

**UNITED STATES
PATENT AND TRADEMARK OFFICE**



Patents external quality survey FY 20 Q4 key findings

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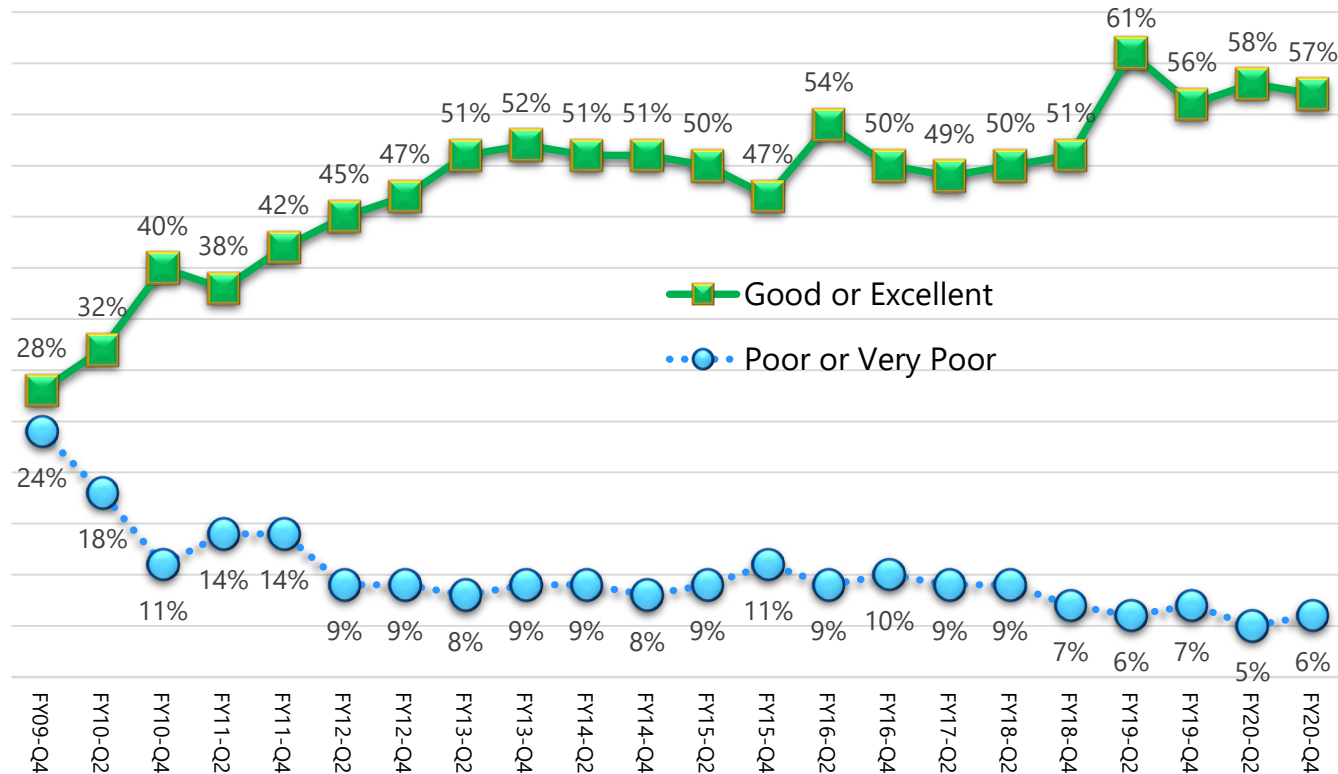
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Survey overview

- Customers from “top filing” firms/entities
- Administered semi-annually since 2006
- Focus on quality
- Sample size approximately 3,200 customers
 - A new sample frame was acquired in October 2019 to update the list of “top filing” firms/entities. FY20 Q3 was the second launch using the new frame.
 - A stratified random selection of customers was asked to participate in two successive waves of data collection to create the panel design.
- Enumeration and analysis conducted by Westat
 - 95% completed the recent survey via the web, compared to historic 82%

In the past three months, how would you rate overall examination quality?

