

INTERNATIONALE GEWERKSCHAFT IM EUROPÄISCHEN PATENTAMT

IGEPA

STAFF UNION OF THE EUROPEAN PATENT OFFICE

SUEPO

UNION SYNDICALE DE L'OFFICE EUROPEEN DES BREVETS

USOEB

Zentraler Vorstand . Central Executive Committee . Bureau Central

05.02.2014

Su14020cl – 0.3.1/6.6

Mr Benoît Battistelli
President of the EPO

ISAR - R.1081

Draft Proposal for a “Framework Agreement”

Dear Mr President,

SUEPO represents nearly half of all EPO Staff.

It is a matter of both great concern and regret that the channels of communication between SUEPO and EPO Management have broken down. We trust you will agree that we cannot go on like this. Even though employers and unions naturally represent different perspectives, they should endeavor to cooperate as much as possible to ensure that the legitimate interests of both staff and organisation are protected and considered. In the current adversarial climate, we are all missing out on valuable opportunities to work together and further our collective interests.

We have heard your complaint that you are frustrated that SUEPO has not always spoken with one voice, and that it is therefore difficult to come to binding agreements. We take these concerns seriously and have carefully considered how SUEPO might better organize itself and interact more productively with the EPO.

To this end, please find attached a **draft proposal for a “framework agreement”** (“accord cadre”) that would regulate interactions between SUEPO and Management in a way that, we trust, will address many if not most of your concerns. This proposal is not entirely new: many elements result from previous working groups and decisions agreed between SUEPO and the EPO. For various reasons, it was not always possible in the past to bring such discussions to a conclusion. We hope that under your leadership and such a framework agreement this will now be possible.

We look forward to receiving your comments on this proposal by 19 February, wherein we ask that you indicate your willingness to enter into negotiations with SUEPO on this basis, should you approve it in principle.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'François Brévier', written in a cursive style.

François Brévier
Deputy Chairman SUEPO Central
On behalf of SUEPO MU, TH, VI, BE

FRAMEWORK AGREEMENT ON RECOGNITION AND PROCEDURE

between:

The European Patent Office
represented by the President

and

The Staff Union at the EPO
represented by the Central Chairman
on behalf of the local sections TH, MU, BE, VI

A. DEFINITION OF TERMS

1. *The EPO*: the European Patent Office or the European Patent Organisation
2. *The Council*: the Administrative Council of the European Patent Organisation
3. *The President*: the President of the EPO and any official holding a delegation of power from the same.
4. *The Union*: The Staff Union at the EPO (SUEPO), consisting of the local sections of VI, BE, MU, TH.
5. *The Union Representatives*: the SUEPO officials duly elected by their members
6. *The Union Experts*: staff members, other than Union Representatives, having special skills and assuming an advisory role to the Union Representatives.
7. *Members*: members of SUEPO
8. *Staff*: all employees of the EPO.
9. JNC: Joint Negotiating Committee

B. COMMENCEMENT DATE

This Agreement commences on _____

C. OBJECTIVES

1. In drawing up this Agreement, the EPO and the Union recognise that the EPO exists to serve its users. The purpose of this Agreement is to ensure that employment practices in the EPO are conducted to the highest possible standards within the resources

available, and that equal opportunities are offered to employees or prospective employees and that the treatment of staff will be fair and equitable in all matters, even if in dispute.

D. GENERAL PRINCIPLES

1. The EPO and the Union accept that the terms of this Agreement are binding.
2. The Union recognises the President's responsibility to plan, organise and manage the work of the EPO in order to achieve the best possible results in pursuing its overall aims and objectives.
3. The EPO recognises the Union's responsibility to represent the interests of its members and to work for improved conditions of employment for them, and all staff in general. Accordingly, and without prejudice to the stipulations set out in section H2 below, the EPO shall consult the Union on any change in the working conditions of EPO staff, including but not limited to any changes in the Service Regulations and other Conditions of Employment, and ancillary regulations.
4. The EPO and the Union recognise their common interest and joint purpose in furthering the aims and objectives of the EPO and in achieving reasonable solutions to all matters which concern them. Both parties declare their common objective to maintain good employment relations.
5. The EPO and the Union accept that their respective relationship must follow the principles laid down in:
 - ILO Convention No. 87, concerning Freedom of Association and Protection of the Right to Organize;
 - ILO Convention No. 98, concerning the Application of the Principles of the Right to Organize and Bargain Collectively; and
 - ILO Convention No. 151, concerning the Protection of the Right to Organize and Procedures for determining conditions of Employment in the Public Sector.

