

#### **Episode 04:**

Using Examiner Analytics to Improve Prosecution Efficiency and Develop Well-informed, Data-Driven Prosecution Decisions and Strategy

# Patent Analytics Webinar Series

### **8–Episode Webinar Series**



**Episode 01** - Techniques and Analytics for Identifying Valuable Patents and Patents to Abandon **Thursday, April 16, 2020 at 12:00 PM CT** 

Episode 02 - Using Patent Landscapes to Develop IPRich Products and Valuable Patent PositionsThursday, April 30, 2020 at 12:00 PM CT

Episode 03 - Using Prosecution Analytics to Improve
Prosecution Efficiency and Identify Wasteful,
Unproductive Prosecution Spending
Thursday, May 14, 2020 at 12:00 PM CT

**Episode 04** - Using Examiner Analytics to Improve Prosecution Efficiency and Develop Well-informed, Data-Driven Prosecution Decisions and Strategy **Thursday, May 28, 2020 at 12:00 PM CT**  Episode 05 - Best Practices for Developing Reliable Freedomto- Operate Landscapes and Advanced Techniques for Interactive, Reusable FTO Mapping
Thursday, June 11, 2020 at 12:00 PM CT

Episode 06 - Using White Space Maps to Identify Open Spaces in the Patent LandscapeThursday, June 25, 2020 at 12:00 PM CT

Episode 07 - Using a Patent Analytics Dashboard for IP Strategy,Competitor Surveillance, and Portfolio ManagementThursday, July 9, 2020 at 12:00 PM CT

**Episode 08** - Using Patent Prosecution History Reports to Increase Prosecution Efficiency and Avoid Unintended Estoppel **Thursday, July 23, 2020 at 12:00 PM CT** 

### **Today's Presenters...**





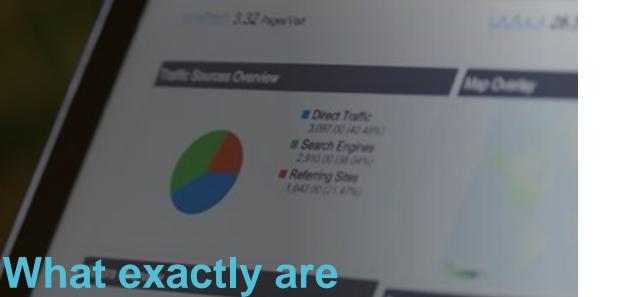
**Steve Lundberg** Principal & Chief Innovation Officer Schwegman Lundberg & Woessner

**Thomas Marlow** President, Renewals Black Hills IP Former Chief Patent Counsel of Fairchild Semiconductor **Russ Slifer** CEO, Black Hills IP Former USPTO Deputy Director Mark Stignani Analytics Chair & Firm Compliance Officer Schwegman Lundberg & Woessner Former Chief Patent Counsel Thomson

**Garrett Hall** 

Schwegman Lundberg & Woessner

Principal



# Examiner Analytics?

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Examiner Analytics are review and analysis of patent prosecution data around PTO tech centers, Art Units, individual examiner statistics

### What you will learn today



- Who uses examiner analytics
- When they are used
- Strategic insight provided
- Different types of examiner analytics
- How examiner analytics are generated
- Overview of tools



## Portfolio Examiner Analytics Key Uses

### Some key uses:

- Cost projections
- Outcome management
- Art Unit targeting
- Appeal v. RCE decisions
- Continuation decisions
- New application targeting

### **Typical users:**

- Corporate Prosecution management
- Law firm management

### What Examiner Metrics Can We Look At?



### **Financial Stats**

Cost to prosecute

### **Company Stats**

- Company Success Rates
- Competitor Success Rates
- Law Firm Success Rates

### **Examiner Stats**

- Number of office actions
- Types of office actions
- RCE behavior
- OA behavior
- Allowance behavior
- End-of-quarter surge

### What Can the Examiner Stats Tell Us, and Not Tell Us?



### Things we can learn

- Success/Abandon Rates
- Examiner Education
- Examiner Experience
- Examiner Tendencies
- Best Appeal Strategy
- Budgeting
- Prosecution Decisions

### Things we can't tell directly

- Quality of examination
  - Will be in line with statistics
- Outcome of examination
  - Will be in line with statistics

SLW does not recommend discussing with examiners their statistics\*

\*Results may vary....

