

European Patent Office

Bob-van-Bentham-Platz 1
80469 Munich

Attn. Mr. Benoît Battistelli, President of the EPO
Attn. Dr. Christoph Ernst, President of the
Administrative Council
Attn. Mr. Niclas Morey, Principal Director User
Support and Quality Management
Attn. Mr. António Campinos, designated President
of the EPO



VOSSIUS & PARTNER
Patentanwälte Rechtsanwälte mbB



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Patentanwalts- und
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München
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June 7, 2018

Open Letter: Quality of Examination Proceedings at the EPO

Dear President Battistelli,
Dear Dr. Ernst,
Dear Mr. Morey,
Dear Mr. Campinos,

Each year our law firms file more than 9500 patent applications with the EPO.

For several years now we have followed with great concern the developments at the European Patent Office, in particular the modifications to the incentive systems for the examination of patent applications. The incentive systems and internal directives appear to be increasingly directed towards rewarding or even requesting rapid “termination” of proceedings and a correspondingly higher productivity. This has resulted in penalization of detailed and thorough assessment of cases.

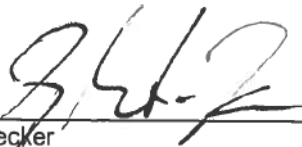
While we do appreciate the increased average speed of the proceedings, such an overreaching desire for high productivity has led to the following, specific problems regarding the examination of patents:

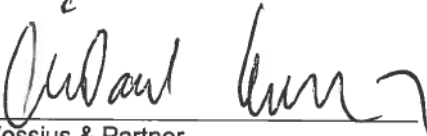
- a) When the aim is to terminate proceedings as quickly as possible within specific allowed times, the quality of the search and examination of applications must suffer.
- b) The fees for search and examination, which are rather high when compared internationally, can only be justified by giving the examiners sufficient time for an in-depth assessment of each single application.

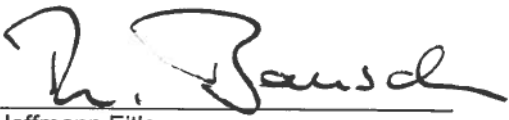
- c) Patents that have been examined less thoroughly tend to have an erroneous scope of protection. This distorts and hinders economic competition within the EPC Member States.
- d) Proprietors of inadequately examined patents are exposed to an increased risk of their patents not being able to be successfully asserted against competitors in their full scope.
- e) If the users of the European system gain the impression that granted EP patents cannot be relied upon anymore due to insufficient search and examination, the users may increasingly be discouraged from filing European patents. This might unhinge the entire patent system.
- f) The core task of the EPO is the examination and grant of European patents. This is an important public task, where the EPO needs to balance the interests of the public against the interests of patent applicants. The official fees are supposed to self-fund the EPO. However, in contrast to an industrial company, we cannot see why the profit of the EPO needs to be increased beyond the level of self-funding. From our perspective, the high surplus is rather an indication that the fees are too high and that a further, problematic increase of productivity is not appropriate.


We have observed that our perception of endangered quality of the examination of European patent applications is shared by a large number of patent examiners. As you know, a petition was recently published in which more than 900 examiners at the European Patent Office revealed that they are prevented by the internal directives from a thorough, complete search and examination.

In view of this background, we urgently suggest setting up new incentive systems for examining European patents so that the high-quality of searches and examinations for which the European Patent Office used to be known will be guaranteed again.


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