

Munich, 19-01-2024
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50 years EPC

The EPO ignoring the skilled person

Back in 2022, Mr Campinos mentioned in his [Christmas speech](#)¹ that “there have been some comments on our quality recently” and defended that “[q]uality is the appraisal of the many and not the discontent of the few”. At that time, Mr Beat Weibel, Chief IP counsel of Siemens had just [initiated](#) with other major industry players an [Industry Patent Quality Charter](#) (IPQC) to voluntarily adhere to measures to improve patent quality. One of the main objectives was also to enter into a continuous dialogue with patent offices, especially the EPO. After a few “discussions” with the IPQC, the EPO has decided in June 2023 to stop any direct dialogue with the signatories. Nevertheless, the IPQC remains very active. This paper provides an overview of the events.

Criticism from the industry...

The “[EPO Patent Quality Charter](#)”, which was part of Mr Campinos’ so-called “Strategic Plan 2023”, was critically received by European players in the patent world. The Chief IP counsel of Siemens, Mr Beat Weibel, [declared](#) in October 2022²³ in the press that: “[a]ll the measures are too focused on the improvement of internal processes and their effectiveness, including speed and timeliness. This does not necessarily enhance the actual quality of the granted patents.” Consequently, Mr Weibel launched an [industry initiative](#) in response to what is seen as an ongoing quality issue at the EPO. The signatories of the [Industry Patent Quality Charter](#) jointly commit to a set of quality standards independent to the measures set out by the EPO. Among the signatories are major patent applicants to the EPO in recent years⁴.

...and the EPO denies

Under pressure, Mr Rowan (VP1) entered into a denial exercise in the press⁵: “We are absolutely focused on the substantive quality of the products and services” and “[...] timeliness doesn’t necessarily mean speed”. The latest Technologia Survey organised by SUEPO in 2022 actually showed in its [results](#)⁶ that, in the view of EPO staff, timeliness has become a covert means for increasing output and that productivity/production are the main criteria for the appraisal and rewards exercise at the expense of quality. End of 2022, in his [Christmas speech](#), Mr Campinos considered the IPQC as expressing the “discontent of a few” and hence considered that it can be downplayed if not ignored.

Production remains paramount

Early 2023, Mr Menidjel (Chief Operating Officer) communicated to DG1 line management that “[i]n

¹ “[Pre-recorded all-staff Christmas message](#)”, Speaking Notes for the President, 10-12-2022

² “[EPO must focus on quality rather than efficiency, says Siemens IP chief](#)”, IAM Magazine, 31-10-2022

³ “[Dissatisfied industry users push back against EPO quality measures](#)”, JUVE Patent, 12-10-2022

⁴ Atos, Bayer, Deutsche Telekom, Drägerwerk AG & Co. KGaA, Ericsson, Heraeus, HP, Iveco Group N.V., Knorr Bremse AG, MTU, Nokia, Physik Instrumente (PI) GmbH & Co. KG, Procter & Gamble, Qualcomm, Roche, Siemens AG, Siemens Healthineers, Syngenta, Tetra Pak, Vodafone, Volvo

⁵ “[Efficiency-over-quality criticisms are unfounded, says EPO VP for Patent Granting Process](#)”, IAM Magazine, 12-12-2022

⁶ “[Fifth Edition of the Technologia Staff Survey: the 2022 results](#)”, SUEPO letter, 23-06-2022

the last two years our production has fallen just short of our strategic targets [...] it is a situation that we need to address". All examining Team Managers were consequently asked to revert from a 70% to an 80% contribution to production as of 1 July 2023 with a doubled functional allowance.

At the same time, DG1 Directors put early pressure on their staff to increase output. Some of their emails addressed simultaneously to DG1 staff in [January 2023](#) and [March 2023](#) are thoroughly commented in this [blog](#). Both emails were sent in copy to Mr Rowan (VP1) and Mr Menidjel (COO), thereby showing that the senders were satisfied that their content was fully supported by upper management.

In his [detailed analysis](#)⁷, the blogger is obviously shocked by the content of the emails, especially by the Director's statement that *"production is the only thing that guarantees our payslip on the 26th of every month"*. For EPO staff, it came just as a written form of the [unofficial management mantra](#)⁸ trickled down orally in principle.

