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Public Engagement Partnership Meeting Series

Patents External Quality Survey

FY24Q4 Key Findings

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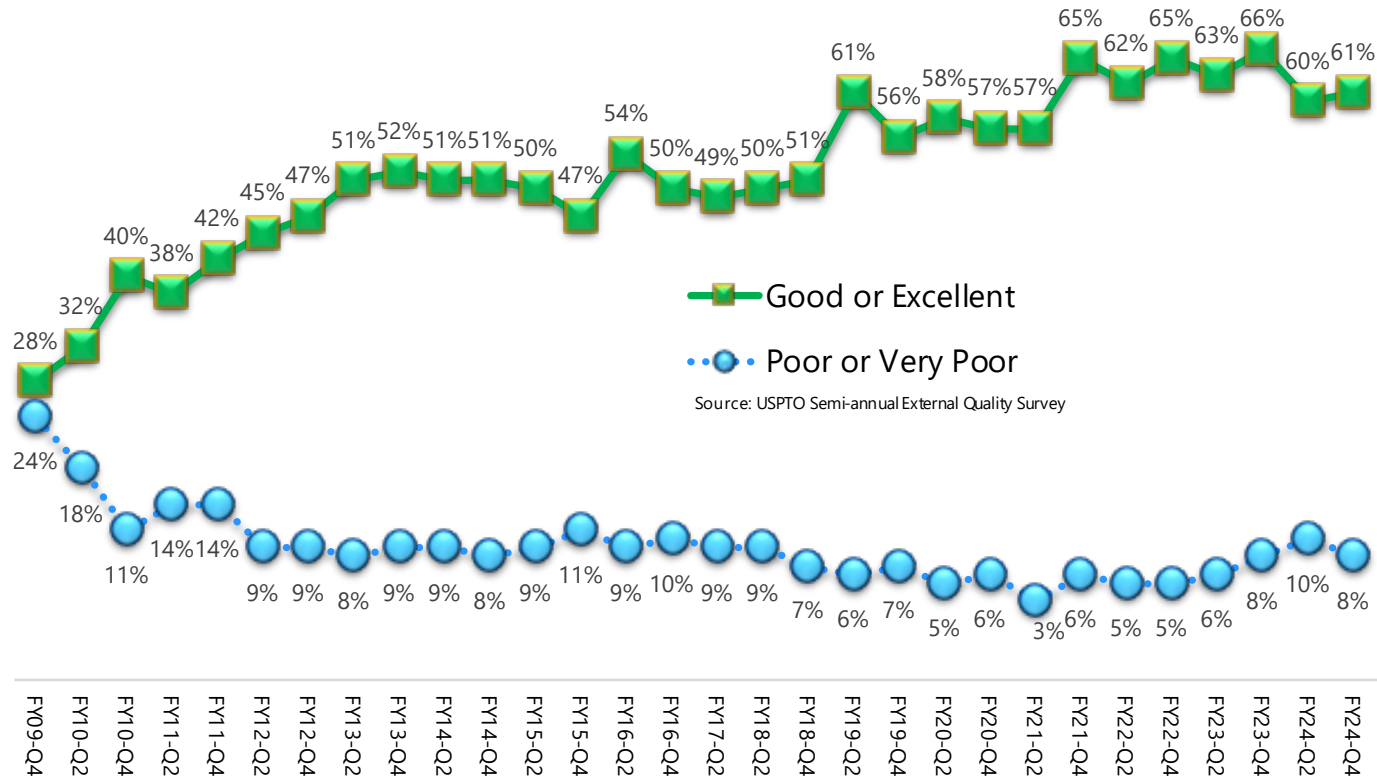
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Survey overview

- Customers from “top filing” firms/entities
 - On average, respondents had received around 15-20 office actions in the 3 months prior to being surveyed
- Administered semi-annually since 2006
- Focus on quality
- Sample size approximately 3,200 customers
 - A new sample frame was acquired in October 2023 to update the list of “top filing” firms/entities. FY24-Q2 was the second 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
 - 94% completed the recent survey via the web



In the past 3 months, how would you rate overall examination quality?



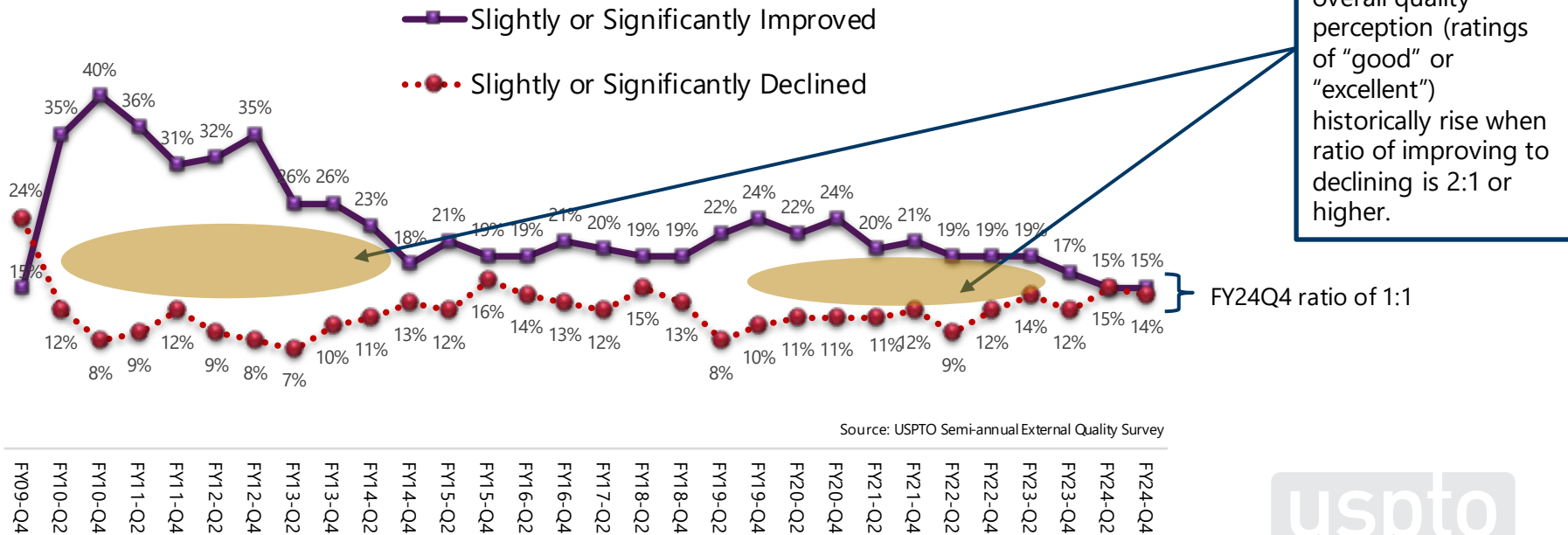
Quality Net Promoter Score (NPS) remains strong

	Good or Excellent	Poor or Very Poor	Ratio	Net Promoter Score
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
FY24-Q2	60%	10%	6.00	50
FY24-Q4	61%	8%	7.62	53

- 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 an acceptable score?
 - 50 and above generally considered “excellent”; 30-49 considered “good”
 - Varies by industry



