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PATENT AND TRADEMARK OFFICE**

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Update on Patent Quality Metrics and Current Quality Programs

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Master Review Form and Quality Metrics



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MRF Program Goals

- To create a **single, comprehensive** tool (called the Master Review Form) that can be used by all areas of the Office to **consistently** review final work product
 - Common review standard
 - Common data points
- To better collect information on the **clarity and correctness** of Office Actions
- To collect review results into a **single data warehouse** for more **robust analysis**
 - Increased precision in metrics
 - More granular levels of analyses to detect anomalies, inconsistencies, and hot spots

Looking Forward

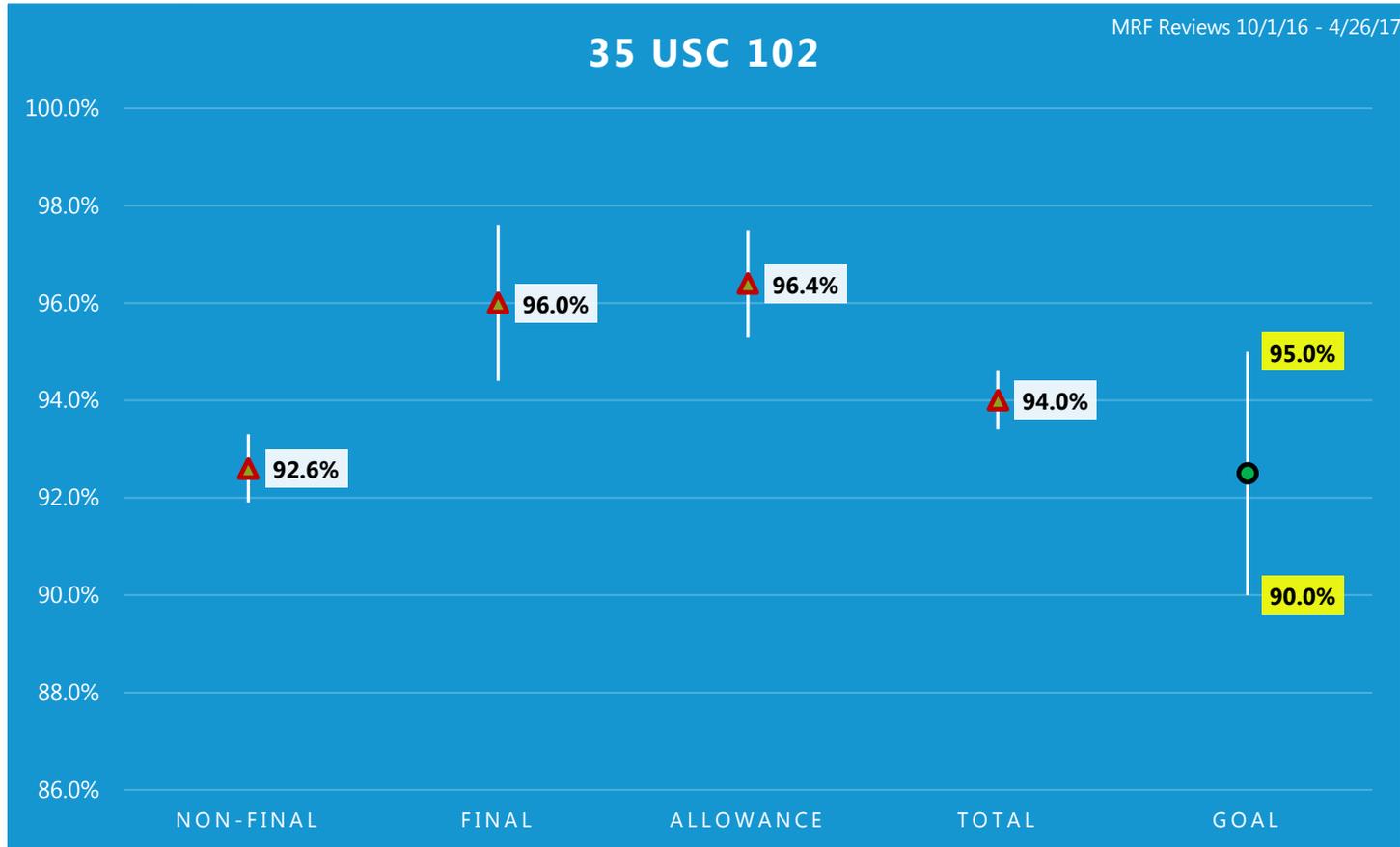
The Master Review Form's single data warehouse facilitates:

- Better quality metrics
- Case studies without the need for *ad hoc* reviews
- Rapid measurement of the impact of training, incentives, or other quality programs on our work product
- Quality monitoring tools, such as dashboards

Compliance and Clarity

- Master Review Form (MRF) and Integrated Quality System (IQS)
- 11,000 reviews completed to date
- 18,000 targeted for FY17
- Correctness targets for FY17 were established based on FY16 reviews
 - Statutory Compliance reviews started midyear FY16
- MRF data being analyzed for development of both correctness and clarity goals for FY18

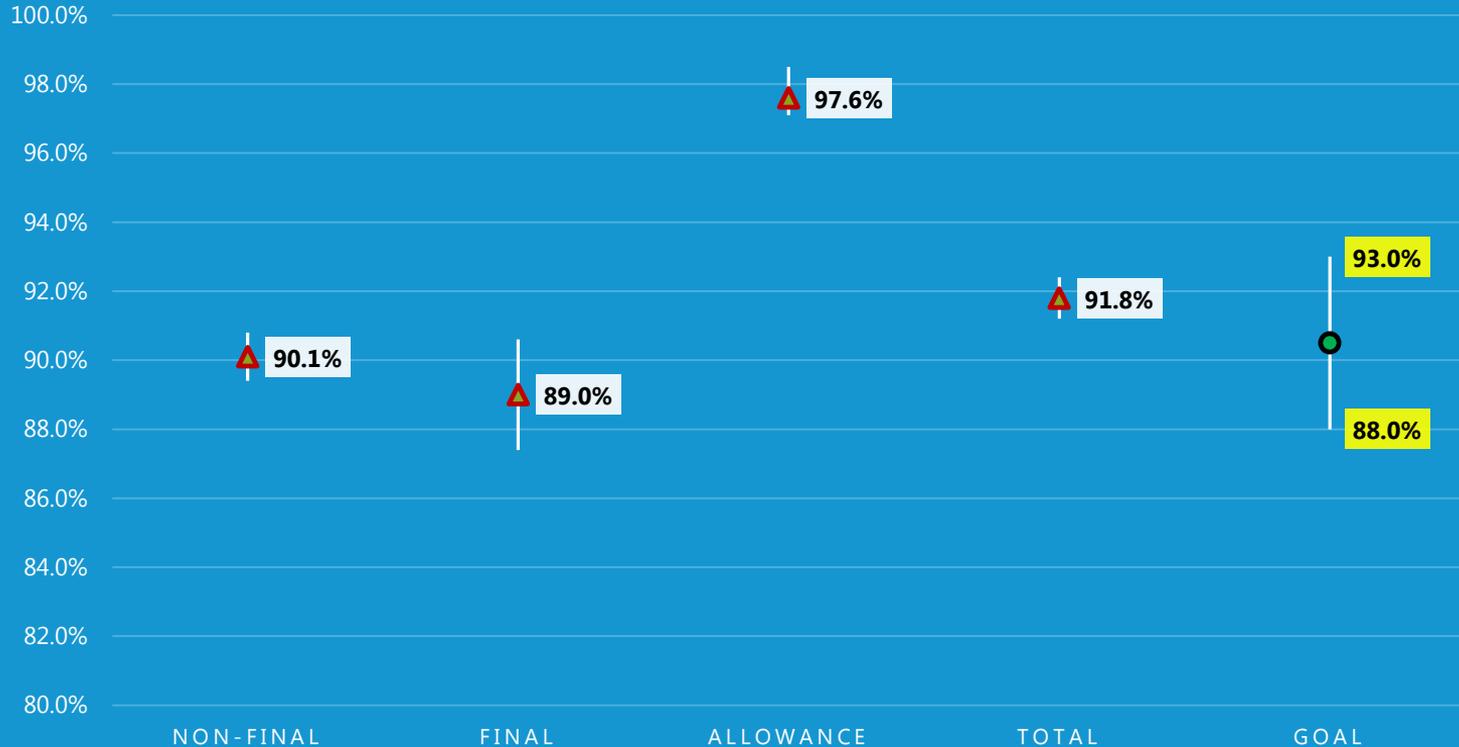
Compliance: 35 USC §102



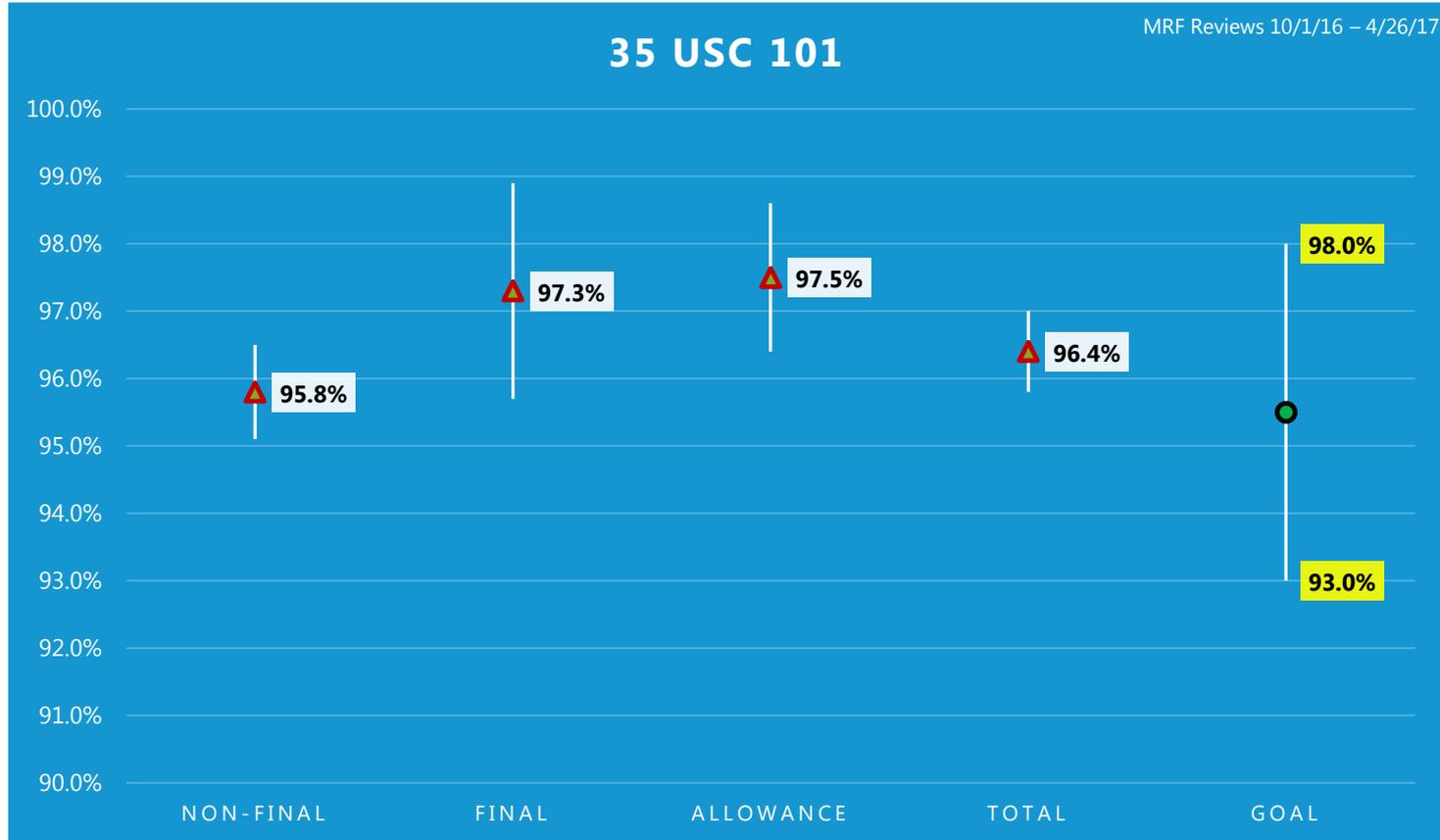