### **Useful Examiner Metrics**



### **PTO(Quantitative)**

- Art Unit v Examiner
- OA success rates
- OA Counts / Av OA per matter
- Interviews / Success Factors
- RCE Counts / Av RCE per Matter
- Extensions Taken
- Restrictions
- Appeal Win Rate
- Rejection Stats (101/102/103)

### Firm to Client (Qualitative)

- Cost to Grant (Original Filing)
  - Filing+Fees+OA+RCE+Other
- CTG(Continuation)
- Claim Coverage v. Cost
- Allowance Rate v. Claim Scope
- Competitor Impact

### **Caveat: Examiners and Statistics**



- Consider Analytics as starting point with your client (Look for the outliers)
- Examiner tools have some variability in their statistical views
- Examiner experiences have a degree of subjectivity that statistics do not measure
- Do not make the Examiner statistics self-fulfilling

### **Grant Rate and Difficult Ranking**



3-Year Grant rate:	87% over 303 cases
Difficulty: 🔞	Very Easy
Difficulty Percentile: 🚱	13th

### **Top Level Review**

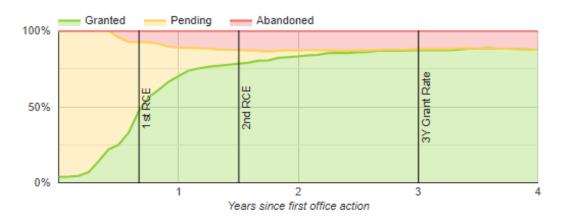
- Grant Rate/Throughput
- Statistical Comparison to Others
- Art Unit

### Grant Rate Timeline & Art Unit Comparison Easy Examiner



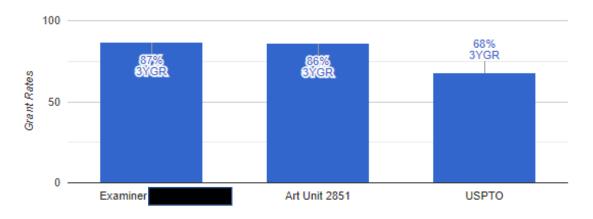
#### **Grant Rate Timeline**

Below is the grant rate timeline for Examiner where the timeline is relative to the date of the first office action. The three-year grant rate is the percentage of applications granted at three years after the first office action.



#### Comparison with Art Unit 2851

Examiner grant rate is higher than that of Art Unit 2851 and higher than that of the USPTO.

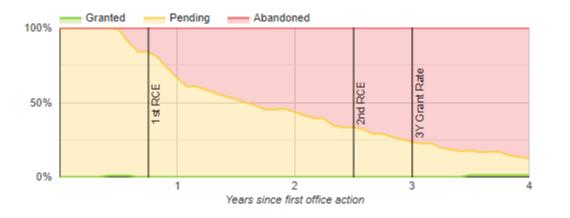


### Grant Rate Timeline & Art Unit Comparison Difficult Examiner



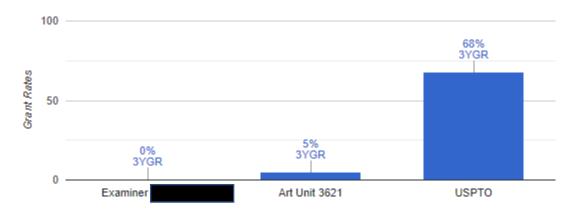
#### **Grant Rate Timeline**

Below is the grant rate timeline for Examiner where the timeline is relative to the date of the first office action. The three-year grant rate is the percentage of applications granted at three years after the first office action.



#### Comparison with Art Unit 3621

Examiner grant rate is lower than that of Art Unit 3621 and lower than that of the USPTO.

