



29.09.2014  
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## Early Certainty from Search:

### Certainty for whom?

*The ECfS reorganizes the priorities in search and examination to provide as soon as possible information to the applicants, who must know where they stand legally with their invention. The new priorities will affect the manner in which examiners are expected to work, and how their performance will be assessed. However, at least the initial implementation of the new priority, and in particular the electronic tools in Dossier Management, have been chaotic. The end result is, for the time being, great uncertainty for the examiner about how they are to go about the new priorities, and what the impact will be on their future yearly assessments.*

#### The story as seen from the examiner perspective (main facts)

VP1 announced on the 23.06.2014 the introduction of “Early Certainty from Search” (ECfS) as of 1 July 2014<sup>1</sup>. The idea was floated within the Office as early as February<sup>2</sup>:

*“The Office is already able to provide search reports within 6 months for its first filings (20% of the total), but the objective now is to apply this tight timeline to all the second filings as well. By focusing more examiner time on searches, “Early Certainty from Search” would improve legal certainty for pending patent applications in Europe, as well as removing the blind spots caused by the growing backlog of unsearched applications, mostly from outside Europe. It should also be possible for third parties to request accelerated examination, provided this does not place an undue burden on applicants. The new scheme would apply to all our files, with no additional fee”.*

AMDG1 released a note to all examiners dated 30.06.2014 informing that the new priority groups for ECfS were released in MUSE and that thereby<sup>3</sup>:

<sup>1</sup>[http://my.internal.epo.org/portal/private/epo/organisation/dg1/?WCM\\_GLOBAL\\_CONTEXT=/epo/intranet/organisation/dg1/vp1\\_org/announcements/2014/1403105686964\\_ecfs\\_entering\\_into\\_force](http://my.internal.epo.org/portal/private/epo/organisation/dg1/?WCM_GLOBAL_CONTEXT=/epo/intranet/organisation/dg1/vp1_org/announcements/2014/1403105686964_ecfs_entering_into_force)

<sup>2</sup>President’s blog, February 2014. <http://blog.epo.org/patents/early-certainty-search/>

<sup>3</sup> Annex 1

*“The changes will influence the ranking, priorities and limit dates in Dossier Management (SEA), Workload Manager (Muse) and Megalist (for Directors, as of 02-07-2014 after the Data Warehouse daily load).”*

Soon after this announcement, and right at the start of the holiday period, directors seeking to implement this decision gave, or tried to give, some instructions to their examiners. Some said that they would not sign B10s anymore, and that examiners are only allowed from now on to treat “priority 1 files”, or files within ranks 1-20 or 1-30. Others tried to redistribute somehow the search stocks. Others still simply advised their examiners to “act smartly” or “use common sense”. In other words: there was no coordinated implementation policy, only guesses and creativity on the part of the Directors.

For their part, the examiners opened their Dossier Management tools, only to be stunned by the incongruence of what they found: National Premier Dépôts with very close limit dates, which used to figure very high on their priority lists, were suddenly catapulted to rank 213. In contrast, examination files for which the fees had not been paid, i.e. files that used to be kept “on ice”, emerged to the top as first priority.

Before the matter could be digested and some practicalities figured out, AMDG1 published on the 16.07.2014:

*“An unexpected side effect of this change is that the date printed on the labels of the paper file of EP, National and PCT first filings is now the allocation limit date instead of the limit date for the search. As the date on the paper file is still used by many (Directors, Stock Managers, Examiners) in order to process the files, a change request has been initiated to ensure that the limit date for search is printed again. The change is expected for the end of August, it is not foreseen to correct labels printed until the correction is ready.*

*In the meantime, it is possible to check the limit date for search in the limit dates tab in Muse and in Dossier Management (as soon as the dossier is allocated, the lead limit date is the search limit date again).*

*As the files awaiting allocation are listed in the mail “overdue priority group 1 dossiers” (sent weekly to Directors), this limit date should be followed by Directors/Stock Managers and the files should be allocated to an examiner one month after the formalities are done at the latest.”*

So, by now the DG1 population must know that it is the labels on the paper files that are causing the problem and nothing more: directors and examiners were asked to fish in the mega-lists the high priority files, and of course calculate themselves the limit dates in order to accurately predict which file should jump from bottom to top within the next few days....

