Los Angeles
Intellectual Property Lawyers Association
January 30th, 2015

Views from the USPTO

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United States Patent and Trademark Office

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UPSTO Update on Patents

Agenda

- Satellite Offices
- Patent Performance
- Quality & Training
- Prosecution Initiatives
- Stakeholder Engagement
Establishing a Regional Presence

SATELLITE OFFICES
OVERVIEW:

• Background
• Update on Establishing Permanent Offices
• Services Offered Regionally
• Regional Outreach and Education Programs
The Silicon Valley USPTO
City Hall, San Jose, California

Opening in 2015
Satellite Offices will provide:

- **Walk-in services** to obtain information about the USPTO
- **Workstations for searching** patents and trademarks
- **A regional focus** for workshops, just-in-time training, conferences and roundtables (at all levels)
- **A hearing room** to host Patent Trial and Appeal Board (PTAB) proceedings and remote access to hearings taking place in Alexandria or at another satellite office
- **Interview rooms** to connect applicants to patent examiners working in Alexandria and across the country
- **Remote training capabilities** from local experts to patent examiners around the country
- **Office hours** for strategic partners like Small Business Development Centers and the Export Assistance Center
Regional Focus for Workshops

• For All Levels – From K-12 to IP professionals
  – From basic facts to updates on law and procedure
• Stakeholder roundtables
  – First Inventor to File Roadshows
• Inventor conferences and Startup Programs
• Tech Specific Partnership Meetings
  – Cyber-Tech & Bio-Tech
• International programs - IP Attaché Program
• 1 on 1 assistance
• Co-host programs with strategic community partners
Fiscal Year 2014 in Review

PATENT PERFORMANCE
Data Visualization Center
Your window to the USPTO
Patents Dashboard

December, 2014

UPR allowance rate, including RCEs = 51.1%
UPR allowance rate, without RCEs = 69.2%
Total Serialized and RCE Filings
FY 2002 – FY 2015 (through January 12th)

FY 2015 total UPR filing growth rate is projected to be 3% over FY 2014.

FY 2014 total UPR filing growth rate was 2.8% (582,203 applications).
Unexamined Patent Application Backlog
FY 2009 – FY 2015 (through January 8th)

FY 2014 Result: 605,646.

610,316 Unexamined Applications as of January 8, 2015.

AIA filing bubble (March 2013)
CPC learning curve begins (October 2013)
RCE Backlog
FY 2010 – FY 2015 (through January 8th)

44,363 as of January 8, 2015.

FY 2014 result: 46,441.
First Action Pendency and Total Pendency
FY 2009 – FY 2015 (through December)

Average Total Pendency FY 2015 Target (2016 President’s Budget): 27.7 months
Average First Action Pendency FY 2015 Target (2016 President’s Budget): 16.4 months

Total Pendency as of December 31, 2014: 27.0 months.
First Action Pendency as of December 31, 2014: 18.1 months.
Quality Components

- **Quality Index Reporting (QIR):** 20%
  - Statistical representation of quality-related events in the prosecution of the patent application
  - Items tracked for Quality Composite include: Actions per Disposal; % Disposals not RCE; % Finals Reopened; 2nd+ Action Non-Finals; Restrictions Made on 2nd or Subsequent Action
  - Objective metrics; no sampling error

- **FAOM Search:** 10%
  - Measures degree to which the search and the first action on the merits conforms with the best practices of the USPTO
  - Based on randomly-selected review of FAOMs and First Action Allowances
  - Actions receive an exam-type score based upon their compliance with best practices
  - N=800 reviews per Fiscal Year for each component

- **Complete FAOM Review:** 10%

- **In-Process Compliance Rate:** 15%

- **External Quality Survey:** 15%
  - Measures satisfaction of applicants and practitioners with patent examination quality
  - Metric expressed as ratio of Good/Excellent responses vs. Poor/Very Poor responses
  - Semi-annual survey of approximately 3,000 frequent-filing applicants and practitioners
  - 95% confidence interval +/- 3.0%

- **Internal Quality Survey:** 10%
  - Measures employee satisfaction with various factors and inputs that lead to the ability to perform high quality examination
  - Metric expressed as ratio of Good/Excellent responses vs. Poor/Very Poor responses
  - Semi-annual survey of approximately 750 patent examiners
  - 95% confidence interval +/- 5.0%
• Substantially all examiners have received AIA/FITF Comprehensive Training, as well as AIA Indicator Training.

