

AIPLA/FICPI COLLOQUIUM
- THE PATENT OFFICES BACKLOG CRISIS -

June 17-18, 2010

Edinburgh Scotland
Radisson Hotel

USPTO Quality Initiative
Robert Stoll, Commissioner for Patents

Opening

- Good afternoon. It is my pleasure to be here today with such an esteemed and international group of presenters and participants. You have been here for a day and a half already, discussing one of the greatest challenges facing our respective patent offices – the backlog crisis.

- My role here today is to talk to you about an equally important topic. A topic which goes hand in hand with the topic of the backlog crisis – and that is patent quality.

Background

- Quality patents are critical to the proper functioning of the patent system. With the help of the dedicated employees of the USPTO, I am committed to issuing high quality patents as a top priority of the agency.

- To pursue this objective, last fall we created a joint USPTO-PPAC Quality Taskforce, which has been busy since their inception- taking and analyzing public comments, planning public roundtables and:
 - discussing the indicia of patent quality,
 - evaluating how quality is measured at the USPTO and whether that measurement indicia properly reflects the best and most accurate measurement of quality, and
 - determining the best path forward for the agency to address the issue of patent quality.

- My thanks go to Marc Adler, who spoke with you yesterday (Thursday, the 17th) as part of a panel addressing the impact of the backlog on patent quality. Marc, as the PPAC lead on the Quality Taskforce, has been at the forefront of this issue and has been able to take this project and move it forward with great diligence and drive. In doing so, Marc has pioneered a new model for teaming between PPAC and USPTO management to collaboratively address issues critical to the patent system. His leadership and insight have been invaluable.

- The USPTO began its current study on patent quality by publishing (December 2009) a Federal Register Notice requesting comments on the enhancement in the quality of patents.
- We received responses from over 70 organizations, corporations, law firms, and individuals – some of whom are here today as presenters or participants. If you haven't had a chance to read the comments, I would encourage you to do so. They are posted to our Web site, at uspto.gov.
- As a result of the feedback, we developed a strawman set of quality metrics to facilitate our discussion at two roundtables held in Los Angeles, California and at the USPTO. These strawman metrics are posted on our Web site too.
- The roundtables, due to the high caliber of the participants and our united goal of enhancing patent quality, proved to be invaluable. Both had lively discussions amongst all of the participants and provided the USPTO and the PPAC with a great deal to think about.
- I want to emphasize that the strawman set of quality metrics presented was to facilitate a discussion on patent quality and patent quality metrics. The USPTO had not predetermined what quality metrics would ultimately be adopted. To the contrary, we are continued to gather comments and input on

the appropriate measures of patent quality up until today, June 18th.

- To share with you some of the common themes we have heard in the written comments and at the roundtables, it is things like:
 - The importance of a good quality search; For example, it has been suggested that the USPTO should measure if a USPTO examiner finds the same or better art as applied by a foreign examiner (or as supplied by the applicant). The metric used could measure the quality of the prior art search and the amount of possible reuse for future work sharing initiatives.
 - There should be a better correlation between the specification and claims or an application. The USPTO is aware of current electronic tools, used by practitioners, to compare the specification and the claims – perhaps the USPTO should use similar tools.
 - Care must be taken when creating any type of new metric as there can be unintended consequences of placing an emphasis on any one area.
 - While most were in consensus that current interview practice has improved, in part, because of the First Action Interview Pilot program, all agreed that enhanced two-way communication between examiners and applicants would facilitate enhanced efficiencies and quality.
 - As with the suggested correlation tool for use with the specification and claims, a number of other IT improvements including ways in which to access and save prior art were suggested.

- And my favorite – quality is a shared responsibility between the USPTO and applicants. In this vein, best practices should be developed, recognized and taught.

Current Activity

- As I mentioned previously, we continue taking comments until the end of today, June 18th.
- In preparation for today's date and to maintain the momentum of the roundtables, the USPTO has been reviewing all comments submitted and the information provided at the roundtables to develop steps forward to achieving enhancement in the quality of patents.
- The Quality Taskforce is taking the strawman metric discussed at the roundtables and trying to flesh out the appropriate factors for each of the proposed six elements of the new quality metric. In doing so, the Quality Taskforce is also trying to establish the appropriate weighting for each of the six elements and the numeric baseline for each element.
 - You may be wondering, what are the six proposed elements of the new quality metric?
 - Well, very briefly **and keeping in mind these are subject to change:**
 1. **Final Disposition Compliance Rate** - Rolling 12-month average of combined Final/Allowance Review measure. TBD - Expected score computed on points-based assessment of each reviewed application.
 - [Currently measured by OPQA]
 2. **In-Process Compliance Rate** -Rolling 12-month average of Non-Final (IPR) Review measure.

- [Currently measured by OPQA]

3. Complete Application Scoring TBD - Expected score computed on points-based assessment of each reviewed application.

- *Some discussion though has suggested this element be modified to instead be an intensive FAOM reviews with an emphasis on the quality of the search. [This is in line with the USPTO's emphasis on compact prosecution and addressing issues early in prosecution.]

4. QIR Composite* TBD – Making use of QIR items being tracked for SPE performance.

5. Customer Panel Survey Data - collected from semi-annual CPQS Survey.

- Based on question of Overall Examination Quality, rate from Very Poor to Excellent, over prior 3 months. Ratio is Number of "Satisfied" customers versus "Dissatisfied customers"

6. Examiner Survey (Application Issues) TBD - Data collected from semi-annual or annual TBD - Data collected from semi-annual or annual Examiner Survey.

- It is uncertain yet as to what the nature of the survey questions will be. This is currently under discussion.

- I have to tell you though, determining the appropriate factors for each of the proposed six elements of the new quality metric, establishing the appropriate weighting for each of the six elements and the numeric baseline for each element is NO easy task.

- But one which we are committed to do right.

Future Steps

- The Quality Taskforce will continue its evaluation of all of the comments received, including those coming in most recently.
- Armed with this knowledge and the input of the roundtables, they will continue to tweak the proposed composite metric of quality.
 - In parallel with this effort, is participation by the Technology Center Directors and others throughout the Agency who are weighing in on the appropriate measurement of quality – the weighting of the elements measured, the nature of the elements measured, and the necessary steps for implementation.
 - I should also add, and would be remiss if I failed to do so, transparency of what is being measured, and how it is being measured is being kept in mind throughout this entire process.
 - We hope to end up with not only a new and better measurement of patent quality, but one which provides you with better insight into the process and more data as to what is being measured and how.
- When the USPTO has a finalized “new quality metric” - we will share that with all stakeholders, perhaps either through another roundtable or some other means to enable us to get your feedback on what we have come up with.

Closing

- I hope this information has been helpful today and brought you up to speed, so to speak, on the USPTO’s efforts to enhance the quality of U.S. patents.

- The Quality Taskforce is by no means done with its efforts, and in fact the quality of U.S. patent will always remain a top priority of the Agency, but with your input, the USPTO is making great progress.
- I'd be happy to take any questions on the Quality Taskforce, its work, the information gathered so far, or the proposed quality metric at this time.
- Thank you.