

Internal Quality Survey for the United States Patent and Trademark Office

SEMI-ANNUAL REPORT FY21-Q4



Survey Reference Periods and Response Rates

	Wave Name	Survey Reference Period	Response Rate (unweighted)
1	FY13-Q2	December 2012 – February 2013	51%
2	FY13-Q4	April 2013 – June 2013	51%
3	FY14-Q2	October 2013 – December 2013	48%
4	FY14-Q4	April 2014 – June 2014	52%
5	FY15-Q2	October 2014 – December 2014	53%
6	FY15-Q4	April 2015 – June 2015	57%
7	FY16-Q2	November 2015 – January 2016	42%
8	FY16-Q4	April 2016 – June 2016	49%
9	FY17-Q2	October 2016 – February 2017	45%
10	FY18-Q2	October 2017 – December 2017	40%
11	FY18-Q4	April 2018 – June 2018	29%
12	FY19-Q2	October 2018 – December 2018	45%
13	FY19-Q4	April 2019 – June 2019	34%
14	FY20-Q2	October 2019 – December 2019	36%
15	FY20-Q4	April 2020 – June 2020	32%
16	FY21-Q2	October 2020 – December 2020	38%
17	FY21-Q4	April 2021 – June 2021	33%

The current wave is titled “FY21-Q4,” for the administration of the survey in Summer 2021.

When responding to questions on the survey, patent examiner employees were asked to refer to their experiences in the three months prior to receiving the survey. This time period is referred to as the “survey reference period”.



Methodology

- The sample for each wave was drawn from a USPTO database of patent examiner employees.
- The sample frame for FY21-Q4, the 17th wave of the Internal Quality Survey, was acquired in July 2021.
- A systematic random sample of patent examiner employees was selected. The sample size of FY21-Q4 was 815.
- Employees were emailed a web link for completing the survey. In FY21-Q4, 33% of sampled employees completed the survey.*

*Since the IQS survey inception, response rates historically ranged from 48% to 57%. Rates began trending lower in FY16-Q2 through FY19-Q2 (40-49%), FY19-Q4 through FY20-Q2 (34 & 36%), and still low through the COVID-19 pandemic (FY20-Q4 32%, FY21-Q2 38%, and FY21-Q4 33%).



Main Findings

Internal Factors:

- There was a significant increase in ratings of internal USPTO factors (training, tools, coaching) since the last administration of the survey from 2.9 to 3.9. More than half of respondents rated the factors as good or excellent. [Slides 11 & 10]
- More than half of respondents were satisfied or very satisfied with the effectiveness of coaching and mentoring (technical and practice & procedure). [Slide 9]
- Patent examiners gave the opportunities for professional development training, and its effectiveness, the lowest ratings of satisfaction relative to the opportunities for and effectiveness of other types of training. [Slides 7 & 8]
- Of the tools needed to perform their work, patent examiners were more satisfied with office action tools (e.g. OC), and application viewing tools (e.g. DAV) than search tools, and other electronic resources (e.g. MPEP, telework tools, CAT). [Slide 6]

External Factors:

- There was a significant increase in ratings of overall external factors since the last administration of the survey from 3.6 to 5.0. [Slides 16]
- More than half of respondents rated external USPTO factors (patent applicants/agents/attorneys and their interactions) as good or excellent. [Slide 15]
- Patent examiners reported the lowest level of facilitation by applicants in terms of “Art cited in IDS is material to patentability,” “Clarity of translations for foreign applications,” [Slide 13], and for “Citation to the specification and/or drawings that provide support for newly added claim limitations.” [Slide 14]

Open-ended Responses:

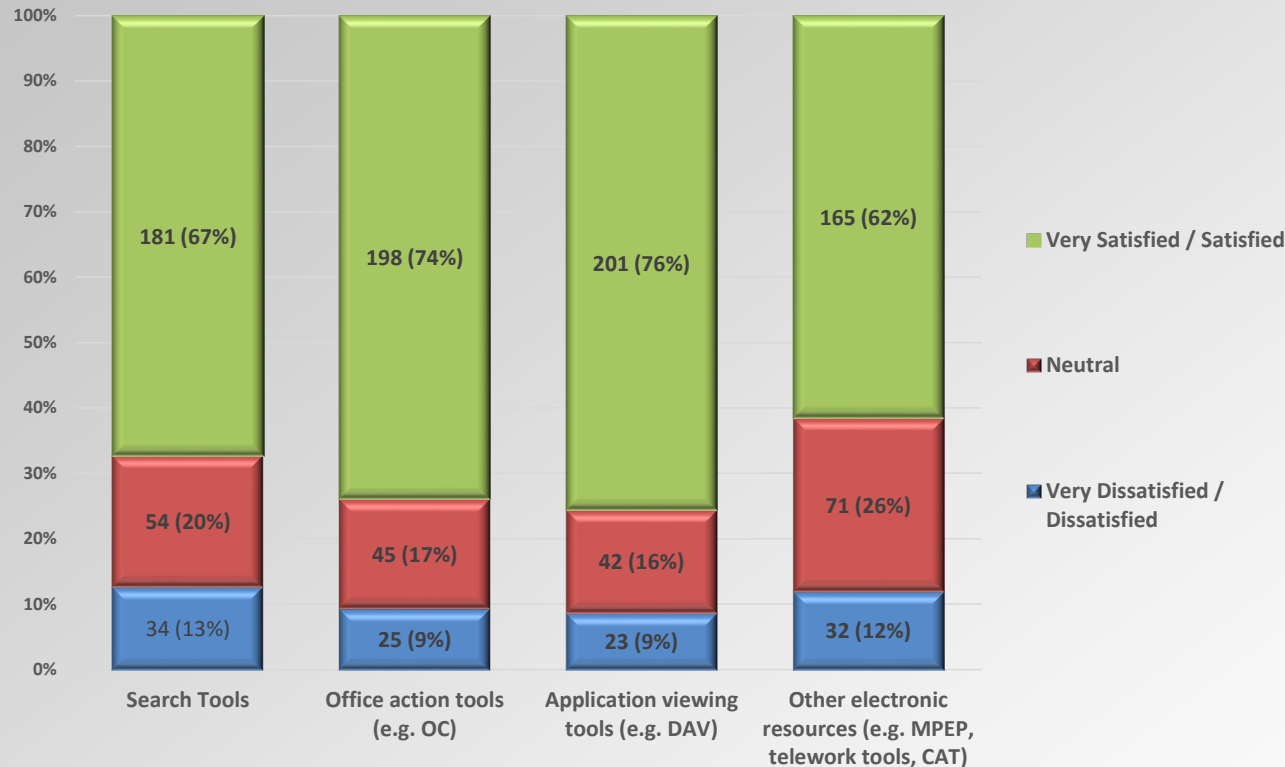
- When asked what would help them better respond to applicants' arguments to help advance prosecution, patent examiners said: 1) Improved clarity, relevance, format and length of **arguments**. 2) More **time**. 3) **Claims** clearly cited and not too broad. 4) Indicate where support for **amendments** can be found. 5) **Training** on how to respond to applicants arguments and how to draft better responses. [Slide 18]



Internal factors: Patent examiner satisfaction with USPTO tools, training, and coaching/mentoring



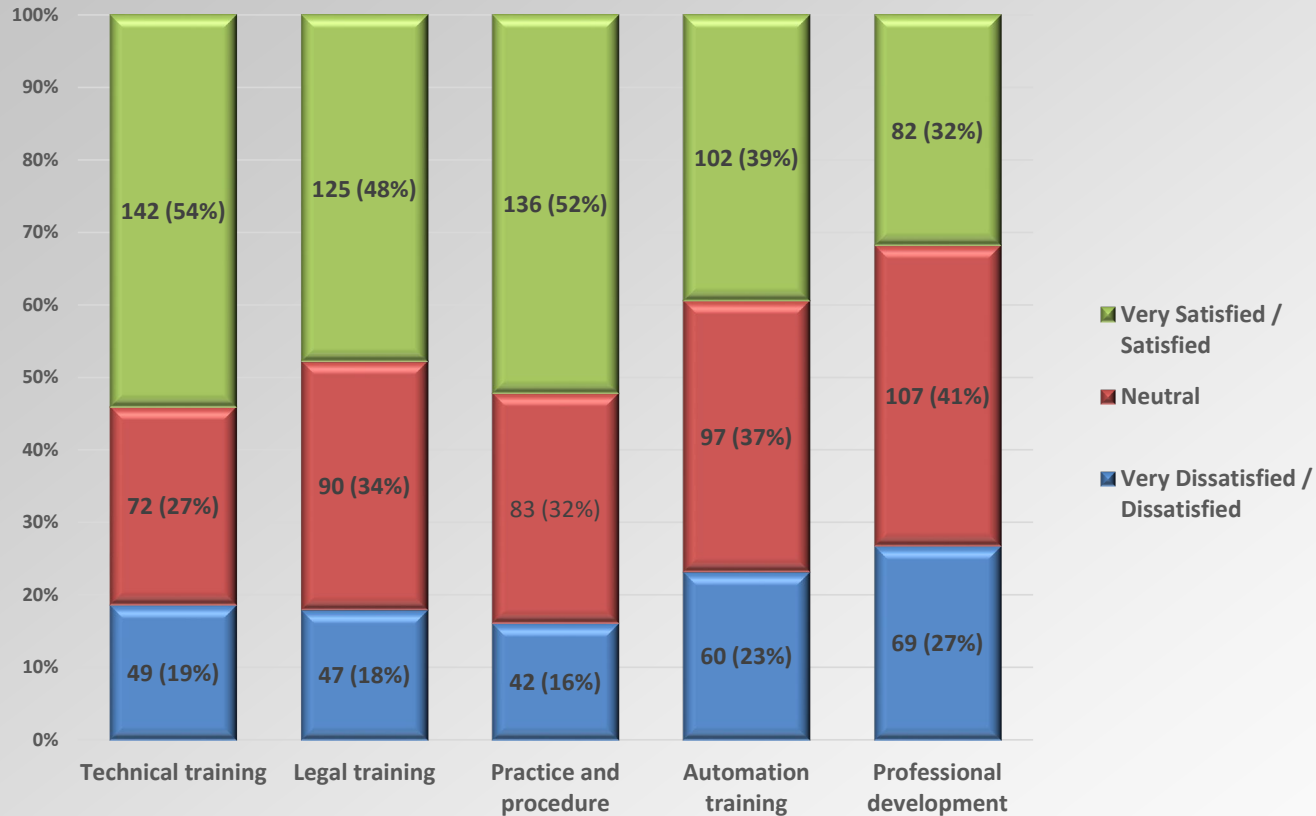
Q2: During the past quarter, please indicate your level of satisfaction with the following tools that are needed to perform your work (consider content and reliability).