Compliance: 35 USC §103

35 USC 103

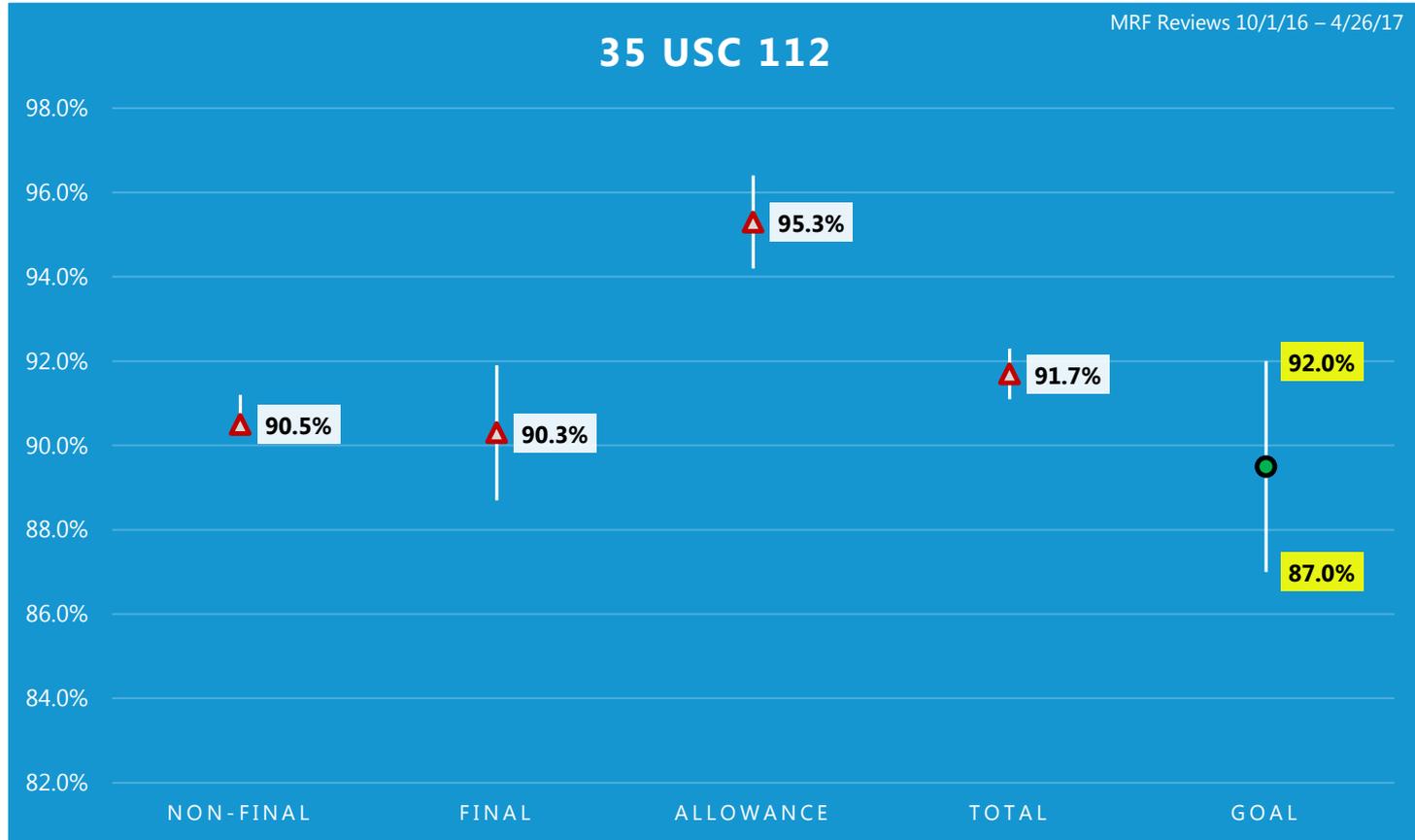
MRF Reviews 10/1/16 – 4/26/17



Compliance: 35 USC §101

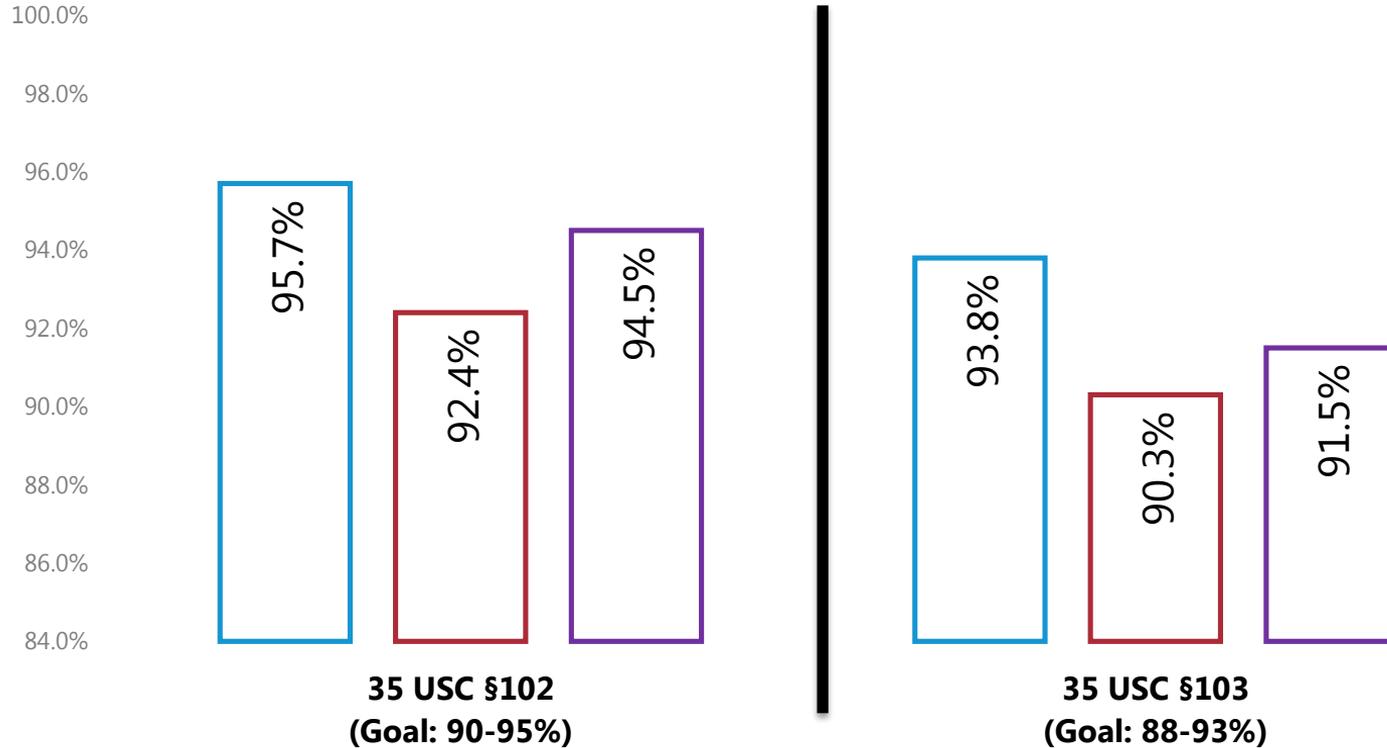


Compliance: 35 USC §112



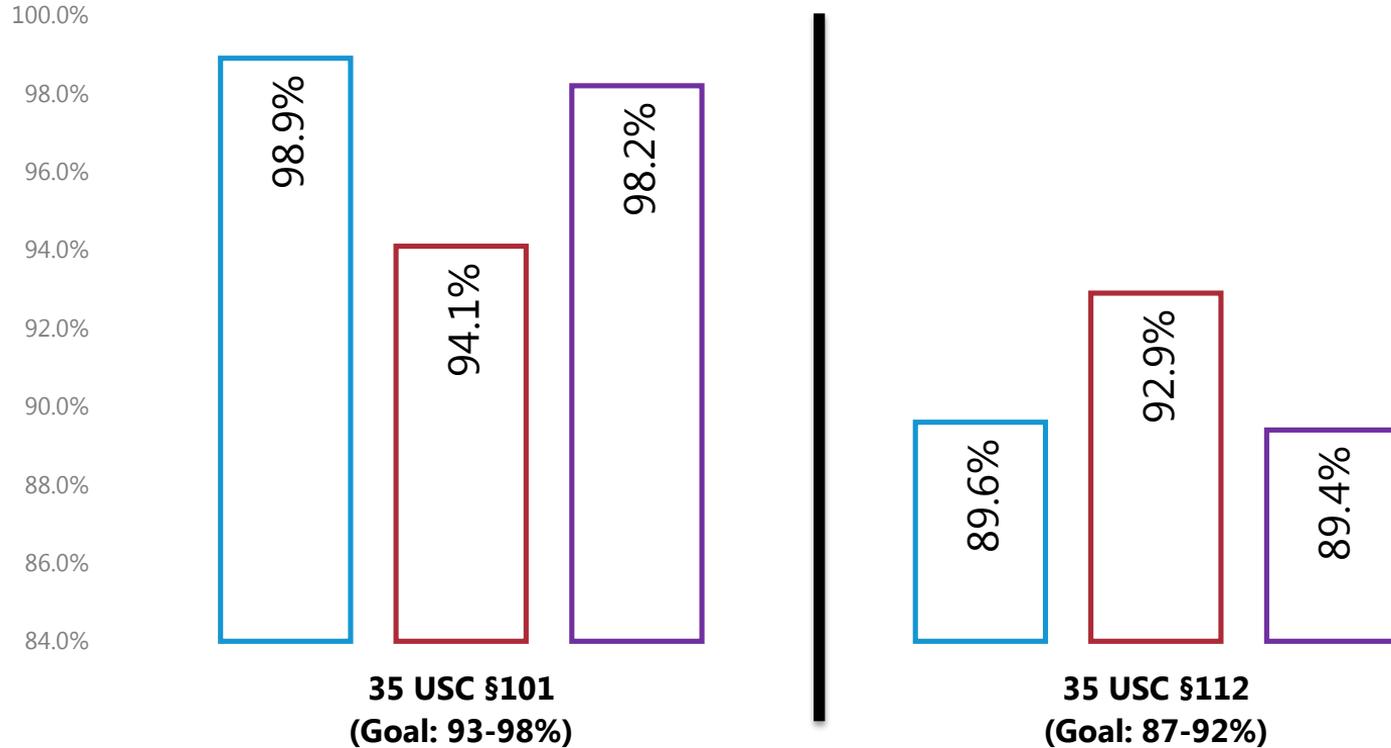
Compliance by Discipline

□ Chemical □ Electrical □ Mechanical



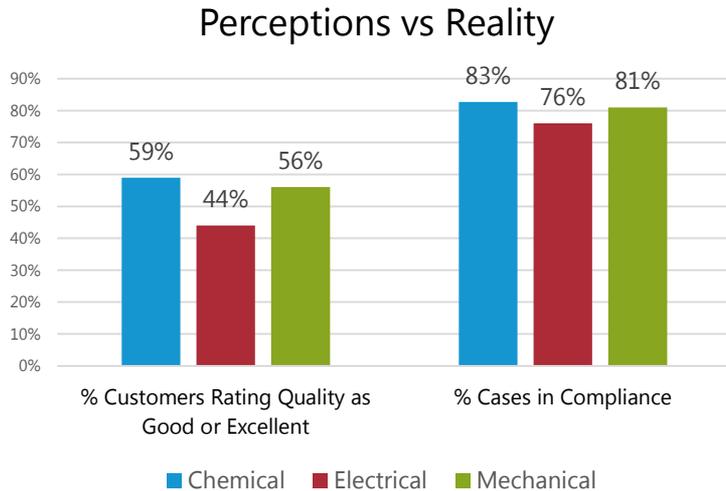