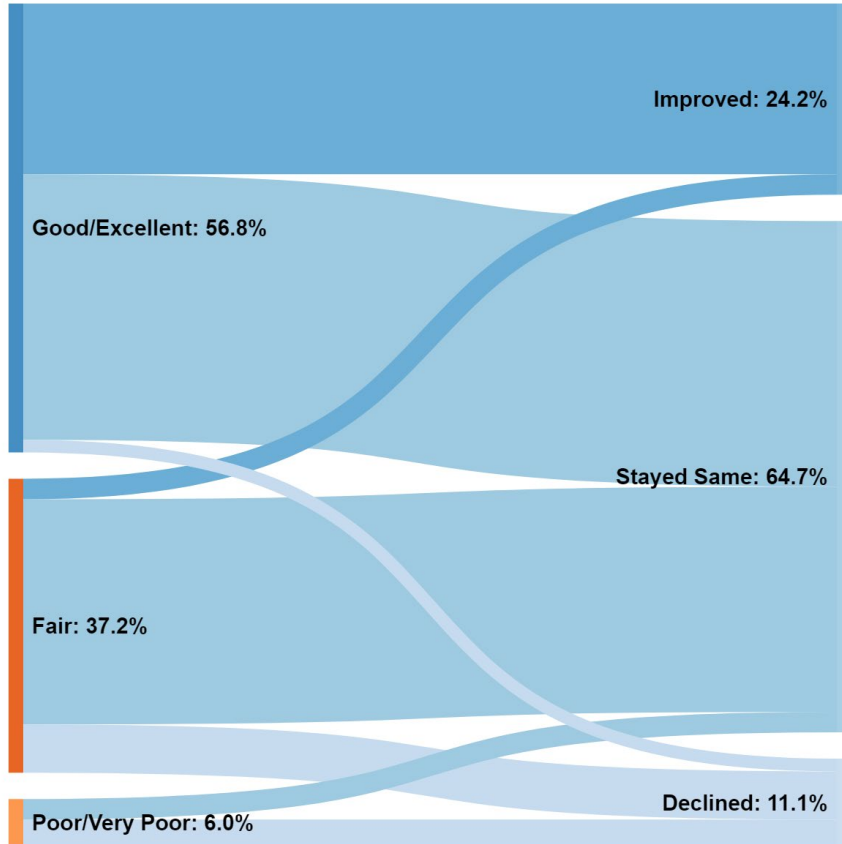


Quality Net Promoter Score (NPS) remains strong

- Historically have focused on ratio of positive responses for every single negative response
- Net Promoter Score becoming more popular and follows similar concept
 - Net difference between % positive and % negative
- What is a decent score?
 - 50 and above generally considered “excellent”; 30-49 considered “good”
 - Varies by industry

