

Dear Patent Quality Measurement Team: I am thrilled that the PTO is working on patent quality. For context, I worked for Michelle Lee for years when I was a legal director on the patent team at Google. I hope the following comments are helpful. These comments are my personal views and do not represent the views of any current or former employers:

1. For the PTO to improve patent quality, I suggest taking steps to understand better where the majority of the problem is in finding and applying prior art that later invalidates a patent, i.e., finding out where the low-hanging fruit is.
 - a. When a claim is invalidated during post-grant procedure, e.g., IPR or CBM, or during litigation, the PTO should determine if the invalidation is based on prior art that
 - i. the PTO was already aware of but didn't apply?
 1. E.g., cited art or a US patent
 2. If so, why didn't the Examiner apply the art?
 - a. e.g., was the Examiner too short on time, if so, could a search/relevancy tool have helped, or was the cited art flagged for the US examiner as relevant by another examiner or by a search tool - some research suggests that Examiners tend to ignore art that they didn't find themselves,
 - b. Did another patent office apply the same/similar art?
or
 - ii. the Examiner could have found, but didn't find? E.g., the invalidating art was
 1. in the database(s) available to the Examiner but the Examiner didn't find it and it wasn't cited to the Examiner?
 - a. And if so, why didn't he/she find it?; or
 - iii. the Examiner couldn't have found using the then available search tools?
 1. Why was the invalidating art not in one of the available search tools?
 2. Is the art now easily discoverable in an available search tool?
 - b. To determine the information outlined in (a), the PTO needs to collect certain information upfront, e.g.,
 - i. Which cited references an examiner reviewed in any detail, the relevant sections that were reviewed, and how long the Examiner spent on each section/reviewed reference.
 - ii. A periodic snapshot of which databases/search tools are available to Examiners and which are used most often.
 - iii. Which search tools were used and the search strings/methods that were employed.
 - iv. And then the PTO needs to review each case, if possible with the issuing Examiner, when a claim is invalidated.
 1. Related Questions/notes:

- a. How was the cited art discovered, e.g., which tool/database (this info should be broken down by technology at issue)
- i. Related question: How often does an examiner use 3rd party search tools and which ones?
 - b. Tracking the evolution of which search tools are most effective in finding applied and/or invalidating prior art, broken down as granularly as possible
 - c. How often does the PTO grant a patent that is later invalidated on the basis of another US patent?
 - d. The info noted above should also be transparent to the public to allow the public to suggest/develop solutions.

I hope this is helpful.

Best,
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