First Action Interview Pilot Program
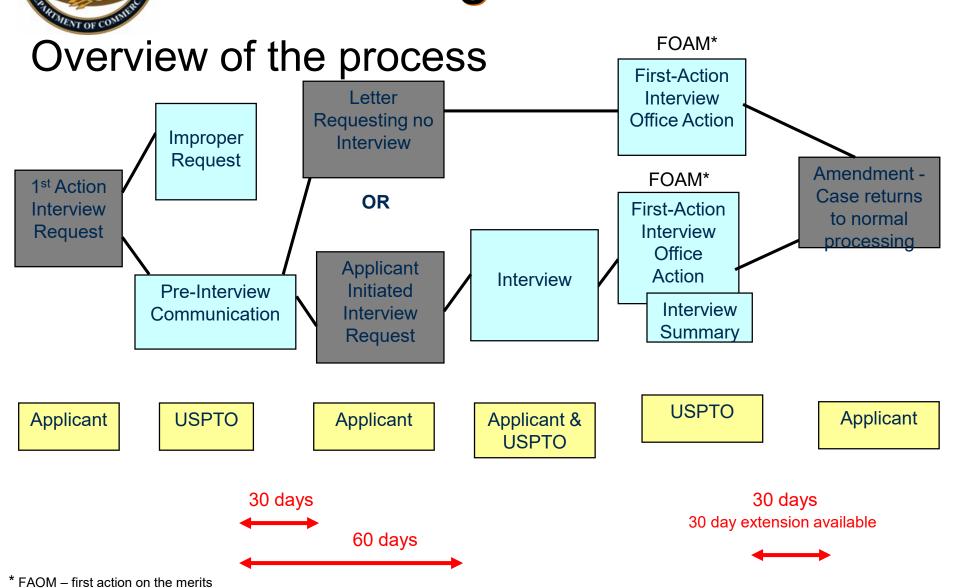
First Action Interview Pilot Program

Pilot Program Objectives:

- Promote personal interviews prior to issuance of a first Office action on the merits

- Advance examination of applications once taken up in turn

- Facilitate resolution of issues for timely disposition of an application

First Action Interview Pilot Program

- Some of the current criteria:
  - Utility applications assigned to certain classes and art units
    - Including national stage applications under 35 USC 371
    - Excluding design, plant, and reissue applications
  - The application contains:
    - No more than three independent and twenty total claims; and
    - No multiple dependent claims
  - The request to participate in the pilot program must be filed before the mailing of a first Office action on the merits
- The Office is considering an expansion of the pilot (requests stopped being received 10/21/08)

First Action Interview Pilot Program

Overview of the process

FOAM*

First-Action Interview Office Action

Letter Requesting no Interview

Improper Request

1st Action Interview Request

OR

Amendment - Case returns to normal processing

FOAM*

First-Action Interview Office Action

Pre-Interview Communication

Applicant Initiated Interview Request

Interview

Interview Summary

Applicant

USPTO

Applicant

Applicant & USPTO

USPTO

Applicant

30 days
←→

60 days
←—————→

30 days
30 day extension available
←→

* FAOM – first action on the merits

Sample Pre-Interview Communication

found at http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/fai_example_1.pdf

Notification of Potential Rejection(s) and/or Objection(s)

#	Claim(s)	Reference(s) (if applicable)	Rejection Statutory Basis	Brief Explanation of Potential Rejection
1	1-8		101	Claim 1 recites a binary translator with various components. The binary translator as claimed is software per se and software is not considered patentable subject matter. Claims 2-8 depend on 1 and do not include hardware so as to overcome the rejection.
2	1-8		112, 1st	Claim 1 recites the limitation of "replace disabled legacy binary instructions with native instructions". However, according to the specification, on page 6, lines 1-3, "...used to disable... insert new native instructions without (see continuation below)
3	1-5, 7-8	U	102(b)	Claim 1 (Figure 1, 1st para, 3rd para, Section "3.1 Components", 4th &5th paragraph - note the claimed "processor means" is interpreted as the CPU in fig. 1); 2 (Fig. 1); 3 (Section 3.1, 4th para); 4 (section 4.2, para 9 - note this) (see continuation below)
4	6	U,V	103(a)	U does not disclose said native instruction processor as claimed. V discloses this at section 2.1, 2nd paragraph. As one would want to to have better code for hot spots in order to improve performance (see V, section 2.1), it would have (see continuation)

Expanded Discussion/Commentary

2		altering the original legacy instructions." Thus, the specification does not disclose replacing disabled legacy binary instructions. On the contrary, the specification specifically discloses not altering the original legacy binary instructions. The claim limitation of claim 1 contradicts with what the disclosure describes. Thus, this subject matter was not described in the specification in such a way to enable one skilled in the art to make and use the invention without undue experimentation.
3		section states that "any kind of memory can be used"); 5 (Section 3.1 5th para); Claim 7 (Section 3, Resourceable and Retargetable Binary Translation); 8 (Section 3.1, 4th para).
4		been obvious to include the native instruction processor in the system described in V.

