Bicoastal
Biotechnology/Chemical/Pharmaceutical
Customer Partnership Meeting

RCE Progress Update

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Director, TC1600
September 17, 2014
RCE Backlog
FY 2009-2012 (through August 8, 2012)
Reducing RCE Backlog

• **RCE leveling plan**
  - Reduce existing backlog

• **Pilot programs (AFCP, QPIDS)**
  - Reduce some of the need for RCEs

• **RCE Outreach**
  - Identify reasons for filing RCE (e.g. drivers)
  - 3 outcomes
    - Identify new programs
    - Recommended Practices
    - Program changes
RCE Outreach Methodology Review

- Conducted a series of roundtables and focus sessions across the country in partnership with PPAC to gather input from the public to better understand root causes.

- Gathered public comments from online crowd-sourcing, FR Notice as well as an online (IDS) survey.

- Analyzed comments and identified major themes.

- Set up teams of directors to address the major themes.
RCE Outreach Methodology Review

- One team was tasked with addressing the current inventory of RCEs (backlog reduction).

- Other teams continue to work on approaches to curb the need for some future RCE filings:
  - Improve external education of current programs and pilots
  - Improve internal education of examiners & SPEs
  - Explore modification of the rules governing IDS submissions
  - Better leveraging of 37 CFR 1.116 practice
Leveling Plan to Address Current RCE Inventory/Backlog

• The team devised a 2-phased approach designed to reduce the RCE inventory

  – The first phase featured a temporary increase in production credit for RCEs acted upon for the last two quarters of FY 2013
Leveling Plan to Address Current RCE Inventory/Backlog

• The team devised a 2-phased approach designed to reduce the RCE inventory

  – The second, longer term approach which was implemented October 1, 2013 features:
    • A reorganization of new application dockets
    • A modification the workflow for the RCEs that changed the make up of applications available for examiner processing as well as the workflow credit received
    • A modification in production credit which incentivizes earlier action on RCEs
RCE Backlog
FY 2010 – FY 2014 (through August 6)

RCE CSI Changes (Nov 2009)

AFCP (March 2012)

QPIDS (May 2012)

RCE Leveling Plan Phase 1 (March 2013)

RCE Leveling Plan Phase 2 (October 2013)

61,484 as of August 6, 2014.
Results

• The restructured workflow appropriately allocated examination resources according to docket inventories

• The backlog of RCE applications awaiting first action has been reduced from about 110,000 to about 60,000 since implementation of the Leveling Plan. The backlog has been reduced by about 25,000 applications since October 1, 2013
Distribution of RCE Backlog by Age as of August 6, 2014 Vs. October 1, 2013

30,058 RCEs (48.9% of backlog) are over four months old as of August 6, 2014

59,702 RCEs (73.4% of backlog) were over four months old as of October 1, 2013

- DM changes prioritized examiners to move oldest cases
- Count System changes incentivized examiners to work on a larger volume of RCEs
RCE Backlog Per Examiner by TC
(as of October 1, 2013 and August 6, 2014)

DM changes have reduced disparity in per-examiner RCE Docket size from one TC to another.
FY 2014 RCE Filings by TC (through August 6)
APPROACHES TO REDUCE THE NEED FOR SOME RCE FILINGS

• Explored possible solutions for:
  – External education of current programs and pilots
  – Internal education of examiners & SPEs
  – Modification of the rules governing IDS submissions
  – Better leveraging of 37 CFR 1.116 practice
The Centralized Patent Application Initiative website is a single online location where applicants and examiners can compare the advantages of various patent programs available to applicants during specific stages of prosecution.

It uses both a graphic timeline as well as a matrix (grid) to provide examiners and applicants with detailed information needed to evaluate each initiative.

The PAI external website was launched September 2013 with over 35 thousand visitors. The Internal site was launched this past June to include additional examiner specific information such as initiative time codes.
PAI Website

USPTO Patent Application Initiatives Timeline

<table>
<thead>
<tr>
<th>FILING</th>
<th>FIRST ACTION</th>
<th>FINAL REJECTION</th>
<th>APPEAL</th>
<th>ALLOWANCE</th>
<th>ISSUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRIOR TO EXAMINATION</td>
<td>DURING EXAMINATION</td>
<td>AFTER CLOSE OF PROSECUTION</td>
<td>AFTER NOTICE OF APPEAL</td>
<td>AFTER PAYMENT OF ISSUE FEE</td>
<td></td>
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<tr>
<td>Track One - Prioritized Examination</td>
<td>After Final Consideration Pilot 2.0 (AFCP 2.0)</td>
<td>Pre-Appeal Program</td>
<td></td>
<td>Quick Path Information Disclosure Statement (QIPIDS)</td>
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<tr>
<td>Accelerated Examination</td>
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<td>Full First Action Interview Pilot</td>
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<td>Patent Prosecution Highway (PPH 2.0)</td>
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<td>PCT Patent Prosecution Highway (PCT PPH 2.0)</td>
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<td>Glossary Pilot</td>
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<td>Petition to Make Special</td>
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<td>General Interview Practice</td>
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<td>General Interview Practice</td>
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<td>IDS - No Certification or Fee</td>
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ADVANCEMENT OF EXAMINATION OPTIONS

