

Interview Best Practices

These “best practices” recommendations are intended to assist practitioners and patent examiners in providing productive interviews in accordance with current United States Patent and Trademark Office (USPTO) practices and procedures regarding interviews. Compliance with these recommendations should not be considered sufficient in any specific application to ensure compliance with applicable laws, rules, or Office policies and therefore should not be relied upon for such purposes. This document is divided into four parts: Accessibility, Preparation, Substance and Recordation.

Accessibility for Interviews

As explained in MPEP § 713, discussions between an applicant and an examiner are often indispensable to advance the prosecution of a patent application. Generally, interviews that improve the mutual understanding of specific issues in an application are encouraged. Properly conducted, an interview can bridge the gap between an examiner and an applicant with regard to the substantive matters at issue in an application. Interviews often help to advance prosecution and identify patentable subject matter. The applicant and the examiner should consider the advantages of conducting an interview to advance the prosecution of a patent application,¹ such as the opportunity to provide an explanation of the technology disclosed and to engage in a collaborative process. Positions presented during an interview should be advanced with decorum and courtesy.²

The following recommendations of best practices are provided to promote interview accessibility.

- When requesting an interview, verify the individual assigned to represent the other participant. An applicant should check the Patent Center system to identify the current examiner of record for a specific patent application. An examiner should check the record to confirm the interview requester has proper authority to act in the case on behalf of the principal or to act in a representative capacity with express authority from the applicant.^{3,4}

¹ See MPEP § 713

² *Id.*; see also 37 C.F.R. § 1.3; MPEP § 714.25

³ 37 C.F.R. § 1.32; MPEP § 713.05

⁴ If requester is acting in a representative capacity without express authorization from the principal, a request for interview may still be granted. See *Conducting an Interview with a Registered Practitioner Acting in a Representative Capacity*, 1357 OG 254, August 24, 2010; see also 37 C.F.R. § 1.34

- Applicants are reminded that examiner availability for interviews may be limited during the weeks leading up to the end of each fiscal quarter (generally the weeks leading up to December 31st, March 31st, June 30th, and September 30th).
- Applicants are encouraged to submit an agenda in advance of the interview. Interview agendas support efficiency by promoting advance preparation by both the applicant and the examiner. Applicants should fashion an agenda suggestive of how an examiner can most productively prepare for the interview, especially when review of the figures or specification is involved.⁵
 - If the applicant plans to propose a potential amendment during the interview, it is recommended that the applicant include this amendment (or at least a summary thereof) within the agenda.⁶
 - While inclusion of potential amendments or arguments in the written agenda may be undesirable or infeasible in certain circumstances, a failure to include sufficient detail can restrict the potential benefit of an interview and decrease the likelihood of reaching an agreement.⁷
 - In preparing the interview agenda, applicants should be mindful of examiner time constraints. The stated goal of the interview should be augmented with a succinct list of applicable material that can be effectively reviewed in no more than **30 minutes** (such as specific claims, figures, or paragraphs).
- Applicants should submit a request for an interview with lead time sufficient to ensure the examiner of record and an examiner with negotiating authority will be available. More lead time may be needed for an in-person interview than for a video conference or telephonic interview. The USPTO Automated Interview Request (AIR) web-based tool⁸ assists the examiner and Office in tracking interviews.

⁵ See MPEP § 713.01(IV) (“It is desirable that the attorney, agent, or applicant submit an agenda which indicates in advance what issues they desire to discuss at the interview by submitting, in writing, a proposed amendment or argument. This would permit the examiner to prepare in advance for the interview and to focus on the matters set forth in the proposed amendment.”)

⁶ *Id.*

⁷ See MPEP § 713.01(IV) (“[T]he attorney or agent should be fully prepared to discuss . . . at the time of the interview. When it is obvious that the attorney or agent is not so prepared, the interview should be rescheduled. . . . The examiner should not hesitate to state . . . that claims presented for discussion at an interview would require further search and consideration. Nor should the examiner hesitate to conclude an interview. . . when it becomes apparent that the application requires further amendment or an additional action by the examiner.”) (emphasis added)

⁸ <https://www.uspto.gov/patents/laws/interview-practice?MURL=InterviewPractice#step1>

