

European Patent Office | 80298 MUNICH | GERMANY

To the Chairman and The Head of Delegations of the Administrative Council of the European Patent Organisation Mr Josef Kratochvíl

By email

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OPEN LETTER

Putting back quality on the agenda of the EPO

Dear Members of the Administrative Council,

Staff of the European Patent Office gathered in hybrid General Assemblies in Munich on 24 January, in Berlin on 31 January and in The Hague on 6 February 2024.

A resolution on objective setting and quality (**Annex 1**) was put to a vote and supported by an overwhelming majority: among the 1 523 attendees, **1 088 voted in favour**, 31 against and 66 abstained. The outcome confirms the view that EPO management instrumentalizes the career and performance system to put pressure on staff to produce quantity at the expense of quality of the final products. Such policies result in low level of staff engagement, high incidence of psychosocial risks and mounting criticism from the industry on patent quality (IPQC).

Back in 2015, the EPO had initiated a project "Closer contacts with major applicants" to foster a better "esprit de service" (Annex 2). Among the companies selected at the time were companies which have now become members of the Industry Patent Quality Charter (IPQC) and are among the top proprietors of Unitary Patents¹. Since 2022, these companies express their concerns on the decrease in substantive quality of EPO granted patents. They bring arguments, data and propose working groups to improve our patent system.

European Patent Office Grasserstraße 9 80339 Munich Germany

¹ "Statistics and trend centre: Requests for unitary effect", EPO website

However, this time, EPO management closes its door and denies any quality issue without justification (see overview of events² in **Annex 3**).

Following the adoption of the resolution, Mr Beat Weibel, Chief IP counsel at Siemens and founder of the IPQC, told Managing IP³: "We feel now there is an informal coalition between the users of the [EPO] system and those executing the system." Mr Jorge Thomaier, Head of IP at Bayer, noted that "This message is loud and clear for the EPO management – they should first talk to their staff and then take our (industry members') help to improve targets, incentivisation, and in the end, the quality of the patents."

We can only urge the Administrative Council to exercise its supervisory role and instruct EPO management to enter into dialogue with the staff representation and to put in place the measures supported by staff in the resolution.

Yours sincerely,

Dock Helly

Derek Kelly

Chairman of the Central Staff Committee

List of annexes:

Annex 1	Resolution adopted on objective setting
Annex 2	"Closer contacts with major applicants", DG1 Note of 16.02.2015
Annex 3	"50 years EPC: The EPO ignoring the skilled person", CSC paper of 19.01.2024

cc.: Mr A. Campinos; President of the EPO

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² "50 years EPC: The EPO ignoring the skilled person", CSC paper (sc24001cp), 19-01-2024 [ANNEX 2]

³ "<u>EPO staff vote through resolution urging quality control</u>", Managing IP, 08-02-2024

RESOLUTION adopted on objective setting

Staff of the EPO in Munich, gathered in a General Assembly,

Noting:

- That production targets¹ and <u>work pressure</u> have increased relentlessly in the last decade,
- The low level of staff engagement and high incidence of psychosocial risks,
- The mounting criticism from industry on patent quality²,

Fears the effects of the above on:

- the health of EPO staff and their commitment to the task of the Organisation;
- the capacity of the organisation to deliver on its mission of granting legally sound patents, and
- European industry;

Further **noting** that:

- EPO management culture instrumentalizes the employment framework (5-year contracts, Young Professionals), the career and performance management systems to put pressure on staff to produce quantity at the expense of quality of the final products (Search, Examination, Opposition);
- the policy of reducing the workforce is at odds with the trend of increasing workload;

Urges EPO top management to:

- Implement genuine bottom-up planning which takes into account the input of staff, the true available work capacity and the time needed for peripheral but essential tasks (training, chairing, classification, etc...);
- increase recruitment of staff, especially performing core tasks (examiners and formalities officers);
- reinstate a robust and genuine quality management (DQA);
- revise the career and performance management systems to transparently recognize, incentivise and reward delivering EPC compliant, legally sound patents; and
- prioritize the task of the organisation to grant legally sound patents meeting the requirements of the EPC.