The decisions and principles of the Freedom of Association Committee of the Governing body of the ILO shall define the interpretation of the conventions.

E. UNION REPRESENTATION

1. The EPO recognises SUEPO as a Trade Union, and undertakes to consult and negotiate with SUEPO on all matters set out in Clause H (2) of this Agreement.
2. The EPO will inform all new employees of this Agreement, will inform them of the possibility to join the union, and will provide facilities for them to talk to a representative as part of their induction procedure.
3. The EPO accepts that the Union's Members will elect their Representatives in accordance with their Union Rules, to act as their spokespersons in representing their interests.

4. The Union agrees to inform the EPO of the names of all elected Representatives in writing within five working days of their election, and to inform the EPO in writing of any subsequent changes, each time within five working days of the change having taken place. Persons whose names have been notified to the EPO shall be the sole Representatives of the SUEPO membership.
5. The Union may avail itself of the services of a reasonable number of Experts, whose knowledge and skills are essential to the good functioning of the Union and the provision of its services to the members and the EPO. The Union shall provide to the EPO a list of such Experts and notify any changes within five working days.
6. The EPO recognises that Union Representatives and Experts fulfill an important role, and that the discharge of their Union duties will in no way prejudice their career prospects or employment with the EPO.
7. The EPO recognizes that an important role of the Union is that of disseminating information: to Union members, but also all Staff members and, where appropriate, the Council and the President himself. The EPO undertakes not to interfere with reasonable use of office services for the purpose of maintaining communication with Union members and EPO staff.. The Union recognizes that, whilst enjoying a wide freedom of expression and communication, it must keep its information within the bounds of what is lawful, and must endeavour not to tarnish the reputation of the EPO where it is not warranted. The Union may report on any actions of the EPO and express their views on such actions.

F. UNION MEETINGS AND OTHER FACILITIES

1. Meetings of Union Members may be held on the EPO premises outside core working hours and there shall be no restriction on the frequency or duration of such meetings.
2. Union meetings may be held on the EPO premises inside core working hours provided that the Union seeks the consent of the EPO. Such consent shall not be withheld without reasonable grounds. The Union shall provide the EPO with a timetable of regular Union meetings or give at least three working days notice of the intention to hold a meeting as appropriate.
3. The EPO agrees to provide reasonable and defined facilities to the Union Representatives to enable them to discharge their duties including the provision of suitable office space, notice boards and reasonable use of telephones, photocopiers, computers, internal email and internal post and communication services.
4. Subject to at least seven days notice and the agreement of the EPO, Union Representatives and Experts will be granted special leave without loss of pay to attend training courses run by the Union or other appropriate bodies which are relevant to the discharge of their Union duties. Such special leave may be subject to reasonable limits which are agreed between the EPO and the Union.

5. Union Representatives and Experts will be permitted to take reasonable paid time release from their normal duties to enable them to carry out their duties under this Agreement. Such time release may be subject to reasonable limits which are agreed between the EPO and the Union.

6. Subject to reasonable prior notice and the consent of the EPO which shall not unreasonably be withheld, Union Representatives will be afforded reasonable paid time release during working hours for the purpose of taking part in Trade Union activity.

7. In all other respects, elected Union Representatives and Experts shall conform to the same working conditions as all other employees.

8. Union Representatives and Experts shall be protected from negative measures as a consequence of their status as officials of the Union or actions undertaken on behalf of the Union.

G. SUPPORT FOR GRIEVANCE AND DISCIPLINE PROCEDURES

1. The EPO recognises the Union's right to assist or represent the interests of all or any of its members at any stages during grievance and disciplinary procedures, and to call in Union advisors who are not employees of the EPO wherever this is considered appropriate.

2. The EPO undertakes to inform the any staff member faced with an investigation, disciplinary action, or other negative measures, of the possibility to seek Union representation. Failure to comply with this requirement will constitute a formal flaw in the disciplinary proceedings.

H. JOINT NEGOTIATING COMMITTEE

1. The EPO and the Union agree to set up a joint Negotiating Committee consisting of representatives of both sides.

2. The joint Negotiating Committee is competent to negotiate and find an agreement on:

- Working time (e.g. hours of work, part-time home working, flexi-time)
- Holiday, Leave and Sickness Arrangements
- Remuneration and allowances
- Career perspectives and structure
- Pensions and Social Security
- Health and safety
- Working Tools
- Staff Amenities
- Career, Training and Recruitment
- Redundancy and Redeployment
- Equal Opportunities Policies

- Disciplinary, Grievance and Litigation Procedures
- Any other item which both sides agree to refer to the JNC.

