

Patent Public Advisory Committee
Quarterly Meeting

Central Reexamination Unit (CRU)

John Cottingham

Director, Central Reexamination Unit

May 5, 2016

UNITED STATES
PATENT AND TRADEMARK OFFICE



Current Makeup of the CRU

- 1 SES Group Director
- 10 Supervisory Patent Examiner's (Supervisory Patent Reexamination Specialists)
- 84 GS-15 Primary Patent Examiners (Patent Reexamination Specialists) with an average of 15-20 years of examining experience.
- 1 Manager for Technical Support Staff
- 8 Paralegals
- 3 Legal Instrument Examiners
- 1 Office Manager
- 1 Secretary

History of the CRU

- The Central Reexamination Unit (CRU) was formed in the summer of 2005 from a selection of senior primary patent examiners and supervisory patent examiners with expert technical and advance patent legal knowledge from across various patent technology centers.
- The CRU's initial mission was to centralize the handling of all *ex parte* and *inter partes* reexamination proceedings in order to ensure quality examination while complying with statutory mandate of special dispatch required by 35 U.S.C. §305 and 35 U.S.C. §314.

The CRU and the America Invents Act (AIA)

- In the fall of 2011, with the passage of AIA, the CRU, working with the USPTO's Deputy Commissioner for Patent Examination Policy, helped to develop the Office's interpretation of the new "Reasonable Likelihood of Prevailing" standard for granting *Inter Partes* Reexamination (See 76 Fed. Reg. 59055 (Sept. 23, 2011) (Final Rule) per section 6 of the AIA)

The CRU and the America Invents Act (AIA)

- In early 2012, prior to the transition of from *Inter Partes* Reexamination to *Inter Partes* Review (IPR) at the Patent Trial and Appeal Board (PTAB), the CRU added more Examiners, in anticipation of an expected increase in *Inter Partes* reexamination request filings prior to the elimination of *Inter Partes* reexamination.

The CRU and the America Invents Act (AIA)

Supplemental Examination (35 U.S.C. § 257)

- The passage of AIA in 2012, created a new post grant proceeding called Supplemental Examination (See 35 U.S.C. § 257)
- This proceeding provides patent owners a new process wherein they may request supplemental examination of a patent to “consider, reconsider, or correct information” believed to be relevant to the patent. 35 U.S.C. § 257(a)
- The CRU worked closely with the Office of Patent Legal Administration (OPLA) in order to develop the proposed rules for Supplemental Examination.

The CRU and the America Invents Act (AIA)

Supplemental Examination (35 U.S.C. § 257)

- 35 U.S.C. § 257(a) requires supplemental examination to be conducted and concluded within 3 months after the date the compliant supplemental examination request is received.
- To date, 111 compliant supplemental examination requests have been received.
- The average time from date of filing to conclusion of the supplemental examination proceeding by issuance of the supplemental examination certificate is 1 month.

The CRU and *Ex Parte* Reexamination Proceedings

- The CRU currently has approximately 435 pending *ex parte* reexamination proceedings.
- The CRU's average time from filing to issuance of an Order granting or denying *ex parte* reexamination is approximately 1.3 months
- The CRU's average time from *ex parte* reexamination request filing to issuance of a Notice of Intent to Issue *ex parte* Reexamination Certificate (NIRC) with no prior Patent Owner appeal to the PTAB is 11.4 months.
- The CRU's average time from *ex parte* reexamination request filing to issuance of a Notice of Intent to Issue *ex parte* reexamination Certificate (NIRC) with appeal to the PTAB is 21 months.

The CRU and Applications for Reissue

- In 2014, the CRU took on the responsibility for examination of all newly filed applications for reissue of a patent.
- In 2015, the majority of pending reissue applications were transferred from the technology centers to the CRU.
- The purpose of bringing examination of reissue applications under the purview of the CRU was to provide consistent and quality handling of all reissue applications and to provide consistent Office practice with respect to the interpretation of 35 U.S.C. §251.

The CRU and Applications for Reissue

(continued)

- Currently, there are approximately 2000 reissue applications assigned to the CRU. These reissue applications consist of a mix of previously filed reissue applications and reissue RCEs transferred from the patent technology centers as well as newly filed reissue applications.
- Approximately 300 new reissue applications have been filed this fiscal year.
- The CRU is concentrating on examining the oldest reissue applications first.

The CRU and the Patent Trial and Appeal Board (PTAB)

AIA Post Grant Proceedings

- The passage of AIA provided third parties the ability to challenge the same patent concurrently under multiple different Office proceedings (*Ex Parte* Reexamination, *Inter Partes* Review (IPR), Post Grant Review (PGR) and Covered Business Method (CBM)).
- The CRU closely monitors all pending and concluded PTAB post grant proceedings and reviews all PTAB determinations before taking any action in an *Ex Parte* Reexamination proceeding or pending reissue application involving the same patent.

CRU Operations

- Currently the processing of all deposited *ex parte* reexamination and supplemental examination requests and the determination of compliance with filing date requirements are handled by CRU technical support staff (CRU paralegals and CRU legal instrument examiners).
- The processing of reissue applications and determination of filing date requirements are handled by the Office Patent Application Processing (OPAP) and by technology center legal instrument examiners.

CRU Operations continued...

- Each *ex parte* reexamination request, supplemental examination request or reissue application is assigned to a single CRU examiner based on the technology (chemical, electrical or mechanical). That examiner is responsible for the examination of the proceeding or application.
- Before being mailed, all substantive Office actions are reviewed, conferenced and signed by a three person panel consisting of (1) the examiner assigned to the case, (2) a conferee examiner working in the same technology, and (3) a CRU supervisor.

The Future of the CRU

- In just over 10 years, the CRU has expanded greatly in both its size and its duties.
- The division and its personnel has shown its ability to rapidly adapt to changes in patent law and as well as changes in the general patent practice landscape.
- While the types of proceedings the CRU handles on a daily basis has changed, the unit has consistently shown the ability to handle all its duties with professionalism and to produce high quality work product in a timely manner.

Questions and Comments

John Cottingham

Director, Central Reexamination Unit

(571) 272-7079

John.Cottingham@USPTO.GOV