Munich, 24 January 2024

¹ Official average targets have increased from 79,6 to 96 products/examiner/year from 2013 to 2024, see here and p.5 and 17 of the 2024 budget

² See also: press articles from November 2023, September 2023, July 2023...

Memo: Closer Contact with Major Applicants

16/02/2015

Why is closer contact with major applicants desirable?

Both The President and VP1 have expressed the opinion that there needs to be closer contact between examiners and their applicants. We should foster a better esprit de service, not least to ensure that we do not lose workload market share to other major offices.

History

Historically, DG1 has had frequent contacts with applicants but no systematic way of approaching them or feeding back business intelligence obtained from them. Moreover, DG1 has not always passed on consistent messages to them.

Microsoft, Canon, Siemens

The ICT cluster has had close contact with both Canon and Microsoft recently and their experience has prompted the proposal for this pilot. Microsoft had 450 files which they regarded as "stalled" within the EPO. Under the auspices of Grant Philpott, Francesco Zacca and the PA KAM, together, they have found a mutually acceptable way to treat these files. Similarly Canon had a list of files which they considered excessively delayed. However, again with Grant Philpott supervising. Franco Cordera and PA KAM have started working on the first list of around 170 files. In JC EET, Jeremy Scott has initialised general and specific lectures from Siemens, their global patent strategy and specific training to examiners working in the fields of Sub-sea Connectors and Wind Turbines. At the same time, informal checks were made about what Siemens thought of the EPO way of handling their files. These are concrete ways in which the EPO's major applicants are being facilitated through issues due to concrete contact with DG1 PDs and directors.

Proposed Pilot

It is proposed to start a pilot for ten major applicants, worldwide, lasting one year (1.4.2015-1.4.2016). The applicants will be selected by DG1 but taking into consideration input from PA, PDQM

and DG5. This will be based around strong existing contacts. 5 liaison directors will be selected to deal with two major applicants each. They will be in regular contact with these applicants and will have at least one face to face meeting during the year of the pilot.

Liaison with DG2 and DG5

Patent Administration will be an integral player in this pilot project and close links to the Key Account Managers will be needed. To facilitate this PD PA will be kept fully in the loop. DG5 has been approached and informed. They will be present in the kick off meeting for the contact directors.

Benefits for DG1

This pilot will bring significant benefits to DG1:

- more efficient use of missions
- technical training
- predicting incoming workload
- targeting recruitment to the right areas
- dealing with file requests such as PACE/late files
- esprit de service
- production

Optimising Missions

Historically missions were organised on a directorate and cluster level with little coordination beyond that. Moreover, they did not always target the largest applicants, but more often the "nicer" locations. With the deployment of the Coordination Tool for External Contacts and with more directional input from the PDs, along with the experience from the liaison directors it is guaranteed that DG1 missions will be more focussed on our major applicants and delivering a better service to them.

The Coordination Tool for External Contacts

The coordination tool can provide a good starting point for coordinating this pilot. For example there can be a link with the highlighted companies so that anyone wishing to visit should first contact the liaison director to a), see if the visit can go ahead;

b). check what messages should be passed or if the applicant has specific issues; c). provide a place to feedback any business intelligence gathered on the mission.

Organisational Structure

It is envisaged that there will be 5 DG1 directors, each in contact with 2 major applicants. These directors will also work closely with the appropriate KAMs. The ERG should nominate someone to oversee the whole structure, to help with harmonisation of what is done, sharing of knowledge and best practice, and to make sure everything runs smoothly. Currently it is proposed that Jeremy Scott takes on this role. He would additionally sit on the ICT group, set up by Grant Philpott in this role.

Selected Directors and Companies

Canon (22) F.Cordera
Philips (3) F.Cordera
Microsoft (28) C.Platzer
Qualcomm (9) F.Zacca
BASF (5) M.Weaver
Bayer (16) M.Weaver
Samsung (1) under discussion

Huawei (11) under discussion
Siemens (2) J.Scott
Ericsson (10) F.Zacca

Fujitsu (20)

As can be seen, the applicants selected are major ones (their ranking in terms of applications filed in 2013 is parenthesised). The lowest applicant selected, Microsoft, filed 600 applications. All in the top 12 file over 1000 and Samsung filed 2833 applications in 2013. These applicants come from different technical areas and different geographical locations to maximise the learning potential of the pilot. It can be explored as to what the EPO can do for them and vice versa. Many of these applicants have been chosen because of the strength of existing contacts, which will facilitate the speedy implementation of the pilot.

