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50 years EPC

Rewarding quality in the core business

« Production is the only thing that guarantees our payslip on the 26th of every month »

DG1 director

Normally directors dutifully trickle down the management mantra, both the official one and the unofficial one. Especially at the Office, any other attitude would quickly cause them to be exiled to director posts “ad personam” or other loss of their prerogatives.

When meeting with staff, managers talk turkey. When the unofficial management mantra encounters staff resistance, managers cannot limit their instructions to oral ones and lay them down in written form¹.

We can consider it common ground, and figures (quality report et al.) show it, that the current functioning in DG1 operative units does not contribute to improving quality.

The Staff Committee has already drawn the attention to the worrying situation² and made proposals to the President and in the Administrative Council but it seems necessary to repeat them once more. After all, *repetitio est mater studiorum*³.

Staff the divisions and their support appropriately

Patent applications have risen since 2012 while the number of examiners decreased⁴. The plan of the Office for future recruitment of examiners ([CA/100/22](#)) shows that not only does upper management see no issue with these opposing trends, but that they intend to continue in this direction. This means only one thing for the examiners that remain – more pressure to produce, and less time to dedicate to each file. IT tools remain from the perspective of the users merely a new user interface and certainly do not enable examiners to think quicker so that they can read and analyse documentation any faster than before.

The situation is certainly no better for formalities officers (FOs). In fact, there has been no recruitment *at all* of formalities officers since 2019. In the area of Patent Administration, the number of FOs has decreased significantly by around 12% since 2018. The plan for 2023 is also for zero recruitment, with some potential for recruitment thereafter. However, the planning still foresees to further reduce the number of FOs for every single year until 2027.

There is one simple answer to the Office being behind target and not managing to deal with incoming workload, and that is – more recruitment.

¹ [“Productivity vs Quality at the EPO: A rare glimpse behind the curtain that’s worrying”](#), PatentLitigation.ch Blog, 26-07-2023

² [“Patent Quality: Can it be put back on the EPO’s agenda?”](#), CSC paper ([sc23024cp](#)), 24-02-2023

³ Repetition is the mother of study/learning.

⁴ [“Depletion of the Workforce: Failure to recruit under the current administration”](#), CSC paper ([sc23020cp](#)), 17-02-2023

Respect the work of the divisions

The next priority is to stop interfering with the work of the search / examining / opposition divisions. The EPC has safeguards built in for quality, managed by the members of the divisions in the first place, which have been operative and successful since the inception of the Office. For instance, practices such as changing the composition of divisions until the outcome of the divisions' work pleases management must stop. In the case of oppositions, we have even seen team managers and directors acting as "hidden" members of the division although there is no provision for it in the EPC. We cannot sustain either the recent managerial decision to consider patentable subject-matter which is excluded from patentability according to Case Law⁵. Finally, the continuous reduction of time allocated to divisions is a lack of respect of their work.

Reward quality or: "you get what you pay for"

A priority is also to reconsider the reward schemes. Although "quality" is formally part of the reward exercise, it does not receive in practice the importance it deserves in the appraisal exercise. The statement that production is the only thing that counts demonstrates this.

Over the year, the current management has been introducing additional bonuses rewarding staff who show interest in each new trend the management invents, with the introduction of so called "collaborative bonuses" for "contributions to strategic projects" or the latest one of June 2023, the so-called "strategic bonuses" rewarding contributions to some yearly strategic initiatives⁶. These new bonuses now make up a substantial chunk of the financial reward envelope, and in the case of [strategic bonuses](#)⁷, benefit a predefined subset of staff that are eligible for reward, most of which come from areas outside of DG 1, and with no transparency in the distribution thus far⁸. These incentives reward submissiveness and endorsement of short-term ideas developed in the successive phases of the strategic plans and divert resources away from the core business. Instead, we suggest that management allocates appropriate time budget to interested DG1 staff (examiners, formalities officers...) when their input is necessary to shape its strategic and other plans. In many cases indeed, DG1 staff can be useful in assisting management who is not necessarily acquainted with the core business.

Most of the budgetary envelopes for bonuses must be redirected to rewarding genuine quality, which is a long-term investment in the sustainability of the Office, i.e., which is a contribution eligible for a pensionable reward. On the contrary, upper management shows little interest in rewarding those who are still showing dedication to their unvarying core roles by maintaining the high standards of quality, but rather are drawn like magpies to the constant stream of shiny new short-term projects that can be neatly completed with boxes satisfyingly ticked. Assessing substantive quality is all the more difficult when upper management loses touch with the core business and the actual work of examiners and formalities officers (FOs). However: in the practice of their daily work, examiners and FOs (and team managers) can assess very well how their peers work. For the time being, peer assessment is an unknown practice at the EPO. In fact, it could hardly be implemented in the EPO's purely competition-based career system rewarding some at the expense of others.

Conclusion

The patent world has been debating quality for a long time. Concretely, apart from spreading its usual gospel, the Office has taken little concrete action to improve the situation.

A return to the basics is a must. At a time when the Office is looking back on 50 years of history and gearing up for a sustainable future, it is urgent that upper management finally gets back to the core business and what has made the Office a success story, namely its staff and the quality of their work.

The Central Staff Committee

⁵ "[Distress among DG1 examiners](#)", CSC letter to VP1 ([sc23043cl](#)), 20-04-2023

⁶ "[Incentivising strong teamwork with strategic impact: Strategic Bonus for the 2023 rewards cycle](#)" and [GCC/DOC 13/2023](#)

⁷ "[New strategic bonus scheme launches](#)", Communiqué of 13-06-2023

⁸ Efforts in creating transparency in the annual reward exercise has thus far been absent with respect to the strategic bonus allocation