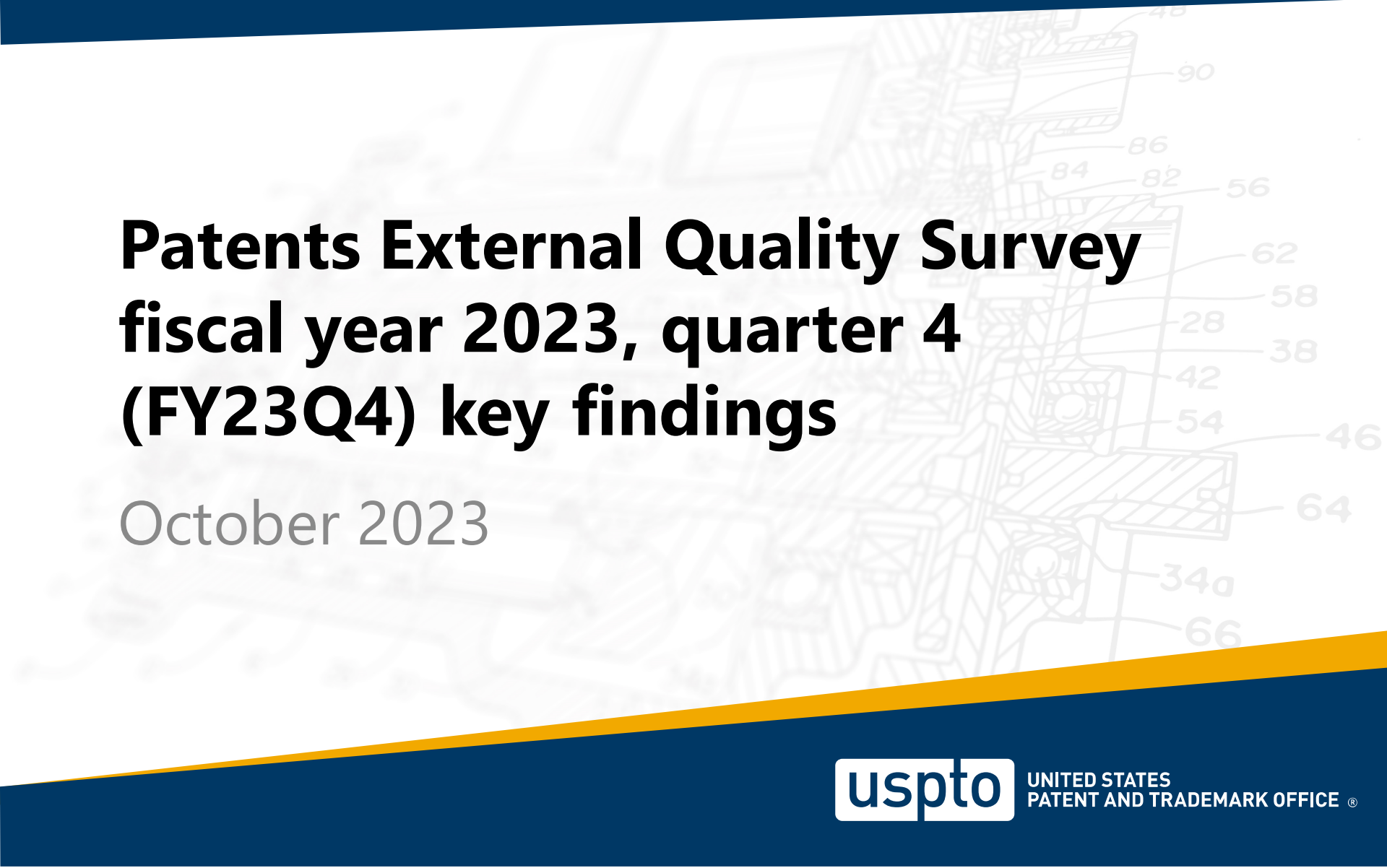


UNITED STATES
PATENT AND TRADEMARK OFFICE



A technical drawing of a mechanical assembly, possibly a gear or a similar component, is shown in the background. It features various parts with callout numbers such as 90, 86, 84, 82, 56, 62, 58, 28, 38, 42, 54, 46, 64, 34, and 66. The drawing is rendered in a light gray color, providing a technical and industrial feel to the slide.

Patents External Quality Survey fiscal year 2023, quarter 4 (FY23Q4) key findings

October 2023



UNITED STATES
PATENT AND TRADEMARK OFFICE ®

FY23Q4 executive summary

- Quality Net Promoter Score (NPS) is 58 and above targeted performance
 - Non-significant change from prior survey, however it marked the 5th consecutive reporting period where over 60% of customers rated quality as good or excellent. Prior to FY21Q4, only achieved that level one (1) time out of 33 measurement periods
- Eight customers rate quality as good or excellent for every single customer that reports quality as poor or very poor; USPTO has maintained a strong ratio for past four years.
- If customers say examiners substantively address responses to office actions to a “large extent”, roughly 90% report quality as good or excellent; when they say “small extent”, less than a quarter (22%) report quality as good or excellent.
- 35 USC 103 rejections remain the largest opportunity for improvement
 - Only half of customers state USPTO is correct most or all of the time
 - 39% of customer stated recent 103 rejection met their expectations to a large extent