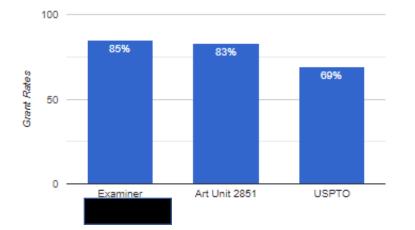


### **Interview Benefit**



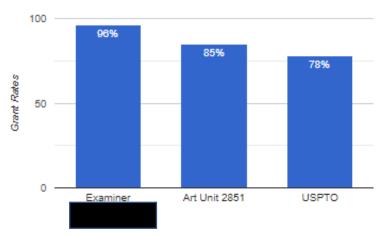
#### **Grant Rate without Interview**

Examiner has granted 211 of 247 cases without any applicant-requested interviews for a grant rate of 85%.



#### **Grant Rate with Interview**

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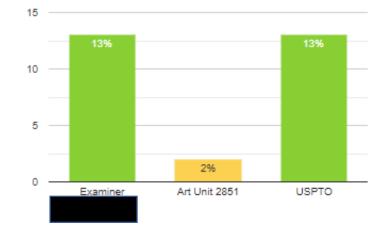


#### Interview Benefit

With Examiner

conducting an

interview increases your chance of getting a patent granted by 13%.

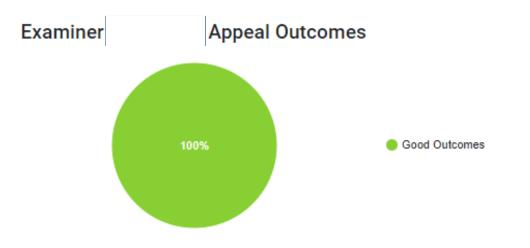


### Appeal Outcomes – Should I Appeal? Easy Examiner

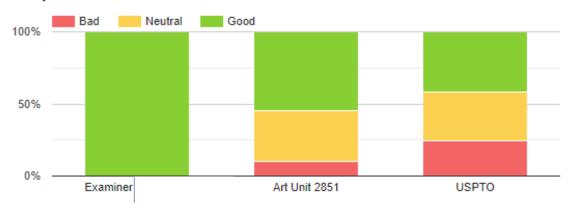
Of the 5 appeals for Examiner 2 have outcomes for comparison. We excluded 3 appeals that ended with an RCE or abandonment and 0 appeals that are still pending.

Of the 2 appeals with outcomes:

- 100% had good outcomes (2 appeals) where the examiner was reversed or affirmed in part or the examiner otherwise allowed claims
- 0% had neutral outcomes (0 appeals) where prosecution was reopened
- 0% had bad outcomes (0 appeals) where the examiner was affirmed



Comparison with Art Unit 2851





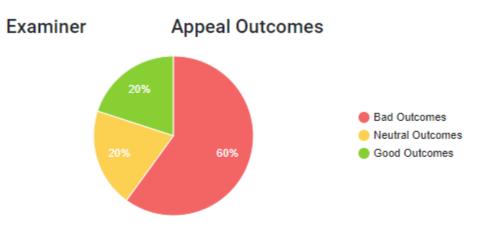
### Appeal Outcomes – Should I Appeal? Difficult Examiner



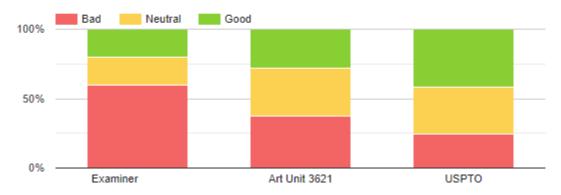
Of the 13 appeals for Examiner 5 have outcomes for comparison. We excluded 2 appeals that ended with an RCE or abandonment and 6 appeals that are still pending.