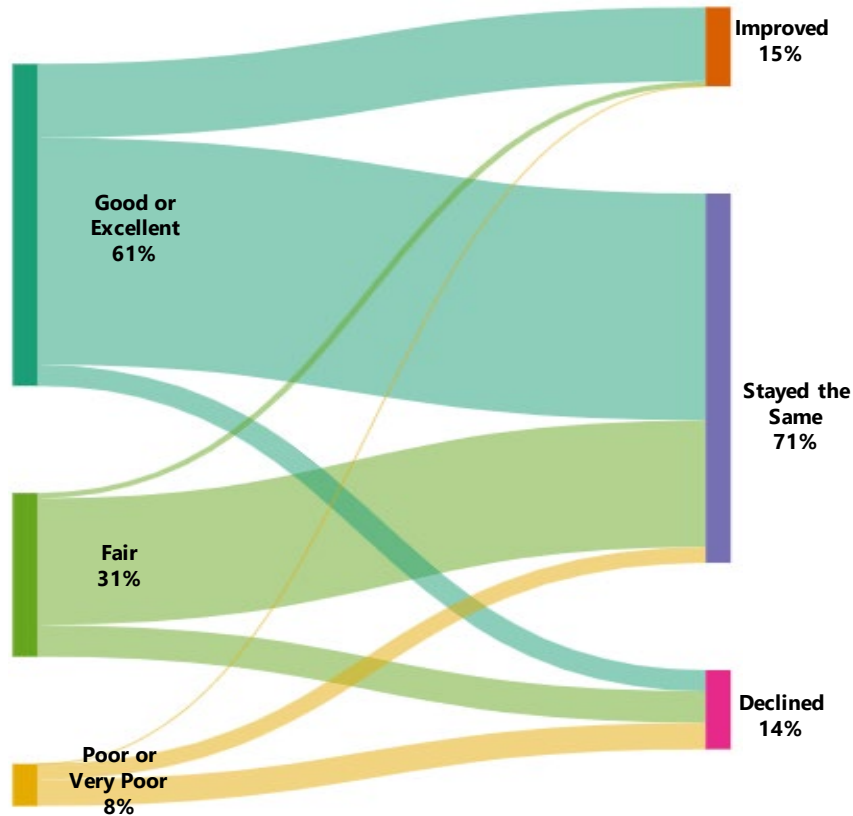
In the past 3 months, has overall examination quality declined, stayed the same, or improved?



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



15% of customers indicated that quality had slightly or significantly improved in the prior 3 months, and 14% said it had declined

- The percentage of customer citing quality is improving (15%) is the lowest level reported in the past 15 years. Historically, the average is 24%
- 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 FY24Q4
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 8 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

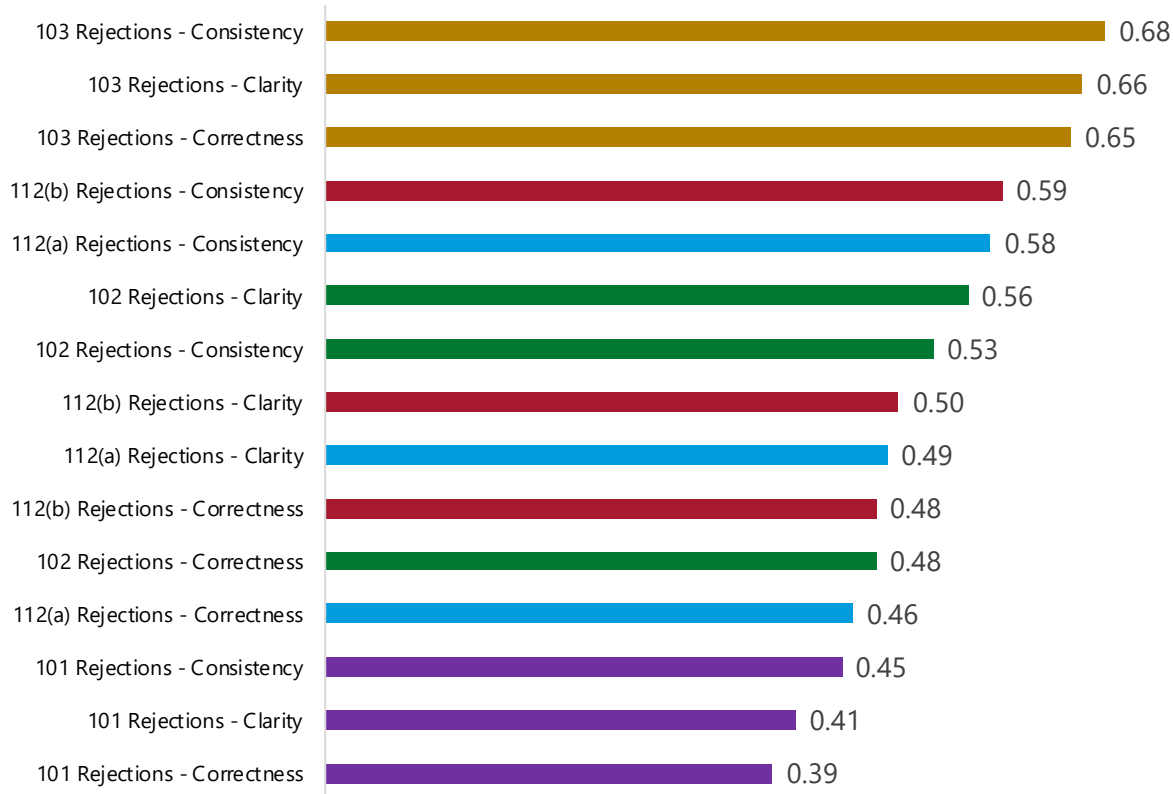
Impact of 112(b) rejections has steadily declined in recent survey waves



Source: Semi-annual External Quality Survey FY24Q4



Key drivers of overall quality



Source: Semi-annual External Quality Survey FY24Q4

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

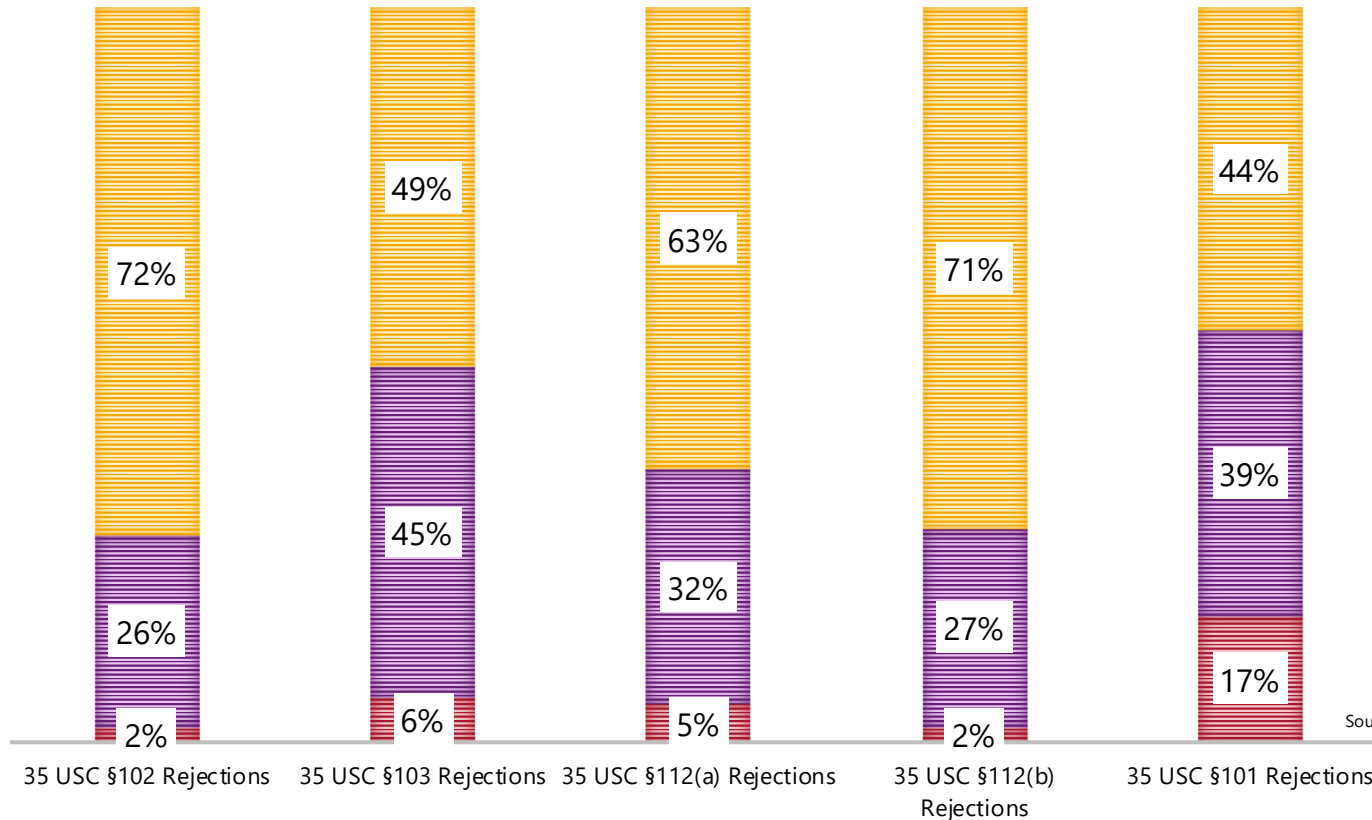
In general, there are minimal differences in the correlations. All rejection types are related to overall satisfaction, but as observed in prior surveys, 103 rejections were found to have the highest correlations with overall examination quality