- Both the applicant and the examiner should be flexible in attempting to arrange a mutually convenient date and time for an interview.
- In the ordinary course of business, both the applicant and the examiner should strive to reply to voicemail messages within one business day. Examiners should strive to respond to AIR form requests within two business days.
- Recorded voicemail greetings and voicemail messages should include helpful information such as the availability and/or unavailability of each party, applicable time zone, and contact information for alternate personnel who can provide assistance.
- Temporary voicemail greetings, during an examiner's extended absence, should include date of return and contact information for alternate personnel who can provide assistance.
- The AIR form includes an authorization for Internet communications. Alternatively, an authorization for internet communications via Form SB/0439 should be submitted to enable any digital communication with the examiner, including email or video conferencing.
- An interview should be granted when the nature of the case is such that the interview serves to develop or clarify outstanding issues in an application. Both applicants and examiners should understand that interview time is limited for both parties and use interview time efficiently. Both parties should ensure the interview does not extend beyond a reasonable time and minimize interruptions during the interview.⁹ Applicants and examiners should facilitate the grouping of interviews where effective.¹⁰

Preparation for Interviews

Effective preparation will result in a more productive interview. Accordingly, if an applicant submits an interview agenda, the agenda should be submitted as far in advance of the interview as possible. The more lead time the examiner has to consider the amendments or arguments before the interview, the greater the likelihood of a successful interview. Attorneys and examiners should maintain an open mind and be prepared to discuss the overarching inventive concept, as well as any relevant details of the specification, claims, and the prior art.

- Typically, an effective interview agenda should identify any figures and sections of the

⁹ See MPEP § 713.01(IV)

¹⁰ See MPEP § 713.05

specification that the applicant intends to discuss with respect to the issues raised in an office action. The agenda should identify the claims to be discussed and any proposed amendments, or at least any key limitations that the applicant wishes to focus on during the interview. If helpful, specific features of the technology disclosed can be further emphasized. Annotated copies of figures can be an efficient mode of communication for such technology tutorials. Additional technical background can be provided, but applicants should be careful to limit unnecessary detail. Draft amendments are particularly helpful when the Applicant's position is that the examiner's broadest reasonable interpretation is broader than expected or intended. If the applicant intends to discuss any prior art references, it can be helpful to direct the examiner's attention to specific figures or portions of the disclosure and provide a succinct summary of the intended purpose for discussing the selected figures or description.

- The USPTO FY 2026 Examination Performance Appraisal Plan (PAP)¹¹ allocates one attribute hour for conducting interviews per application or Request for Continued Examination (RCE), intended to cover the interview and any related tasks, including preparation. Additional time for interviews may be authorized with Supervisory Patent Examiner (SPE) approval.¹² Applicants should remain mindful of the limited time available to examiners for preparing for and conducting interviews.
- The agenda should guide efficient preparation for the interview in no more than 20-30 minutes on average. Both applicants and examiners should understand that interview time is limited, and therefore they should use the interview time efficiently.¹³
- All parties participating in an interview should familiarize themselves with the status and existing issues in an application before an interview.
- Applicants should be prepared to explain key features of the claimed technology, especially claimed features and limitations that distinguish over the prior art of record. Applicants

¹¹ See The Role of a Patent Examiner in the IP Community, USPTO Hour (Oct. 15, 2025), slides 8–46. <https://www.uspto.gov/sites/default/files/documents/USPTO-Hour-External-FY26-Examiner-PAP-Changes.pdf#:~:text=FY26%20Attribute%E2%80%8B%20Interviews%E2%80%8B%E2%80%8B%201%20hour%2C%20when%2C%20during,interview%20may%20be%20authorized%20with%20SPE%20approval.>

¹² *Id.*, slide 25.

¹³ See MPEP § 713

should be prepared to identify “real world” applications of the claimed invention to assist in enhancing the examiner’s understanding of the claimed invention.

- The submission of a proposed response fully compliant with 37 C.F.R. § 1.111 is unnecessary prior to the interview.
- An applicant’s representative should consult with the applicant prior to the interview to discuss the invention and all relevant current issues and obtain applicant approval and/or negotiating authority to accept at least a range of reasonably foreseeable proposals that may arise during an interview. The applicant’s representative should notify the examiner in advance of the interview if they do not have negotiating authority as normally interviews are not granted and conducted unless the party has sufficient authority.¹⁴
- Examiners and applicants should identify any new issues with the case not already of record (e.g., in a previously issued Office Action or previously filed amendment) before conducting the interview so that these issues may be communicated along with any questions that may arise during the interview.
- Both the examiner and the applicant should look for opportunities to resolve as many outstanding issues as possible.