The EPO concedes to a first meeting with IPQC...

As the waves caused by the IPQC continued, Mr Rowan (VP1) finally conceded to a meeting with them on 3 February 2023 and on 10 February 2023 with the Federation of German Industries⁹. His proposal was merely to *"look at the quality pages of our website to see how we can improve the information [and] to prepare the Quality Report [...] with increased data and transparency"*. This statement gave little hope that Mr Rowan (VP1) really understood the issue.

On 8 February 2023, Mr Weibel addressed a [letter to Mr Rowan](#) requesting *inter alia* that the EPO *"provides examiners with sufficient time and to "make the incentive system for examiners transparent"*. Mr Weibel also asked to set-up joint working groups. Meanwhile, Mr Campinos [acknowledged](#)¹⁰ the negative coverage in the media and the EPO promised to intensify dialogue with key applicants and SMEs in 2023¹¹ and to find means to improve substantive quality¹².

The staff representation [recalled](#)¹³ that it was ready to contribute actively and constructively to respond to external criticism and put quality on the EPO's agenda. One of the main concerns is the [depletion of the workforce](#)¹⁴ and the rise in patent applications causing more pressure on the remaining examiners and less time to dedicate to each file.

...but reaches an impasse in patent quality discussion

End of February 2023, the EPO had not yet responded to the IPQC's specific suggestions for improvement. To the [JUVE](#)¹⁵ magazine, an industry representative claimed that *"[they] file patents to protect innovations, not so that the contracting states can get high renewal fees"* and a former examiner confirmed that *"the EPO is setting itself up financially more and more like a profit-oriented company."* In March 2023, the press reported¹⁶ on a further testimony that the career system and the push for more productivity cause examiners *"to close their eyes when granting a patent"*.

VP1: The big interview, the big denial

In April 2023, the increasing press coverage convinced Mr Rowan (VP1) to stop declining requests

⁷ ["Productivity vs Quality at the EPO: A rare glimpse behind the curtain that's worrying"](#), Patent Litigation, 26-07-2023

⁸ ["50 years EPC: Rewarding quality in the core business"](#), CSC paper ([sc23123cp](#)), 16-10-2023

⁹ ["DG1 Beats – January 2023"](#), VP1, 06-02-2023

¹⁰ ["2023 Quality Objectives"](#), President Communiqué, 10-02-2023

¹¹ ["Meeting our users"](#), Intranet Communiqué, 23-02-2023

¹² ["EPO meets with CIPA"](#), Intranet Communiqué, 10-02-2023

¹³ ["Patent Quality: Can it be put back on the EPO's agenda?"](#), CSC paper ([sc23024cp](#)), 24-02-2023

¹⁴ ["Depletion of the workforce"](#), CSC paper ([sc23030cp](#)), 17-02-2023

¹⁵ ["EPO and IPQC reach impasse in patent quality discussion"](#), JUVE, 21-02-2023

¹⁶ ["Mal schnell ein Patent"](#), Frankfurter Rundschau; ["Zoff um das EPA"](#), Münchner Merkur; ["Wird die Prüfung zunehmen nachlässig"](#), Redaktionsnetzwerk DE

for an interview by the magazine [Managing IP](#)¹⁷. Insider information confirmed that “[t]he EPO is “rubber-stamping” applications it would never have granted in the past”. The communication exercise of Mr Rowan (VP1) consisted again in promising a more in-depth version of the quality report and in denying any quality issues at the EPO without any substantiation: “Sometimes industry will be disappointed in what we do”.

Mr Rowan (VP1) denied the concerns from the industry that timeliness objectives are a covert means for pushing for productivity increases. He misrepresented the situation in DG1 with his “holistic” approach (the meaningless buzzword) and concealed the existence of strict productivity objectives in terms of days/product for the purpose of performance assessment and career progression.

In order to keep the users of the patent system quiet, Mr Rowan (VP1) announced “plans to use a three-examiner panel for the search phase, to try to improve the quality of written opinions”. These plans led to the [Active Search Division](#)¹⁸ project which lacks definition, has no legal basis and foresees no time budget: all the ingredients for an empty shell. The final words of Mr Rowan in the interview were that the EPO defined “a system that was designed in the 1800s based on postal services and very sequential processing of the application [...] That’s where we need to think differently”. In view of the EPO’s track record, this declaration sounds worrying as to the compliance with the EPC of future creative shortcuts in the patent grant process.

