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PATENT AND TRADEMARK OFFICE**

**uspto**

# Patent Quality

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**At the TC 2800 Semiconductor Customer Partnership**

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# How to Assess Patent Quality?

## Product Indicators

- Include metrics on the **correctness** and **clarity** of our work products.
- Are formulated using data from reviews using the **Master Review Form (MRF)**.

## Process Indicators

- Assist in tracking the efficiency and consistency of our internal processes.
- Focus on analyzing **reopening of prosecution** and **rework of Office actions** as well as improving **consistency of decisions making** (e.g. allowance rates).

## Perception Indicators

- Are formulated from solicited **internal and external survey data** to validate/verify other metrics; the data can also be used for root cause analysis.

# Data for Product Indicators

- Master Review Form (MRF) and Integrated Quality System (IQS)
- 15,000 reviews completed to date
- 18,000 targeted for FY17
- **Compliance** targets for FY17 were established based on FY16 reviews
  - Statutory Compliance reviews started midyear FY16
- MRF data is being analyzed for development of **compliance** goals and possibly **clarity** goals for FY18

# Product Indicators

- Patent examination quality requires correctness and clarity:
  - Application satisfies all requirements of Title 35 U.S.C.;
    - considering relevant case law at time of action;
  - and
  - Rejections provide sufficient evidence to support any conclusions of unpatentability

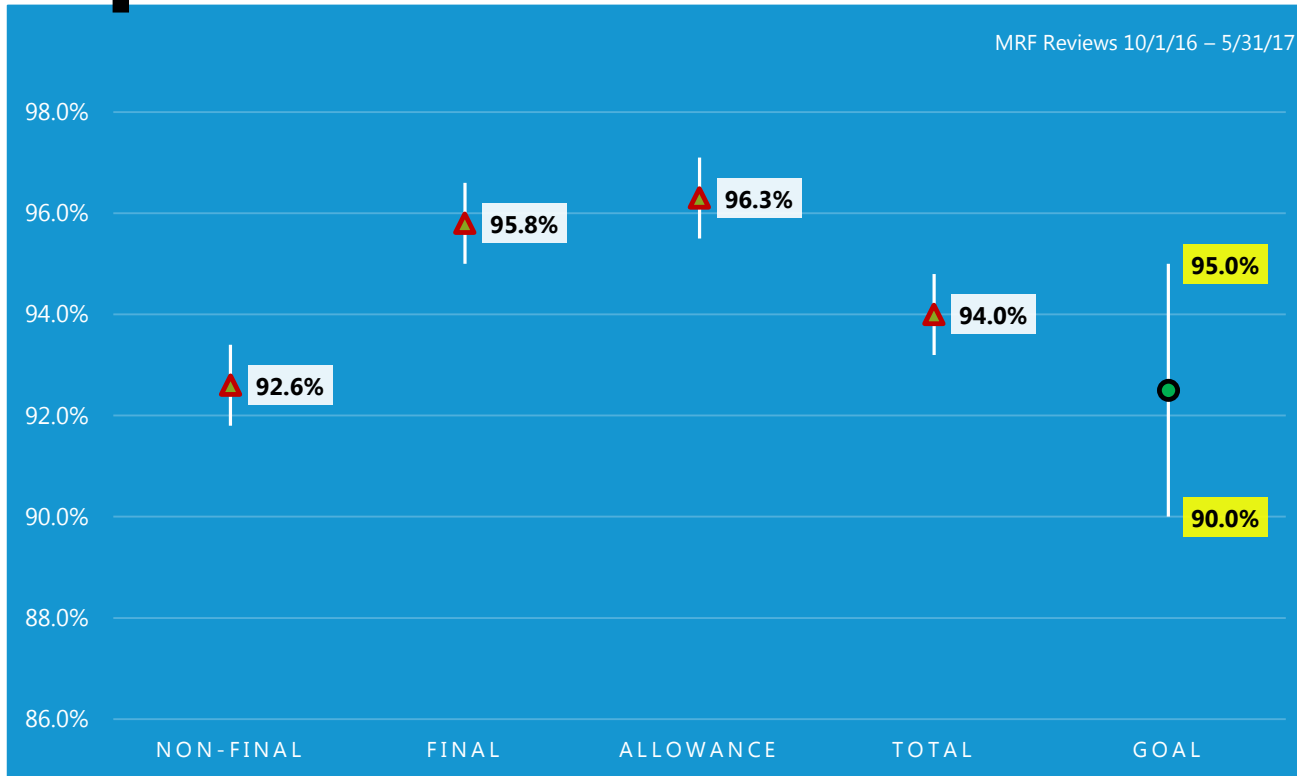
# Product Indicators and Compliance

- Determining non-compliance
  - In allowance reviews:
    - omission of a proper rejection
  - In final and non-final reviews:
    - omission of a proper rejection; or
    - incorrect rejection; or
    - lack of evidence to support rejection made