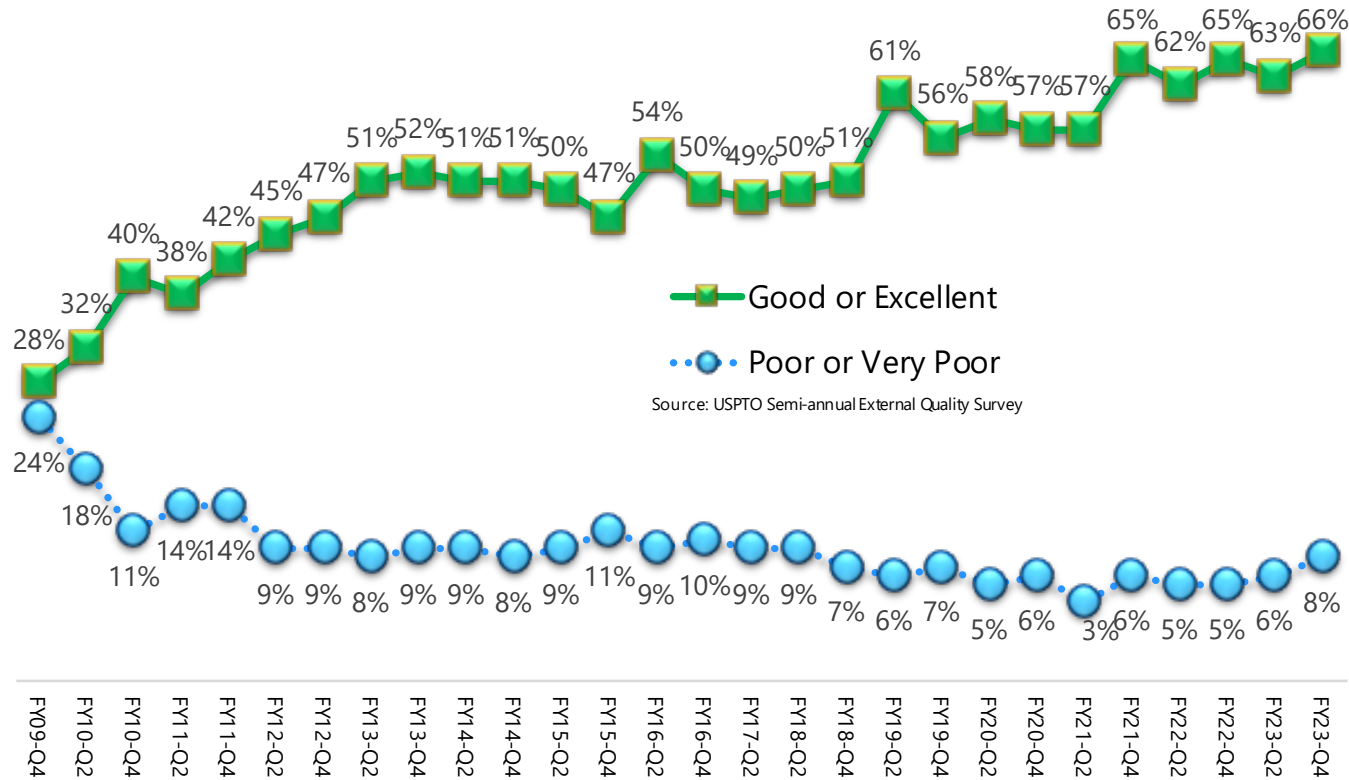


Survey overview

- **Customers from “top filing” firms/entities**
 - On average, respondents had received around 15-20 office actions in the three months prior to being surveyed
- **Administered semi-annually since 2006**
- **Focus on quality**
- **Sample size approximately 3,100 customers**
 - A new sample frame was acquired in October 2022 to update the list of “top filing” firms/entities. FY23-Q4 was the fourth launch using the frame.
 - A stratified random selection of customers is 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 response rate of 85%



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



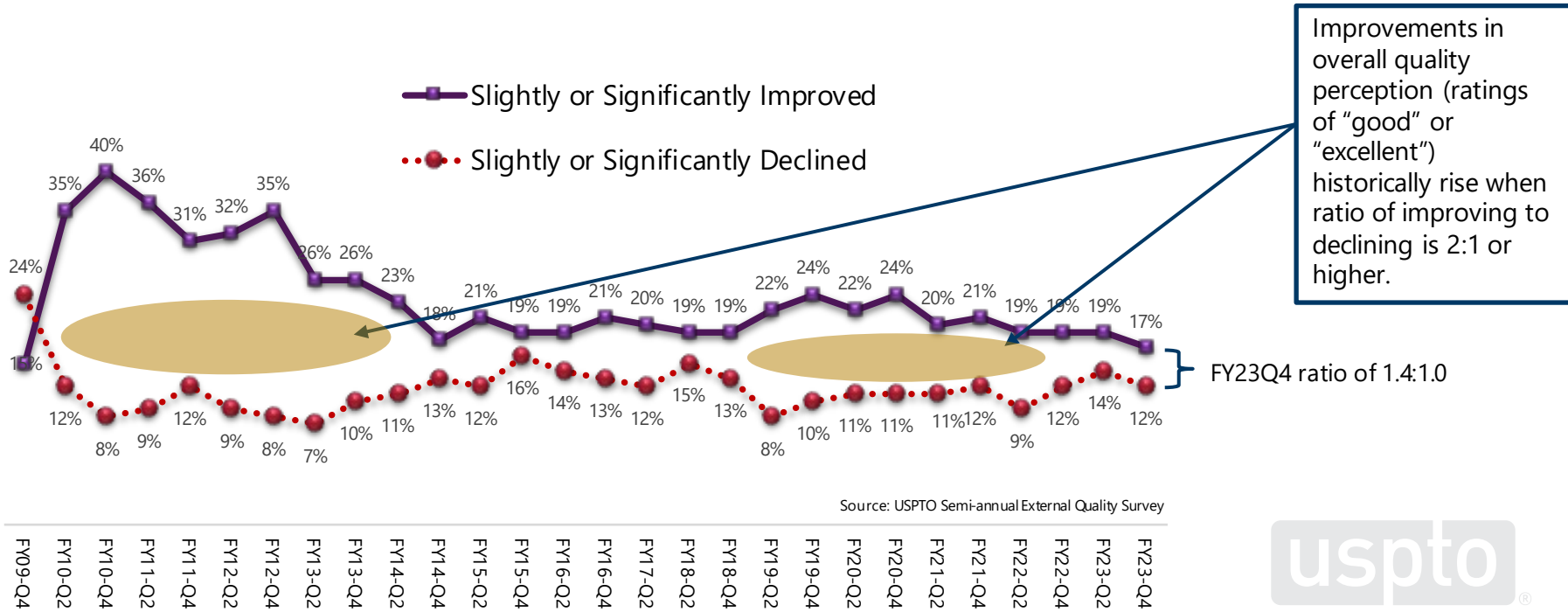
Quality Net Promoter Score (NPS) remains strong

	Good or Excellent	Poor or Very Poor	Ratio	Net Promoter Score
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
FY21-Q2	57%	3%	19.00	54
FY21-Q4	65%	6%	10.83	59
FY22-Q2	62%	5%	12.40	57
FY22-Q4	65%	5%	13.00	60
FY23-Q2	63%	6%	10.50	57
FY23-Q4	66%	8%	8.25	58

- 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 (promoters) and % negative (detractors)
- What is a decent score?
 - 50 and above generally considered “excellent”; 30-49 considered “good”
 - Varies by industry



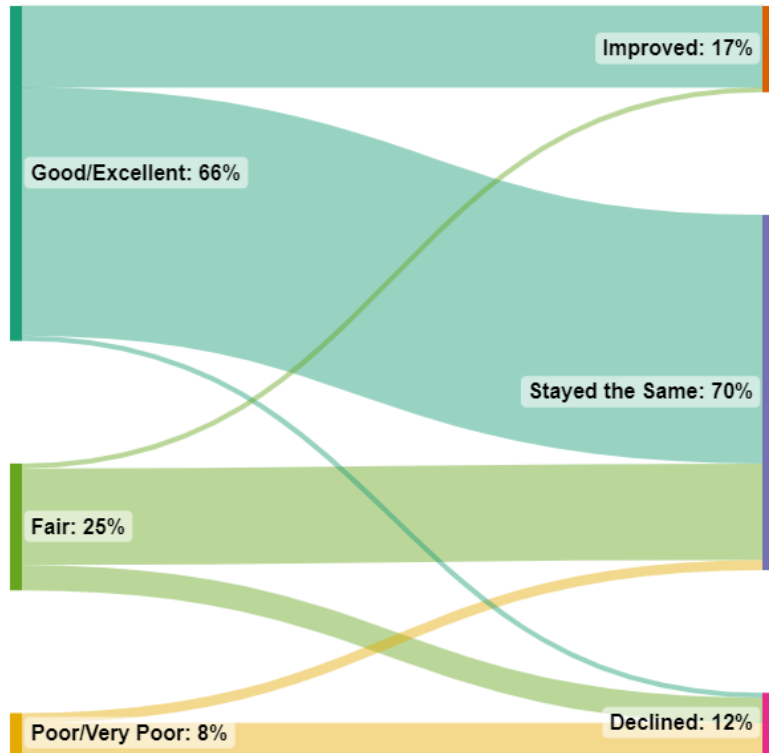
In the past three months, has overall examination quality declined, stayed the same, or improved?



