



Personalausschuss
Staff Committee
Le Comité du Personnel

Quality

Can it be put back on the EPO agenda?

End of 2022: Industry and staff concerns about quality

- **Mr Beat Weibel, Chief IP counsel of Siemens, reacts to [EPO Patent Quality Charter \(SP2023\)](#)**

“All the measures are too focused on the improvement of internal processes and their effectiveness, including speed and timeliness.

This does not necessarily mean enhance the actual quality of the granted patents.”

[IAM Magazine](#), 31 October 2022

- **Technologia Survey organised by SUEPO**

Timeliness has become a covert means for increasing output and productivity/production are the main criteria for the appraisal and rewards exercise at the expense of quality.

[SUEPO letter](#) to Administrative Council, 23 June 2022

End of 2022: EPO in denial mode

- **Mr Campinos reaction**

“there have been some comments on our quality recently”

“quality is the appraisal of the many and not the discontent of the few”

[Christmas speech](#), 10 December 2022

- **Mr Rowan (VP1) reaction**

“We are absolutely focused on the substantive quality of the products and service”

“timeliness doesn’t necessary mean speed”

[IAM Magazine](#), 12 December 2022

Industry Patent Quality Charter (IPQC)

- Who are they?

			Heraeus
			
			
			
			

Industry Patent Quality Charter (IPQC)

- **What do they say?**

- *“The granting of patents with a high chance of validity is crucial to consistent, predictable and efficient court decisions in patent lawsuits, and the good functioning of the patent system in general.”*
- *“The outcome of the patenting process, from proper drafting by the applicant to thorough examination by the patent offices, including the European Patent Office, should be patents with reliable validity. If this is lacking, there are serious consequences.”*

Industry Patent Quality Charter (IPQC) [website](#)

- **What do they want?**

- *To voluntarily adhere to measure to improve patent quality*
- *To enter into a continuous dialogue with patent offices. In particular the European Patent Office since the EPO’s understanding of patent quality is mainly self-driven and the recent measures mainly served internal optimization purposes.*

LinkedIn [page](#) of Weibel

Early 2023: Production remains paramount at EPO

- **Mr Menidjel (COO) instructions**

- *“in the last two years our production has fallen just short of our strategic targets [...] it is a situation that we need to address”.*
- All examining Team Managers asked to revert from a 70% to an 80% contribution to production as of 1 July 2023 with a doubled functional allowance.”

- **DG1 directors put pressure on staff**

- *“production is the only thing that guarantees our payslip on the 26th of the month”*
- questionable instructions on clarity and inventive step
- *“The safety net options according to the EPC were designed knowing we would not be perfect, so an examiner insisting on guaranteed perfection is not working in line with the EPC.”*

[Analysis of emails](#) reproduced on Patent Litigation [blog](#)

February 2023: EPO concedes first meeting

- **3 February: Mr Rowan (VP1) meets with the IPQC**

- just proposes to *“look at the quality pages of our website to see how we can improve the information [and] to prepare the Quality Report [...] with increased data and transparency”*

[Post](#) in DG1 Beats of 6 February

- **8 February: IPQC sends follow-up [first letter](#) to Mr Rowan (VP1)**

- requests that the EPO *“provides examiners with sufficient time and make the incentive system for examiners transparent”*
- asks to set-up joint working groups

