WELCOME TO THE PATENT QUALITY SUMMIT
March 25-26, 2015
USPTO Headquarters • Alexandria, VA

WELCOME
Valencia Martin-Wallace
Deputy Commissioner for Patent Quality
AGENDA

DAY 1: March 25, 2015
MORNING SESSION - INTRODUCTION TO THE ENHANCED QUALITY INITIATIVE AND DISCUSSION OF THE IMPORTANCE OF QUALITY

Welcome.
Opening Remarks
Perspectives on the Importance of Quality
All Audience Discussion of Key Aspects of Quality

AFTERNOON SESSION - PROVIDING THE BEST POSSIBLE WORK PRODUCTS
Overview of Pillar 1 and Currently Available Improvements
Introduction of Proposal 1 and Proposal 2
All Audience Discussion of Proposal 1 and Proposal 2
Brainstorming for Proposal 1 and Proposal 2 and Report Out
Concluding Remarks

AGENDA

DAY 2: March 26, 2015
MORNING SESSION - ESTABLISHING APPROPRIATE QUALITY METRICS

Welcome
Review of Pillar 1 and Overview of Pillar 2 and the Quality Composite
Introduction of Proposal 3 and Proposal 4
All Audience Discussion of Proposal 3 and Proposal 4
Brainstorming for Proposal 3 and Proposal 4 and Report Out

AFTERNOON SESSION - IMPROVING THE CUSTOMER EXPERIENCE AND PROVIDING EXCELLENT CUSTOMER SERVICE
Overview of Pillar 3 and Currently Available Improvements
Introduction of Proposal 5 and Proposal 6
All Audience Discussion of Proposal 5 and Proposal 6
Brainstorming for Proposal 5 and Proposal 6 and Report Out
Concluding Remarks
Opening Remarks

Michelle K. Lee
Undersecretary of Commerce for Intellectual Property and Director of the USPTO

Perspectives on the Importance of Quality

Russell Slifer
Director of the Rocky Mountain Regional Office
Denver, Colorado
Introduction of Speakers

- Manny Schecter, IBM Corporation
- Dennis Crouch, University of Missouri, School of Law
- Chris Bullard, Private Practice
- Robert Budens, Patent Office Professional Association (POPA)
- Hilda Galvan, Jones Day
- Roy Waldron, Pfizer Inc.
- Honorable Paul R. Michel, United States Court of Appeals for the Federal Circuit (retired)

Perspectives on the Importance of Quality

Manny Schecter
Chief Patent Counsel
IBM Corporation
Perspectives on the Importance of Quality

Dennis Crouch
Associate Professor
University of Missouri School of Law

Perspectives on the Importance of Quality

Chris Bullard
Private Practice
Perspectives on the Importance of Quality

Robert Budens
President
Patent Office Professional Association (POPA)

Perspectives on the Importance of Quality

Hilda Galvan
Partner
Jones Day
Perspectives on the Importance of Quality

Roy Waldron
Senior Vice President & Associate General Counsel
Chief Intellectual Property Counsel
Pfizer Inc.

Perspectives on the Importance of Quality

Honorable Paul R. Michel
Chief Judge (Retired)
United States Court of Appeals for the Federal Circuit
BREAK

The Patent Quality Summit will return at approximately 10:45 a.m. EDT

ALL AUDIENCE DISCUSSION

Moderator: Russ Slifer, Regional USPTO Director, Denver

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BREAK

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Pillar 1 – Excellence in Work Products

Valencia Martin-Wallace
Deputy Commissioner for Patent Quality
**Glossary Pilot**

- Allows applicants in certain fields of art to use glossaries in patent specifications to define claim limitations

- In exchange, applicants receive expedited examination through a first office action

- Pilot extended to June 2, 2015 or when the USPTO receives 200 grantable petitions for participation in the pilot, whichever occurs first

**Crowdsourcing**

- Patent Application Alert System released in February 2015 through a partnership with Reed Technology and Information Services

- Public may receive a customized email alert when a patent application of interest publishes

- Public then poised to potentially submit prior art into the application via a preissuance submission
Examiner Technical Training

- Scientists and engineers volunteer to educate examiners on state-of-the-art technological advancements

- Technology Fairs to be held in summer 2015; volunteers wanted in all scientific disciplines