# Compliance Rate Calculation

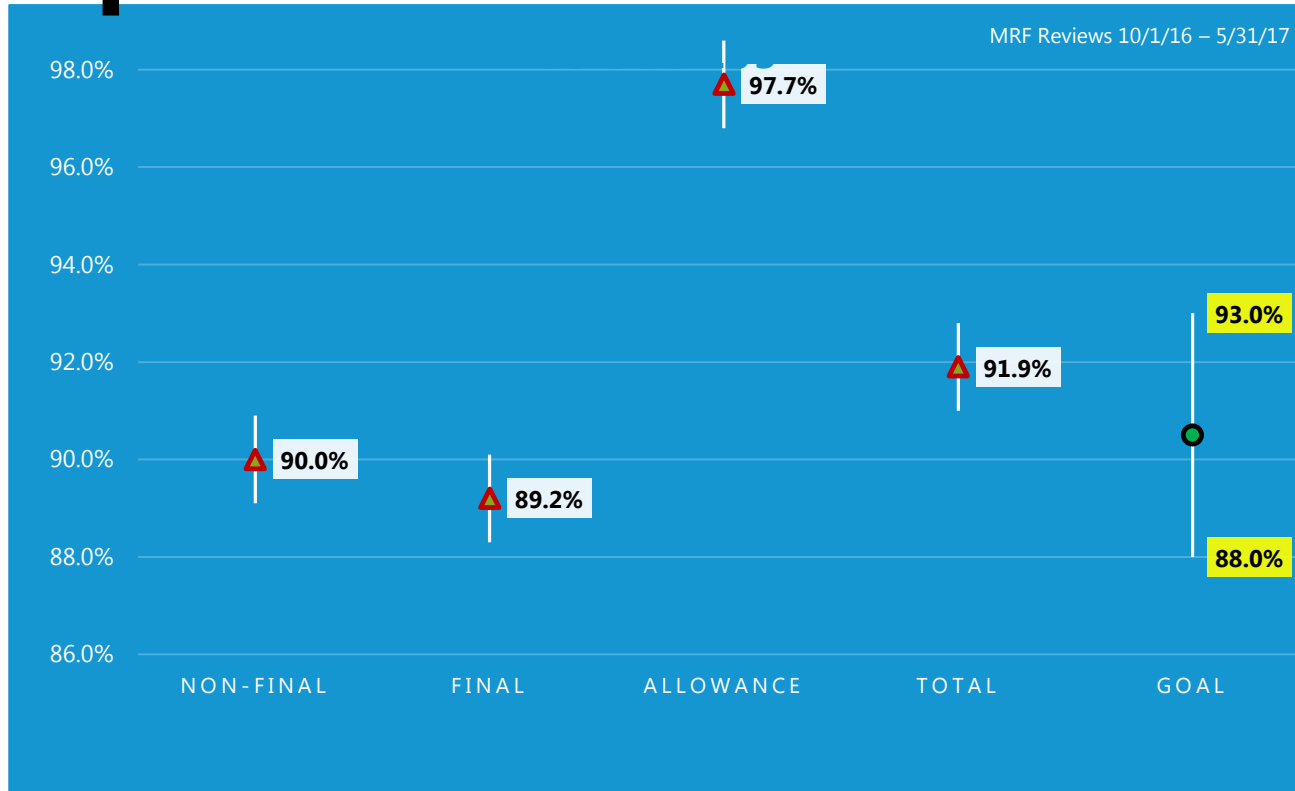
- Denominator is all cases reviewed for a particular category (action type, TC, etc.)
  - Why?
    - All applications require examiner to analyze for compliance with all patent statutes
  - MRF data delineates between omitted and improperly made rejections