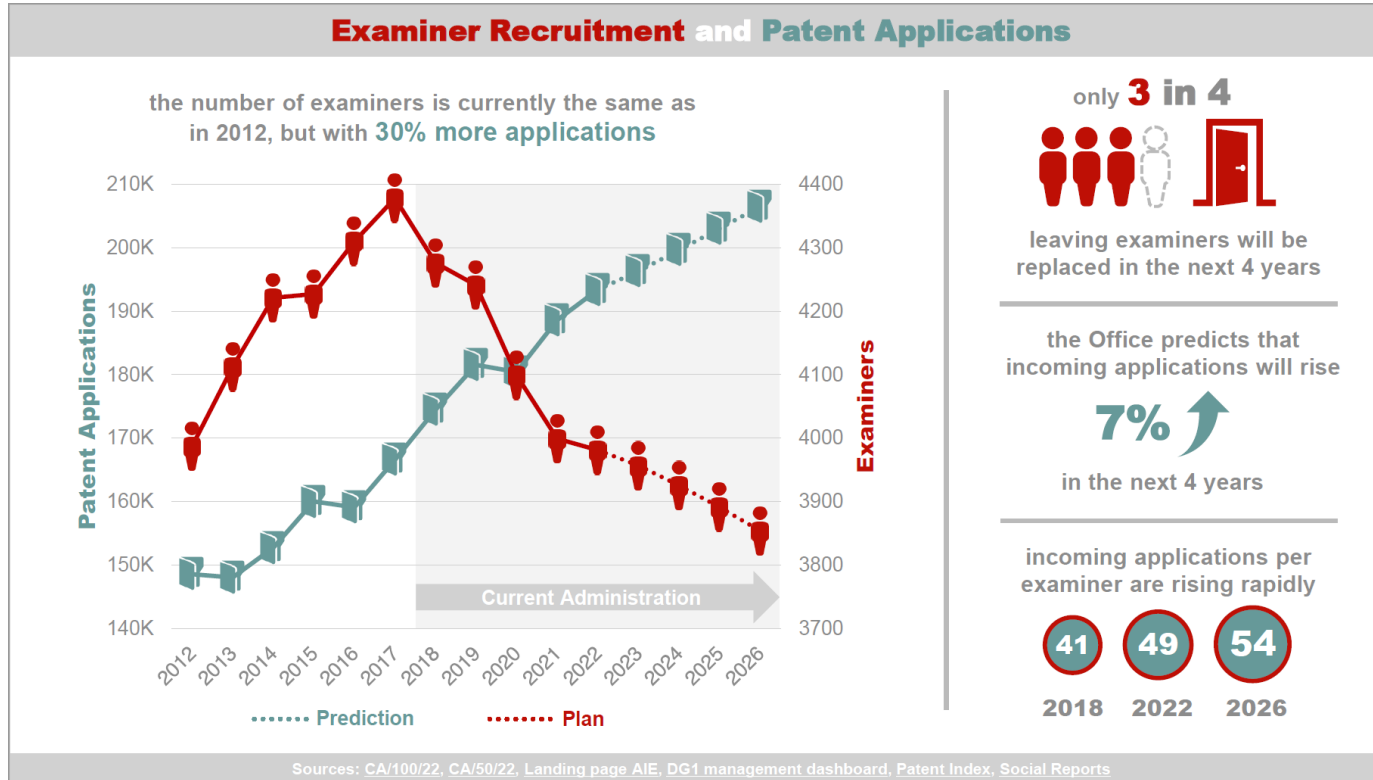
- **Mr Campinos acknowledges negative press coverage**

- promises to intensify dialogue with key applicants and SMEs in 2023
- to find means to improve substantive quality

Intranet Communiqués of [10](#) and [23 February](#)

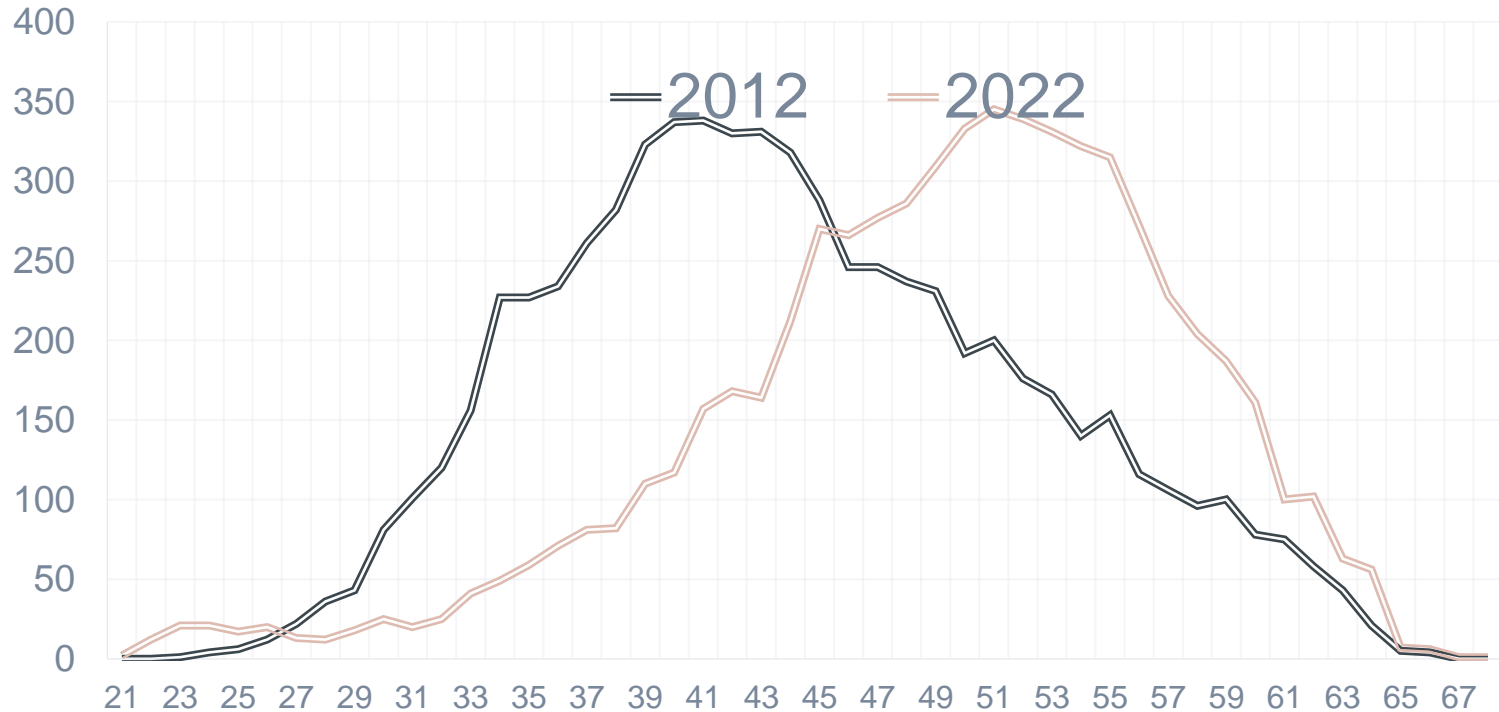
February 2023: Depletion of the workforce