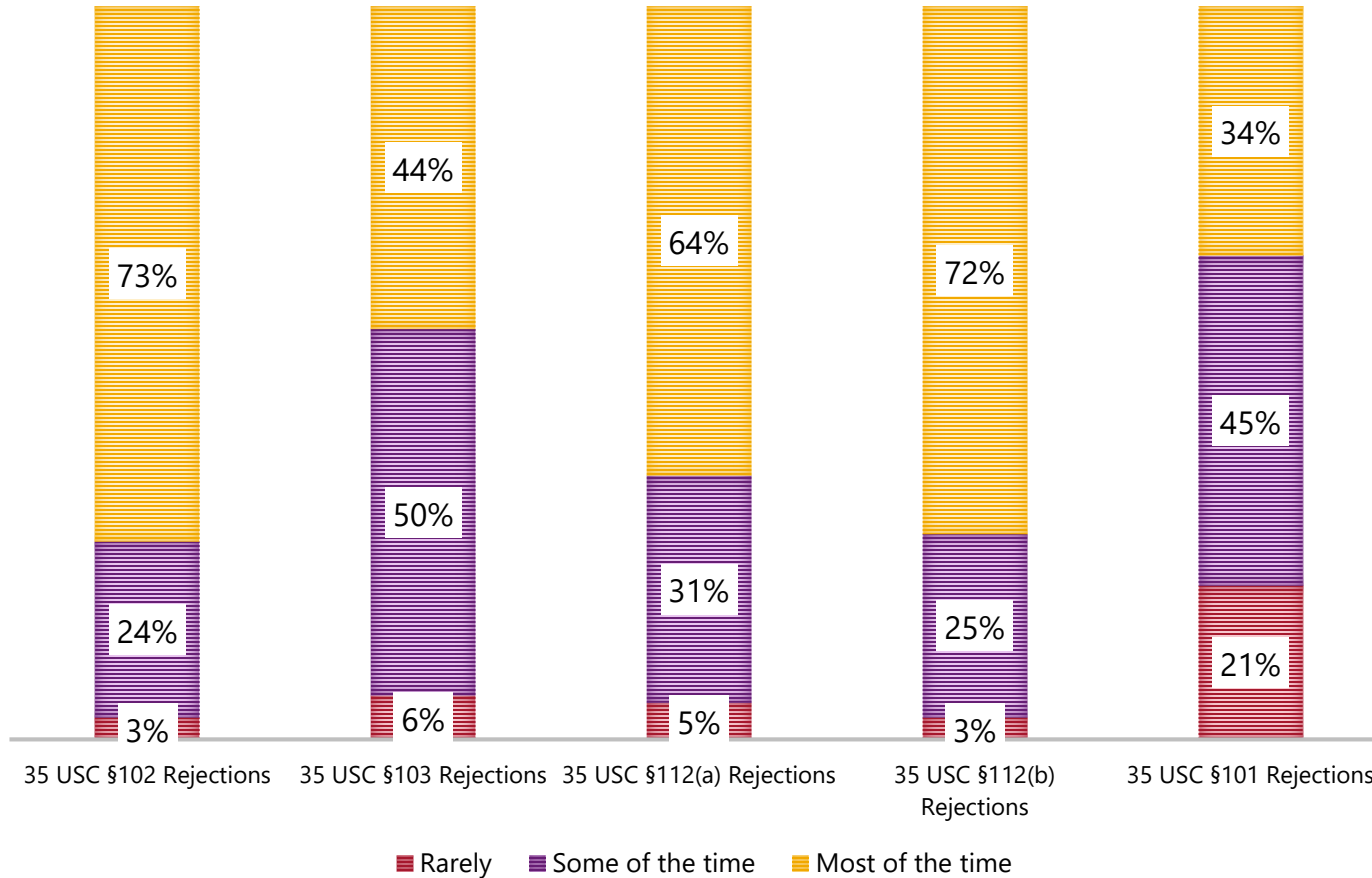
	Good or Excellent	Poor or Very Poor	Ratio	Net Promoter Score
FY09-Q4	28%	24%	1.17	4
FY10-Q2	32%	18%	1.78	14
FY10-Q4	40%	11%	3.64	29
FY11-Q2	38%	14%	2.71	24
FY11-Q4	42%	14%	3.00	28
FY12-Q2	45%	9%	5.00	36
FY12-Q4	47%	9%	5.22	38
FY13-Q2	51%	8%	6.38	43
FY13-Q4	52%	9%	5.78	43
FY14-Q2	51%	9%	5.67	42
FY14-Q4	51%	8%	6.38	43
FY15-Q2	50%	9%	5.56	41
FY15-Q4	47%	11%	4.27	36
FY16-Q2	54%	9%	6.00	45
FY16-Q4	50%	10%	5.00	40
FY17-Q2	49%	9%	5.44	40
FY18-Q2	50%	9%	5.56	41
FY18-Q4	51%	7%	7.29	44
FY19-Q2	61%	6%	10.17	55
FY19-Q4	56%	7%	8.00	49
FY20-Q2	58%	5%	11.60	53
FY20-Q4	57%	6%	9.50	51