During the past quarter, respondents were more satisfied with the office action tools (74%), and the application viewing tools (76%), and less satisfied with other electronic resources (62%) and search tools (67%).



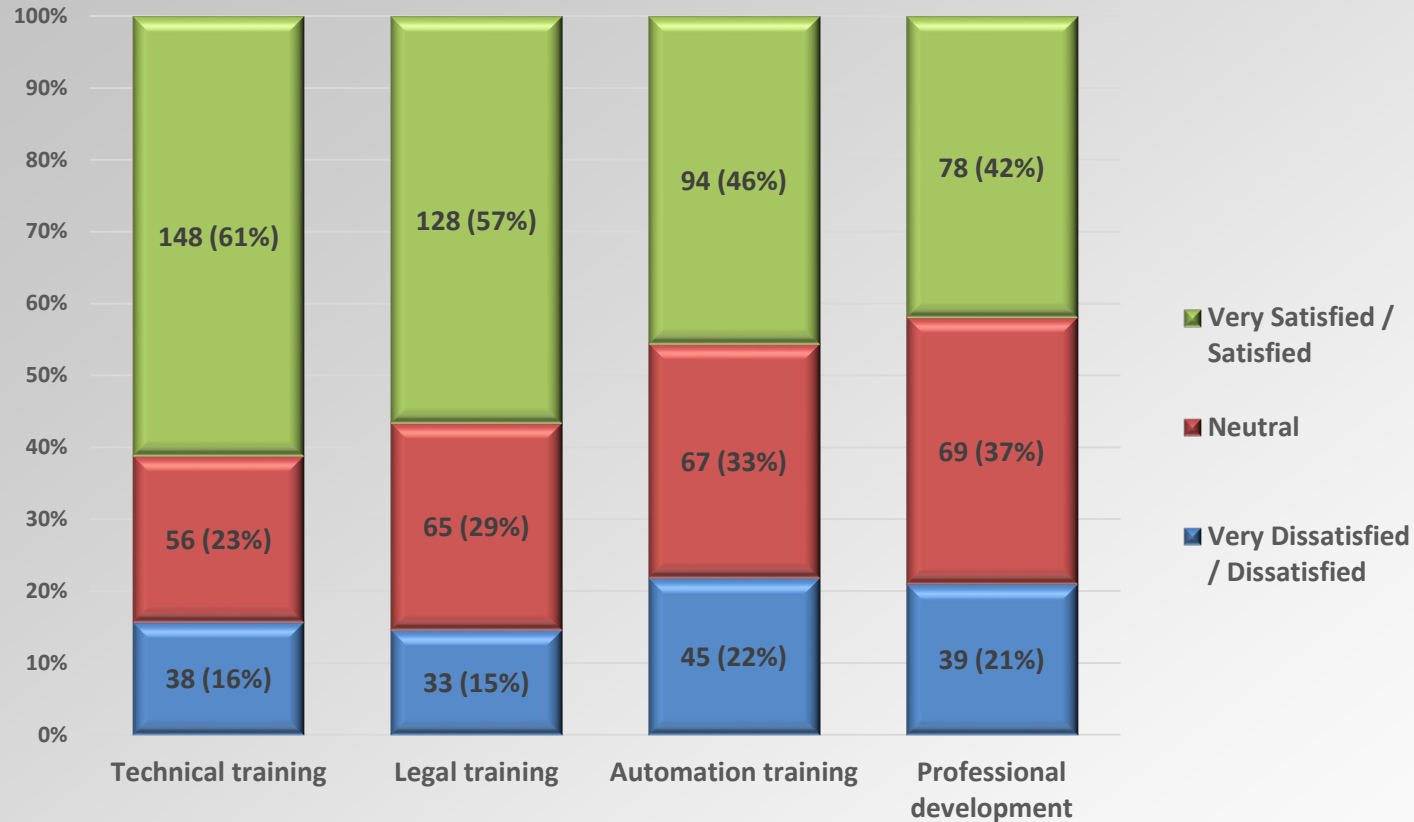
Q3: Please indicate your level of satisfaction over the past quarter with the training opportunities that have been provided to maintain/improve the quality of your work (consider the number and diversity of trainings offered).



During the past quarter, respondents were most satisfied with practice and procedure (52%), and technical training (54%). They were least satisfied with professional development (32%).



