

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

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Examination Process

- Supervisory Patent Examiner (SPE) Largely Randomly Assigned to Examiner in Art Unit
- Examiner assesses the patentability of the claims
 - Non-Art-Based Rejections (utility, patentable subject matter and disclosure requirements)
 - Art-Based Rejections (novelty and nonobviousness)
 - Obviousness is most time intensive
- Applications are Presumed Valid
- Examiner on average 19 hours on each application
 - Read application, prior art search, write up office action, etc.

Anecdotal Evidence from Examiners

- *“when you add it up its not enough time to do a proper job on a case”*
- *“rather than doing what I feel is ultimately right, I’m essentially fighting for my life”*

The Manhattan Strategy Group, Patent Examiners Production Expectancy Goals Re-Assessment and Adjustment Study (2010)

Hypothesis

- *A time constrained examiner that is given less time to review an application will*
 - Cite less prior art
 - Make less time-intensive prior-art rejections (especially obviousness)
 - Grant more patents

Methodology/Data

- Examination time decreases upon certain types of examiner promotions

Examination Hours Allocated to Examiner as a Function of GS-level

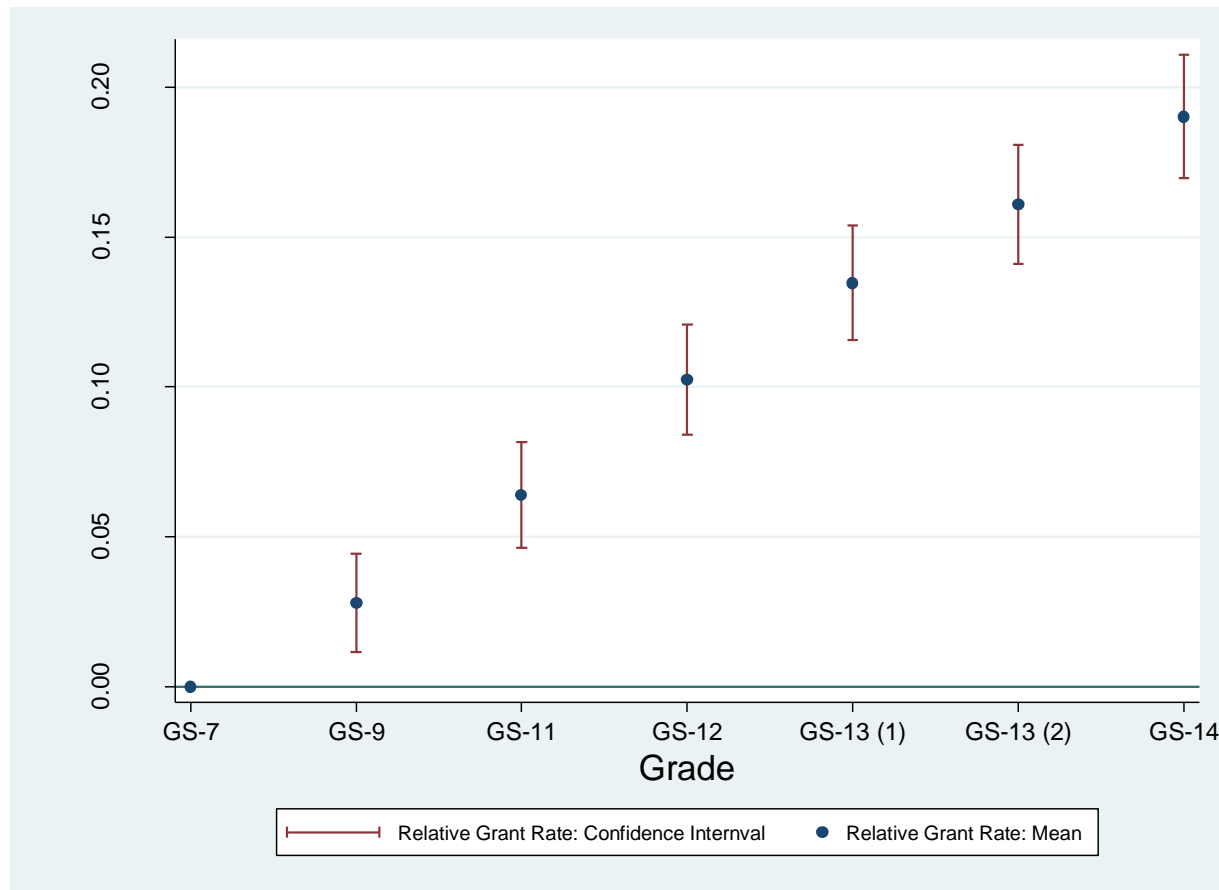
GS-level	Compound Tools	Artificial Intelligence
GS-7	19.7	45.1
GS-9	17.3	39.5
GS-11	15.3	35.1
GS-12	13.8	31.6
GS-13	12.0	27.5
GS-13, partial signatory	11.0	25.3
GS-14	10.2	23.4

