

Kluwer Patent Blog

Concerns about deteriorating patent quality at the EPO

Kluwer Patent blogger · Saturday, February 11th, 2023

The industry has serious concerns about the deteriorating patent quality at the European Patent Office. The issue was discussed earlier this month between the EPO and the Industry Patent Quality Charter, an group representing major international corporations, law firms and patent offices.

After their meeting, Beat Weibel, chief IP counsel, group senior vice-president at Siemens and a driving force behind the IPQC, sent a letter to the EPO, summarizing the results of the meeting and proposing the creation of working groups to address the IPQC's concerns. The tone of the letter is strikingly critical and points, among others, at the working environment for the examiners and the lack of time they have for thorough search and examination:



'(...) We are happy that we seem to have found a common starting and are keen to continue our constructive dialogue.

(...) Therefore, we have a vital interest in high quality patents. However, our influence on quality is mainly focused on the drafting of patent applications and on the portfolio management of granted patents. These aspects we try to cover with our self-obligation according to the IPQC text. Regarding the search and examination of patent applications, however, we are highly dependent on patent offices.

As explained and based on our daily factual experience with search and examination reports, we feel that the search and examination quality of the EPO decreased in the last years.

In our meeting we therefore presented the following requests to the EPO that we would like to elaborate in detail with you in a further constructive dialogue.

1. Complete searches

a. Provide a search prior art for ALL claims (acc. To Art. 92, R. 61 EPC) and a commented search report raising further patentability issues (R. 62). NOT raise patentability issues first, delete critical features and search prior art only for the remaining features.

- b. Make search criteria and strategy transparent.*
- c. Provide examiners with a sufficient amount of hours to come up with a comprehensive search report.*

2. Complete examination

- a. First office action should cover all patentability requirements, including clear language of all the claims; no piecemeal approach.*
- b. Ensure that members of the examining division spend sufficient time together for every application to discuss the proposal of the entrusted examiner. Dto. in opposition.*
- c. Allocate a sufficient time budget to make sure that 3 pairs of eyes principle of examining division is working properly again.*
- d. Analyze decisions by boards of appeal and opposition divisions to identify potential shortcomings in search and examination and develop countermeasures where possible.*

3. User feedback

Introduction on an easy-to-use, anonymous user feedback system for each office action (NPS or smiley approach).

4. Training

- a. Continuous and trackable external training of examiners in latest state of the art e.g., by research institutes, universities, or industries.*
- b. Trackable training of examiners e.g., every 5 year on importance of patents in industry.*

5. Make incentive system for examiners transparent.

It is our ambition to make sure that patent quality in Europe and through the EPO is the highest in the world. To reach this goal we are not only prepared to constructively collaborate with the EPO, but we also think that the working environment for the examiners must be such that they are able to deliver best in-depth search and examination to the benefit of society, industry and Europa.

Regarding the further proceeding, we suggest splitting the above topics into the four working groups (1) Search, (2) Examination, (3) Training, and (4) User feedback and Incentive System. We would be grateful if you could indicate suitable representatives of the EPO to set-up joint working groups for these topics. We would be happy to organize and host corresponding workshops over the next months. (...)

At a roundtable December last year with around 70 members, the Industry Patent Quality Charter criticized the EPO for failing to engage with their concerns, as [Managing IP reported](#), It was only after this meeting that the EPO ‘agreed to meet with a group of in-house counsel at major corporations to discuss concerns over the quality of patents granted by the office’.

Members of the [Industry Patent Quality Charter](#) are companies such as Procter & Gamble, Ericsson, Syngenta, Siemens, HP, Volvo, Roche, Qualcomm, Vodafone, ATOs, Bayer and Deutsche Telekom. The IPQC was created in October last year. ‘One of the main objectives is to enter into a continuous dialogue with patent offices. In particular the European Patent Office since the EPO’s understanding of patent quality is mainly self-driven and the recent measures mainly served internal optimization purposes.’

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