

Criticism of the European Patent Office Patents without value?

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To increase its revenues, the European Patent Office grants questionable patents, say critics. Transparency International sees structures that favour corruption.

Thomas Magenheim

The example described by the Munich patent attorney makes it clear what is at stake. A pharmaceutical company developed a pill against infertility, had it protected at the [European Patent Office](#) (EPO) and invested in its marketing. Then a rival entered the market with an alleged plagiarism. The patent holder went to court and lost. The alleged imitator was able to show a US patent that Epa examiners had overlooked. This rendered their property right worthless. "In extreme cases, this can cause millions in damages," explains the patent attorney, who wishes to remain anonymous. He works for one of the largest patent law firms in Europe. Patenting for several countries alone consumes a six-figure sum and many times that amount is invested in production in reliance on the patent. There is a system of meagre returns, the expert complains. Examiners are encouraged to grant more and more patents because this maximises the office's income. Quality research falls by the wayside.

Michael Heisel hangs the grievances even higher. "We see structural problems at the Epa that facilitate [corruption](#)," says the Bavarian head of the anti-corruption organisation [Transparency International](#). An element of this, he says, is the Epa Board of Directors, in which 39 European countries are represented and which is supposed to control the management of the office. But this is called into question by a conflict of interests, warns Heisel. On the one hand, the office takes over the patent examination for many countries. On the other hand, the states receive a share of the Office's income for granted patents. "The supervisory authority

The administrative board is not independent of the person being controlled, and that can't work," Heisel criticises. Epa service instructions support this view. "Productivity has to improve, very soon, ...because productivity is the only thing that guarantees that our payroll will be paid on 26. of each month," writes an Epa director. The clarity of a patent is not a priority, the inventive step is not to be examined in depth, it continues. It is to be examined quickly, decided positively and recognised a lot, it means.

Siemens is also among the critics

This practice is also a thorn in the side of Siemens patent chief Beat Weibel. His company is the largest German patent applicant and initiator of an industry initiative with the abbreviation IPQC. 20 major international corporations such as Siemens, Bayer or Nokia, but also smaller companies, have united because they fear for effective patent protection. "We have nothing in our hands if patent examiners can't find the state of the art and can only do incomplete research due to internal time pressure," complains Weibel. Siemens, too, has had similar experiences with Epa patents. Representatives of IPQC and Office 2023 have met twice to discuss and resolve problems. But that already fails in terms of awareness. "The

Management of the office has denied quality deficiencies," regrets the Siemensian. The Critics, meanwhile, remain silent. "We ask for your understanding that Epa does not wish to comment on this," a spokesperson explains succinctly when asked.

The data speak a clear language. For example, Siemens has documented an increase in the time spent on patent applications by one third in the past decade. At the same time, according to internal Epa statistics, the time available to examiners per patent search has almost halved, i.e. the opposite development has taken place. As a result, those who challenge patents are becoming more successful. From 2015 to 2021, the revocation rate climbed from 41 to 46 per cent, according to Siemens. For 2022, a study by the Chair of Intellectual Property at the University of Osnabrück has determined a revocation rate of almost 50 per cent at the Epa Board of Appeal. Another almost 40 per cent of contested patents were marginally to substantially restricted. It is striking that not even one in ten revocations is based on documents that could not be found in the Epa patent database, the study authors write. This means that in nine out of ten contested cases, the patent should not have been granted in the first place if a precise search had been carried out.

Internal complaints have gone unheard

"We need reliable patents, and for that examiners need enough time and experience," emphasises a patent expert from the pharmaceutical company Roche in Switzerland. He too is a member of the IPQC. Epa - Staff representatives support the accusations from industry and research. To the outside world, the office management claims that everything is fine and plays down quality deficiencies or ignores them altogether, they explain. Only four out of five exiting auditors are replaced, despite an increase in work. Internal complaints that this is at the expense of the quality of research have gone unheard.

"The Office must provide more examiners and more examination time," the Munich patent attorney also demands. A few years ago, several large patent law firms sent a fire letter to the Office, which criticised the declining quality of patents. This has been negated on the part of the office. "Nothing happened," regrets the expert. Like Transparency International, he sees the Epa Board of Directors as problematic.

Aiming for patent fees

"There are states for which this is a significant source of income," says Weibel, criticising the control body's actions and its focus on patent fees. Patent trolls have also recognised this and are taking advantage of it. These are applicants who apply for superficial patents, which are granted if the examination is poor, explains Heisel. These patents then block competitors. "China in particular applies for a large number of patents, and if they are not carefully examined, German companies can lose innovation opportunities.

take," warns Heisel. This is another reason why the IPQC remains persistent. "We will not give up," promises Weibel in the fight for patent quality.

European Patent Office

Organisation

The European Patent Office (EPO), with its headquarters in Munich, is a supranational organisation, not an EU organisation, which is only subject to very limited state jurisdiction in the German country where it has its headquarters. The management of the Office, under President Antonio Campinos, is controlled by the Epa Administrative Council. It is made up of representatives of the 39 European states that are members of the European Union.

Patent Convention have acceded to. These representatives are usually the heads of the national patent offices. For Germany, there is a Secretary of State for Justice.

Patents

In particular, patent applications from China have been on the rise at the European Patent Office for years. In 2022, the increase on this basis was a good 15 percent to more than 19,000 requests for protection by Chinese inventors. By comparison, applications from the USA grew by only three percent to a good 48,000 requests, while those from Germany fell by almost five percent to 24,684 inventions. However, these figures say nothing about their quality.