

Patent Quality Update

Cary, North Carolina

Wednesday, January 25, 2017

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Update on Patent Quality Programs



Kathleen Bragdon

Advisor to the Deputy Commissioner for Patent Quality

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Enhanced Patent Quality Initiative

EPQI



<http://www.uspto.gov/patentquality>

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EPQI Programs

Under the three pillars of patent quality:



Automated Pre-Examination Search Pilot
Clarity of the Record Pilot
ICR Training
Post Grant Outcomes
STIC Awareness Campaign
Topic Submission for Case Studies



Master Review Form
Quality Metrics



Design Patent Publication Quality
Interview Specialist
Post-Prosecution Pilot (P3)
Reevaluate Quick Path Information Disclosure Statement (QPIDS)

Automated Pre-Examination Search



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Automated Pre-Examination Search

Goal

- Provide a pre-examination search automatically in every application

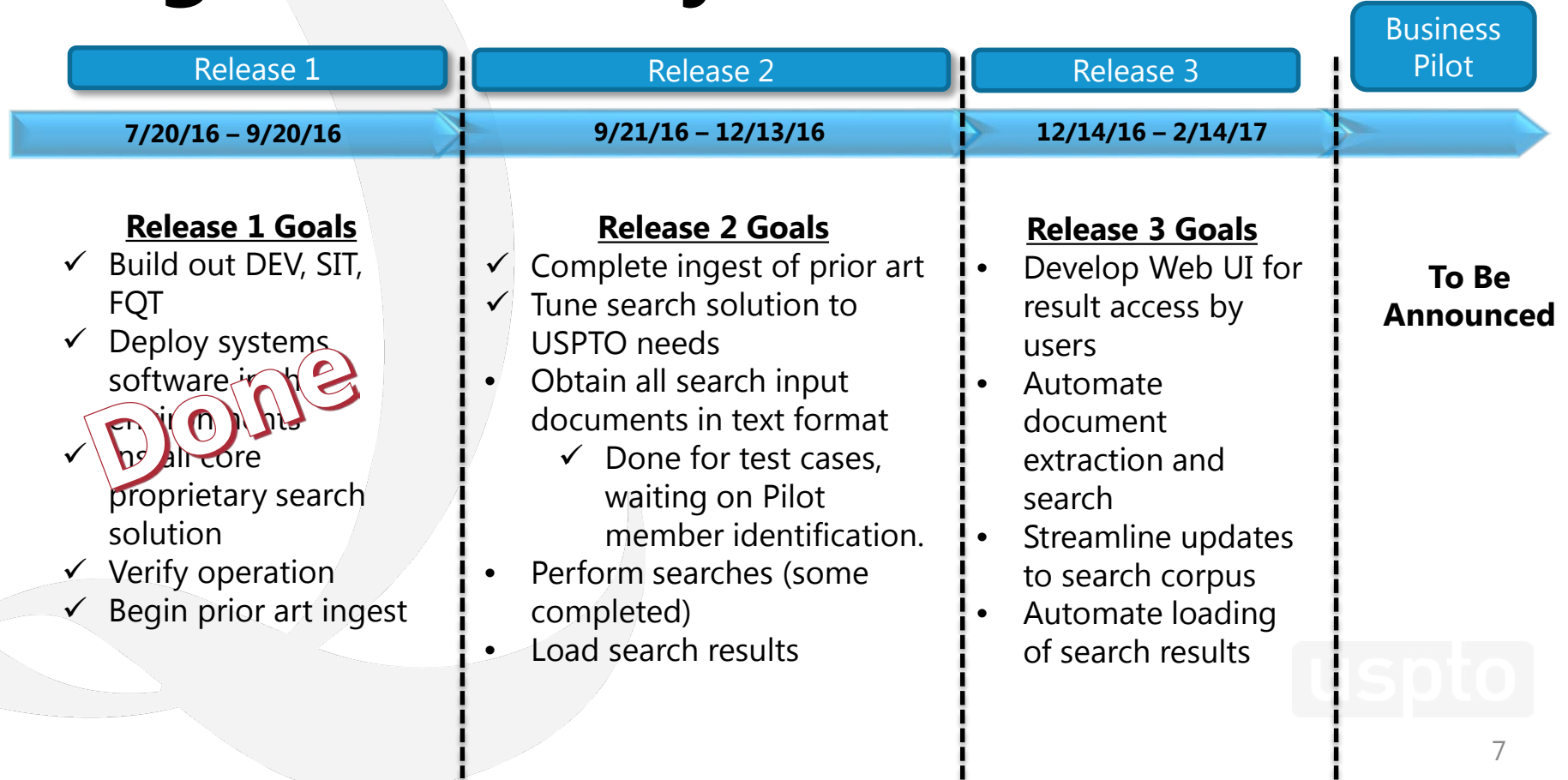
Objectives

- Leverage modern technologies to identify prior art for the examiner **prior to** examination
- Optimize searching technology to keep pace with advancements in the field

Benefits

- Providing a useful prior art baseline that represents the current state of the technology in each patent application
- Improving examination quality by supplying that art to the examiners

High Level Project Release Plan



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**

**35 U.S.C. 112(f):
Evaluating Limitations
in Software-Related
Claims for Definiteness
under 35 U.S.C. 112(b)**

**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**

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Stakeholder Training on Examination Practice and Procedure (STEPP)

- 3-Day training on examination practice and procedure for patent practitioners
- Provide external stakeholders with a better understanding of how and why an examiner makes decisions while examining a patent application
- Aid in compact prosecution by disclosing to external stakeholders how examiners are taught to use the MPEP to interpret an applicant's disclosure

Post Grant Outcomes



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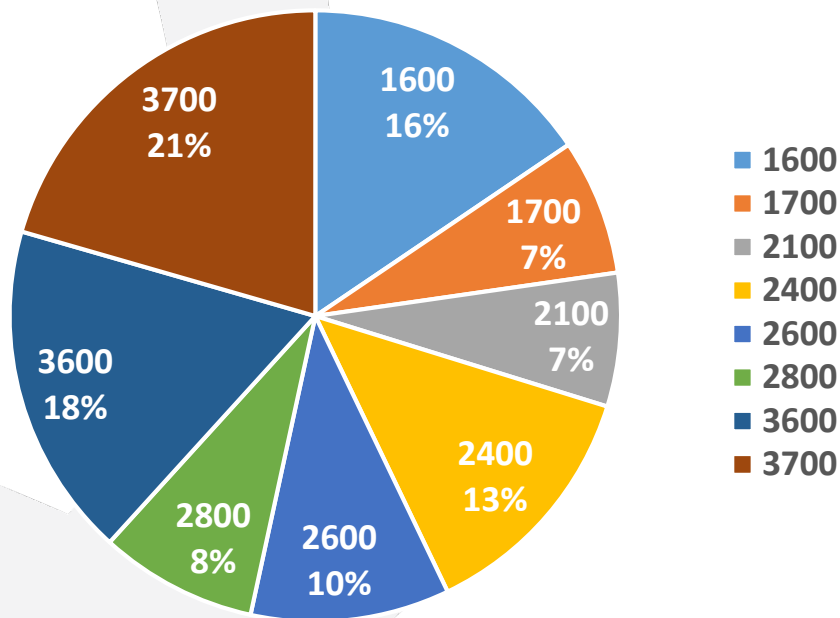


Post Grant Outcomes Program

- 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 by Technology Center

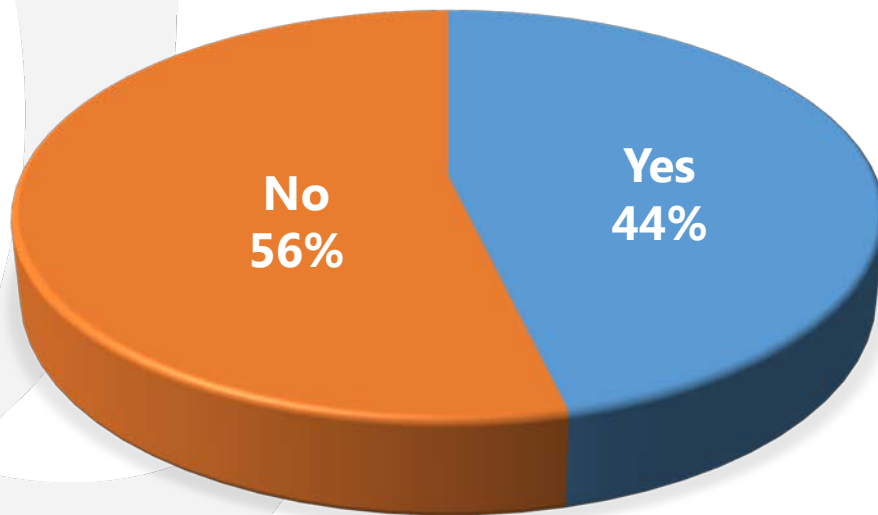
DISTRIBUTION OF PILOT APPLICATIONS
BY TECHNOLOGY CENTER