# Compliance in 35 USC §102

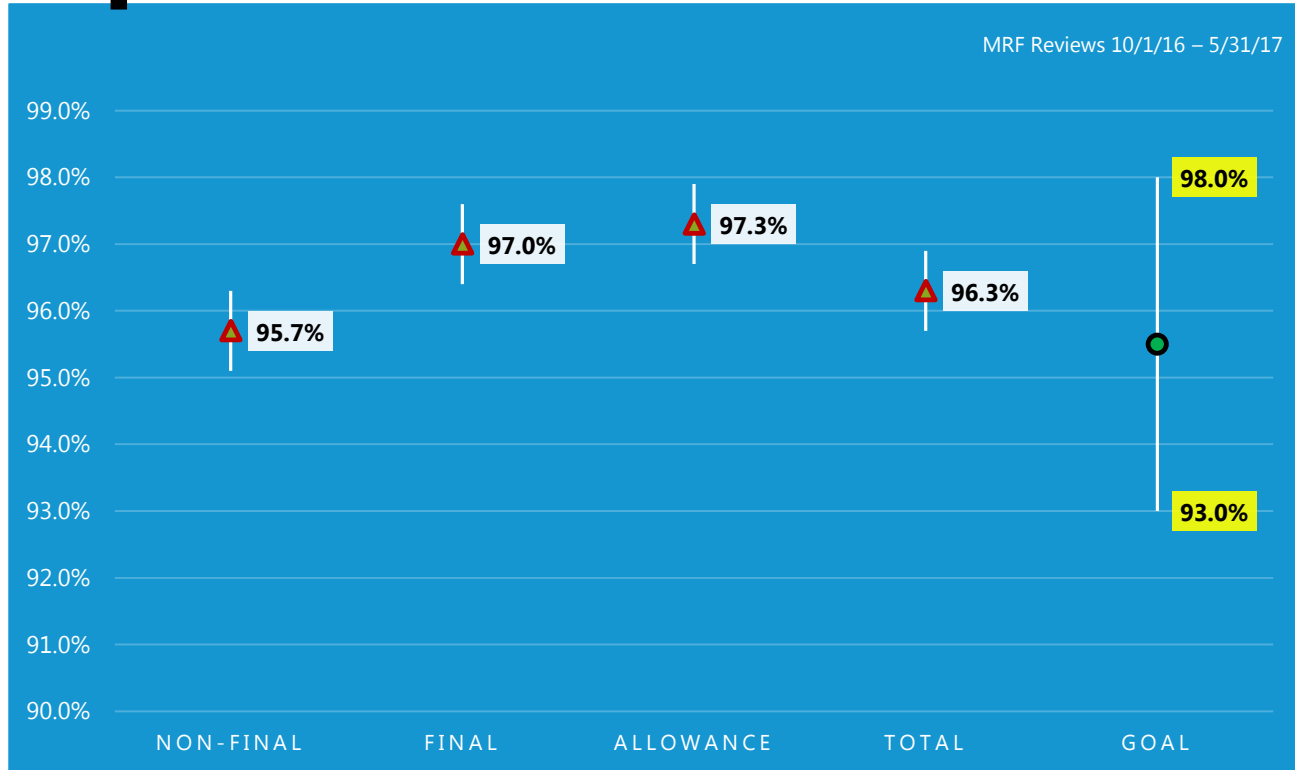




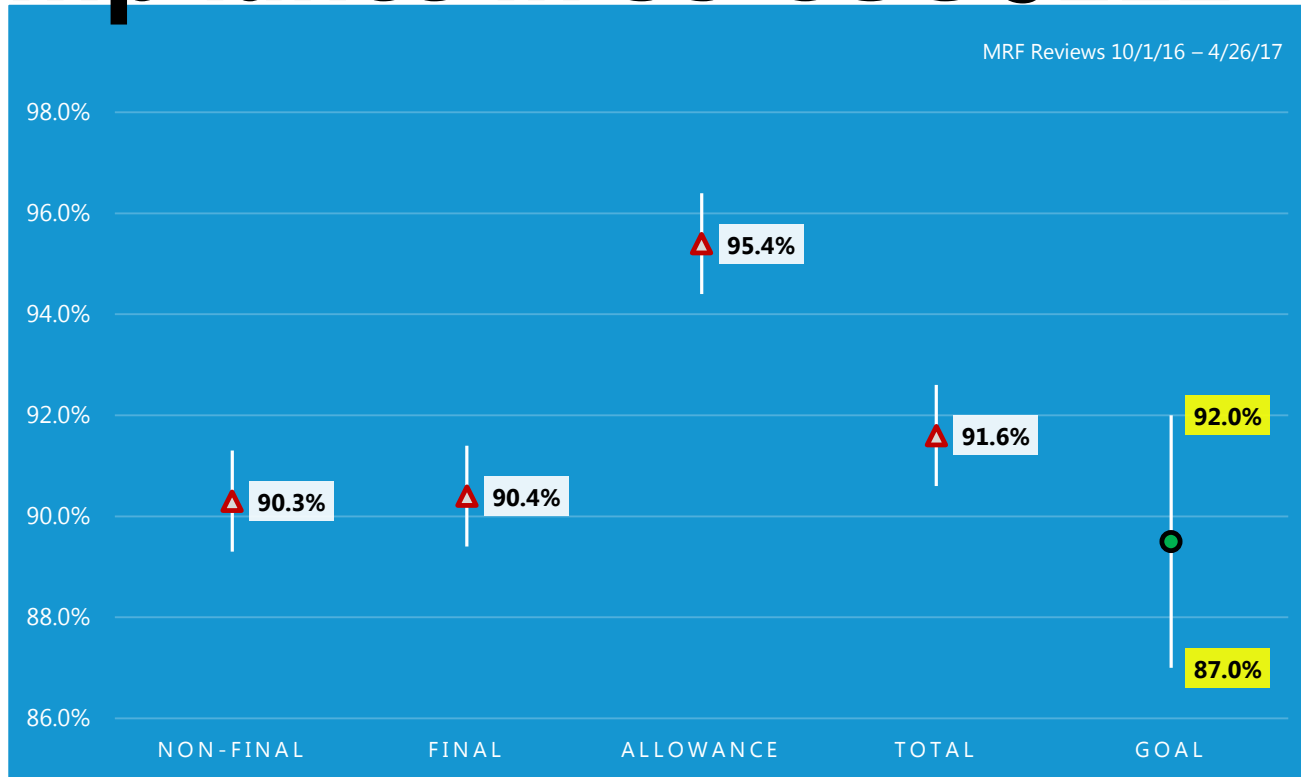
# Compliance in 35 USC §103



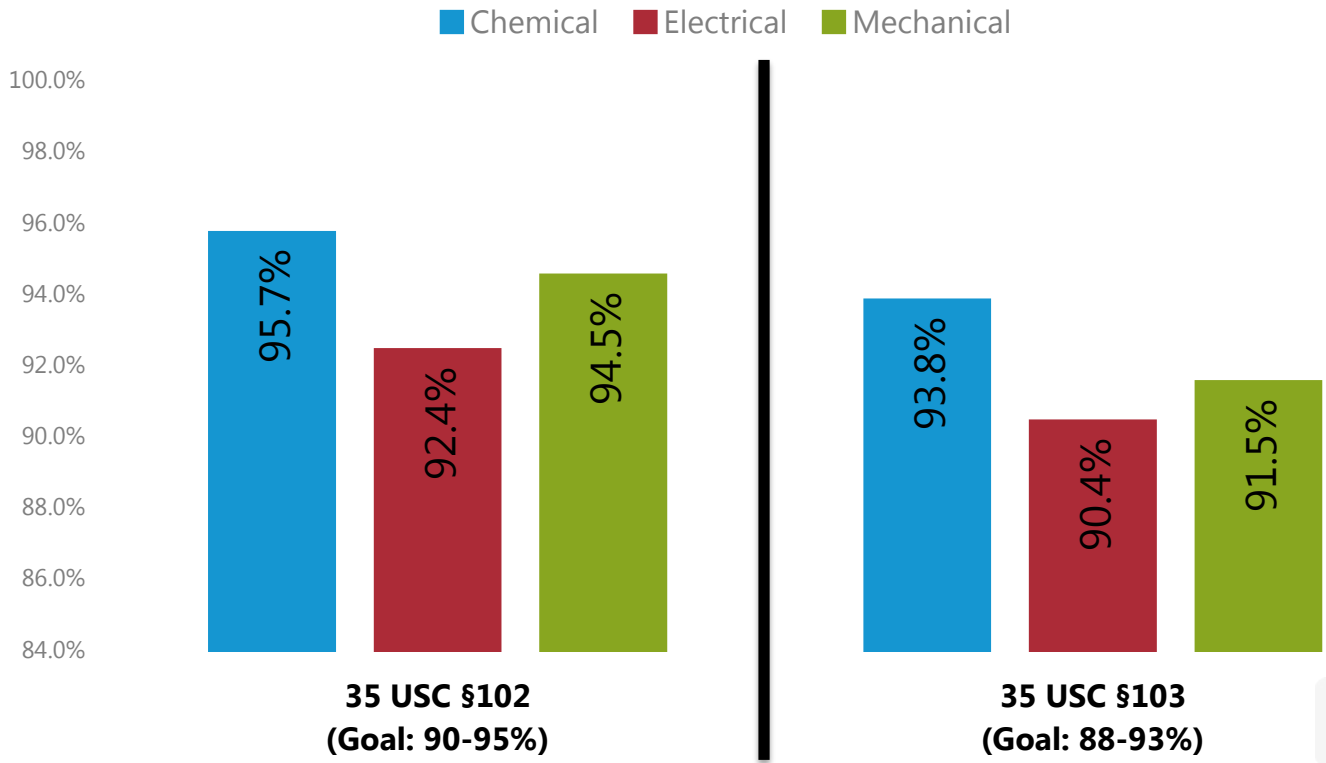
# Compliance in 35 USC §101



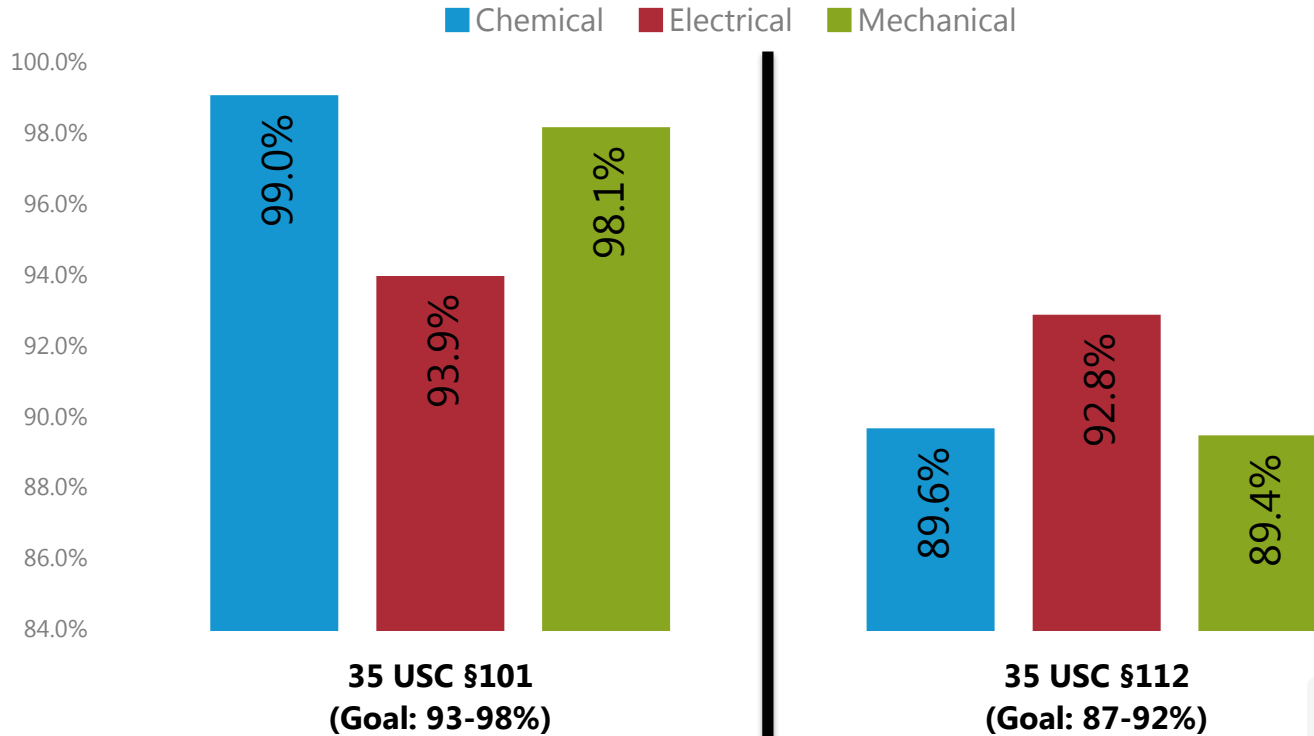
