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Enhancing Patent Quality

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Patent Quality Pillars



Pillar 1 – Excellence in Work Products



Pillar 2 – Excellent in Measuring Patent Quality



Pillar 3 – Excellence in Customer Service

Evolving Programs

Focused on three implementation areas:



Data Analysis

Pillar 1

- **Topic Submission for Case Studies**

Pillar 2

- **Clarity and Correctness Data Capture (Master Review Form or MRF)**
- **Quality Metrics**

Examiners' Resources, Tools & Training

Pillar 1

- **Automated Pre-Examination Search Pilot**
- **STIC Awareness Campaign**
- **Clarity of the Record Training**
- **Post Grant Outcomes**

Pillar 3

- **Interview Specialist**

Changes to Process/Product

Pillar 1

- **Clarity of the Record Pilot**

Pillar 3

- **Post-Prosecution Pilot (P3)**
- **Reevaluate QPIDS**
- **Design Patent Publication Quality**

Topic Submission for Case Studies

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Background

- Federal Register Notice initiated the program on December 21, 2015
- USPTO invited stakeholders to submit patent quality-related topics for study
- Submissions were accepted through February 12, 2016

Selected Topic	Completion
1. Compliance of rejections with 35 U.S.C. 101 Official Guidance	10/31/16
2. Consistency of application of 35 U.S.C. 101 across Art Units/Technology Centers	12/9/16
3. Use of compact prosecution when making 35 U.S.C. 101 rejections	10/31/16
4. Correctness and clarity of motivation statements in 35 U.S.C. 103 rejections	10/21/16
5. Enforcement of 35 U.S.C. 112(a) written description in continuing applications	1/20/17
6. Consistent treatment of claims after May 2014 35 U.S.C. 112(f) training	3/24/17

Clarity and Correctness Data Capture (Master Review Form or MRF)

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Program Goals

- To create a ***single, comprehensive*** tool (called the Master Review Form) that can be used by all areas of the Office to ***consistently*** review final work product
- To better collect information on the ***clarity and correctness*** of Office actions
- To collect review results into a ***single data warehouse*** for more ***robust analysis***

Federal Register Notice

- Published on March 25, 2016 and comment period closed on May 24, 2016
- Requested feedback on the Master Review Form, especially how to objectively assess quality
- Feedback was used to improve the Master Review Form

Master Review Form

Implementation of MRF

- MRF Version 1.0
 - OPQA Implemented November 2015
- MRF Version 2.0
 - OPQA Implemented June 2016
 - All Reviews conducted by use of MRF July 2016

Reviews

FY 2015

- Completed 7,900

FY 2016

- Projected to complete 12,000
- Data now captured at TC Level

FY 2017

- Projection of 18,500 Reviews

Quality Metrics

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Quality Metrics Redefined

FY 2011 – FY 2015

Final Disposition Compliance

In-Process Compliance

First Action (FAOM) Review

Search Review

Quality Index Reporting (QIR)

External Quality Survey

Internal Quality Survey

Composite Score

Moving Forward

Product Indicators

Master Review Form

Capturing both correctness and clarity of examiners' final work product using uniform criteria gathered in a single database

Process Indicators

Transactional QIR

Tracking the efficiency and consistency of our processes (for example, to identify "churning")

Perception Indicators

Survey Results

Continuing to internally and externally poll perceptions of patent quality

Composite Score

Product Indicators

FY 2016

Product Indicators Master Review Form

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Process Indicators

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Tracking the efficiency and consistency of our processes
(for example, to identify "churning")

Perception Indicators

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FY 2016 Key Product Metrics

Correctness

Clarity

Process Indicators

FY 2016

Product Indicators

Master Review Form

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Process Indicators

Transactional QIR

Tracking the efficiency and consistency of our processes
(for example, to identify "churning")

Perception Indicators

Survey Results

Continuing to internally and externally poll perceptions of patent quality

FY 2016 Key Process Indicators

Reopening Prevention

Rework Reduction

**Consistency of
Decision-Making**

Perception Indicators

FY 2016

Product Indicators
Master Review Form

Capturing both correctness and clarity of examiners' final work product using uniform criteria gathered in a single database

