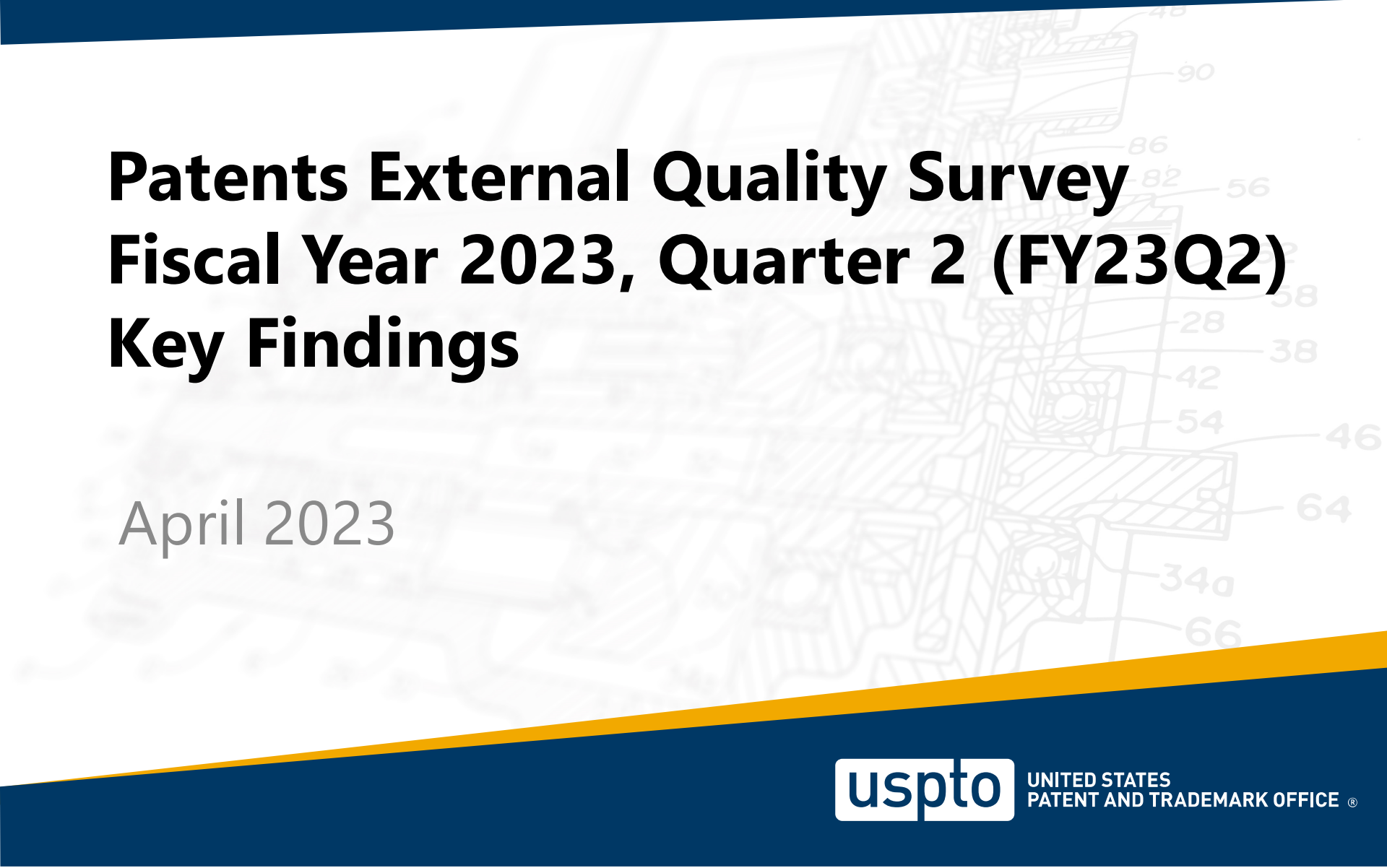


UNITED STATES  
PATENT AND TRADEMARK OFFICE



A faint, light gray technical drawing of a mechanical assembly is visible in the background. It features various parts with callout numbers such as 90, 86, 82, 56, 38, 28, 42, 54, 46, 64, 34, and 66. The drawing is a cross-sectional view of a complex mechanical component.

# Patents External Quality Survey Fiscal Year 2023, Quarter 2 (FY23Q2) Key Findings

April 2023



UNITED STATES  
PATENT AND TRADEMARK OFFICE ®

# FY23Q2 executive summary

- Quality Net Promoter Score (NPS) is 57 and above targeted performance.
  - Non-significant change from prior survey, however it marked the fourth consecutive reporting period where over 60% of customers rated quality as good or excellent. Prior to FY21Q4, only achieved that level one time out of 33 measurement periods.
- Over 10 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”, nearly 90% report quality as good or excellent; when they say “small extent”, less than half (43%) report quality as good or excellent.
- Based on feedback to past surveys, began several new observations in FY22Q4 and this is the second survey of building a new data series.
  - Measurements were stable indicating efficacy of questions.
  - Timeliness of written actions and responses to inquiries. About 75% of customers rated these new elements as good/excellent.
  - Recent office action quality (as opposed to assessment over past three months):
    - Opportunities for improvement exist in examiners’ understanding of technology and legal positions taken.
    - On average, about 40% of customers reported that patent examiners met their expectations to a “large extent”.