# Compliance in 35 USC §112



# Prior Art Compliance by Discipline



# 101 and 112 Compliance by Discipline

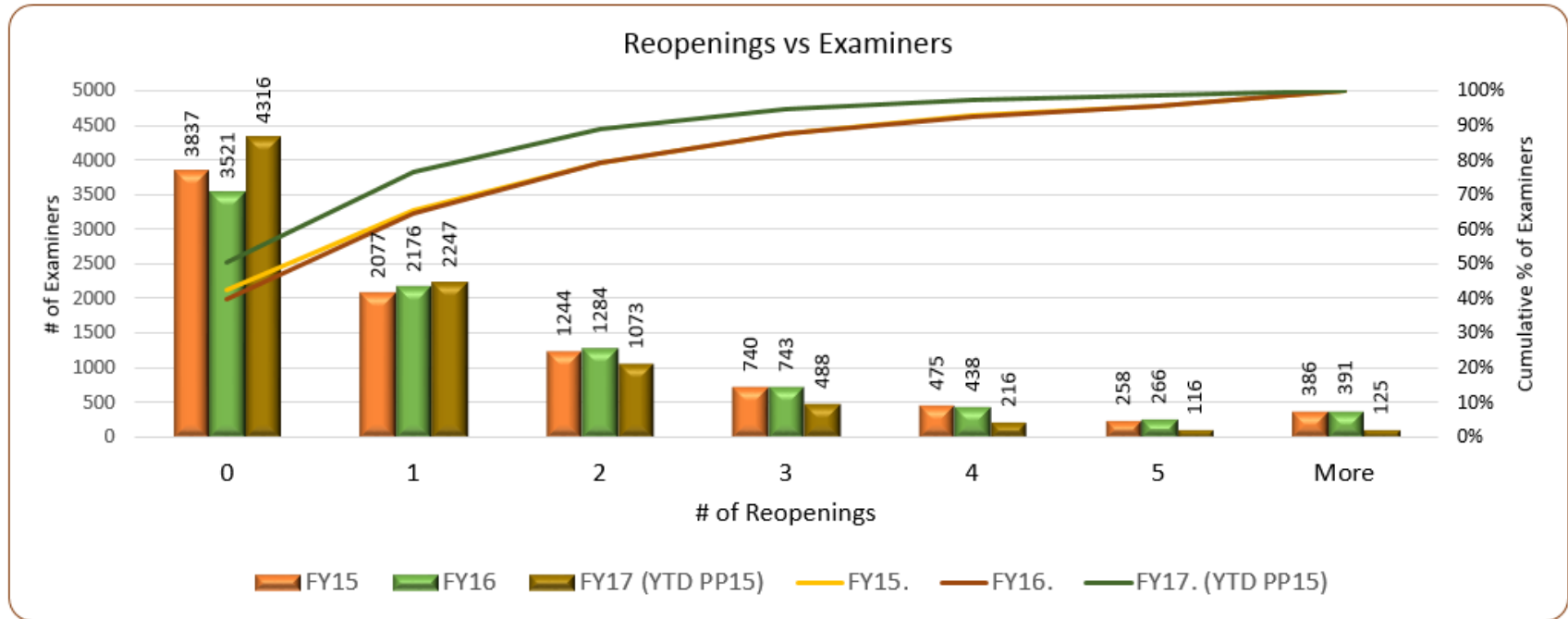


# Process Indicators

- Reopening – after prosecution is closed
- Rework – multiple (a) restriction requirements, (b) non-final