This colourful information was also distributed:

Must be done in time	As far as possible
<ul style="list-style-type: none"> <li>• <b>Priority 1 :</b></li> <li>• <b>First filings searches</b> <ul style="list-style-type: none"> <li>– Search for <b>First Filings</b> (National, PCT Chap I (including SIS) and EP)</li> <li>– “Housekeeping” (B99, actions after oral proceedings, remittal, IGRE, Search after non-unity or CLAR, Interlocutory decision)</li> </ul> </li> <li>• <b>Searches with committed dates:</b> <ul style="list-style-type: none"> <li>– Search PCT Chap I 2nd filings</li> <li>– RASE and promised dates</li> </ul> </li> <li>• <b>PCT Chapter II examination</b></li> <li>• <b>Opposition, Limitation, Revocation</b></li> <li>• <b>Second filings searches</b> <ul style="list-style-type: none"> <li>– A1 publications EP 2nd filings</li> <li>– Euro-PCTbis searches</li> <li>– National second filings</li> </ul> </li> <li>• <b>Fast track examination</b> <ul style="list-style-type: none"> <li>– Direct Grants after positive ESOP or WOISA</li> <li>– Request for Accelerated Examination (RAEX), promised dates and non-anonymous and substantiated third party observations</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Priority 2 : Further examination actions</b></li> <li>• <b>Priority 3 : First examination actions</b></li> <li>• <b>Priority 4 : Backlog</b> <ul style="list-style-type: none"> <li>– All EP 2nd filings which have been published without search report (A2)</li> <li>– All Euro-PCTbis search dossiers which are overdue on 30-06-2014, i.e. already later than 6 months after the receipt of the reply to the Rule 161 communication</li> </ul> </li> </ul>

When looking at it carefully, it does not really reflect what the President announced on his blog<sup>4</sup>. For instance, EP A2 files are now given the lowest priority 4<sup>5</sup>, whereas they were supposed to be the trigger of the whole project. To complete the picture it was also made known that the “*excessive redistribution*” of the search files within the office would be tackled as follows:

*“Already implemented: The limit date for allocating a file to an examining division has been set to one month after receipt by the director (priority 1). Here I have an action together with Luca to look for examination files without division yet.*”

*To be implemented by AMDG1 in MUSE by 1 October 2014: The redistribution of a file to another directorate should become impossible 1 month after an examining division has been allocated to the file and in any case one month before the search has to be performed. An escalation procedure should however be drafted to deal with exceptional cases such as late received files and ad-hoc agreements between directors.”*

From VP1’s office, July 2014 we hear additionally that:

*“Timeliness of our products is of major importance to our applicants. With the introduction of Early Certainty from Search (ECfS) on 1 July 2014 priorities have been redefined leading to substantial changes in the examiner’s stock ranking. For ECfS to be a success, it is important that priorities are followed and that backlogs are reduced – in particular under the new “Priority 1”. The term “Backlogs” refers to all overdue actions.*”

*In order to support DG1 management, two new indicators will be added in the reporting tools: the backlog of priority 1 actions and the average rank of the actions done in the priority list.*

<sup>4</sup> See footnote 2

<sup>5</sup> Note that priority 4 is also called “backlog” and “overdue” but is of lowest priority. As a result, a EuroPCT-bis received, for instance, in 2006 will have a lower priority than one received in September 2014.

*While the backlog is well understood, the average rank is new.*

*The idea is to measure to what extent examiners work “at the top of the list” (as ranked in SEA Dossier Management). When an examiner uploads an action for the first time in Trimaran, the system records its rank and will calculate the average over a certain period. It is therefore expected that the value under ideal circumstances would be close to 1, while we know ideal circumstances do not exist and that sometimes there are good reasons to e.g. combine technically related dossiers or anticipate a long holiday period, the aim is to arrive at the lowest possible rank. While many examiners indeed comply with this ranking, a large dispersion in the values and behaviour can be observed: DG1’s average rank is 33.”*

### **Preliminary conclusions**

- a) The tool Dossier Mgmt does not work properly: the ranks and the priorities listed therein do not match. Concurrent criteria in the tool itself do not lead to the same result.
- b) The tool Dossier Mgmt, at least for the stock keeping practice in TH, is not suitable for providing credible indicators: within many AoCs one examiner keeps the search stock for the whole group.

