

Director's Forum: A Blog from USPTO's Leadership

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Enhanced Patent Quality Initiative: Moving Forward

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Patent quality is central to fulfilling a core mission of the USPTO, which as stated in the Constitution, is to “promote the Progress of Science and useful Arts.” It is critically important that the USPTO issue patents that are both **correct** *and* **clear**. Historically, our primary focus has been on correctness, but the evolving patent landscape has challenged us to increase our focus on clarity.

Patents of the highest quality can help to stimulate and promote efficient licensing, research and development, and future innovation without resorting to needless high-cost court proceedings. Through correctness and clarity, such patents better enable potential users of patented technologies to make informed decisions on how to avoid infringement, whether to seek a license, and/or when to settle or litigate a patent dispute. Patent owners also benefit from having clear notice on the boundaries of their patent rights. After successfully reducing the backlog of unexamined patent applications, our agency is redoubling its focus on quality.

We asked for your help on how we can best improve quality—and you responded. Since announcing the Enhanced Patent Quality Initiative earlier this year, we received over 1,200 comments and extensive feedback during our first-ever Patent Quality Summit and roadshows, as well as invaluable direct feedback from our examining corps. This feedback has been tremendously helpful in shaping the direction of our efforts. And with this background, I’m pleased to highlight some of our initial programs under the Enhanced Patent Quality Initiative.

First, we are preparing to launch a **Clarity of the Record Pilot**, under which examiners will include as part of the prosecution record important claim constructions and more detailed reasons for the allowance and rejection of claims. Based on the information we learn from this pilot, we plan to develop best examiner and applicant practices for enhancing the clarity of the record.

We also will be launching a new wave of **Clarity of the Record Training** in the coming months emphasizing the benefits and importance of making the record clear and how to achieve greater clarity. Recently, we provided examiners with training on functional claiming and putting statements in the record when the examiner invokes 35 U.S.C. 112(f), which interprets claims under the broadest reasonable interpretation standard and secures a complete and enabled disclosure for a claimed invention. Training for the upcoming year includes an assessment of a fully described invention under 35 U.S.C. 112(a) and best practices for explaining indefiniteness rejections under 35 U.S.C. 112(b).

Second, we are **Transforming Our Review Data Capture Process** to ensure that reviews of an examiner's work product by someone in the USPTO will follow the same process and access the same facets of examination. Historically, we have had many different types of quality reviews including supervisory patent examiner reviews of junior examiners and quality assurance team reviews of randomly selected examiner work product. Sometimes the factors reviewed by each differed, and the degree to which the review results were recorded. With only a portion of these review results recorded and different criteria captured in those recordings, the data gathered was not as complete, useful, or voluminous as it could have been. As a result, the USPTO has been able to identify statistically significant trends only on a corps-wide basis, but not at the technology center, art unit, or examiner levels. We are working to unify the review process for all reviewers and systematically record the same review results through an online form, called the "master review form," which we intend to share with the public.

What are the implications of this new process and new form? This new process will give us the ability to collect and analyze a much greater volume of data from reviews that we were already doing, but that were not previously captured in a centralized, unified way. As we roll out this new review process the amount of data we collect will significantly increase anywhere from three to five times. This will allow us to use big data analytic techniques to identify more detailed trends across the agency based upon statistically significant data including at the technology center, art unit, and even examiner levels. Also, this new process will give us better insight into not just whether the law was applied correctly, but whether the reasons for an examiner's actions were spelled out in the record clearly and whether there is an omission of a certain type of rejection. For example, for an obvious rejection we are considering not only whether a proper obvious rejection was made, but whether the elements

identified in the prior art were mapped onto the claims, whether there are statements in the record explaining the rejection, and whether those statements are clear.

The end results will be the (1) ability to provide more targeted and relevant training to our examiners with much greater precision, (2) increased consistency in work product across the entire examination corps, and (3) greater transparency in how the USPTO evaluates examiners' work product. You can read more about these and our many other initiatives, such as our **Automated Pre-examination Search** pilot and **Post Grant Outcomes**, which incorporates insight from our Patent Trial and Appeal Board and other proceedings back into the examination process on our new [Enhanced Patent Quality Initiative](#) page on our website.

Finally, let me close by emphasizing that our Enhanced Patent Quality Initiative is not a “one-and-done” effort. Coming from the private sector, I know that any company that produces a truly top quality product has focused on quality for years, if not decades. The USPTO is committed to no less. The programs presented here are just a start. My goal in establishing a brand new department within the USPTO was to focus exclusively on patent quality and the newly created executive level position of Deputy Commissioner for Patent Quality will ensure enhanced quality now, and into the future. With your input we intend to identify additional ways we can enhance patent quality as defined by our patent quality pillars of excellence in work products, excellence in measuring patent quality, and excellence in customer service.

To that end, we will continue our stakeholder outreach and feedback collection efforts in various ways, such as our monthly [Patent Quality Chat webinars](#). The next [Patent Quality Chat webinar on November 10](#) will focus on the programs presented in this blog and our other quality initiatives. I encourage you to join in regularly to our Patent Quality Chats and visit the [Enhanced Patent Quality Initiative](#) page on our website for more information. The website provides recordings of previous Quality Chats as well as upcoming topics for discussion. We are eager to hear from you about our Enhanced Patent Quality Initiative, so please continue to provide your feedback to WorldClassPatentQuality@uspto.gov ([link sends e-mail](#)). Thank you for collaborating with us on this exciting and important initiative!