

*Is the Time Allocated to Review Patent Applications
Inducing Examiners to Grant Invalid Patents?
Evidence from Micro-level Application Data*

Melissa Wasserman

Associate Professor of Law, University of Illinois College of Law
Champaign, IL

Co-author: Michael D. Frakes, Associate Professor of Law, Northwestern University School of Law

This paper explores how examiner behavior is altered by the time allocated for reviewing a patent application. We isolate the effect of allocated examination time on examiner behavior by relying on the fact that examination times decrease upon certain types of examiner promotions. By utilizing micro-level application data over a span of ten years we estimate examiner fixed-effects specification which enables us to rule out a number of selection stories. That is, by following individual examiners throughout the course of their careers we track the evolution of their examination behavior - including their granting rates - as they experience the promotions of interest. Our results demonstrate that the less time an examiner is given to review an application the less prior art they cite, the less likely they are to make prior-art-based rejections (especially obviousness), and the more likely they are to grant the patent. Assuming that patent examiners who are allocated sufficient time to review applications will tend to make the correct patentability determinations, our results suggest that the time allotments are inducing patent examiners to grant patents excessively.

Biography: Associate Professor of Law; Richard and Anne Stockton Faculty Scholar; & Richard W. and Marie L. Corman Scholar, University of Illinois College of Law. J.D., Ph.D.

Email: mfwasser@illinois.edu

Wasserman