Despite the public concerns over EPO quality, the production pressure on staff continued unabated. In some areas (like the business methods), management even [enforced radical changes](#)¹⁹ in search and examination to consider patentable subject-matter which is excluded from patentability according to Case Law. This resulted in a higher rate of granted patents and caused distress among the examiners affected.

The EPO meets with the IPQC for the second (and last) time

In May 2023, [Managing IP](#)²⁰ reported on the second meeting between the EPO and the IPQC. The IPQC presented evidence demonstrating a decline in quality standards. Such meetings with direct and frank feedback became inconvenient for the EPO who made it clear that it would be the last one. Management explained that they expect the IPQC to voice their concerns through “established channels” such as the Federation of German Industries and the Standing Advisory Committee before the EPO (SACEPO). The IPQC understood the manoeuvre: “We don’t want to be buried in the big associations where it is harder to reach consensus [...] That would be great for the EPO, then they can do what they want”.

The press [reported](#)²¹ again on the IPQC concerns that examiners got 50% less time to treat applications within the last 10 years. The anti-corruption organization, Transparency International, [criticised the structural problems](#) of the EPO which facilitate corruption: the Administrative Council has a direct interest in increasing renewal fees and cannot perform its supervisory role.²²

The IPQC tables further evidence...

End of June 2023, the IPQC addressed again Mr Campinos, Mr Rowan (VP1) as well as the Administrative Council. In this letter, the IPQC shared the outcome of the discussions held at the Osnabruecker Patenttage 2023. In particular, they submitted an analysis ([02/2023](#)) by the independent research company ipQuants showing that the quality of examination and consistency of decisions is significantly depending on the experience of an examiner. Consequently, the IPQC suggested that the EPO reviews the current training measures for new examiners, including the time allocated for the examination.

¹⁷ “EPO’s quality chief answers critics”, [Managing IP](#), 13-04-2023

¹⁸ “Active Search Division. More “checks”. Better quality?”, CSC paper ([sc23134cp](#)), 10-11-2023

¹⁹ “Distress among DG1 examiners”, CSC letter ([sc23043cl](#)), 20-04-2023

²⁰ “Counsel hopeful of EPO quality deal despite latest stalemate”, [Managing IP](#), 11-05-2023

²¹ “Industrie kritisiert Europäisches Patentamt”, [Die Welt](#), 26-05-2023

²² “Patente ohne Wert?”, [Stuttgarter Zeitung](#), 26-05-2023; “Patente ohne Wert?”, [General-Anzeiger](#), 25-05-2023

...and the EPO further denies: End of discussion

The [Kluwer Patent Blog](#)²³ reported that Mr Weibel received [an annotated version of his own letter](#) back from Mr Rowan (VP1) refuting and/or denying almost all of the issues brought forward by the IPQC. The EPO hid again behind the fact that it is ranked number one for quality by the IAM survey for 10 years in a row. The reply pretended that *“there is neither a minimum nor a maximum time step per action”* and carefully omitted to mention the timeliness objectives and the days/product imposed on staff. A similar avoidance and denial attitude was adopted by Mr Menidjel (COO) in the DG1 Town Hall meeting of 27 June 2023 when faced with quality questions from staff. He refused to answer questions as to the content of discussions with the IPQC and could not convince the audience that *“timeliness is not speed”*.

The press coverage continued over the summer 2023. Two examiners testified that [quality problems at the EPO are structural](#) with the new career system²⁴ and industry representatives [expressed their scepticism](#)²⁵ about the [EPO annual review](#) *“flooding all of us with sheer numbers, telling us how quick they are, how productive they are, how great this all is”*. Even Jacques Michel, former VP1 at the EPO from 1987 to 2002 [commented on LinkedIn](#) that: *“Today the quality falls down and the laxism is everywhere.”* The [Kluwer Patent Blog](#)²⁶ published an analysis of the EPO continued propaganda for justifying higher fees for lower quality work and the [Algemeen Dagblad](#)²⁷ in the Netherlands recalled the quality issues during the 50 years EPC celebrations.