Upscaling the Pilot

If the pilot is deemed successful, the idea would be to upscale the pilot to more companies in the

second half 2016. The speed at which this would be done is determined mainly by the manpower PA requires to deal with the requests.

Further Contacts/Approval

To carry out this pilot, approval is sought from VP1.



Zentraler Personalausschuss Central Staff Committee Le Comité Central du Personnel

> Munich, 19-01-2024 sc24001cp - 0.2.1/0.2.2

50 years EPC The EPO ignoring the skilled person

Back in 2022, Mr Campinos mentioned in his <u>Christmas speech</u>¹ that "there have been some comments on our quality recently" and defended that "[q]uality is the appraisal of the many and not the discontent of the few". At that time, Mr Beat Weibel, Chief IP counsel of Siemens had just <u>initiated</u> with other major industry players an <u>Industry Patent Quality Charter</u> (IPQC) to voluntarily adhere to measures to improve patent quality. One of the main objectives was also to enter into a continuous dialogue with patent offices, especially the EPO. After a few "discussions" with the IPQC, the EPO has decided in June 2023 to stop any direct dialogue with the signatories. Nevertheless, the IPQC remains very active. This paper provides an overview of the events.

Criticism from the industry...

The "EPO Patent Quality Charter", which was part of Mr Campinos' so-called "Strategic Plan 2023", was critically received by European players in the patent world. The Chief IP counsel of Siemens, Mr Beat Weibel, declared in October 2022²³ in the press that: "[a]II the measures are too focused on the improvement of internal processes and their effectiveness, including speed and timeliness. This does not necessarily enhance the actual quality of the granted patents." Consequently, Mr Weibel launched an industry initiative in response to what is seen as an ongoing quality issue at the EPO. The signatories of the Industry Patent Quality Charter jointly commit to a set of quality standards independent to the measures set out by the EPO. Among the signatories are major patent applicants to the EPO in recent years⁴.

...and the EPO denies

Under pressure, Mr Rowan (VP1) entered into a denial exercise in the press⁵: "We are absolutely focused on the substantive quality of the products and services" and "[...] timeliness doesn't necessarily mean speed". The latest Technologia Survey organised by SUEPO in 2022 actually showed in its results⁶ that, in the view of EPO staff, timeliness has become a covert means for increasing output and that productivity/production are the main criteria for the appraisal and rewards exercise at the expense of quality. End of 2022, in his Christmas speech, Mr Campinos considered the IPQC as expressing the "discontent of a few" and hence considered that it can be downplayed if not ignored.

Production remains paramount

Early 2023, Mr Menidjel (Chief Operating Officer) communicated to DG1 line management that "[i]n

¹ "Pre-recorded all-staff Christmas message", Speaking Notes for the President, 10-12-2022

² "EPO must focus on quality rather than efficiency, says Siemens IP chief", IAM Magazine, 31-10-2022

³ "Dissatisfied industry users push back against EPO quality measures", JUVE Patent, 12-10-2022

⁴ Atos, Bayer, Deutsche Telekom, Drägerwerk AG &Co. KGaA, Ericsson, Heraeus, HP, Iveco Group N.V., Knorr Bremse AG, MTU, Nokia, Phyisk Instrumente (PI) GmbH & Co. KG, Procter & Gamble, Qualcomm, Roche, Siemens AG, Siemens Healthineers, Syngenta, Tetra Pak, Vodafone, Volvo

⁵ "Efficiency-over-quality criticisms are unfounded, says EPO VP for Patent Granting Process", IAM Magazine, 12-12-2022

⁶ "Fifth Edition of the Technologia Staff Survey: the 2022 results", SUEPO letter, 23-06-2022

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 were consequently asked to revert from a 70% to an 80% contribution to production as of 1 July 2023 with a doubled functional allowance.