Compliance by Discipline

Chemical Electrical Mechanical

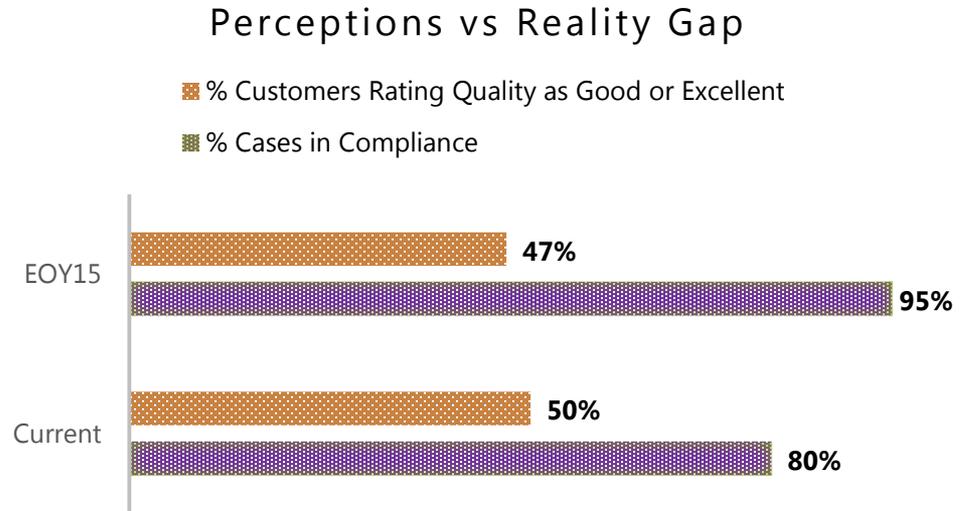


Alignment with Customer Perceptions

- Not an apples-to-apples comparison, but direction of quality should track



Today: By Discipline



Today vs EOY15



Current Activities

- Reporting
 - Internal Dashboard
 - Coming soon: Publishing statistics on USPTO.gov
- Exploratory Analysis
 - example if clear, 3X more likely to be correct
 - example examiner and prosecution characteristics vs. compliance
- Supporting Corps-wide studies and evaluations
 - Examination Time Analysis, Clarity Pilot, etc.
- Supporting TC-specific quality initiatives
 - Action plans and own exploratory analysis