Examiner Technology Fairs

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<th>Technology Center</th>
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<td>1600</td>
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<td>Semiconductors, Memory, Optics, Photoprinting, Electrical Circuits &amp; Systems, Printing, Measuring &amp; Testing</td>
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<td>Sensor Technologies</td>
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Examiner Training

- Legal Training Modules
  - Functional Claiming
  - Clarity of Claim
  - Patent Eligible Subject Matter

- Cooperative Patent Classification (CPC)

- America Invents Act
  - First Inventor to File
Global Dossier

- One-stop access for examiners and public to related applications for IP5 countries
  - Make cross-filings;
  - Manage cross-filed applications; and
  - Eliminate need to file duplicate documents in multiple offices (e.g., priority documents, prior art citations, etc.)

Common Citation Document

- Provides signal point access to up-to-date citation data relating to the patent application of the IP5 Offices
- Consolidates prior art cited by all participating offices for the family member of a patent application
- Search results for all applications with a patent family are viewable on single page
Patent Prosecution Highway

- When an applicant receives a final ruling from a first patent office that at least one claim is allowed, the applicant can request fast track examination of corresponding claim(s) in the corresponding application pending in a second patent office.

- USPTO will decide requests for participation typically in two months, provided that U.S. substantive examination has not started yet.

- No fee; 27 countries currently participating with U.S. – PPH participating country list: http://www.uspto.gov/patents/init_events/pph/index.jsp.

PROPOSAL 1
Applicant Requests for Prosecution Review of Selected Applications

Paula Hutzell
Director, Office of Patent Quality Assurance
Proposal 1: Background

- Office of Patent Quality Assurance (OPQA) reviews ~9,000 office actions each year
  - Review findings, identify trends and inform improvement initiatives
  - Sample is not always sufficient to permit root cause analysis or detect subtle trends
    - Supplemental sampling may be needed to study issues of interest

Proposal 1: What it Does

- Allows applicants to identify applications containing issues that should be studied by OPQA
  - Examining best practices or potential concerns

- Aligns USPTO with what public perceives are key quality issues

- Assists USPTO in identifying applications that contain issues to be studied

- Provides information needed to identify trends and training needs
Proposal 1: What it Does Not Do

• Does not replace random sampling necessary to provide representative unbiased metrics of patent examination quality
  – Results from purposive sampling can’t be extrapolated to the entire population of applications
    • Representativeness not guaranteed
    • Sample may reflect some inherent bias

• Does not alter the prosecution of a specific application

Proposal 1: Breakout Session Topics

• Usage
  – What types of issues would prompt you to use such a program?
  – What attributes would the program need in order to make it useful?

• Inputs
  – What parameters, if any, should be imposed on submitted requests?
Proposal 1: Breakout Session Topics

• Process
  – What “best practices” would you recommend for the OPQA selection and review of submitted cases (i.e., sampling, reviewer blind to issues raised, scope of review, etc.)?

• Outcomes
  – What type of result/outcome would practitioners expect if they were to use this program?

PROPOSAL 2
Automated Pre-Examination Search

Thomas A. Beach
Senior Advisor
Office of the Undersecretary and Director, USPTO
Proposal 2: Objective

To explore leveraging modern technologies into an automated pre-examination search tool to advance from one that is antiquated and not scalable.

Proposal 2: Background

- Performing a prior art search is a critical and time-intensive aspect of the USPTO patent examination process
  - Vital to patent quality
  - Body of prior art continuously expanding

- Current Linguistic Tool (PLUS)
  - Used prior to examination at the Examiner’s discretion
  - Generates list of references based upon key words
  - Opportunities for improvement exist in algorithm and architecture
Proposal 2: Background

- Computerized searching algorithms and databases have advanced significantly in recent years

- USPTO is seeking input on new tools that might be available to conduct a pre-examination search utilizing features such as:
  - Keyword, stemming, concept-semantic searching
  - Relational word searching
  - Natural language queries

- Results would be used to supplement examiner's search of prior art, which is based upon applicant’s specification and specific claim language

Proposal 2: Breakout Session Topics

- Value
  - Do Applicants find value in conducting a search prior to filing?

- Legal implications
  - What are the legal implications of creating and communicating the results of a pre-examination search?
Proposal 2: Breakout Session Topics

• Timing
  – Relative to application filing, when should results be communicated?