Methodology/Data

- Examiner-fixed-effects design
- Collected data on all 1.4 million utility patent applications from PAIR from 2001-2012
 - ▣ filed on or after March 2001
 - ▣ published and disposed by July 2012
- FOIA the PTO for annual roster indicating the GS-level and experience

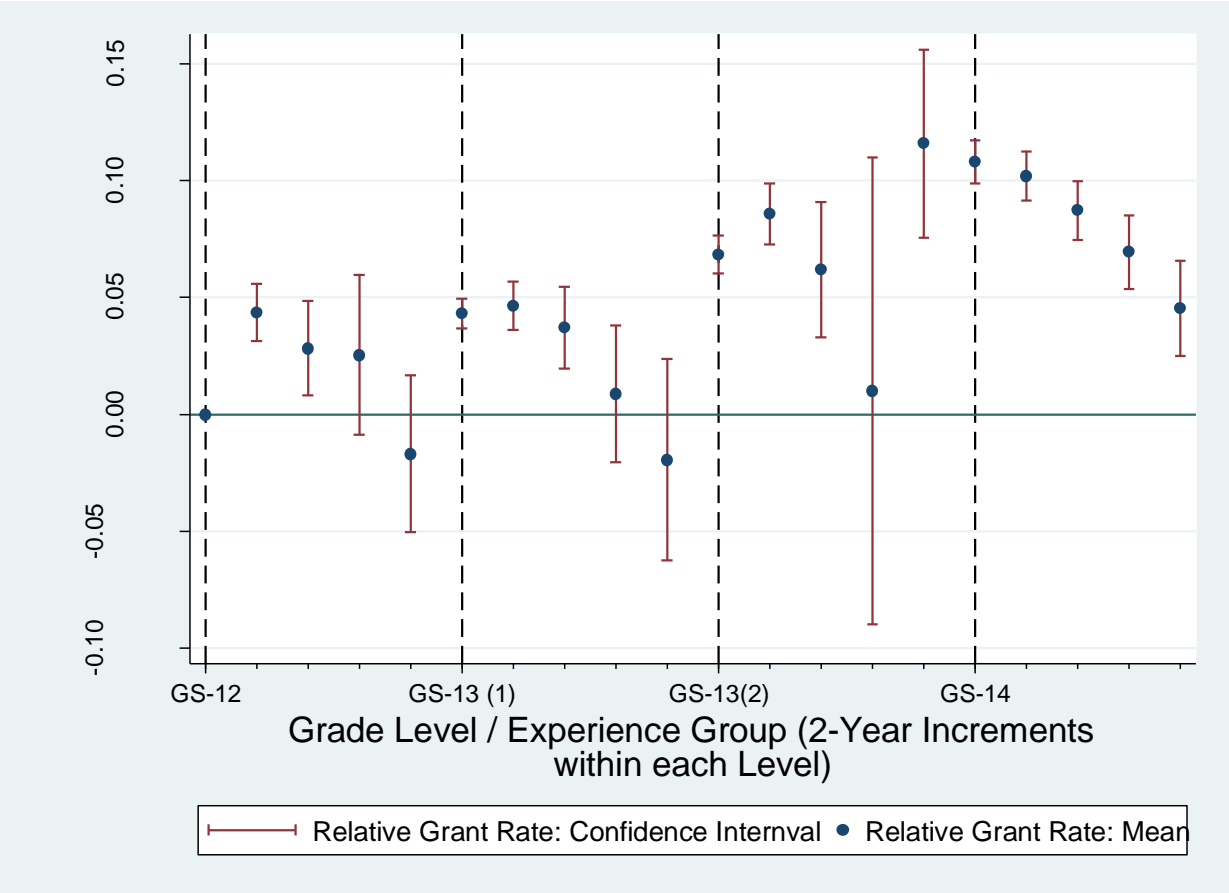
Results

Figure 1: Relationship between Examiner GS Level and Grant Rate

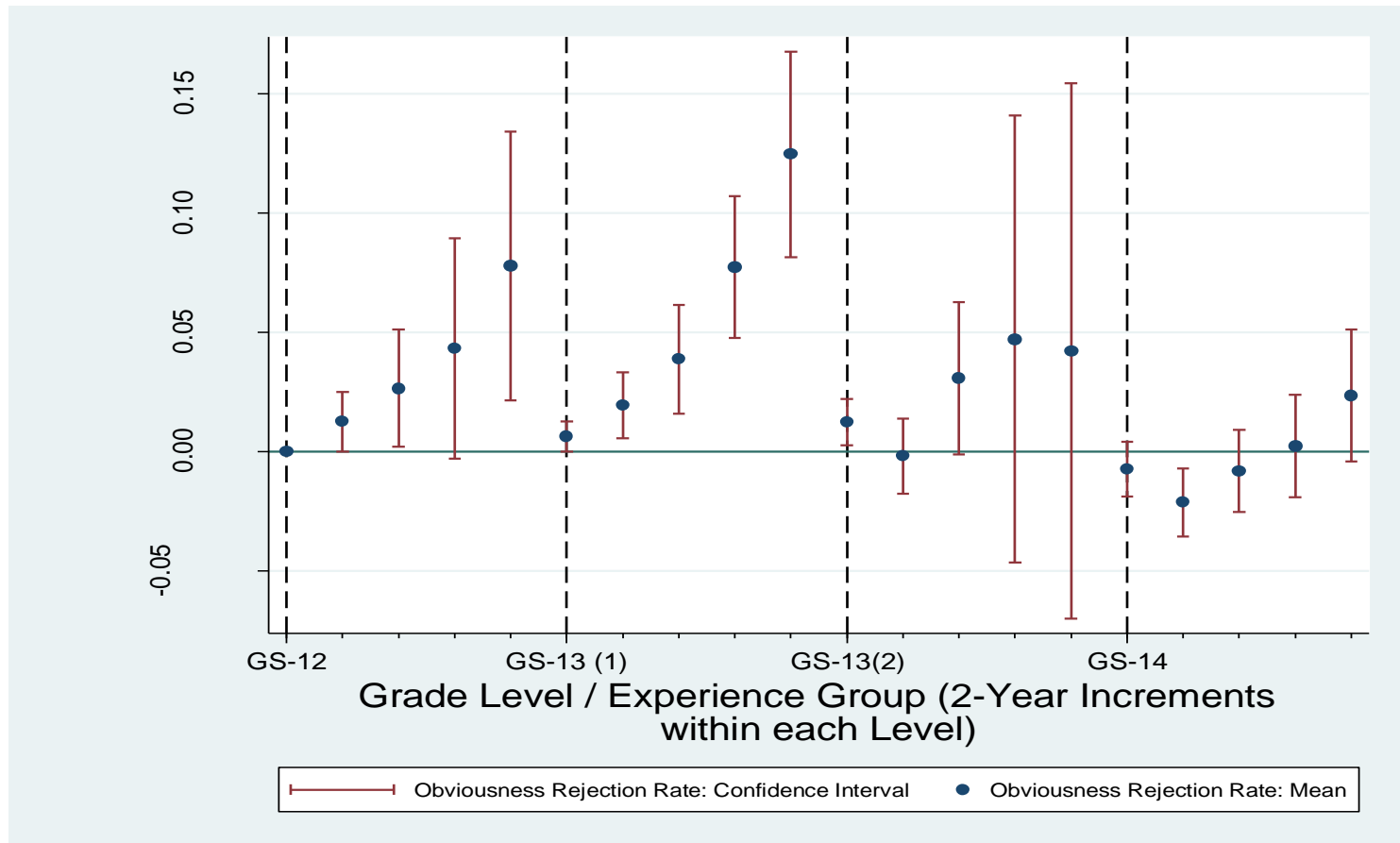


Results (con't)

Figure 3: Relationship between Grant Rate and Increases in Experience Years within Distinct Grade Levels



Relationship between Incidence of any Obviousness Rejection and Increases in Experience Years within Distinct Grade Levels



RELATIONSHIP BETWEEN GRADE LEVELS AND SHARE OF PRIOR ART CITATIONS FROM EXAMINER

	(1)
Omitted: GS-7	
GS-9	0.004 (0.007)
GS-11	-0.009 (0.007)
GS-12	-0.027*** (0.007)
GS-13	-0.038*** (0.007)
GS-13 (with partial signatory authority)	-0.048*** (0.008)
GS-14	-0.051*** (0.008)
N	643838

RELATIONSHIP BETWEEN ALLOWANCE RATE AT EPO AND JPO AND U.S. EXAMINER GRADE AND EXPERIENCE LEVELS, AMONG SET OF U.S. PATENTS LIKELIWISE SEEKING PROTECTION AT EPO AND JPO

	(1)
Omitted: GS-7	
GS-9	-0.024 (0.018)
GS-11	-0.048*** (0.019)
GS-12	-0.056*** (0.019)
GS-13	-0.063*** (0.020)
GS-13 (with partial signatory authority)	-0.065*** (0.020)
GS-14	-0.070*** (0.021)
N	172103

Implications

- So, evidence is consistent with prediction that tightening of time constraints may contribute to elevated grant rates.
- Rethink the scaling factors