• Over half of the examiners have elected to take the AIA/FITF Hands On Workshop (HOW). The workshop is designed to be taken when an AIA/FITF case is at the top of an examiner's docket. The training will continue throughout FY15.

• A "Declarations of Attribution or Prior Public Disclosure Under 37 CFR 1.130" training module has been prepared and will be available for examiners soon.
• AIA/FITF experts from the USPTO presented a seven-city Roadshow in Fall 2014.

• In conjunction with the Roadshow, USPTO experts interacted with IP law students, including a HOW presentation at UNH and a virtual Q&A session with the law school clinic program at UConn.

• The MPEP has been updated to include AIA/FITF materials.

More information and slides are available on our Web site
# Examination Guidance and Training Materials

## 35 U.S.C. 101

### Subject matter eligibility

- **2014 Interim Guidance On Patent Subject Matter Eligibility** (December 2014) [new]
  - **2014 Interim Eligibility Guidance Quick Reference Sheet** (December 2014) [PDF]
  - **Nature-Based Product Examples** (December 2014) [PDF]
  - **Abstract Idea Examples** (January 2015) [PDF]
  - Feedback
- **Preliminary Examination Instructions in view of the Supreme Court Decision in Alice Corporation Pty. Ltd. v. CLS Bank International, et al.** (June 2014) [PDF]
- **2014 Procedure For Subject Matter Eligibility Analysis Of Claims Reciting Or Involving Laws Of Nature/Natural Principles, Natural Phenomena, And/or Natural Products** (March 2014)
  - **Eligibility Guidance Quick Reference Sheet** (March 2014)
  - **Training Slides** (March 2014)
  - Feedback
  - Slides
  - Computer Based Training (CBT)
- **Flowchart - Subject Matter Eligibility Analysis for Claims to Laws of Nature/Natural Principles** (August 2012)
- **2012 Interim Procedure for Subject Matter Eligibility Analysis of Process Claims Involving Laws of Nature**
- **Interim Guidance for Determining Subject Matter Eligibility for Process Claims in View of Bilski v. Kappos** (through 2010 update)
- **Subject Matter Eligibility of Computer Readable Media** (2010)
- **Interim Examination Instructions For Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101** (August 2009)

## America Invents Act

### First Inventor To File (FITF)

- **First-Inventor-to-File Training Plan for USPTO Examiners** [PDF]
- **First-Inventor-to-File Statutory Framework Chart** [PDF]
- Overview CBT (March 2013) (46 min) Video | Slides [PDF]
- Overview Follow-On Video (March 2013) (27 min) Video | Slides [PDF]
Options for Applicants

PATENT PROSECUTION INITIATIVES
Patent Application Initiatives Timeline

http://www.uspto.gov/patents/init_events/patapp-initiatives-timeline.jsp
# Patent Application Initiatives

[http://www.uspto.gov/patents/init_events/patapp-initiatives-timeline.jsp](http://www.uspto.gov/patents/init_events/patapp-initiatives-timeline.jsp)

