IP Impact Silicon Valley
November 6th, 2014

Developments in Intellectual Property

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United States Patent and Trademark Office

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UPSTO Update on Patents and Trials

Agenda

• Satellite Offices
• End of FY 2014
• Quality and Training
• Prosecution Initiatives
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 Spring 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 Capability** 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
  – Quality Roundtables
  – First Inventor to File Roadshows
• Inventor conferences and Startup Programs
• Tech Specific Partnership Meetings
  – CyberTech – November 2014 in Silicon Valley
• International programs
  – IP Attaché Program – on both coasts in December
• 1 on 1 assistance
• Co-host programs with strategic community partners
Fiscal Year 2014 in Review

PATENT PERFORMANCE
Data Visualization Center
September 30th, 2014

Your window to the USPTO

- **First Office Action Pendency (Months)**: 18.4
- **Traditional Total Pendency (Months)**: 27.4
- **Unexamined Patent Application Backlog**: 605,646
- **RCE Backlog**: 46,441
- **Track One Pendency from Petition Grant to Allowance (Months)**: 5.1
- **Fiscal Year Production**: 594,046
- **Patent Examiners**: 8,472
- **Actions per Disposal**: 2.42

UPR allowance rate, including RCEs = 52.8%

UPR allowance rate, without RCEs = 70.7%
Total Serialized and RCE Filings
FY 2002 – FY 2015 (through October 17)

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

The preliminary FY 2014 total UPR filing growth rate is currently 2.8% (582,114 applications).
Unexamined Patent Application Backlog
FY 2009 – FY 2015 (through October 17)

609,444 Unexamined Applications as of October 17, 2014.

FY 2014 Result: 605,646.
QUALITY AND TRAINING
Quality Components

### Quality Components

- **In-Process Compliance Rate**: 15%
  - Measures propriety of Office actions on the merits during the prosecution.
  - Based on review of randomly sampled Non-Final Rejections.
  - N=3,000 reviews per Fiscal Year; 95% confidence interval +/- 0.75%

- **Final Disposition Compliance Rate**: 20%
  - Measures propriety of final dispositions of patent applications.
  - Based on review of randomly sampled Allowances and Final Rejections.
  - N=3,000 reviews per Fiscal Year; 95% confidence interval +/- 0.75%

- **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%

- **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%
The USPTO Dashboard shows updated Quality Composite Score and component information.

http://www.uspto.gov/dashboards/patents/main.dashxml

FY 14 Goal: 83-91%
# Examination Guidance and Training Materials

**America Invents Act**

- 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]
- FITF Definitions (June 2013) (14 min) Video | Slides [PDF] / Handout [PDF]
- Comprehensive Examiner Training Slides (Summer 2013) Video | Slides [PDF]
- AIA FITF Indicator Training (Fall 2013) Video

**non-FITF AIA Regulations**

- non-FITF Regulations Training (Summer 2013) [PDF]

**35 U.S.C. 112**

### 35 USC 112(f) – “Means-plus-function” limitations

- 35 USC 112(f): Broadest Reasonable Interpretation and Definiteness of § 112(f) Limitations
  - Computer Based Training [CBT] [posted May 5, 2014]
  - PowerPoint of the CBT [PPT] [posted May 5, 2014]
- 35 USC 112(f): Evaluating § 112(f) Limitations in Software-Related Claims for Definiteness under 35 USC 112(b)
  - Computer Based Training [CBT] [posted June 20, 2014]
  - PowerPoint of the CBT [PPT] [posted June 5, 2014]
- 35 USC 112(f): Identifying Limitations That Invoke 112(f)
  - Computer Based Training [CBT] [posted August 2, 2013]
  - PowerPoint of the CBT [PPT] [posted August 2, 2013]
  - Handout [PDF] [posted August 2, 2013]
- 35 USC 112(f): Making the Record Clear
  - Computer Based Training [CBT] [posted August 2, 2013]
  - PowerPoint of the CBT [PPT] [posted August 2, 2013]
  - Handout [PDF] [posted August 2, 2013]

The public is invited to submit comments on the training to: TrainingComments112f@uspto.gov

