

**[English translation by WIPO]**

**Comments on the proposal by the United States of America submitted in document  
SCP/17/10**

Firstly, we note the substantive information on ensuring the quality of patents provided by the Delegation of the United States of America (document SCP/17/10).

The Russian patent office, Rospatent, shares the position of the Member States of the Standing Committee on the Law of Patents, including the United States of America, who hold that it is difficult to come to agreement on the definition of the term “high quality patent”.

Rospatent supports the work program, proposed by the American delegation, to survey the specific metrics for patent quality used by national offices. The results of this research could be taken as a basis for general recommendations on evaluating the quality of patents.

It is most timely to address this issue, given the development of contemporary patent cooperation practices that use the results from a previous search and examination performed by a patent office on a first application, or by a competent international body, before making a decision on according legal protection to the subject matter of patent law in conformity with national legislation.

Furthermore, the exchange of information on ensuring the quality of patents is an important element in the development of national patent systems.

***National Goals of a Patenting System***

1. In 2011, during the implementation of the framework to reduce administrative barriers and improve the quality and availability of public services in 2011-2013, approved by the Government of the Russian Federation, Rospatent activities related to according legal protection to the results of intellectual activity and to granting patents were categorized as public services.

Providing high quality public services, in particular high quality examination of applications and of the documents sent to applicants during the examination process, is one of the strategic priorities for developing the Rospatent system up until 2015.

Providing high quality public services for the protection of the results of intellectual activity is directly related to promoting and commercializing innovative developments.

Rospatent’s quality assurance policy is being developed with due consideration of the requirements of national legislation on according legal protection to the results of intellectual activity, the commitments of the Russian Federation ensuing from participation in international agreements on legal protection of the results of intellectual activity, and the strategic priorities for economic development and innovation in Russia. The Deputy Director General of Rospatent

and the Department for Supervision and Control in the field of Protection of Intellectual Property Rights are responsible for matters relating to the running and improvement of the Rospatent quality management system.

A number of specialist control subdivisions of the Federal Institute of Industrial Property (FIPS), which comes under the authority of Rospatent, are also involved in the Rospatent quality management system:

- (a) the Division for Monitoring the Quality of Public Services (Quality Service);
- (b) the Division for the Chamber of Patent Disputes (PPS Division);
- (c) the Department for International Patent Cooperation.

(a) The Quality Service undertakes activities to implement the framework to improve the quality and availability of public services, as applied to the specific activities of the examination subdivisions. The Quality Service undertakes in particular:

- routine and operational monitoring of the examination subdivisions;
- checking of complaints received from applicants;
- monitoring and technical supervision of the examination subdivisions' activities, as well as developing proposals to provide, develop and improve legal protection for the results of intellectual activity;
- drafting practical recommendations and administrative documents on the examination subdivisions' activities, which take into account the results of monitoring.

The Quality Service also produces reports, provides statistical and analytical processing of written appeals regarding the examiners' activities (including complaints), monitors the time frame for carrying out planned tasks, and organizes training and instruction for examination staff. The Quality Service includes:

- (1) the department of technological and administrative quality assurance for public services;
- (2) the department of legal quality assurance for public services;
- (3) the department for training and analysis of the quality metrics for public services;
- (4) the department for monitoring the examination subdivisions' activities.

The department for monitoring the examination subdivisions' activities was established in 2011 following the reorganization of the Quality Service.

The department is responsible for the following key tasks:

- monitoring the legislative compliance of documents prepared by examiners on intellectual property during the administrative process;
- monitoring the quality of information searches;
- developing administrative, practical, technical, information and training mechanisms, including mechanisms aimed at eliminating the breaches identified during document monitoring and their causes, and at eliminating the deficiencies and conflicts identified in the standards provided by Russian regulatory legislation and office regulatory tools;

- offering systematic, practical help, including operational assistance, to the examination subdivisions by training staff, in particular intellectual property examiners, and providing them with advice on legal and practical questions relating to the examination of patent law applications.

(b) The PPS Division is responsible for considering objections to decisions made following the examination of applications and objections to the grant of patents.

Objections are considered on a collegiate basis at a session of the PPS board with no less than three of its members present, including the chairperson and the member responsible for consideration. Consideration procedures involve checking, as part of the grounds for objection, that the results of intellectual activity are patentable and that the decision made regarding the application is valid.

The management of the PPS Division carry out internal quality control of the consideration of objections in board sessions and also monitor the decisions prepared after objections are considered, as well as checking whether deadlines for consideration are met.

(c) The Department for International Patent Cooperation carries out quality control of international search reports, written opinions and international preliminary examination reports.

2. Monitoring the quality of public services, particularly the quality of application examinations and of documents intended for applicants, is achieved by (a) ongoing, (b) routine and spot checks.