### **Our comments, our questions**

#### **1) How is the new system going to affect the reporting exercise?**

Examiners are now confronted with two new parameters/indicators that are supposed to be taken into account for the reporting at the end of the year, namely dealing with the backlog of priority 1 actions and the average rank of actions (see above VP1’s announcement). We see some problems here.

In the past, Examiners were asked to prioritise their work in a completely different way (for example the “cut the tail” operation) in order to meet their yearly PAX objectives. The change comes literally in the middle of the year and of reporting period.

The new priorities change radically the planning of the individual examiner: the PAX objectives agreed at the beginning of the year become obsolete, or it is wholly unclear how they should be achieved taking into account the priorities, particularly with an unsuitable tool.

No sufficient time has been given to the individual examiner to reschedule his course of action. An examiner does not normally have sufficient margin of manoeuvre to still meet the production requirements when, in the middle of the year, (s)he must also meet completely new requirements (introduced without any consultation of the examiners!).

Thus, we wonder how directors can assess the performance of the examiners in the circumstances -- other than perhaps “à la tête du client”?

#### **2) Is this new processing way the declaration that the previous one did not function?**

The previous way of organising work focused on collecting “points” rather than dealing with timeliness. Why has the management used the “points” for the best part of a decade? Why has the very same management changed its mind quite suddenly, in the middle of the year?

### **3) Is this new method to be seen as a preparation for the new “single spine” career system?**

Is the idea that examiners in completely different backlog situations should now be squeezed into an extremely narrow pipeline, irrespective of their expertise, their talents, the evolution in their technical fields?

### **4) What does the new file distribution entail?**

Does the new file distribution system mean that an examiner has to do whichever file arrives on his/her desk, irrespective of whether he/she have the technical background to treat it? Why should it be so difficult to transfer a file if one realizes, during studying a file in detail at the start of the search, that a colleague in another field is more technically qualified to treat this dossier? Is timeliness – so far not much of an issue -- and fast file-routing more important than technical expertise?

Are we already in the meta AoC times, wherein no distinction of technical fields will be made? Is this the quality that we are certifying with ISO 9001?

### **5) What is the message the Office is sending to the outside world?**

Is the PCT route for second filings encouraged rather than the EP route? Can this really be the official policy of the European Patent Office?

Where the applicants informed that OLD second filings will only be searched when accelerated search is requested, while NEW second filings are always of highest priority? And what are we supposed to tell the applicants when they ask us about it once they notice?

RAEX examination files end on the top of the priority lists when applicants file a RAEX action. If this new system survives, do applicants have to undertake one more bureaucratic action? What if the news spread around and the vast majority of applicants do file RAEX requests? Will we celebrate yet another success of the system?

Is the outside world, and in particular the stakeholders, sufficiently informed about these new priority lists and the consequences they will have on applicants? Have they been consulted about it?

Yours,

The Central Staff Committee

## ANNEX 1

for: New priority groups as of 01-07-2014  
to: all Examiners, DG1 Directors  
cc: VP1 Office, DG1 PDs, IM Service Desk, MuseHelp, PD11

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Dear colleagues,

As announced by VP1 on 23-06-2014 (see [link](#)), the new DG1 priority groups (Early Certainty from Search) have been loaded in Muse and will take effect as of **01-07-2014**. The changes will influence the ranking, priorities and limit dates in Dossier Management (SEA), Workload Manager (Muse) and Megalist (for Directors, as of 02-07-2014 after the Data Warehouse daily load).

For a complete high level overview of the DG1 priority groups please look at this [link](#). A detailed explanation on the ranking algorithm is available on the [Muse wiki](#).

To ensure that you have the correct ranking in Dossier Management, please refresh the list or simply restart Dossier Management (this is not necessary if SEA has a fresh start on 01-07-2014 morning). Please note that although the new limit dates will be active as of 01-07-2014 (applying to all **new** incoming files), the correction of the old limit dates will be finalised by the end of this week.

Should you encounter any problem, please do not hesitate to contact the IM Service Desk (Phone 7979 or [servicedesk@epo.org](mailto:servicedesk@epo.org)).

Questions on the rationale behind the priority groups themselves should be addressed to your line manager.

Best regards,