

Leading German patent law firms criticize European Patent Office

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Four leading patent law firms in Germany – Grünecker, Hoffmann Eitle, Maiwald and Vossius & Partner – have published an open letter expressing 'great concern' about the developments at the European Patent Office, particularly 'the modifications to the incentive systems for the examination of patent applications'. The 'overreaching desire for high productivity' has led to a series of problems, according to the letter, which is directed to outgoing EPO president Benoit Battistelli, the chairman of the Administrative Council Christoph Ernst, principal director user support & quality management Niclas Morey and future EPO president Antonio Campinos (who will start in office on 1 July 2018).

Among others, the firms write that when 'the aim is to terminate proceedings as quickly as possible (...), the quality of the search and examination of applications must suffer'. The rather high fees, moreover, 'can only be justified by giving the examiners sufficient time for an indepth assessment of each single application'. Patents with an erroneous scope of protection distort and hinder economic competition and might unhinge the patent system, they write.

More broadly, the law firms question the enormous financial reserves of the European Patent Office, amounting to 2.300.000.000 euros, 650 million euros to fund the pension scheme not included: '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.'

The full text of the letter is published below.

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 indepth 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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