- More applications for less examiners



February 2023: Depletion of the workforce

- 10-year development of age pyramid



End of February 2023: Impasse in patent quality discussion

- EPO provides no answer to IPQC questions

- Press coverage continues
 - industry representative claims that *“they file patents to protect innovations, not so that the contracting states can get high renewal fees”*
 - former examiner confirms that *“the EPO is setting itself up financially more and more like a profit-oriented company”* ([JUVE](#) Magazine)
 - career system and push for productivity cause examiners to *“close their eyes when granting a patent”* ([Frankfurter Rundschau](#), [Münchner Merkur](#))

April 2023: The big interview, the big denial

- **Mr Rowan (VP1) concedes interview to [Managing IP](#)**
 - article reports insider information that “[t]he EPO is ‘rubber-stamping’ applications it would never have granted in the past”
 - Mr Rowan (VP1)
 - denies that timeliness objectives are covert means for pushing for productivity
 - misrepresents situation in DG1 with “holistic” approach (meaningless buzzword)
 - conceals existence of strict productivity objectives in days/product for career progression
 - announces “plans to use a three-examiner panel for the search phase, to try to improve the quality of written opinions” ([Active Search Division](#) project, legal basis? time budget?)
 - announces changes to “very sequential processing of application” (PGP shortcuts?)
- **Management enforces [radical changes](#)**
 - examiners shall consider patentable subject-matter excluded from patentability according to Case Law (e.g. business methods)
 - interference of directors into decisions of examiners
 - higher rate of granted patents

May 2023: EPO concedes second (and last) meeting

- **8 May: EPO meets with the IPQC for the last time**

- IPQC presents evidence demonstrating decline in quality standards
- direct and frank feedback becomes inconvenient for the EPO (last meeting)
- EPO expects IPQC to voice concerns through established “channels” such as the Federation of German Industries and Standing Advisory Committee before the EPO ([SACEPO](#), 180 members)
- *“We don’t want to be buried in the big associations where it is harder to reach consensus [...] That would be great for the EPO, then they can do what they want”*

[Managing IP](#) article of 11 May

- **Press coverage continues**

- anti-corruption organization Transparency International criticises structural problems of the EPO facilitating corruption
- Administrative Council has a direct interest in increasing renewal fees and cannot perform its supervisory role

[Die Welt](#), 26 May

June/December 2023: IPQC tables further evidence

- **IPQC provides analysis from ipQuants (independent research company)**
 - June report ([02/2023](#))
 - quality of examination and consistency of decisions significantly depending on the experience of an examiner
 - EPO should review current training measures for new examiners, including the time allocated for examination
 - December ([03/2023](#))
 - *“Metrics such as increased workload for examiners combined with reduced examiner workforce, quicker decisions with fewer office actions, and the high success rate of oppositions are areas of concern“*

June/December 2023: EPO in denial mode

- **3 July 2023: Mr Rowan (VP1) answers [second letter](#) from IPQC**
 - refutes and denies almost all of the issues brought forward by the IPQC
 - hides behind the IAM survey in which EPO is ranked number one for 10 years in a row
 - pretends “*there is neither a minimum nor a maximum time set per action*”
 - carefully omits to mention timeliness objectives and days/product imposed on staff

- **27 June 2023: Mr Menidjel (COO) in DG1 Town Hall meeting**
 - similar avoidance and denial attitude in front of staff asking questions
 - refused to answer questions as to content of discussions with IPQC
 - could not convince audience that “*timeliness is not speed*”