INTERVIEW OPTIONS

INFORMATION DISCLOSURE STATEMENT (IDS) OPTIONS
Navigate using the PAI Web site

![USPTO Web site](https://uspto.gov)

**USPTO Patent Application Initiatives - Prior to Examination**

**Prior To Examination**

<table>
<thead>
<tr>
<th>Description</th>
<th>Track One (Prioritized Examination)</th>
<th>Accelerated Examination</th>
<th>Full First Action Interview Pilot</th>
<th>Patent Prosecution Highway (PPH 2.0)</th>
<th>PCT Patent Prosecution Highway (PCT PPH 2.0)</th>
<th>Competition Program</th>
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<tbody>
<tr>
<td><strong>Currently Active (accepting applications)</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, extended beyond 11/15/12</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Petition / Request</strong></td>
<td>Request</td>
<td>Request</td>
<td>Petition</td>
<td>Request</td>
<td>Request</td>
<td>Request</td>
</tr>
<tr>
<td><strong>Surcharge / Fee</strong></td>
<td>Yes - $4500 / $4200 for small entities; $4000/$2000 as of 2/15/12</td>
<td>Yes - $150 ***</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

* If claims are in condition for allowance, no interview is required

**Note**: The Patent Prosecution Highway (PPH) is a program that enhances the USPTO's ability to assist applicants in their examinations of corresponding claims in corresponding applications with issues that arise during patent application prosecution.
Reduce RCE filings: Quick Path Information Disclosure Statement (QPIDS)

 FY 2012 – FY 2014 (through July 8, 2014)

<table>
<thead>
<tr>
<th>QPIDS</th>
<th>FY 12</th>
<th>FY 13</th>
<th>FY 14 (through July 8)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number filed</td>
<td>491</td>
<td>1,358</td>
<td>2,081</td>
<td>3,930</td>
</tr>
<tr>
<td>Total QPIDS completed process</td>
<td>327</td>
<td>1,171</td>
<td>1,889</td>
<td>3,387</td>
</tr>
<tr>
<td># Corrected NOAs mailed</td>
<td>280</td>
<td>998</td>
<td>1,629</td>
<td>2,907</td>
</tr>
<tr>
<td>Total # of RCEs processed</td>
<td>47</td>
<td>173</td>
<td>260</td>
<td>480</td>
</tr>
</tbody>
</table>
Reduce RCE Filings: After Final Consideration Pilot (AFCP 2.0)

• Features of the pilot:

  – Applicants must request entry into AFCP 2.0
  – Applicants must submit an amendment to at least one independent claim that does not broaden the scope of the independent claim
  – If the application is not allowed, the examiner must request an interview with the applicant in order to claim non-production time
AFCP

% RCEs with no prior AF

- % RCEs with no prior AF

40% - 60%

### Percentage of Subsequent Appeal Briefs in Pilot and Non-Pilot Applications

(May 19, 2013 – June 28, 2014)

<table>
<thead>
<tr>
<th>Application Type</th>
<th>Number of Cases</th>
<th>% of Total Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Pilot Cases With Subsequent Appeal Brief</td>
<td>4,864</td>
<td>4.7%</td>
</tr>
<tr>
<td>Pilot Cases with Subsequent Appeal Brief</td>
<td>615</td>
<td>1.5%</td>
</tr>
</tbody>
</table>
Preliminary External Survey Results:

- When asked if the AFCP 2.0 pilot reduced the likelihood an RCE will be filed in the application, 62% responded affirmatively.
- 75% of respondents felt that the pilot is either somewhat or very effective in advancing prosecution.
- Respondents were 3 times more likely to recommend continuation of the pilot than otherwise.
- Consistency of pilot implementation and examiner familiarity with the pilot were two concerns of respondents.
  - Additional training has been provided to examiners.
  - Examiner/SPE access to PAI.
On-going Activities and Next Steps

- Advanced training for supervisors and examiners in development
  - After final practice/compact prosecution
  - How to effectively review a case
  - How to better identify and relate allowable subject matter
  - Continuing one-on-one training for examiners with a large number of RCEs

- Claim construction training for practioners
On-going Activities and Next Steps

• Continue to investigate avenues to provide relief for IDS submissions after allowance
• Continue to gather additional AFCP data (i.e. sampling) to gain a more comprehensive understanding of potential next steps
• Update the PAI web site as additional initiatives are launched/revised (i.e. addition of the glossary pilot)
• Administer the training currently in development and monitor RCE metrics
Questions and Comments?

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