<table>
<thead>
<tr>
<th>Description</th>
<th>Track One (Prioritized Examination)</th>
<th>Accelerated Examination</th>
<th>Full First Action Interview Pilot</th>
<th>Glossary Pilot</th>
<th>Ombudsman Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>The goal is to provide a final disposition within twelve months, on average, of prioritized status being granted. Learn about Track One statistics.</td>
<td>Accelerated examination provides applicant the opportunity to have final disposition of an application in 12 months. Learn about Accelerated Examination statistics</td>
<td>Under this Program, an applicant is entitled to a first action interview, upon request, prior to the first Office action on the merits.</td>
<td>Focus on enhancing claim clarity in the specification of software-related applications through the use of glossaries.</td>
<td>The Patents Ombudsman Program enhances the USPTO’s ability assist applicants on their representatives with issues that arise during patent application prosecution.</td>
<td></td>
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<tr>
<td>Program Start Date</td>
<td>09/2011 (AIA)</td>
<td>08/2006</td>
<td>10/2009</td>
<td>06/02/2014</td>
<td>04/2010</td>
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<tr>
<td>Currently Active (accepting applications)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, extended beyond 11/16/12</td>
<td>Yes (as of 06/02/14)</td>
<td>Yes</td>
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<tr>
<td>Petition / Request</td>
<td>Request</td>
<td>Petition</td>
<td>Request</td>
<td>Petition</td>
<td>Request</td>
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<tr>
<td>Surcharge / Fee</td>
<td>Yes - $4800 / $2400 small entity; $4000 / $2000 after 340/12</td>
<td>Yes - $130 ***</td>
<td>No</td>
<td>No</td>
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# Track One Filings
(through January 8th)

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<tr>
<th>Petitions Received</th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
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<td></td>
<td></td>
<td></td>
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<td>855</td>
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<td>FY 12</td>
<td>390</td>
<td>302</td>
<td>285</td>
<td>292</td>
<td>371</td>
<td>442</td>
<td>457</td>
<td>516</td>
<td>436</td>
<td>470</td>
<td>517</td>
<td>559</td>
<td>5,037</td>
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<td>505</td>
<td>513</td>
<td>575</td>
<td>504</td>
<td>468</td>
<td>1,029</td>
<td>400</td>
<td>508</td>
<td>530</td>
<td>584</td>
<td>642</td>
<td>636</td>
<td>6,894</td>
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<td>FY 14</td>
<td>715</td>
<td>570</td>
<td>732</td>
<td>650</td>
<td>629</td>
<td>1,028</td>
<td>822</td>
<td>803</td>
<td>795</td>
<td>796</td>
<td>673</td>
<td>911</td>
<td>9,124</td>
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<td>FY 15</td>
<td>347</td>
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<td></td>
<td></td>
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<td>347</td>
<td></td>
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</table>

### Percent of Small and Micro Entity Applications

<table>
<thead>
<tr>
<th>Track One Requests Filed After an RCE</th>
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<tbody>
<tr>
<td>51.3%</td>
</tr>
<tr>
<td>963</td>
</tr>
<tr>
<td>1,785</td>
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</table>

*Micro entity status was implemented March 19, 2013*
Patent Prosecution Highway
Global PPH & IP5 PPH Pilots
Patent Prosecution Highway

Principles of Global PPH

- Retains PPH benefits and fast-track of applications (MOTTAINAI & PPH 2.0)
- Streamlines process:
  - A single set of requirements – simplified filing
  - A single USPTO program (no more PPH or PCT-PPH)
  - A single approach to determining earliest effective date
- Reciprocity among ~20 Offices participating in Global PPH
  - IP5 PPH: EPO and China only with other IP5 Offices
- Pilot Start date: January 6, 2014 – Extended Indefinitely
PPH Benefits

✓ Rapid prosecution
  • Fast Track Examination

✓ Higher grant rates
  • 84% PPH vs. 53% non-PPH

✓ Fewer RCE filings
  • 12% PPH vs. 25% non-PPH

✓ Fast portfolio building

**Significant and meaningful cost savings for innovators!**

As of November, 2014
Glossary Pilot Program
A NEW STRATEGY FOR IMPROVING CLAIM CLARITY USING GLOSSARIES