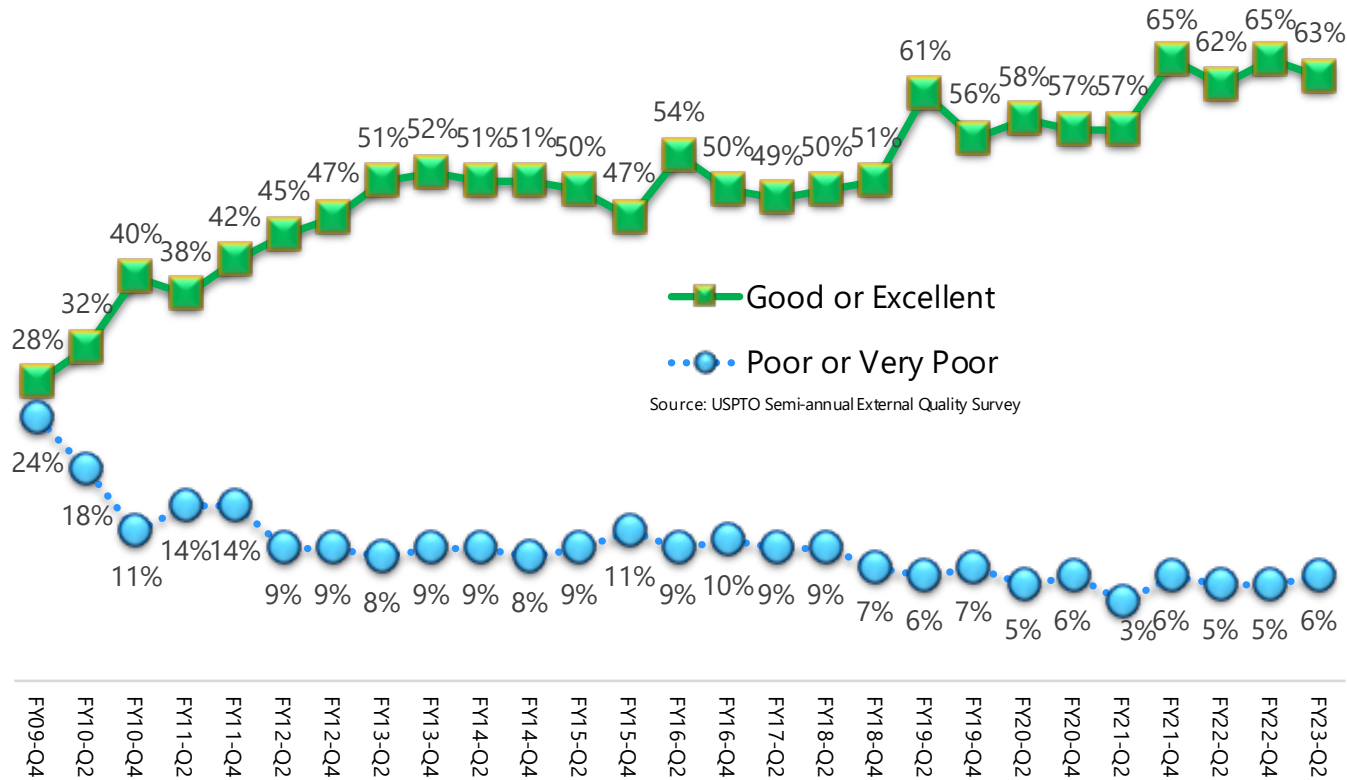


# Survey overview

- 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 2021 to update the list of “top filing” firms/entities. FY23-Q2 was the third launch using the 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
  - 94% completed the recent survey via the web, compared to historic 83%.



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



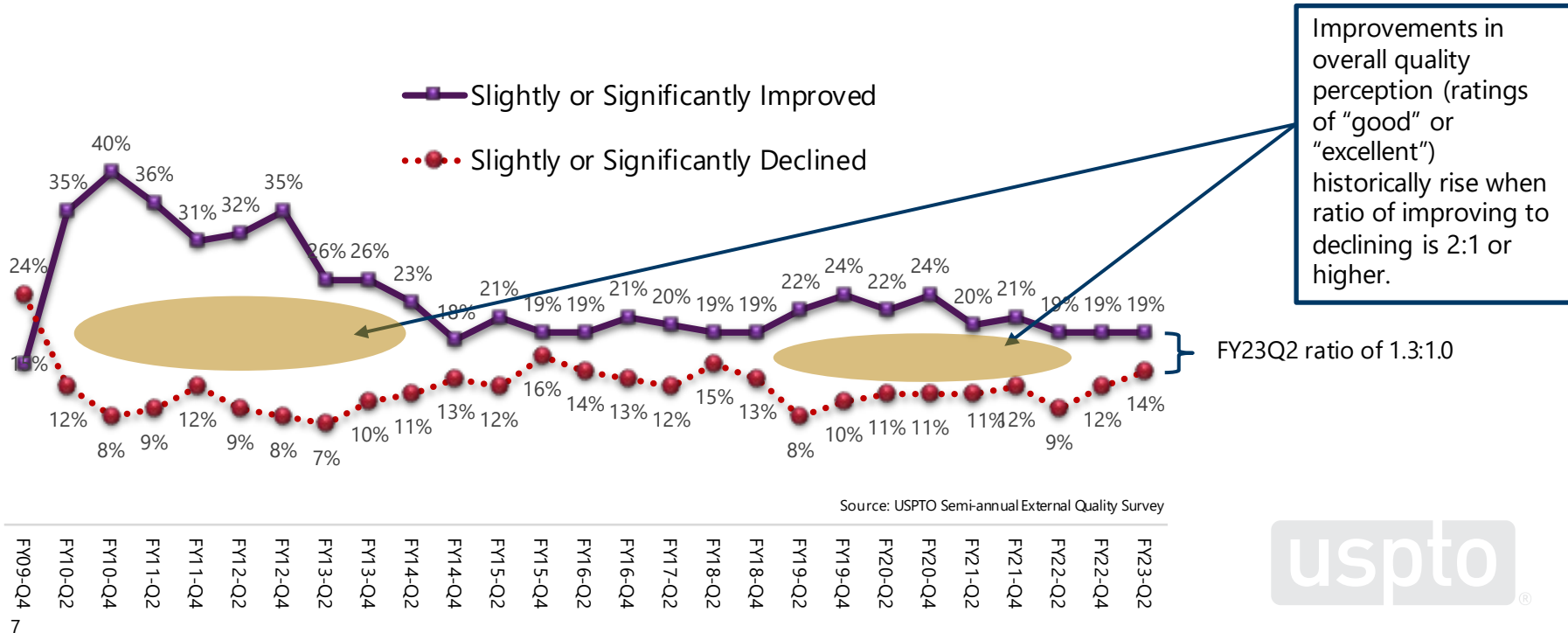
# Quality Net Promoter Score (NPS) remains strong

	Good or Excellent	Poor or Very Poor	Ratio	Net Promoter Score
FY12-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
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
<b>FY23-Q2</b>	<b>63%</b>	<b>6%</b>	<b>10.50</b>	<b>57</b>

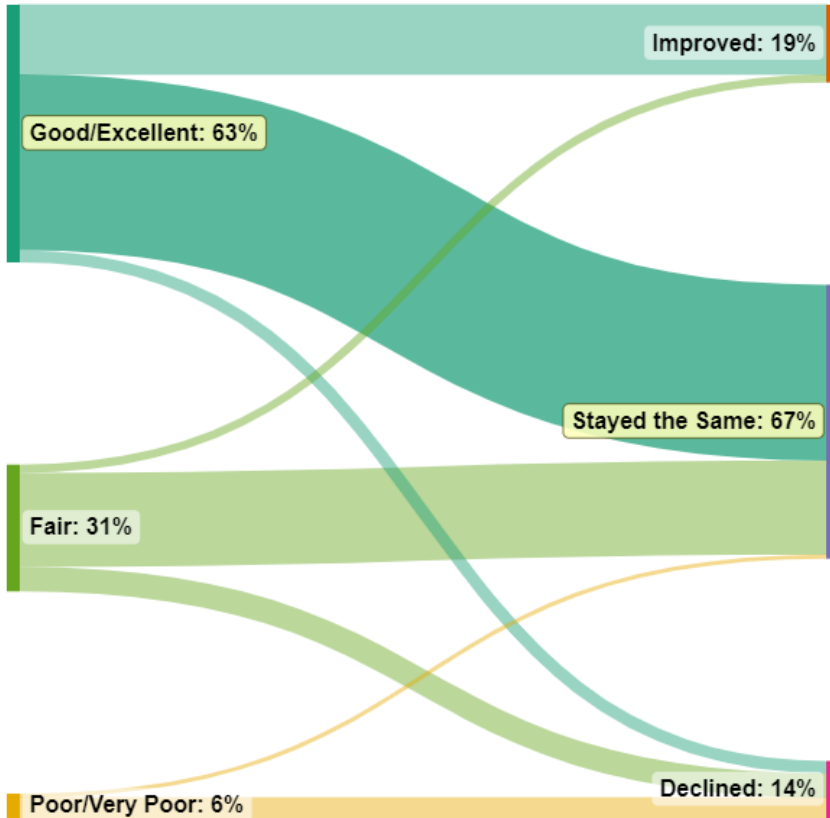
- Historically, the focus has been on the ratio of positive responses for every single negative response.
- Net Promoter Score is becoming a more popular and follows a similar concept.
  - Net difference between % positive (promoters) and % negative (detractors)
- What is a decent score?
  - 50 and above 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?



# Perceived changes in quality



Source: USPTO Semi-annual External Quality Survey FY23Q2

19% of customers indicated that quality had slightly or significantly improved in the prior three months, compared to 14% 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.