• Content of the search results
  – What information should be provided in the results?
  – How should the results be presented?
Virtual attendees – please join a virtual brainstorming session now by clicking the link for Proposal 1 or Proposal 2 in the agenda on our Summit webpage http://www.uspto.gov/patent/initiatives/patent-quality-summit

The Patent Quality Summit will begin the brainstorming session at 2:45 p.m. EDT

BRAINSTORMING IN PROGRESS
Proposals 1 and 2

Please join us when we return from our brainstorming sessions here at approximately 3:45 p.m. EDT to discuss ideas from the groups
BRAINSTORMING REPORT OUT on Proposals 1 and 2

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Concluding Remarks

Peggy Focarino
Commissioner for Patents
Opening Remarks

Valencia Martin-Wallace
Deputy Commissioner for Patent Quality

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Pillar 1
Excellence in Work Products

Valencia Martin-Wallace
Deputy Commissioner for Patent Quality

Existing Initiatives Examples

- Glossary Pilot Program
- Crowdsourcing
- Global Dossier
- Common Citation Document
- Patent Prosecution Highway
- Examiner Technical and Legal Training
PROPOSAL 3
Clarity of Record

Brian Hanlon
Director
Office of Patent Legal Administration

Proposal 3: Background

• Better communication between examiner and applicant throughout prosecution

• Give inventors and investors the confidence to take the necessary risks to launch products and start businesses

• Provide the public with the benefit of knowing the precise boundaries of an exclusionary right

• Avoid costly and needless litigation down the road
Proposal 3: Breakout Session Topics

• General

– What have you seen in Office actions that have helped clarify the Official record and should these be considered routine practice?

– What downstream (e.g., litigation/enforcement) issues should the USPTO consider when proposing additional requirements (e.g., statement of claim construction) for the purpose of clarifying the Official record?

• Claim Construction

– Should the USPTO create a more detailed prosecution record that defines the scope of a patent through explicit claim construction?

• Memorializing the Oral Record

– What are the advantages and disadvantages of making the substance of interviews more extensive on the record?

– Would it be helpful for the USPTO to provide an explanation on the record concerning the decision made in a pre-appeal conference or appeal conference not to re-open prosecution?
Proposal 3: Breakout Session Topics

• Reasons for Allowability
  – When should an examiner provide reasons for why a claim is allowable, and what should such reasons for allowability include to aid in determining the scope of a patent?

Pillar 2
Excellence in Measuring Quality

Valencia Martin-Wallace
Deputy Commissioner for Patent Quality
Patent Quality Composite

Richard Seidel
Assistant Deputy Commissioner for Patent Operations

Background

• Collaborative effort with Patent Public Advisory Committee (PPAC) that started in 2009

• Goal was to identify, measure, and track meaningful indicia of patent examination quality
Background

• 3 key themes emerged in exploration phase:
  
  – Measure quality throughout the examination process rather than solely at the endpoint of prosecution;
  
  – Provide a balanced measure to address errors of both allowance and rejection; and
  
  – Place emphasis on compliance with procedures early in the prosecution of applications, such as search and restriction practice

Implementation

• Identified five new quality metrics to be used in conjunction with two historic measures of patent examination quality
  
  – Final Disposition Compliance Rate (historic measure)
  
  – In-Process Compliance Rate (historic measure)
  
  – Quality Index Reporting
  
  – First Action On the Merits (FAOM) Search Review
  
  – Complete FAOM Review
  
  – External Quality Survey
  
  – Internal Quality Survey

• Implemented Patent Quality Composite in 2010
Why a Composite?

- Lack of a widely-accepted single definition of “patent examination quality”
- Multiple metrics can lead to information overload
- Provides a balanced perspective
  - Consistently communicates both improvements and declines for all items
  - Eliminates trap of wanting to advertise only those items that support a particular position
- Sensitive to detecting unintended consequences of driving improvement in limited areas

Patent Quality Composite Video
PROPOSAL 4
Review of and Improvements to Quality Metrics

Richard Seidel
Assistant Deputy Commissioner for Patent Operations

Proposal 4: Background

• USPTO proposes to re-assess the effectiveness of the Quality Composite Metric to:
  – increase the effectiveness, clarity, and simplicity of USPTO review;
  – employ a system that measures errors by commission and omission;
  and
  – obtain examination metrics that are specifically tied to procedures for improving performance based on identified trends

• USPTO also proposes to re-evaluate its current ways of measuring the impact of training provided to examiners to enhance effectiveness
Proposal 4: Breakout Session Topics

• Overall Value of the Quality Composite

  − What are the advantages and disadvantages of using a single composite measure versus using the multiple components of the composite to define quality for public and system users? Is one more useful than the other?

