

Two examiners unpack

RND: "The cash register must be right": Why the European Patent Office under criticism



The European Patent Office has been criticised for quality problems. Now two examiners have come clean and confirmed deficiencies. The Office is stonewalling - and the Ministry of Justice is calling for dialogue.



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Munich. The man presents his official identity card for the European Patent Office (EPO), which identifies him as a patent examiner. Like a colleague, he wants to remain anonymous because, according to internal regulations, examiners are not allowed to make public statements if that could damage the reputation of the office. What the duo has to say is quite capable of doing that. "The seeds are sown," says one of them. He is referring to the consequences of a new appraisal and promotion system introduced in 2015 that encourages examiners to work through as many cases as possible. Cases are patent applications. Those who process many applications get many assessment points. The more of these points an examiner manages, the faster he rises and receives more salary. "Our quality problem is structural", emphasises one of the two auditor.

His colleague confirms this, and with it [criticism of the IPQC](#). This is an initiative of major industrial applicants at the patent office, with Siemens leading the way on the German side. Bayer, Nokia and Roche are also involved. IPQC complains that the office is having patent applications examined ever more quickly and thus more negligently. The result is that patents contested in court are less and less likely to be upheld, which can cost alleged patent holders a lot of money. The office itself has not yet publicly commented on the criticism.

It has always denied quality problems to IPQC until recently, say industry representatives.

In contrast, the IPQC's criticism has been registered without surprise among its own auditors. "This was to be expected," says one of the two auditors. It was only a matter of time before quality problems began to show through, since the audit time has been getting tighter and tighter for years. "The money has to be right," adds the other examiner. However, the office collects fees mainly when patents are recognised. Revenues per grant therefore have priority.

Auditors had already feared the resulting quality problem eight years ago and addressed it internally. "The management doesn't see it that way and sees us more as a nest-destroyer," says an auditor who has been working for a good 20 years and has a lot of experience.

The office is also stonewalling the IPQC. Since February, it has refused to provide data requested by the initiative on patent granting practices. It has also refused invitations to a round table or a public discussion at the Osnabrück Patent Days this May, where all the problems could have been discussed. All this can be seen in a letter from the IPQC to Epa head Antonio Campinos from the end of June. It also shows that the leadership no longer wants to talk to IPQC, as confirmed by those involved.

The office and its critics

The European Patent Office, with its headquarters in Munich, is not an EU authority, but a supranational organisation to which 39 European states have joined. Each of them is represented in the Administrative Council with one vote, regardless of the patent volume of their countries. San Marino has one vote, as does Germany. Patent fees also benefit these 39 states proportionately. For many smaller ones, they represent an important budget item. They are interested in many patent grants. The IPQC industry initiative provides facts for criticism. From 2018 to 2022, the number of patent applications increased by a tenth, but the number of examiners fell by 8 per cent. The rate of accepted patent applications grew from 61 to 71 per cent from 2015 to 2021, while the processing time per patent application was halved. By comparison, major applicant Siemens needed a good third more time to formulate a patent application. Well over half of the contested patents were recently withdrawn in whole or in part.

No one is served by mass instead of class

In the meantime, the dispute has also reached the Epa Administrative Council as the supervisory body of the office. The German representative on the board is Assistant Secretary Christian Wichard from the Federal Ministry of Justice. "The IPQC is known to the ministry," it writes in response to a question. It is important, he says, to grant a patent that will last as far as possible if it is legally challenged. "No one is served by a merely quantitative approach that prioritises the number of patents granted," the Ministry of Justice emphasises.

The Administrative Council is very aware that the quality of [patent granting is of great importance](#) and that quality deficiencies would be very problematic for Europe as a location for innovation, it continues, and urges constructive dialogue with the IPQC. The commitment of the industry initiative is to welcome.

With its attitude of refusal, the office obviously sees things quite differently. From now on, alleged quality problems will only be discussed within Epa and in the Standing Advisory Committee, which is made up of representatives of the notifying industry. The Office refuses to discuss the matter separately with the IPQC, according to people familiar with the matter.

However, the critical major notifiers do not want to let up, and have now also sought contact with the German Epa Board of Directors, Wichard, and thus political support. Judging by the statements of the Federal Ministry of Justice, there is. Germany has always emphasised the importance of patent quality in the Administrative Council and suggested that the Office and IPQC try to find solutions in dialogue, it explains. It is important that the Office and users "remain in serious dialogue and that no hardened fronts emerge". But that is exactly what it looks like at the moment.