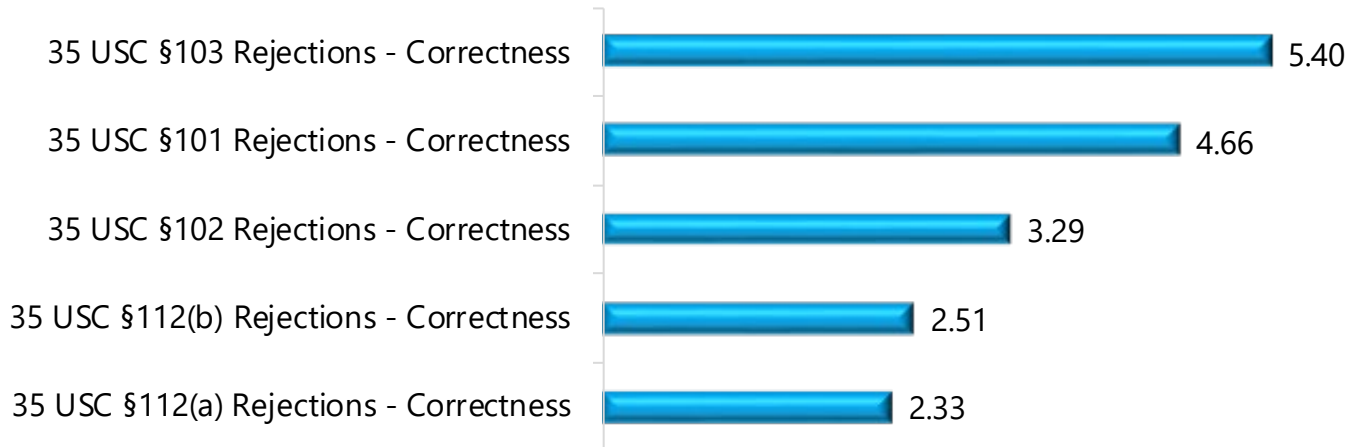
# Key drivers of overall quality

## 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 double that of other rejection types. The past three surveys suggest the impacts by rejection type has narrowed.

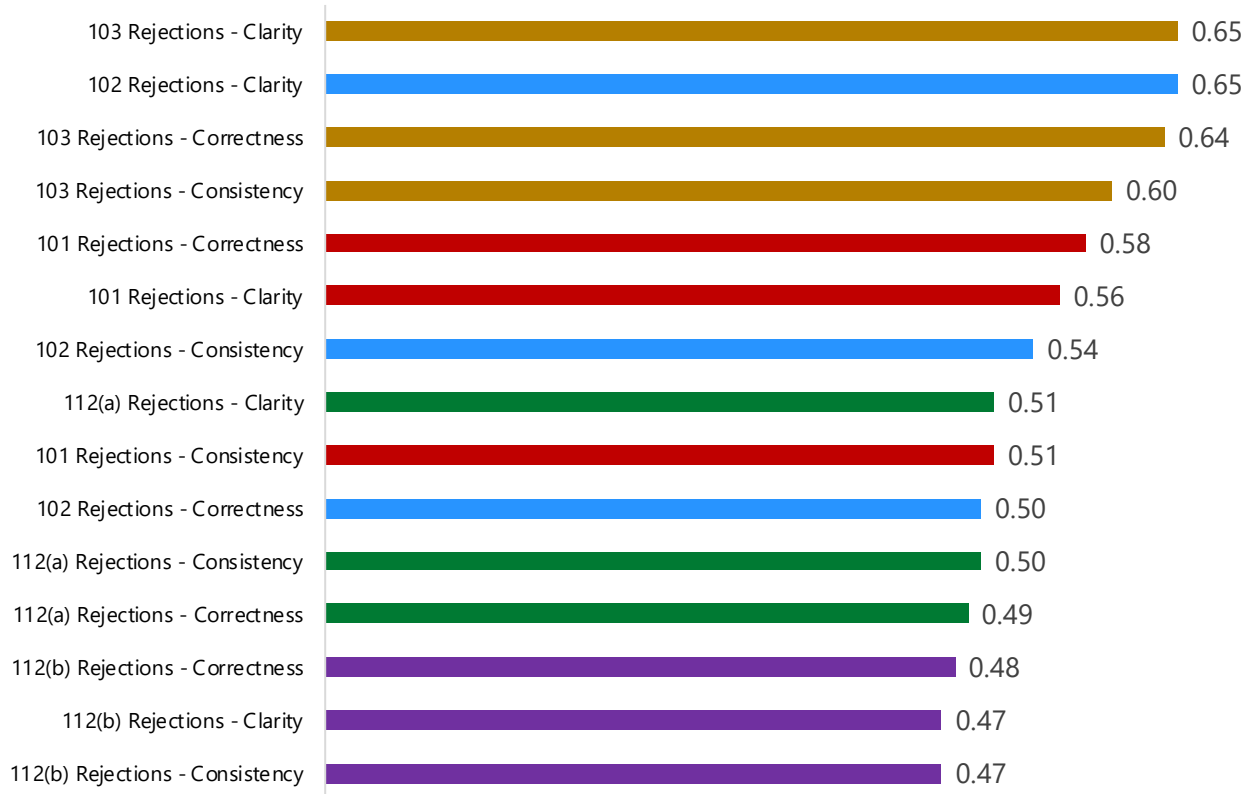
Compared to the prior survey, impact of 101 rejections has increased while impact of 112(b) rejections has declined.



Source: Semi-annual External Quality Survey FY23Q2



# Key drivers of overall quality (cont'd)



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

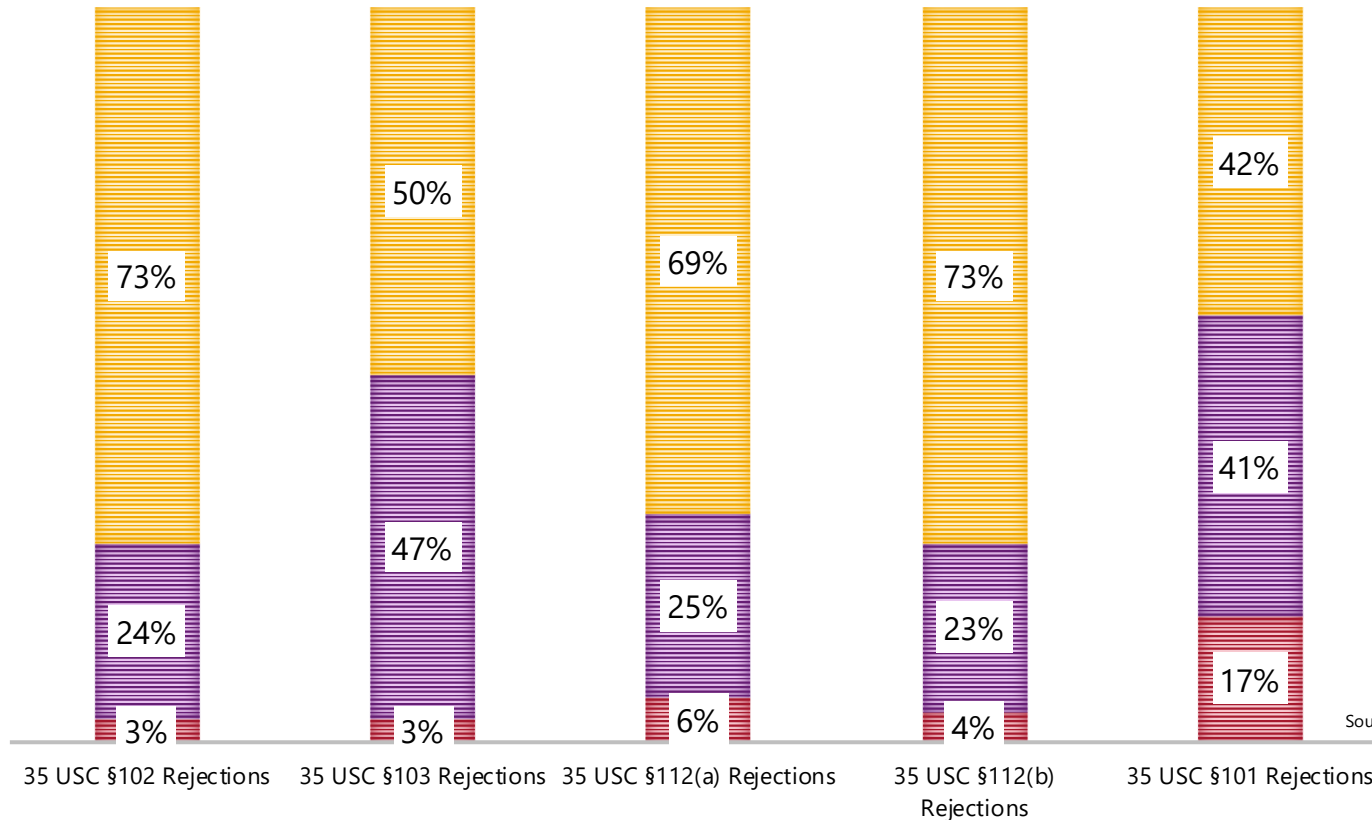
In general, there are minimal differences in the correlations. All rejection types are related to overall satisfaction, but as observed in prior surveys, 102 and 103 rejections were found to have the highest correlations with overall examination quality. As noted with odds ratios, the most recent survey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