Consistency tends to correlate more with overall perceptions than correctness or clarity



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

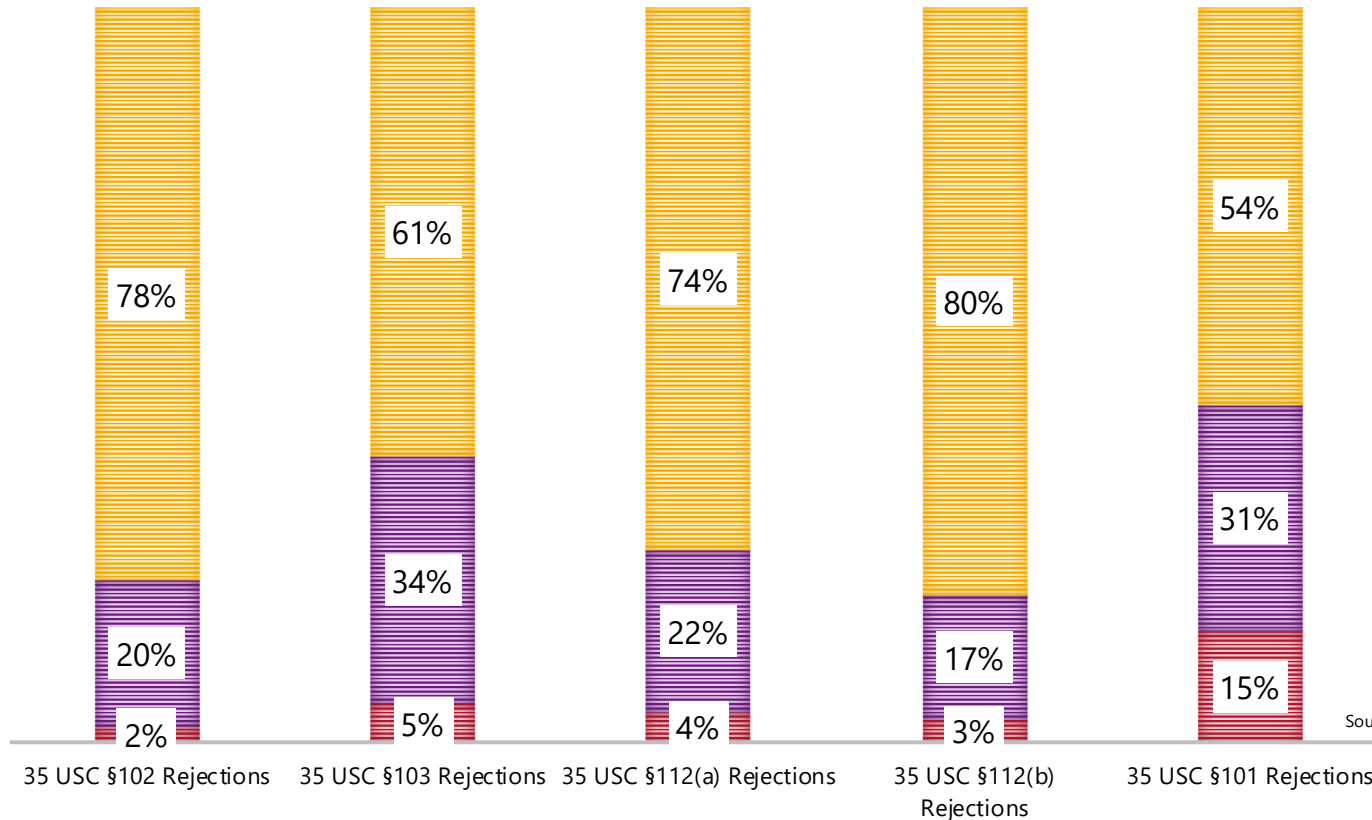
No significant changes from prior survey

Source: Semi-annual External Quality Survey FY24Q4



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

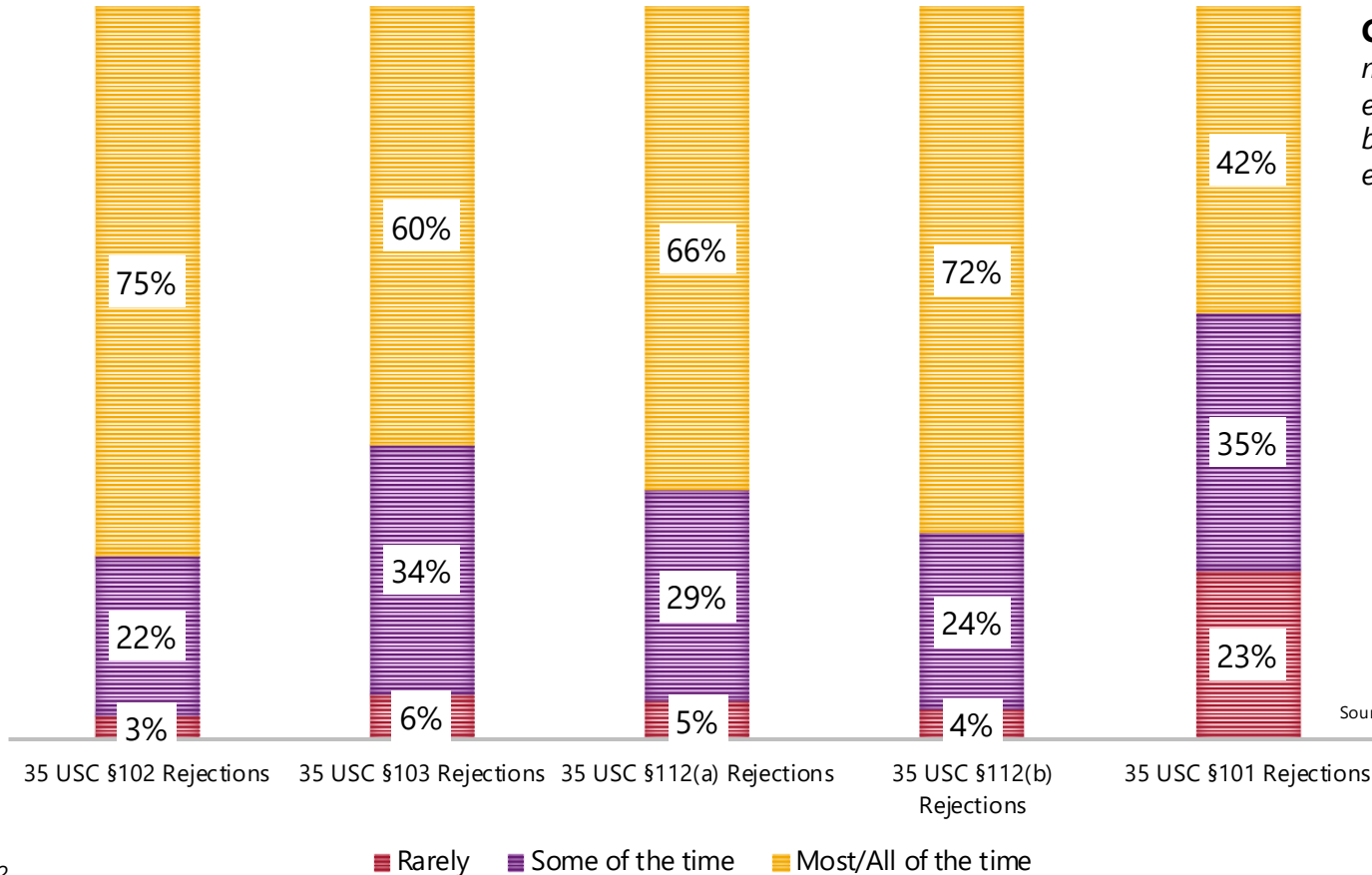
Source: Semi-annual External Quality Survey FY24Q4