**Supplemental, ¶1, ¶2, ¶4, ¶6**

Options for Applicants

PATENT PROSECUTION INITIATIVES
### Patent Application Initiatives Timeline

http://www.uspto.gov/patents/init_events/patapp-initiatives-timeline.jsp

<table>
<thead>
<tr>
<th>FILING</th>
<th>FIRST ACTION</th>
<th>FINAL REJECTION</th>
<th>APPEAL</th>
<th>ALLOWANCE</th>
<th>ISSUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRIOR TO EXAMINATION</td>
<td>DURING EXAMINATION</td>
<td>AFTER CLOSE OF PROSECUTION</td>
<td>AFTER NOTICE OF APPEAL</td>
<td>AFTER PAYMENT OF ISSUE FEE</td>
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<tr>
<td><strong>ADVANCEMENT OF EXAMINATION OPTIONS</strong></td>
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<tr>
<td>Track One - Prioritized Examination</td>
<td>After Final Consideration Pilot 2.0 (AFCP 2.0)</td>
<td>After Final Consideration Pilot 2.0 (AFCP 2.0)</td>
<td>Quick Path Information Disclosure Statement (QPIDDS)</td>
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<tr>
<td>Accelerated Examination</td>
<td>Pre-Appeal Program</td>
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<td>Full First Action Interview Pilot</td>
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<td>Patent Prosecution Highway (PPH)</td>
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<tr>
<td>Glossary Pilot</td>
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<td>Petition to Make Special</td>
<td>Petition to Make Special</td>
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<td>Ombudsman Program</td>
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<td>Ombudsman Program</td>
<td>Ombudsman Program</td>
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<td><strong>INTERVIEW OPTIONS</strong></td>
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<tr>
<td>General Interview Practice</td>
<td>General Interview Practice</td>
<td>General Interview Practice</td>
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<tr>
<td><strong>INFORMATION DISCLOSURE STATEMENT (IDS) OPTIONS</strong></td>
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<tr>
<td>IDS - No Certification or Fee</td>
<td>IDS - Certification or Fee</td>
<td>IDS - Certification and Fee</td>
<td>IDS - Certification and Fee</td>
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<td></td>
</tr>
</tbody>
</table>
## Patent Application Initiatives

http://www.uspto.gov/patents/init_events/patapp-initiatives-timeline.jsp

| Description | Track One (Prioritized Examination) | Accelerated Examination | Full First Action Interview Pilot | Glossary Pilot | Ombudsman Program
<table>
<thead>
<tr>
<th></th>
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</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 or their representatives with issues that arise during patent application prosecution.</td>
<td></td>
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<table>
<thead>
<tr>
<th>Program Start Date</th>
<th>09/2011 (AVI)</th>
<th>08/2006</th>
<th>10/2009</th>
<th>06/02/2014</th>
<th>04/2010</th>
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<tbody>
<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>
</tr>
<tr>
<td>Surcharge / Fee</td>
<td>Yes - $4800 / $2400 small entity; $4000 / $2000 pro se or micro entity</td>
<td>Yes - $130 ***</td>
<td>No</td>
<td>No</td>
<td>No</td>
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### Track One Filings
(through October 17)

<table>
<thead>
<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>
<th>Total</th>
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<td>FY 11</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>
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<td>FY 13</td>
<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>
<td>347</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Percent of Small and Micro Entity Applications</th>
<th>*Number of Micro Entity Applications</th>
<th>Track One Requests Filed After an RCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>51.3%</td>
<td>850</td>
<td>1,628</td>
</tr>
</tbody>
</table>

*Micro entity status was implemented March 19, 2013

Need to FAST track your patent? Use Track One!
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
- 19 Offices participating in Global PPH, including USPTO
  - IP5 PPH: EPO and China only with other IP5 Offices
- Pilot Start date: January 6, 2014
## Comparison between PPH and non-PPH FY 2014

<table>
<thead>
<tr>
<th></th>
<th>Percent of Applications with at least one RCE</th>
<th>Examination Actions per Application Disposal</th>
<th>Overall Allowance Rate</th>
<th>First Action Allowance Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non PPH Applications</td>
<td>25%</td>
<td>3</td>
<td>53.2%</td>
<td>12.6%</td>
</tr>
<tr>
<td>PPH Applications</td>
<td>12%</td>
<td>2.2</td>
<td>84%</td>
<td>23.8%</td>
</tr>
</tbody>
</table>

Examiner Actions include restrictions, non-final rejection, final rejection, ex parte Quayle, allowance, Interference, SIR disposal, Rule 105 requirement, examiner’s answer, advisory action, miscellaneous action with SSP, first action interview actions, examiner initiated suspension and abandonment after PTAB decision.
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 6 months or 200 applications

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

~ 4,300 filed through September 30, 2014
~ 3,200 RCE’s avoided out of the ~3,700 cases completed

<table>
<thead>
<tr>
<th>QPIDS</th>
<th>FY 12</th>
<th>FY 13</th>
<th>FY 14</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number filed</td>
<td>498</td>
<td>1,373</td>
<td>2,449</td>
<td>4,320</td>
</tr>
<tr>
<td>Total QPIDS completed process</td>
<td>327</td>
<td>1,171</td>
<td>2,241</td>
<td>3,739</td>
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<tr>
<td>• # Corrected NOAs mailed</td>
<td>280</td>
<td>997</td>
<td>1,934</td>
<td>3,211</td>
</tr>
<tr>
<td>• Total # of RCEs processed</td>
<td>47</td>
<td>172</td>
<td>307</td>
<td>526</td>
</tr>
</tbody>
</table>
Working With Stakeholders

STAKEHOLDER ENGAGEMENT IS KEY!
29.8% of Serial Disposals completed in September 2014 had at least one interview.
Patent Examiner Training

How 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
• 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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SiliconValley@uspto.gov