Source: Semi-annual External Quality Survey FY23Q2



# Correctness of rejections

Over the past three 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.

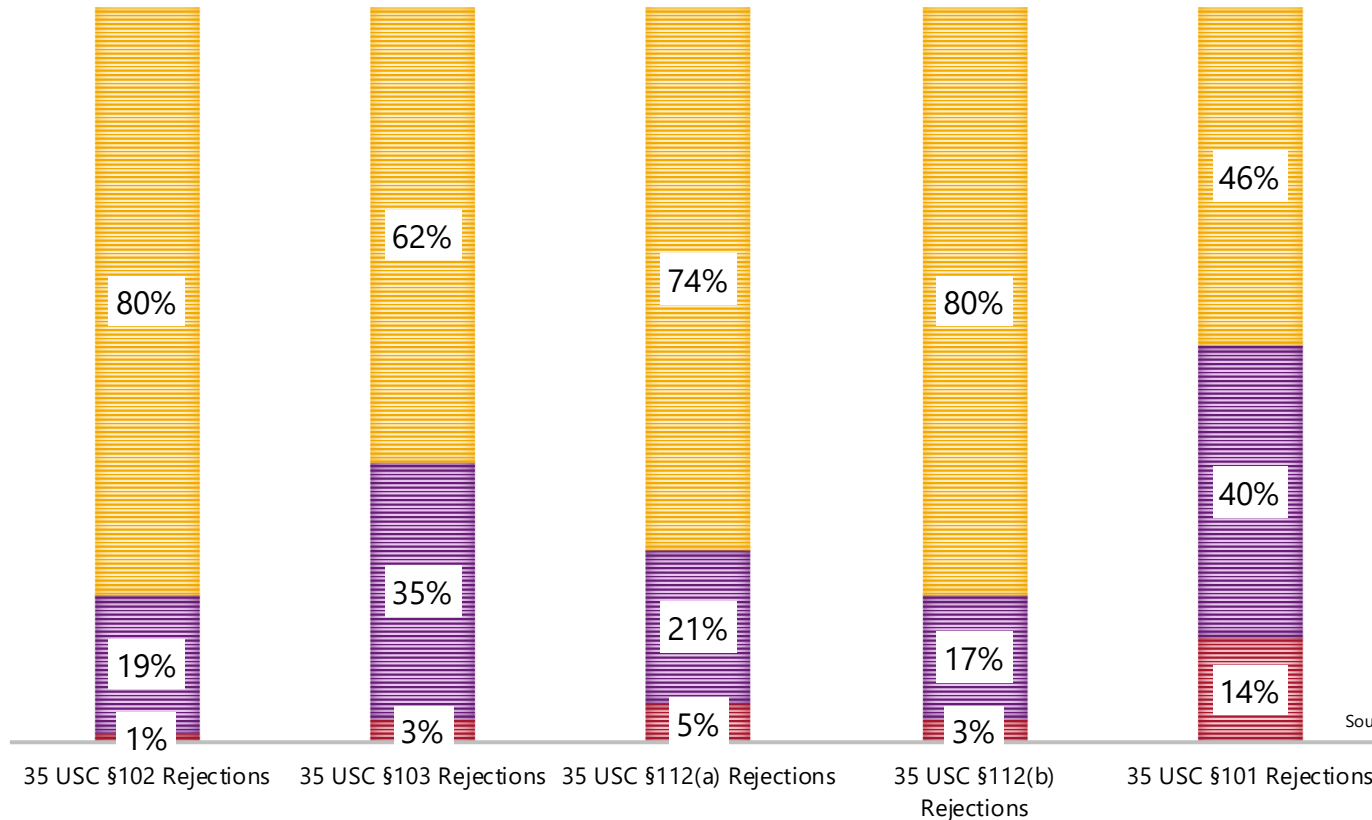
**No significant changes from prior survey.**

Source: Semi-annual External Quality Survey FY23Q2



# Clarity of rejections

Over the past three 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.**

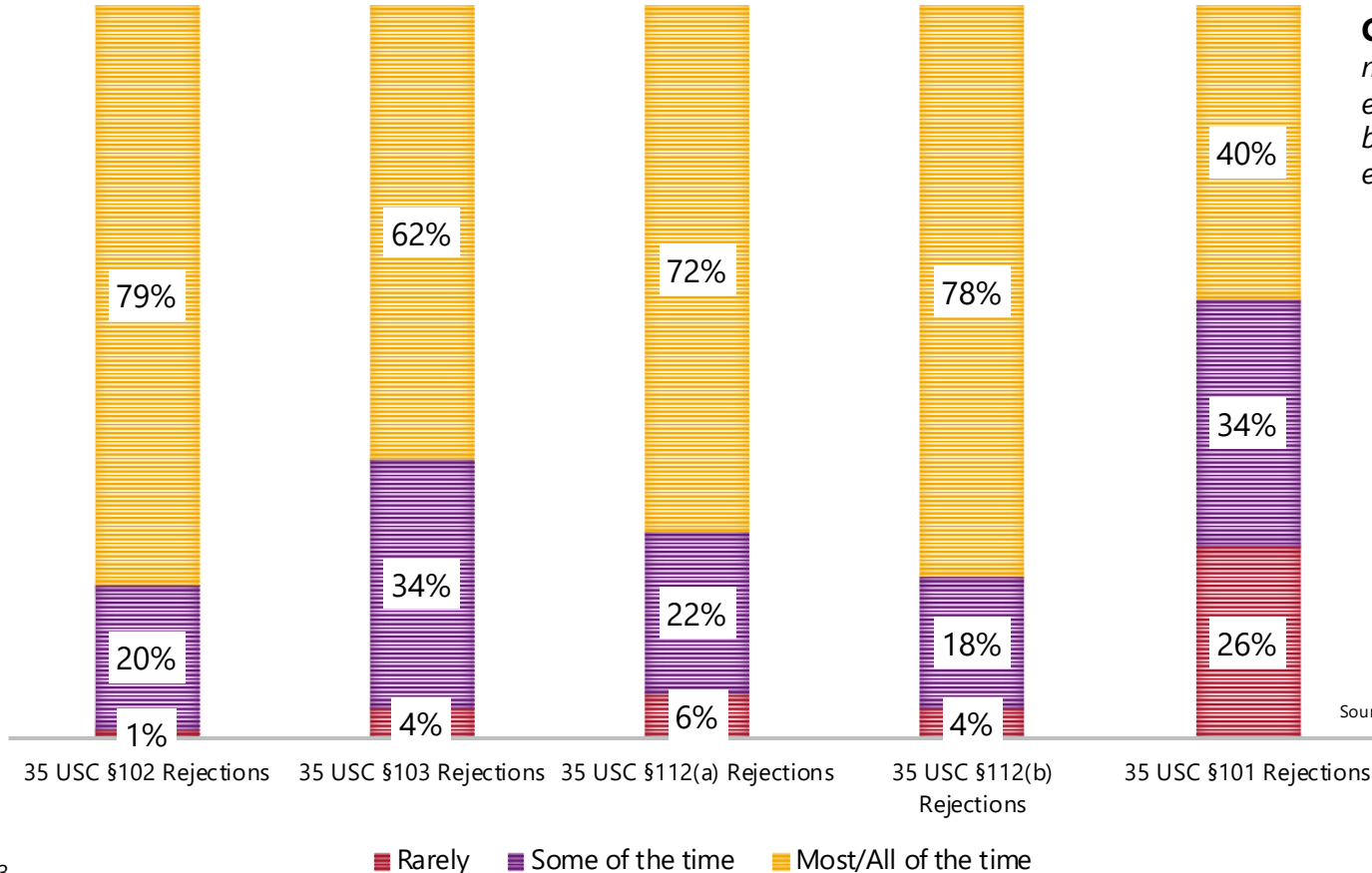
Source: Semi-annual External Quality Survey FY23Q2