Technology Center	Number of Pilot Applications
1600	121
1700	56
2100	55
2400	102
2600	82
2800	65
3600	138
3700	160
Grand Total	779

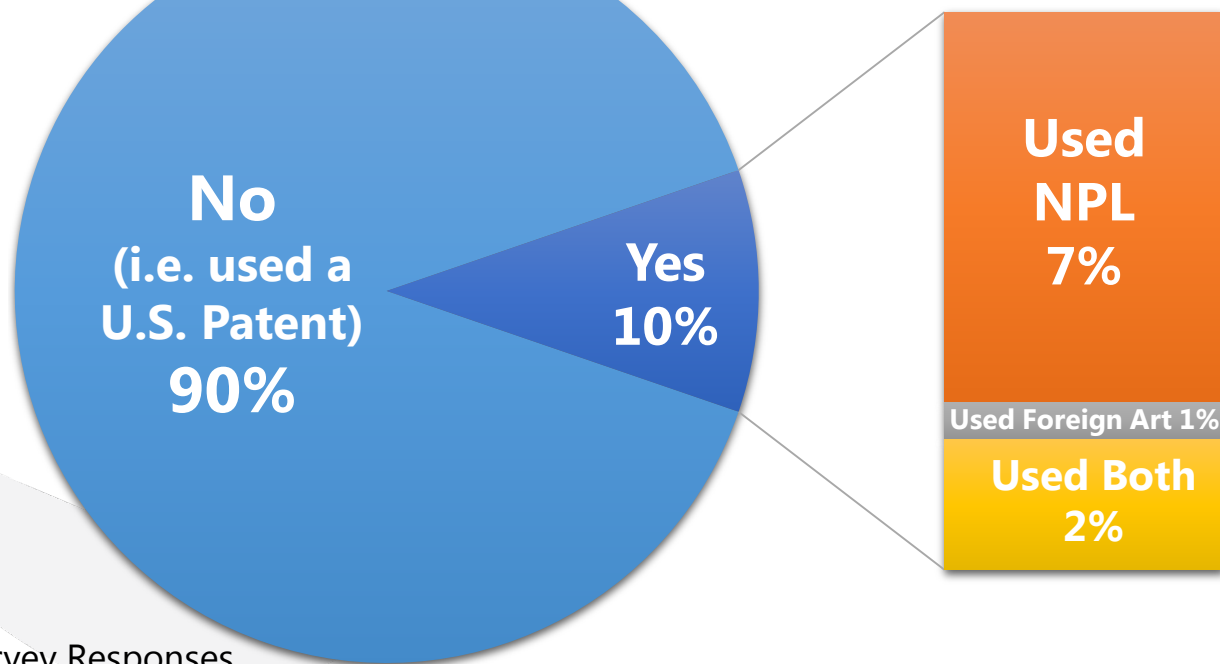
Pilot Statistics – Relevant Art For Child Case

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?

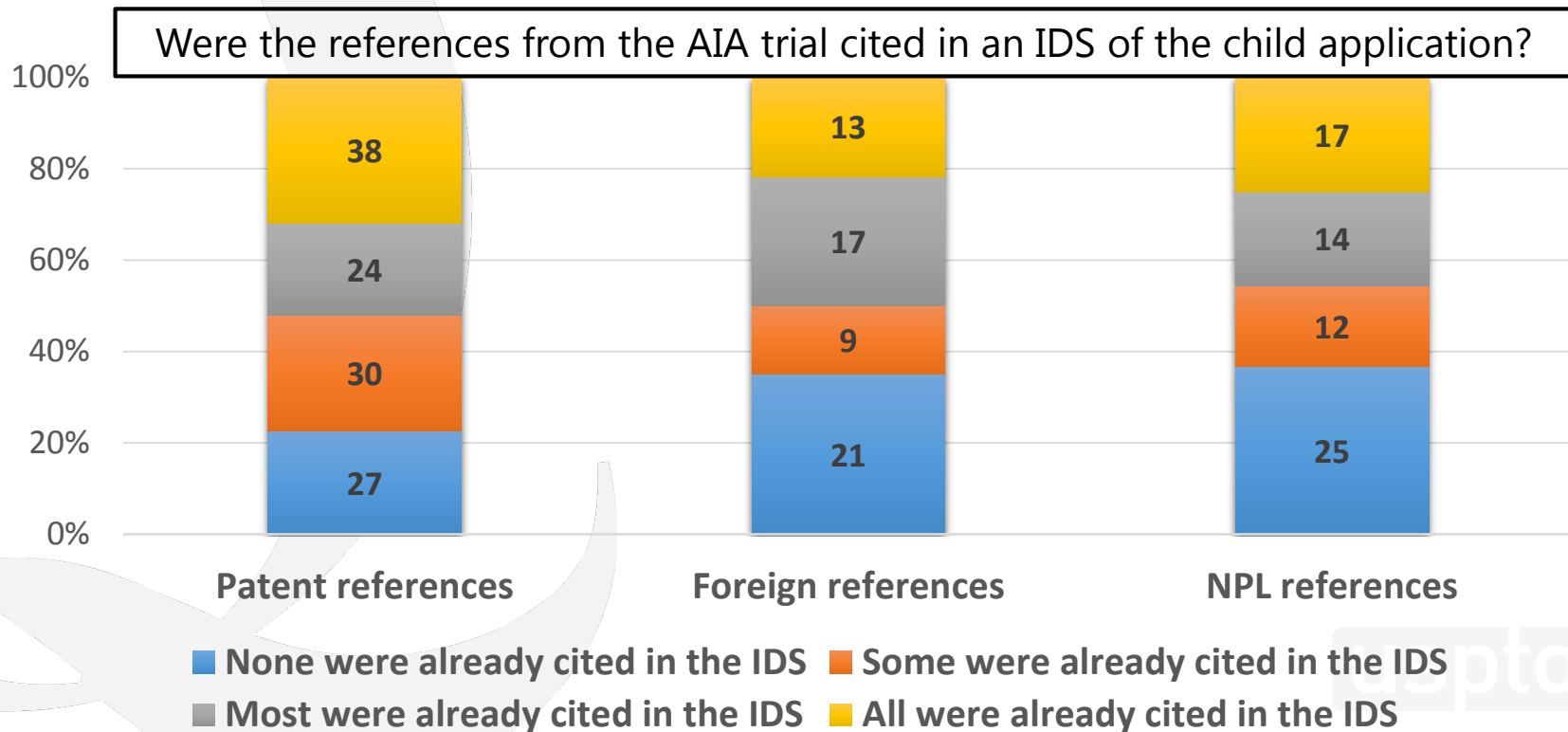


Pilot Statistics – What Kind of Relevant Art

Did the examiner write a new grounds of rejection using NPL or foreign art cited in the PTAB petition?



Pilot Statistics – Enhancing the Record



Based on 129 Survey Responses

Post Grant Outcomes Looking Forward

Next Steps

- Develop training and best practices collected from pilot
- Implement the program corps-wide
- Continue to collect suggestions from stakeholders about how to improve the program

For more information

- Webpage <http://www.uspto.gov/patent/initiatives/post-grant-outcomes-pilot>
- Email is at PostGrantOutcomes@uspto.gov

More information at the Pilot home page:

<http://www.uspto.gov/patent/initiatives/post-grant-outcomes-pilot>



STIC Awareness Campaign



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STIC Awareness

- Highlighting internal tools for patent examiners

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PTOWeb Patents OPIM STIC

Request Forms EICs Service C

STIC

Scientific & Technical Information Center

Welcome E

Welcome to EIC1600

Mary Hale, Supervisor

Linda Basker, TIS - Reference

Remsen 1D58

Phone: 571-272-0473

Email: STIC-EIC1600/2900

[Staff List](#) · [Hours: 8 - 5 PM \(M-F\)](#)



Click for EIC Video!

EIC 1600/2900

15-Minute Demos

Wednesday, April 13th @ 1:00PM ET

Using Social Media to Find Prior Art - Part 2: Discussions, Forums, Blogs and Microblogs

Participants will be able to understand:

- Discussions and Forums
 - Google Groups
 - Discussions and forums for specialized interests
- Blogs and Microblogs
 - Wordpress
 - Twitter
- In-person: REM 1058
 - [Via WebEx](#)
 - Meeting Number: 641 472 054
 - Meeting Password: 1234

[Click to see other demos offered this week at the EIC/CI](#)
[Can't attend? Find the presentation materials here](#)



Connect to WebEx here!