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

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

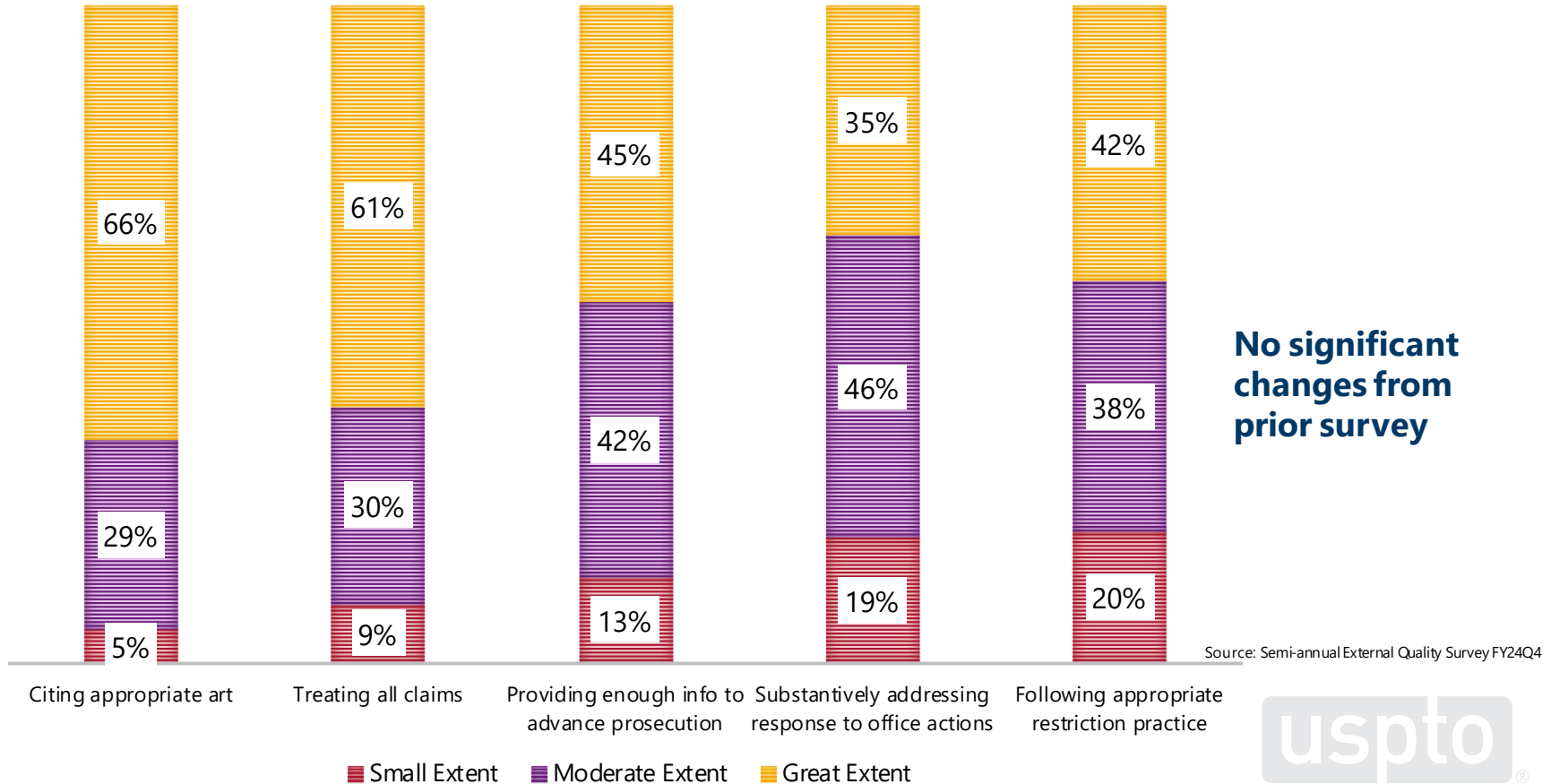
No significant changes from prior survey

