOGY CENTER



| Technology Center  | Number of Pilot Applications |
|--------------------|------------------------------|
| 1600               | 121                          |
| 1700               | 56                           |
| 2100               | 55                           |
| 2400               | 102                          |
| 2600               | 82                           |
| 2800               | 65                           |
| 3600               | 138                          |
| 3700               | 160                          |
| <b>Grand Total</b> | <b>779</b>                   |

# Objective 1 – Pilot Statistics cont.

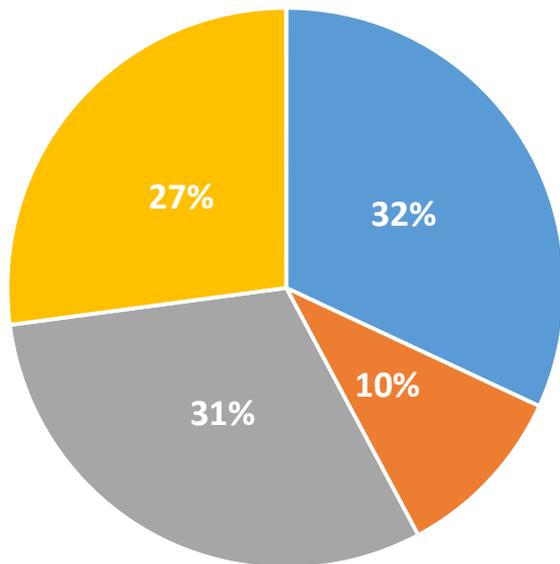
In the Office Action of the child case, did the examiner refer to any of the references cited in the AIA trial petition of the parent case?



Based on 270 Survey Responses

# Pilot Statistics cont.

If the examiner did not use any references cited in the AIA Trial Petition, why?



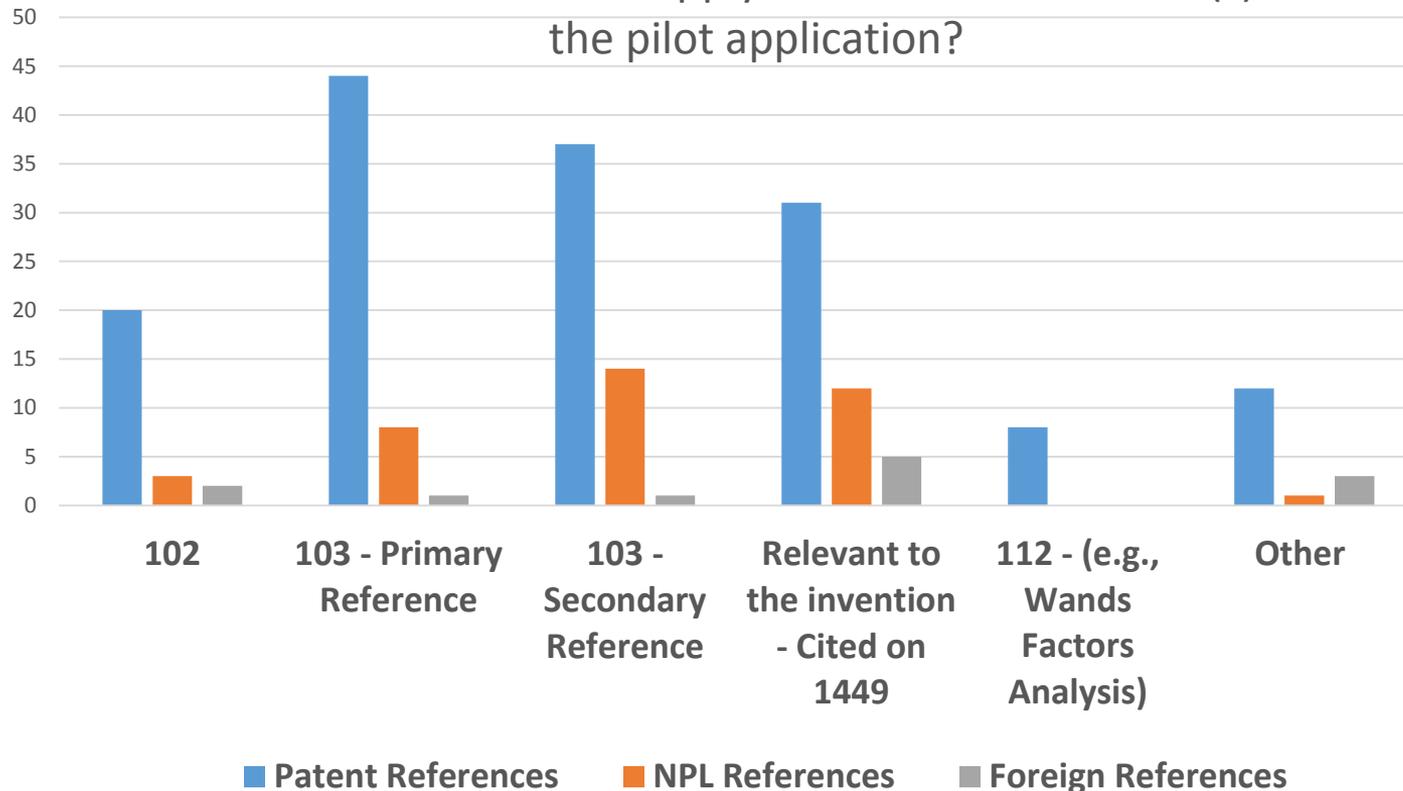
- The claims in my pilot case were substantially different from the parent case.
- I disagreed with the petitioner's analysis of the prior art and/or claims.
- I was able to find better art on my own.
- Other (please specify below)

