

PATENT COOPERATION TREATY

Common Quality Framework for
International Search and Preliminary Examination

Report Under Paragraph 21.18 of the PCT International Search and Preliminary Examination Guidelines

by: *Australian Patent Office within IP Australia*

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Documents referred to in this report: None

INTRODUCTION (PARAGRAPHS 21.01–21.02)

In accordance with the Circular C. PCT 1197, dated 2 December 2009 and the reporting guidelines specified in Chapter 21.18 of the PCT International Search and Preliminary Examination Guidelines, the following report details our Authorities current Quality Management System.

QUALITY MANAGEMENT SYSTEM (PARAGRAPHS 21.03–21.09)

Establishment and maintenance of QMS (Paragraph 21.03)

The Australian Patent Office (APO) at IP Australia has an established and maintained quality management system, the scope of which includes international search and examination, national search and examination; innovation examination, and patents oppositions, hearings and legislation.

Our framework is based on the business principles contained in the ISO 9001:2008 standard. This includes resourcing, procedures, feedback and communication which are all specified in chapter 21 of the PCT International Search and Preliminary Examination Guidelines (the guidelines).

It should be noted that the quality management system applies to all facets of the Office for example the product quality standards for search and examination work. The QMS also specifically addresses our role as an international searching and preliminary examining authority.

We are committed to improving the quality management system. We have received certification under ISO 9001:2008 for international search and examination, national search and examination; innovation examination, and patents oppositions, hearings and legislation.. We have also received ISO 9001:2008 certification for our supporting administrative processes: pre and post examination services; international services; receipt of correspondence; provision of information including call centre functions.

Resources - infrastructure (Paragraph 21.05)

A defined framework has been established for the APO to assure that the appropriate resources are allocated for administration and international search and examination.

The framework includes the following elements:

- A cyclic recruitment process that is based on work flow requirements across the technology areas. APO has targeted recruitment campaigns that provide the resources in the technologies where they are required. The cycle is currently based on two campaigns per year. Currently we have approximately 350 patent examiners.
- APO has aligned the practice and procedure under national law with that of PCT where possible and Examiners are familiar with the different requirements between PCT and national law and are expected to do search and examination under both.
- The APO has continued to develop the skills of patent examiners under a competency based system. The introductory training program called the Patent Examiner Qualification Competency (PEQC) program combines both formal and on the job training components with units of competency developed for all key patent product lines. Once examiners have completed the PEQC program they are enrolled in the Patent Examiner Proficiency Advancement (PEPA) competency based program. This program leads examiners to obtaining Acceptance Delegation whereby they are deemed competent at exercising the search and examination responsibilities with minimal supervision. The PEQC units complement the PEPA units and the normal expectation is that new patent examiners will have attained the PEQC and PEPA competencies within 2 years. Depending on the individuals skills, knowledge and application examiners are more likely than not to have achieved the competencies in a shorter period of time.
- The APO also has a competency based program for experienced examiners to undertake structured development to become hearing officers.
- The APO has an ongoing development program called the Technical Examiner Learning Program (TELP) to aid all examination staff in maintaining their currency in technological developments. The TELP operates across all technology areas and includes in-house technical trainings sessions by experts in the field, attendance at conferences or visits to various companies in the relevant industries. The examiners needs are constantly monitored and strategies to address the needs are formulated through this program.
- Apart from English, the APO has a policy of maintaining competencies in other languages. This currently includes translators in French, German, Japanese, Chinese, Russian and Spanish.
- The APO has a comprehensive Manual of Practice and Procedure which has been in place for many years and is available electronically to staff as an on-line resource. The Manual comprises 6 comprehensive volumes of practice and procedure. Volumes 1-3 International; National; and Oppositions, Courts, Extensions & Disputes are published on the internet.
- Since mid 2008 the APO has implemented a series of PCT best practices, which have been incorporated into the Manual of Practice and Procedure; and PEQC and PEPA programs. These changes are currently undergoing a post implementation review.
- Additional support tools for examiners include ready access to internal and external databases, technical books, journals and legal resources. The APO utilises for example the EPOQUE search tool in its examination and search work.

- Our Business Manual provides a central source of information on how IP Australia does business in order to assure quality of service. It is intended for IP Australia's staff, stakeholders and internal and external auditors. This manual satisfies AS/NZS ISO 9001:2008 Quality Management Systems requirements and it is intended that certification of ISO 9001:2008 will be applied to organisationally identified core business transactions.
- The APO has remote examination centre in Melbourne, Victoria {known as the Melbourne Patent Examination Centre (MPEC)}.
- Work is distributed and tracked via formalized workflows to ensure work is actioned effectively and efficiently by each of the 13 Canberra examination sections, including the Melbourne Patent Examination Centre (MPEC),

Administration - procedures (Paragraphs 21.06(a) and (b))

The APO has identified and documented practices and associated control mechanisms that ensure the ongoing efficient and effective handling of international search and examination related activities. These include:

- Product Quality Standards 1-12 define attributes that determine our product quality.
- Searching and examination functions under the PCT have set targets for completing each of an ISR/ISO, an IPEO, and an IPER II. Compliance with these targets is managed by each examination section. Management reporting of compliance with these targets across all examination sections occurs on a regular basis.
- APO has had a Customer Service Charter in place for a number of years. This Charter sets out what customers can expect from APO in relation to quality and timeliness of its services including its international services. The Charter identifies the specific timeframes within which APO will produce International Search and Preliminary Examination Reports. APO's performance against these timeframes is measured monthly and APO's performance against its Customer Service Charter is reported to the Australian Government annually. The Customer Service Charter is accessible online via the APO (IP Australia) internet website.

Quality Assurance Procedures (Paragraph 21.07)

The APO has in place a Quality Policy Statement that reflects the IP Australia Strategic Statement and Plan. The statement details our commitment to deliver quality products and services that are valued by our customers.

The APO Product Quality Standards incorporate the requirements of the PCT Search and Examination Guidelines. All our search and examination work is undertaken in relation to these product quality standards.

In recognition of the inherent difficulties of conducting cost-effective quality audit of searches, the APO employs a strategy which seeks to assure quality at the front end of the search process. To this end a 3-person team is used to develop the search strategy. The 3-person team augments the technical expertise, provides an alternative perspective, and expands the search skills. The team reviews the patent application and in consultation formulates the search strategy. The results are reviewed by the team and if necessary the search strategy and search may be further refined before being deemed completed.

The quality of searching is also supported by a team called the 'Search Technical Team'. The Team manages the ongoing excellence of searching tools and techniques available to examiners, and examiners knowledge of those tools. This includes investigating new sources, updating software, eliminating obsolete sources etc. The team is made up of about 12 examiners selected across the technologies, and is led by a head of an Examination section.

In addition to the specific approach used for original searches, the APO employs a three tiered approach to quality assurance of all examination work. The first tier deals with close supervision of less experienced examiners who are not yet competent to exercise the acceptance delegation. The second tier is comprised of in-section quality checks by senior and supervising examiners of high-risk cases such as those with more than two office actions. The third tier is an independent periodic audit of a random sample of cases across all technology sections by the Product Quality Review Group.

The Product Quality Review Group reviews the work across all the examination sections on a random sampling basis. The members of the group are selected from each of the examination sections and membership is rotated so that all senior examination staff are involved in the group over a given period of time. Exam Section Supervising Examiners are informed of all non-compliance issues. The Supervising Examiner then provides guidance and assists in determining whether a particular issue identified during the review is a non-compliance that needs to be referred immediately to the relevant section and examiner. The results of the review are reported to management, the examination sections and through the relevant supervisor to the examiner.

The APO has a feedback loop whereby PCT searches undertaken by APO are compared after national phase entry in Australia with search reports issued by other offices. This process is used to identify instances where more relevant documents were found by the other office. When such an instance occurs, the application is reviewed to identify the reason and appraise whether improvements can/should be made to existing processes, practice or enhance training of staff.

Internal quality audits are conducted on processes within the APO. Audits are based upon the results of a risk analysis undertaken in accordance with the Australian risk management standard. The risk analysis is periodically reviewed for its relevance and accuracy.

The APO pre-grant opposition process also serves as a feedback process to quality management. Issues arising that identify potential areas for improvement are reviewed and used to adjust processes, reaffirm existing practices or identify further training needs. Similarly, issues identified from any court proceedings involving office decisions are reviewed and used to identify appropriate process, practice or training changes.

Regular Surveillance audits are conducted by independent assessors to ensure continuing compliance with ISO 9001:2008.

Feedback arrangements (Paragraph 21.08)

The APO employs a number of feedback avenues to continuous improvement of quality and better customer alignment of products/services. These include:

- Periodic customer surveys. IP Australia conducts a longitudinal survey of customers which is intended to be deployed on a biennial basis. The survey addresses quality and other customer satisfaction parameters for all the IP rights administered by IP Australia (i.e. patents, designs and trademarks).
- The APO has a corporate customer feedback database that records complaints, compliments and suggestions.. The system has processes to refer specific complaints to relevant areas for appropriate action – both on the individual case, and from a systems perspective such that recurrences of the situation are avoided. We promptly and fully respond to all of our customers' complaints and suggestions.
- The APO has an Improvement Log. This is a specific database that draws on issues raised through the corporate customer feedback database, corporate performance audits, internal quality audits, feedback from the Product Quality Review Group reviews, issues identified from pre-grant opposition hearings and court proceedings and staff suggestions for improvement. The issues are recorded, monitored and reported in the log for corrective and preventative action. Feedback is provided to persons that report the issues.
- IP Australia also has a structured customer relationship management strategy which is deployed through periodic visits and meetings with individual customers and their representative associations.
- Communication of quality issues is provided to staff by varied means, for example, intranet quality page, staff newsletters and emails, Quality Committee meetings, section, team and management meetings and individual performance agreements.