Source: Semi-annual External Quality Survey FY24Q4

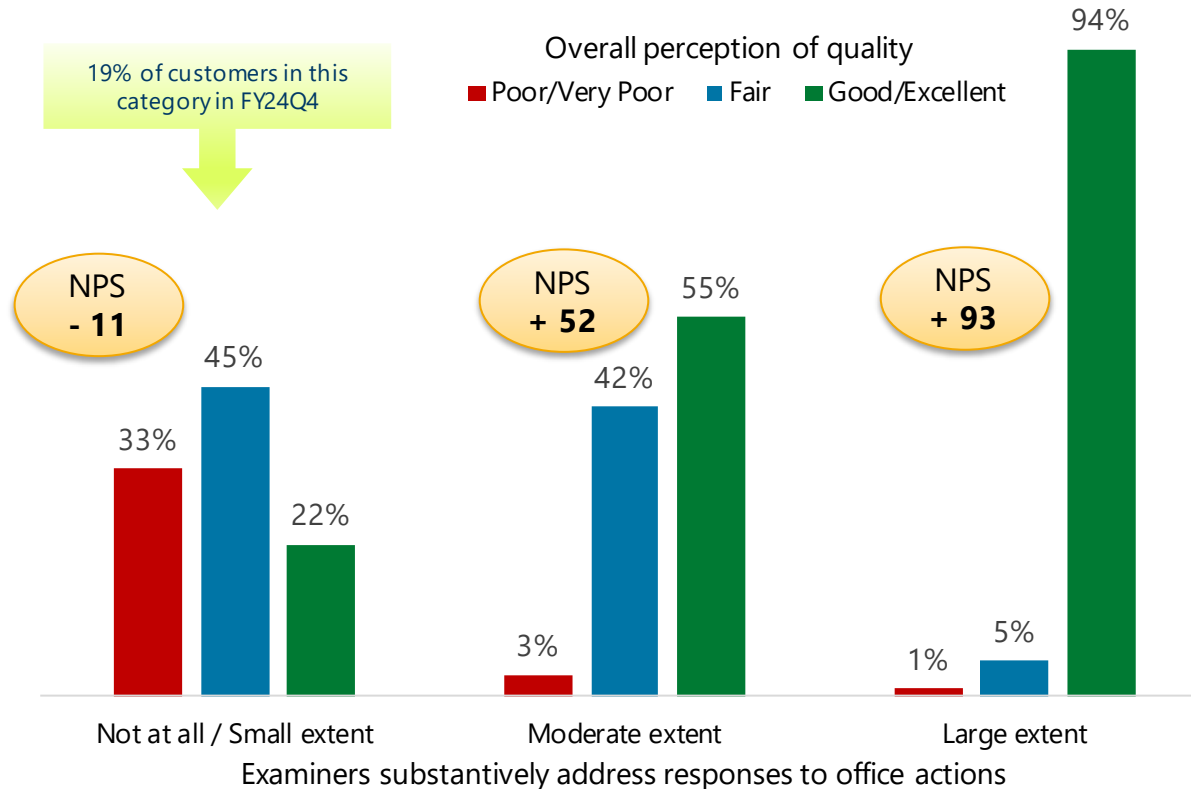


Adhere to rules and procedures

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



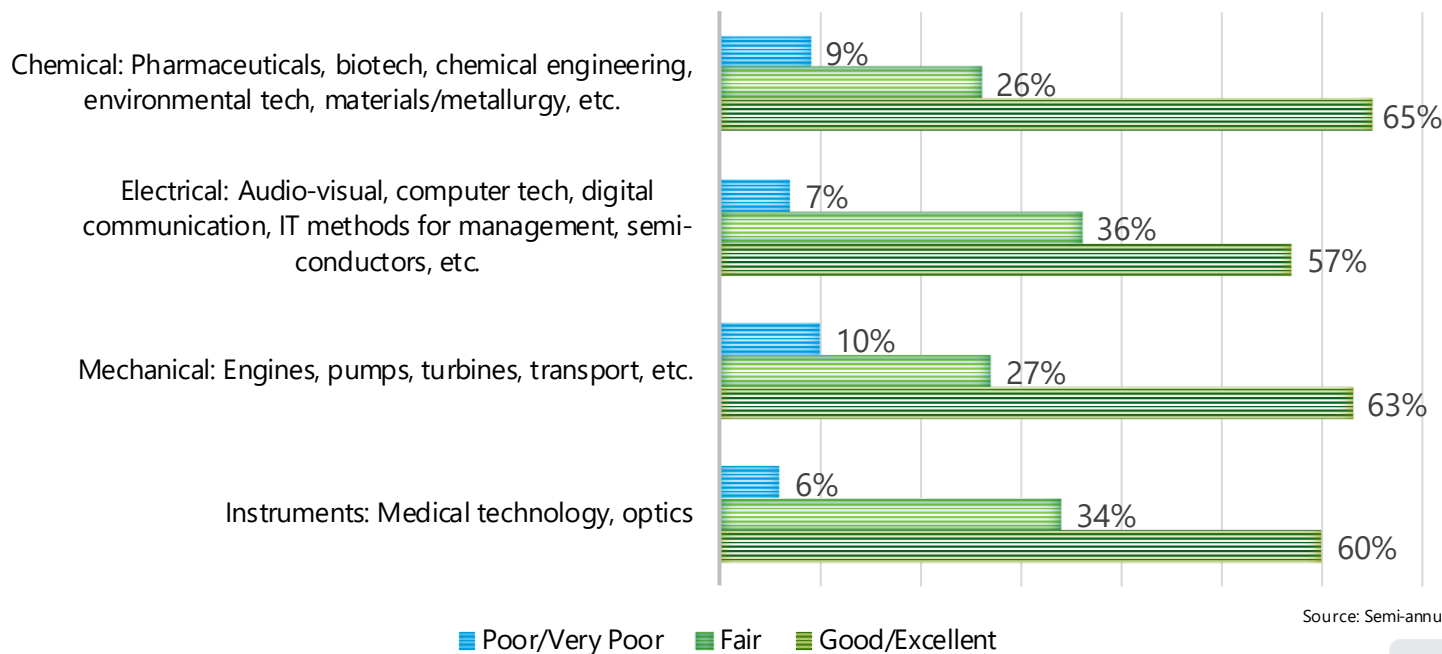
Source: Semi-annual External Quality Survey FY24Q4



Prior art

For examinations in the past 3 months, would you rate the overall quality of the prior art found by patent examiners as...

Quality of Prior Art by Technology: FY24Q4

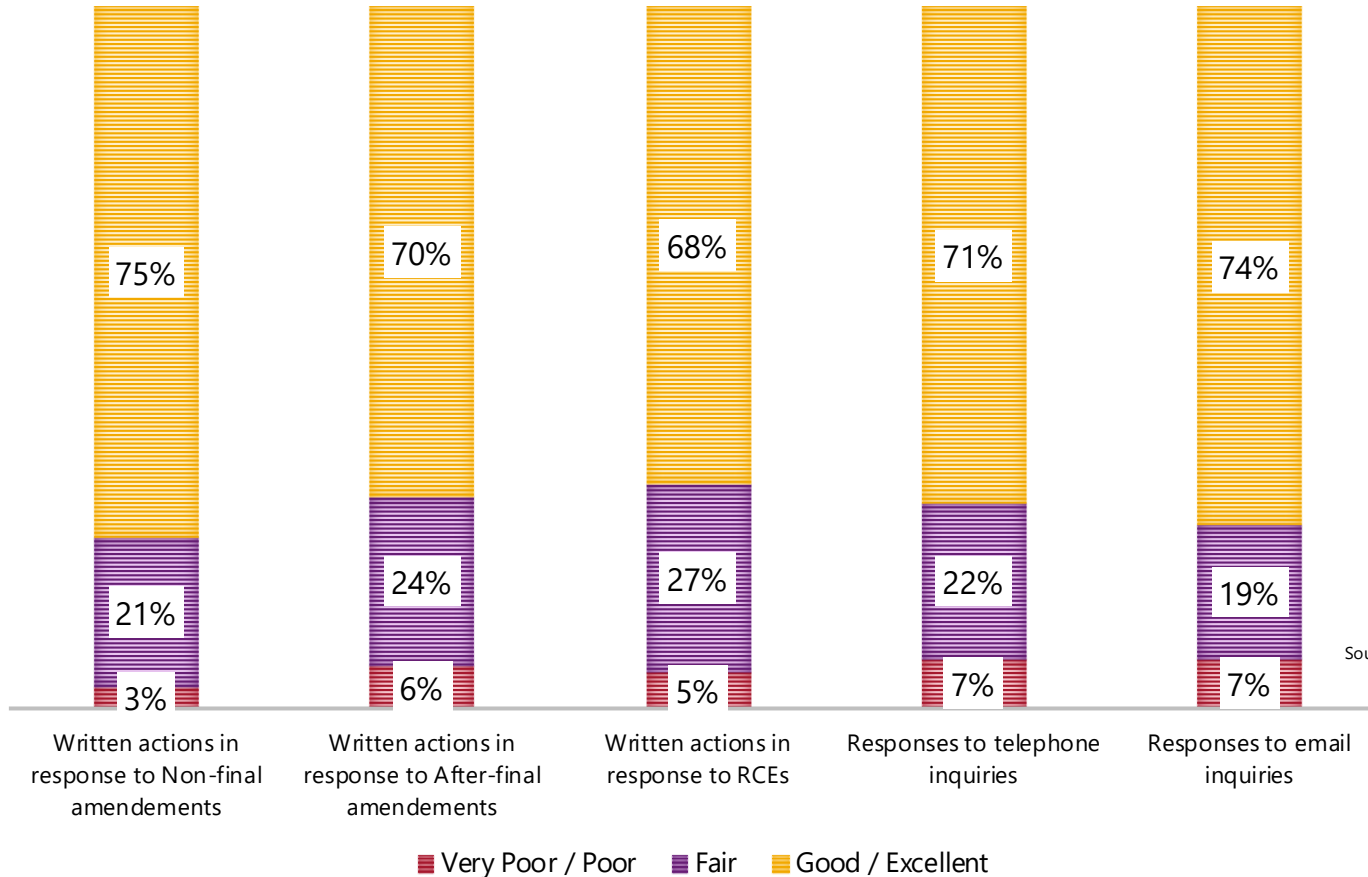


Source: Semi-annual External Quality Survey FY24Q4



Timeliness of written actions and responses

Over the past 3 months, how would you rate the following in terms of **timeliness**?



No significant changes from prior survey.

