

Decreasing The Patent Office's Incentives to Grant Invalid Patents

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Motivation

- Concerns regarding patent quality
- Lack compelling empirical evidence that any feature of the PTO biases it towards allowing patents
- As a result, policymakers have been tweaking the patent system to improve patent quality in the dark

Examination Process

- 300,000 to 500,000 patent applications filed at Patent Office a year
- Patent applicants have a duty of candor
- Supervisory Patent Examiner (SPE) Largely Randomly Assigned to Examiner in Art Unit

Examination Process

- Examiner assesses the patentability of the claims
 - Non-Art-Based Rejections (utility, patentable subject matter and disclosure requirements)
 - Art-Based Rejections (novelty and nonobviousness)
 - Obviousness is most time intensive
- Applications are Presumed Valid
- Examiner on average 19 hours on each application
 - Read application, prior art search, write up office action, etc.

Anecdotal Evidence from Examiners

- *“when you add it up its not enough time to do a proper job on a case”*
- *“rather than doing what I feel is ultimately right, I’m essentially fighting for my life”*

The Manhattan Strategy Group, Patent Examiners Production Expectancy Goals Re-Assessment and Adjustment Study (2010)

Hypothesis

- *A time constrained examiner that is given less time to review an application will*
 - Cite less prior art
 - Make less time-intensive prior-art rejections (especially obviousness)
 - Grant more patents

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"Decreasing the USPTO's Incentive to Grant Invalid Patents"