The checks reveal (c) failures in public service provision and the appropriate measures are then taken to eliminate and prevent such failures.

(a) Ongoing checks provide pre-emptive monitoring of compliance with the regulations on legal protection for the results of intellectual activity.

Ongoing monitoring is carried out by designated managers and supervisors in the examination subdivisions.

It is undertaken on a random basis before the examination documents are sent to the applicant.

During the process of checking, examiners' activities and documents prepared by them are evaluated for compliance with the requirements of legislation.

Following these checks, documents prepared by examiners in breach of the requirements are returned to them for revision.

The results of monitoring are documented.

(b) Routine and spot checks monitor the integrity and quality of public services.

(b-1) Routine checks are scheduled each quarter by the specialist control subdivision. They are random checks performed once documents prepared by examiners have been sent.

During the process of checking, the integrity and quality of the public services provided are evaluated. Before the checks are carried out, aims and procedures are identified, notably the procedure for selecting documents for checking.

The results of monitoring are documented.

(b-2) Spot checks are carried out by those responsible: the Director General of Rospatent and his deputy, the directors of the subdivisions of Rospatent, the Director of FIPS and his deputies, and the directors of the subdivisions of FIPS. They carry out checks either independently, or with the involvement of the specialist control subdivision, to consider applicants' complaints, either about the actions (inaction) of examiners, or in connection with their disagreement with a decision taken.

The results of monitoring are documented.

(c) Failure to comply with legislation on established administrative procedures, office regulations or the requirements for the corresponding examination documents are classified as breaches.

(c-1) Examiners are responsible for meeting the deadlines for completing administrative steps relating to applications and their appropriate quality and integrity.

The Directors of the examination subdivisions (and their deputies) ensure that administrative procedures are completed and are responsible for organizing work to meet the deadlines for administrative procedures and their appropriate quality and integrity.

(c-2) If routine checks (b-1) or spot checks (b-2) should find breaches regarding the transmission of an illegal document to an applicant, the Director General of Rospatent, or an authorized official, has the right to recognize the document as invalid and to withdraw it.

The right to withdraw a document does not extend to a decision to grant or refuse a patent that was made following checks that the claimed subject matter of patent law is patentable.

Such decisions can be disputed by an applicant in the administrative manner provided for in the Russian Civil Code, which is by means of submitting objections to the Chamber of Patent Disputes.

### ***Specific Metrics for Measuring Quality***

A system of metrics is used to define the quality of public services provided by Rospatent.

(a) The most important metrics for the quality of application examinations are:

- the results from monitoring searches, including international searches carried out by Rospatent as a competent International Searching Authority;

- the results from monitoring the validity of decisions made as to whether a claimed subject matter is patentable during the application examination stage (up until a decision is made on the application);
- the number of application decisions withdrawn by the Chamber of Patent Disputes following the consideration of objections by an applicant;
- the number of application decisions made by the Chamber of Patent Disputes following the consideration of objections that are appealed in court;
- the results from monitoring compliance with established administrative procedures, including deadlines and the rules for preparing examination documents;
- the results from monitoring examiners' activities for a consistent approach to the examination of applications;
- the number of applicants' complaints regarding the actions (or inaction) of examiners or in connection with application decisions that are found to be valid.

Analytical reports are drafted on the basis of these metrics, gathered from ongoing, routine and spot checks, noting the breaches discovered and the reasons for them, as well as suggesting measures to eliminate and prevent such breaches.

The reports are presented to the management of Rospatent and FIPS in order to find balanced solutions, designed to ensure the provision of quality public services. This includes the holding of thematic training for examiners, developing practical recommendations for examiners' problem areas and taking disciplinary measures against examiners who make errors.

The results of the consideration of complaints are published quarterly on the Rospatent and FIPS websites, and at the end of the reporting year in Rospatent's Annual Report.

(b) The metrics for the quality of public service provision are:

- the number of applications registered;
- the number of examinations carried out and the number of decisions made;
- the average time taken to examine an application;
- the number of patents granted and the time taken to grant them;
- the number of agreements and deals registered;
- the number of valid complaints (as a percentage of the overall number of applications filed);
- the number of decisions to grant and refuse patents for applications (including as a percentage of the overall number filed);
- the number of objections to application decisions submitted to the Chamber of Patent Disputes;
- the number of those objections granted and refused (including as a percentage of the overall number of objections);

- the number of objections against granting patents brought before the Chamber of Patent Disputes;

- the number of those objections granted and refused (including as a percentage of the overall number of objections);

- the number of patent application decisions appealed in court.

The metrics for the last five years, including the financial reporting year, are published in the Rospatent Annual Report, which can be found on the Rospatent website (<http://www.rupto.ru/>).

The given metrics are used to determine Rospatent's strategic direction and to develop short and long-term programs to that end, including activities to ensure the provision of high quality public services.