3. The Negotiating Committee shall consist of:

- (a) up to seven members appointed by the President
- (b) up to seven members appointed by the Union, wherein:
 - at least four members must be Representatives with the mandate and power to negotiate and, if negotiations are successful, enter an agreement,
 - up to three members can be Experts nominated by the Union to assist the representatives by providing their advice and knowledge in particular areas to be discussed.

4. The composition of the Negotiating Committee may vary depending on the subject to be discussed.

5. The JNC is to establish a code of practice. Lack of adherence to the code of practice can be construed as prima facie evidence of lack of co-operation or bad faith in dispute procedures.

I. NEGOTIATIONS

1. The EPO and the Union recognize that negotiation is a dialogue with the intention to reach agreement or understanding or to resolve differences. Negotiated agreements support the goals of social peace and are therefore in the interests of all parties. Negotiation is most effective where it takes place in an environment of open dialogue between independent parties acting in good faith.

1. A shared understanding of problem perspective is an essential requirement for effective dialogue, therefore any party presenting a problem undertakes to provide complete supporting evidence. Where statistics and data are required to transparently assess the problem, the EPO undertakes to provide this and permit the Union adequate time to analyse the data, or alternatively permit a jointly selected external auditor to provide such an analysis.

2. Negotiations may be initiated by either the EPO or the Union.

3. Successful negotiations will result in a joint **agreement which is binding on both parties**, The agreement will normally address the following :

- a) The principles underlying the agreement including the issues it seeks to resolve.
- b) The measures agreed.
- c) How the EPO will implement the agreement including translation into internal regulations, guidelines or instructions.
- d) Any special agreements regarding how disputes regarding implementation of the agreement will be resolved.
- e) That the Union is bound to support the terms of the agreement and not to organise or support actions seeking to challenge the agreement whether by legal means or through industrial action.
- f) The duration of the agreement

g) The terms under which the agreement may be terminated prematurely.

4. In the event of a **breakdown in the negotiations**, or if it is impossible to reach a reasonable settlement, either party may request dispute resolution measures in accordance with section K below.

J. INDUSTRIAL ACTIONS

1. The EPO recognizes that employees have the right to participate in industrial actions without fear of retribution or sanctions. The EPO may make reasonable deduction of emoluments corresponding to any labour withheld in the course of a strike.
2. The Union is entitled to call for and organize general or local industrial actions, including but not limited to strikes. Industrial actions shall be undertaken only after a positive ballot by the Union respective members. The Union is required to ensure that ballot is witnessed by an independent observer who will prepare a report on the ballot. The EPO is to be provided with a copy of this report. Industrial actions shall be considered approved, if a quorum of at least 30% of the Union members cast a vote, and a simple majority of the votes cast are in favour of industrial action. The organisation and modalities of the ballot are at the discretion of the Union.
3. Paragraph J(2) applies mutatis mutandis to the local sections of the Union, whereby, any industrial actions so organised are limited to the site represented by that local section.
4. The Union, or local section, shall inform the President of any industrial action so planned. Barring force majeure or other serious cause, the Union shall inform the President in advance of a strike, with a period of notice of no less than 5 days.
5. The President may requisition personnel, but not more than absolutely necessary for:
 - ensuring the security of the EPO premises or persons;
 - guaranteeing the minimum maintenance of facilities and equipment, so that work can resume immediately after the strike has ended;
 - providing essential services to the EPO's customers, to secure rights that would otherwise be lost (incoming patent applications).
6. For SUEPO and its members, this agreement, in particular paragraphs J(1) and (2), supersedes any other general provision regulating the right to organise and participate in industrial actions. This agreement does not invalidate or otherwise affect those provisions in so far as SUEPO and its members are not concerned.

