

There needs to be a balance of incentives for examiners in order not to bias their examinations. Currently, in the business-method units, the allowance rate may indicate a bias towards rejection. Decisions by the Patent and Appeals Board and the Court of Appeals will provide substantial evidence as to bias.

I suggest instead incentivize examiners to make a correct decisions in the first place. One way would be to examine the reasoning of a final rejection which is reversed. If the reversal was based on an egregious process error, such as failing to follow clearly applicable precedent or to even address an analysis or fact which was found persuasive by the reviewing body then there should be a consequence to the Examiner. This consequence should be balanced with disincentive to pass a patent application to allowance so that there is an incentive not to make such an error in the first instance.

For example, in such cases the credit an Examiner received for the rejection could be subtracted from the Examiner's current count. However, because there may still be incentive to make very sloppy rejections because they take little time and may not be appealed this may not be sufficient. Therefore, it may be necessary to deduct a multiple of the credit received from the Examiners current count in such cases. Supervisors who signed off on the action should receive a similar incentive to make the correct decision.

An appropriately formulated policy, such as the above, would enhance quality by more appropriately incentivizing examiners to conduct a more thorough and appropriate analysis in the first instance.

Thank you for considering this comment.

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