Communication, Guidance and Responses to Users (Paragraphs 21.06(c), 21.09)

APO has a number of mechanisms for providing feedback to applicants on how to improve the quality of PCT applications being filed:

- APO has a PCT Receiving Office which is highly regarded both nationally and internationally. It is very supportive of applicants including unrepresented applicants who need to deal with the complexities of filing their PCT applications. Ensuring that the PCT application is in a fit state at filing improves the subsequent quality of the searching and examination processes.
- APO has also established communication processes that allow for enquiries to be dealt with efficiently and effectively with examiners. Examiner details are provided on all correspondence to allow for direct communication with applicants/attorneys.
- The APO provides guidance to applicants through a number of various sources including the IP Australia website. Specifically a detailed description of the international patent application process is provided, along with the International Patent Application Kit - these are both also available in paper copy. There is also a forum for

IP Professionals to lodge questions with the organization. IP Australia also runs a number of customer education and awareness programs each year.

- APO has structured customer relationship management strategies and ‘account management’ roles. Periodically feedback is provided by APO to these representatives on how the quality of the PCT applications can be improved thus improving the quality of the search and examination processes later in the process.
- An example of customer engagement is that in March 2009 IP Australia commenced consultation on a series of IP Rights reforms directed at improving the fit and function of the IP Rights system as a vehicle to support innovation. Many of the proposed reforms are directed at improvements to the patent system.

Improvements to the patent system include:

- Raising the inventive step threshold and disclosure standards in patent specifications
- Improving consistency in the substantive grounds considered during examination, re-examination, opposition and revocation in the courts
- Introducing an experimental use exemption
- Reducing the time taken to resolve divisional applications and patent opposition proceedings.

Consultation will continue into 2010, with a view to implementing the proposals through amendments and procedural change once consultation has finished.

INTERNAL REVIEW (PARAGRAPHS 21.10–21.15)

Required Arrangements for Internal Review (Paragraph 21.10)

In 2008-2009, IP Australia conducted an IP Rights Quality Review. The review identified a number of areas for improvement in terms of the Quality Management System and Product Quality.

Improvements to the IP Australia management and governance structure are proposed to better support continuous improvement of quality across all three layers of quality management system:

- **System** – the quality framework to ensure on-going compliance to the ISO 9001 standard.
- **Process** – maintaining, reviewing and improving processes required for product realisation.
- **Product** – in-process and end of process inspections to verify compliance to established quality standards.

In August 2009, IP Australia established a Quality Improvement Section. The Section is responsible for maintaining at least the existing scope of ISO 9001 certification, continuous improvement of quality across all three layers of quality management and ensuring that the key quality system documentation is maintained and enhanced.

The Quality Improvement Section currently comprises a Director Quality Improvement, a Quality System Manager, a Product Quality Manager, 8 Product Quality Reviewers (6 Patents & 2 Trade Marks), a Product Quality Coordinator & Assistant Coordinator, and 4 Quality Officers.

In November 2009, IP Australia established a new IP Australia Quality Committee, whereby the governance of the IP Australia Quality System occurs through this single Committee. The Committee membership comprises General Managers from the groups which are currently operating under ISO 9001 certified quality system and those who are actively seeking quality system certification: This proposed structural change is in direct response to the increased quality undertakings in the IP Australia Strategic Statement 2009-2014. The Quality Committee reports directly to the IP Australia Executive Committee.

In terms of Product Quality, the Quality Improvement Section in conjunction with its product quality reviewers are looking towards implementing a more robust and transparent Product Quality Review process. The process is envisaged to:

- Validate that quality work is produced by examiners who are exercising the acceptance delegation (AD examiner) and whose decisions have the potential to affect the future of the applicant's invention and in a way that of the applicant, Australia's marketplace and reputation of IP Australia.
- Provide an equitable and consistent assessment of product quality and recognition of good quality.
- Provide for improvements in product quality including accuracy and consistency of the IP Rights we grant.
- Identify training and assistance needs for individuals to enable them to make robust decisions and produce good quality product.

The Product Quality Review process proposed herein seeks to meet these requirements by:

- relying on clearly defined *Product Quality Standards* categorised into tiers based on their effect on the validity of the IP Right;
- employing the international quality standard ISO 2859-1:1999 for *Sampling Procedures by Attributes* for determining the sample size and decision criteria regarding acceptability of the product based on conformance with the Product Quality Standards;
- providing independent assessment of quality conformance which is validated by the supervisor;
- providing for timely feedback where good quality has been demonstrated or where improvements are necessary;
- providing independent case by case review where quality assessment is disputed; and
- being consistent with the requirements of the IP Australia *Performance Achieving Together* framework.

Trials of the new Product Quality Review process are currently occurring in the Patents and Trade Mark IP Rights Groups with a view to implementation in mid 2010.

[End of report]