Improvements in overall quality perception (ratings of "good" or "excellent") historically rise when ratio of improving to declining is 2:1 or higher.



Perceived changes in quality



17% of customers indicated that quality had slightly or significantly improved in the prior three months, compared to 12% that said it had declined.

- Among customers that rated quality as good/excellent, the majority reported that quality had stayed the same or improved and very few said it had declined.
- Among customers that rated quality as fair, while the majority said quality stayed the same, there were three times as many customers that felt quality declined when compared with those that cited improvement.
- Among customers that rated quality as poor/very poor, the vast majority reported quality continued to decline.

Source: USPTO Semi-annual External Quality Survey FY23Q4
Totals may not sum to 100% due to rounding.



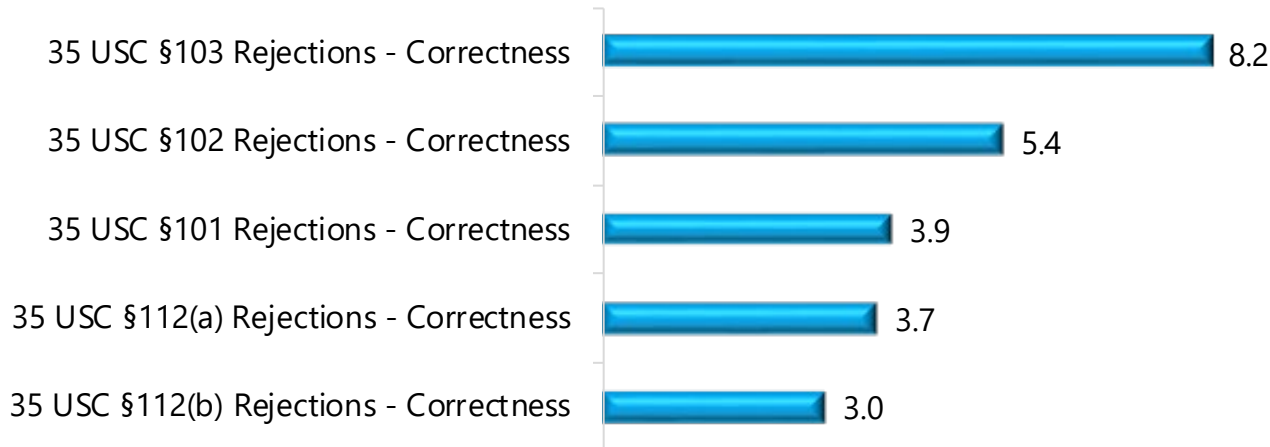
Key drivers of overall quality

Odds ratio of correctness of rejections against overall quality

103 rejections continue 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 roughly five times more likely to rate the Overall Examination Quality as good/excellent.

Historically, correctness of 103 rejections has had the largest odds ratio and displayed an impact roughly double that of other rejection types..

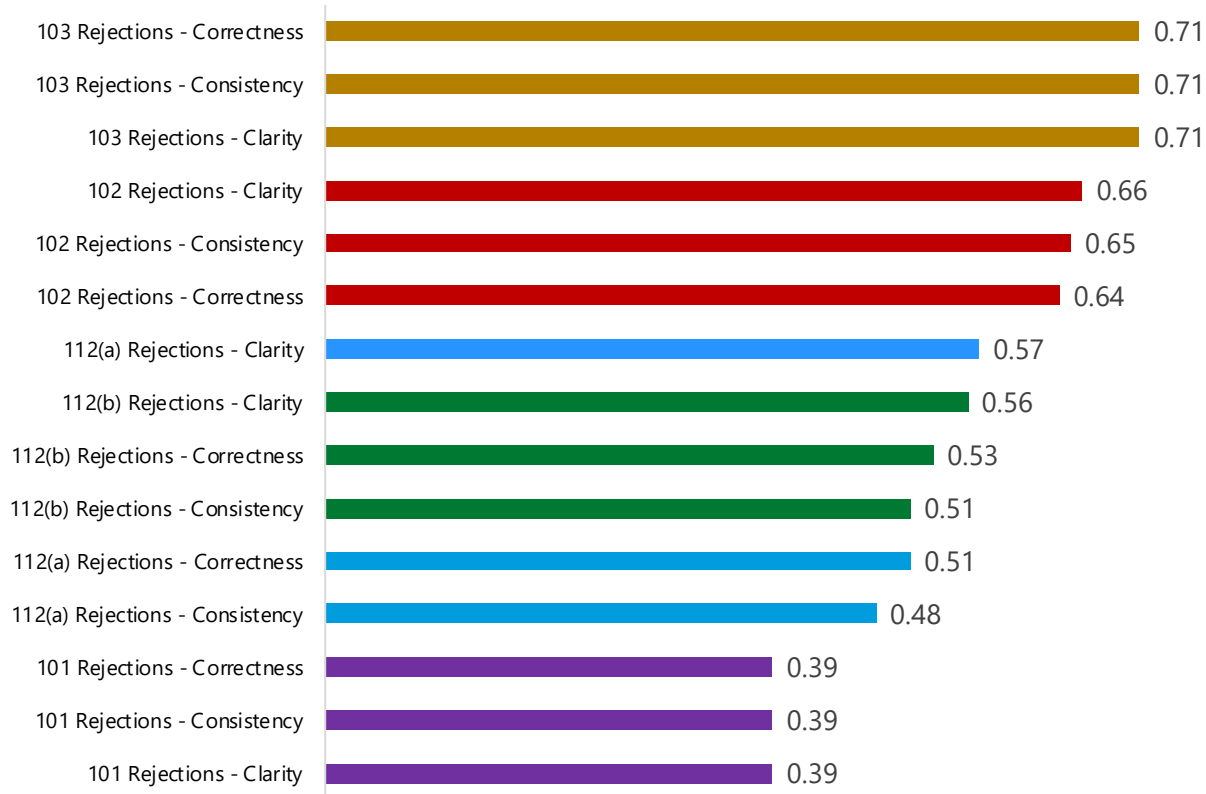
Impact of 112(b) rejections has steadily declined in recent survey waves.