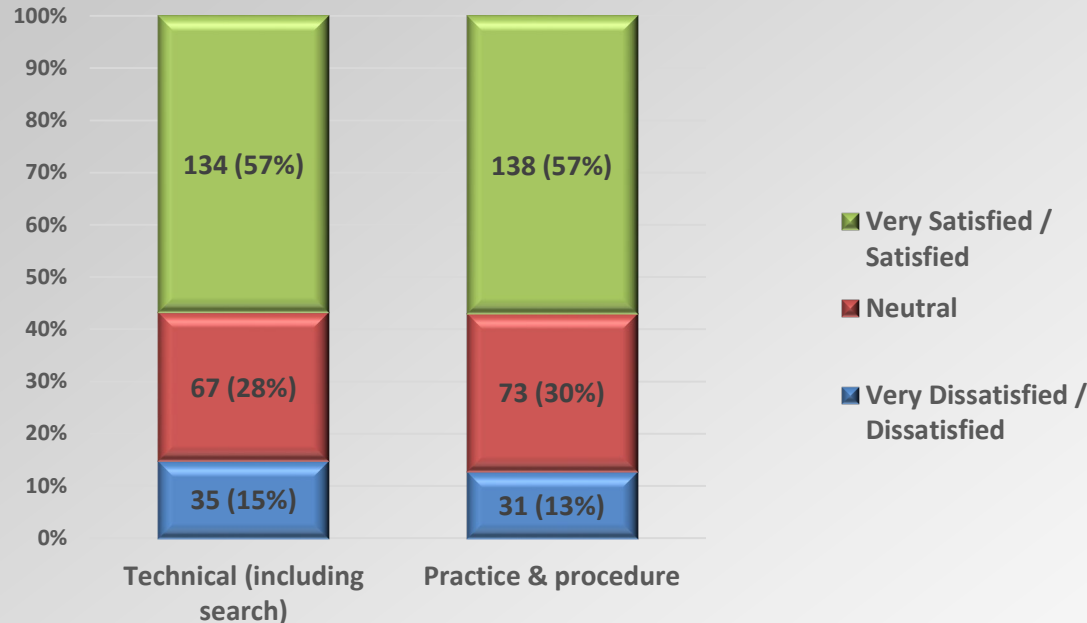
Q4: During the past quarter, please indicate your level of satisfaction with the effectiveness of training you have received to maintain/improve the quality of your work.



During the past quarter, respondents were most satisfied with the effectiveness of technical training (61%), and least satisfied with the effectiveness of professional development training (42%).



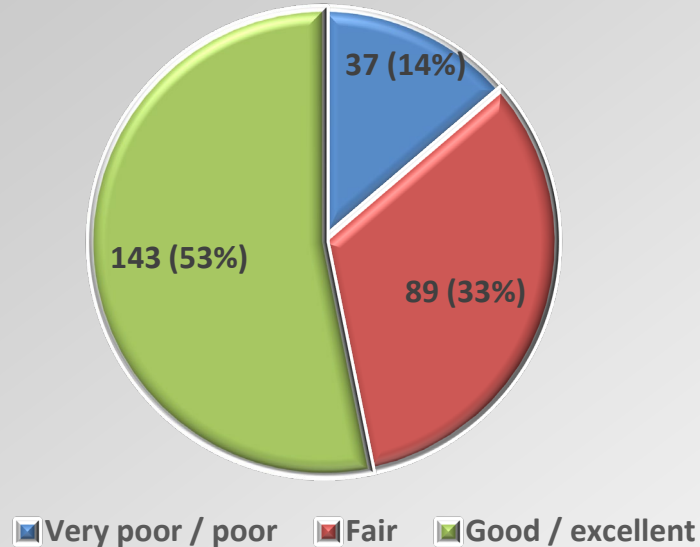
Q5: During the past quarter, please indicate your level of satisfaction with the effectiveness of coaching/mentoring received to maintain/improve the quality of your work.



During the past quarter, more than half of respondents were satisfied with the effectiveness of the two types of coaching and mentoring (57%). Far fewer were dissatisfied with the effectiveness of coaching and mentoring for technical (15%) and practice & procedure (13%).



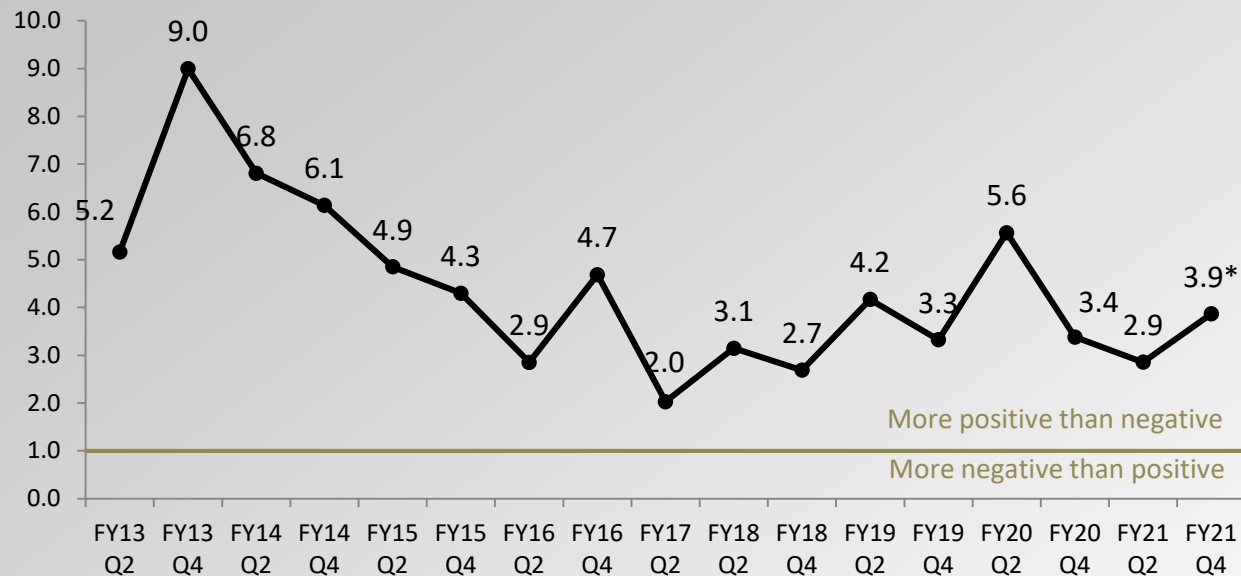
Q6: During the past quarter, overall, how would you rate the internal USPTO factors (training, tools coaching, etc.) that impact your ability to provide high-quality patent examination?