Of the 5 appeals with outcomes:

- 20% had good outcomes (1 appeals) where the examiner was reversed or affirmed in part or the examiner otherwise allowed claims
- 20% had neutral outcomes (1 appeals) where prosecution was reopened
- 60% had bad outcomes (3 appeals) where the examiner was affirmed

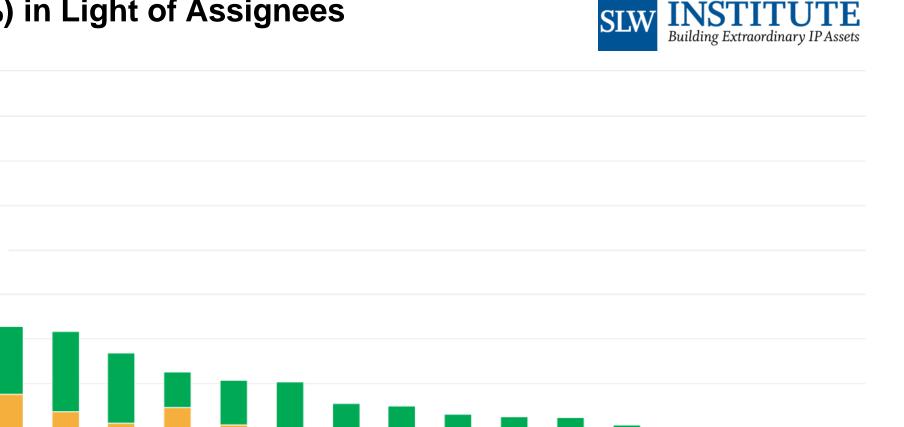


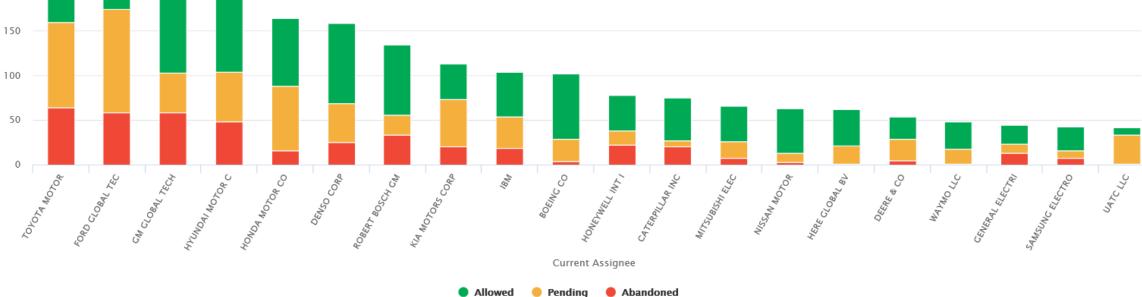
Comparison with Art Unit 3621



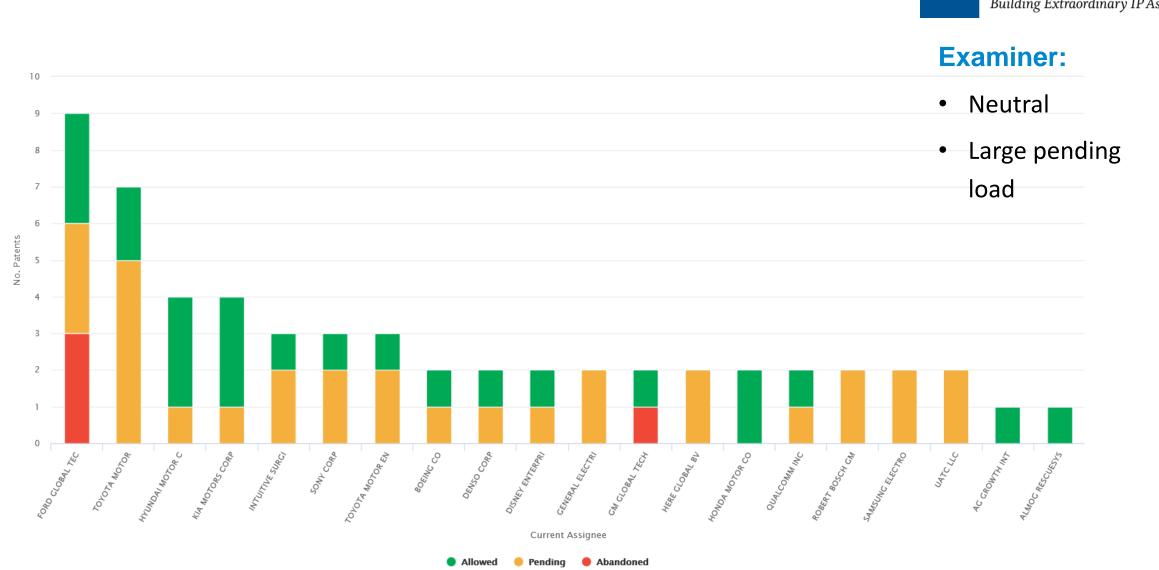
### Art Unit 3665 (76%) in Light of Assignees