Source: Semi-annual External Quality Survey FY23Q4



Key drivers of overall quality



Source: Semi-annual External Quality Survey FY23Q4

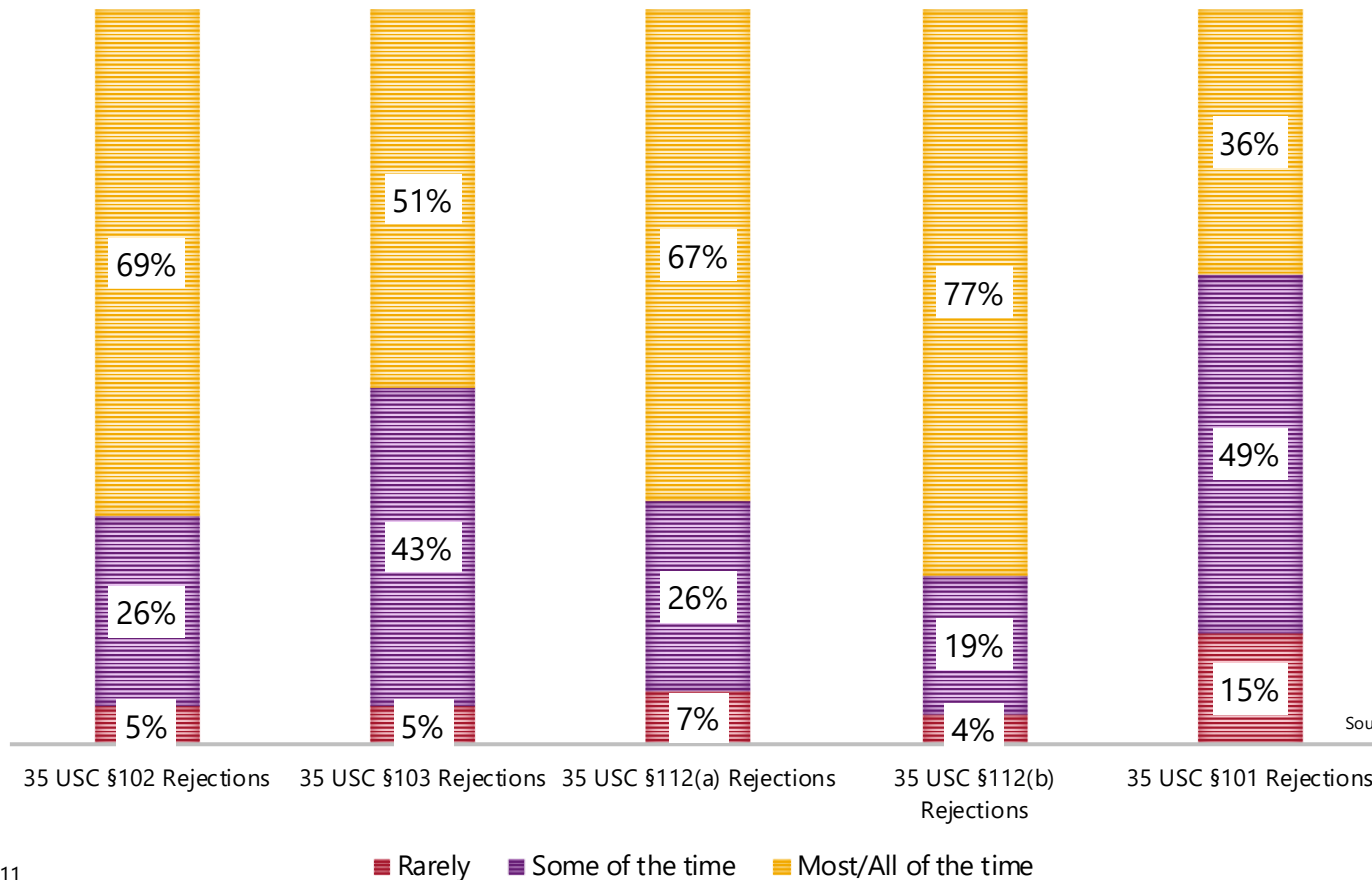
Polychoric correlations between overall examination quality and each of the rejection factors were calculated and ranked from the highest to the lowest.

In general, there are minimal differences in the correlations. All rejection types are related to overall satisfaction, but as observed in prior surveys, 102 and 103 rejections were found to have the highest correlations with overall examination quality. As noted with odds ratios, the most recent survey suggests the impacts by rejection type has narrowed.



Correctness of rejections

Over the past 3 months, how often were the rejections you received reasonable in terms of **correctness**?



Correctness: Compliance with all requirements of Title 35 U.S.C. as well as the relevant case law at the time of issuance. Decisions to reject were proper and contained sufficient evidence to support a conclusion of unpatentability.

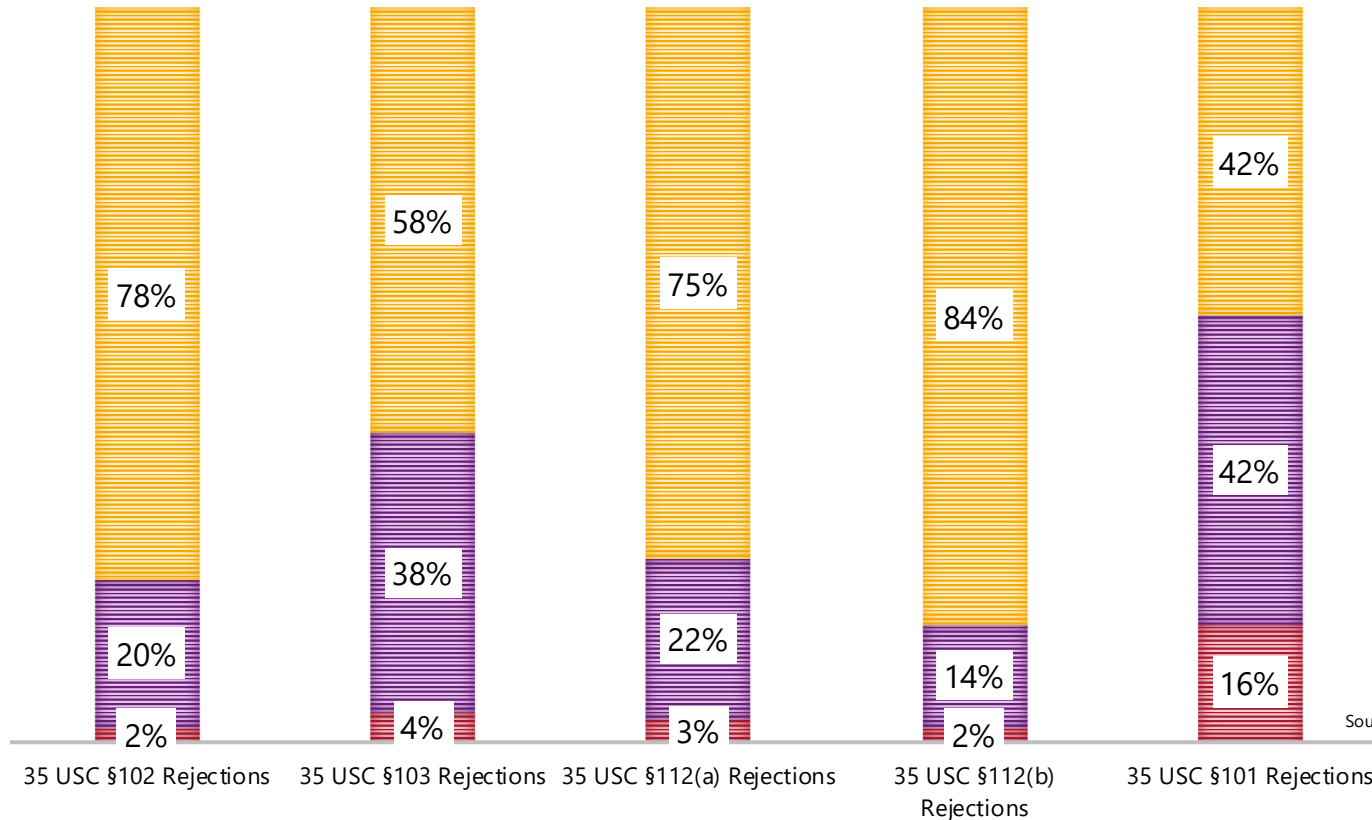
No significant changes from prior survey.

Source: Semi-annual External Quality Survey FY23Q4



Clarity of rejections

Over the past 3 months, how often were the rejections you received reasonable in terms of **clarity**?