rejections, or (b) final rejections during prosecution
- Consistency – varying decisions among similarly-situated examiners

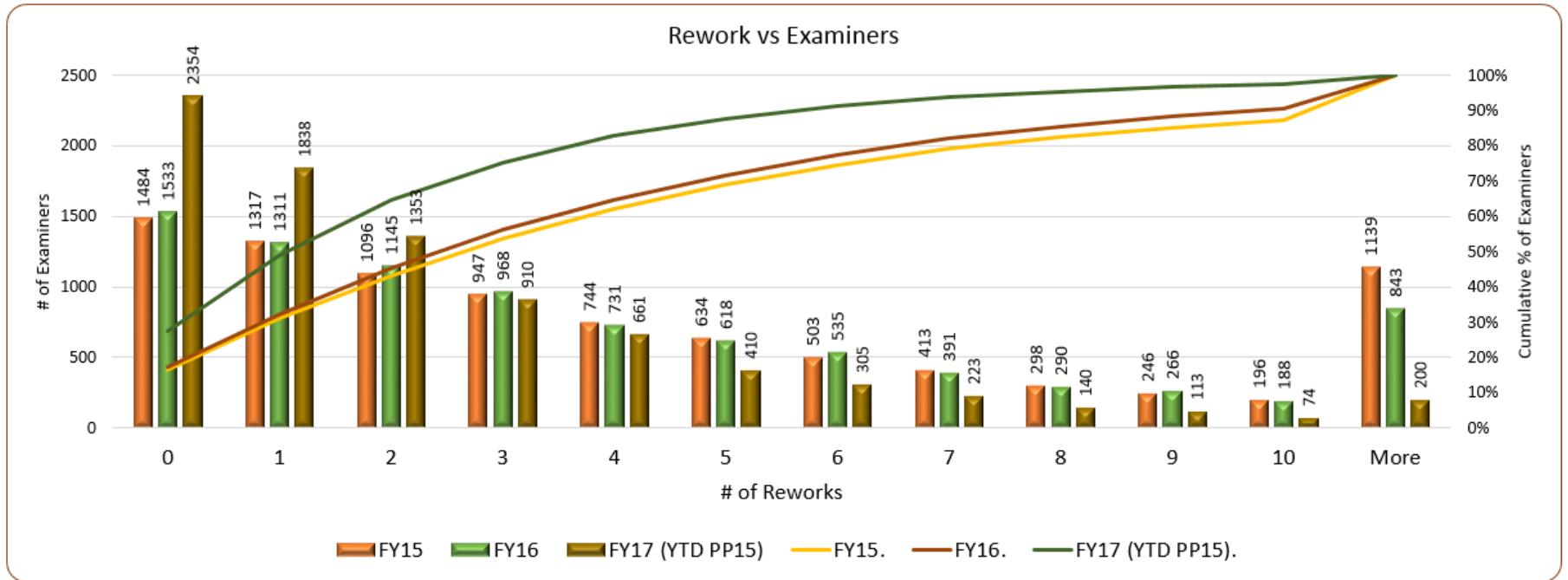
# Process Indicators: Reopening

How many times does an examiner reopen prosecution in a given period?