Process Indicators
Transactional OIR

Perception Indicators
Survey Results

Continuing to internally and externally poll perceptions of patent quality

FY 2016 Key Perception Indicators

Root Cause Analysis

Validation/Verification

Clarity of the Record Training: Improving Clarity and Reasoning in Office Actions (ICR)

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Overview

- The purpose of the program is to include tips and techniques for enhancing the clarity of the record as part of ongoing substantive training
- Planned or Completed Training
 - 35 USC §112(a), (b) (completed)
 - 35 USC §101 (completed)
 - Reasons for Allowance (completed)
 - Advanced writing techniques (planned, fall 2016)
 - Clarifying complex legal analysis
 - Properly utilizing/addressing case law

Post Grant Outcomes

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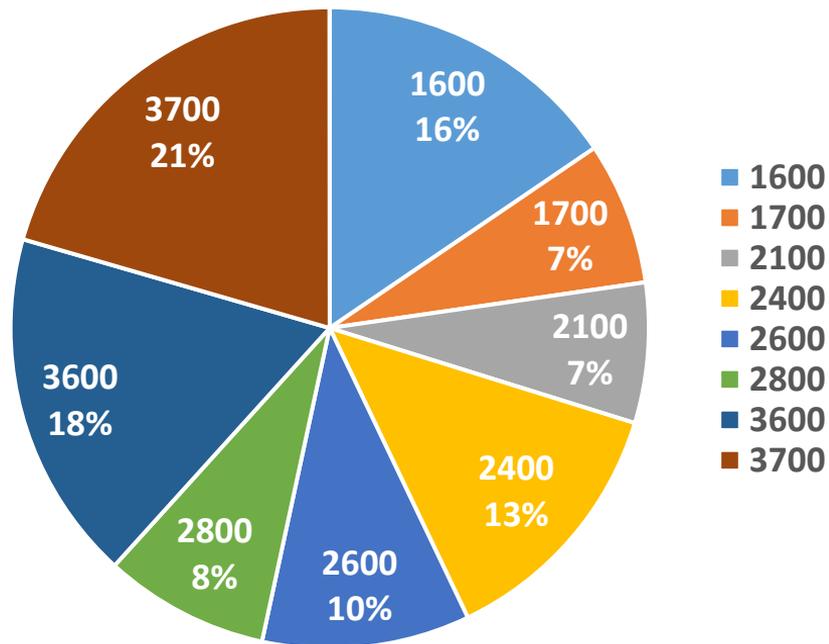
Objectives of Post Grant Outcomes

The purpose of this program is to learn from all post grant proceedings and inform examiners of their outcomes

- Propose **three** objectives to accomplish this:
 - **Enhanced Patentability Determinations in Related Child Cases**
 - Provide examiners with prior art submitted during PTAB AIA trial proceedings
 - Other petition information, expert testimony, declarations, interpretations...
 - **Targeted Examiner Training**
 - Data collected from the prior art submitted and examiner behavior will provide a feedback loop on best practices
 - **Examining Corps Education**
 - Provide examiners a periodic review of post grant (and post examination) outcomes focusing on technology sectors

Pilot Statistics

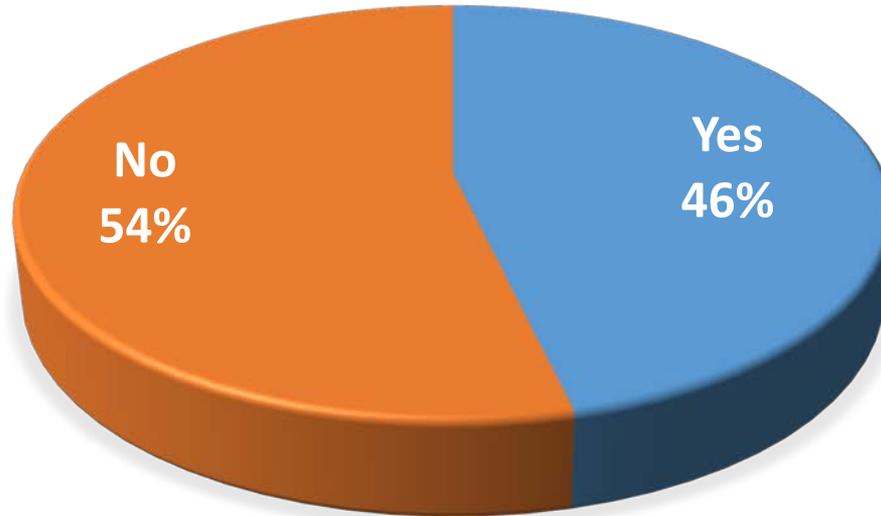
DISTRIBUTION OF PILOT APPLICATIONS
BY TECHNOLOGY CENTER