■ Rarely   ■ Some of the time   ■ Most/All of the time

# Consistency of rejections

Over the past three 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.

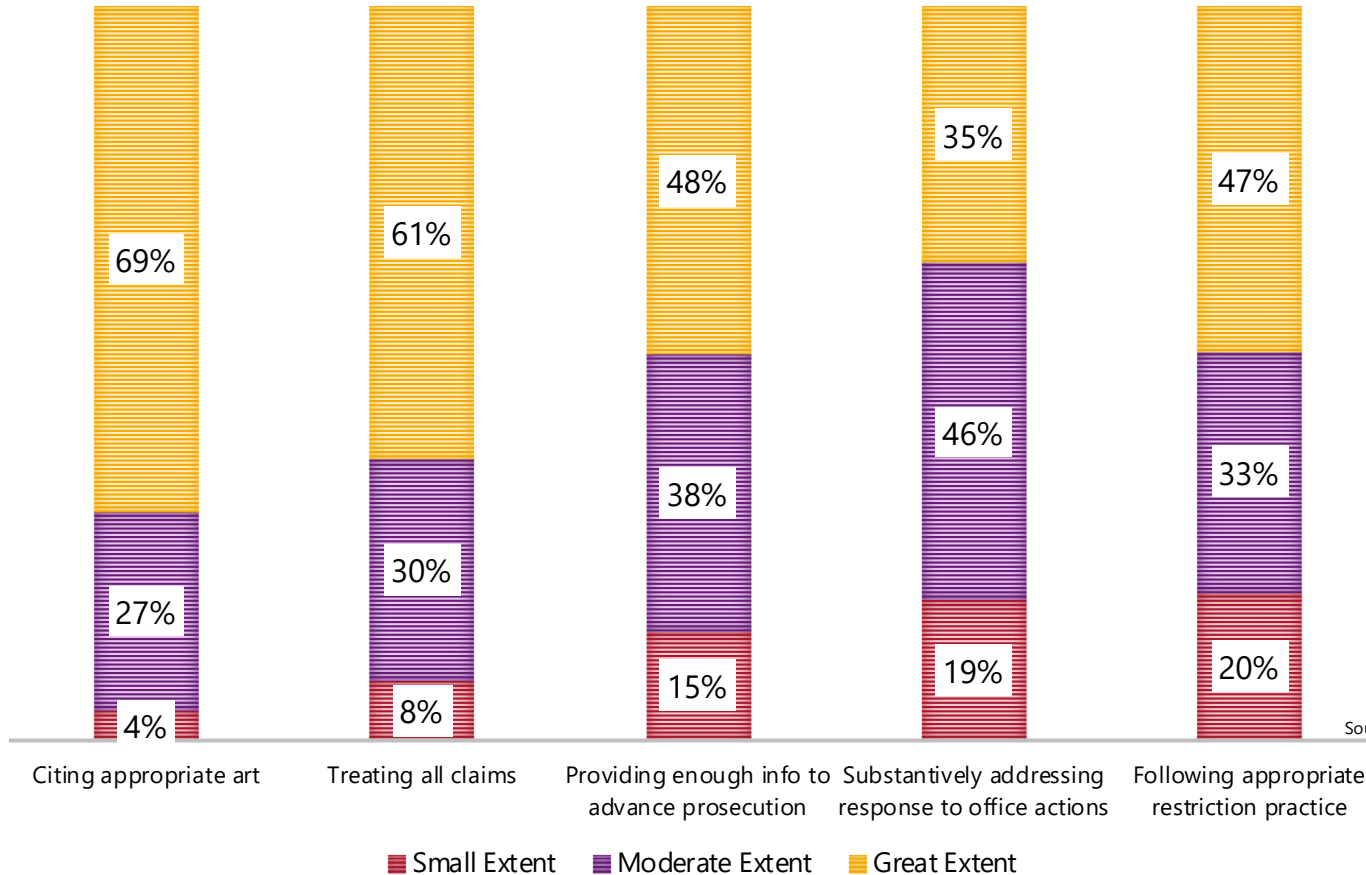
**No significant changes from prior survey.**

Source: Semi-annual External Quality Survey FY23Q2



# Adhere to rules and procedures

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



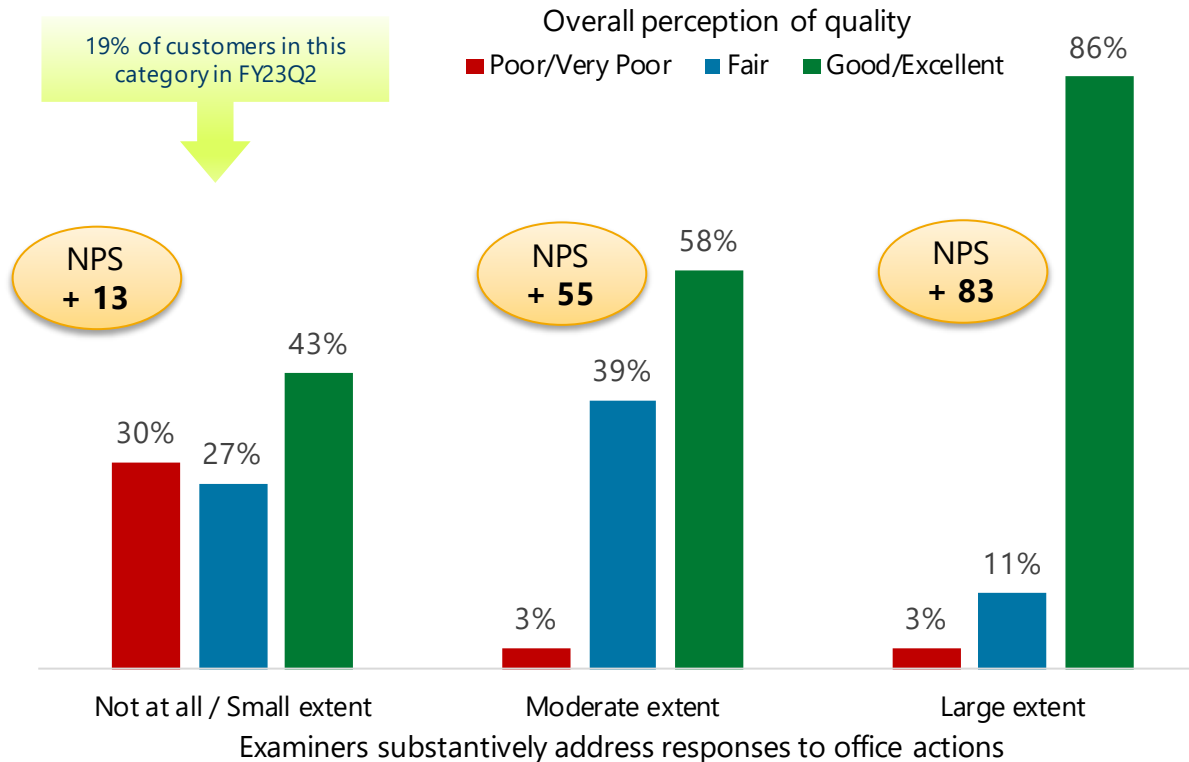
**Most items remained consistent with prior surveys.**

