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To: RCE outreach
Subject: Questions Related to RCE Practice

From my experience, the most significant factor contributing to the need to file an RCE (as well as the perpetual and ever-increasing backlog of patent applications at the USPTO) is the poor and improper examination practices in first actions. For instance, many examiner's fail to address all of the pending claims in a first action (and, in some egregious circumstances, only address the elements and limitations in the base claims or, worse yet, a single independent claim). In addition, many first actions fail to properly articulate the examiner's grounds for rejection, especially providing a factual basis for anticipation and obviousness rejections. If examiner's were incentivized (or required) to issue thorough first office actions, I would venture that the number of RCE's would be reduced significantly.

Another possible factor contributing to the need to file an RCE is the tendency for examiner's to improperly make second actions final. This is so because the current count system at the USPTO incentivizes such practices. Moreover, there appears to be very little by supervisors to prevent the issuance of improper final actions. If examiners were given the opportunity to issue a second non-final action, I would venture that the number of RCE's would be reduced significantly.

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