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<http://www.regulations.gov> (docket number PTO-P-2015-0074)

**Re: Request for Submission of Topics for USPTO Quality Case Studies**

Intel Corporation (Intel) submits the below topic for consideration in response to the United States Patent and Trademark Office's (USPTO) request for submissions of topics for USPTO quality case studies. *See* 80 Fed. Reg. 79277 (Dec. 21, 2015). We appreciate the opportunity to provide a submission for this important initiative.

**Title:** "Procedures for Documenting Examiner-Applicant Interviews Should be Improved to Increase the Clarity of the Record."

**Proposal for Study:** Recordings of Examiner-Applicant interviews do not adequately capture positions and terminology expressed in the interviews.

**Explanation:** At a time when many claims suffer from vagueness and unjustified "elasticity," a complete and accurate file history can act as an important and reasonable restraint on "nose of wax" recitations. Intel agrees with the USPTO that capturing the contents of interviews is vital to completing the patent record. *See* 80 FR 6475 (Feb. 5, 2015). In interviews, many representations of the art and claims are made, and many Examiner concerns and Applicant rebuttals are aired. Yet only a small fraction of these ever are recorded in the file history of the patent. Such omissions rob the public of clarity in the precise metes and bounds of the claim language and can permit claim interpretation in litigation that would be unwarranted if this unwritten communication were known.

Intel proposes a case study to investigate whether this current approach to Examiner-Applicant interviews results in a decrease in overall patent quality. Specifically, Intel suggests

that the USPTO review the frequency of unpatentability findings in inter partes and post-grant reviews and compare those findings for claims that issue after an interview to those for claims that issue without any interview. A determination of a higher frequency of post-grant unpatentability in cases with an interview would indicate that USPTO process changes are needed to improve the quality of interviews, including the more complete interview recordation process.

One approach would be to issue additional guidance and Examiner training materials in proper methods for recording and summarizing interviews. Best practices for recording interviews would include clear identification of discussion of claim term meanings, characterizations of prior art, and Applicant arguments that both overcome and do not overcome rejections, as both are an important part of a file history. Another future development could be the implementation of a recording system, such as those in customer call centers, that may be used to record and store the interviews for review.

Sincerely,



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