

PROPOSAL TO REVISE THE USPTO EXAMINER'S COUNT SYSTEM

By: David Pitcher and Yiu Au

The U.S. Patent and Trademark Office (USPTO) is proposing changes to the patent examiner's count system that would provide incentives for examiners to resolve application issues early and thus help reduce the backlog of patent applications. The count system is a time management and productivity incentive system used by the USPTO that gives examiners credits (counts) based on completing various stages in patent prosecution. An examiner's performance is partly based on credits, and an examiner can earn more money from more credits.

The proposed count system differs from the current system by providing examiners with the proper incentives to address issues early in the examination process and to reduce reworks. Under the current system, the original case and subsequent requests for continued examination (RCE) are all given equal credits. Therefore, examiners have incentive to churn for more RCEs as they take less time to process than the original case. Also, the first action on the merits (FOAM) and subsequent disposal are worth equal weight even though FOAMs take more time. Under the proposed system, RCE are given less credit than the original case, and the second and subsequent RCEs are worth less than the first RCE. Therefore, the proposed system takes away the incentive for examiners to churn RCEs. Second, FOAM in the proposed count system is given more credit than the disposal of the application. Thus, an examiner can allot more time to FOAM. Also, a disposal with no final rejection is worth the same as a final rejection and subsequent disposal, thus effectively reducing an examiner's incentive to issue final office actions. Other provisions in the new system include giving examiners one hour of non-examining time devoted to conducting interviews and preparing post-interview documentation. An examiner who inherits a docket (due to examiner turnover) is given extra credit to compensate for the additional time required to process the application.

Specifically, the proposed system gives an examiner 1.25 credits for the FOAM in the original case, 1 credit for the first RCE, and 0.75 credits for subsequent RCEs. Final rejections are worth 0.25 credits, while a subsequent disposal is worth 0.5 credits. If the application is disposed of with no previous final rejections, it is worth 0.75 credits. In the current system, FOAM and disposal (with or without final rejections) are all worth 1 credit.

Practice Tip: The proposed system would likely increase the number of issues to be resolved in the FOAM and diminish the need to use RCEs. For further information, please contact us.