

From:

Sent: Friday, March 05, 2010 10:32 AM

To: patent_quality_comments

Subject: comments on patent quality

MEMMORANDUM

Patent and Trademark Office [Docket No.: PTO-P-2010-0004] Extension of Period for Comments on

Enhancement in the Quality of Patents AGENCY: United States Patent and Trademark Office, Commerce. **ACTION:** Request for comments.

The following suggestions are designed to improve quality of patents issued by the United States Patent and Trademark Office. The author was a career PTO examiner. The PTO must first recognize that there are thousands of Examiners who do not spend an eight hour day working on their patent applications. In fact many spend much, much less.

1. Monitor electronically examiners work habits to determine which examiners are working only 1 or two hours a day or less and identify which examiners need help with their schedules
2. For dockets with an abnormally high allowance rate, split the docket with other examiners. If these cases are easily allowable, they may be easy cases. The burden of the hard and easy cases must be fairly allocated. Or ask why is the allowance rate so high in this particular docket. Perhaps the standard for obviousness is less with this examiner. Perhaps this examiner has maxed out is overtime. Perhaps this examiner does not care to make a rejection as this takes time and effort.
3. Parity and fairness will improve examiner quality and morale. Patent classifiers should not be allowed to assign their own dockets because this allows the assignments of significantly easier cases to themselves. Across the entire PTO this amounts to quite a lot of cases.
4. New examiners are usually saddled with the hardest cases because examiners go through their dockets to provide the new examiners with the cases they do not want. Eliminate this practice and give new examiners some reasonable cases.
5. Eliminate overtime entirely. Overtime is nothing but a race to get cases out quickly and quality is sacrificed. Some examiners work a lot of overtime. Any reasonable practitioner knows that one has only so much effective work hours in a day before quality starts to slip. Accept the fact that 8 hours is all one can reasonably handle and that increasing that necessarily makes one sacrifice quality.
6. Install computer forensics system. How the PTO lets examiners work from home without the slightest monitoring is amazing. Does the PTO even know if the Examiners are in this country?
7. Eliminate examiner bonuses. Examiner bonuses are nothing but a race to get cases out quickly and quality is sacrificed. Some examiners earn big bonuses. Any reasonable practitioner knows that one has only so much effective work hours in a day before

quality starts to slip. At the end of every quarter or fiscal year there is a push to get cases out so examiners can make their quota and earn that bonus. When an examiner tries to act on too many cases in too short a period bad quality is the result.

8. Eliminate SPE bonuses. This motivates SPES to encourage Examiners to rush through more cases than is reasonable. When one examines more cases in a shorter period of time, quality suffers.
9. Monitor examiners who turn in more than 50 percent of their cases during the last day of the pay period. These examiners back loaded their workload because they did not work during the early days of the pay period. Thus the appropriate amount of time was not paid to their work.
10. Increase the amount of filing fees required for claim sets over 20 claims and/or multiple inventions.
11. Provide a gold star program and identify which examiners have been routinely checked out by quality review and give them some special recognition. This will allow new examiners to see which examiners are worthy of. Currently with the exception of yearly personnel reviews which give ratings, there is no public recognition. Some examiners could be on the Federal Bench, some can't even speak English.
12. Identify lawyers that leave the pto and go to work for law firms. Then check their issued cases and when one identifies one or more cases that they were working on for a law firm or corporation that the lawyer is not employed at instigate a OED investigation. This will eliminate PTO examiners who are lawyers from negotiating with firms and corporations with whom they hope to go to work for.
13. From a quality review standpoint, one is wasting time by picking cases randomly to review. If you are going to have a quality assurance and review program, then it is prudent to identify the most cases that have problems in the most efficient manner. Here is how to identify those cases. How one fixes the identified problems will depend on the facts of each individual case.
 - a. identify which examiners have an allowance rate 70, 80,90 or even 95 percent and ask what is it about this docket that has such a high allowance rate, or is it the Examiner. Review these cases
 - b. Monitor examiners who turn in more than 50 percent of their cases during the last day of the pay period. These examiners back loaded their workload because they did not work during the early days of the pay period. Thus the appropriate amount of time was not paid to their work.
 - c. Monitor the cases of examiners who attend law school. These examiners tend to be extra busy and do not spend the time on cases that they should.
 - d. Monitor the time examiners spend on the computer on facebook or other media. This is excessive in some cases.
 - e. Monitor examiners close to retiring. They know that they will be gone if bad cases show up thus they do not care if they issue a bad action.
 - f. If the PTO is silly enough to continue with the bonuses and overtime, monitor the cases from those examiners who earn the big bonuses and work the most overtime. Sometimes their motto is "the only problem with poor quality at the PTO is that you did not do enough of it".

- g. Identify the SPES who turn in a bunch of cases that they are signing for junior examiners. SPES can not reasonably sign 20 cases on count Monday and properly train examiners. SPES and primary examiners let their junior's cases back up just like they do their own work. This results in a lack of training because the cases are just sent out rather than having their problems identified and corrected.
- 14. Change the count system to eliminate the incentive to allow a patent application.
- 15. Require PTO employees to disclose if they have a relative and/or partner who is an outside practitioner. Those employees should have their systems monitored to insure they are not passing out confidential.