# Process Indicators: Rework

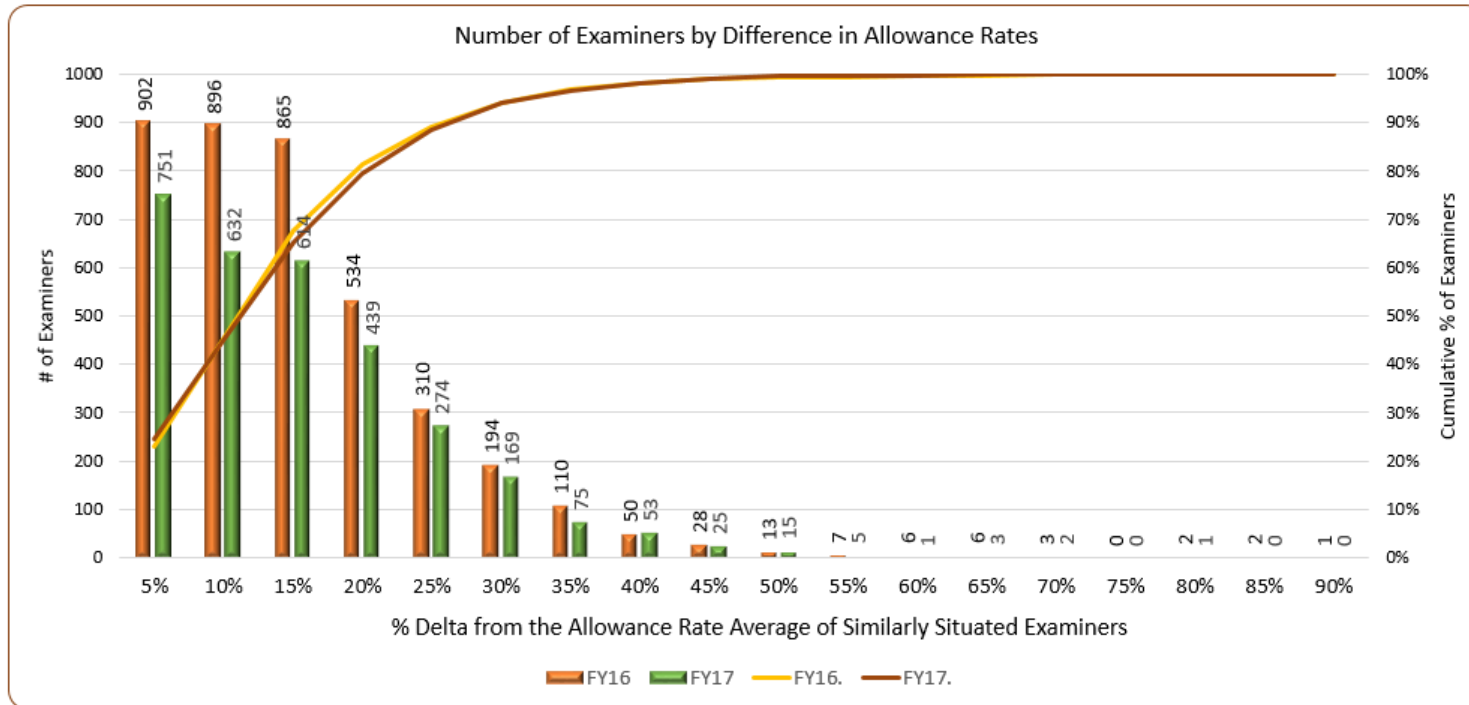
How many times does an examiner do rework in a given period?





# Process Indicators: Consistency

How much variance is there in allowance rates among similarly-situated examiners?

