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Patent Quality *Can it be put back on the EPO's agenda?*

Several European companies have recently expressed serious concern about the declining quality of granted patents by the EPO.

The future of the European patent system depends on how the EPO, as a public service, is able to set worldwide standards to foster innovation in the interest of European society. Consequently, management should take the criticism very seriously. The staff would be perfectly capable of carrying out prior art searches of the highest quality and, accordingly, conducting patent examination procedures that result either in patents that stand up in court or in refusals when adequate. Mismanagement resulting in decreasing quality should be put under the spotlight: recruitment policy, time budgets and incentive systems for staff, HR policies, IT strategy, etc.

The Staff Committee is ready to contribute actively and constructively to these points so as to respond to external criticism and put quality back on the EPO's agenda.

Increasingly loud criticism

The members of Industry Patent Quality Charter (IPQC) recently sent a [letter](#) to Vice-President DG 1 signed by the Chief IP counsel of Siemens. IPQC members are important European players¹ in the patent world and several of them have been among the largest patent applicants to the EPO in recent years.

This letter follows the critical reception of the "[EPO Patent Quality Charter](#)" (part of Mr Campinos' so-called "Strategic Plan 2023") that came into force on 1 October 2022. It is indeed an open secret that Mr Campinos' "EPO Patent Quality Charter" was a disappointment. The Chief IP counsel of Siemens told JUVE Patent in October 2022 that "[a]ll 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."²

¹ ATOS, Bayer, Deutsche Telekom, Drägerwerk AG & Co. KGaA, Ericsson, Eraeus, HP, Iveco Group N.V., MTU, Nokia, Physik Instrumente (PI) GmbH & Co. KG, Procter&Gamble, Qualcomm, Roche, Siemens AG, Siemens Healthineers, Syngenta, Vodafone, Volvo, ...

² "Dissatisfied industry users push back against EPO quality measures" by JUVE Patent (12.10.2022) <https://www.juve-patent.com/news-and-stories/legal-commentary/dissatisfied-industry-users-push-back-against-epo-quality-measures/>

The recent IPQC letter follows up on an earlier meeting with EPO management and identifies many relevant topics with regard to the quality of search and examination at the EPO, which should obviously be discussed and fixed:

- Complete searches
- Complete examination
- User feedback
- Training (of examiners)
- A transparent incentive system for examiners

Each topic is subdivided into detailed points. The [Kluwer Patent blog](#) and [Juve Patent](#) have reported on the letter.

Well-known issues

[Staff Representation](#) has been [critical](#) of management's approach to quality for many years and has denounced the deleterious effects on substantive quality of the "New Career System" (NCS) introduced in 2015 which incentivises examiners to focus on their work as first examiner and in this role to issue as many search reports and grant as many patents as possible, with substantive quality being secondary to productivity and timeliness³⁴⁵⁶. Management openly [reproached](#)⁷ the staff representation regarding its interventions on the EPO's quality policies in front of delegations and user representatives in the Administrative Council.

[EPO staff](#) have repeatedly expressed their concern about the decreasing importance of quality in several staff surveys conducted by Technologia: for a great majority of respondents, the importance of quality in relation to quantitative targets has steadily decreased at the EPO since 2013⁸.

The [official figures](#) from the Directorate Quality Audit (DQA), which assesses the *substantive* quality of the work in DG1, also show a negative trend: the compliance rate of grants has dropped from 85% in 2015⁹ to 75% in 2022¹⁰, an all-time low. The *substantive* quality of searches is steadily decreasing.

The Office is in denial

In the face of the converging signals of deteriorating quality, how can management continue to pretend that everything is fine. For example, VP 1's response to recent criticisms of prioritising efficiency over quality has been to declare them "*unfounded*"¹¹. In his New Year's

³ "Measure for Measure: Quantity, Quality & Timeliness for Europe", CSC paper of 14.09.2016 ([sc16170cp](#))

⁴ "Measure for Measure: Quantity, Quality & Timeliness for Europe", CSC paper of 14.09.2016 ([sc16170cp](#))

⁵ "Good enough? A discussion paper about Patent Quality at the EPO", LSC MU and BE paper of 19.04.2018 ([su18003mp](#))

⁶ "All the President's Peas", CSC paper of 18.01.2018 ([sc18008cp](#))

⁷ "Attack on quality delivered by EPO staff", Clarification to [publication](#) (see also [here](#)) of VP1 and VP2 dated 17.03.2017, CSC paper of 20.03.2017 ([sc17040cp](#))

⁸ Technologia Survey Results 2022 (page 31) of staff survey frequency tables: https://www.suepo.org/archive/A1-OEB_EN-2010-2013-2016-2020-2022.pdf

⁹ [EPO Quality Report of 2016](#) or [here](#)

¹⁰ [DQA Report of 2022](#) or [here](#)

¹¹ "Efficiency-over-quality criticisms are unfounded, says EPO VP for Patent Granting Process", IAM Magazine (12.12.2022) <https://www.iam-media.com/article/efficiency-over-quality-criticisms-are-unfounded-says-epo-vp-patent->

greetings to staff, Mr Campinos referred to what he sees as general positive feedback from 6000 EPO users and said that "*quality is the appraisal of the many – and not the discontent of the few*". In other words, the President considers that complaints from the public or users about the quality of EPO patents – which undoubtedly include IPQC members – can be downplayed if not ignored.

The fact is that management's interest in genuine patent quality began to fade a decade ago, when the pursuit of endless productivity and production growth replaced a sense for public service and common sense.

Which future for (substantive) quality?

Under the topics of "Complete Searches" and "Complete Examination", the IPQC members stress the need to *give examiners sufficient time (budget)* to carry out their tasks. Examiners (and formalities officers) have the right qualifications and dedication to carry out their duties in accordance with the EPC and the Implementing Regulations, if sufficient time is given for a proper functioning of the divisions, including quality control within the divisions¹².

The recruitment policies need to be reconsidered, especially the decision not to recruit formalities officers and to replace only 80% of leaving examiners, despite a steady rise in the workload and a predictable wave of retirements of highly experienced staff in the coming years¹³.

The long-term attractiveness of the Office as an employer and the impact of the recent recruitment policies¹⁴ needs be assessed.

The CSC has always advocated for a transparent incentive system for examiners (and other staff⁹, particularly a career system with a performance-based reward system that provides the right incentives to get the job done right and a commitment that staff careers are a long-term investment, not a liability.

Senior management will not spontaneously call into question the mantra of ever-increasing productivity, especially in DG1, where "management by Excel sheet" now prevails. Hopefully the IPQC initiative will trigger an adequate reaction that goes beyond denial, window dressing and continuing to hope that progress in IT tools will solve the problems. In addition to an IT strategy that needs to be revised, internal appreciation of the EPO's own personnel and appropriate HR policies are key aspects of a reorientation toward more quality.

It is not yet clear whether the IPQC initiative from outside the EPO will achieve what could not be achieved internally: to put patent quality back at the top of the agenda. The Staff Committee will report on the progress made (or lack thereof) in the coming weeks.

The Central Staff Committee

[granting-process](#)

¹² In accordance with Article 15 EPC and Article 143(2) for the administration of the European patent with unitary effect

¹³ "Depletion of the Workforce - Failure to recruit under the current administration": CSC publication of 17/02/2023 ([sc23020cp](#))

¹⁴ Five-year contracts, lowering of the standards for recruitment, the hiring of young professionals