Review of Examiner Work Product

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Agenda

• TC Review of Examiner Work Product
  – PAP Standard
  – Reviews Before Mailing
  – Reviews After Mailing

• OPQA Review of Examiner Work Product
  – Compliance Reviews
  – Review Process
  – Returns to the TC
TC Reviews of Examiner Work Product
PAP Standard

• The examiner Performance Appraisal Plan (PAP) sets forth standards for examiner performance
  – Examiner responsibility varies based on GS level (e.g. Quality Major Activities Chart)

• Clear Error Definition
# PAP Quality Element

<table>
<thead>
<tr>
<th>Quality Major Activities</th>
<th>Activity Level</th>
<th>Error Category</th>
<th>Evaluation Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. checking applications for (a) compliance with formal requirements of patent statutes and rules and (b) technological accuracy</td>
<td>Basic</td>
<td>📊</td>
<td>☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑</td>
</tr>
<tr>
<td>2. treating disclosure statements and claims of priority</td>
<td>Basic</td>
<td>📊</td>
<td>☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑</td>
</tr>
<tr>
<td>3. analyzing disclosure and claims for compliance with 35 USC 112</td>
<td>Basic</td>
<td>📊</td>
<td>☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑</td>
</tr>
<tr>
<td>4. planning field of search</td>
<td>Basic</td>
<td>📊</td>
<td>☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑</td>
</tr>
<tr>
<td>5. conducting search</td>
<td>Basic</td>
<td>📊</td>
<td>☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑</td>
</tr>
<tr>
<td>6. making proper rejections under 35 USC 102 and 103 with supporting rationale, or determining how claim(s) distinguish over the prior art</td>
<td>Basic</td>
<td>📊</td>
<td>☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑</td>
</tr>
<tr>
<td>16. properly treating all matters of substance in applicant’s response</td>
<td>Legal</td>
<td>📊</td>
<td>☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑</td>
</tr>
<tr>
<td>17. formulating and independently signing final determinations of patentability (final rejections, allowance, examiner answers and advisory actions)</td>
<td>Legal</td>
<td>📊, *</td>
<td>☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑</td>
</tr>
<tr>
<td>18. properly closing prosecution: makes no premature final rejection</td>
<td>Legal</td>
<td>📊</td>
<td>☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑</td>
</tr>
<tr>
<td>19. properly rejecting all rejectable claims in a final rejection; properly allowing all claims in an allowance</td>
<td>Legal</td>
<td>📊</td>
<td>☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑ ☑</td>
</tr>
</tbody>
</table>
Reviews before Mailing

• Junior Examiner
  – All actions must be signed by a supervisor or a primary examiner authorized to sign off on work

• Primary Examiner
  – Sign most actions on their own
Reviews after Mailing

• Quality Initiatives
• Quarterly PAP Rating Reviews
• Appeal/Pre-appeal Conferences
• Signatory Program
OPQA Reviews of Examiner Work Product
Topics

• OPQA Random Compliance Reviews
• Review Process
• Returns to TC
Random Compliance Reviews

- Sample is based on the volume of work completed by TC to achieve a statistically significant sample
- Allowances, Finals and Non-Finals
- Assigned to RQAS based on TC designation
- Approximately 4 hours/review
Review Process

• Master Review Form
  – Rejections Made
  – Omitted Rejections
  – Other issues (i.e. search, restriction, objections)
Review Process

Rejections made in Office action. Check all that apply.

☐ None
☐ 35 U.S.C. 102
☐ 35 U.S.C. 103
☐ 35 U.S.C. 112(a) — Written Description
☐ 35 U.S.C. 112(a) — Enablement
☐ 35 U.S.C. 112(b) — Vague and Indefinite Claim Language
☐ 35 U.S.C. 112(a)/(b) — 112(f) Related
☐ 35 U.S.C. 101 (Eligibility)
☐ 35 U.S.C. 101 (Utility)
☐ Double Patenting (Statutory)
☐ Double Patenting (Nonstatutory)
☐ Other Rejection(s)

Were there any omitted rejections? Check all that apply.

☐ None
☐ 35 U.S.C. 102
☐ 35 U.S.C. 103
☐ 35 U.S.C. 112(a) — Written Description
☐ 35 U.S.C. 112(a) — Enablement
☐ 35 U.S.C. 112(b) — Vague and Indefinite Claim Language
☐ 35 U.S.C. 112(a)/(b) — 112(f) Related
☐ 35 U.S.C. 101 (Eligibility)
☐ 35 U.S.C. 101 (Utility)
☐ Double Patenting (Statutory)
☐ Double Patenting (Nonstatutory)
☐ Other Omitted Rejection(s)
Review Process

• Focused on the assigned action, but will review prosecution history as appropriate

• A Compliant Rejection will include:
  – Correct Claim(s)
  – Correct Statute
  – Sufficient Evidence

• All reviews include feedback
  – Positive reinforcement
  – Best practices/Areas for improvement
  – Issues for consideration
Returns to TC

• All reviews are provided to the TC for appropriate action categorized as:
  – Noncompliant
  – For Consideration
  – Pass Through
  – Accolade
Questions and Comments

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