QUALITY, QUANTITY AND COMMENTS: USPTO'S NEW PATENT QUALITY METRICS

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IP Procurement and Portfolio Management Alert

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On Friday March 25, 2016, the U.S. Patent and Trademark Office introduced its new patent quality metrics and requested comments from stakeholders on how to further improve the proposed changes ("2017 Proposed Changes"). The goal of the improved quality metrics is to identify quality-related issues and more clearly communicate quality measurements to the public.

In 2011, the USPTO adopted a "Composite Quality Metric" to track patent quality by providing a single comprehensive metric. The Composite Quality Metric consisted of seven total factors: (1) the final disposition review, (2) the in-process review, (3) the first action on the merits (FAOM) search review, (4) the complete FAOM review, (5) the external quality survey, (6) the internal quality survey, and (7) an aggregation of five factors from the USPTO's Quality Index Report (QIR). This information, published on the USPTO dashboard website, is used to identify trends and areas of concern to target those areas in need of increased attention.

On February 5, 2015, the USPTO launched the "Enhanced Patent Quality Initiative," which targets three pillars of patent quality: (1) excellence in work products, (2) excellence in measuring patent quality, and (3) excellence in customer service. The 2017 proposed changes seek to further these goals. With a focus on the second pillar, the USPTO looks to improve the internal metrics used to evaluate patent examination quality and the communication of its patent examination quality measurements to the public. Based on comments from the public, the USPTO has proposed several changes that provide a tighter focus on measuring statutory compliance and clarity of decision making in office actions.

A sampling of office actions will continue to be reviewed both for improperly made rejections and for failure to make rejections where required by statute. The new metrics will also include clarity review items specifically designed for each of the substantive patentability determinations made in office actions. The new clarity review items will include, for example, whether a rejection was proper and whether the statement of the rejection explained the reasons for the rejection in a clear manner. The new clarity review items will further include items directed to the sufficiency of the recordation of any interview and the propriety of any reasons for allowance of an application.

The 2017 Proposed Changes include a single standardized review that replaces the review-specific forms used in the Composite Quality Metric. This "Master Review Form" will be used by all USPTO reviewers for finished product quality reviews of actions at every stage of prosecution. The draft proposed version of the Master Review Form is available to be viewed here. Historically, reviews have been performed by the quality assurance team and other Technology Center personnel, with each reviewing area setting its own criteria. The Master Review Form is designed to provide standardized reviewing criteria for quality reviews of finished work product.

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The new patent quality metrics will also use transactional data from the QIR to identify information that can be used to prevent reopening of prosecution, reduce rework, and improve the consistency of decision making throughout the USPTO. This data will hopefully reveal trends and outlier behavior to draw attention to potential quality concerns, rather than provide a single reportable number that is measured against a goal. The prior Composite Quality Metric, which combined seven different quality variables into a single composite number, will be discontinued. In doing so, the USPTO seeks to improve the usefulness and transparency of quality reporting.

The current year, 2016, will be used as a transitional period for the USPTO to fine-tune the 2017 patent quality metrics. During this time, the USPTO will test and refine the Master Review Form. Further, transactional data from the QIR will be reviewed to optimize the data analysis therein.

The USPTO is seeking input on all areas of quality measurement but has specifically posed three questions to the public:

- Is the USPTO moving in the right direction by choosing to focus on two core metrics: a work product metric representing correctness of actions, and a clarity metric that more thoroughly explores the sufficiency of the examiner's reasoning in an Office Action, thus moving away from the prior goal-based quality "score" that reflected not only quality of work product but also results of surveys, used to discover both internal and external stakeholder opinions, and QIR process indicators?
- Which of the proposed clarity and correctness review items in the proposed standardized "Master Review Form," should be used as the key drivers of patent examination quality metrics?
- How can patent metrics best provide objective, rather than subjective, measurements of quality-related features in clarity and correctness reviews?

Anyone who has applications pending at the USPTO would benefit by providing comments to the USPTO to help improve the effectiveness, transparency, clarity, and simplicity of USPTO review. The USPTO is requesting all comments be received by May 24, 2016. K&L Gates will continue to monitor these metrics and provide updates as data are collected and comments are made.

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