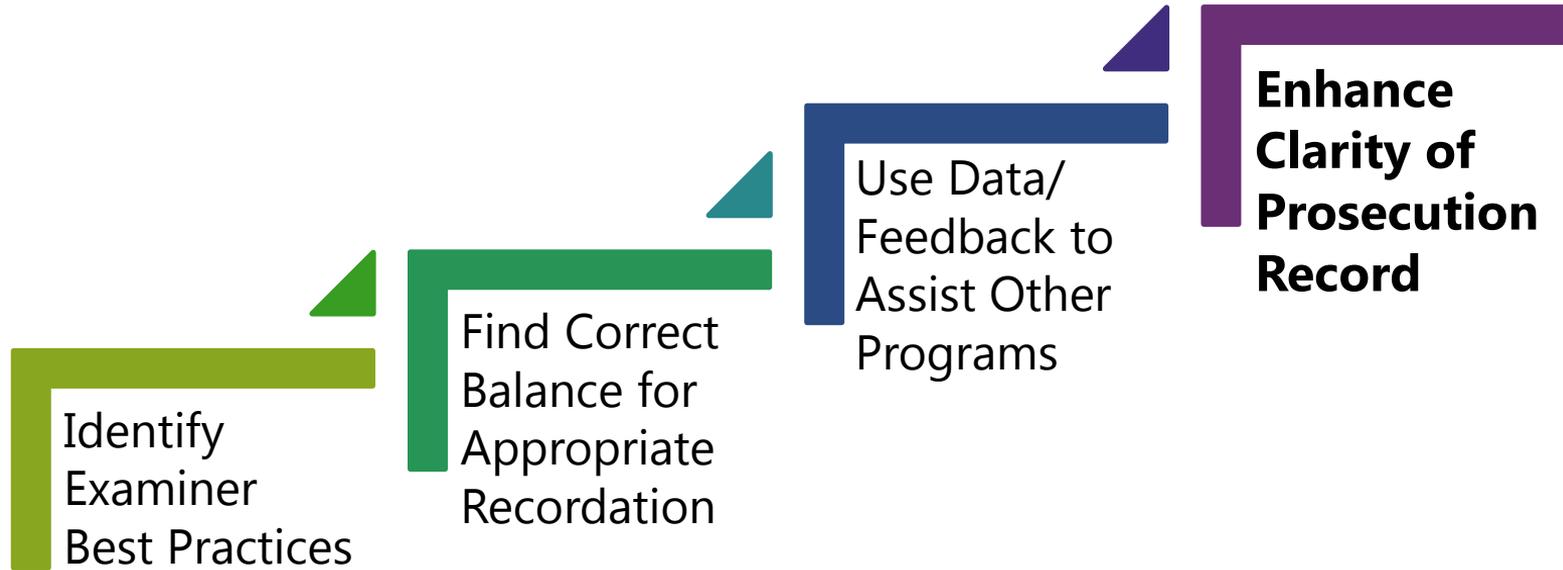
Clarity of the Record Pilot



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Pilot Goals



Areas of Focus

- More detailed interview summaries
- More precise reasons for allowance
- Pre-search interview – Examiner's option
- Enhanced documentation of 7 areas of claim interpretation:
 - **Special definitions of claim terms**
 - **Functional language**
 - **Intended use or result (preamble and body of claim)**
 - **"Means-plus-function" (35 U.S.C. §112(f))**
 - **Optional language**
 - **Non-functional descriptive material**
 - **Computer-implemented functions that invoke 35 U.S.C. §112(f) ("specialized" or "non-specialized")**

Clarity of the Record Training: Improving Clarity and Reasoning in Office Actions

ICR Training



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Improving Clarity and Reasoning – ICR Training Program Goals

- To identify particular areas of prosecution that would benefit from increased clarity of the record and develop training
- To enhance all training to include tips and techniques for enhancing the clarity of the record as an integral part of ongoing substantive training

ICR Training Courses

**35 U.S.C. 112(f):
Identifying
Limitations that
Invoke § 112(f)**

**35 U.S.C. 112(f):
Making the Record
Clear**

**35 U.S.C. 112(f):
Broadest Reasonable
Interpretation and
Definiteness of §
112(f) Limitations**

**Evaluating
Limitations in
Software-Related
Claims for
Definiteness under**

**Broadest Reasonable
Interpretation (BRI)
and the Plain
Meaning of Claim
Terms**

**Examining
Functional Claim
Limitations: Focus on
Computer/Software-
related Claims**

**Examining Claims for
Compliance with 35
U.S.C. 112(a): Part I
Written Description**

**Examining Claims for
Compliance with 35
U.S.C. 112(a): Part II
– Enablement**

**35 U.S.C. 112(a):
Written Description
Workshop**

**§ 112(b): Enhancing
Clarity By Ensuring
That Claims Are
Definite Under 35
U.S.C. 112(b)**

**2014 Interim
Guidance on Patent
Subject Matter
Eligibility**

**Abstract Idea
Example Workshops
I & II**

**Enhancing Clarity By
Ensuring Clear Reasoning
of Allowance Under C.F.R.
1.104(e) and MPEP
1302.14**

**35 U.S.C. 101: Subject
Matter Eligibility
Workshop III: Formulating
a Rejection and Evaluating
the Applicant's
Response**