Clarity: Sufficiently allows anyone reviewing a rejection to readily understand the position taken.

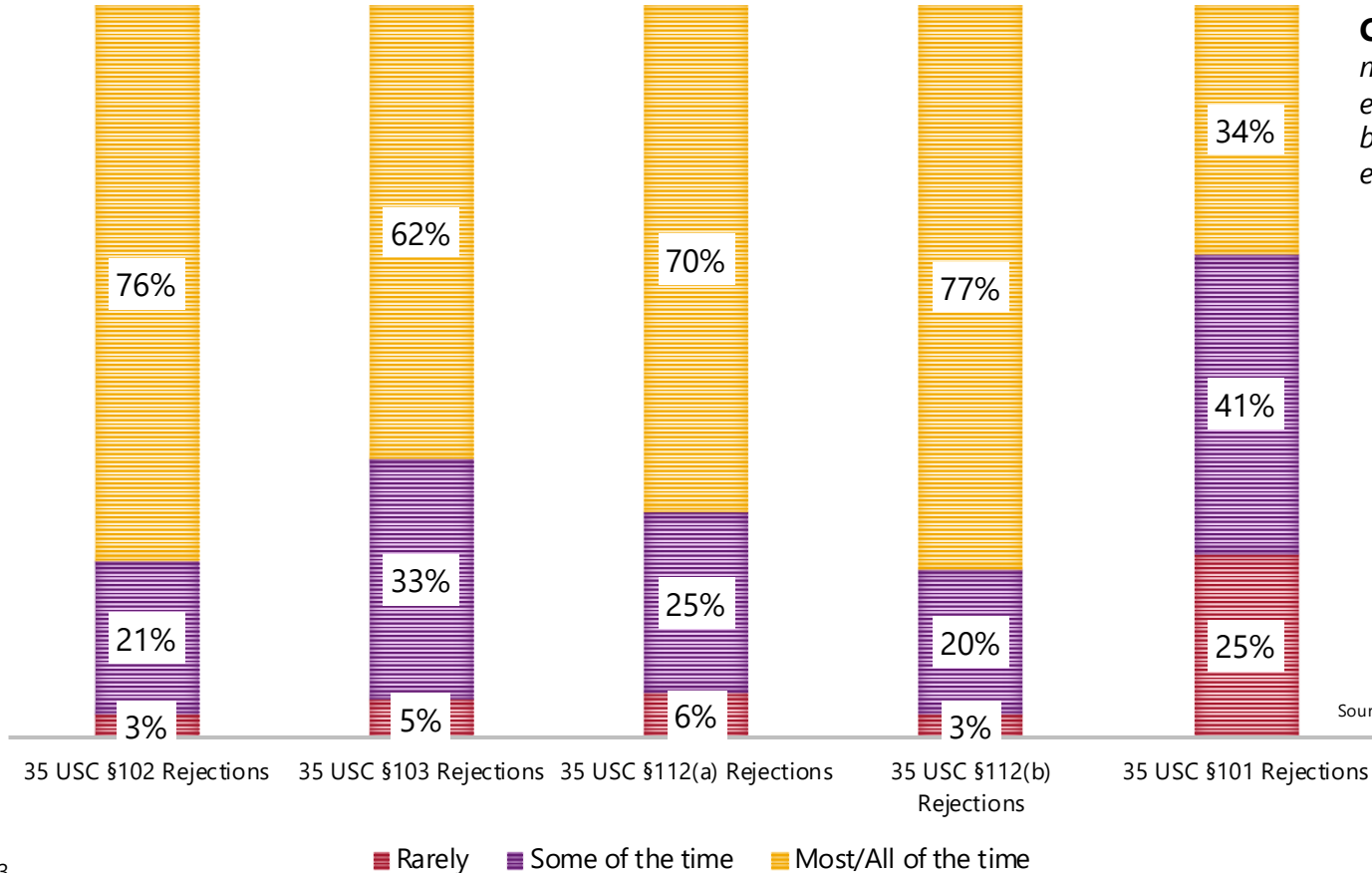
No significant changes from prior survey.

Source: Semi-annual External Quality Survey FY23Q4



Consistency of rejections

Over the past 3 months, how often were the rejections you received reasonable in terms of **consistency**?



Consistency: A similar manner of treatment and examination standards between applications and examiners.

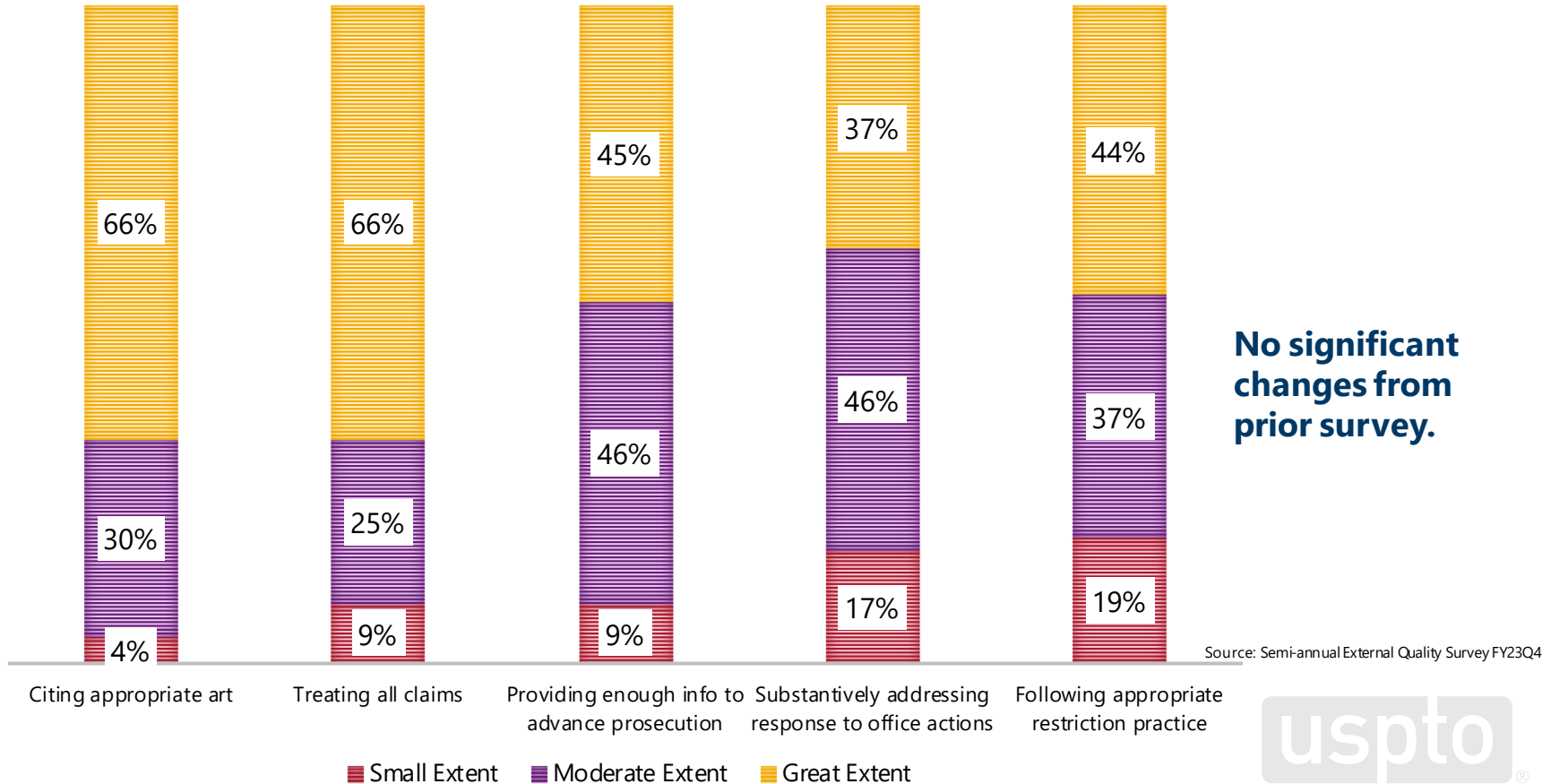
No significant changes from prior survey.