Perceived changes in quality

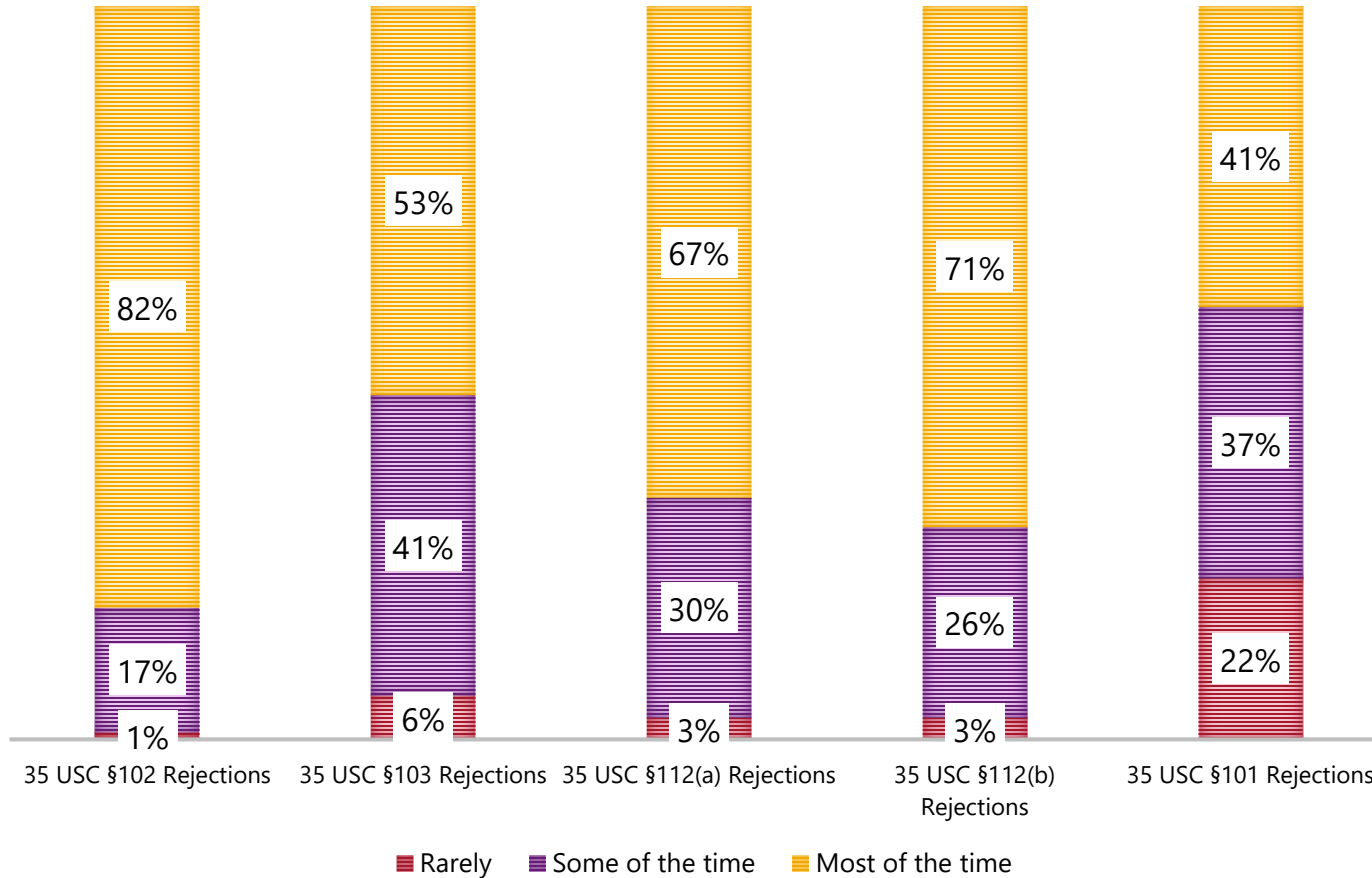


- 24% of customers indicated that quality had slightly or significantly improved in the prior 3 months, compared to 11% that said it had declined.
- Among customers that rated quality as good/excellent, the majority reported that quality had stayed the same and very few said it had declined.
- Among customers that rated quality as poor/very poor, perceived change in quality was almost evenly split between stayed the same and declined.

