

# 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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## Title search: Decreasing the Patent Officer's Incentive to Grant Invalid Patents

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[Decreasing the USPTO's Incentive to Grant Invalid Patents](#)

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