  − How should the complex nature of a robust quality metric be balanced with a need to simplify its understanding?

• Perception and Definition of Patent Quality

  − How can we capture perceptions of downstream users of the patent system, e.g., investors and technologists, in our evaluation of Patent Quality?

  − How could we capture the quality of the application “as filed” and its impact on overall Patent Quality?
Proposal 4: Breakout Session Topics

- Effectiveness of the Quality Composite as an accurate depiction of Patent Quality

  — What metrics, if any, should be added, substituted, or removed?

  — Besides our Internal Quality Survey, are there other ways to incorporate the effectiveness of the USPTO training programs in defining the quality of work product?

Patent Quality Composite Scope & Framework

- Examiner Experience
- Examiner Competency/Training
- Rules & Regulations
- Policy Guidance Updates
- Examination Tools
- Budget
- Mentors/Supervisors
- Patent Applications
- Responses to Office Actions
- Quality Control
- Inputs
- Examining the “process”
- Outputs
- Outcome
- Proposal 4: Breakout Session Topics
- Patent Quality Composite Coverage
- Internal Quality Survey
- Quality Index Reporting (QIR)
- Actions per Disposal
- ICE Disposals
- 2nd+ Action Non-Final
- Reopen After Final
- Late-Stage Restriction
- OPQA Search Reviews
- OPQA FAOM Reviews
- Office Actions
- Allowances
- Rejections
- Innovation
- Validity
- Value
- Litigation
- Final Disposition
- Compliance
- In-Process Compliance
- External Quality Survey

Leading in Quality Excellence - Every Interaction Counts

United States Patent and Trademark Office
Patent Quality Composite Scope & Framework

**Inputs**
- Applications
- Applicants
- Examiners
- Policies and Guidelines

**Patent Examination**
- Practice and Procedure
- Examiner behaviors

**Outputs**
- Office Actions
- Allowances
- Rejections
- Abandonments

**Outcomes**
- Innovation
- Validity
- Value
- Litigation

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**Patent Quality Composite Coverage**
- Internal Quality Survey
- Quality Index Reporting
- Actions per Disposal
- RCE Disposals
- 2nd+ Action Non-Final
- Reopen After Final
- Late Stage Restriction
- Search Reviews
- FACM Reviews
- Final Disposition
- Compliance
- In-Process Compliance
- External Quality Survey

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**Enhanced Patent Quality Initiative**

**ALL AUDIENCE DISCUSSION of Proposals 3 and 4**

**Moderating:** Valencia Martin-Wallace
Deputy Commissioner for Patent Quality

**Proposal 3**
Brian Hanlon
OPLA

**Proposal 4**
Rick Seidel/Marty Rater
Patents
BREAK

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Proposals 3 and 4

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BRAINSTORMING REPORT OUT
on Proposals 3 and 4

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Pillar 3
Excellence in Customer Service

Valencia Martin-Wallace
Deputy Commissioner for Patent Quality

Assignment Search

• Released new Assignment Database in January 2015
  – Modernized user interface
  – Increased number of searchable fields
• Recording of ownership information in database is voluntary; records are available from 1980 to present and updated weekly
Quick Path Information Disclosure Statement

- Authorizes time for examiners to consider compliant Information Disclosure Statements filed after allowance

- Provides a mechanism for consideration of Information Disclosure Statement filed after the issue fee has been paid where applications will only result in an RCE if the information necessitates reopening prosecution

- Part of the USPTO’s on-going efforts toward compact prosecution

After Final Consideration Pilot

- Authorizes additional time for examiners to search and/or consider responses after final rejection

- If an after final response does not place application in condition for allowance, examiners will conduct an interview to discuss the results of their search and/or consideration

- Supports USPTO’s on going efforts towards compact prosecution and increased collaboration between examiners and stakeholders
First Action Interview Pilot

• Participants are permitted to conduct an interview with the examiner after reviewing a Pre-Interview Communication providing the result of a prior art search conducted by the examiner.