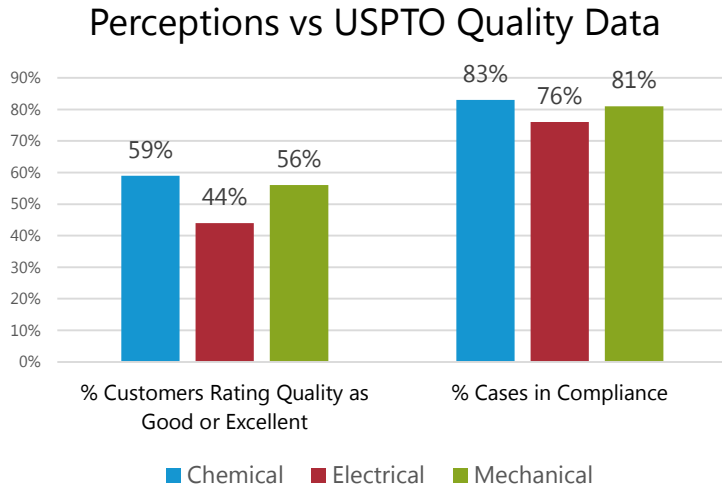


# Perception Indicators

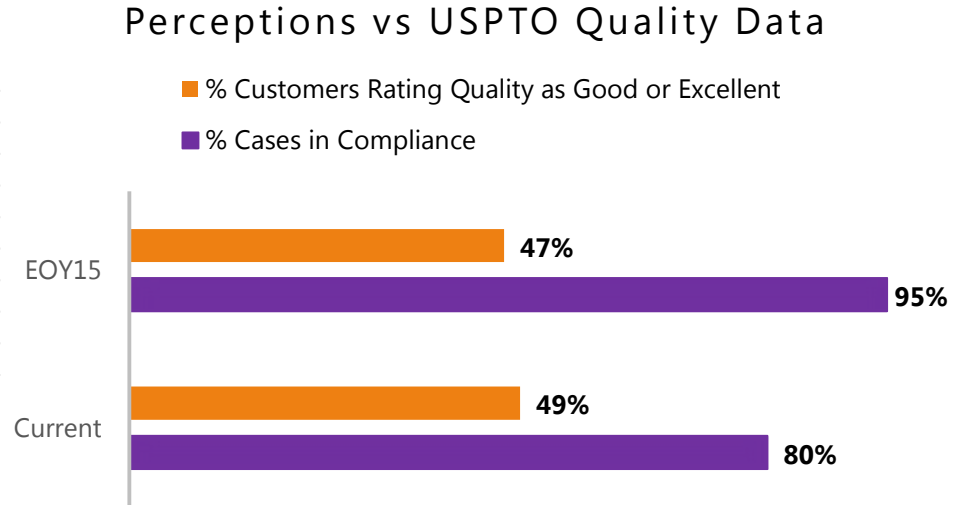
- Surveys to solicit examiner and external customer perceptions on a semi-annual basis :
  - Internally send to 750 randomly selected patent examiners
  - Externally send to 3,000 of our frequent-filing customers
- Data from these surveys are the basis for analysis

# Alignment with Customer Perceptions

Applicant-perceived quality should track with USPTO quality data



Today: By Discipline



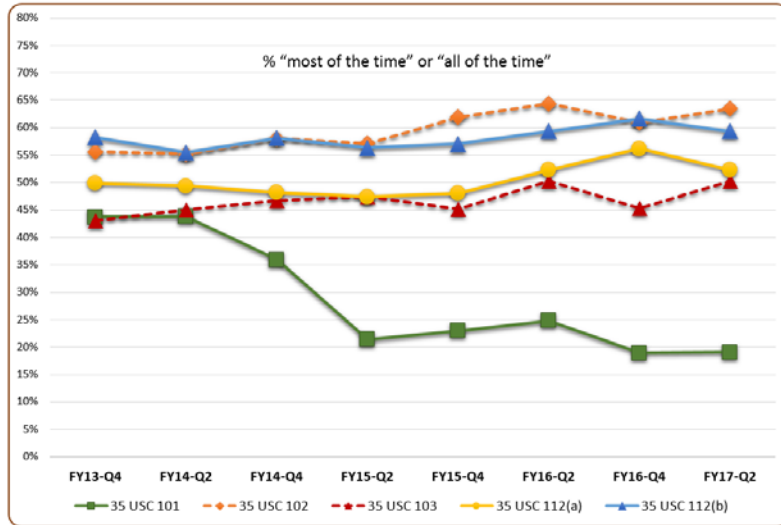
Today vs EOY15



# Historical Alignment with Perceptions

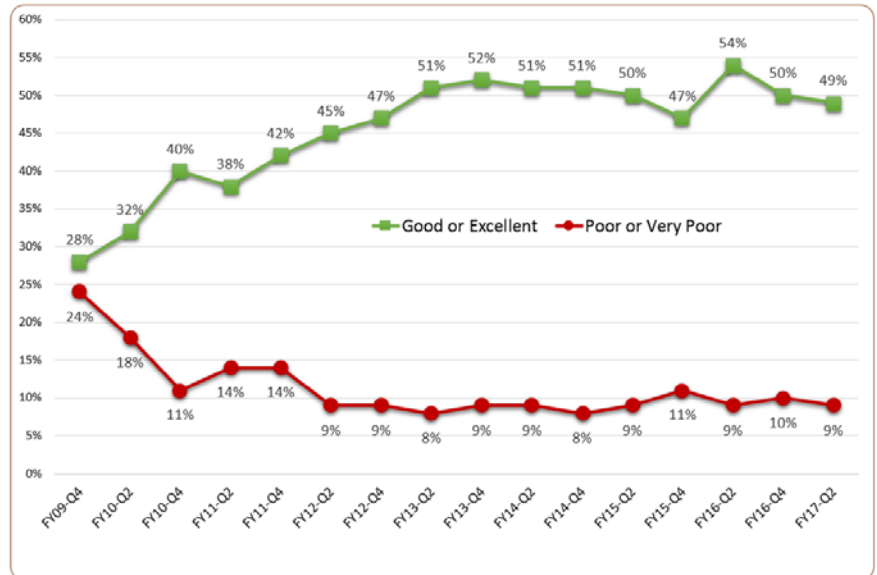
## Technically, Legally, and Logically Sound Rejections by Statute

How are customers' perceptions on technically, legally, and logically sound rejections trending since 2013?



## Historical Perspective on Overall Patent Examination Quality

How are customers' perceptions on overall patent examination quality trending since 2009?