The IPQC will remain active

In November 2023, Mr Weibel told [Managing IP](#)²⁸: *“When our concerns are ignored by the EPO management, I ask myself ‘what are they thinking?’ At least they should take those concerns seriously”*.

In order to seek political support, Mr Weibel organised a meeting on 6 November 2023 at the Technical University of Munich with 30 attendees including representatives from the National Patent Offices of France, Germany, United Kingdom, Austria, Sweden, Denmark and Switzerland. Although duly invited, EPO management declined to send representatives. Mr de Corte, Head of IP for crop protection at Syngenta, noted that it was “remarkable” that the EPO refused the invitation: *“If I were interested in quality I would appreciate any invitation to a conversation”*.

In the meeting, Mr Poredda, Chief Patent Officer at drugmaker Roche, presented data from ipQuants showing that almost 50% of EPO patents are granted without a single substantive office action. Mr Thomaier, Head of IP at Bayer, added clearly: *“Even if you finally win a validity and infringement case, you can never repair the damage to the market.”*

Mr Weibel confirmed the observed impact of low quality patents in the [Kluwer Patent Blog](#)²⁹ on startups and big companies: *“Instead of focusing on protecting their own innovations, they are mainly absorbed to do Freedom to Operate analysis of the masses of granted patents that are invalid or too broad [...] It could very well be that a project is not executed because an analysis of the field shows a landscape of thousands of patents. Then the management thinks: we’re not going there because that’s already blocked. But if these patents are all invalid, then this really harms the company”*

Early 2024, ipQuants advertised on [LinkedIn](#) its latest report ([03/2023](#)) on Patent Quality at EPO:

“Metrics such as increased workload for examiners combined with reduced examiner workforce, quicker decisions with fewer office actions, and the high success rate of oppositions are areas of concern”.

²³ [“Deteriorating patent quality: EPO under fire, management is not impressed”](#), 5 July 2023

²⁴ [“Die Kasse muss stimmen: Warum das Europäische Patentamt in der Kritik steht”](#), Redaktionsnetzwerk DE, 14-07-2023

²⁵ [“Slippery road: in-house say EPO quality concerns not abating”](#), Managing IP, 17-07-2023

²⁶ [“EPO Propaganda Master Class – or: How to Justify Higher Fees for Lower Quality Work”](#), Kluwer Patent Blog, 09-09-2023

²⁷ [“Cultuur van burn-outs en uitputting op Europees octrooibureau”](#), AD, 04-10-2023,

²⁸ [“IPQC founder seeks political backing after EPO no-show”](#), Managing IP, 09-11-2023

²⁹ [“Beat Weibel: Low quality patents harm European Industry”](#), Kluwer Patent Blog, 24-11-2023

For Mr Campinos, “[q]uality is a shared responsibility and the result of collaborative efforts. All stakeholders have a role to play in achieving higher quality” according to his [Strategic Plan 2028](#) (p. 37/47). Mr Weibel already provided his answer in this blog³⁰:

“Siemens [...] has invested about 30-35% more time in drafting patent applications since 2011. On the other hand, at the EPO the efficiency and productivity of the examiners has been increased by 50%. Their output has doubled. That opens a gap which speaks for itself”

Conclusion

Over the last decade, the staff representation has continuously reported that the ever-increasing productivity targets and the New Career System did not create the conditions for staff to focus on quality. EPO management did not listen and kept the staff representation away from any discussion on substantive patent quality.

Since 2022, major industry players express their concerns. They bring arguments, data and propose working groups. Instead, the EPO opposes denial, publishes press releases not reflecting discussions and closes its door. One would expect the industry to be better treated than staff and their representation. It is remarkably not the case.

When performing an inventive step analysis of a patent application, EPO examiners take into account the general knowledge of the “skilled person” working in the corresponding technical field, especially from the industry.

If EPO management does not listen to the “skilled person”, to whom will they listen?

The Central Staff Committee

³⁰ [“Beat Weibel: Low quality patents harm European Industry”](#), Kluwer Patent Blog, 24-11-2023