Source: Semi-annual External Quality Survey FY24Q4



Recent Office Action

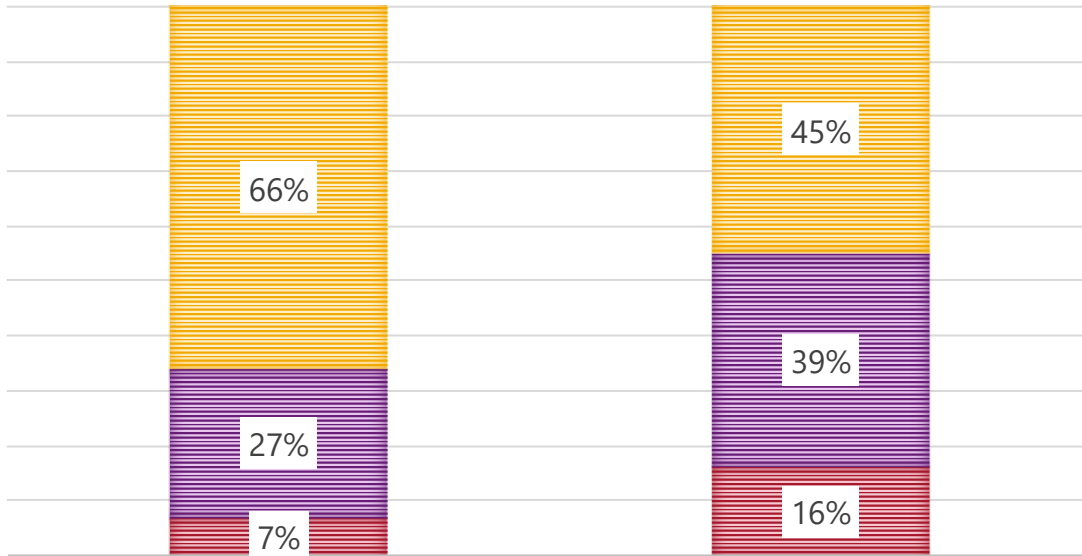
Recent office action

- New set of questions started in FY22Q4 to support:
 - customer requests to comment on a specific action as opposed to a period of 3 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

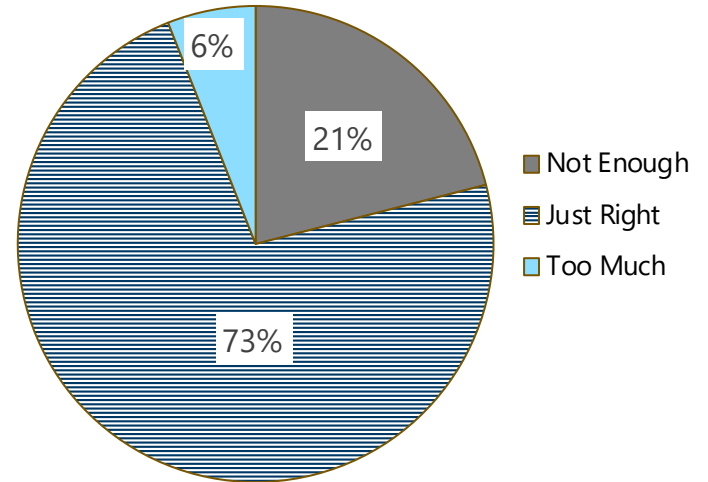
No significant changes from prior survey.



Examiner's understanding of the technology claimed

Legal position taken by the examiner

■ Poor/Very Poor ■ Fair ■ Good/Excellent



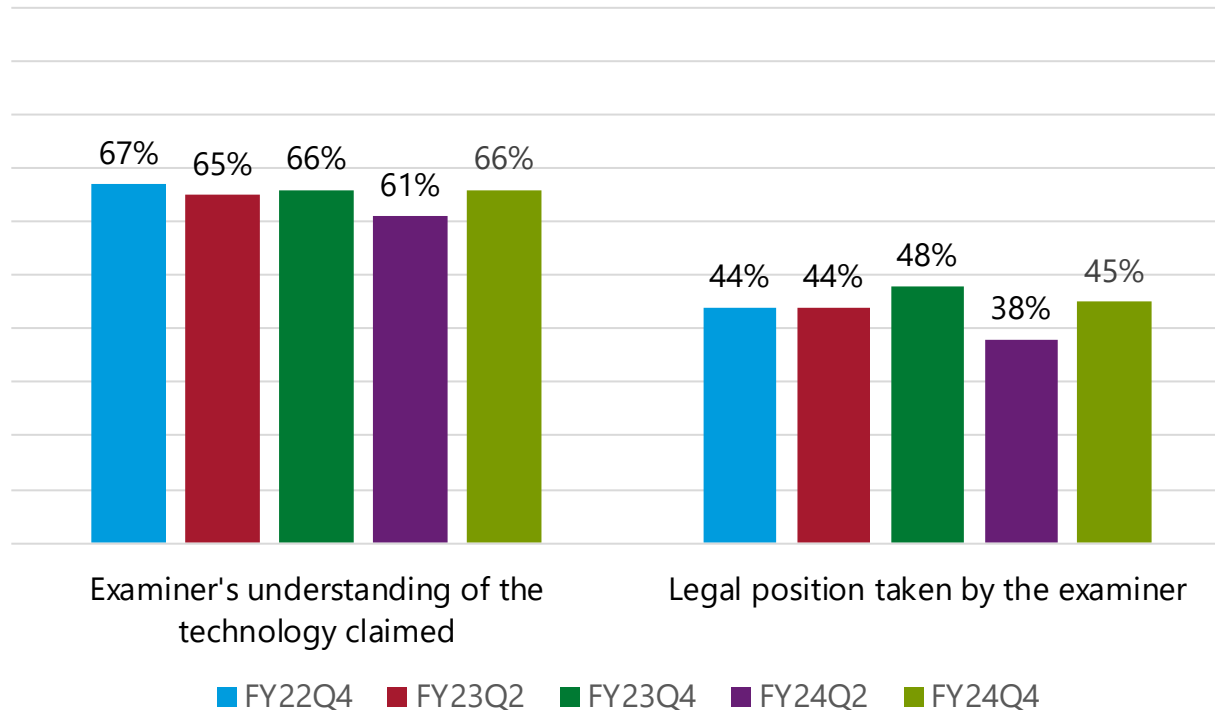
Amount of information received in office action