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Search and Discover NPL

☒ Keyword ☐ Title ☐ Author

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Clarity and Correctness Data Capture: Master Review Form (MRF)



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Master Review Form Background

- USPTO has a long history of reviewing its own work
 - Office of Patent Quality Assurance (OPQA)
 - Regular supervisor reviews
 - Other formal review programs
 - Informal feedback
- Reviews, using different formats, focused on correctness and provided feedback on clarity
- Review data was routinely analyzed separately

MRF Program Goals

- To create a ***single, comprehensive*** tool (called the Master Review Form) that can be used by all areas of the Office to ***consistently*** review final work product
 - Common review standard
 - Common data points
- To better collect information on the ***clarity and correctness*** of Office Actions
- To collect review results into a ***single data warehouse*** for more ***robust analysis***
 - Increased precision in metrics
 - More granular levels of analyses to detect anomalies, inconsistencies, and hot spots

MRF Design

Correctness

Overall, were the 35 U.S.C. 102 rejection(s) in compliance?

☒ Yes

☐ In-Part

☐ No

Claimed features are explicitly/inherently disclosed in the prior art relied upon?

☒ Yes

☐ In-Part

☐ No

☐ N/A

Clarity

Examiner's reliance

Overall, how was the clarity of the 35 U.S.C. 102 rejection(s)?

☐ Above Average

☒ Average

☐ Below Average

Effective date(s) sufficient?

Sufficient explanations were provided to clarify the basis of the rejection(s) as to allow applicant to understand rejection.

☐ Above Average

☒ Average

☐ Below Average

Examiner explained their claim interpretation.

☐ Above Average

☒ Average

☐ Below Average

☐ N/A

Applicant's arguments clearly pin-point where the rejection is not proper.

☐ Above Average

☒ Average

☐ Below Average

The Office action contained clear suggestions for overcoming the rejections.

☐ Above Average

☐ Average

☐ Below Average

☒ N/A

Clarity Comments:

Modular designed smart-form

20+ modules
Omitted/Made Rejections,
Search, etc.

330 question library
Correctness, clarity, best
practices

Auto-populated
case details

Integrated system
with sampling and
workflow features

MRF Looking Forward

- The MRF's single data warehouse facilitates:
 - Better quality metrics
 - Case studies without the need of directed, *ad hoc* reviews
 - Rapid measurement of the impact due to training, incentives, or other quality programs on our work product
 - Quality monitoring tools, such as dashboards
- Developing quality metrics from MRF review data

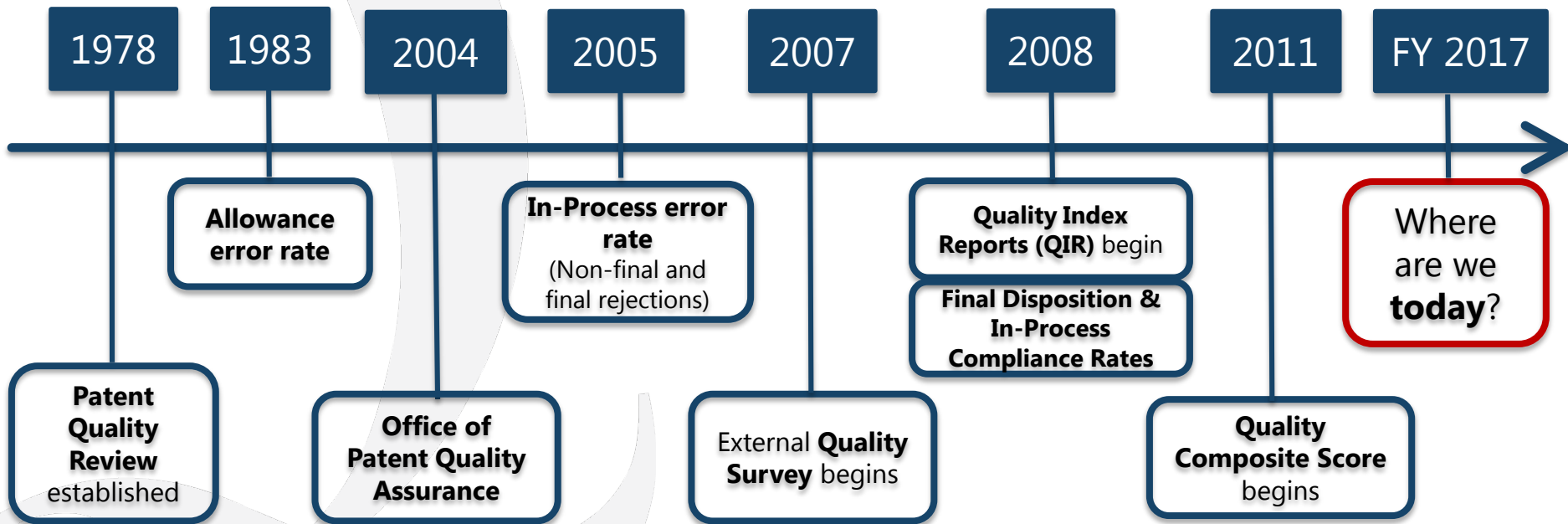
Quality Metrics



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Historical Perspective on Measuring Quality



Supplemented with: regular supervisory reviews; formal review programs; informal feedback; ad-hoc studies

Quality Metrics - Redefined

Product Indicators

Master Review Form

Capturing both correctness and clarity of examiners' final work product using uniform criteria gathered in a single database

Process Indicators

Transactional QIR

Tracking the efficiency and consistency of our processes (for example, to identify "churning")

Perception Indicators

Survey Results

Continuing to internally and externally poll perceptions of patent quality

Quality Metrics Website

<https://www.uspto.gov/patent/initiatives/quality-metrics-1#step2>

Quality Metrics

We are committed to self-improvement, developing and implementing new measures for understanding, evaluating, and reporting the correctness and clarity of examiners' work products.

1 About Quality Metrics

2 Product Indicators

3 Process Indicators

4 Perception Indicators

5 Timeline

6 Contact Us

About Quality Metrics

We have had quality metrics since at least 1983. Committed to self-improvement, we continue to identify new metrics to gain a more thorough understanding of our work products and processes. Learn more about our Quality Metrics evolution in the Quality Metrics Timeline.

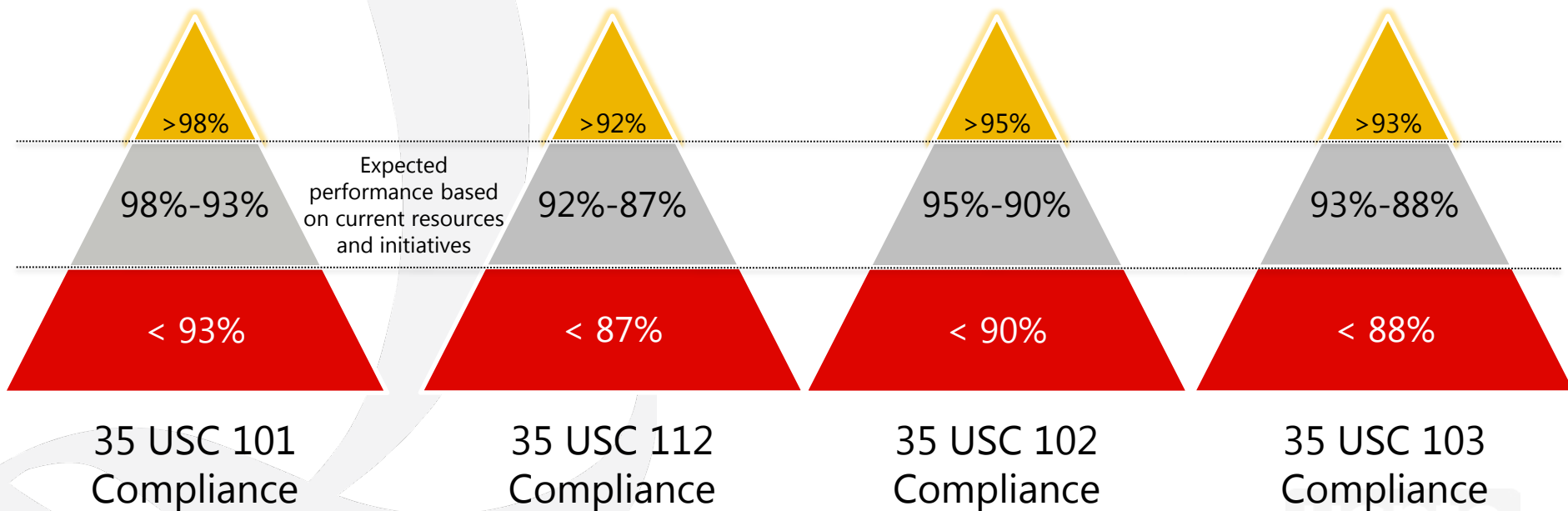
Resulting from stakeholder feedback, in fiscal year 2015, we launched the Enhanced Patent Quality Initiative (EPQI) Quality Metrics Program. In a March 2016 [Federal Register Notice](#), we announced a new quality metrics approach, categorizing quality metrics as follows:

- **Product Indicators** include metrics on the correctness and clarity of our work products. We formulate these metrics using data from reviews conducted by the Office of Patent Quality Assurance using the [Master](#)



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Quality Metrics FY17 Targets



Design Patent Publication Quality



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Design Patent Publication Quality

Goal

- Improve the quality of images printed in design patent grants

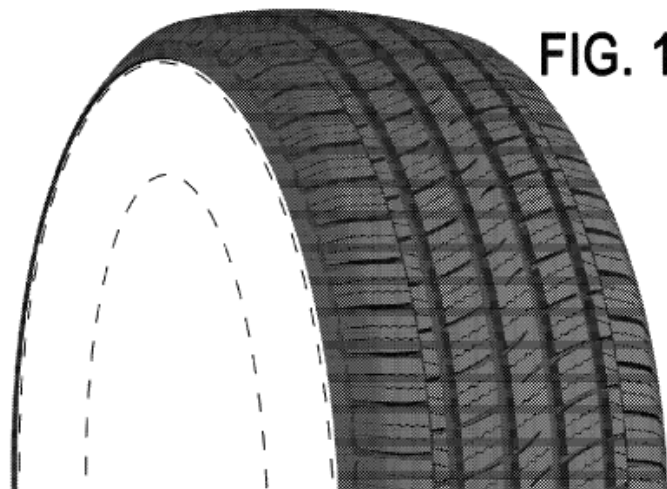
Results

- New process implemented October 4, 2016 wherein:
 - Images of design patent grants are clearer and more reflective of the electronically filed images and
 - Electronic file wrappers of design patent grants contain PDF copies of the design patent grants

Looking Forward

- Uploading enhanced quality patent images into search systems to enhance patent search capabilities

Enhancing Design Patent Images



BEFORE



AFTER

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Interview Specialist



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TC Interview Specialists

- Subject matter expert on interview practice and policy in each Technology Center
- The list of TC Specialists can be found here:
<http://www.uspto.gov/patent/laws-and-regulations/interview-practice/interview-specialist>
- Specialists can provide One-on-One Training to help applicants utilize WebEx video conferencing tools (email your request to ExaminerInterviewPractice@uspto.gov)

Making Collaboration Easier

- Fully equipped video conference rooms are available for reservation on **each** USPTO campus
- Internet Usage Policy has been updated to permit verbal authorization for video conferencing tools
 - MPEP § 502.03 now allows a verbal request to authorize a video conferencing, instead of submitting a written request.
- Examiners set up video conferencing for interview using WebEx, a web-based service that you can use it from any computer (Windows, Mac, Linux, or Solaris) with no software needed.

Interview Practice Webpage

<http://www.uspto.gov/patent/laws-and-regulations/interview-practice>

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Interview Practice

Interviews enable Applicants and Examiners to discuss and resolve issues and are an effective tool to advance the prosecution of an application. The USPTO encourages Examiners to take a proactive approach to examination by reaching out and engaging our stakeholders in order to shorten prosecution.

- 1 USPTO AIR
- 2 Video Conference
- 3 TC Interview Specialist
- 4 Policy and Guidance
- 5 Training and FAQs
- 6 Survey
- 7 Federal Register Notice
- 8 Contact Us

USPTO AIR

A new web-based tool that allows Applicants to schedule an interview with an Examiner for their pending patent application. Complete the form.

Video Conference

Video conferencing with a patent examiner gives you the ability to have face-to-face meetings, no matter the location of the examiner or attorney. Visit [Video Conferencing and Collaboration](#) for instructions on how to join a USPTO-hosted video conference, and information and links on how to use WebEx collaboration tools, including audio/video conferencing and file sharing. In this short video, attorneys share some advantages of video conferencing interviews.

USPTO Automated Interview Request (AIR) Form

Automated Interview Request Form (AIR) Form
Last updated for use through 1/15/2016. OMB 0551-0001
Patent Office U.S. DEPARTMENT OF COMMERCE
This online form displays a valid OMB control number.

AIR form allows applicants to schedule an interview with an examiner for their pending patent application

* This paper requesting:
☐ I have previously submitted an interview request.
☐ I am concurrently submitting an interview request.
☐ This submission is not an interview request.
Internet communication:
Interview via video conference:
Including video conferencing.

☐ I understand that a copy of this communication will be made of record in the application file.

*Name(s):

*S-signature: (See 37 CFR 1.4(d)(2) (/Name/))

Registration Number: (5 Digit Numeric Only: 12345)

*U.S. Application Number: (8 Digit Numeric Only: 12345678)

*Confirmation Number: (4 Digit Numeric Only: 1234)

*E-mail Address:

*Phone Number: (10 Digit Numeric Only: 0123456789)

*Proposed Date and Time of Requested Interview must be more than one (1) week after today:
(Note: Confirmation of actual interview date and time will be arranged between examiner and requester)
MM DD YYYY Time Eastern Time

*Proposed Type of Interview: (Examiners working remotely will offer Video Conference or Telephonic interviews)

☐ I am the applicant or applicant's representative for this application.

* Indicates fields that are required

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to be provided (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 1.34. This collection is estimated to take 24 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time required to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS.

Post-Prosecution Pilot (P3)



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Post-Prosecution Pilot (P3) Goal

- Developed to impact patent practice during the period subsequent to final rejection and prior to the filing of a notice of appeal
- Adding to current programs:
 - After final Consideration Pilot (AFCP 2.0)
 - Pre-appeal Brief Conference Pilot

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

Post-Prosecution Pilot (P3) Summary

- Ran July 11, 2016 – January 12, 2017
- Accepted over 1500 submissions across all technologies
- Formal comments about P3 were collected July 11 – Nov 14, 2016 and are now posted at <https://www.uspto.gov/patent/laws-and-regulations/comments-public/comments-post-prosecution-pilot-program>

P3 Looking Forward

Metrics for Consideration

- Internal and external survey results
- Formal comments from FR Notice
- Stakeholder feedback about the program from other sources

Program Decision

- Whether to continue the program, optionally with modifications

For more information

- Webpage <http://www.uspto.gov/patent/initiatives/post-prosecution-pilot>
- Email us at PostProsecutionPilot@uspto.gov

Re-Evaluation of Quick Path Information Disclosure Statements (QPIDS)



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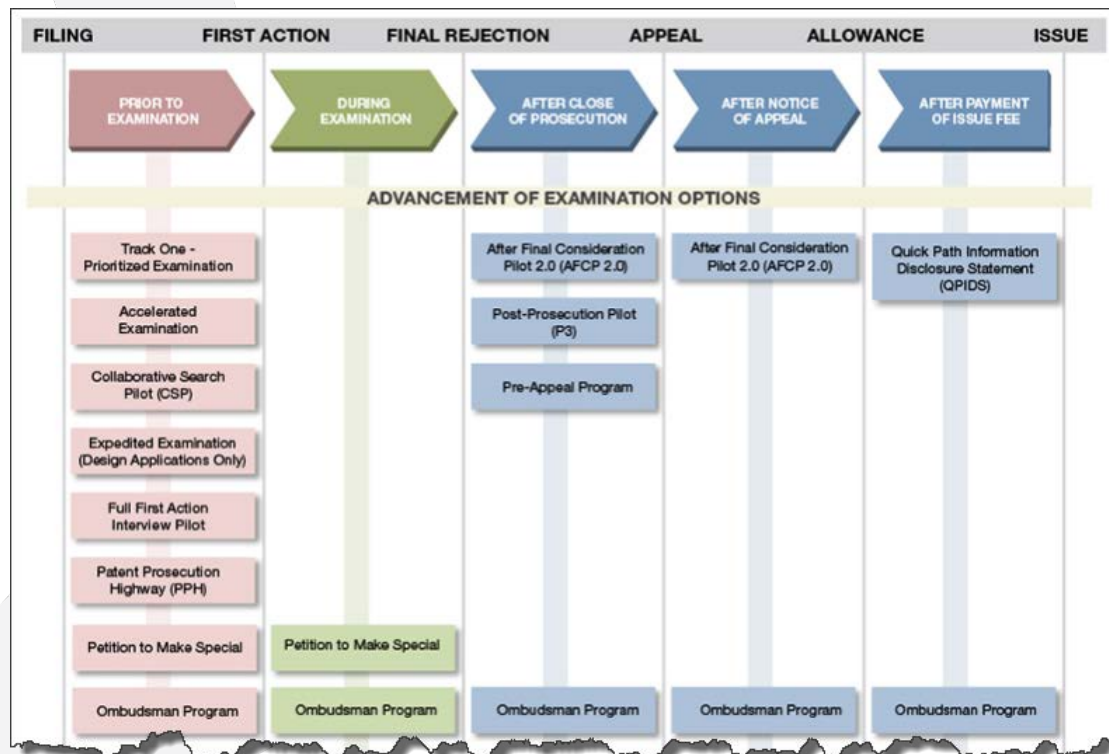


QPIDS Re-Evaluation

- Approximately 3,000 QPIDS requests/FY
- Many requirements, including an e-Petition for withdraw from issue after payment of the issue fee
- Updating resources on Patent Application Initiatives (PAI) webpage
- Developing training for QPIDS experts and technical support staff to improve processing
- Considering improvements for internal tracking

Patent Application Initiatives (PAI)

<https://www.uspto.gov/patent/initiatives/uspto-patent-application-initiatives-timeline>



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Clarity of the Record Pilot



Jim Dwyer

Senior Advisor to the Deputy Commissioner for Patent Quality

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Clarity of Record Pilot - Purpose

This program is to develop **best Examiner practices** for enhancing the clarity of various aspects of the prosecution record and then to **study the impact** on the examination process of implementing these best practices.