During the past quarter, more than half of the respondents rated overall internal factors (training, tools, coaching, etc.) as excellent or good (53%). Fewer rated internal factors as very poor or poor (14%), and one-third said fair (33%).



Q6: Ratio of positive to negative ratings of internal USPTO factors that impact patent examiner employees' ability to provide high-quality patent examination



This line graph illustrates the ratio of positive to negative ratings of overall internal USPTO factors affecting ability to provide high-quality patent examination. The horizontal line at 1.0 represents the reference line of when that ratio is equal to 1. The graph shows that this positive-to-negative ratio increased significantly between FY21-Q2 and FY21-Q4 from 2.9 to 3.9.

In FY21-Q4, for every respondent that rated overall internal factors as “poor” or “very poor”, slightly less than 4 respondents rated it as “good” or “excellent.”

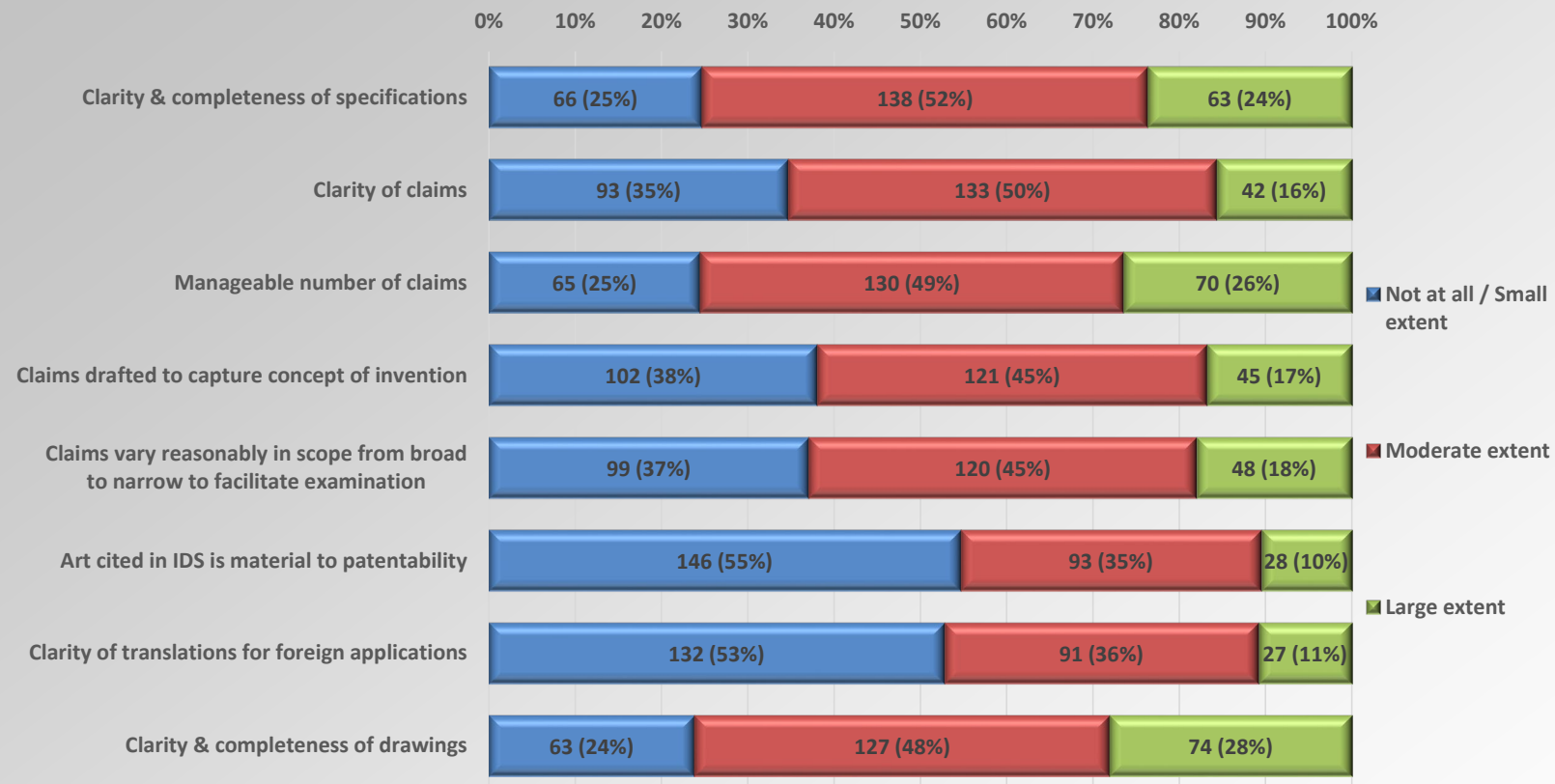
* $p = 0.0428$



External factors: Patent examiner experiences with incoming patent applications