Source: Semi-annual External Quality Survey FY23Q4

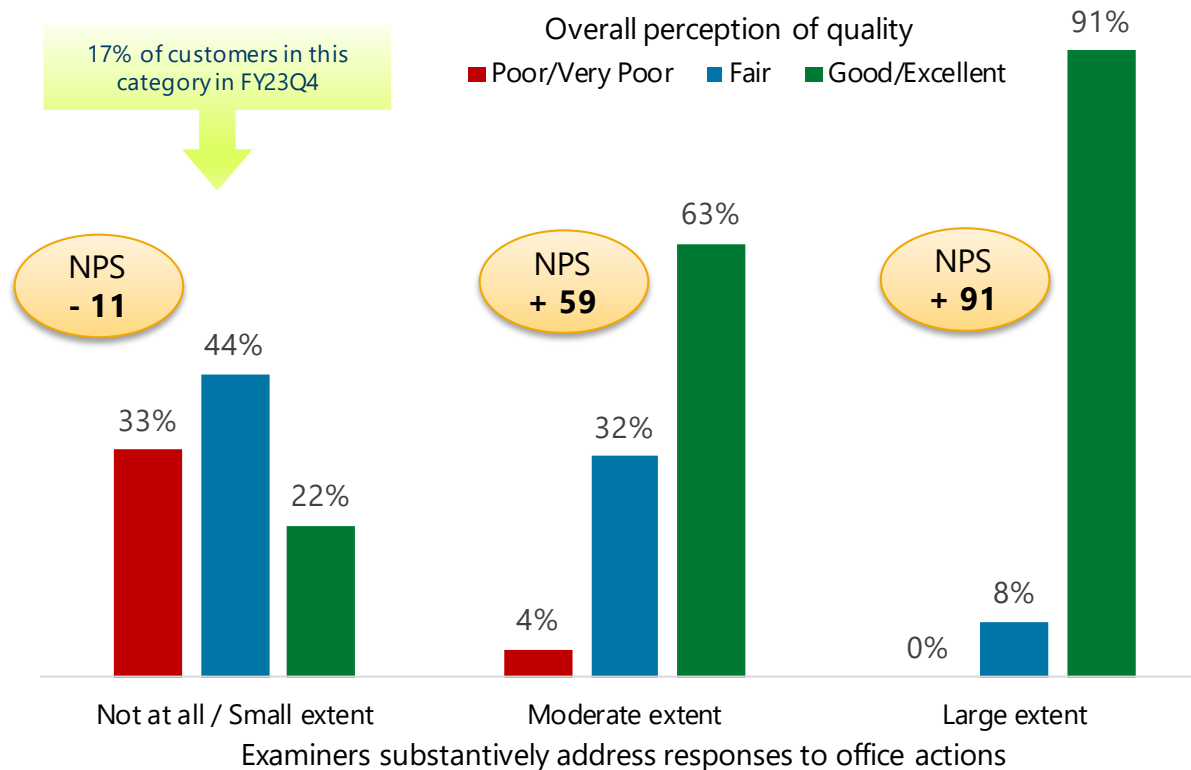


Adhere to rules and procedures

Over the past 3 months, to what extent did the patent examiners you worked with adhere to the following rules and procedures?



Addressing applicant response to office actions vs overall perception



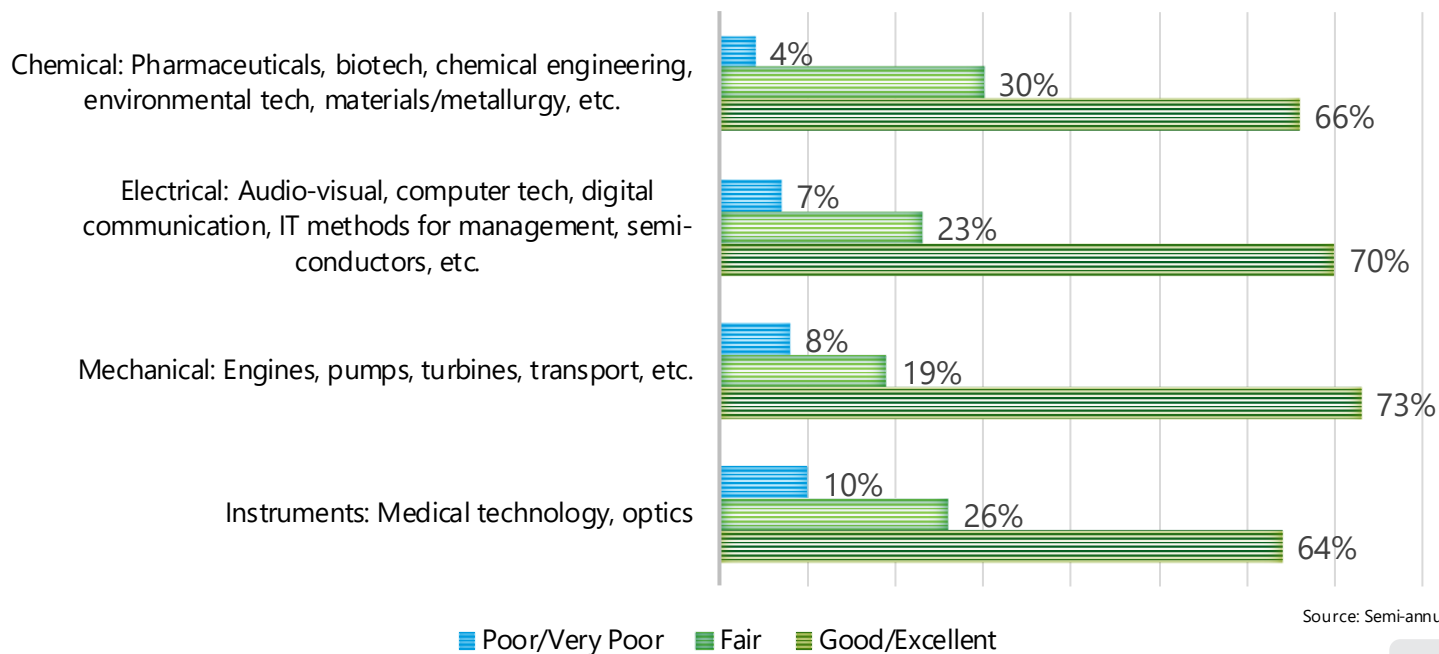
Source: Semi-annual External Quality Survey FY23Q4



Prior art

For examinations in the past three months, would you rate the overall quality of the prior art found by patent examiners as...