At the same time, DG1 Directors put early pressure on their staff to increase output. Some of their emails addressed simultaneously to DG1 staff in <u>January 2023</u> and <u>March 2023</u> are thoroughly commented in this <u>blog</u>. Both emails were sent in copy to Mr Rowan (VP1) and Mr Menidjel (COO), thereby showing that the senders were satisfied that their content was fully supported by upper management.

In his <u>detailed analysis</u>⁷, the blogger is obviously shocked by the content of the emails, especially by the Director's statement that "production is the only thing that guarantees our payslip on the 26th of every month". For EPO staff, it came just as a written form of the <u>unofficial management mantra</u>⁸ trickled down orally in principle.

The EPO concedes to a first meeting with IPQC...

As the waves caused by the IPQC continued, Mr Rowan (VP1) finally conceded to a meeting with them on 3 February 2023 and on 10 February 2023 with the Federation of German Industries⁹. His proposal was merely 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". This statement gave little hope that Mr Rowan (VP1) really understood the issue.

On 8 February 2023, Mr Weibel addressed a <u>letter to Mr Rowan</u> requesting *inter alia* that the EPO "provides examiners with sufficient time and to "make the incentive system for examiners transparent". Mr Weibel also asked to set-up joint working groups. Meanwhile, Mr Campinos <u>acknowledged</u>¹⁰ the negative coverage in the media and the EPO promised to intensify dialogue with key applicants and SMEs in 2023¹¹ and to find means to improve substantive quality¹².

The staff representation <u>recalled</u>¹³ that it was ready to contribute actively and constructively to respond to external criticism and put quality on the EPO's agenda. One of the main concerns is the <u>depletion of the workforce</u>¹⁴ and the rise in patent applications causing more pressure on the remaining examiners and less time to dedicate to each file.

...but reaches an impasse in patent quality discussion

End of February 2023, the EPO had not yet responded to the IPQC's specific suggestions for improvement. To the <u>JUVE</u>¹⁵ magazine, an industry representative claimed that "[they] file patents to protect innovations, not so that the contracting states can get high renewal fees" and a former examiner confirmed that "the EPO is setting itself up financially more and more like a profit-oriented company." In March 2023, the press reported¹⁶ on a further testimony that the career system and the push for more productivity cause examiners "to close their eyes when granting a patent".

VP1: The big interview, the big denial

In April 2023, the increasing press coverage convinced Mr Rowan (VP1) to stop declining requests

⁷ "Productivity vs Quality at the EPO: A rare glimpse behind the curtain that's worrying", Patent Litigation, 26-07-2023

⁸ "50 years EPC: Rewarding quality in the core business", CSC paper (sc23123cp), 16-10-2023

⁹ "DG1 Beats – January 2023", VP1, 06-02-2023

^{10 &}quot;2023 Quality Objectives", President Communiqué, 10-02-20023

^{11 &}quot;Meeting our users", Intranet Communiqué, 23-02-2023

^{12 &}quot;EPO meets with CIPA", Intranet Communiqué, 10-02-2023

^{13 &}quot;Patent Quality: Can it be put back on the EPO's agenda?", CSC paper (sc23024cp), 24-02-2023

¹⁴ "Depletion of the workforce", CSC paper (sc23030cp), 17-02-2023

¹⁵ "EPO and IPQC reach impasse in patent quality discussion", JUVE, 21-02-2023

^{16 &}quot;Mal schnell ein Patent", Frankfurter Rundschau; "Zoff um das EPA", Münchner Merkur; "Wird die Prüfung zunehmen nachlässig", Redaktionsnetzwerk DE

for an interview by the magazine Managing IP17. Insider information confirmed that "[t]he EPO is "rubber-stamping" applications it would never have granted in the past". The communication exercise of Mr Rowan (VP1) consisted again in promising a more in-depth version of the quality report and in denying any quality issues at the EPO without any substantiation: "Sometimes industry will be disappointed in what we do".