June/December 2023: IPQC remains active

- **6 November 2023: IPQC organises meeting at Technical University**

- **National Patent Offices:** France, Germany, United Kingdom, Austria, Sweden, Denmark and Switzerland
- EPO declines invitation

“When our concerns are ignored by the EPO management, I ask myself ‘what are they thinking?’ At least they should take those concerns seriously”

Mr Weibel, Chief IP Counsel at **Siemens**

“If I were interested in quality I would appreciate any invitation to a conversation”

Mr de Corte, Head of IP for crop protection at **Syngenta**

“Even if you finally win a validity and infringement case, you can never repair the damage to the market”

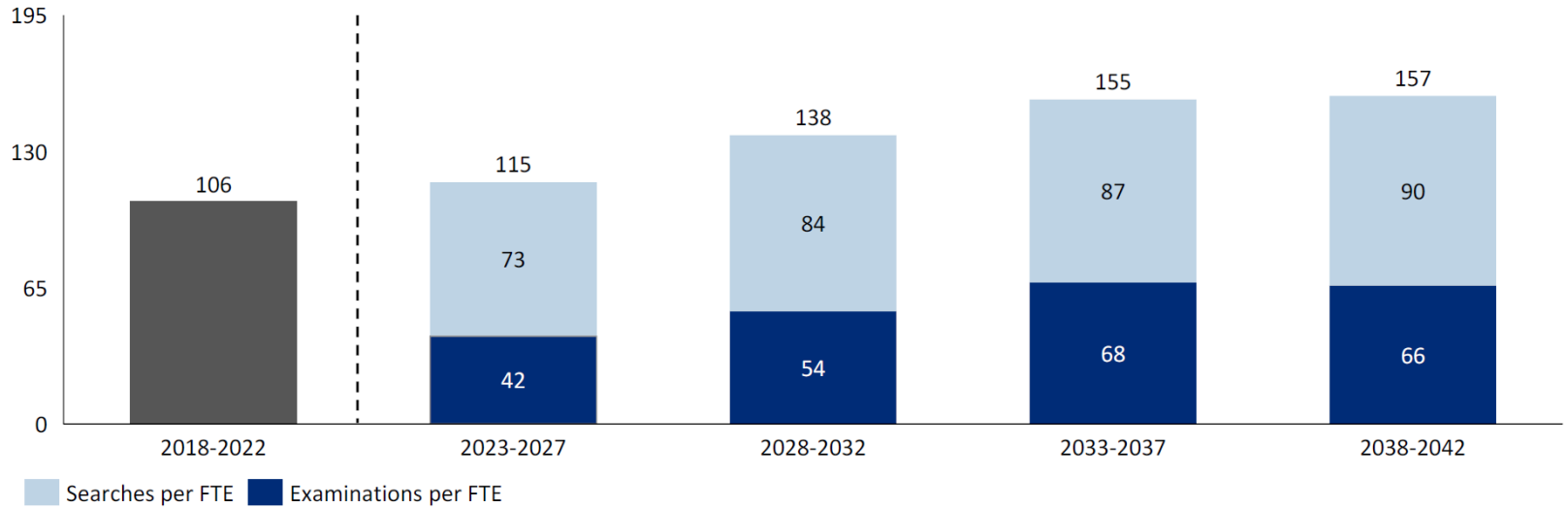
Mr Thomaier, Head of IP at **Bayer**

([Managing IP](#), 9 November 2023)

Can the EPO put quality back on the agenda?

- EPO Financial Study 2023 ([CA/68/23](#))

Figure 12: Productivity (required to achieve SEO production), products per FTE, period average, 2018-2042



FTE= Full Time Equivalent

Can the EPO put quality back on the agenda?

- **Strategic Plan (SP2028)**

“Quality is a shared responsibility and the result of collaborative efforts. All stakeholders have a role to play in achieving higher quality”

[SP2028](#) (p. 37/47)

- **IPQC**

“Siemens [...] has invested about 30-35% more time in drafting patent applications since 2011. On the other hand, at the EPO the efficiency and productivity of the examiners has been increased by 50%. Their output has doubled. That opens a gap which speaks for itself”

Mr Weibel in [Patent Kluwer Blog](#), 24 November 2023

Conclusion

- **Ever-increasing productivity targets and competition-based career system**
- **Staff representation continuously warned EPO does not create conditions for focusing on quality**
- **IPQC expresses concerns ignored by an EPO in denial mode**

Who would imagine the EPO would treat industry players as bad as it treats staff representation?

- **Resolution to be adopted by staff**

Thank you for your attention!