One noticeable change was in "addressing response to office actions". A slight increase in customers (+4%) citing "great extent" was not offset by an increase in customers (+7%) citing "small extent".

Source: Semi-annual External Quality Survey FY23Q2



# Addressing applicant response to office actions vs overall perception



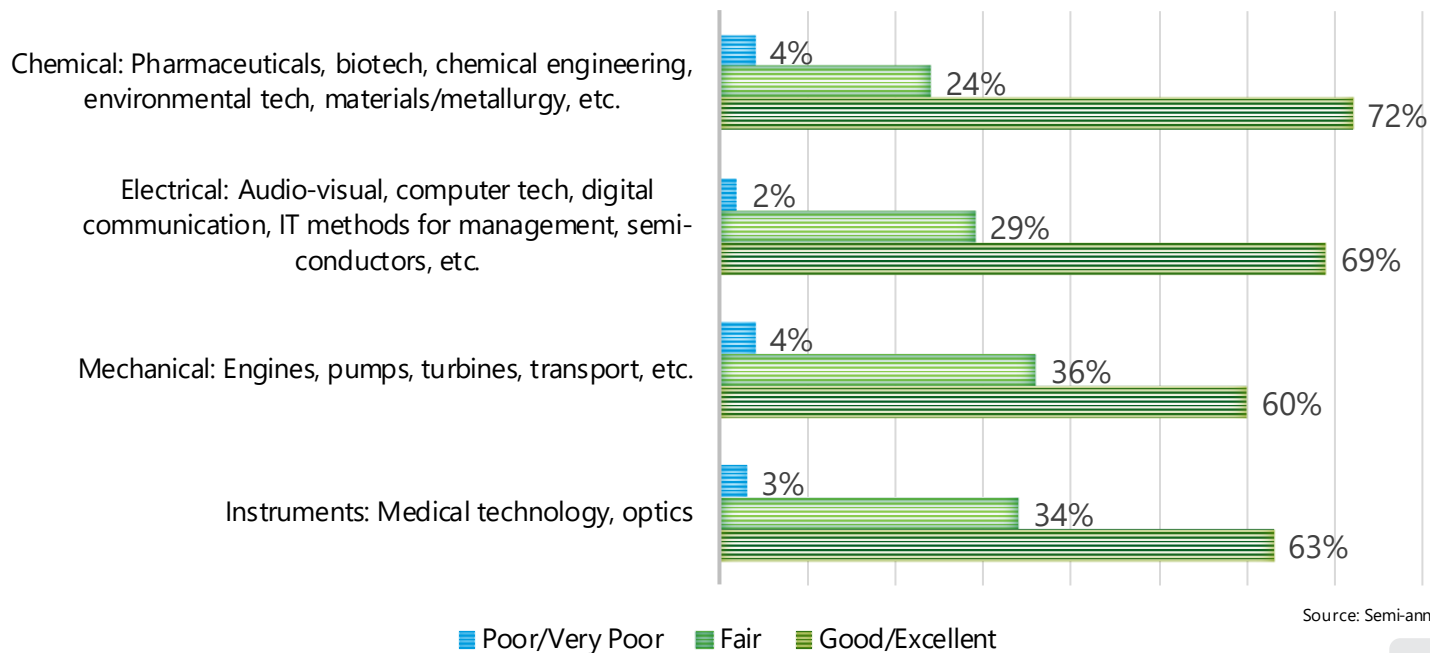
Source: Semi-annual External Quality Survey FY23Q2



# 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: FY22Q4



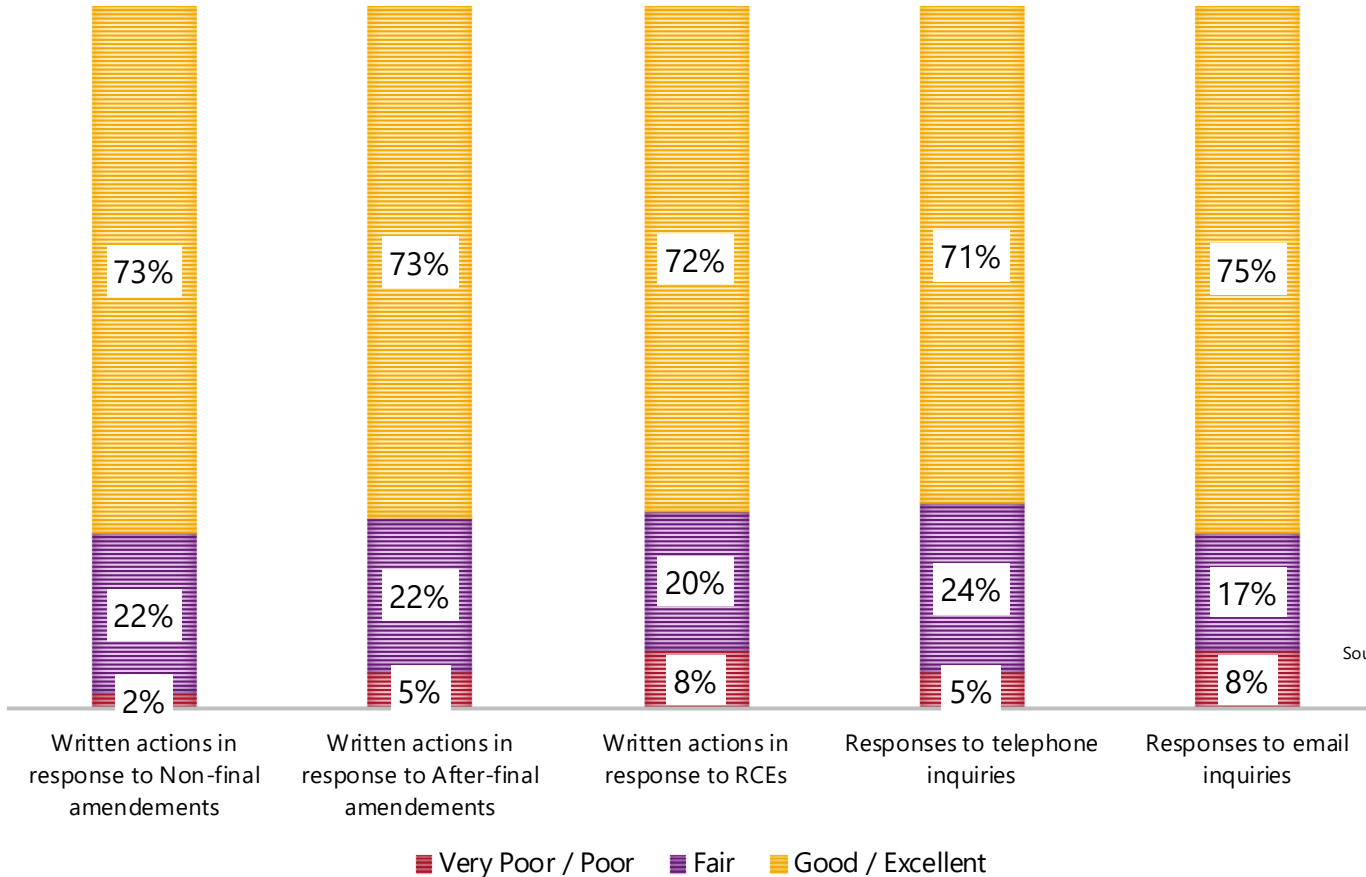
Source: Semi-annual External Quality Survey FY23Q2