Mr Rowan (VP1) denied the concerns from the industry that timeliness objectives are a covert means for pushing for productivity increases. He misrepresented the situation in DG1 with his "holistic" approach (the meaningless buzzword) and concealed the existence of strict productivity objectives in terms of days/product for the purpose of performance assessment and career progression.

In order to keep the users of the patent system quiet, Mr Rowan (VP1) announced "plans to use a three-examiner panel for the search phase, to try to improve the quality of written opinions". These plans led to the Active Search Division 18 project which lacks definition, has no legal basis and foresees no time budget: all the ingredients for an empty shell. The final words of Mr Rowan in the interview were that the EPO defined "a system that was designed in the 1800s based on postal services and very sequential processing of the application [...] That's where we need to think differently". In view of the EPO's track record, this declaration sounds worrying as to the compliance with the EPC of future creative shortcuts in the patent grant process.

Despite the public concerns over EPO quality, the production pressure on staff continued unabated. In some areas (like the business methods), management even enforced radical changes¹⁹ in search and examination to consider patentable subject-matter which is excluded from patentability according to Case Law. This resulted in a higher rate of granted patents and caused distress among the examiners affected.

The EPO meets with the IPQC for the second (and last) time

In May 2023, Managing IP20 reported on the second meeting between the EPO and the IPQC. The IPQC presented evidence demonstrating a decline in quality standards. Such meetings with direct and frank feedback became inconvenient for the EPO who made it clear that it would be the last one. Management explained that they expect the IPQC to voice their concerns through "established channels" such as the Federation of German Industries and the Standing Advisory Committee before the EPO (SACEPO). The IPQC understood the manoeuvre: "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".

The press reported²¹ again on the IPQC concerns that examiners got 50% less time to treat applications within the last 10 years. The anti-corruption organization, Transparency International, criticised the structural problems of the EPO which facilitate corruption; the Administrative Council has a direct interest in increasing renewal fees and cannot perform its supervisory role.²²

The IPQC tables further evidence...

End of June 2023, the IPQC addressed again Mr Campinos, Mr Rowan (VP1) as well as the Administrative Council. In this letter, the IPQC shared the outcome of the discussions held at the Osnabruecker Patenttage 2023. In particular, they submitted an analysis (02/2023) by the independent research company ipQuants showing that the quality of examination and consistency of decisions is significantly depending on the experience of an examiner. Consequently, the IPQC suggested that the EPO reviews the current training measures for new examiners, including the time allocated for the examination.

 ^{17 &}quot;EPO's quality chief answers critics", Managing IP, 13-04-2023
 18 "Active Search Division. More "checks". Better quality?", CSC paper (sc23134cp), 10-11-2023
 19 "Distress among DG1 examiners", CSC letter (sc23043cl), 20-04-2023

²⁰ "Counsel hopeful of EPO quality deal despite latest stalemate", Managing IP, 11-05-2023

²¹ "Industrie kritisiert Europäisches Patentamt", Die Welt, 26-05-2023

²² "Patente ohne Wert?", Stuttgarter Zeitung, 26-05-2023; "Patente ohne Wert?", General-Anzeiger, 25-05-2023

...and the EPO further denies: End of discussion

The Kluwer Patent Blog²³ reported that Mr Weibel received an annotated version of his own letter back from Mr Rowan (VP1) refuting and/or denying almost all of the issues brought forward by the IPQC. The EPO hid again behind the fact that it is ranked number one for quality by the IAM survey for 10 years in a row. The reply pretended that "there is neither a minimum nor a maximum time step per action" and carefully omitted to mention the timeliness objectives and the days/product imposed on staff. A similar avoidance and denial attitude was adopted by Mr Menidjel (COO) in the DG1 Town Hall meeting of 27 June 2023 when faced with quality questions from staff. He refused to answer questions as to the content of discussions with the IPQC and could not convince the audience that "timeliness is not speed".

