



Munich, 10-11-2023
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Active Search Division More « checks ». Better quality?

Since the end of 2022, users of the patent system have increasingly voiced their concerns over EPO policies putting the focus on increasing efficiency at the expense of substantive quality. According to Mr Weibel, chief IP counsel at Siemens “the internal quality checks are not properly working anymore due to the focus on productivity”¹. To reassure the users of the patent system a new measure has now been introduced, the “Active Search Division” principle, aiming at formally integrating in the Patent Work Bench the check of all searches by each member of the potential future Examining Division and their line manager. The project has taken DG1 by surprise and is far from convincing. This paper explains why.

Quality management

There are essentially three options for dealing with quality: 1) giving employees the time and the means for it, 2) creating new indicators, and 3) introducing new checks.

The most effective but costly option is to give employees both the time and the means for quality, and to consequently create career incentives to foster quality. Since 2015, the EPO career system has given little to no place for quality in DG1. It is essentially competition-oriented system based on production/productivity rankings and an additional layer of managerial arbitrariness. Current EPO management has refused so far to put the system into question. Back in 2018, Mr Campinos already declared in meetings with the Central Staff Committee (CSC) that the New Career System was in his view the best reform of his predecessor.

Therefore, the EPO has focused on the less effective and cheaper options for dealing with quality.

First, the EPO created [new Key Performance Indicators](#) (KPIs)². Among them are a dozen concerning timeliness and another dozen dealing with “user satisfaction” with no transparency as to how they were calculated. There is little room left for indicators relating to substantive quality: the Directorate Quality Audit (DQA) provides those for Quality of Search (at 88,7% below 90% compliance) and Quality of Grants (75,3% below 85% compliance).

Second, the EPO has decided to introduce new “checks” via the “Active Search Division” principle. In the past, only **positive searches** had to be discussed and only with the Chair of the potential future Examining Division. As of 1st November **all searches** are now routed to all members of the division via the Patent Work Bench (PWB).

¹ [“EPO and IPQC reach impasse in patent quality discussion”](#), JUVE, 21-02-2023

² [“Quality Objectives and Quality Action Plan 2023”](#)

More “checks” in no time. But which “checks”?

Mid-October, line managers invited their examiners to meetings, many of which took place on 31st October, and orally explained that the “Active Search Division” principle would be introduced as of 1st November. Line managers were not in a position to clearly explain which “checks” should be performed by the second member and the Chair. In any case, no time budget is planned for the additional checks despite the fact that the routing of all searches will roughly double the amount of tasks of examiners in the PWB. In the past, “checks” of randomly selected searches were provided with a time budget of 90 minutes per search file under the so-called CASE procedure.

A pilot of this “project” apparently took place but information about its existence and the results cannot be found on the Intranet. The [DG1 Beats Edition of September 2023](#) extensively covers the European Inventor Award 2024 and the 50 years EPC celebrations but brings no further information on this major change in the PWB.

During the last week of October, a document titled “*Active Search Division Purpose and Principles*” (see Annex 1) was circulated by some line managers. The document does not explain what should be checked nor in which amount of time. On 31 October, BIT announced the rollout of the updated PWB software via a mass-email (see Annex 2) without any further information.

One week after the rollout, examiners are still left without clear instructions. Some line managers are explaining orally to their examiners to “*use [their] common sense and trust the first examiner*” [sic!].

Legal basis (?) and implications

The European Patent Convention (EPC) in [Article 17](#) defines that “[t]he Search Divisions shall be responsible for drawing up European search reports.”

The Guidelines set out in [B-I. 2](#), that “[t]he member of the search division responsible for the search on a European application is also normally the first member of the examining division for that application.” Only two exceptions are foreseen in the Guidelines,

- Where claimed unitary subject-matter covers more than one technical field ([B-I.2.2.1](#)).
Exceptionally, where the application covers two or more technical fields which are so diverse that a member trained to carry out searches in one of those fields cannot reasonably be expected to carry out a search in all of them, the responsibility for preparing the search report may be shared between a number of members.
- Further searches on a non-unitary application in a different technical field ([B-I.2.2.2](#))

The “Active Search Division” principle now defines an enlarged Search Division for **all** files.

