

Ethics Before the USPTO



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Things I've Recently Seen

- ❧ Improperly influencing examiners?
- ❧ Lawyers who fail to advance prosecution diligently.
- ❧ Lawyers who fail to disclose information properly.
- ❧ Lawyers who fail to deal with assignments properly.

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Influencing Examiner?

- ❧ Services now gather examiner-specific data.
- ❧ Helpful.
- ❧ Practitioners are taking that data to interviews and using it to persuade examiner she's too slow, etc.
- ❧ Proper?

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Languid Prosecution: Signs

- ❧ Repeatedly seeking same claims, not appealing or amending.
- ❧ Regularly seeking lengthy and/or maximum extensions, without being caused by client.
- ❧ Failure to discuss PPH or other means to speed up US prosecution.

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Obvious Concern: Prosecution Laches

- ⌘ Has only been found in egregious instances of delay and abuse.
 - ⌘ E.g., routinely pulling allowed claims and continuing prosecution to 'submarine' competitors... and doing so for decades.
- ⌘ Therasense make it even more difficult?
- ⌘ Less incentive post-GATT.

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Subtle Concerns

- ⌘ Churning file.
- ⌘ Failing to timely protect client's invention, including losing valuable, front-end patent term.
- ⌘ Losing patent term.
- ⌘ Failing to provide assets needed by start-up.

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