The press coverage continued over the summer 2023. Two examiners testified that <u>quality problems</u> at the EPO are structural with the new career system²⁴ and industry representatives <u>expressed their scepticism</u>²⁵ about the <u>EPO annual review</u> "flooding all of us with sheer numbers, telling us how quick they are, how productive they are, how great this all is". Even Jacques Michel, former VP1 at the EPO from 1987 to 2002 <u>commented on LinkedIn</u> that: "Today the quality falls down and the laxism is everywhere." The <u>Kluwer Patent Blog</u>²⁶ published an analysis of the EPO continued propaganda for justifying higher fees for lower quality work and the <u>Algemeen Dagblad</u>²⁷ in the Netherlands recalled the quality issues during the 50 years EPC celebrations.

The IPQC will remain active

In November 2023, Mr Weibel told Managing IP²⁸: "When our concerns are ignored by the EPO management, I ask myself 'what are they thinking?' At least they should take those concerns seriously".

In order to seek political support, Mr Weibel organised a meeting on 6 November 2023 at the Technical University of Munich with 30 attendees including representatives from the National Patent Offices of France, Germany, United Kingdom, Austria, Sweden, Denmark and Switzerland. Although duly invited, EPO management declined to send representatives. Mr de Corte, Head of IP for crop protection at Syngenta, noted that it was "remarkable" that the EPO refused the invitation: "If I were interested in quality I would appreciate any invitation to a conversation".

In the meeting, Mr Poredda, Chief Patent Officer at drugmaker Roche, presented data from ipQuants showing that almost 50% of EPO patents are granted without a single substantive office action. Mr Thomaier, Head of IP at Bayer, added clearly: "Even if you finally win a validity and infringement case, you can never repair the damage to the market."

Mr Weibel confirmed the observed impact of low quality patents in the <u>Kluwer Patent Blog</u>²⁹ on startups and big companies: "Instead of focusing on protecting their own innovations, they are mainly absorbed to do Freedom to Operate analysis of the masses of granted patents that are invalid or too broad [...] It could very well be that a project is not executed because an analysis of the field shows a landscape of thousands of patents. Then the management thinks: we're not going there because that's already blocked. But if these patents are all invalid, then this really harms the company"

Early 2024, ipQuants advertised on <u>LinkedIn</u> its latest report (<u>03/2023</u>) on Patent Quality at EPO:

"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".

²³ "Deteriorating patent quality: EPO under fire, management is not impressed", 5 July 2023

²⁴ "Die Kasse muss stimmen: Warum das Europäische Patentamt in der Kritik steht", Redaktionsnetzwerk DE, 14-07-2023

²⁵ "Slippery road: in-house say EPO quality concerns not abating", Managing IP, 17-07-2023

^{26 &}quot;EPO Propaganda Master Class – or: How to Justify Higher Fees for Lower Quality Work", Kluwer Patent Blog, 09-09-2023

²⁷ "Cultuur van burn-outs en uitputting' op Europees octrooibureau", AD, 04-10-2023,

²⁸ "IPQC founder seeks political backing after EPO no-show", Managing IP, 09-11-2023

²⁹ "Beat Weibel: Low quality patents harm European Industry", Kluwer Patent Blog, 24-11-2023

For Mr Campinos, "[q]uality is a shared responsibility and the result of collaborative efforts. All stakeholders have a role to play in achieving higher quality" according to his <u>Strategic Plan 2028</u> (p. 37/47). Mr Weibel already provided his answer in this blog³⁰:

"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"

Conclusion

Over the last decade, the staff representation has continuously reported that the ever-increasing productivity targets and the New Career System did not create the conditions for staff to focus on quality. EPO management did not listen and kept the staff representation away from any discussion on substantive patent quality.

Since 2022, major industry players express their concerns. They bring arguments, data and propose working groups. Instead, the EPO opposes denial, publishes press releases not reflecting discussions and closes its door. One would expect the industry to be better treated than staff and their representation. It is remarkably not the case.

When performing an inventive step analysis of a patent application, EPO examiners take into account the general knowledge of the "skilled person" working in the corresponding technical field, especially from the industry.

If EPO management does not listen to the "skilled person", to whom will they listen?

The Central Staff Committee

³⁰ "Beat Weibel: Low quality patents harm European Industry", Kluwer Patent Blog, 24-11-2023