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Measuring And Improving U.S. Patent Quality

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On February 5, 2015, the USPTO announced the launch of an Enhanced Patent Quality Initiative and solicited public comments on certain proposals aimed at improving patent quality, which are due by May 5, 2015. With a few weeks left in the comment period, the Office of Inspector General of the U.S. Department of Commerce issued a report on its review of the USPTO's quality assurance program. The report is eye-opening and underscores the problems the USPTO faces in measuring and improving patent quality.

USPTO Patent Quality Pillars and Initiatives

In the February 5 [Federal Register Notice](#), the USPTO identified three patent quality pillars and six new patent quality initiatives :

The Three Pillars

1. **Excellence in work product** (issued patents and Office actions)
"The USPTO is committed to issuing patents that clearly define the scope of the rights therein, that are within the bounds of the patent statutes as interpreted by the judiciary, and that provide certainty as to their validity to encourage investment in research, development, and commercialization."
2. **Excellence in measuring patent quality** (appropriate quality metrics)
"[T]he USPTO is focusing on its measurement of quality to evaluate work products and customer interactions. The USPTO welcomes the public's input on its measurement of patent quality and how it may be improved."
3. **Excellence in customer service**
"The USPTO seeks feedback to ensure that customers are treated promptly, fairly, consistently, and professionally at all stages of the examination process."

The Six Initiatives

1. *Applicant requests for prosecution review of selected applications*
2. *Automated pre-examination search*
3. *Clarity of the record*

4. Review of and improvements to quality metrics

5. Review of current Compact Prosecution model and the effect on quality. (See this article on [Compact Prosecution 2.0](#) for a look at an alternative paradigm.)

6. In-person interview capability with all examiners

For more information on the patent quality initiatives and instructions on how to submit written comments, please see [this article](#).

The Office of Inspector General Report

The OIG's final report highlights four significant areas of concern:

1. The USPTO's performance appraisal plan and related policies are ineffective at measuring whether examiners are issuing high-quality patents.
2. The USPTO's official quality metrics may underrepresent the true error rate.
3. The USPTO is not collecting data that could improve patent quality.
4. The USPTO's response to patent mortgaging may not discourage abuse. (According to the report, "patent mortgaging" occurs when an examiner knowingly turns in incomplete work product for credit. Such incomplete work is caught by administrative staff and returned to the examiner.)

An Eye-Opening Look At The Problems

The OIG's final report reveals several systemic problems with the USPTO's processes and policies. I found the following information particularly eye-opening:

- 95% of examiners receive the highest performance ratings ("outstanding" or "commendable").
- A supervisor is required to conduct an in-depth review of only 4 samples of an examiner's written work product (e.g., Office Actions) per year for performance appraisal purposes.
- If a supervisor charges an error against an examiner, the examiner can initiate a grievance process, so many supervisors choose instead to coach the examiner.
- Examiners can receive the highest performance ratings even if errors are found in 75% or 100% of their work that is reviewed (i.e., 3 or 4 out of 4 samples), as long as they are meeting the USPTO's production goals.
- The USPTO only recently started requiring supervisors to record errors identified in their review of examiner work product for performance appraisals.
- The USPTO does not record errors uncovered during the Signatory Authority Review program that assesses whether an examiner is qualified to issue office actions without supervisory review.
- Over the past 5 years, in any given quarter, up to 20% of examiners submitted more than 50% of their work product during the last 4 weeks of the quarter.

The USPTO's Response

The USPTO has been receptive to the OIG's recommendations. The USPTO has created a new, full-time senior executive position, the Deputy Commissioner for

Patent Quality (currently filed by Valencia Martin-Wallace), has announced an Enhanced Patent Quality Initiative and has [requested public comments on enhancing patent quality](#) as noted above. The USPTO is taking these patent quality issues seriously, and stakeholders can do their part by sharing their ideas for improving patent examination quality in written comments sent by email to WorldClassPatentQuality@uspto.gov.

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This entry was posted on Thursday, April 23rd, 2015 at 8:00 am and is filed under [United States of America](#)

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