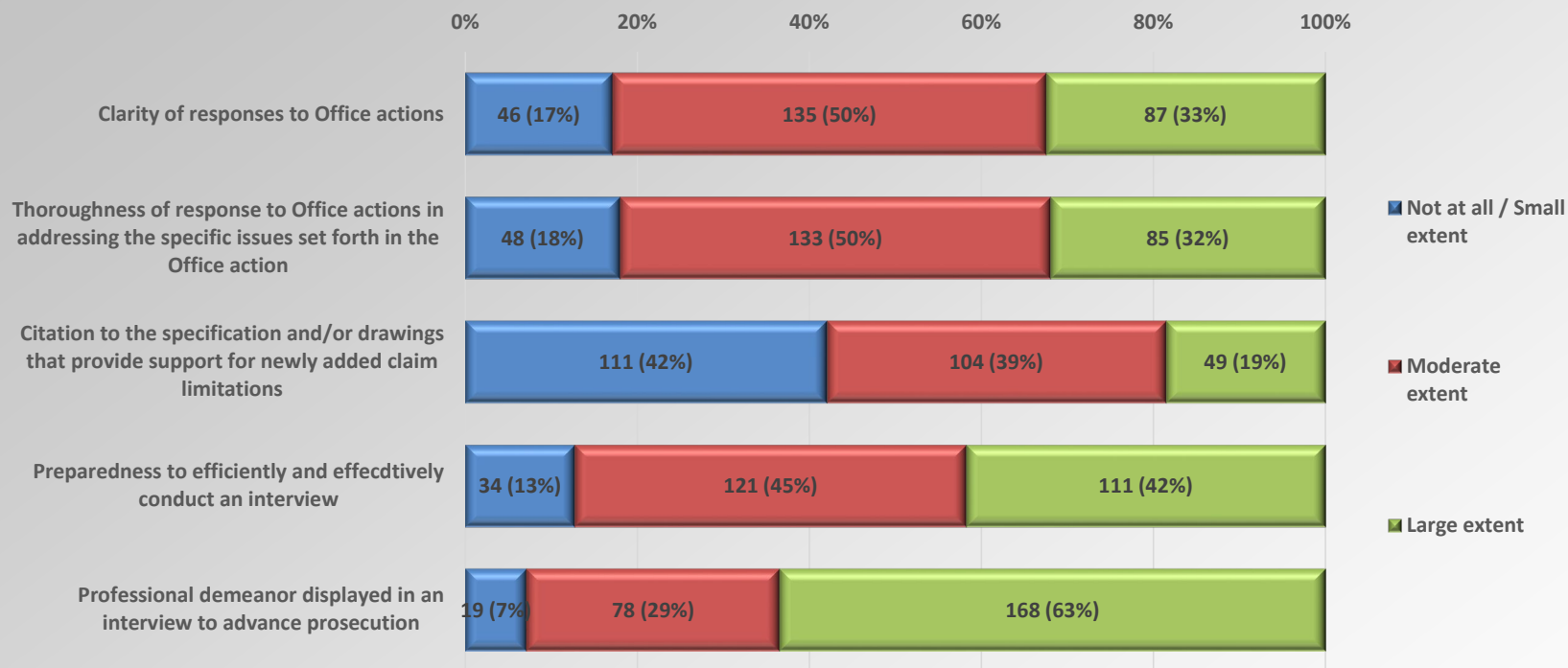
Q7: During the past quarter, consider your examination experiences relating to incoming patent applications. To what extent did the applicants and/or their agents/attorneys facilitate high-quality patent prosecution with respect to...?



The majority reported that agents/attorneys facilitated high-quality prosecution to a moderate extent or large extent in most, but not all, areas. Across all, they were more likely to report “to a moderate extent” than “to a large extent.” However, for “Art cited in IDS is material to patentability” and “Clarity of translations for foreign applications,” the majority reported “to a small extent” or “not at all” (55% and 53% respectively).



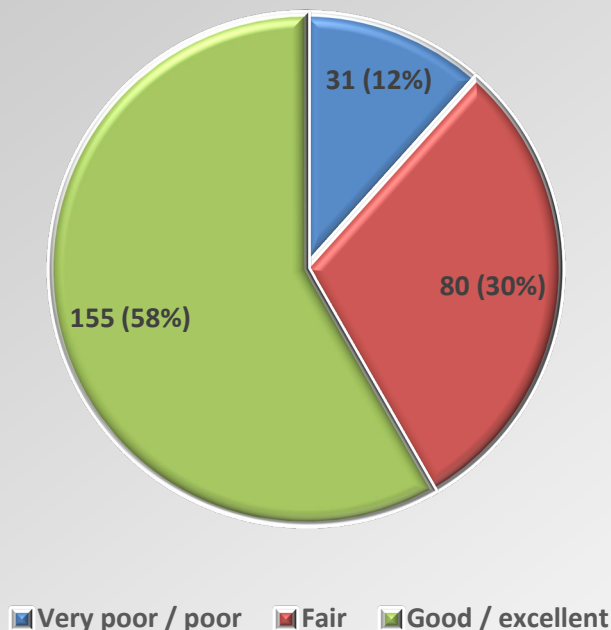
Q8: During the past quarter, consider your examination experiences relating to your written and personal interactions with applicants and/or their agents/attorneys. To what extent did they facilitate high-quality patent prosecution with respect to...?