Correctness of rejections

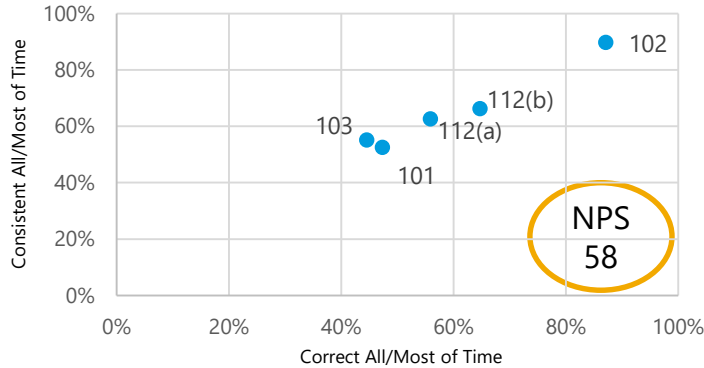


Consistency of rejections

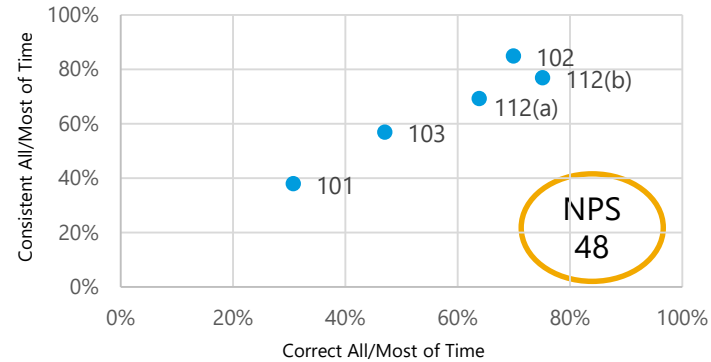


Correctness vs consistency by technology sector

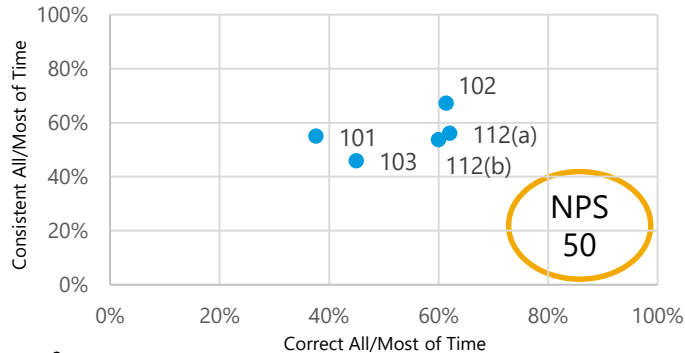
Chemistry



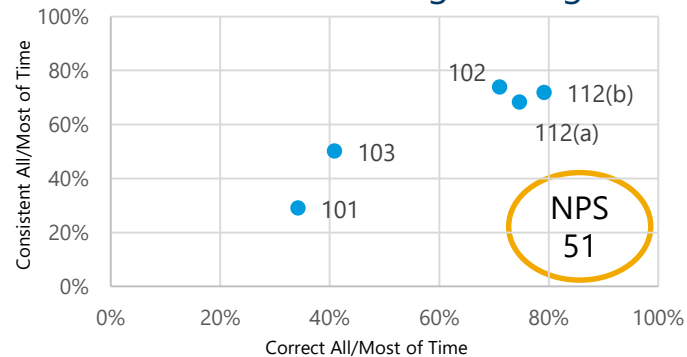
Electrical Engineering



Instruments



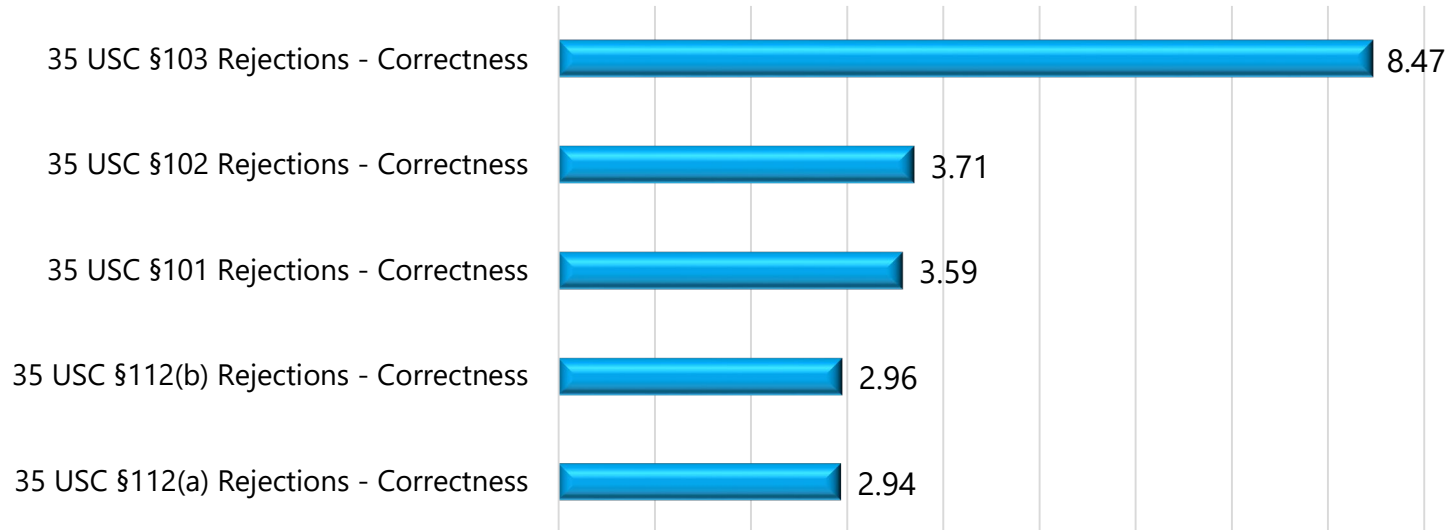
Mechanical Engineering



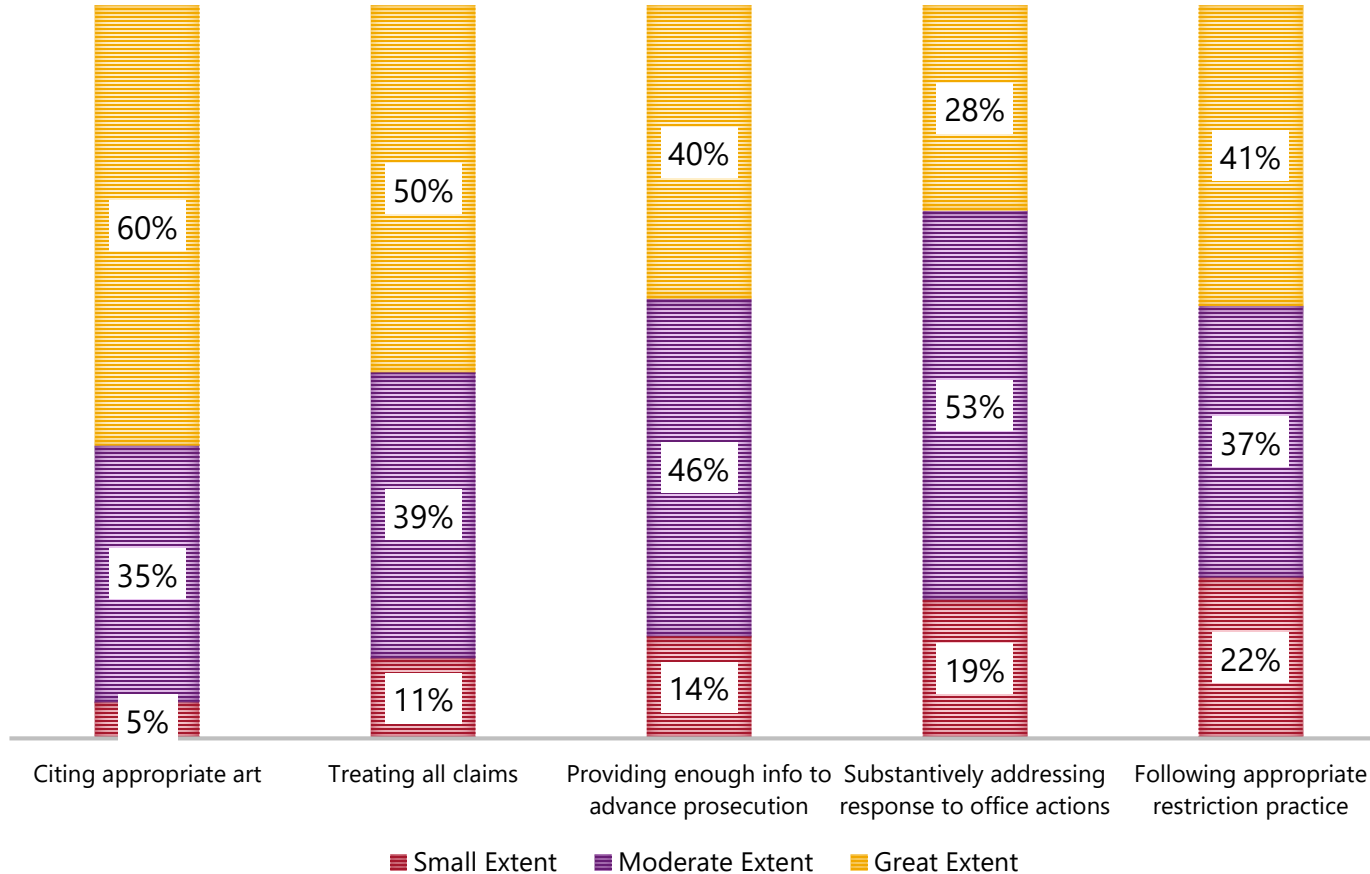
Key drivers of overall quality

Odds ratio of correctness of rejections against overall quality

The 103 rejections were found to have the highest odds ratio against Overall Examination Quality. That is, if a respondent rated the 103 rejections to be correct “most/all the time”, the respondent is 8 times more likely to rate the Overall Examination Quality as good/excellent.



Adhere to rules and procedures



Addressing applicant response to office actions

- For past 18 months, roughly 30% of applicants have cited that examiners substantively address their response to office actions to a large extent. 19% reported it happens to a small extent.
- When reporting “large extent”, customers are significantly more likely to cite overall examination quality as “good or excellent”.

		Overall Examination Quality			
		Very Poor/ Poor	Fair	Good/Excellent	NPS
Substantively addressing response to office actions	Large Extent	0%	29%	71%	71
	Moderate Extent	14%	40%	46%	32
	Small Extent	33%	42%	33%	0

- OPQA review findings indicate it may also be a factor in statutory compliance
 - “Were all arguments presented by the applicant addressed?” When “no”, two times more likely to result in a non-compliance when compared to “yes” indications.

