

Open letter: Patent attorneys see quality problems at the EPO

Four patent attorney firms are becoming concerned about the quality of the issue of patents by the European Patent Office (EPO), prompting them to send an open letter addressed to current President Benoît Battistelli and his designated successor António Campinos. The letter originates from attorneys at Grünecker, Hoffmann Eitle, Maiwald, and Vossius & Partner. The accusation that the efficiency strategy adopted by the Office is leading to poorer quality patents has been voiced for a long time. Now the attorneys are demanding action.



Benoît Battistelli

Other recipients of the letter are the Chair of the EPO Administrative Council Dr. Christoph Ernst and EPO Quality Management Director Niclas Morey.

The four authors of the letter are among the largest patent attorney firms in Europe. By their own estimations, they are behind more than 9,500 of the 166,000 applications made annually to the EPO. Their clients include many of the big international names in the pharmaceutical and mobile communications industries, but overall the four firms cover a very broad technical spectrum indeed.

“For a number of years we have been viewing with growing concern the developments at the European Patent Office,” the attorneys write. In their view, the new incentive scheme for the examination of patent applications in particular, as well as the internal instructions issued, appear to reward a rapid conclusion to examination procedures, leading to higher productivity at the Office.

The number of patent applications rose over the past year by 3.9 percent to around 166,000. Hoffmann Eitle & Co. do indeed welcome the “increased average speed of the procedures”, but they also point out that the exaggerated drive towards higher productivity has led to problems with patent examinations, in particular to poorer quality with the procedures. They criticise the fact that the patent examiners have too little time for individual examinations, and that, set against this, the fees imposed by the Office are too high by international comparison.

They also express concern about the issue that this is leading to defective patents, and thereby to distortion of competition within the economic area of the 38 EPO states. As well as that, the proprietors could no longer enforce their patents in their full extent against competitors. And ultimately they fear dwindling attraction for the EPO among their clients, which in turn will have effects on the European patent system.

Indirectly, the four firms are calling for a reduction in the fees in the light of the surplus which the EPO achieves. Since the system is self-financing, there is no particular need for a further increase.

The attorneys recommend that the EPO management adopt a new incentive scheme for the patent examiners which will guarantee the quality of searches and examination, a reputation for which the EPO was well known before the most recent reforms.



Thorsten Bausch

So far, no reaction

The EPO has so far made no comment. At the 2017 annual balance sheet conference, Battistelli declared that the EPO had boosted productivity. As well as the internal reforms, the increased number of patent examiners, to just on 4,400, had contributed to this. A recently published assessment of his 10 years in office pointed out that production had risen by 36 percent in the last three years, with the number of patent decisions still outstanding down by 27 percent.

Sustained criticism

Over and over again in the past the criticism has been voiced from all quarters in the patent attorney sector, but also from industry in general, that the efficiency strategy of the Office has led to deterioration in quality. The Office and its representatives have always rejected this. “There have never been any demonstrable figures to support this”, the Chair of the EPO Administrative Council Dr. Christoph Ernst insisted in 2017 in an interview with JUVE.

In a non-representative survey by the JUVE editorial board at the beginning of the year, 59 percent of the patent experts from industry said they were satisfied with the quality of the issues of patents by the EP. 31 percent were not.

In the JUVE Patent Survey 2018, industry representatives also formulated specific demands for the new President Campinos. Around 21 percent want Campinos to ensure “more thorough searches instead of rapid issue procedures”. Conversely, only 6 percent favoured the fast application approach.

Although Battistelli is the first person addressed by the letter from the attorneys, the open letter is to be understood as aimed especially at Campinos and Administrative Council leader Ernst. Battistelli is going at the end of the month, after eight years at the Office. His period of power has led to some very mixed views by patent experts throughout Europe. On the one hand, the Frenchman has introduced a series of important reforms, which according to sources among EPO member states in particular have made the Office fit for the future. On the other, in the view of many patent experts from the patent attorney sector and industry in general, this has led to a decline in quality in the issue of patents, bitter disputes with some groups of staff members and with the main staff union, SUEPO, as well as serious encroachments on the independence of the EPO's own courts. The Boards of Appeal have become largely detached from the Office over the past year, and now govern themselves, although their budget continues to be subject to the President of the Office.

Battistelli's departure was not a determinant factor in the timing of the publication of the letter to the EPO management, according to one of the initiators, Dr. Thorsten Bausch of Hoffmann Eitle. The letter represents a broad consensus within the four firms. The signatories have been in contact with other firms, asking for their input. (Mathieu Klos)