Clarity of Record Pilot Goals

Enhance Clarity of
Prosecution Record

Use Data/Feedback
to Assist Other
Programs

Find Correct Balance
for Appropriate
Recordation

Identify Examiner
Best Practices

Clarity of Record Pilot - Areas of Focus

- More detailed interview summaries
- Enhanced documentation of claim interpretation

➤ Special definitions of claim terms	➤ Optional language
➤ Functional language	➤ Non-functional descriptive material
➤ Intended use or result (preamble and body of claim)	➤ Computer-implemented functions that invoke 35 U.S.C. §112(f) ("specialized" or "non-specialized")
➤ "Means-plus-function" (35 U.S.C. §112(f))	

- More precise reasons for allowance
- Pre-search interview - Examiner's option

Clarity of Record Pilot - Participants

- 125 Examiners participated
 - Advanced Training
 - Met regularly
 - Recorded time spent
- 45 Supervisors (SPEs) participated
 - Managed program
 - Provided reviews
 - Provided direct assistance

Clarity of Record Pilot - Evaluation

- 2,600 Office actions (reviewed and recorded)
 - Included a statistical mix of:
 - Pre-Pilot Office actions
 - Pilot Office actions
 - Control group
- Key Drivers were determined
- Best practices were gathered

Results and Recommendations – Interview Summaries

Identified Best Practices/Key Drivers:

- Adding the substance of the Examiner's position
- Providing the details of an agreement, if reached
- Including a description of the next steps that will follow the interview

Recommendations:

- Provide corps-wide training on enhancing the clarity of interview summaries that focuses on the identified best practices/key drivers
- Consider whether to require examiners to complete more comprehensive interview summaries
- Continue to evaluate Pilot cases to see whether improved interview summary clarity has a long-term impact on prosecution

Results and Recommendations – 112(f) Limitations

Identified Best Practices/Key Drivers:

- Explaining 112(f) presumptions and how the presumptions were overcome (when applicable)
- Using the appropriate form paragraphs
- Identifying in the specification the structure that performs the function

Recommendation:

- Consider whether to require examiners to use the 112(f) form paragraph

Results – 102 and 103 Rejections (Claim Interpretation)

Identified Best Practices/Key Drivers:

- Clearly addressing all limitations in 35 U.S.C. 102 rejections when claims were group together
- Explaining the treatment of intended use and non-functional descriptive material limitations in 35 U.S.C. 103 rejections

Overall Pilot Determination:

- Examiners currently doing a good job with clarity in claim interpretation

Results and Recommendations – 102 and 103 Rejections (Claim Interpretation)

Key Drivers that *Added to* and *Detracted From* Clarity:

- Providing, in 35 U.S.C. 102 rejections, an explanation for limitations that have been identified as inherent
- Providing, in 35 U.S.C. 103 rejections, annotations to pin-point where each claim limitation is met by the references

Recommendation:

- Assess how to use the identified best practice of recording claim interpretation to improve the clarity of Office actions *without* detracting from clarity

Results and Recommendations – Reasons for Allowance

Identified Best Practices/Key Drivers:

- Identify specific allowable subject matter or where found, if earlier presented, during prosecution
- Confirm applicant's persuasive arguments
- Address all independent claims

Recommendations:

- Provide training on best practices
- Require more comprehensive reasons for allowance

Results – Additional Practices

Identified Best Practice:

- Pilot Examiners shared best practices with non-Pilot Examiners

Practices that did NOT significantly impact overall clarity:

- Providing an explanation regarding the patentable weight given to a preamble
- Providing an explanation of how relative terminology in a claim is being interpreted
- Providing an explanation for how a claim limitation that was subject to a rejection under 35 U.S.C. 112(b) has been interpreted for purposes of applying a prior art rejection

Clarity of the Record - Next Steps

Surveys

- Internal surveys sent to Pilot examiners
- Data currently being collected

Quality Chat

- Gather information/thoughts on any differences seen during Pilot time period
- Share data results of Pilot
- Discuss/share best practices

Focus Sessions

- Are best practices still being used?
- Discuss amended cases resulting from Pilot

Clarity of the Record - Next Steps (cont.)

Monitor Pilot Treated Cases

- Are applicant's arguments more focused?
- Average time to disposal compared to pre-pilot cases?

Recommendations

- Discuss implementation of training and best practices in all Technology Centers
- Consider further efforts to enhance claim interpretation including key drivers that did not significantly impact clarity
- Expand Pilot to gather additional data

Topic Submission for Case Studies



Jim Dwyer

Senior Advisor to the Deputy Commissioner for Patent Quality

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Topic Submissions - Background

- Case studies used internally on an *ad hoc* basis to study particular issues
- Federal Register Notice on Topic Submissions
 - USPTO invited stakeholders to submit patent quality-related topics for study
 - Submissions were accepted through December '15 through February '16

Topic Submissions and Selection

Submissions:

- Received over 135 ideas for case studies from 87 stakeholders
 - Intellectual property organizations, law firms, companies, and individuals

Process of review and selection:

1. Appropriate or capable of being timely assessed via a case study
2. Whether other programs or mechanisms within the USPTO were more appropriate
3. Grouped the remaining submissions by subject matter

Topics Selected for Case Studies

Patent Quality Topic	Project Status
1. Compliance of rejections with 35 U.S.C. 101 official guidance	Being Finalized
2. Consistency of application of 35 U.S.C. 101 across Art Units/Technology Centers	In-Progress
3. Use of compact prosecution when making 35 U.S.C. 101 rejections	In-Progress
4. Correctness and clarity of motivation statements in 35 U.S.C. 103 rejections	Being Finalized
5. Enforcement of 35 U.S.C. 112(a) written description in continuing applications	In-Progress
6. Consistent treatment of claims after May 2014 35 U.S.C. 112(f) training	Being Finalized

Compliance of Rejections with 35 U.S.C. 101 Official Guidance

Objective: This study evaluates whether rejections made under 35 U.S.C. § 101 were **correct** under USPTO Guidance and **clearly communicated** their reasoning.

This was the top study suggested by the public.

Overview

- Primary Study – Compliance of § 101 Rejections
 - Scope of the Study
 - Methodology
 - Findings
- Secondary (Additional) Study – Further Prosecution