Technology Center	Number of Pilot Applications
1600	121
1700	56
2100	55
2400	102
2600	82
2800	65
3600	138
3700	160
Grand Total	779

Objective 1 – Pilot Statistics cont.

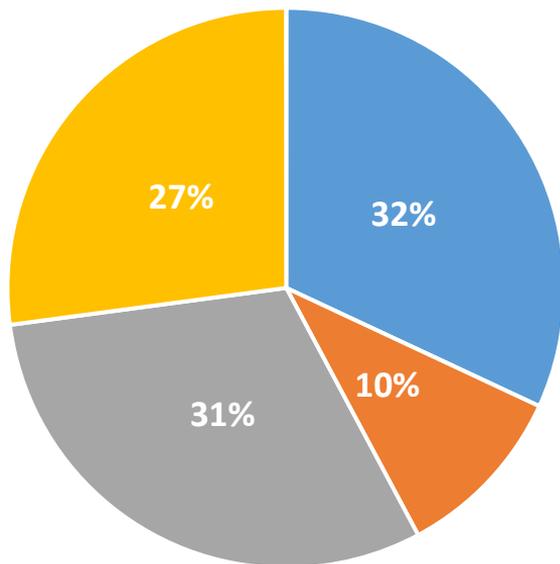
In the Office Action of the child case, did the examiner refer to any of the references cited in the AIA trial petition of the parent case?



Based on 270 Survey Responses

Pilot Statistics cont.

If the examiner did not use any references cited in the AIA Trial Petition, why?