Still Accepting Applications!
Eligible Applications must fall in technologies under Technology Center 2100, 2400, 2600 or 3600 (Business Methods area only)

Accepted applications will receive special status up to the FAOM

Pilot started on June 2, 2014

- Ends after 12 months or 200 applications

Glossary Initiative

http://www.uspto.gov/patents/init_events/glossary_initiative.jsp
AFCP 2.0: After Final Consideration Pilot 2.0 (AFCP 2.0)

Pilot extended through Sept. 30, 2015
After Final Consideration Pilot
(AFCP 2.0)

• Gives Examiners additional time to search and consider amendments after final rejection and interview with applicant to discuss results
  – Over 61,000 requests since May 2013
  – Interview is 3 times more likely in an application with an AFCP 2.0 request when compared to applications without an AFCP 2.0 request
  – Non-pilot cases are 3 times more likely to result in the filing of an appeal brief

• Pilot extended until September 30, 2015
  – Further evaluation and surveys underway
Quick Path Information Disclosure Statement (QPIDS)

- Offers consideration of IDS after payment of Issue Fee
- Eliminates need to file RCE when IDS does not necessitate reopening prosecution
- Pilot extended until September 30, 2015
  - > 5,000 filed through January 7, 2014
  - > 3,700 RCE’s avoided out of the ~4,400 cases completed

<table>
<thead>
<tr>
<th>QPIDS</th>
<th>FY 12</th>
<th>FY 13</th>
<th>FY 14</th>
<th>FY 15</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td>Total Number filed</td>
<td>491</td>
<td>1,355</td>
<td>2,425</td>
<td>800</td>
<td>5,071</td>
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<tr>
<td>Total QPIDS completed process</td>
<td>327</td>
<td>1,169</td>
<td>2,240</td>
<td>668</td>
<td>4,404</td>
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<tr>
<td>• # Corrected NOAs mailed</td>
<td>280</td>
<td>997</td>
<td>1,933</td>
<td>563</td>
<td>3,773</td>
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<tr>
<td>• Total # of RCEs processed</td>
<td>47</td>
<td>172</td>
<td>307</td>
<td>105</td>
<td>631</td>
</tr>
</tbody>
</table>
Working With Stakeholders

ENGAGEMENT IS KEY!
29.8% of Serial Disposals completed in September 2014 had at least one interview.
### Third Party Submissions

**Proper**
- 1,868

**Improper (including 248 resubmissions and 32 that were not 3rd party)**
- 549

**Not Yet Reviewed**
- 41

**Total**
- 2,458

### Total Documents Breakdown for Proper Submissions

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
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</thead>
<tbody>
<tr>
<td>Patents</td>
<td>1,825</td>
</tr>
<tr>
<td>Published US. Apps</td>
<td>1,418</td>
</tr>
<tr>
<td>Foreign Reference</td>
<td>1,121</td>
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<tr>
<td>NPL</td>
<td>1,912</td>
</tr>
<tr>
<td>Total Documents</td>
<td>6,276</td>
</tr>
</tbody>
</table>
Ways Stakeholders Can Help!

Patent Examiner Technical Training Program (PETTP):
- Share your expertise with Patent Examiners
  - Lecture on state of the art, emerging trends & new developments in focused technology areas
- Satellite offices will support guest lecturers

Site Experience Education (SEE) Program:
- Patent Examiners visiting with industries
- Gain first-hand experience and SEE how technology operates in the field
Pro Bono Help

In California: California Lawyers for the Arts

http://www.calawyersforthearts.org/CIAP

http://www.uspto.gov/inventors/proseprobono/index.jsp
• Process designed for issues that arise during patent application prosecution; used to get an application “back on track”

• Use on-line ombudsman form at http://www.uspto.gov/patents/ombudsman.jsp

“This program brings a voice to the inventor that he normally would not have ... THANK-YOU!!!!!!!”
THANK YOU!

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