Quality of Prior Art by Technology: FY23Q4

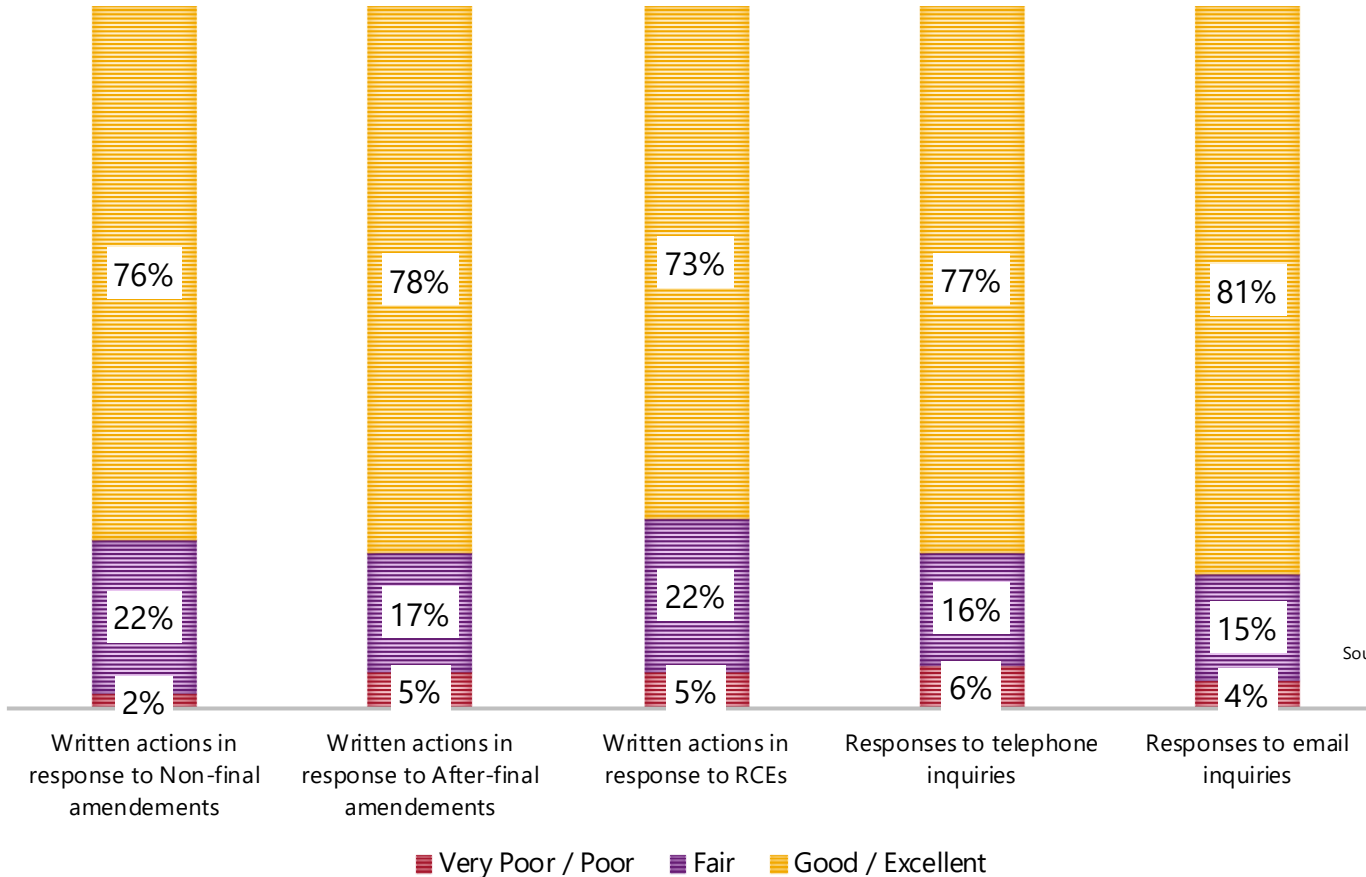


Source: Semi-annual External Quality Survey FY23Q4



Timeliness of written actions and responses

Over the past three months, how would you rate the following in terms of **timeliness**?



New series started in FY22Q4

Item of interest from 2020 OIG findings.

No significant changes from prior survey.

Source: Semi-annual External Quality Survey FY23Q4



Recent Office Action

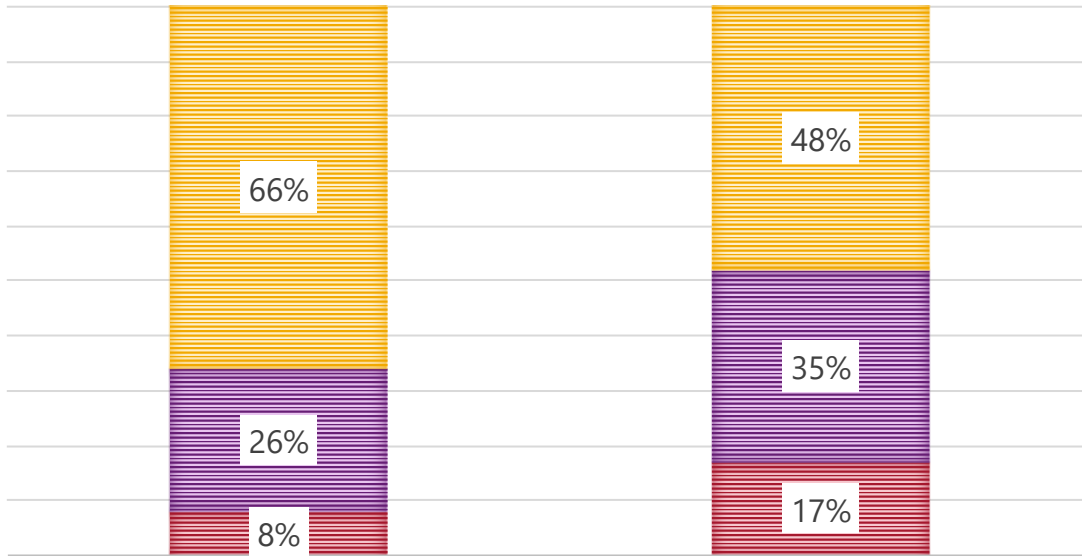
Recent office action

- New set of questions started in FY22Q4 to support:
 - customer requests to comment on a specific action as opposed to a period of three month activity that forces them to consider 15-20 office actions as a whole
 - better linkage to internal quality reviews that are performed on a per office action basis
 - office-wide CX measures and initiatives



Office action satisfaction

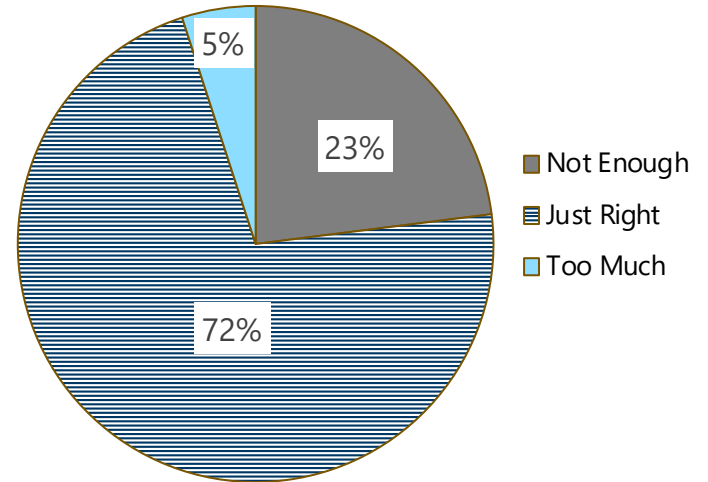
No significant changes from prior survey.



