

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 prepares an Office action in which claims are rejected or allowed, and an examiner with signatory authority or SPE reviews, approves, and signs Office action.

Decision Point: Second Examination

If a compliant response is filed, then:

- An examiner with signatory authority decides to reject or allow claims.
- An examiner without signatory authority prepares an Office action in which claims are rejected or allowed, 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. The Office makes a decision to continue to re-open prosecution, allow claims, or proceed with the appeal. If a decision is made by the Office to proceed with the appeal, the examiner prepares an examiner's answer.