Even at the time of drafting this paper, the Internal Instructions [B-I.3](#) mention that “[T]he digital search workflow is the only applicable workflow” and “[w]hen the first examiner clicks “Commit & View” in Trimaran, the workflow is started for circulating the action to the next actors as shown in the [...] table” below:

Action type	Routing to next actors
Search with negative opinion	Line manager -> formalities officer
Search with positive opinion	Chair -> line manager -> formalities officer
Search sampled for quality check	Chair -> line manager -> formalities officer

The “Active Search Division” principle is therefore not compliant with the defined “Digital search workflow”.

The EPO is therefore not consistent with its own guidelines and internal instructions. In addition to that, an enlarged Search Division should be a group of examiners working together and **not** “checking” the work of each other without any clear indications of what is to be checked.

The PWB is *inter alia* used to perform a kind of authentication of all official actions of an Examining Division by the click of an approve button. Although from now on all members of the Active Search Division are obliged to approve a search and the corresponding opinion under Rule 62(1) EPC before both are sent to the applicant, only the entrusted Search Examiner is presently named on EPO Form 1503 of the European Search Report. In the PWB, this circulation among the members of the “Active Search Division” is run under the title “Examining Division”, leaving it open to the members of the “Active Search Division” whether they act as members of a possible future Examining Division and authenticate any official actions by the click of the approve button.

Furthermore, no announcement in the Official Journal (Article 129 (b) EPC) could be found informing the public that the Search Division from now on consists of three members, leading to another hidden procedure in the Office, akin to the concealed role of the line manager. As two members of the “Active Search Division” are not named on the European Search Report, those two members could become members of an Opposition Division without either party knowing that they had been involved in the procedure before – besides leading to possible partiality objections violating Article 19(2) EPC.

Conclusion

The newly introduced “Active Search Division” principle has all the ingredients to be an empty shell. The project lacks consultation and legal basis. “Checks” are not clearly defined, and no time budget is foreseen. Under these conditions, colleagues might be tempted to adopt a simple “click-forward” approach: *“Prima facie no problem is apparent on this search”*.

The “Active Search Division” principle appears to be purely part of a PR exercise aimed at keeping quiet the users of the patent system and the press. EPO management is still showing no willingness to foster substantive quality.

The Central Staff Committee

Annex 1: *“Active Search Division” Purpose and Principles*, 25-10-2023

Annex 2: *“RELEASE NOTICE for Patent Workbench – Active Search Division routing”*,
BIT User Information Mass-Email, 31-10-2023

“Active Search Division”

Purpose and Principles

In short

The European Patent Office strives to provide the highest possible level of legal certainty to its users. An essential element of early legal certainty is the completeness and correctness of the Search and the Written Opinion.

Consultation has always been integral to EPO's Search practice. The digitalisation of workflows allows us now to further strengthen this collaborative practice, connecting skills across the Organisation and adapting it to the NWoW.

From 1.11.2023 early consultation with the Division at the Search stage will formally be integrated into our workflows and tools. The present guidance is meant to support this process and additionally describes the new PWB circulation of the Search file.

Why?

The Search Phase is of utmost importance to users when it comes to providing the highest possible early legal certainty. This is why at the EPO, Search has always been based on collaboration between expert examiners. During the last years, the Office carried out pilots to gauge the benefits of strengthened collaboration at Search. The Collaborative Quality Initiatives (CQI), Enhancing Collaboration Project (E-Co) and Active Search Division (ASD) pilot, demonstrated that actively involving the division at search stage, improved legal certainty of our actions, reduced unnecessary objections and facilitated a solution-oriented PGP.