Substance of Interviews

Properly conducted, an interview can bridge the gap between an examiner and an applicant with regard to the substantive matters at issue in an application. Interviews help to advance prosecution and identify patentable subject matter.

Examiners and applicants should not conduct interviews as adversaries, but rather, should conduct interviews with the objective of meeting the common goals of advancing prosecution and resolving issues. Collaboration is more effective than argument, especially in the short time available. Argumentative interviews are likely to be inefficient and counterproductive because of the natural human tendency to try and win an argument; positions presented during an interview should be advanced with decorum and courtesy.¹⁵

¹⁴ MPEP § 713.05

¹⁵ *Id.*; see also 37 C.F.R. § 1.3; MPEP § 714.25

Interview requests should be considered at any stage during prosecution in accordance with current USPTO policy, practice, and procedure. Applicants should appreciate that even if agreement is reached regarding patentability over the art of record during an interview, an examiner will perform a final update and interference search, which can produce prior art that resets the agreement regarding the art that was of record in the interview.¹⁶

- If an examiner of record participating in the interview is new to the case, at the beginning of the interview, the applicant should provide the new examiner an introductory summary of the technology claimed by referencing the claim language, specification, and figures, to the extent necessary to facilitate a productive discussion.¹⁷
- An interview can also be improved by presenting selected figures, showing product demonstrations, or using slides or animations in lieu of figures to explain the invention. Desktop sharing greatly enhances illustration of the invention by allowing applicant to point to or annotate areas of the screen while explaining.
- When proposing claim amendments, reasonable effort should be taken to identify support in the specification for the proposed claim amendments, if not previously identified. During a video conference interview, applicants are encouraged to share their desktop if proposing new claim amendments during the interview.
- Review of claim language following illustration of the invention should reveal whether the Examiner's broadest reasonable interpretation aligns with the Applicant's explanation of the figures and understanding of the limitation wording. The examiner should ensure what was discussed and/or explained is adequately captured by the claim language. When patentable technology is being claimed, a difference in claim interpretation can often be bridged by minor claim amendments suggested during a telephonic interview.
- Examiners should evaluate the claims over the prior art and assist the applicant in identifying allowable subject matter. Both the examiner and applicant should cooperatively work toward identifying allowable subject matter, if any. Examiners should suggest allowable subject matter when satisfied that the prior art has been fully identified.¹⁸

¹⁶ MPEP § 719.05, 904 and 1302.08

¹⁷ MPEP § 713.01(V)

¹⁸ MPEP § 707.07(j)(III)

- Both parties should refrain from using an interview to re-present the same positions previously presented and addressed and instead utilize the interview to further advance prosecution of the application. The examiner should not hesitate to state, when appropriate, that claims presented for discussion at an interview would require further search and consideration. The examiner should attempt to identify issues and resolve differences during the interview as much as possible.¹⁹
- All parties should make a reasonable effort to clearly explain the rationale for any positions taken during the interview. For example, the examiner should be able to articulate why a proposed amendment does not overcome a rejection of record. The applicant should be able to explain why any examiner-suggested claim amendments are unacceptable (e.g., too narrow in light of the prior art of record).

Recordation of Interviews

Oral discussions between applicants and patent examiners must be summarized in a writing on the record to satisfy the USPTO requirement that all business be transacted in writing as all actions of the USPTO are based exclusively on the written record.²⁰ No agreements, promises, stipulations, or understandings will be recognized that are not on the written record in the Office.²¹ Interviews are well recognized as advancing prosecution. Often an applicant will provide the examiner with a proposed amendment for substantive discussion. Practitioners have reservations regarding the inclusion of unpersuasive proposed amendments, due to the potential of an adverse impact upon claim scope that might occur due to the presence of an unpersuasive proposed amendment on the record. However, by statute, the USPTO is required to preserve all records received in connection with the transaction of public business.²² This statutory mandate extends to all documents submitted to the USPTO regardless of the manner of submission, e.g., email,²³ Patent Center,²⁴ or facsimile.²⁵ Therefore, the potential exists that these competing interests may undermine the advancement of prosecution using interviews. Accordingly, the following recommendations are

¹⁹ MPEP § 713.01(IV)

²⁰ 37 C.F.R. § 1.2

²¹ *Id.*; see also MPEP § 713.04 for detailed guidance on preparing a proper Interview Summary.