Customer comments

Thinking about quality of work products and the varying prosecution processes among international IP offices you may also work with, in which areas does the USPTO perform well and which areas need improvement?

- **Prior Art** –performs well and needs improvement. In terms of finding prior art, many respondents said USPTO searches are usually conducted well; search content is comprehensive; and art cited and relied upon in rejections is relevant and easy to understand. They said EPO search and the examination reports are higher quality, have a better understanding of the invention, and have more relevant art than those issued by USPTO. In terms of the application of prior art, several said USPTO performs well in applying art to support rejections, but more said improvement is needed, particularly under 103. Examiners often cite the art and the rule, then repeat the application claims without a clear understanding or interpretation.
- **Consistency** –needs improvement. There is a lack of consistency in the application of standards. USPTO has more variation in examiner quality, relative to international IP offices. Some USPTO examiners communicate with efficiency, clarity, and common courtesy while others are unclear, difficult or rude. Respondents do not encounter this in other countries where reportedly examiners are generally very professional. Also, consistency in government documents is prevalent in international IP offices, while the format of USPTO office actions is dependent on the examiner.
- **101 Rejections** –needs improvement. There is inconsistency across examiners and art units in applying 101 eligibility standards, specifically the Alice/Mayo test. Many examiners apply 101 to everything and ignore elements of step 2A of the Alice/Mayo analysis. They rarely respond substantively to arguments, instead simply repeating a form rejection that is arbitrary and without analysis of the claim language. Many 101 rejections are only a one-paragraph general assertion that the claims are direct to an abstract idea.
- **Use of Interviews** –performs well. The USPTO performs well in examiners’ willingness and availability to schedule and participate in interviews. Efforts to promote examiner interviews are helpful to advancing prosecution and achieving compact prosecutions. Respondents’ experiences in interviews are very positive. A few respondents said that access to efficient examiner interviews are not a common practice in most international offices.
- **Examiner Responsiveness** –performs well. Communication has improved and more examiners are reaching out to applicants. USPTO examiners are responsive and accessible, with solid communications primarily through telephone and video interviews. Available to discuss applications and advance prosecution in a timely manner, they often offer suggestions to overcome objections, resolve procedural problems, and identify patentable subject matter. Relative to international IP offices, some say USPTO examiners are more accessible and collaborative.



Thank you!

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