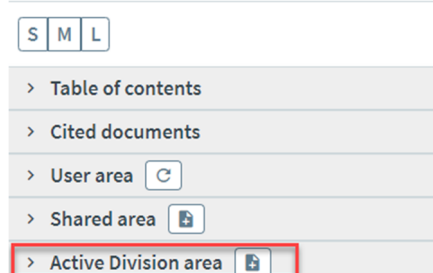
In parallel, the digitalisation of PGP workflows followed an unprecedented development. In particular developments in the PWB, such the introduction of AI-assisted Digital File Allocation (DFA) and (Pre)-Classification, support the assignment of expert divisions across DG1. Along with developments in the Digital File Repository (DFR) that facilitate the collaborative work within and beyond the Division, tools and practices have now converged into strengthened collaboration practices.

Building on the aforementioned developments, the Office is therefore now in a position to formalise the consultation within the Division at search stage.

Consequently, from 1.11.2023, all searches will be routed to the complete division via the PWB.

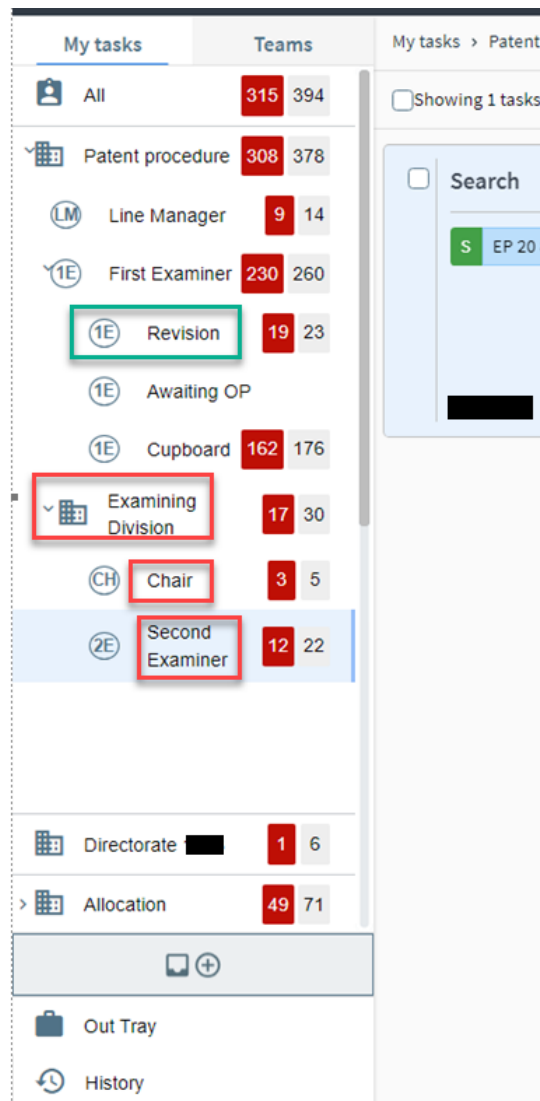
In practice:

From a practical point of view, Consultation will take place in the usual manner (in-person, teams-call, mail, etc...). It may further make use of the Active Division Area in DFR when needed e.g. co-editing of documents by all division members. (See screen shot below, please note that in the near future the Shared Area and the Active Division Area will be merged, with no loss of information) w.



