Enhanced First Action Interview (EFAI) Pilot Program

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Pilot Program Objectives

- Promote personal interviews prior to issuance of a first Office action on the merits
- Advance examination of applications once taken up in turn
- Facilitate resolution of issues for timely disposition of an application
- Give applicants more options in regards to the amount of notice and procedure needed
Topics

• Application Eligibility Criteria
• Application Requirements
• Evaluation of Request
• Pre-Interview Procedures
• The Interview
• Post Interview Procedures
• Review Enhanced First Action Interview
• Changes
Application Eligibility

- Utility applications which are:
  - Applications filed on or before November 1, 2006, and assigned to workgroup 1610 (art units 161X).
  - Applications filed on or before October 1, 2006, and assigned to art unit 1795.
  - Applications filed on or before February 1, 2008, and assigned to workgroups 2150 and 2160 (art units 215X and 216X).
  - Applications filed on or before July 1, 2008, and assigned to workgroups 2440 and 2450 (art units 244X and 245X).
  - Applications filed on or before March 1, 2007, and assigned to art unit 2617.
  - Applications filed on or before March 1, 2008, and assigned to art units 2811-2815, 2818, 2822-23, 2826, 2891-2895.
  - Applications filed on or before December 1, 2007, and assigned to art unit 3671.
  - Applications filed on or before January 1, 2008, and assigned to art unit 3672.
Application Eligibility (continued)

- Utility applications which are:
  - Applications filed on or before November 1, 2007, and assigned to art unit 3673.
  - Applications filed on or before February 1, 2008, and assigned to art unit 3676.
  - Applications filed on or before July 1, 2007, and assigned to art units 3677 and 3679.
  - Applications filed on or before May 1, 2006, and assigned to art unit 3735.
  - Applications filed on or before April 1, 2007, and assigned to art unit 3736.
  - Applications filed on or before August 1, 2006, and assigned to art units 3737 and 3768.
  - Applications filed on or before September 1, 2006, and assigned to art unit 3739.
  - Applications filed on or before September 1, 2007, and assigned to art units 3762 and 3766.
  - Applications filed on or before September 1, 2006, and assigned to art unit 3769.
Application Requirements

• Must be a non-reissue, non-provisional utility application under 35 USC 111(a) or national stage application under 35 USC 371

• Must contain three or fewer independent claims and twenty or fewer total claims

• Must not contain any multiple dependent claims

• Must claim only a single invention

• Must not have a first Office action on the merits as of the date Applicant requests participation in program
Evaluation of Request

- Is there a Notice of Non-compliance?
  - Yes, then determine if Applicant has timely cured the request (30 days from notice)
  - If Applicant has not timely cured then examination in accordance with standard practices and procedures

- Verify propriety of the Request
  - No FAOM
  - No more than 3 independent and 20 total claims
  - No multiple dependent claims
  - Meets Group I & II eligibility requirements

- If request is not proper then forward application to the appropriate TSS team leader for generation of a notice of non-compliance
Pre-Interview Procedures

Examiner will:

• Follow current restriction policy and practice
• Conduct a prior art search
• Follow current policy and practice if a determination of allowability is made
• Issue a Pre-interview Communication (PTOL-413FP) setting a one month (30 day) time period to request or decline an interview
• The time period to respond to the Pre-interview Communication maybe extended for one additional month (30 days).
Applicant will:

- Follow current restriction policy and practice
  - Except that applicant must elect without traverse in order to stay in the program

- Timely respond to the Pre-Interview Communication
  - A single one month (30 days) extension is available
  - A failure to timely respond is treated as a request not to have the interview

- Properly respond to the Pre-Interview Communication by filing one of the following:
  - Request not to have the interview;
  - “Applicant Initiated Interview Request” form (PTOL-413A) along with a proposed amendment and/or arguments via EFS-Web, and conduct the interview within 60 days from the filing of the Applicant Initiated Interview Request; or
  - Request not to have the interview AND submit a reply in accordance with 37 CFR 1.111
The Interview

• Conducted in accordance with current policy and practice (See MPEP 713):
  – Assisting the examiner in obtaining a better understanding of the claimed invention
  – Establishing the relevant state of the art
  – Discussing all relevant prior art teachings
  – Focusing on what claimed features establish patentability over the prior art
  – Discussing proposed amendments or remarks
  – Applicant may request waiver of the First Action Interview-Office Action and enter a proposed amendment that complies with 37 CFR 1.111
Interview Produces Agreement on Allowability

Examiner will:

• Document the substance of the interview and reasons for allowance on interview summary (PTOL-413)
• Note and attach all relevant amendments and/or arguments
• Generate a notice of allowability (PTOL-37), if applicant requests an unofficial courtesy copy.
• Attach a copy of a completed copy of the Applicant Initiated Interview Request form
• Make all documents and forms of record
• Perform an updated search and interference review before issuing an official notice of allowability
Interview does not Produce Agreement on Allowability

Examiner will:

• Document all requirements, objections and rejections in a First Action Interview Office Action (PTOL-413FA)
• Complete an interview summary (PTOL-413)
• Note and attach all relevant amendments and/or arguments
• Attach a copy of a completed copy of the Applicant Initiated Interview Request form
• Make all documents and forms of record
• Upon request provide unofficial courtesy copies
• Upon request for waiver of the First Action Interview Office Action enter a proposed amendment that complies with 37 CFR 1.111
Post Interview Procedures

• Applicants must timely respond to all outstanding issues in accordance with current policies and practice

• Applicants must make the substance of the interview of record when filing a timely response

• Examiners must proceed in accordance with current examination procedures and also insure the substance of the interview made of record by applicants is accurate
# Key Changes in EFAI Pilot

## Initial FAI Pilot
- Followed Standard Restriction Practice
- Response period to Pre-interview Communication non-extendable
- Cannot waive the First Action Interview Office Action

## Enhanced FAI Pilot
- Requires Election without Traverse
- Response period to Pre-interview Communication extendable for one month
- May waive interview and the First Action Interview Office Action, and submit response to Pre-interview communication
Key Changes in EFAI Pilot (cont.)

**Initial FAI Pilot**
- Application abandoned if applicant does not timely response to the Pre-interview communication
- Applicant must wait for notification of a First Action Interview Office Action after the interview before submitting a response

**Enhanced FAI Pilot**
- Failure to timely respond to the Pre-interview Communication treated as a waiver to conduct interview
- Applicant may waive notification of a First Action Interview Office Action and submit a response at the conclusion of the interview
Flowchart of EFAI Procedure

Enhanced First Action Interview
Combined Process

TAB 1
Notice of improper Request

TAB 2
Restriction

TAB 3
Request to Join FAI pilot

TAB 4
Search by Examiner

TAB 5
Pre-interview Communication

TAB 6
Interview Office Action

Proposed Amendments
Written in accord with 37 CFR 1.137(j)

Current Office policy, practice and procedures (e.g., http://www.USPTO.gov)

August 17, 2009
Contact Information

• Pilot Program Points of Contact:
  – For EFS-Web questions contact the EBC at 866-217-9197
  – For Notice/Legal questions contact Joseph Weiss OPLA 571-272-7759 or first.action.interview@uspto.gov
For Program questions contact:

- Tech Center 1600 – Yvonne Eyler
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Thank You

Questions?