DATE:	Examiner Signature:	Primary Examiner Signature:

First Action Interview Pilot Details

Applications Eligible for the Pilot

1. Subject Matter Eligibility

   – Two technology areas in TC2100

     • Computer networks (now in TC2400)

     • Database and File Management

2. Filing Date Eligibility

   – Each technology area had filing date requirements

➢ **Overall, approximately 5500 applications were eligible.**

First Action Interview Stats
as of 5/29/09

- 493 Requests to join the pilot were received

    - This represents approx 9% of eligible applications

- 376 Pre-Interview Communications mailed

- 285 Interviews held

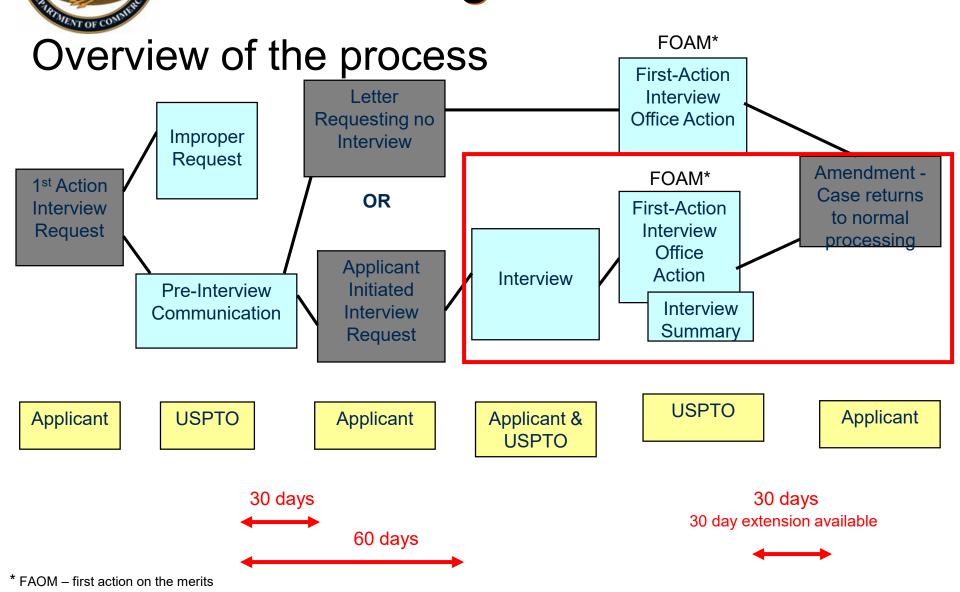- 240 First-action interview Office actions mailed

First Action Interview Stats
as of 5/29/09

- 88 applications have been allowed
  - 26 allowed without/before pre-interview communication
  - 46 allowed after pre-interview communication but before FAI Office action
  - 16 allowed after FAI Office action
- Thus, so far, 23% of applications are allowed prior to First-Action on the merits
  - Typical first-action allowance rate in 2100 is approx 3.9% (excluding CONs and RCEs)
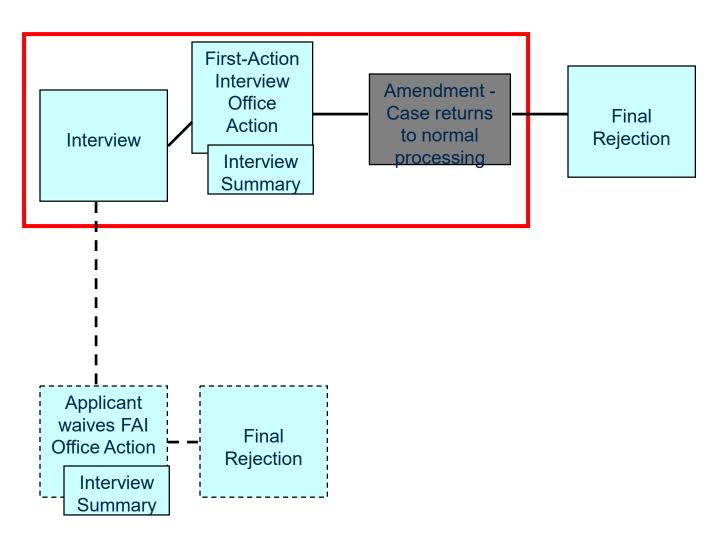
First Action Interview Pilot Next Steps

- Expand pilot into other technology areas
  - POPA agreed to a limited expansion
- Automate more of the application processing and tracking
- Consider allowing extensions of time to respond to Pre-Interview Communication
- Give applicants the opportunity to waive the First-Action Interview Office Action
- Surveying the applicants

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FOAM*

First-Action Interview Office Action

Interview Summary

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Applicant	USPTO	Applicant	Applicant & USPTO	USPTO	Applicant

30 days

60 days

30 days
30 day extension available

* FAOM – first action on the merits

First Action Interview Pilot Program – process change

First Action Interview Pilot Program

- Contacts
  - Joseph Weiss
    - First.Action.Interview@uspto.gov
  - Andrew Hirshfeld
    - Andrew.Hirshfeld@uspto.gov
  - Wendy Garber
    - Wendy.Garber@uspto.gov
  - John Follansbee
    - John.Follansbee@uspto.gov