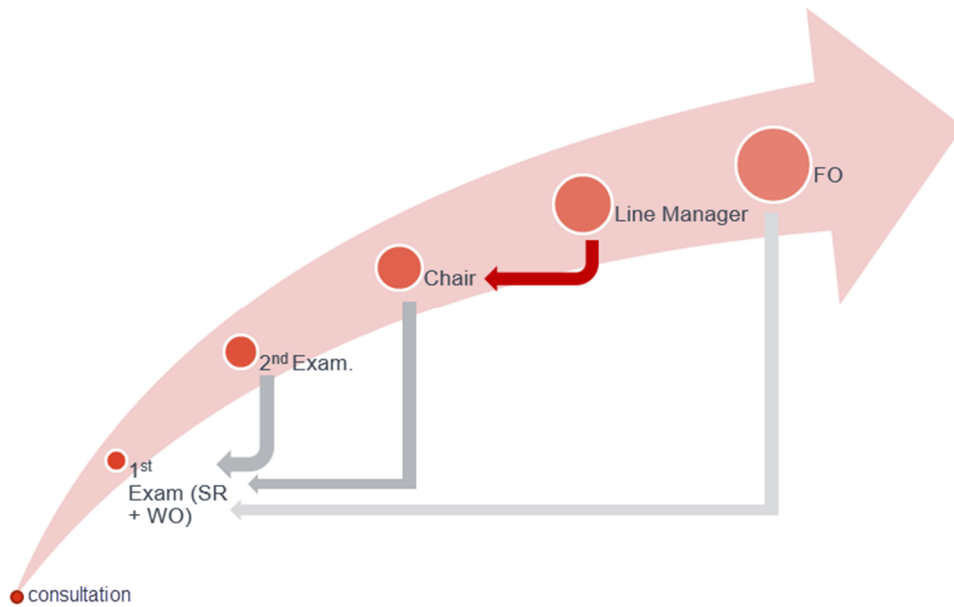
Following the sending of the action by the 1st member, the Task Manager in PWB will from 1.11.2023 include a 2nd member and Chair validation also in the search phase. All examiners must therefore check regularly their usual **task manager** in PWB and process the applications (see screenshot below):

- Search actions sent by the First Examiner will appear under "Examining Division" à "Chair" or "Examining Division" à "Second Examiner"
- Search actions sent back by Line Manager to the Chair will appear under "Examining Division" à "Chair"
- Search actions sent back by the 2nd or Chair to the first examiner are to be found under "First Examiner" à "Revision" - as per usual practice.



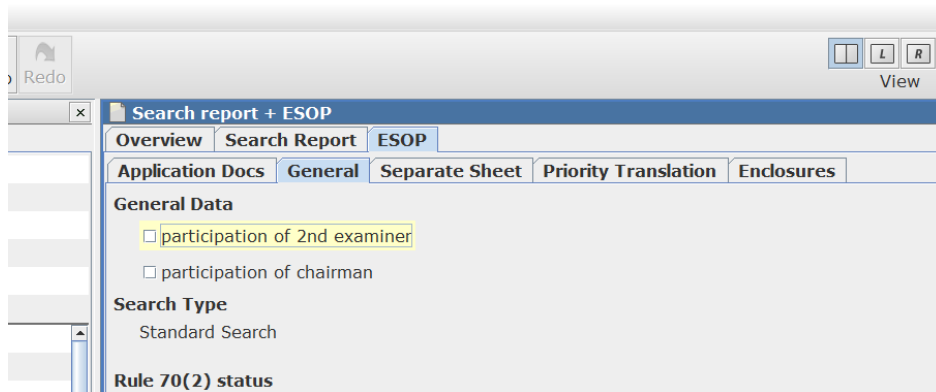
The Line Manager check remains unchanged (according to any existing deputization context), but as of 1.11.2023, PWB will route files that need corrections to the Chairperson, reflecting the roles of responsibilities within the Division (see Figure below).

Whenever a Formalities Officer detects a formal deficiency that needs action by the first, the re-routing will be back to the first examiner, as in the present workflow.



Please note:

With the introduction of the Active Search Division, the previous Division participation check-boxes in Trimaran (see below) have become obsolete and need not be clicked.



They will be removed in future versions of Trimaran.

The circulation to the Division of Clarifications at Search -CLAR- and the (rare) Phone Consultations at search phase (TEL) will be rolled out in a later release of the PWB.

From: BIT User Information
Sent: 31 October 2023 14:50
Subject: RELEASE NOTICE for Patent Workbench – Active Search Division routing

To: DG1, DQA, DG5
Cc: BIT User Information Recipients

BIT User Information

Dear All,

What is being released?

