

**UNITED STATES  
PATENT AND TRADEMARK OFFICE**



# Patent Quality Metrics

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Office of Patent Quality Assurance (OPQA)

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# What is patent quality?

The USPTO considers a quality patent to be one that is correctly issued in compliance with all the requirements of Title 35 as well as the relevant case law at the time of issuance.

In order to continually improve quality, the USPTO is committed to:

1. assessing the quality of our work products,
2. assessing the quality of our work processes, and
3. identifying metrics that help provide an understanding of this quality.



# Patent quality is assessed by USPTO-defined metrics

- Statutory compliance measures
- Process measures
- Perception measures



# Statutory compliance measures

- The USPTO regularly reviews patent examination work product for adherence to statutory law.

Technology Center (TC) supervisors and reviewers regularly review work product throughout the fiscal year and provide direct coaching and mentoring based on their findings.

The Office of Patent Quality Assurance (OPQA) audits a random sample of work product each fiscal year to generate the USPTO's statutory compliance data.



# Sampling for statutory compliance

Random sampling goal is set by the USPTO's data needs and available resources at ~12,000 reviews/fiscal year.

- Identifies corps-wide trends
- Provides TC-level insights
- Allows for data collection to be responsive to our stakeholders

The sample is representative of the population of work products completed and mailed, both

- by Office action type (i.e., non-final rejection, final rejection, and allowance) and
- by technology.



# Reviewing for statutory compliance

OPQA reviews randomly sampled Office actions for appropriate and clear determinations based on the four patentability statutes:

- 35 U.S.C. §102 – novelty
- 35 U.S.C. §103 – non-obviousness
- 35 U.S.C. §112 – specification (enablement, written description, definiteness)
- 35 U.S.C. §101 – inventions patentable (subject matter eligibility, utility)

All rejections made must identify the claim(s) and relevant statute and set forth sufficient evidence.

# OPQA's reviewing tool – the MRF

A Master Review Form ([MRF](#)) is used by the TCs and in OPQA.

- Modular, online smart-form that includes a 330+ question library
  - Assesses for **statutory compliance** and other **non-statutory inquiries** (e.g., search, restriction, response to arguments, reasons for allowance)
  - Regularly updated for OPQA's reviewing needs
  - Last major update in FY2020 added assessment **characteristics** for each part of an Office action that capture best practices and give better insight into clarity
    - These characteristics serve as the basis for accolade designations.



# Office action characteristics

Exemplary characteristics identified in Office actions by OPQA:

- The rejection(s) reasonably pinpoints where substantially all limitations are met by the prior art (e.g., written specification, drawings).
- The rejection(s) sets forth a claim interpretation that points out how the examiner is interpreting the claim/term/phrase for the purposes of the rejection(s) (e.g., broadest reasonable interpretation, special definitions).
- The Office action included appropriate suggestions to overcome rejection(s).
- Prior art was cited on the record by the examiner which was pertinent to significant unclaimed features of the disclosed invention.
- The Reasons for Allowance addresses each independent claim separately.

# OPQA's process of reviewing

Office action characteristics are evaluated.

Each **rejection made** is evaluated, relative to its statutory requirements, in a claim-by-claim analysis.

PROPER

Claims are also evaluated claim-by-claim to determine if a rejection has been **omitted** that should have been made.

PROPER

COMPLIANT  
Office action

I  
M  
P  
R  
O  
P  
E  
R

NON-COMPLIANT  
Office action

I  
M  
P  
R  
O  
P  
E  
R

All non-compliant Office actions are **verified** by an OPQA supervisor before notifying the TC.

# Statutory compliance metrics

Compliance metrics are generated for each statute.

$$\text{Compliance} = \frac{\text{total \# of Office actions that properly evaluated all pending claims for that statute}}{\text{total \# of Office actions reviewed}}$$

\*Metrics are validated by TC feedback, comparisons of data across TCs, and external stakeholder surveys

\*\*OPQA does not have any targets or incentives based on the findings of non-compliance; OPQA does regularly study our internal consistency

# Statutory compliance metrics – FY21 data

| Statute for Compliance                                | FY21 Compliance<br>(all action types) |
|---|---------------------------------------|
| Was the Office action compliant under 35 U.S.C. §101? | 98.3%                                 |
| Was the Office action compliant under 35 U.S.C. §102? | 95.1%                                 |
| Was the Office action compliant under 35 U.S.C. §103? | 90.7%                                 |
| Was the Office action compliant under 35 U.S.C. §112? | 92.2%                                 |

For all published FY21 data, go to

<https://www.uspto.gov/sites/default/files/documents/MRF-Data-Tables-FY21.xlsx>



# Office of Patent Quality Assurance (OPQA)

## What we do

- Randomly sample all examination work products for an accurate assessment of patent examination quality and to provide suggestions for improvement
- Provide resources to Technology Centers, as requested, to help with their patent quality initiatives
- Accept public suggestions for case studies to investigate a perceived quality problem

## What we don't do

- Target examiners in our reviewing
- Direct patent quality initiatives in Technology Centers
- Accept public requests for review of the prosecution of specific applications – we direct this kind of quality control to the Technology Centers



# Patent quality process measures

- The USPTO tracks the efficiency and consistency of examination processes.

We are currently focused on:

- preventing reopening of prosecution,
- reducing rework, and
- ensuring consistency of decision-making.



# Patent quality perception measures

- The USPTO uses perception measures as a quality indicator and to validate other USPTO patent quality-related metrics.

We conduct internal and external perception surveys semi-annually.

- 750 randomly selected examiners are surveyed about factors affecting their examination, like examination tools, classroom training, and one-on-one mentoring that is available.
- 3,000 randomly selected external customers are surveyed about correctness of rejections, adherence to rules, satisfaction with the prior art search, clarity and consistency of rejections, etc.



# Questions?

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To provide feedback to OPQA specifically: [OPQA@uspto.gov](mailto:OPQA@uspto.gov)

For more information about USPTO patent quality metrics:

- <https://www.uspto.gov/patents/quality-metrics>

For more information about OPQA, including some historical information about how the USPTO has tracked patent quality in the past:

- <https://www.uspto.gov/patents/office-patent-quality-assurance-0>



