

## **The Patent System's Two-Sided Agency Problem**

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Recent studies suggest that the PTO's attempts to control its backlog of unexamined applications create an operational bias in favor of allowance that compromises patent quality. In delving into the circumstances that permit issuance of low quality patents, scholars have focused primarily on patent examiners, who, as the agents of the PTO, are charged with making patentability determinations. Because the patent procurement process involves two sides—the PTO and the patentee—the behavior of the respective agents on each side should be evaluated together when considering reforms. However, compared to the PTO's agents (i.e., the examiners), the role of the patentee's agents (e.g., employee-inventor, in-house counsel, patent attorney, etc.) in contributing to the PTO's backlog and patent quality problems have received comparatively less scholarly attention. The analytical power needed to accurately model current patenting behavior may be enhanced by peering into the patentee “black box” to evaluate the self-interested behavior of multiple agents.