The majority reported that agents/attorneys facilitated high quality prosecution to a moderate extent or large extent in all areas. The highest levels of facilitation (“to a large extent”) was most frequently reported for “Professional demeanor displayed in an interview to advance prosecution” (63%). The lowest level of facilitation (“to a small extent or not at all”) was most frequently reported for “Citation to the specification and/or drawings that provide support for newly added claim limitations” (42%).



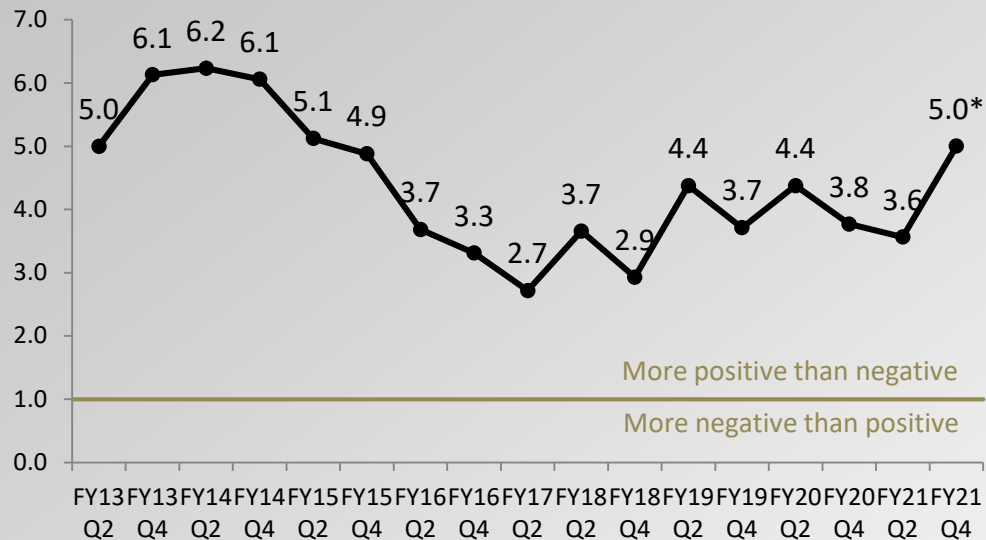
Q9: During the past quarter, overall, how would rate the various external factors (patent applicants/agents/attorneys and their interactions) that impact your ability to provide high-quality patent examination?



During the past quarter, more than half of the respondents rated overall external factors (patent applicants/agents/attorneys and their interactions) as excellent or good (58%). Fewer rated external factors as very poor or poor (12%), and slightly less than one-third said fair (30%).



Q9: Ratio of positive to negative ratings of external factors that impact patent examiner employees' ability to provide high-quality patent examination



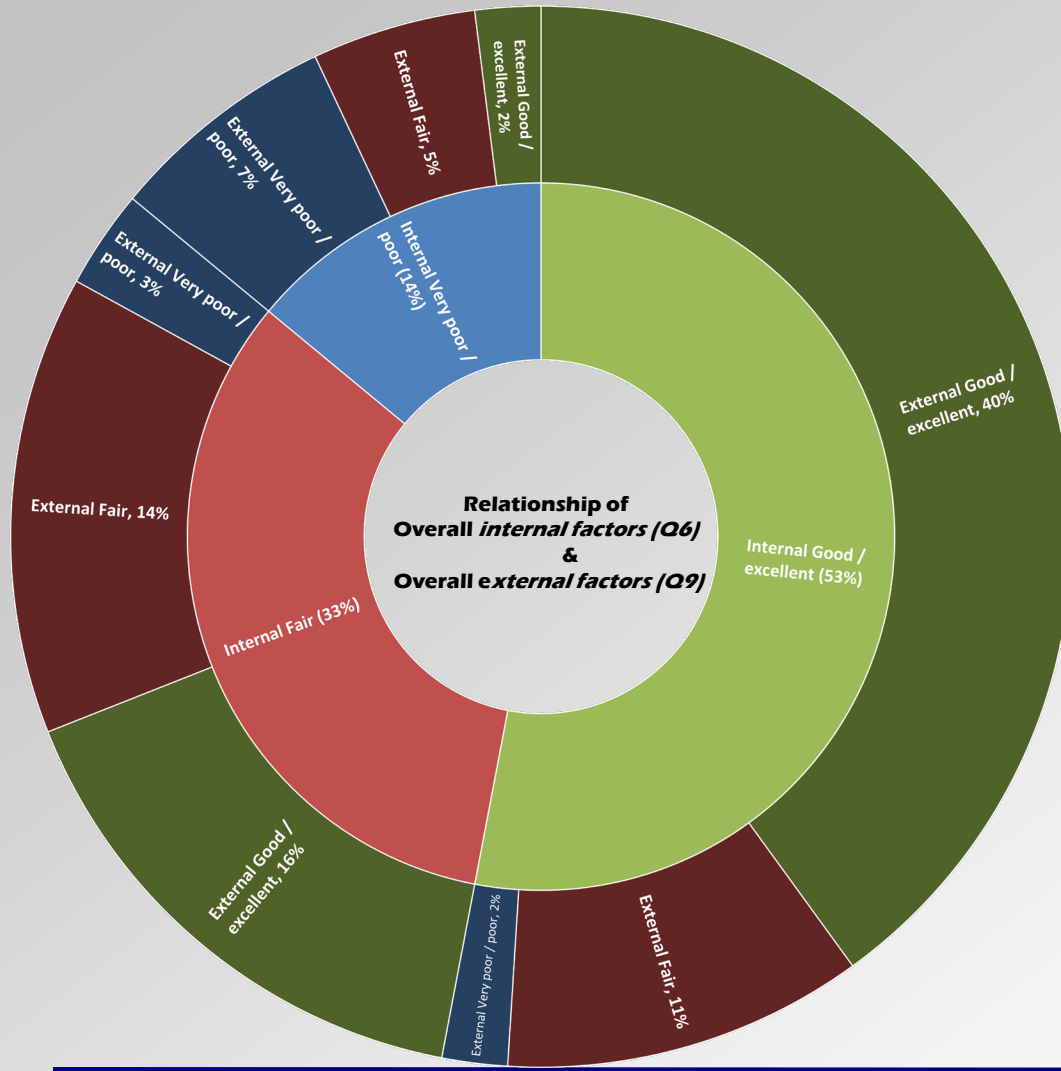
This line graph illustrates the ratio of positive to negative ratings of overall external factors impacting ability to provide high-quality patent examination. The horizontal line at 1.0 represents the reference line of when that ratio is equal to 1. The graph shows that this positive-to-negative ratio increased significantly between FY21-Q2 and FY21-Q4 from 3.6 to 5.0.