No. Patents





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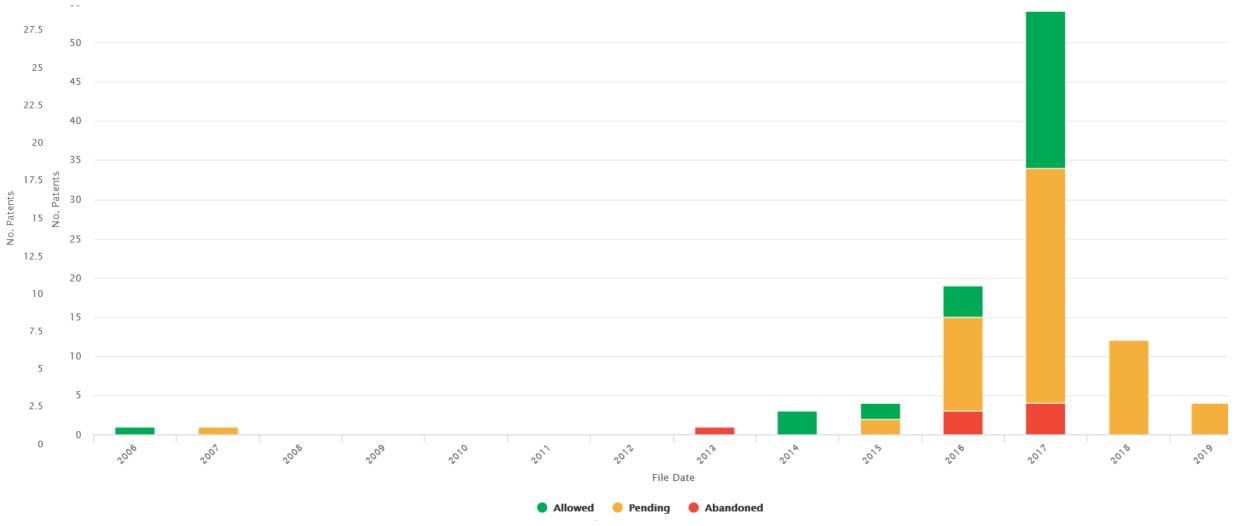


#### Examiner (68%) in Light of Assignees

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### **Annual Examiner Performance**