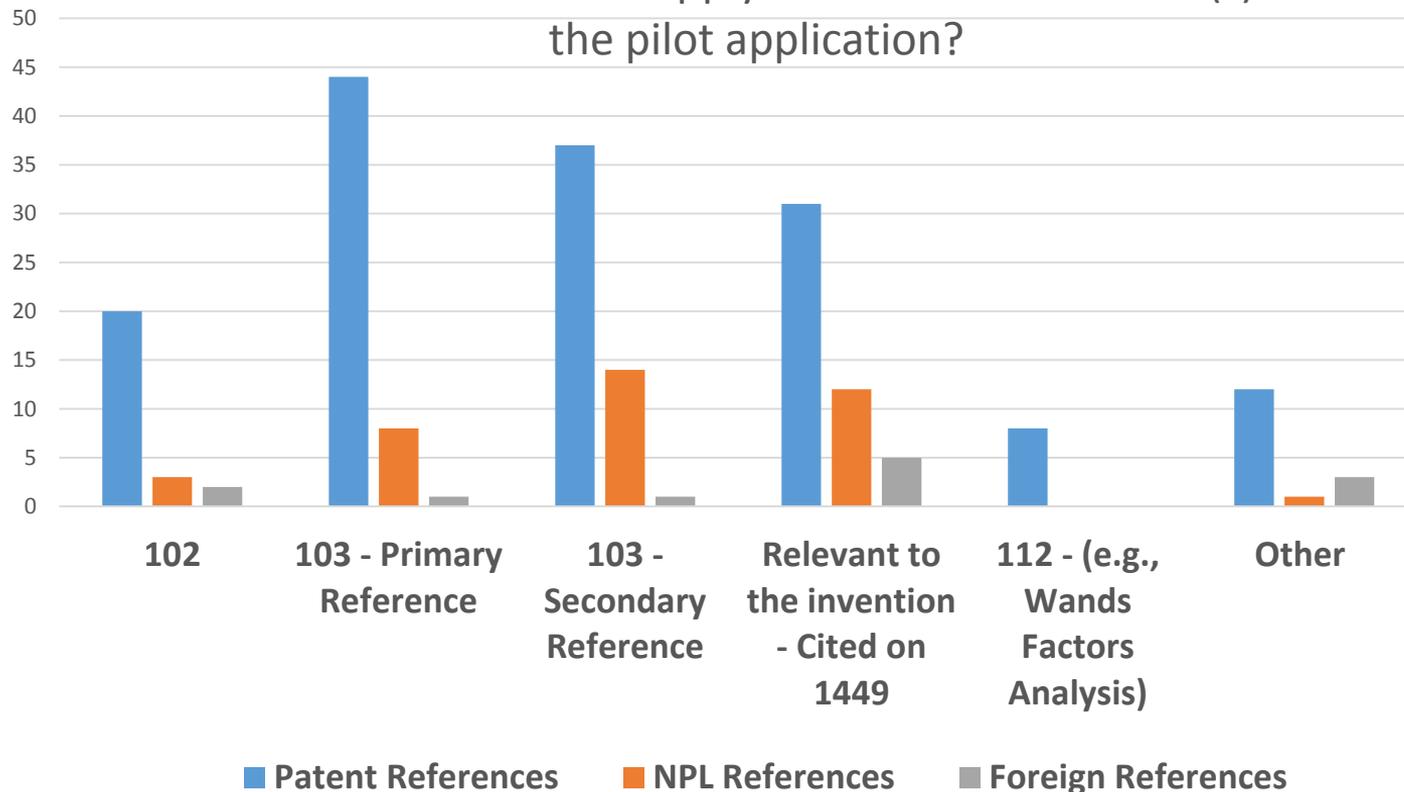
- The claims in my pilot case were substantially different from the parent case.
- I disagreed with the petitioner's analysis of the prior art and/or claims.
- I was able to find better art on my own.
- Other (please specify below)

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Based on 136 Survey Responses

Objective 1 – Pilot Statistics cont.

How did the examiner apply the AIA Trial reference(s) in the pilot application?



Based on 112
Survey
Responses



Clarity of the Record Pilot

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Purpose and Goals

- Identify best examiner practices for enhancing the clarity of the prosecution record
- Find the correct balance for appropriate recordation
- Use data/feedback to assist with further enhancements of the Clarity and Correctness Data Capture Form (Master Review Form – MRF)

Areas of Focus

- Enhanced documentation of claim interpretation
- More precise reasons for allowance
- More detailed interview summaries
- Pre-search interview at examiner's option

Data Analytics

- Surveys
 - Pilot participants
- Metrics
 - OPQA reviewed:
 - Pre-pilot cases from the pilot participants
 - Post-pilot and Pilot cases for each pilot participant using MRF
 - Total of 2,600 reviews conducted
- QEMs
 - Feedback from bi-weekly QEMs held during Pilot between Pilot participants and Pilot SPEs.

Post Prosecution Pilot (P3)

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Overview

- Retains popular features of the Pre-appeal Brief Conference Pilot and After Final Consideration Pilot (AFCP) 2.0 programs:
 - Consideration of 5-pages of arguments after final
 - Consideration of non-broadening claim amendments after final
- Adds requested features:
 - Presentation of arguments to a panel of examiners
 - Explanation of the panel's recommendation in a written decision after the panel confers

Post-Prosecution Pilot Duration

- Federal Register Notice initiated program on July 11, 2016
- Runs six (6) months or upon receipt of 1,600 compliant requests, whichever occurs first
 - 200 per Technology Center
- Formal comments about P3 will be received through November 14, 2016

P3 Statistics

Total Submission	1077
Approved	925
Defective	92
Conference Held	449

Conference Outcomes	Count
Allowed	67
Final Maintained	259
Reopened	69
Awaiting Request	299

Questions?

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