Source: Semi-annual External Quality Survey FY24Q4



Office action satisfaction trends

% Good or Excellent

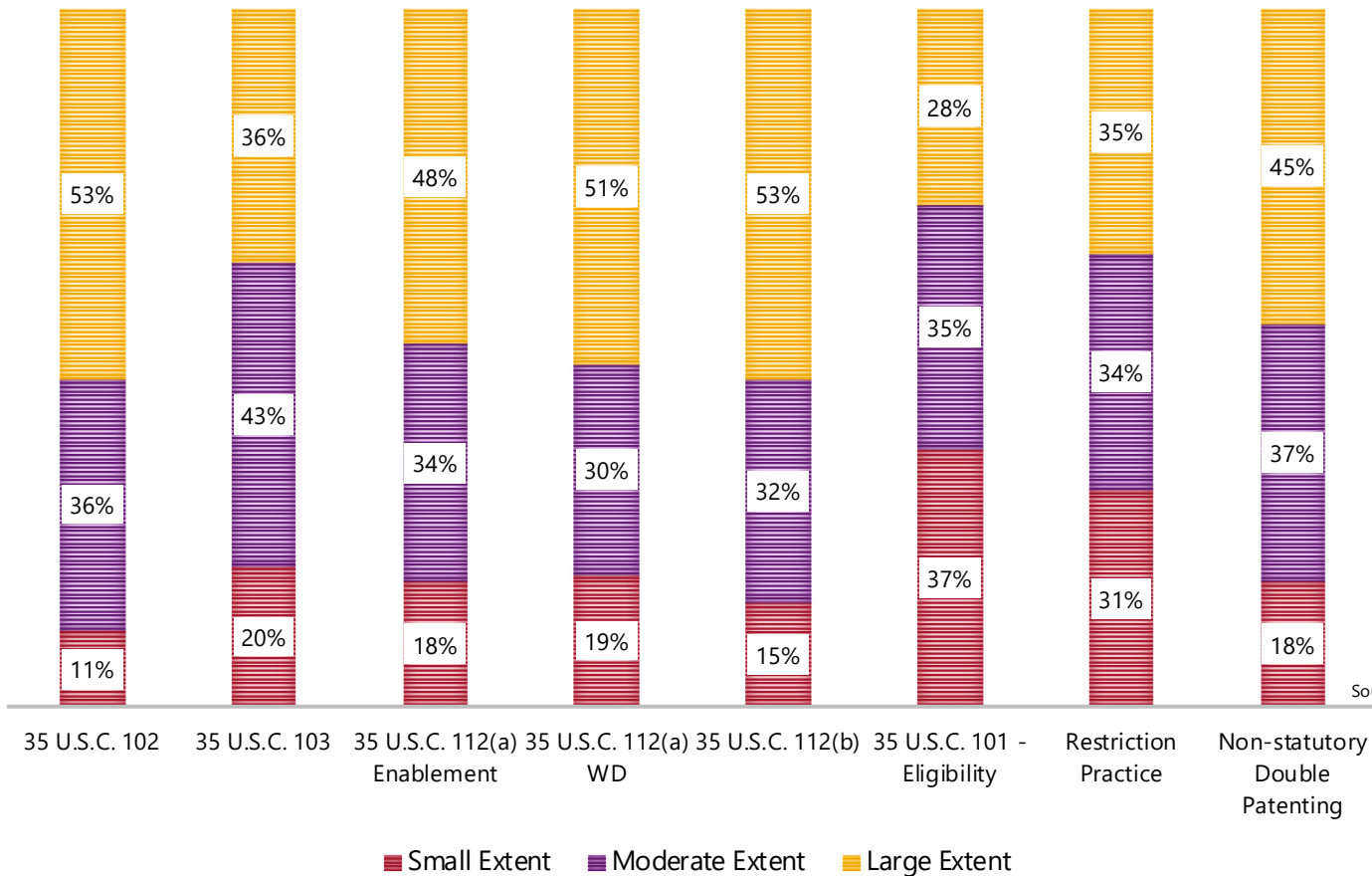


Source: Semi-annual External Quality Survey



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

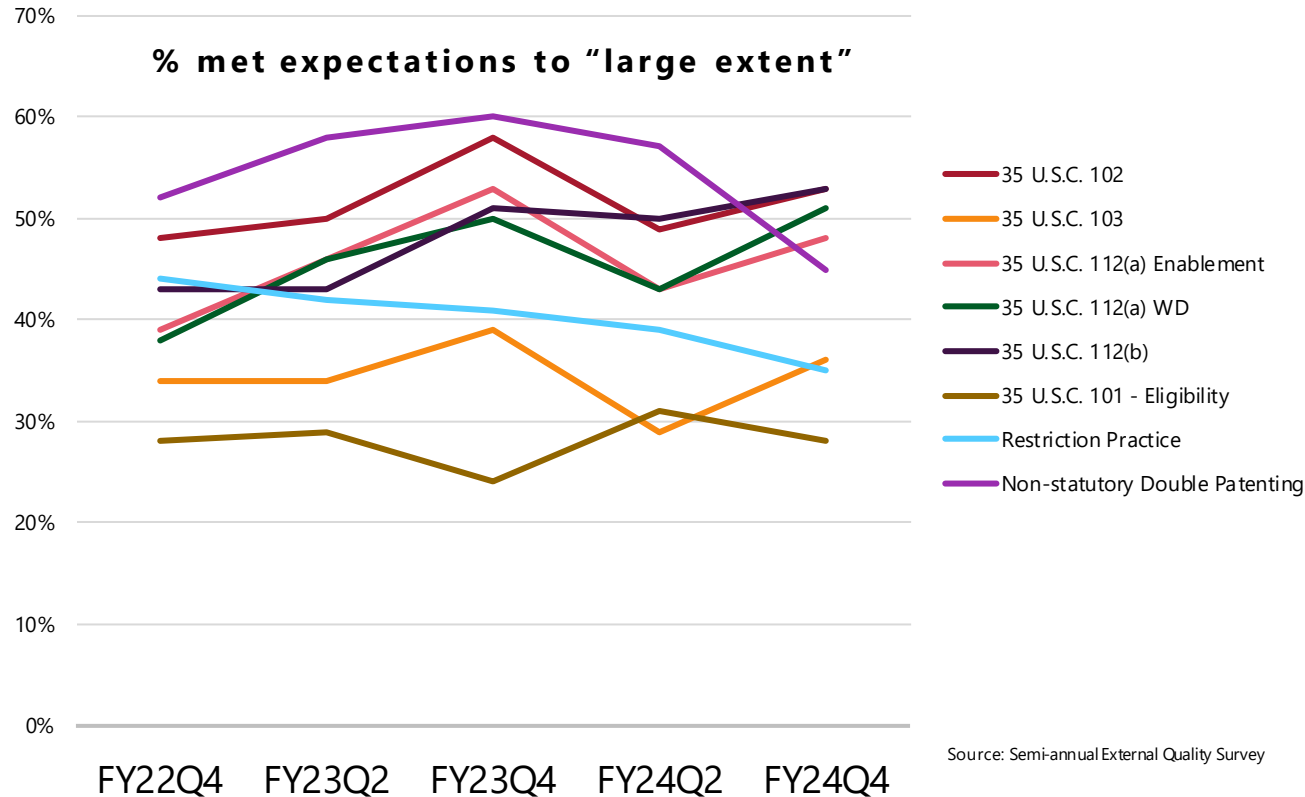
With respect to 102, 103, and 112 rejections, ability to meet customer expectations to a large extent increased by roughly 5% from prior survey

Source: Semi-annual External Quality Survey FY24Q4



Meeting expectations trends

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?

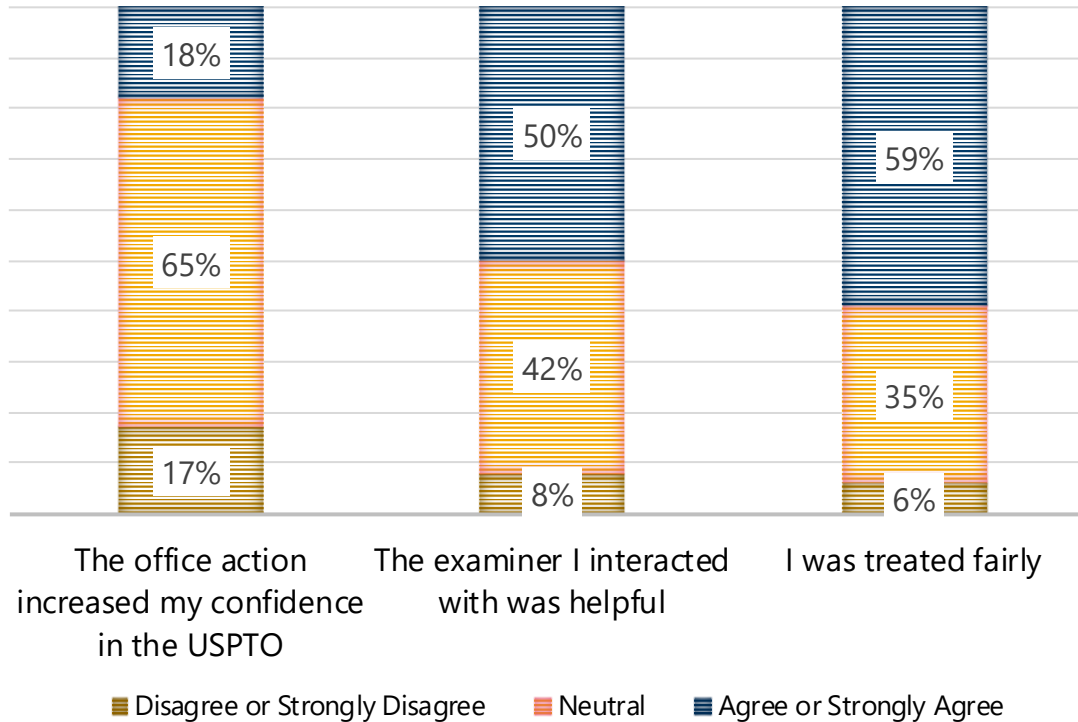


While many areas rebounded in the most recent survey, satisfaction with restriction practice and satisfaction with non-statutory double patenting rejections are continuing to trend down



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.