# Timeliness of written actions and responses

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



**New questions asked in FY22Q4**

**Item of interest from 2020 OIG findings.**

**No significant changes from prior survey.**

Source: Semi-annual External Quality Survey FY23Q2



# Recent Office Action

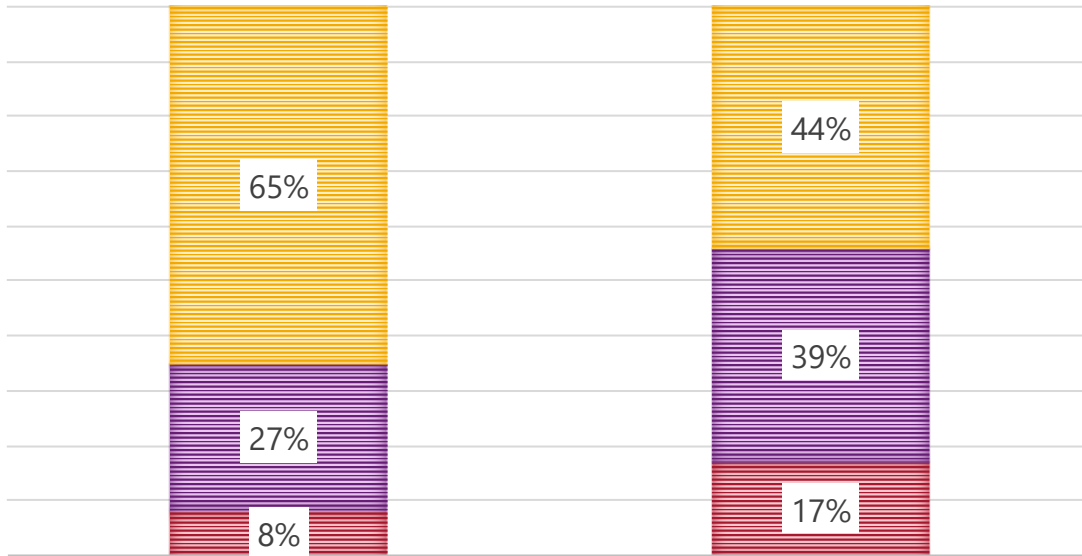
# Recent office action (cont'd)

- 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

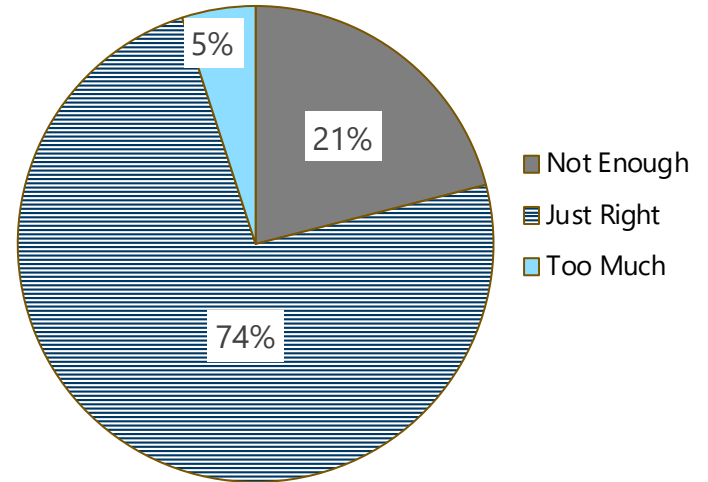
No significant changes from prior survey.



Examiner's understanding of the technology claimed

Legal position taken by the examiner

■ Poor/Very Poor ■ Fair ■ Good/Excellent



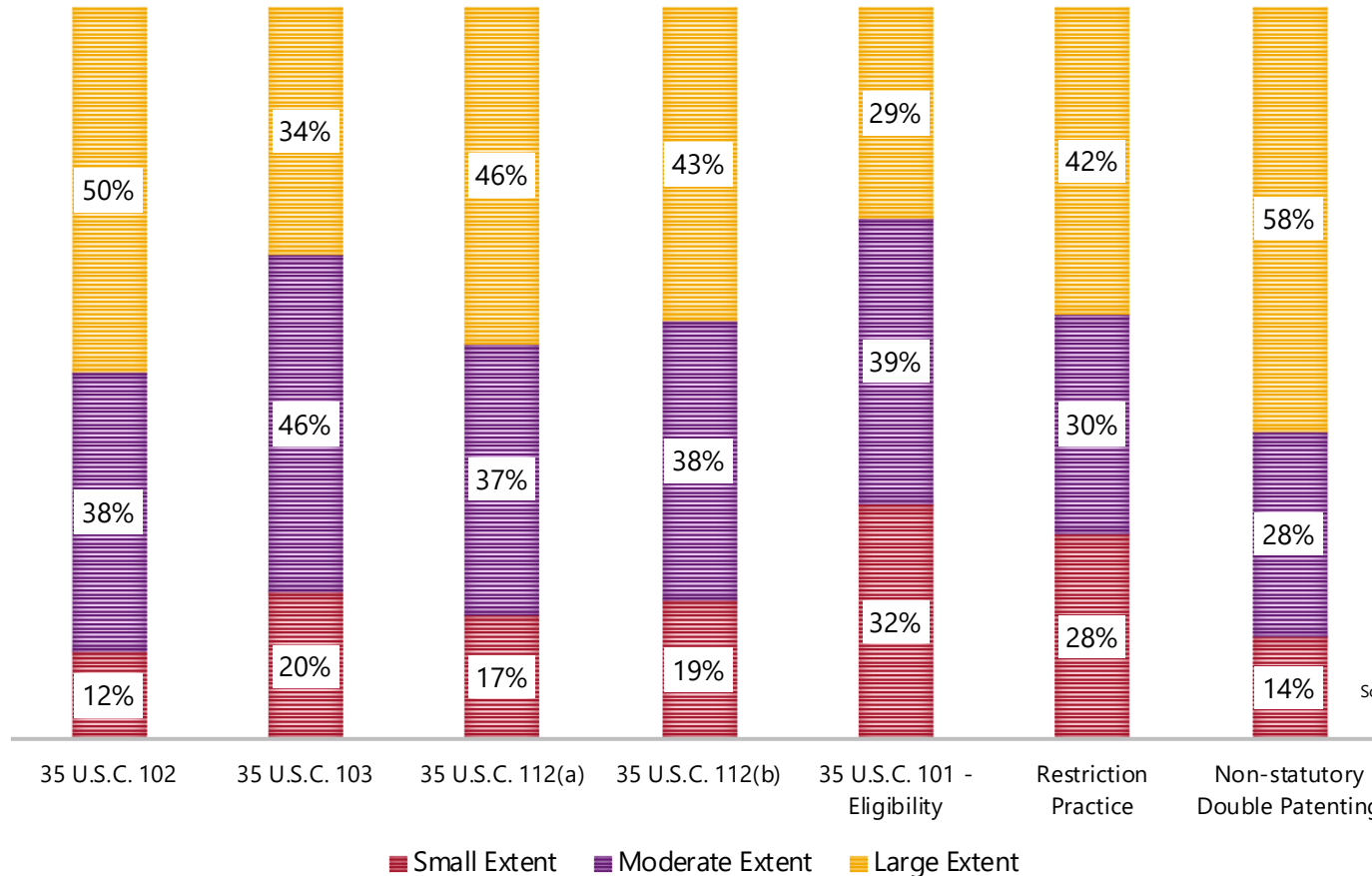
Amount of information received in office action