Scope of the Primary Study

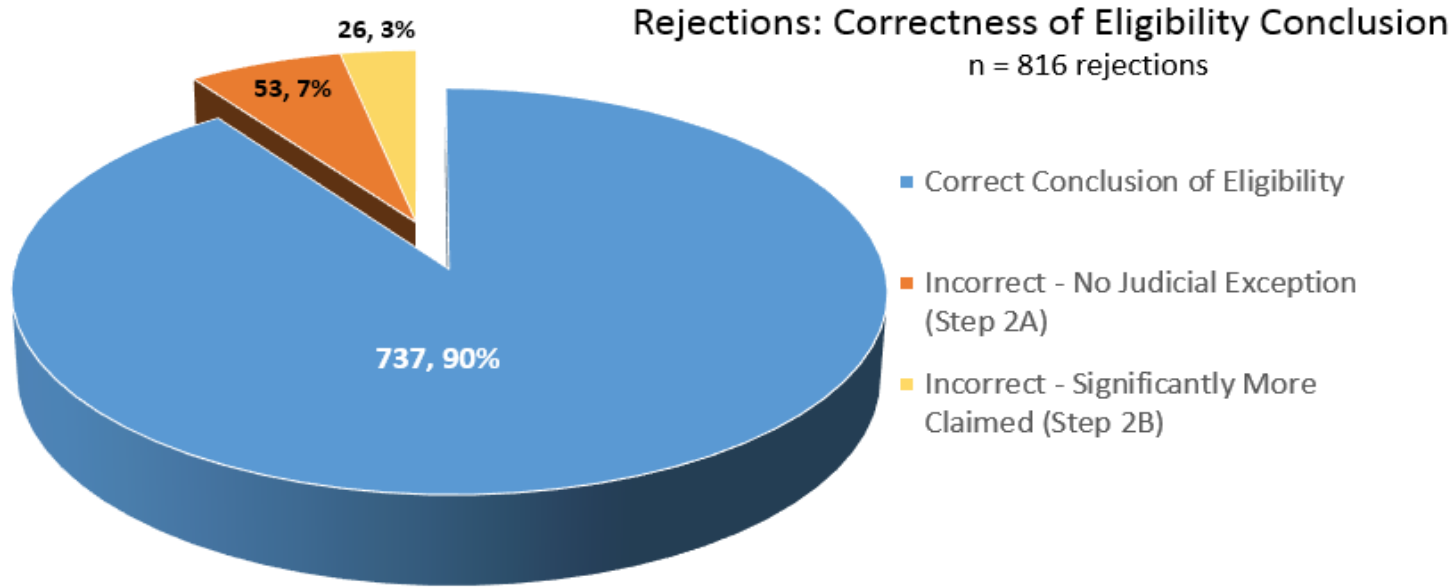
- Study was designed to provide these findings:
 - I. Are examiners following § 101 Guidance?
 - a. Ineligible rejections correct?
 - b. Properly explained?
 - II. What improvements were found due to the June 2016 training?
 - III. What are the drivers of compliance with Guidance for § 101 rejections?
 - a. Which parts of the 101 Guidance are most/least followed?
 - b. Where can future efforts move the quality needle?

Methodology of the Primary Study

- *Alice/Mayo*-type 101 rejections randomly sampled across Corps
 - Actions were issued January 2016-August 2016
 - 394 Office actions reviewed (prior to the 101 training of Spring 2016)
 - 422 were post-training
 - Review was limited to the first claim in the Office Action rejected under 101 and its dependent claims

Findings of the Primary Study

I.a) How often were the rejected claims actually ineligible



99% of dependent claims were correctly treated where the independent claim was correctly rejected.

Findings of the Primary Study

I(b). Were The Claims Properly Explained

Is the claim directed to a judicial exception?

1. Rejection should identify the judicial exception; *i.e.*, “a method of hedging”.
 - Should be more than “claim recited an abstract idea”
 - Should be more than simply repeating the limitations of the claim
2. The judicial exception should be correctly determined under USPTO Guidance
 - The explanation should correspond to the claim limitations
 - Similar to a court-identified abstract idea
 - For products of nature, markedly different characteristics from a natural product.

Findings of the Primary Study (cont.)

I(b). Were The Claims Properly Explained

Is significantly more than the judicial exception claimed?

1. Rejection; explanation of why the additional elements do not provide significantly more
2. The explanation should be reasonably correct
 - Should account for each additional element
 - Should be correct in concluding that an element is, *e.g.*, merely routine, conventional, well-understood
 - Should be based upon USPTO Guidance

Findings of the Primary Study - Conclusions

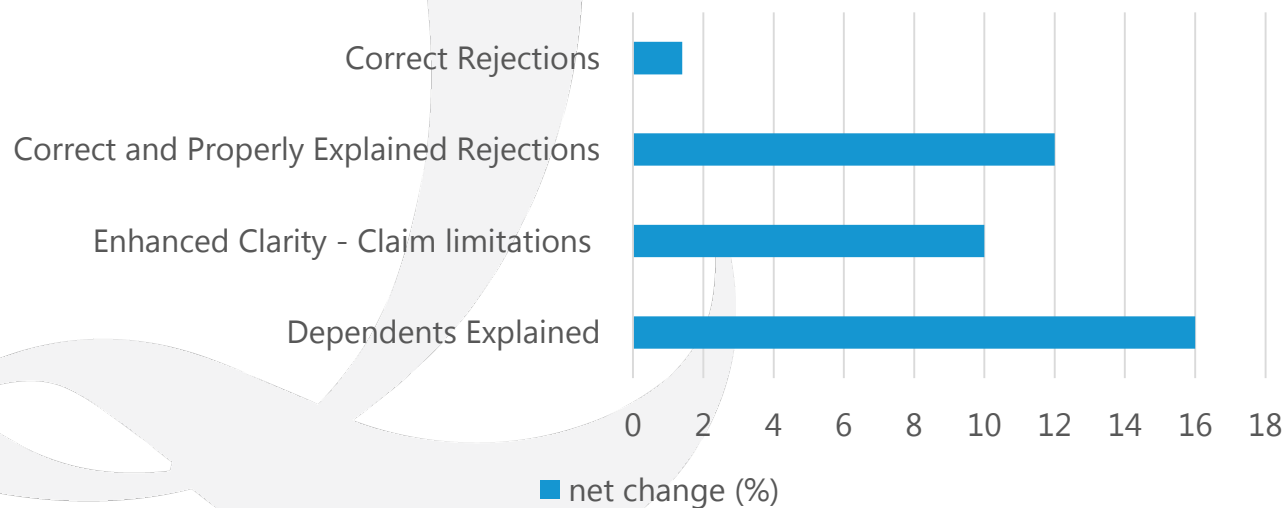
I(b). Were The Claims Properly Explained

- Out of **816** Total Rejections:
- **737** Correct **Conclusions** (Step 2A + 2B) Total
 - Rejected claim is ineligible under Guidance
- **657** Step 2A-Proper Explanations
 - 87% of **Rejections with** Correct **Conclusions**
- **624** Step 2B-Proper Explanations
 - 85% of **Rejections with** Correct **Conclusions**
- **554** Proper Explanations (Step 2A + 2B)
 - 75% of **Rejections with** Correct **Conclusions**
 - 68% of All Rejections

Findings of the Primary Study

II. Improvements Due to May 2016 Training

Improvement from Pre-Training to Post-Training



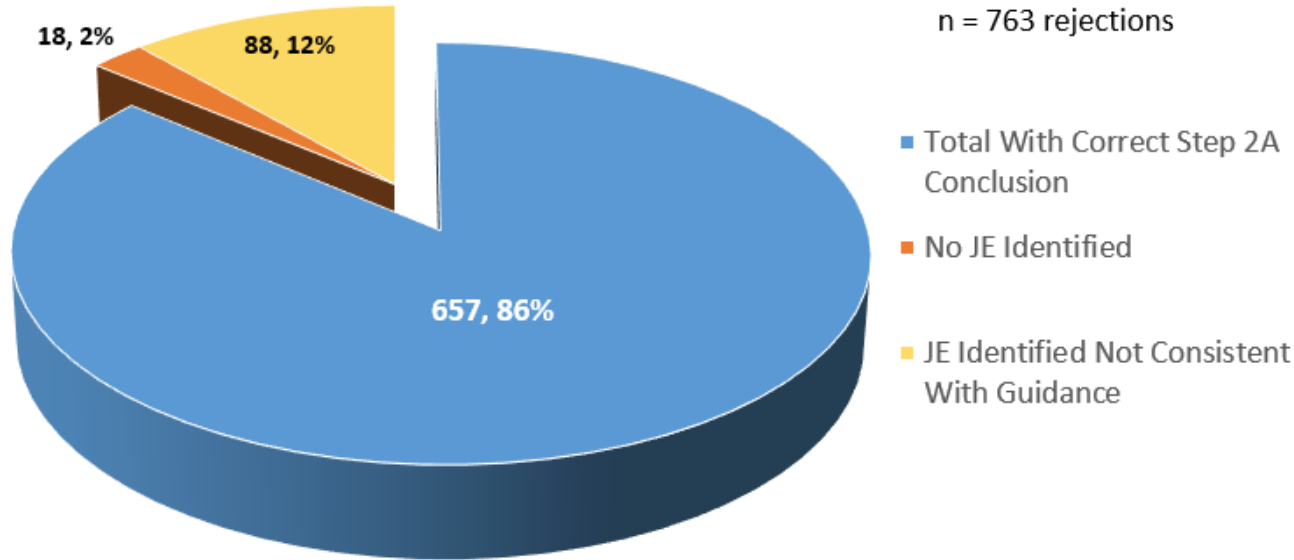
Improvement (% of total rejections)	Statistically Significant ?
90% → 91%	No
62% → 74%	Yes
40% → 50%	Yes
18% → 34%	Yes

