

United States Patent and Trademark Office

Informational paper on the Enhanced Patent Quality Initiative

1 Improving the quality of issued patents is one of the top priorities of the United States Patent and Trademark Office (USPTO) leadership. This topic is also of great interest to many patent offices taking part in the meetings of the Standing Committee on the Law of Patents (SCP).

2 During the 23rd session of the SCP, as part of the quality of patents agenda topic, delegates of the member states held a sharing session relating the experiences of experts from different regions on the assessment of inventive step in examination, opposition and revocation procedures. Over the past several meetings of the SCP, many countries including Canada, Denmark, the Republic of Korea, the United Kingdom, and the United States have submitted proposals for work on patent quality, for example in documents SCP/17/7, 8 and 10, SCP/19/4, SCP/20/11 Rev. and SCP/23/4.

3 The United States encourages continued discussion by member states on this important topic and maintains its view that granting high quality patents is fundamental to having a well-functioning patent system that promotes innovation, economic growth, employment and the general welfare.

4 In the 17th session of the SCP, we provided a detailed explanation of quality management measures being implemented by the USPTO.¹ In view of recent developments in the United States, we would like to take this opportunity to give an update on recent efforts at improving patent quality in the USPTO. We would also like to encourage the delegations of other member states to reflect upon this topic and share their views on updating and improving their own quality management systems.

The Enhanced Patent Quality Initiative - EPQI

5 The USPTO views high quality patents as instruments that facilitate certainty and clarity of rights, which in turn helps to fuel innovation and reduces needless litigation. Following passage of the America Invents Act, a sweeping patent reform legislation, the USPTO is now able to better leverage its resources towards longer-term and more ambitious improvements to patent quality.

¹ See document SCP/17/10.

6 In January 2015 the USPTO established the new senior level position of Deputy Commissioner for Patent Quality, responsible for ensuring that the USPTO's patent examination processes and products maintain a high level of quality. Soon after, in February, 2015, the USPTO launched the Enhanced Patent Quality Initiative (EPQI). This initiative involves a comprehensive review and reformulation of internal USPTO processes meant to enhance the quality of issued patents.

7 Several outreach programs were carried out, to gather the views and suggestions of stakeholders. These included a Patent Quality Summit held on March 25 - 26, 2015; a Patent Public Advisory Committee (PPAC) and Patent Examiner Join Discussion held on May 4, 2016; various Patent Quality Forums and other quality-related events. Many of the materials presented in those events are available online.²

8 The Enhanced Patent Quality Initiative focuses on three pillars for enhancing patent quality and has identified specific programs related to each pillar to increase patent quality. The three pillars are:
Pillar 1 – Excellence in Work Products: Provide the best work products and services at every stage of the patent process.

Pillar 2 – Excellence in Measuring Patent Quality: Provide excellence in measuring patent quality ensuring appropriate quality metrics target examination issues requiring attention.

Pillar 3 – Excellence in Customer Service: Improve the customer experience with emphasis on excellent customer service.

These pillars serve as guideposts for the USPTO as it undertakes the necessary steps to ensure that examiners have the tools, resources, and training required to perform their jobs optimally and to provide a superior work product.

9 Within the framework established by these three pillars, the USPTO implemented eleven programs addressing different facets of patent quality. The USPTO formulated these programs after conducting public consultations and outreach programs and receiving input from a diverse group of stakeholders throughout the country, ranging from large multinationals to independent inventors. In addition, trade groups, public interest groups, and bar associations provided diverse views that were integrated into the programs.

² <http://www.uspto.gov/patent/initiatives/enhanced-patent-quality-initiative-event-materials-and-presentations>

10 The eleven EPQI programs can be categorized according to their designated pillar. For instance, to improve the quality of its work product (Pillar 1), the USPTO instituted the following programs:

- (i) Automated Pre-Examination Search Pilot; to provide to the examiner relevant prior art through an automated pre-examination search, for review before the examiner begins examination and conducts a manual search of the application.
- (ii) Scientific and Technical Information Center Awareness Campaign; to highlight the USPTO's Scientific and Technical Information Center (STIC) search tools and resources.
- (iii) Clarity of Record Training: Improving Clarity and Reasoning in Office Actions Training; to educate examiners on the latest legal developments and effective ways to convey their positions and reasons to applicants.
- (iv) Post Grant Outcomes Pilot; to identify prior art raised in post grant proceedings that is relevant to related cases undergoing prosecution and to simplify access to this prior art for examiners in the related cases.
- (v) Topic Submission for Case Studies; to use stakeholder suggestions to identify new topics for case studies. Six case studies have been already identified under this program.

11 With respect to measuring patent quality (Pillar 2), the USPTO is instituting the following programs:

- (i) Clarity and Correctness Data Capture (using the Master Review Form); to develop and implement a new agency-wide consistent and transparent process and form to capture minable data on the correctness and clarity of examiners' work products.
- (ii) Quality Metrics; to develop and implement new measures for understanding, evaluating, and reporting the correctness and clarity of examiners' work product.

The USPTO developed the Quality Composite Metric in 2011 with the aim of identifying and correcting potential quality concerns that may arise during examination. Presently the USPTO is receiving public input on how to fine-tune the metrics in order to better measure the accuracy of examiner determinations and obtain data more representative of the effectiveness of examiner training. The USPTO intends to implement the new patent quality metrics in Fiscal year 2017.

- (iii) Reevaluation of After Final Consideration Pilot 2.0, Pre-appeal, and Quick Path Information Disclosure Statement; to evaluate improvements to existing after-final programs, to achieve compact prosecution and reduce the number of issues being appealed.

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12 With respect to excellence in customer service (Pillar 3), the following programs aim to improve the customer experience as a way of further increasing patent quality:

- (i) Review of existing pre-appeal processes to better streamline examination.
- (ii) Design Patent Publication Quality; to improve the quality of images in published design patents.
- (iii) Interview Specialist program; to provide a point of contact to facilitate applicant-examiner interviews and assisting examiners and applicants with interview logistics.

13 The USPTO's continued efforts at improving patent quality reflect the importance that the patent system plays in a knowledge-based economy. In developing mechanisms to improve patent quality, the USPTO seeks to take into account and understand the views of all stakeholders, and to explain to the public, in a transparent manner, the changes to be implemented in the quality management system.

14 We are very interested to hear the experiences and insight of other offices that have updated or refined over time their quality management systems. We would like to invite interested offices to reflect on this issue and to share their views with the rest of the SCP membership.