

## Examiner Decision Making Process

The final say for the determination of patentability resides with the Primary Examiner (MPEP §1004) with the exception when a Junior Examiner has partial signatory authority (MPEP §1005). The below illustrates decision points and who is the deciding official during the first examination, the second examination, and the appeals process:

### Decision Point: **First Examination**

During first examination:

- An examiner with signatory authority decides to reject or allow claims.
- An examiner without signatory authority recommends to reject or allow claims, and an examiner with signatory authority or SPE reviews, approves, and signs Office action.

### Decision Point: **Second Examination**

If a compliant amendment is filed, then:

- An examiner with signatory authority decides to reject or allow claims.
- An examiner without signatory authority recommends to reject or allow claims, and an examiner with signatory authority or SPE reviews, approves, and signs Office action.

### Decision Point: **Appeals Process**

If claims have been twice rejected, Applicant may appeal decision to PTAB by filing a notice of appeal and an appeal brief.

An appeal conference is held with the examiner, SPE, and an additional conferee having sufficient experience to be of assistance in the consideration of the merits of the issues on appeal. A decision is made to continue to PTAB, re-open prosecution, or allow claims.