Findings of the Primary Study

III. Drivers of § 101 Compliance with Guidance – Step 2A

Total: 763 of 816 Rejections with Correct Step 2A Conclusion

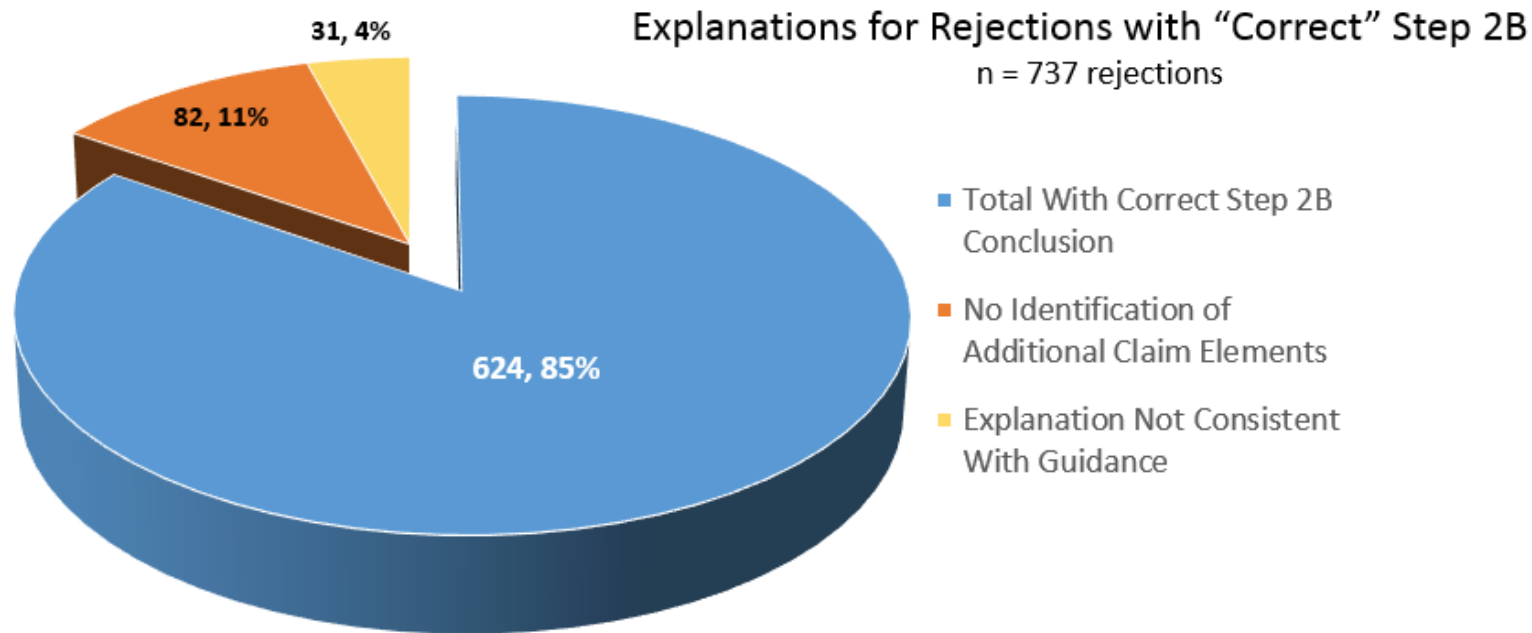
Explanations for Rejections with “Correct” Step 2A
n = 763 rejections



Findings of the Primary Study

III. Drivers of § 101 Compliance with Guidance – Step 2B

Total: 737 of 816 Rejections with Correct Step 2B Conclusion



Primary Study – Results Summary

- 90% of rejections that were made were of claims that are actually ineligible.
- 75% of those rejections of claims that are actually ineligible properly explained why the rejection was made.
- 68% of all studied rejections were correct and properly explained.

Secondary Study

Applicant's Response and Next Office Action

- Prosecution subsequent to the Office Action having the 101 rejection was studied
 - Cases from study having Office Action issued in January – April 2016

January-April 2016 Cases	394
Responses filed	315 (81%)
Subsequent Office action	189 (48%)

- What did applicant argue/amend?
 - What were the most common arguments?
 - Did the Examiner provide a detailed response to the applicant's arguments?
- Was 101 rejection maintained or withdrawn?
 - How often was the application allowed on the next action?

Can any correlations be identified?



Secondary Study – (cont.)

Applicant's Response and Next Office Action

Characteristics of the next Office action:

January-April 2016 Cases	394
Responses filed	315 (81%)
Subsequent Office action	189 (48%)
101 rejection not maintained (including where claims were cancelled)	86 (45%)
101 rejection maintained Specifically addressed arguments	103 (55%) 78 (76%)

Secondary Study - Correlations

Which aspects of the rejection correlate with withdrawal of the 101 rejection in the next Office action?

Did the study find the claim directed to an abstract idea?	How often was the rejection withdrawn in the next Office action?
Yes	40%
No (claim was eligible at 2A)	76%

Patents Ombudsman Program



Kathleen Bragdon

Senior Advisor to the Deputy Commissioner for Patent Quality

UNITED STATES
PATENT AND TRADEMARK OFFICE





Facilitate complaint handling when applications become stalled in the examination process

Track complaints to ensure each is handled within 10 business days (FY 2016 average resolution 6.2 business days)

Provide feedback regarding training needs based on complaint trends

Ombudsman Webpage Access

<http://www.uspto.gov/patent/ombudsman-program>

Enter Requesting Information

***items are mandatory**

*Ombudsman: Required

*First Name: Required

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*E-mail Address: Required

*Telephone Number: Required. You can use spaces/hyphens if you wish.

Best Time to Reach :

TC1600
TC1700
TC2100
TC2400
TC2600
TC2800
TC3600
TC3700
Ombudsman Program

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Other Ombudsman Contact Info

- For a phone consultation
 - (800) 786-9199
 - (571) 272-5555
- For direct email
 - ombudsmanprogram@uspto.gov