# Current Quality Metrics Activities

- Reporting
  - Internal dashboard
  - *Coming soon...* published statistics on USPTO.gov
- Exploratory analysis
  - Investigate any links between clarity and correctness (e.g. if action is clear, it is 3X more likely to be correct)
  - Investigate any links between process indicators and compliance
- Supporting corps-wide studies and evaluations
  - Examination Time Analysis, Clarity Pilot, etc.
- Supporting TC-specific quality initiatives
  - Action plans and own exploratory analysis

# Applicants Role in Quality Examination

- Drafting clear claims
- Keeping applications patently distinct
- Clear responses to Office actions
- Preparedness for interviews
- Application readiness
- Send us your feedback to [QualityMetrics@uspto.gov](mailto:QualityMetrics@uspto.gov)



# Clarity of the Record Pilot

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# Pilot Goals



Identify  
Examiner  
Best Practices

Find Correct  
Balance for  
Appropriate  
Recordation

Use Data/  
Feedback to  
Assist Other  
Programs

Enhance  
Clarity of  
Prosecution  
Record





# Areas of Focus

- More detailed interview summaries
- More precise reasons for allowance
- Pre-search interview – Examiner's option
- Enhanced documentation of 7 areas of claim interpretation:
  - **Special definitions of claim terms**
  - **Functional language**
  - **Intended use or result (preamble and body of claim)**
  - **"Means-plus-function" (35 U.S.C. §112(f))**
  - **Optional language**
  - **Non-functional descriptive material**
  - **Computer-implemented functions that invoke 35 U.S.C. §112(f) ("specialized" or "non-specialized")**





**Clarity of the Record Training:  
Improving Clarity and Reasoning in Office Actions**

# **ICR Training**

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# Improving Clarity and Reasoning – ICR Training Program Goals

- To identify particular areas of prosecution that would benefit from increased clarity of the record and develop training
- To enhance all training to include tips and techniques for enhancing the clarity of the record as an integral part of ongoing substantive training



# ICR Training Courses

35 U.S.C. 112(f):  
Identifying  
Limitations that  
Invoke § 112(f)

35 U.S.C. 112(f):  
Making the Record  
Clear

35 U.S.C. 112(f):  
Broadest Reasonable  
Interpretation and  
Definiteness of §  
112(f) Limitations

Evaluating  
Limitations in  
Software-Related  
Claims for  
Definiteness under

Broadest Reasonable  
Interpretation (BRI)  
and the Plain  
Meaning of Claim  
Terms

Examining  
Functional Claim  
Limitations: Focus on  
Computer/Software-  
related Claims

Examining Claims for  
Compliance with 35  
U.S.C. 112(a): Part I  
Written Description

Examining Claims for  
Compliance with 35  
U.S.C. 112(a): Part II  
– Enablement

35 U.S.C. 112(a):  
Written Description  
Workshop

§ 112(b): Enhancing  
Clarity By Ensuring  
That Claims Are  
Definite Under 35  
U.S.C. 112(b)

2014 Interim  
Guidance on Patent  
Subject Matter  
Eligibility

Abstract Idea  
Example Workshops  
I & II

Enhancing Clarity By  
Ensuring Clear Reasoning  
of Allowance Under C.F.R.  
1.104(e) and MPEP  
1302.14

35 U.S.C. 101: Subject  
Matter Eligibility  
Workshop III: Formulating  
a Rejection and Evaluating  
the Applicant's  
Response

35 U.S.C. 112(b):  
Interpreting Functional  
Language and  
Evaluating Claim  
Boundaries - Workshop

Advanced Legal  
Training Part I:  
Understanding Case  
Law and the Federal  
Court System

Advanced Legal  
Training Part II:  
How to Analyze and  
Respond to Case Law  
Related Arguments





# Post Grant Outcomes

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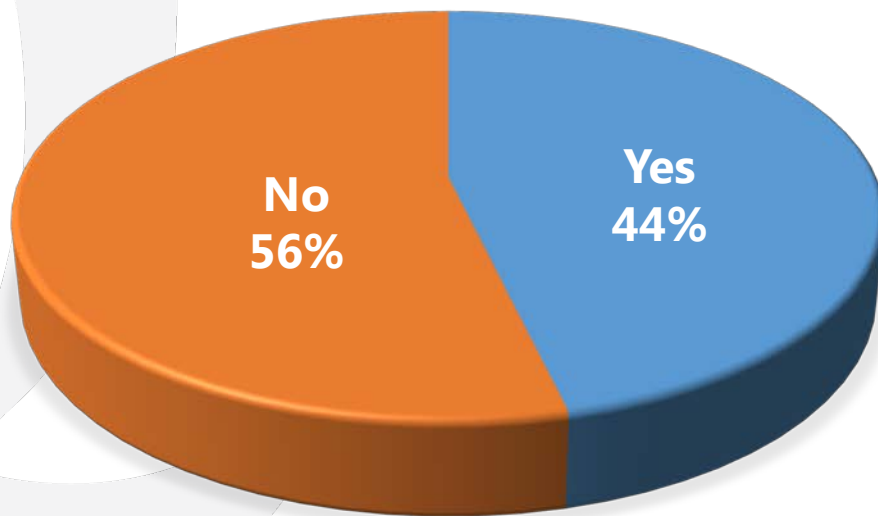
# Post Grant Outcomes Program

- This program is to develop a process for providing post grant outcomes from various sources, such as the Federal Circuit and Patent Trial and Appeal Board (PTAB), to the examiner of record and the examiners of related applications.
- Post Grant Outcomes Pilot: April-August, 2016
  - 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 contents of the AIA trial



# Pilot Statistics – Relevant Art For Child Case

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?





# Post-Prosecution Pilot (P3)

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# Post-Prosecution Pilot (P3) Overview

- Retains popular features of the Pre-appeal Brief Conference Pilot and AFCP 2.0 programs:
  - Consideration of 5-pages of arguments
  - Consideration of non-broadening claim amendments
  - Consideration by a panel
- 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



# Questions and Comments

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