²² See 44 U.S.C. § 3301

²³ See MPEP § 502.03; USPTO *Internet Usage Policy*, 64 FR 33056 (June 21, 1999)

²⁴ See MPEP § 502.05; *Legal Framework for Patent Electronic System*, 90 FR 44050 (September 11, 2025)

²⁵ MPEP § 502.01

provided to ensure that the benefits of interviews are supported.

- Applicants are reminded that, according to USPTO policy, agendas and proposed amendments submitted by any means to the Office, including facsimile or email communications, will be retained as a record by the USPTO.
- According to USPTO policy, all discussions between the applicant/practitioner and the examiner regarding the merits of a pending application will be considered an interview and will be made of record.
- Time should be reserved at the end of an interview to discuss what should be included in an Interview Summary Form.
- A complete and proper recordation of the substance of an interview, by both applicant and the examiner, should include the items listed in MPEP § 713.04, including a brief identification of each argument or issue discussed, indication of any other pertinent matters discussed regarding patentability, the results or outcome of the interview (if appropriate), and an indication as to whether or not agreement was reached on the issues raised.
- Even though an examiner completes a PTOL-413 Interview Summary form, applicant is expected to provide a separate summary of the interview unless the examiner indicates in writing on the PTOL-413 that a written summary of the interview by the applicant is not necessary.
- Examiners are expected to carefully review the applicant's record of the substance of an interview to ensure the record is complete and accurate.²⁶

The following examples regarding summarizing the matters discussed in an interview are illustrative and not intended to be exhaustive.

Examples of Suitable Examiner Interview Summary Content (By Examiner or Applicant)

The following examples are suitable interview summary comments to capture the thrust of the issues/arguments raised in an interview:

Applicant argued that the prior art combination of Smith in view of Jones does not render

²⁶ MPEP § 713.04

the claimed invention obvious because the Jones reference teaches away from the combination of the teachings. *See* Jones at col. 5, ll. 10–20.

Applicant argued that the examiner’s interpretation of the claim term “superabsorbent” was unreasonably broad in light of the definition of “superabsorbent” found on page 5, lines 10–15 of the application specification.

Applicant’s argument that Smith does not expressly teach the claim limitation of “adding sodium to promote the growth of micro-algae” requires further consideration in light of the Smith teaching of adding Sodium Hydroxide to buffer a microbial medium.

Agreement was reached that material incorporated by reference on page 5, lines 10–11 of the application specification is necessary for one skilled in the art to identify the structure that performs the function of monitoring to support the “means for monitoring” limitation of claim 5. Applicant is required to amend the specification to include the corresponding structure in accordance with MPEP § 2181(III) and clearly link the corresponding structure to the “means for monitoring” limitation in accordance with MPEP § 2181(IV).

A proposed amendment to claim 1 was discussed. The examiner agreed that the proposed amendments would overcome the enablement and utility rejections under 35 U.S.C. § 112, first paragraph and 35 U.S.C. § 101 respectively, if the claim language of independent claim 1 was modified as follows: the “including the inserted information” limitation after the claim term “message” on the last line of the proposed amendment to claim 1 should be deleted and replaced with --the computer-- (See Claim 1 of the attached proposed amendment). Claim 1 was also discussed in connection with the obviousness rejections. The examiner recommended that the claims be further amended to clarify the operation of the claimed collaboration server because, in the examiner’s view, the proposed claim language does not sufficiently distinguish the Smith reference’s collaboration server teaching. No agreement was reached regarding the obviousness rejections.

Examples of Unsuitable Examiner Interview Summary Content (By Examiner or Applicant)

The following examples are unsuitable interview summary comments because they do not capture the thrust of the issues/arguments raised in an interview:

Issues of anticipation/obviousness were discussed regarding the cited prior art.

Issues of claim interpretation were discussed.

The issues raised would require further search and/or consideration.

Agreement was (or was not) reached because the claims are found patentable (or unpatentable).

A proposed amendment to claim 1 was discussed. The examiner explained that the proposed amendments as presented would not overcome the rejections under 35 U.S.C. § 112 or 35 U.S.C. § 101. The examiner recommended that the applicant reconsider his arguments regarding the Smith reference. No agreement was reached.