

Criticism of the European Patent Office Patents without value

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



The European Patent Office in Munich. Experts criticise the practice of granting inventor protection.

Photo: dpa/Sven Hoppe

By Thomas Magenheim-Hörmann

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 lame searches, the expert complains. Examiners are encouraged to grant more and more patents because they maximise the office's income. Quality research falls by the wayside. Michael Heisel puts the grievances even higher. "We see structural problems at the EPO that facilitate corruption," says the Bavarian head of the anti-corruption organisation Transparency International.

39 countries represented in the Council

An element of this 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 shares of the Office's income for granted patents. "The Administrative Council is not independent of the party being controlled, and that can't be good," 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 the 26th 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.

This practice is also a thorn in the side of Siemens patent chief Beat Weibel. His company is the largest German patent applicant and the initiator of an industry initiative with the abbreviation IPQC. 20 major international companies such as Siemens, Bayer and Nokia, but also smaller firms, have joined forces because they fear for effective patent protection. "We have nothing 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 has also 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 Office's management has denied that there are any quality deficiencies," says the Siemens expert regretfully. 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. Data speak a clear language.

For example, Siemens has documented an increase in the time spent on patent applications by one third in the last decade. At the same time, according to internal EPO statistics, the time available to examiners per patent search has almost halved. 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 the Epa Board of Appeal of almost 50 percent. A further almost 40 percent of contested patents were marginally to substantially restricted. It is striking that not even one in ten revocations was based on documents that could not be found in the Epa patent database, the study authors write. In nine out of ten contested cases, the We need reliable patents, and examiners need enough time and experience for this," emphasises a patent expert from the Roche pharmaceutical company 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 management claims that everything is fine and plays down or completely ignores quality deficiencies, they explain. Only four out of five examiners who leave the office are replaced, despite an increase in work. "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 wrote an incendiary letter to the Office criticising the declining patent quality. This has been negated by the office. "Nothing happened," regrets the expert. Like Transparency International, he sees the Epa Board of Directors as problematic. "There are States, for them this is a significant source of income," Weibel also criticises.

Patent trolls have also recognised this and use it for themselves. These are applicants who apply for protective rights for superficial patents, which are also granted if the examination is inadequate, explains Heisel. These patents then block competitors. "China in particular applies for a large number of patents, and if they are not carefully examined, this can deprive German companies of innovation opportunities," warns Heisel.

Patents: More and more applications from China

The European Patent Office, with its headquarters in Munich, is a supranational organisation and not an EU organisation. The management of the Office, under President Antonio Campinos, is controlled by the EPO Administrative Council. It is made up of representatives of the 39 European states that have acceded to the European Patent Convention. Germany is represented by a State Secretary for Justice. 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. mho