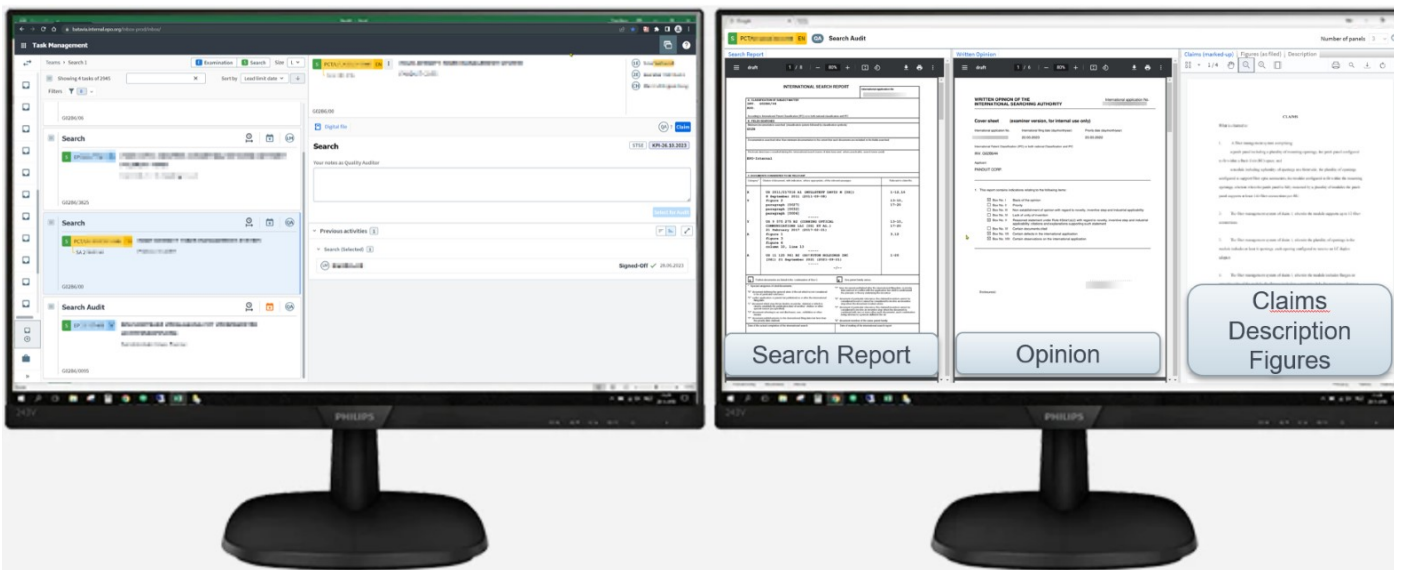
As of this evening, 31 October, a new routing is taking place in Patent Workbench for all Search actions sent from Trimaran:

- New: all search actions are **routed via the Second Member and Chair for their validation**, before they are routed to the Line Manager. In case of a finding by the Second Member or Chair, the actions are sent back to the First Member for revision.
- New: the Line Manager must either sign-off the actions, or **send back to the Chair** for revision.
- Unchanged: the Formality Officer must either complete the actions, or send back to the First Examiner for revision.

The Second Member and Chair will find the tasks in the tray “**Examining Division**”.
The First Examiner will find the sent-back tasks in the tray “**Revision**”.

Note 1: Search actions committed in Trimaran **before** this release will be circulated according to the former routing (no division member approval needed for negative search report)

Note 2: the division members can easily view the Search Report, Search Opinion and application documents in using the PWB Second Window (see also [PWB release note 2023-06-28](#)):



What is the installation procedure - What do I have to do?

There is no installation on your machine. You will be updated for the new software automatically. A dialog informs you about this update.

What if there is a problem?

For any questions, check the [FAQ](#) first or the [Known Issues page](#), and consult your Team Manager or WUC. If you need further assistance, please contact BIT Service Desk or use [q/selfservice](#) and specify that you have an issue with Patent Workbench.

BIT Services:	<ul style="list-style-type: none">· BIT SelfService· Phone: 7979 (ext.) +49 (0) 89 2399 7979 +31 (0) 70 340 9595
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With kind regards,
BIT Business Information Technology