Pressured staff 'lose faith' in patent quality

Alison Abbott, Munich

Examiners at the European Patent Office (EPO) are losing confidence in its ability to ensure the quality of the patents it issues, according to two separate staff surveys.

In a survey of some 1,300 patent examiners, conducted by the staff union in April, more than three-quarters agreed with the statement that productivity demands from the EPO's managers did not allow them "to enforce the quality standards set by the European Patent Convention". And 90% said that they did not have time to keep up to date with advances in their scientific fields. In a second survey of 730 examiners, done by the EPO itself, only 9% said they believed that the management was "actively involved in improving quality".

But Ciaran McGinley, head of the EPO's controlling office, says that commitment to quality is fundamental to the organization. He adds that the office is currently preparing a thorough report on its approach to quality, which will be presented to staff in the summer.

The number of patent applications processed by the Munich-based office has more than doubled since 1995 to over 160,000 last year. The mean number of hours spent examining each patent claim dropped from 23.8 hours in 1992 to 11.8 hours in 2001, the last year for which figures are available.

But some patent examiners privately contend that the pressure to process files encourages them to approve marginal cases, instead of formulating reasons for rejection. Internal quality controls, in which two other examiners check each patent immediately before it is granted, have also been eroded, they allege. "It is difficult to ask a close colleague to start checking a patent again when you know that he or she has as many files as you have to get through, and just as little time," explains one examiner, who did not want to be identified. In the union survey, two-thirds of respondents said that they lacked the time to do back-up examinations "in a satisfactory manner".

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Time out: staff at the European Patent Office say they are too busy to do satisfactory checks.

Outsiders have questioned the quality of recently granted patents. To qualify for a patent, an invention must demonstrate novelty, industrial applicability and an inventive step — but some are worried about the last, especially in fast-growing areas such as biotechnology.

"The bar for inventive step has been kept too low in genetic patenting," says genome researcher and 2002 Nobel laureate John Sulston of the Sanger Institute in Cambridge, UK. Sulston co-authored a report from the Royal Society published in April 2003, which raised concerns about patent quality. "Officers need plenty of time to consider carefully whether something is really an invention or not," Sulston says.

McGinley says that the EPO has had no complaints. "We've had no feedback from industry about inventive-step issues," he says.

Francis Hagel, an intellectual property manager with the French geoscience-service company CGG, near Paris, argued in April's *Patent World* that there was a "serious quality problem". Hagel also claims that the EPO has followed the commercial orientation of the US Patent and Trademark Office, and is treating its applicants as customers. He says that the EPO should instead be putting more emphasis on determining whether patents deserve to be granted.

Critics point out that the EPO gains fee income from each patent it grants. "Any incentive system that favours patent granting adds pressure to award a patent in marginal cases," says John Pethica, a physicist at Trinity College Dublin and a co-author of the Royal Society report.

McGinley counters, however, that the EPO's approach has cleared a backlog of applications, which he says was "bringing the EPO into disrepute". ■

Brands in peril as Brazil strives to keep AIDS drugs free

Declan Butler

Brazil has pioneered the distribution of free AIDS treatment. But as costs soar, it is considering the issue of compulsory licences to bypass patents on some AIDS drugs.

About 125,000 Brazilians with AIDS take advantage of the nation's 1996 free-drugs policy, and mortality has dropped from 70% to 40%. But the country's generic drugs are becoming obsolete, forcing it to import costly, newer ones.

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, which Brazil joined in 1996, prevents it from making generic copies of drugs developed since then. Patient demand for newer therapies means that 8 of the 15 approved drugs are now brand-name imports, and account for 70% of its AIDS treatment budget.

A meeting of Latin American politicians and scientists in Brasilia on 23–24 June will discuss how to assure the long-term viability of free antiretrovirals.

Brazil could invoke a compulsory licence, which would allow it to make generic versions of recent drugs. Under World Trade Organization rules adopted last year, this is legal in cases of 'national emergency'. But Brazil fears a trade dispute with the United States if it does this, says Michel Lotrowska, from the Rio de Janeiro office of Médecins Sans Frontières. Trade pressure against doing so is very strong, he says.

The threat of such licensing has lowered prices in the past, but it becomes less convincing as Brazil's production of generic drugs falls, and the expertise to make them is lost. So, Brazil will "need to think about compulsory licences", Lotrowska says. ■