



Patents and the Public Domain: Improving Patent Quality Upon Reexamination

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EXECUTIVE SUMMARY

Many issued patents upon a new review turn out to lack novelty and obviousness in light of previously undisclosed references. This report examines this policy problem and suggests the following recommendations to improve patent quality during and after issuance.

1. Encourage Organized Efforts to Have a More Thorough Review of Patent Applications

- ✦ Increase third party efforts to improve prior art searches and to facilitate a stronger understanding of the world of prior art.

2. Support Organized Efforts After Patents Have Been Issued

- ✦ Reexaminations should be limitless in time and with no financial harm limitations.
- ✦ Don't streamline. Maintain a variety of options for reexamination requesters.

3. Increase Access to Information in the Patent Office

- ✦ Update information in the USPTO's online Public Patent Application and Information Retrieval (PAIR) databases regularly.
- ✦ Conduct and publish regular evaluations of effectiveness and performance within the Patent Office.

Through an examination of the most recent US Patent and Trademark Office (USPTO) reexamination filing data up through December 31, 2007, this report finds that reexamination is an effective process for raising substantial new questions of patentability. Since over ninety percent of all reexamination requests are granted by the Office of the Patent Commissioner, an overwhelming majority of reexamination requests raise substantial new questions of patentability. For *ex parte*, over three-fourths of the time, these requests narrow or cancel the patent claims in question, showing that the substantial new questions of patentability raised were so strong that the examiners were made to rethink the initial grants. This is even more true for *inter partes* reexamination, where 64% of all reexamination requests resulted in canceling the claims altogether.

This report begins with an explanation of current patent policy in the United States, defines the problem with patent quality and explores the implications for a robust public knowledge commons. The following explanation of current reexamination procedures informs a detailed examination of reexamination filing trends. Finally, the report concludes with a survey of various proposals for patent policy reform and makes three recommendations for improving patent quality for the purpose of expanding and defending the public domain.