Source: Semi-annual External Quality Survey FY23Q2



# 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.

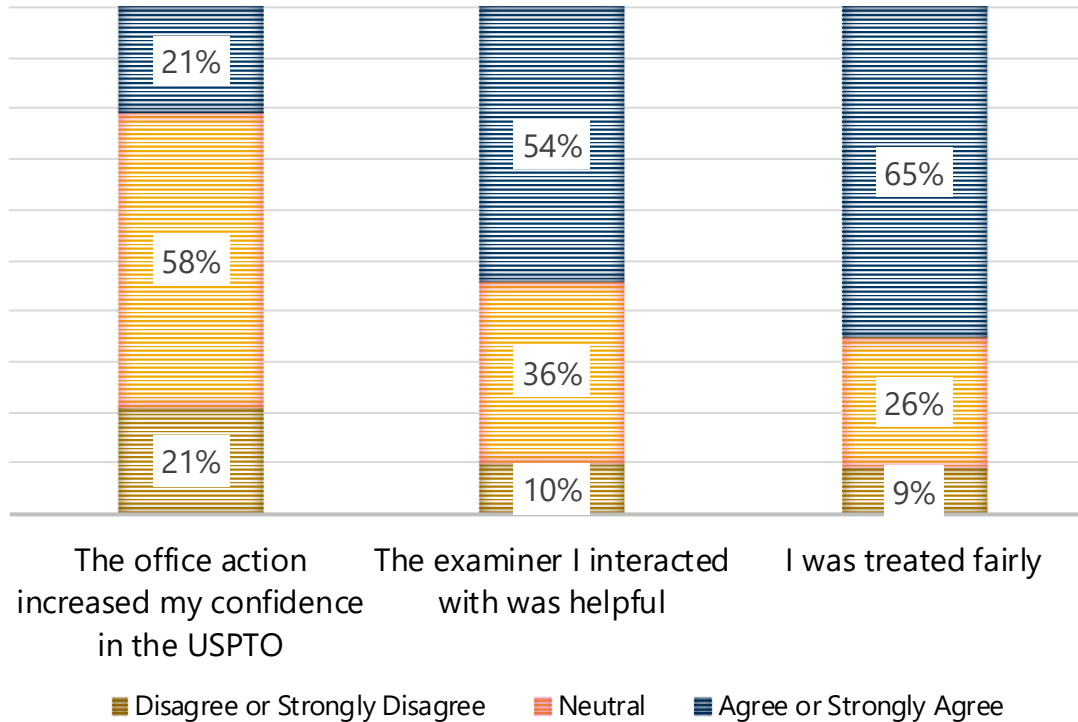
**No significant changes from prior survey.**

Source: Semi-annual External Quality Survey FY23Q2



# 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 FY23Q2



**Customer comments**

# Customer comments: overall

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

- **Examiner level of expertise / training**

Customers say they have far fewer issues with experienced examiners than with younger, less experienced examiners who are not as well trained and are sometimes flatly inconsistent with the law. Less experienced examiners need more education on how case law is properly applied to patent applications. Rather than just citing a rule that sounds applicable, they need to understand the factual basis for the rule. They also need a better understanding of restriction practice. It appears that customers are being trained to reject claims rather than examine claims.

- **Consistency**

Respondents commented on the lack of consistency in quality, why and when a claim restriction is required, within art units, and across examiners and art units. Some examiners find good art, apply it well and understand the technology, while others rely purely on word searches without analysis or understanding of the technology.

- **101 rejections**

Customers report that it appears 101 rejections are on the rise again, and over the past year there has been a shift to reject more applications than occurred in 2020 and 2021. Some examiners reportedly say were told by a primary to issue a 101 rejection, resulting in little or no analysis. Also, the application of 101 is both inconsistent and unclear. Art units vary and examiners fail to explain how each step of the Alice/Mayo test has been applied. Customers want improved guidance based on federal and/or precedent case law. Some acknowledge that although the courts cannot even agree on the law, the USPTO should try to maintain as much consistency as possible.





# Customer comments: overall (cont'd)

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

- **First Actions (pendency and quality)**

First office action times are too slow. Customers want to see an improvement in the length of time from filing of non-provisional patent applications to first office actions. One customer cited examinations that were beyond the 30 month date, and data showing that the receipt of the first office action has increased 6 to 10 months. First office actions are often low quality. There is an uptick in first office actions that appear to have been issued without review of the full specification, where examiners find anything to put it into a rejection just to get the first action out the door. Substantive examination and citation of relevant prior art doesn't start until the second office action. Furthermore, sometimes examiners issue office actions based upon the original claims rather than those presented in the preliminary amendment. Ensure that examiners examine the correct claims in the first instance.

- **Patent Center**

Customers are very unhappy with the new Patent Center, especially with the search feature. It is "a downgrade from the previous search," "very difficult to use," "not intuitive," and "severely hampers" their practice. The users can only have one document open at a time, which times out, and they can no longer have multiple tabs open in their browser with the HTML version of each document. The newer "Basic Search" option was a good idea to fix the problems but still does not allow searching terms within quotes, and is limited to just two different search terms. Also, after selecting a result it only shows on half of the screen. Finally, old links to patents or applications no longer work. Customers are turning to other tools like google patent search and ESPACENET instead of going to the USPTO site.



# 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.

- **Examiner level of expertise / training**

Respondents said the examiners on their most recent office action lacked technical competency and/or an understanding of the law. Restriction practice is not understood and often used to avoid additional work. Their examiner's rejection of independent claims did not make sense. Their examiner misused or misunderstood case law on obviousness-type double patenting; applied arbitrary definitions not founded in the specification; or failed to consider part of the amendments made in the previous response.

- **Prior Art**

Respondents said examiners on their most recent office actions did not apply the prior art fairly or clearly. They noted the lack of specificity and relevancy. One said their examiner mischaracterized the prior art in a 103 rejection. Another said there was an absurd application of prior art to claims even though the examiner knew that the cited art was not what was intended by the claims.



# Customer comments: recent action (cont'd)

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

- **Office Actions / General Comments**

Respondents commented on various aspects of their most recent office action. Examples include one where the rejection of the independent claims did not make sense, the examiner did not address any of the independent claims, and the office action was final so the customer had no recourse. Another said the examiner reopened prosecution without a new rejection, which made it drag on. Another said that after the examiner agreed with the amendments and arguments during an interview, months later they sent a final office action rejecting all claims, contrary to the position taken during the interview.

- **Clarity**

Respondents said examiners should do a better job of clearly showing each and every feature in 102 rejections, instead of copying and pasting from a prior art document without an explanation of how each feature is found in that reference. One customer commented on the amount of cutting and pasting between non-final and final making it difficult to advance examination when there is no real explanation. Others commented on the lack of clarity in the application of 101 subject matter eligibility.



