

# Business models of patent offices

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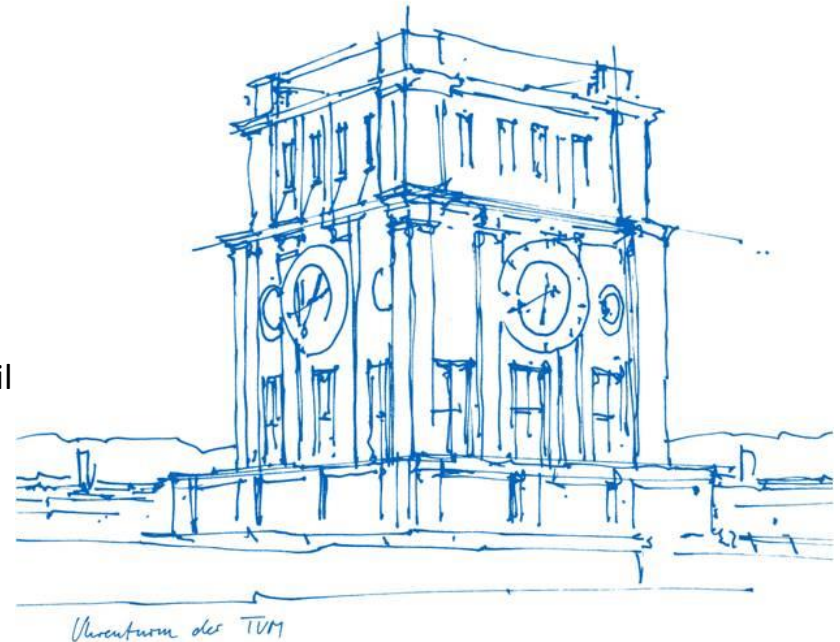
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1. Introduction
  - a) Patent quality
  - b) Industry concerns
2. PTO features
3. Stakeholders
4. PTO dynamics
5. PTOs' business models

## a) Patent quality

- Patent quality =<sub>df</sub> **patent efficacy** (usability) & **patent validity** ("survival")
  - that patents are *respected* by the public (mainly by competitors).
  - that patents are *recognised* as a quality standard by investors.
  - that patents *form solid bases for injunctive relief*.
  - that patents will *reliably uphold* in (potential) annulment suits.
  - that in bifurcation systems infringement courts *will not stay* trials to wait for the outcome of pending annulment trials.
  - that patents form *solid bases for preliminary injunctive relief*.
- Economic perspective: As technology(!) monopoly rights patents **can only be justified, if they are of quality.** – **This is not new and generally accepted!**
- Complexity of patent use: Only a **small percentage** of all patents granted are **ever enforced and/or challenged!** → Purpose based upon the assumption of quality

# 1. Introduction (cont'd)

## b) Industry concerns – *remarkable!*

*“The outcome of the patenting process [...] should be patents with reliable validity. If this is lacking, there are serious consequences.”* (cf. Industry Patent Quality Charter from 2022)

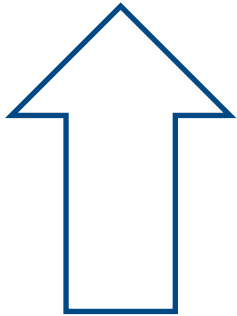
- Vivid discussion of PTOs’ patent quality and its importance for patents’ stakeholders and the sustainability of the patent system itself
- Increased **criticism of efficiency focus, swiftness of grant** and – in turn – **alleged(!) neglect of substantive examination** and disregard of patent quality



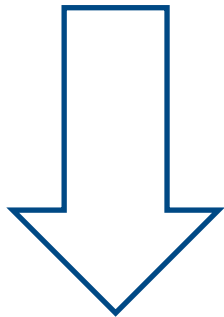
*(See LinkedIn Profile Beat Weibel, Siemens Chief IP Counsel and Group Senior Vice President)*

## 2. PTO features

Most important for this analysis: PTOs' dual nature



On the one hand, **regular governmental (or transnational) agencies** examining patent applications and then issuing patents (***granting authorities***)



On the other hand, **large *cash cows***

→ German PTO that in the last five fiscal years contributed around EUR 205 million to the German Federal budget – ***annually!***

→ while not widely recognised, **consequences are far reaching!**

### Important questions:

1. Does the quest for PTO profits affect patent systems? *How?*
2. Why must the quest for profits *not* take over?

### 3. Stakeholders

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- ✓ **General public:** wants to maintain competition AND foster innovation
  - Vital interest in patent quality, and as a result in rigorous examination
  
- ✓ **Applicants:** want to receive patents AND want patents to be sustainable
  - Cannot entirely disregard patent quality and cannot be interested in examination becoming too lenient
  - See *Industry Patent Quality Charter* → members have voluntarily pledged to adhere to high quality standards
  
- ✓ **Patent attorneys:** want to satisfy clients
  - Having a patent invalidated in court will make them lose clients!
  - Patent attorneys too are interested in good examination
  
- ✓ **PTOs**
  - Driven in ways different from other government agencies
  - **See next slide!**

## 4. PTO dynamics

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- ✓ **Product of (potentially) very high value**
  - State warranted technology monopolies, thus holding potential for controlling markets rather than just technologies (as they are meant to do).
  
- ✓ **Caught in between conflicting objectives**
  - Tasked with examining thoroughly and simultaneously tasked with generating profits.
  - Dilemma of either prioritising quality over revenues (in fees) or sacrificing revenues for patent quality.
  
- ✓ **Revenues not linked to quality, but to sheer numbers**
  - The most profitable patents grants are those granted with only few office actions or (expensive) hearings.
  - PTO interests in line more with applicants', rather than with general public's.
  - How does this translate into daily PTO work (e.g. incentivising patent examiners)? .
  
- ✓ **Oversight seems sketchy and scarce**
  - Problem: Who is interested in bothering a cash cow?
  
- ✓ **Transparency varies**



### Do PTOs have a business model?

- legitimate question?
- how does it look?
- how much of a role does patent quality play there?



### What exactly are PTO's products?

- without a doubt: grant of high quality IP rights
- **but also profits?**
- and for whose benefit? Infrastructure (buildings, IT?), staff compensation (salaries, pensions), national budgets?



### Which parameters control patent quality?

- material/human resources?
- international cooperation, e.g., participation in PPHs?
- educated users?



## 5. PTOs' business models (cont'd)



### What efforts do PTOs put into patent quality?

- formalised review processes? Benchmarking against other (leading) PTOs?
- structured input from the outside invited?
- look at competition? Perhaps even monitoring their patents' impact?



### How do PTOs incentivise examiners?

- structured performance measurement systems in place?
- how are they designed (steering effects)?
- are fair & equitable (e. g. additional work for refusals)?



### Where do profits go?

- who controls?
- PTO commissioners' FTO for use?
- what about moral hazards? – Are profits perceived and treated as such?

**Thank you very much for your attention!**



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