

From: [Mark Greenstein](#)
To: [Fee.Setting](#)
Subject: Comment
Date: Friday, December 02, 2016 8:56:55 PM

You note that the pendency has improved. However, in my experience, at least a portion of this improvement is due to reduced quality of examination. It seems that examiners may have been incentivized, directly or indirectly, to process applications more rapidly but to not pass applications to issue if time does not permit an adequate examination. The evidence is specious reasons for rejections such as those listed below.

In one case, an examiner introduced words that were not in the claims of record and then based a rejection on the words added.

In another an examiner asserted that a retirement plan and an investment in which a retirement plan invests are one and the same in order to formulate a rejection.

In another, an examiner specifically requested an article then did not consider nor discuss the article when formulating an obviousness rejection which objection was abandoned when the applicant appealed.

If quality is the goal whatever incentives lead to these types of rejections needs to be balanced by counter incentives. For example, if the Patent and Appeals Board or the Court of Appeals reverses a rejection, the fees associated with the flawed examination or a multiple of such fees should be paid to the applicant with a portion of such refund deducted from any bonus payments made or to be made to examiners who signed off on the rejection. Appropriate formulation of such a disincentive would lead to more balanced examinations because making specious rejections such as those listed above could lead to a cost to the Patent Office as well as the examiners responsible.

Thank you for your consideration of the above comments.

Mark Greenstein