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Based on 136 Survey Responses

# Objective 1 – Pilot Statistics cont.

How did the examiner apply the AIA Trial reference(s) in the pilot application?



Based on 112  
Survey  
Responses



# Post Prosecution Pilot (P3)

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# Overview

- Retains popular features of the Pre-appeal Brief Conference Pilot and After Final Consideration Pilot (AFCP) 2.0 programs:
  - Consideration of 5-pages of arguments after final
  - Consideration of non-broadening claim amendments after final
- Adds requested features:
  - Presentation of arguments to a panel of examiners
  - Explanation of the panel's recommendation in a written decision after the panel confers

# Post-Prosecution Pilot Duration

- Federal Register Notice initiated program on July 11, 2016
- Runs six (6) months or upon receipt of 1,600 compliant requests, whichever occurs first
  - 200 per Technology Center
- Formal comments about P3 will be received through November 14, 2016

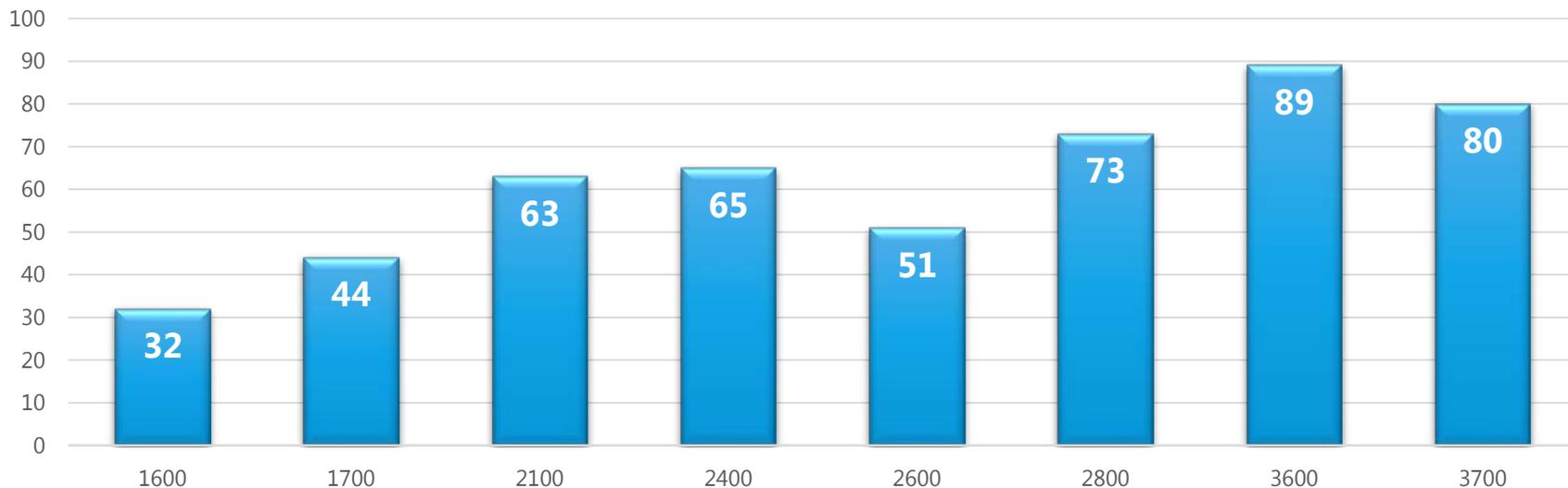
# P3 Statistics

| <b>Total Submission</b> | <b>497</b> |
|-------------------------|------------|
| Approved                | 406        |
| Defective               | 29         |
| Conference Held         | 90         |

| <b>Conference Outcomes</b> | <b>Count</b> |
|----------------------------|--------------|
| Allowed                    | 6            |
| Final Maintained           | 30           |
| Reopened                   | 9            |
| Awaiting Request           | 45           |

# P3 Statistics

SUBMISSIONS BY TC



# Clarity of the Record Pilot

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# Purpose and Goals

- Identify best practices for enhancing the clarity of the prosecution record
- 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)

# Areas of Focus

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

# Questions?

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