**35 U.S.C. 112(b):
Interpreting Functional
Language and
Evaluating Claim
Boundaries - Workshop**

**Advanced Legal
Training Part I:
Understanding Case
Law and the Federal
Court System**

**Advanced Legal
Training Part II:
How to Analyze and
Respond to Case Law
Related Arguments**

Topic Submission for Case Studies



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Topic Submissions - Background

- Case studies used internally on an *ad hoc* basis to study particular issues
- Federal Register Notice on Topic Submissions
 - USPTO invited stakeholders to submit patent quality-related topics for study
 - Submissions were accepted through December '15 through February '16

Topics Selected for Case Studies

Patent Quality Topic	Project Status
1. Compliance of rejections with 35 U.S.C. 101 official guidance	Being Finalized
2. Consistency of application of 35 U.S.C. 101 across Art Units/Technology Centers	In-Progress
3. Use of compact prosecution when making 35 U.S.C. 101 rejections	Being Finalized
4. Correctness and clarity of motivation statements in 35 U.S.C. 103 rejections	Being Finalized
5. Enforcement of 35 U.S.C. 112(a) written description in continuing applications	In-Progress
6. Consistent treatment of claims after May 2014 35 U.S.C. 112(f) training	Being Finalized

Post Grant Outcomes



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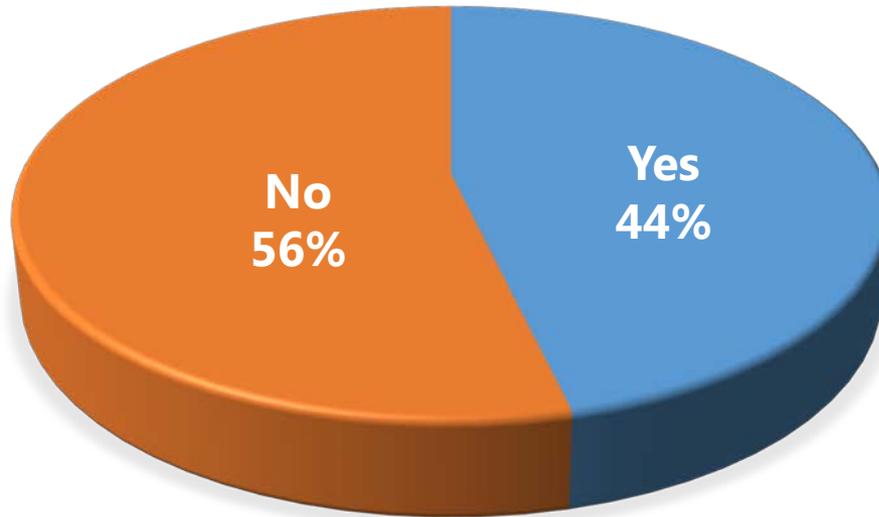


Post Grant Outcomes Program

- This program is to develop a process for providing post grant outcomes from various sources, such as the Federal Circuit and Patent Trial and Appeal Board (PTAB), to the examiner of record and the examiners of related applications.
- Post Grant Outcomes Pilot: April-August, 2016
 - Identify those patents being challenged at the PTAB under the AIA trials that have pending related applications in the Patent Corps
 - Provide the examiners of those pending related applications access to the contents of the AIA trial

Pilot Statistics – Relevant Art For Child Case

In the Office action of the child case, did the examiner refer to any of the references cited in the AIA trial petition of the parent case?



Post-Prosecution Pilot (P3)



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Post-Prosecution Pilot (P3) Overview

- Retains popular features of the Pre-appeal Brief Conference Pilot and AFCP 2.0 programs:
 - Consideration of 5-pages of arguments
 - Consideration of non-broadening claim amendments
 - Consideration by a panel
- Adds requested features:
 - Presentation of arguments to a panel of examiners
 - Explanation of the panel's recommendation in a written decision after the panel confers



Pre-Search Functionality and Search Enhancement Pilot

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Pre-Search Functionality

Objective: Created to make a pre-examination search available automatically available in every application

- Supplements the examiner search

Examination Search Enhancement

Public Feedback

- Identify the best prior art early in prosecution
- Provide early notice to applicant

Pilot Being Designed to Test

- Best avenue for providing prior art
- Overall benefits to the impact on examination quality
- Benefits to patent pendency

Questions and Comments

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