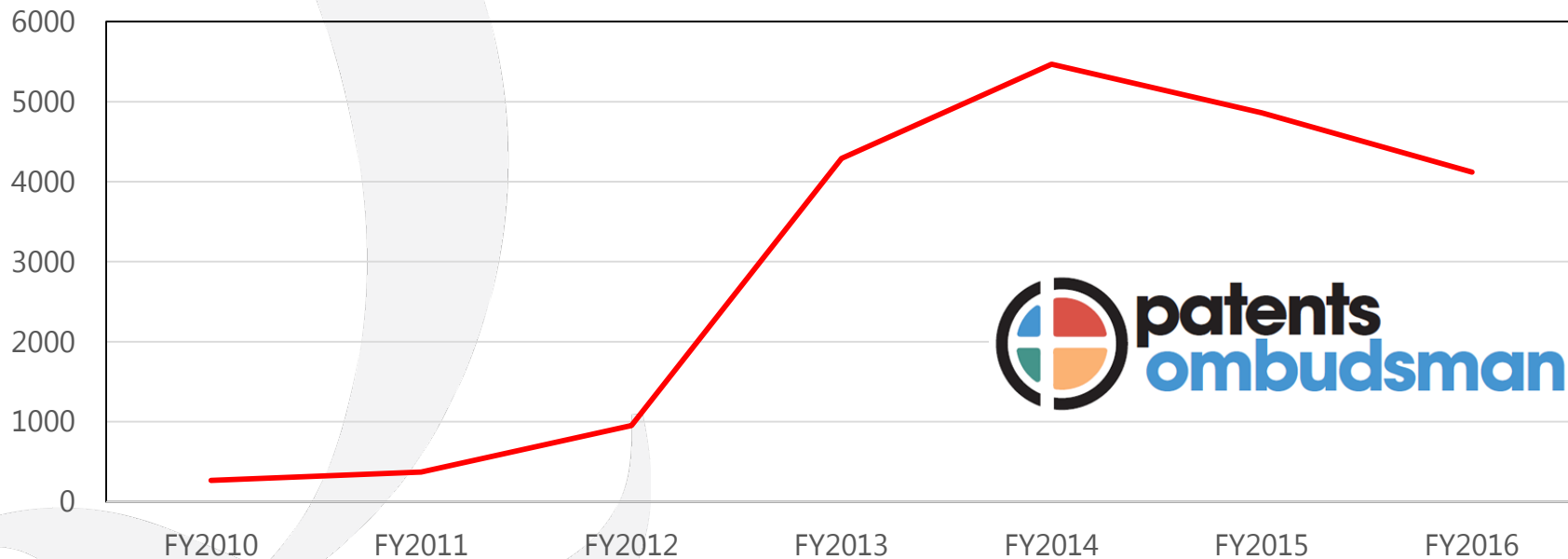
Service Hours via Regional Offices



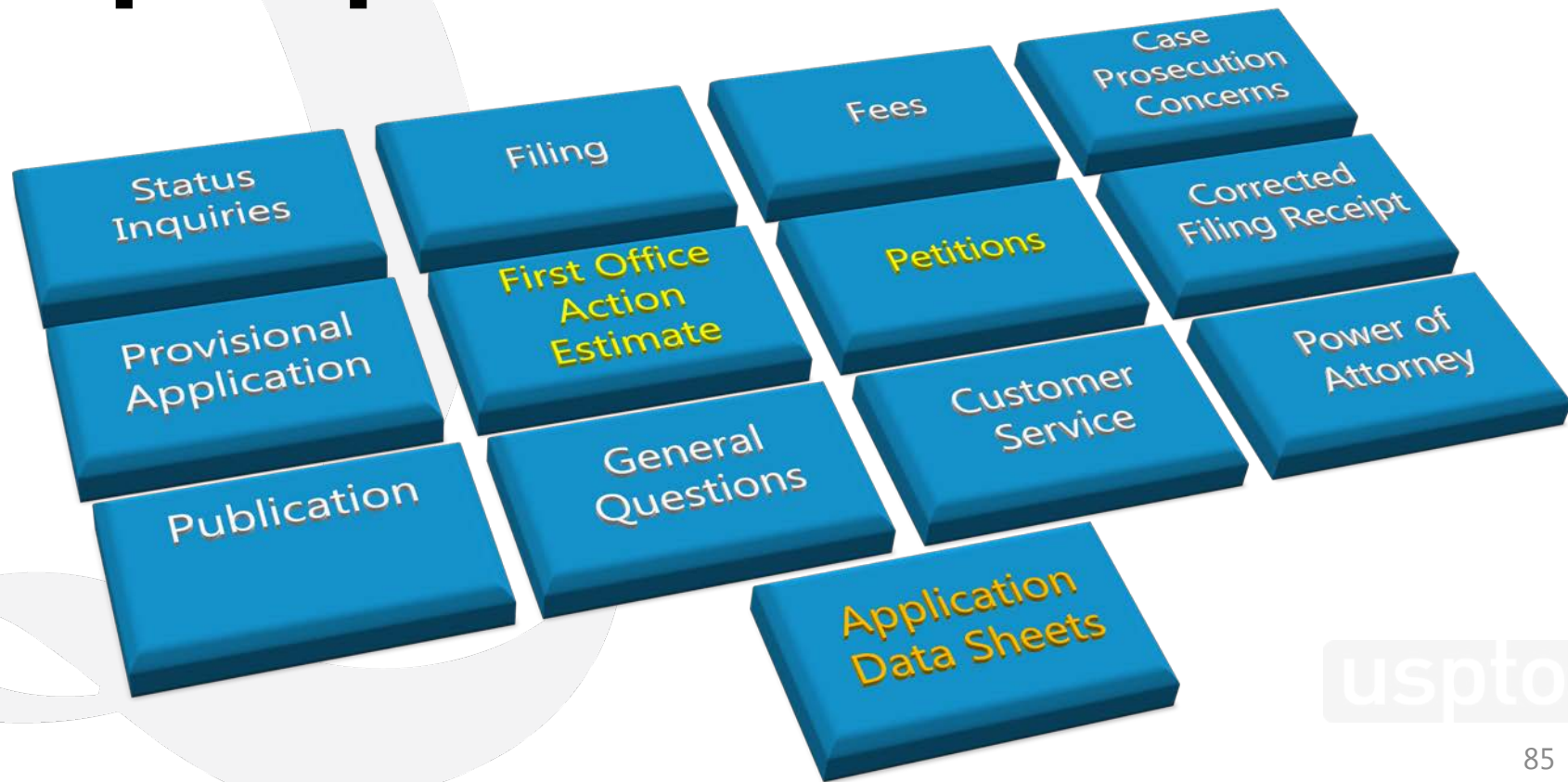
8:30 AM-8PM ET



Quantity of Ombudsman Inquiries



Top Inquiries of 2016



First Office Action Estimator

<http://www.uspto.gov/learning-and-resources/statistics/first-office-action-estimator>

First Office Action Estimator

Check current estimates on how long it will take for a first office action on a patent application by entering an Art Unit or Class and Subclass associated with a current or potential application.

Group Art Unit (four digits)

Search by Art Unit

- Or -



Class (three characters)

Subclass (three or seven characters)

Search by Class/Subclass



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Estimator Results

Search Results

Search based on Art Unit 1652. Estimated time to First Office action is **17** months.

This is an estimate that is based on the current inventory level of applications filed in this art area and the current staffing levels in this Art Unit. The USPTO is dedicated to minimizing first action and total pendency, and we are targeting resources to help address backlogs in art areas with high new application filings. Thank you for your inquiry.

[Estimate data](#) [csv file] current as of Tue Jan 17 07:28:04 2017.

Search Results

Search based on Class 435 / Subclass 195000 (Art Unit 1652). Estimated time to First Office action is **17** months.

This is an estimate that is based on the current inventory level of applications filed in this art area and the current staffing levels in this Art Unit. The USPTO is dedicated to minimizing first action and total pendency, and we are targeting resources to help address backlogs in art areas with high new application filings. Thank you for your inquiry.

[Estimate data](#) [csv file] current as of Tue Jan 17 07:28:04 2017.

Petitions Timeline

<https://www.uspto.gov/patents-application-process/petitions/timeline/patents-petitions-timeline>

1	PRIOR TO EXAMINATION
2	DURING EXAMINATION
3	AFTER CLOSE OF PROSECUTION
4	ALLOWANCE/AFTER PAYMENT OF ISSUE FEE
5	POST ISSUANCE

- Specifies the types of petitions that can be filed during the various stages of prosecution
- Hyperlinks to pendency data, historical grant rates and deciding official
- Links to the Manual of Patent Examining Procedure

Petition Timeline Example

Abandonment Related Petitions

IPLA – International Patent Legal Administration

ODM – Office of Data Management

OPET – Office of Petitions

TC – Technology Center

Generally Available

Petition Type	Avg. Days Pending of Decided Petitions	Grant Rate Percentage	Deciding Office	ePetition Option
502 - To Revive an Abandoned Application-Unintentional Delay (37 CFR 1.137(a))	144	83%	OPET	 GET IMMEDIATE DECISIONS
510 - To Accept Late Payment of Issue Fee - Unintentional Late Payment (37 CFR 1.137(a))	104	86%	OPET	 GET IMMEDIATE DECISIONS
525 - To Withdraw a Holding of Abandonment (37 CFR 1.181) - Failure to receive an Office Action	212	51%	OPET	
525 - To Withdraw a Holding of Abandonment (37 CFR 1.181) - Reply				

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Application Data Sheet (ADS)

Up Next in the Patent Quality Chat Webinar Series

**Feb 14th Understanding the ADS:
Little Things Make a Big Difference**

- 1 Patent Quality Chat
- 2 Joining the Webinar
- 3 2017 Chat Series
- 4 Archive
- 5 General Information

Patent Quality Chat



The Patent Quality Chat series is designed to provide information on patent quality topics and gather your input on a regular basis via an easy, webinar format. Each Patent Quality Chat webinar includes a speaker(s) presentation for approximately 20 minutes with the remaining time for questions and comments from the participants by [email](#) ✉.

All Patent Quality Chats are free and open to all on a first-come, first-served basis. Video recordings and any presentation materials from the Patent Quality Chats will be posted on this website after the event has concluded.

Pro Bono Program



Kathleen Bragdon

Senior Advisor to the Deputy Commissioner for Patent Quality

UNITED STATES
PATENT AND TRADEMARK OFFICE



Independent Inventors ~~Clients~~

- Believe in their invention
 - May have invested significant personal resources
- Often not familiar with patent prosecution
 - Statutes, rules, and procedures appear complex
 - May not know what to expect from an attorney/client relationship
- Often lack financial resources to retain a registered patent practitioner

USPTO Patent Pro Bono Program

- Nationwide network of independently operated universities/colleges and non-profit organizations that:
 - Assists financially under-resourced independent inventors and small businesses
 - Coverage in all 50 states achieved and maintained since August 2015
 - Promotes small business growth and development
 - Helps ensure that no deserving invention lacks patent protection because of a lack of money for IP counsel
 - Opportunity for patent practitioners to serve in their area of expertise

Pro Bono Program – December 2016



The North Carolina Program

- NC LEAP Inventors Assistance Program
 - Managed by:
 - North Carolina Bar Association Foundation
- Focus
 - Business assistance to small business owners through education and legal representation
 - Expanded service to include helping qualified inventors and small businesses to obtain pro bono access to registered patent professionals
- To volunteer:
 - Register Online - <https://www.ncbar.org/giving/volunteer-now/nc-leap-inventor-assistance-program/>
 - Contact Administrator - M'Lea Peak, mpeak@ncbar.org

USPTO Patent Pro Bono Program: Coordination Team

John Kirkpatrick

john.kirkpatrick@uspto.gov

571-270-3343

Grant Corboy

Grant.corboy@uspto.gov

571-270-3102

Oleg Asanbayev

oleg.asanbayev@uspto.gov

571-270-7236