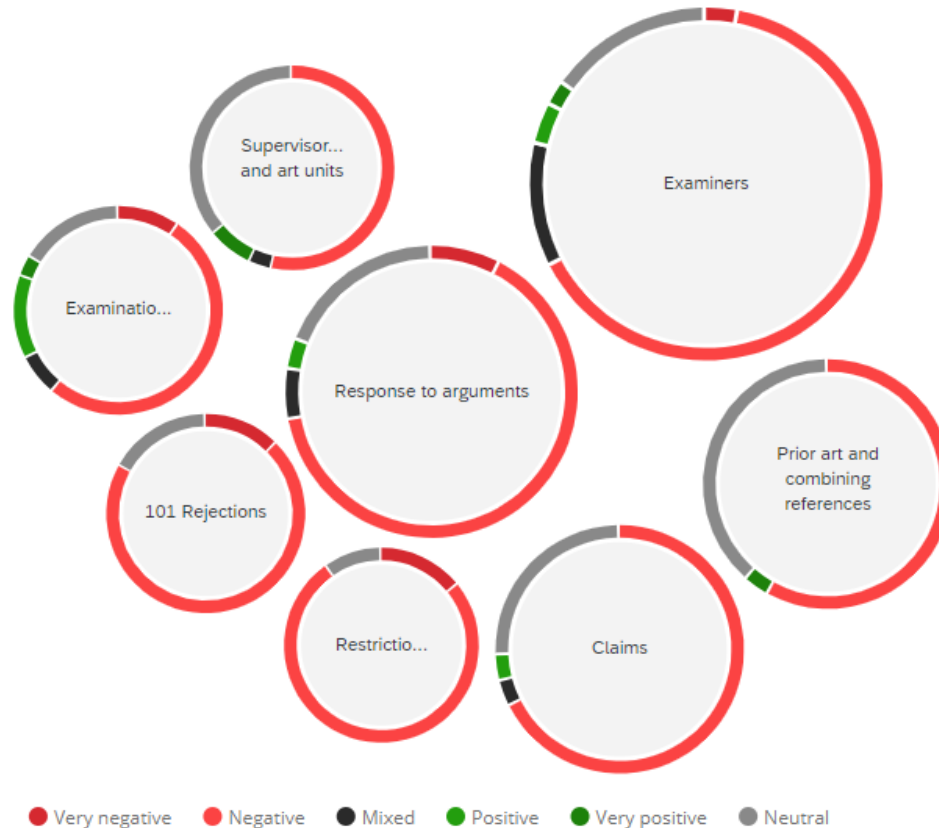
Source: Semi-annual External Quality Survey FY24Q4



Customer comments

Customer comments

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



Customer comments examples

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

Theme	Negative	Mixed	Positive
Examiners	<p>Examiners should be encouraged to work with applicants (and their representatives) to move cases along. Oftentimes it appears Examiners just do not want to allow a case, and their reasoning is often lacking. This only leaves appealing as a viable option. We should be working together as a team to figure out a way to accurately claim the novel aspects.</p> <p>The problems are due to inexperienced examiners who do not seem to appreciate they should work with the applicants to advance prosecution.</p> <p>An examiner yelled and insulted me and his primary examiner asked him to stand down. Truly a poor reflection on the examiner core.</p>	<p>Some examiners may have good technical and examination experience, while some don't. So, the quality of the examination varies between examiners.</p> <p>Patent examiners seem to be doing fine on the substantive issues, but the system around them is failing.</p>	<p>Overall, I am pleased with the quality of service provided by the USPTO. I think the vast majority of examiners that I have dealt with are very professional and reliable.</p> <p>I've had the privilege of dealing with some very helpful cooperative, & pleasant examiners recently - about "EPO level" good. I really like when they reach out to make prosecution decisions collaboratively rather than just sending out on an OA.</p>
Examination	<p>The way examinations are performed substantively is just a waste of client money on rejection which should not to have been made - transition to AI examinations!!!</p> <p>Examination is extremely inconsistent at the USPTO, which I believe is because examiners are judged more based on timeliness than on quality of their rejections.</p>	<p>This next comment is beyond the scope of the survey, but in my opinion, the biggest area of improvement at the PTO comes in the area of pre-examination or other formalities issues.</p>	<p>Expanded interview/telephone/email practice has GREATLY improved the efficiency of examination. This is not a concern; it is an expression of gratitude.</p> <p>Generally, I think the quality of examination is very good. I've been practicing just over 30 years, and I've noticed a distinct improvement in the past 5-7 years. I consider the quality of examination to be as good as it's been in my 30+ years.</p>



Customer comments examples

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

Theme	Negative	Mixed	Positive
Response to arguments	<p>Once a response to the OA is filed, in the next action the examiner typically ignores the applicant's arguments, and the rejection is often a "copy-paste" of the previous OA. The "Response to Arguments" section is also often quite incomplete.</p> <p>Examiners should be trained to be more succinct. This is generally not the situation with more experienced examiners, with office actions ranging from about 1-15 pages that achieve the same result.</p> <p>I debate whether this is due to a lack of foundational technical knowledge, limited time to "dig in" and really read the prior art (rather than latching onto similar terms found in the prior art without a true reading of the teachings), and/or an urge to find everything obvious and hold onto that position regardless of the arguments against it.</p>	<p>At least 10% of all responses that I write are in the form of educational statements, explaining what the law says (statutory, rules and case law) and how it should be applied. Most of these explanations are at a very basic level and are not obscure legal theory.</p>	<p>It is always appreciated and helpful when examiners provide options for advancing prosecution to applicants. This is true especially in light of the sometimes subjective nature of what any particular examiner would like to see in terms of issues like 101 rejections and 112(b) rejections.</p> <p>Overall, examiners are open to discussion and moving things forward, and I generally like working with the majority of examiners I encounter.</p>

Customer comments examples

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

Theme	Negative	Mixed	Positive
<p>Prior art and combining references</p>	<p>The rationale for combining references under 103 is a joke. They are using hindsight bias to the extreme and using applicant claims as a blueprint for their motivation to combine.</p> <p>In many 103 rejections, only a superficial rationale for combining references (e.g., the references belong to the same technical field) is provided, and no effort is made to show how the elements found disclosed in the references can be combined, as a technical matter, to teach the invention.</p> <p>I'm seeing more and more 103 rejections with no citation to the art to support the Examiner's rational underpinning. Instead, Examiners are simply making conclusory statements. More importantly, examiners are not withdrawing their rejections when this error is pointed out.</p> <p>My biggest frustrations are with 1) the overbroad application of the broadest reasonable construction rule and 2) the combination references based on a word search.</p>	<p>*none*</p>	<p>*none*</p>
<p>Supervisors and art units</p>	<p>The USPTO must have access to its examiners data. Those with horrible allowance rates compared to art unit averages should be reviewed internally within the USPTO. They cost applicants a lot of time and money.</p> <p>There is no mechanism to remove an examiner from cases in which they lack appropriate technical expertise, or they show bias.</p> <p>Consistency seems to be a big issue in the art units I deal with.</p>	<p>*none*</p>	<p>*none*</p>



FY24Q4 Takeaways

- Quality Net Promoter Score (NPS) is 53 and above targeted performance
 - Non-significant change from prior survey
 - Marked the seventh consecutive survey period where overall quality was rated 60% or more good or excellent. This level of achievement was achieved only one time in 30 administrations of the survey prior to FY2021
 - Seven (7) customers rate quality as good or excellent for every single customer that reports quality as poor or very poor
- A large majority (71%) of customers indicated quality had stayed the same over the past three (3) months
 - Similar proportions cited improvement (15%) or a decline (14%) in quality
- If customers say examiners substantively address responses to office actions to a “large extent”, over 90% report quality as good or excellent; when they say “small extent”, only 22% report quality as good or excellent
 - Roughly 20% of customers report dissatisfaction with “addressing responses to Office actions”
- 35 USC 103 rejections remain the largest opportunity for improvement
 - Only about half (49%) of customers state examiners are correct most or all of the time
 - Customers that report examiners being correct most or all of the time are eight (8) times more likely to rate overall quality as good or excellent
 - 36% of customers stated their most recent 103 rejection met their expectations to a large extent; an increase of 7 percentage points from the FY24Q2 survey. One in five (20%) said the 103 rejection failed to even moderately meet expectations

We want to hear from you.

Thank you for attending today's Public Engagement Partnership meeting. Your input is important to us for planning future meetings in this series. Please complete a post-event survey by scanning this QR code or by entering the link below in the web browser.



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