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Arbitrary reallocation of patent applications and cancellation of oral proceedings

DG1 Operations is currently arbitrarily reallocating files to new Examining Divisions without explanation and without disclosing the criteria. The focus is put on patent applications from signatories of the [IPQC charter](#). The Central Staff Committee (CSC) addressed Mr Campinos by [letter](#) but no reply is available until now. This paper provides further details on the evolution of events.

Reallocation of files of specific applicants

In August 2024, DG1 Operations put in place a specific unit in charge of scrutinizing patent applications filed by Siemens AG. For a number of these patent applications, the Examining Division in charge had already sent summons to oral proceedings which had successfully passed all the EPO statutory “quality” checks. The specific unit nevertheless took the decision to allocate new Examining Divisions working in another Directorate and in another field. The new Examining Divisions cancelled the oral proceedings that may have led to refusals but instead directly sent intentions to grant.

In a [letter](#)¹ of 29 August 2024, the Central Staff Committee (CSC) noted the lack of legal basis for this course of action, which can be considered to be against the principle of neutrality in the treatment of patent applications. At the time of drafting this paper, our letter remains unanswered.

Since then, DG1 Directors explained to their teams that DG1 Operations indeed put in place specific units for checking summons to oral proceedings and put the focus on patent applications from Siemens AG, Ericsson and Bayer. The latter are members of the IPQC, which is publicly critical about the substantive quality of EPO patents.

No prior notification and no information given to Examiners

The Examining Divisions which had originally sent the summons to oral proceedings were not consulted on the intention to reallocate and not given an opportunity to bring corrections or to comment. They were not even informed in advance of the reallocation, were not provided with any reason for the change and just got informed of the cancellation by an automatic Outlook notification in their calendar. Team Managers and Examiners are currently analysing the files which were silently taken away from them and allocated to a new Examining Division and trying to guess which criteria these summons to oral proceedings were not fulfilling.

In the absence of clear criteria from DG1 Operations, some Directors have decided to proactively check themselves summons to oral proceedings from IPQC members including as well Nokia and Qualcomm. In some Directorates, a set of new “Golden Rules” was presented in team meetings, but not handed out. There is the explicit mention that these shall remain confidential.

¹ “High-level user meetings and special treatment of patent applications”, CSC paper of 29-08-2024 ([sc24050cl](#))

This week, the staff representation became aware that examination actions other than summons are now also checked and, in case, reallocated to another Examining Division. Examiners saw their dossier list shrink even further without any notification. Even when colleagues explicitly asked their Team Manager or Director, they did not receive written feedback about what was allegedly wrong with their work.

Examiners left facing arbitrariness and speculation

Examiners are left alone, are still waiting for explanations, and can only speculate as to the reasons why their examination actions could have been flagged by the special unit(s). In the absence of clarity on the matter, the feeling is now growing that if examiners send summons for oral proceedings or examination actions with critical objections against patentability, specific unit(s) might intercept their application and allocate it to another examiner who will get the reward for bringing the procedure to an end. Therefore, examiners currently find themselves in a safer position if they directly send an intention to grant.

The Central Staff Committee (CSC) considers the current situation, with covert reallocation of files and questionable confidential instructions, intolerable. We recommend that the concerned colleagues keep written track of relevant incidents, question dubious verbal instructions, ask about the legal basis and, if necessary, ask for written confirmation.

There is good reason for the provision that Article 18(2) EPC stipulates that an Examining Division shall consist of three technically qualified examiners. This number of members is a further safeguard that decisions be not influenced by external influence and arbitrary considerations. If an Examining Division has become responsible for the examination of a European patent application under Rule 10(2) EPC, an arbitrary replacement of its members according to a non-documented procedure or secret criteria does not appear to be in line with this objective.

Conclusion

At a time when the increased number of patents granted by the EPO and their quality have become a major concern among users of the patent system. DG1 Operations is taking the wrong course of action by interfering in the Examining Divisions and creating wrong incentives for shortening the procedure towards an intention to grant.

Sincerely yours,

The Central Staff Committee