In FY21-Q4, for every respondent that rated overall external factors as “poor” or “very poor,” 5 respondents rated it as “good” or “excellent.”

* $p = 0.0466$



Factors that impact high-quality patent examination: The relationship of internal USPTO factors (Q6) and external factors (Q9)



Among the respondents who rated overall internal USPTO factors as good/excellent (53%), the majority also reported external factors as good/excellent (40%). 11% reported external factors as fair and 2% reported very poor/poor.

Among the respondents who rated internal factors as fair (33%), most reported external factors as good/excellent (16%). Fewer reported fair (14%). 3% reported external factors as very poor/poor.

Among the respondents who rated internal factors as very poor/poor (14%), most reported external factors as very poor/poor (7%). Slightly fewer reported fair (5%), and 2% reported good/excellent.



Q10: What would be helpful to patent examiners so that they can better respond to applicants' arguments to help advance prosecution? Following are the most common themes revealed in responses.

Arguments (clarity, relevance, format and length). Examiners would like complete and clear arguments from applicants with explanations referring to the specification. Arguments do not always address the issues in the office action. Arguments should be substantive but “to the point.” Examiners would like to see clear mapping of arguments to particular passages in prior art. They would like applicants to point out specific parts of the disclosure, with bold or underscores, for support for their arguments. They want applicants to cite sources and evidence, not just conclusory statements. Applicants often present a “wall of text” making it difficult for examiners to decipher what is being argued. Examiners suggest arranging the arguments in a standardized format, for example using headings, bullets or numbered points for each argument, so that examiners can be certain they’ve addressed each argument. Examiners would also like to see a limit set on the number of pages for arguments, especially for 101 arguments. (n=45)

Time. More examination time for each application would be helpful in advancing prosecution. Examiners need more time to determine allowable subject matter, generate complete office actions, and advance prosecution. More hours per BD would allow them to advise applicants on how to overcome rejections and best capture the nature of the invention. They would like more than an hour for applications with a lot of claims or arguments. One examiners suggested that the time granted for finals should be at least doubled. Another suggested hiring a quality pre-view team of level 15 examiners. Give examiners extra examining time for low quality patent applications as determined by the quality pre-view team. Additionally, examiners want time allotted for training. (n=33)

Claims (clarity and size). Inventive concepts, which are often too broad, need to be clearly cited. It would help examiners if applicants presented clearly constructed and defined claims in boundary and scope, without ambiguous claim language and terms. Some applicants write the claims “to make them un-restrictable,” leaving examiners with a large area to search and examine. Examiners would like applicants to concentrate on the inventions instead of seeking a broader claim. Some suggested limiting applicants to only one independent claim per application (or else increase fees). (n=33)

Amendments / Adding New Claims. Patent examiners would like applicants to indicate where support for amendments to the claims can be found, clearly pointing out supporting subject matter and the location in the specification. One respondent said it should be a requirement to identify the support for the amendment. Others said applicants should not be allowed to add claims after a first action, or that there should be a cap on the number of new claims allowed after a non-final. (n=31)

Training. Examiners would like more training on how to respond to applicants arguments and draft better responses, with examples using different technologies. One suggested a hands-on writing workshop for persuasive writing where examiners read a short response and craft arguments against it, and are then provided with on-the-spot reviews and feedback. Examiners requested technology-specific training; interactive legal analysis and writing training; and refresher courses and advanced legal training for examiners with more years of experience. (n=23)

Note: The open-ended question has been revised several times over the life of the Internal Quality Survey:

FY13-Q4 through FY15-Q4, & FY17-Q2: No open-ended question included in the survey; FY16-Q2 & FY16-Q4: Call for comments on factors that impact internal and external quality;

FY18-Q2 - FY19-Q4: Comments about other quality issues or concerns; FY20-Q2: Suggestions for applicants to facilitate high-quality patent examination;

FY20-Q4 & FY21-Q2: How USPTO performs well and needs improvement; FY21-Q4: What helps examiners better respond to arguments to help advance prosecution.