Examiner's understanding of the technology claimed

Legal position taken by the examiner

■ Poor/Very Poor ■ Fair ■ Good/Excellent



Amount of information received in office action

Source: Semi-annual External Quality Survey FY23Q4



Meeting expectations

Considering only your most recent office action, to what extent did the examiner meet your expectations with regard to how well each of the following were addressed?



Respondents could indicate "don't know" or "not applicable" if particular rejection was not addressed in recent office action.

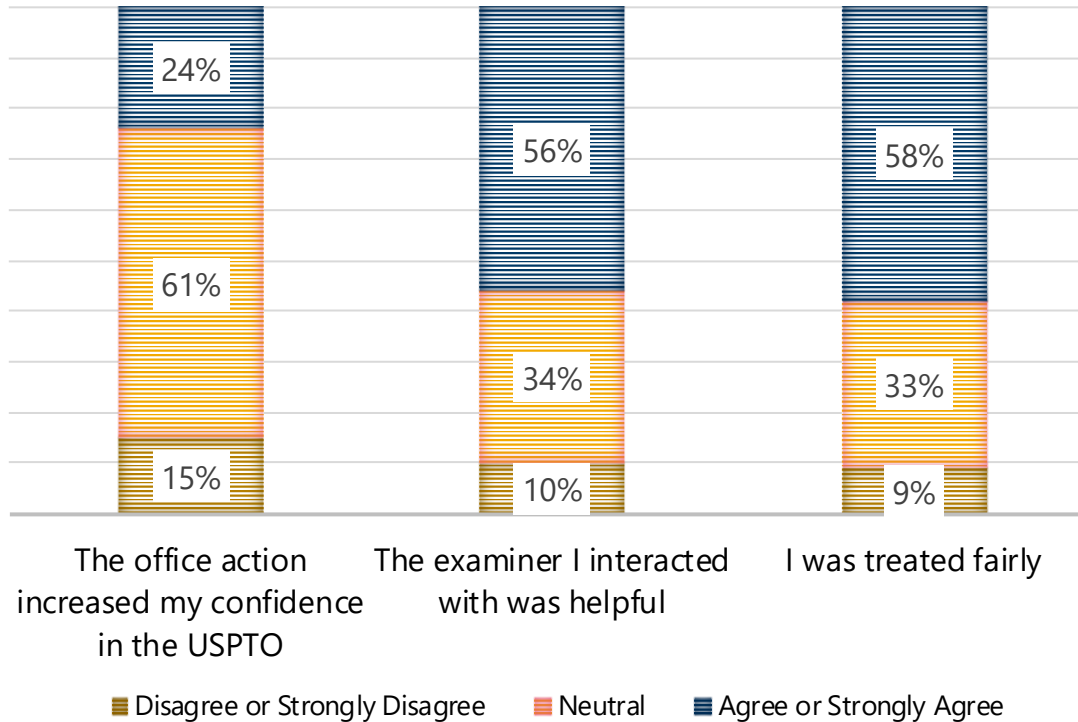
No significant changes from prior survey.

Source: Semi-annual External Quality Survey FY23Q4



Customer experience

Considering only your most recent office action, to what extent do you agree or disagree with the following statements?



No significant changes from prior survey.

Source: Semi-annual External Quality Survey FY23Q4



Customer comments

Customer comments: overall

What, if any, other quality issues or concerns would you like to bring to our attention?

- **Knowledge, training, and experience**

Some customers say quality is getting better and is quite good, and that many examiners are capable and do a good job. One stated a 95% satisfaction level with examiners, and described them as extremely professional, intelligent, and fair. Another noted consistently improved quality by primary examiners, but that there's a need for more training for less experienced examiners. New examiners need more training and oversight. A small subset is not reasonably navigating the law and facts. Some ignore or do not understand how to deal with rules in case law but not embodied in the MPEP. They do not know how to handle rebuttal arguments that distinguish over the case law cited. Furthermore, some examiners' technical knowledge is below standard. They search for keywords without understanding the overall invention.

- **Consistency**

Customers note much inconsistency both across and within art units. In terms of overall outcomes, some examiners have allowance rates of 0-20% while others have 80-100%. The success or failure of an applicant's business can depend on which examiner is assigned. Most consistency complaints are focused on 101 rejections. One customer suggests implementing a consistency initiative for patent examiners that is similar to the Trademark Office's consistency initiative. MPEP provides only vague guidance. If examiners are not bound by the prior decisions of other examiners on the same issue, then it is very difficult to determine whether an objection is proper.

- **103 rejections**

Dissatisfaction with 103 rejections was reported. Examiners do not understand the limitation of inherent obviousness, which is reportedly almost never correct. They summarize the teachings of the references and conclude, without real reasoning, that the invention would be obvious. Many do a simple text search and if a word appears in the prior art, even if in a very different context, they make it "obvious" even when you can show that it isn't teaching something similar or related. Examiners pile on too many references and look to read snippets of text in a way that is favorable for their analysis without considering whether a combination of many disparate references is actually reasonable.



Customer comments: overall continued

What, if any, other quality issues or concerns would you like to bring to our attention?

- **101 rejections**

Customers repeatedly state that 101 continues to be applied unpredictably across examiners and art units. They note the lack of clarity and sensibility in the law, and lack of clarity of the boundaries. 101s are “used as evidence-free 103.” They are used as a crutch that allows examiners to ignore art-based rejections, likely due to the ease of which 101 rejections can be made. Customers suggest the Office conduct research to determine the percentage of office actions that include 101 rejections that should have included an art-based rejection.

- **Timeliness**

Customers noted the decreasing rate at which they receive office actions in general, with some reporting that their backlog has grown 40% over the last five years.

Customers feel the appeal procedure is too slow and expensive.



Customer comments: recent action

Considering only your most recent office action, if there is anything you would like to bring to our attention please comment.

- **General comments**

Several customers reported their satisfaction with their most recent office action, noting it was well-considered and communicated in a manner that indicated how prosecution could be advanced. Their examiners were helpful, made suggestions, clearly indicated what amendments would be amenable to the examiner, and brought to their attention issues to improve the quality of the application. Others commented on dissatisfaction that the examiner for their most recent office action brought up too many newly cited references or claimed obviousness.

- **Examiner knowledge and experience**

Customers stated that examiners often lack thorough understanding of the technology and need better training on obviousness. They don't understand the standard. One customer said they can tell after the first OA whether they will have to appeal because the examiner doesn't understand the technology and/or the patentability standard. Examiners need to understand that breaking the name of a claimed element into pieces then identifying the named pieces into different references is not the same as identifying where the art teaches the claimed element.

- **Customer experience**

Although some customers said examiners do not listen to applicant responses or are not responsive to phone calls or requests for interviews, others were pleased with their examiner's responsiveness. They said their examiner was amicable and well-prepared for the interview, indicated allowed claims and allowable subject matter, and telephone and email outreach was kind and informative.