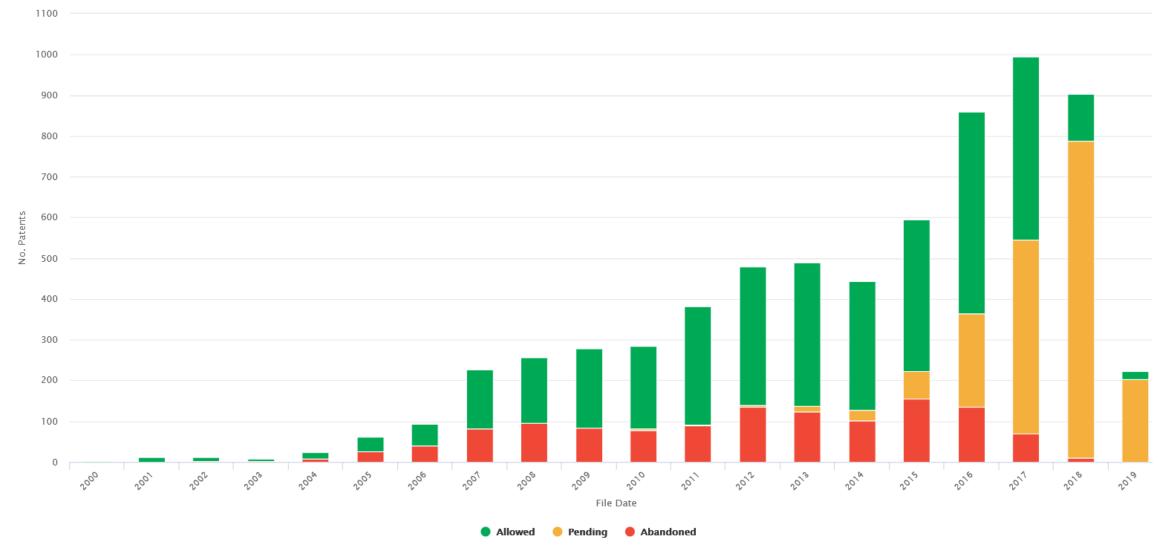




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### **Annual Art Unit Performance (78%)**





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### Examiner (68%) v. Art Unit 3665 (73)%



ΔCL 71

### Pendency

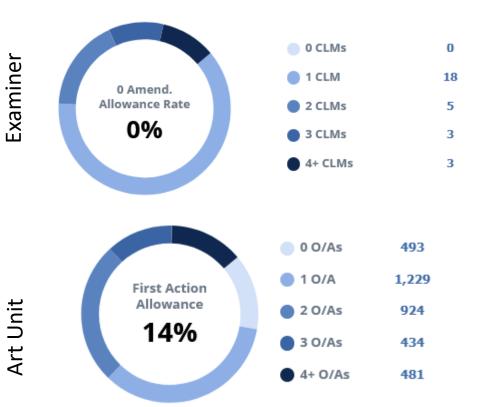


### Amendments



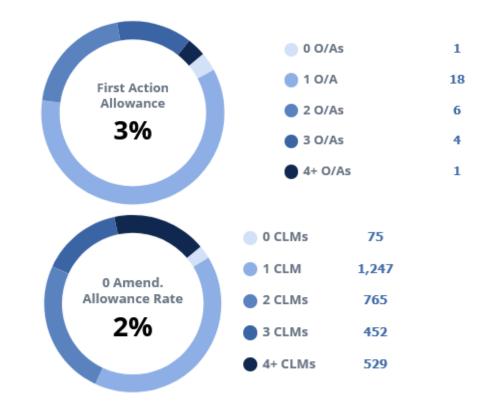
### **Examiner v. Art Unit 3665**





### **Office Actions to Allowance**

### **Amendments to Allowance**



### Examiner v Art Unit 3665 Appeals v. RCE



**Appeals (50% Win by Applicant)** 



Art Unit: 67.9% Win by Applicant

**RCEs to Disposition** 



### **Examiner V. Art Unit 3665 Interviews**



#### **Interviews - Applicant Initiated Interviews - Examiner Initiated** Examiner 0 0 0 19 10 З Pending Allowed Abandoned Allowed Pending Abandoned Art Unit 778 392 281 172 Allowed Pending Abandoned 59 44 Allowed Pending Abandoned

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### **Key Take-Aways**



- What Examiner stats are
- What they can and can't do
- Possible applications

### **The Schwegman Analytics Advantage**



SLW has been helping its clients find and improve high value patents for over 20 years and has invested heavily in its Analytics processes and tools for the last decade and is now expert at helping.

- More efficient work
- Shorter timelines
- Higher quality and key strategies
- IP Operations
- Fixed Fees/AFAs
- Tracking metrics
- Non-traditional providers



## Thank You For Your Interest Questions?



These materials are for general informational purposes only. They are not intended to be legal advice, and should not be taken as legal advice. They do not establish an attorney-client relationship.