• Participants experience many benefit including:
  – Ability to advance prosecution of an application;
  – Enhanced interaction between applicant and examiner;
  – Opportunity to resolve patentability issues one-on-one with the examiner at the beginning of the prosecution process; and
  – Opportunity to facilitate possible allowance.

Patents Ombudsman

• Assists applicants and their representatives when there is a break down in the normal application process.

• Designed not to circumvent normal communication between applicants and their representatives or supervisory examiner.

• Facilitates resolutions and can assist in getting the application back on track.
**Pro Se Assistance Program**

- Comprehensive assistance program established to aid inventors who file patent applications without the assistance of a registered patent attorney or agent (also known as “pro se” filing).

- Examiners available to answer questions from pro se applicants and develop targeted resources to help pro se applicants file and prosecute patent applications.

- Examination pilot also started for examiners to specifically examine pro se filed applications.

**Pro Bono Program**

- Volunteer attorneys provide free legal assistance to under-resourced inventors and small businesses to file and prosecute patent applications.

- Current coverage in 45 states; expanding to 50 states in 2015.
Call Center Assistance

• USPTO provides various call center support:
  – Application Assistance Unit
  – Electronic Business Center
  – Inventor’s Assistance Center
  – Office of Petitions
  – Patent Cooperation Treaty
  – Ombudsman
  – Office of Patent Legal Administration

Outreach

• Partnering in Patents
• Software Partnership
• Medical Device Technology Partnership
• Biotechnology/Chemical/Pharmaceutical Customer Partnership
Big and Open Data

• Treasure trove of data at the USPTO

• Open Data Roundtable held in December 2014 with NYU’s GovLab; currently collecting ideas via:
  – http://mobile-uspto.ideascale.com/

USPTO Website Re-Design

• Released February 5, 2015
PROPOSAL 5
Review of the Compact Prosecution Model and the Effect on Quality

Remy Yucel
Director, Central Reexamination Unit (CRU)
“Compact prosecution” historically has been defined as the achievement of a final disposition in the fewest number of Office actions.

Final disposition includes allowance, appeal or abandonment.

Time from filing to disposition is not factored in the current model.

Proposal 5: Background

Compact prosecution entails:

- First action on the merits (FAOM) to develop all issues
- Reply entered as a matter of right which addresses the rejections and objections presented in the FAOM
- Second action which typically closes prosecution
- Limited after final submission rights
Proposal 5: Background

• Compact prosecution has certain limitations:
  – May generate a FAOM on claims which are more exploratory in nature than the claims applicant truly wishes to pursue
  – First “interaction” is completed after the FAOM is sent and responded to—potentially many months after the examiner first looks at the application
  – Provides for/encourages interview practice, but the opportunity for interactive discussion is limited

Proposal 5: Breakout Session Topics

• Current Compact Prosecution Model Assessment
  – What works? What does not?
  – What factors should go into determining the compactness of prosecution?

• Modest Modifications of the Model
  – When should additional second non-final actions be available?

• More Extensive Modifications of the Model
  – When should final actions be abolished while still avoiding protracted prosecution?
Proposal 6: Background

- Interviews are widely used to advance prosecution
- Examiners used over 220,000 hours in fiscal year 2014 conducting interviews via telephone, in-person meetings, and video conferencing
- Internal reviews have shown that applications with at least one interview have a higher compliance rate with quality metrics
Proposal 6: Background

• Under current Practice, all in-person interviews must be held on USPTO premises

• Remote workforce can present a challenge for arranging in-person meetings

Proposal 6: Concept

• Develop a program to enable an in-person interview for any application, regardless of the examiner’s duty station

• Explore the cost implications for an in-person interview program and identify methods to defray the costs

• Define metrics to measure success of an in-person interview program
Proposal 6: Breakout Session Topics

- What are the benefits of in-person interviews versus video conference interviews?
- What are the obstacles to having in-person interviews at remote locations?
- What equipment or resources are needed for an effective interview?
- What costs are associated with an in-person interview program and how might the agency recover these costs?

ALL AUDIENCE DISCUSSION of Proposals 5 and 6

Moderating: Valencia Martin-Wallace
Deputy Commissioner for Patent Quality

Proposal 5
Remy Yucel
Director, CRU

Proposal 6
Tim Callahan
Director, TC 2400
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Closing Remarks

Peggy Focarino
Commissioner for Patents