K. RESOLUTION OF DISPUTES

1. Where either party has a dispute with regard to:
 - a. The implementation of this agreement
 - b. Any dispute arising during negotiation or the refusal of either party to enter into negotiation.
 - c. The implementation of any agreement entered into by both parties
 - d. Industrial actionseither party may request recourse to mediation or arbitration procedures.
2. Mediation
 - a. Either party may submit to the other party a motivated request for mediation. Such a request shall not be unreasonably refused and both parties shall cooperate towards a swift resolution of the matter.
 - b. The mediator shall be a recognised professional mediator chosen jointly by the EPO and the Union.
 - c. The place and format of the mediate shall be jointly agreed by both the EPO and the Union.
 - d. Mediation shall be confidential and without prejudice to either party.
 - e. Any statement or offer made during mediation procedures shall not be binding on either party.
 - f. Successful mediation will result in a joint agreement between both parties which resolve the matter under dispute.
 - g. Unless the both parties agree otherwise, mediation procedures are exhausted where: a party refuses mediation; or the procedures have not resulted in an agreement within 3 months from the date on which the reasoned request was submitted.
3. Arbitration
 - a) Where mediation is exhausted and a dispute has not been resolved to the satisfaction a party, either party may submit the dispute to binding arbitration, an arbitration board which must be established jointly by the EPO and the Union and conducted in accordance with Annex A to this agreement.
 - b) The Arbitration procedure must be completed within 6 months from a reasoned request for Arbitration submitted by either party. In exceptional circumstances with the agreement of both parties, the 6 month time limit may be extended up to maximum of a further 6 months.
 - c) During dispute procedures under this agreement, neither party shall undertake unilateral actions with regard to the issue under dispute, barring exceptional and grave circumstances such as force majeure, risk to the health and safety of individuals, serious and irreparable harm to either party
 - d) No decision of the EPO is considered final until all dispute procedures under this agreement are exhausted.
4. Other proceedings
 - a. Where the fundamental rights of either party are in jeopardy, relief can be sought from a domestic Court or the ATILO.
 - b. If a party does not faithfully follow and implement the decision on arbitration, the other party may seek relief from a domestic Court or the ATILO.

- c. Individual union members, when personally affected by an adverse decision, retain the right to address their grievance internally and to the ATILO.

L. MISCELLANEOUS PROVISIONS

- 5. This Agreement may be amended at any time with the consent of both parties.
- 6. The Agreement shall not terminate except by mutual consent.
- 7. In the unlikely event of a dispute on the interpretation of this Agreement that cannot be resolved through a mutual agreement, the procedures and standards defined in Clause K shall apply *mutatis mutandis*. For this purpose, industrial action under Clause J shall be excluded.

for SUEPO
SIGNED _____
DATE _____

for EPO
SIGNED _____
DATE _____

ANNEX A

Arbitration Procedures

Arbitration is the submission of the matter under dispute to an independent judicial board for binding decision.

- I) Establishment of the arbitration board.
 1. All decisions with regard to the establishment of the Arbitration Board are to be taken jointly between the EPO and the Union.
 2. The Arbitration Board may be established by:
 - a) a permanent board
 - b) an ad-hoc board
 - c) access to a competent national court
- II) Selection of Members
 1. Where option a or b above are selected the following will apply: The Arbitration Board will consist of 5 members, 2 legal members, 2 lay/advisory members, and a Chairman.
 - The legal members must be qualified jurists in the area of labour law or industrial relations
 - The Chair must have at least 5 years experience as a judge or substantial equivalent experience as a Chair of arbitration boards, both must be in the area of labour law.
 - Lay members will have thorough knowledge of the EPO and labour law / labour relations within an international organisation. Lay members may be serving or retired staff members of the EPO. Where the members are serving staff of the EPO paid time release will be provided.
 2. Each party will nominate one legal member and one lay member. The Chair shall be nominated by the other 4 members.
 3. All arbitrators shall be bound to act independently and impartially, they shall neither seek nor take instructions.
- III) Proceedings:
 - Public, oral hearings must be provided if requested by either party
 - Power to investigate and order disclosure
 - Witnesses may be heard
 - All presentations to the Arbitration Board must be truthful and compete. Knowingly incorrect or misleading statements may result in disciplinary proceedings.
 - The reasoned findings of the Board will be published

IV) Governing law

- Customary law including fundamental rights
- Service regulations of the EPO
- Case law of the ILOAT
- If applicable, procedural rules of the relevant national Court selected under I.c).
- Insofar as applicable, the laws governing the juridical personality of SUEPO

V) **Forms of relief**

- annulment
- declaratory relief (statement on legality / consistency with fundamental rights)
- orders and injunctions
- specific performance
- damages (including moral and punitive damages)

VI) Limitation of liability

- Personal liability of individual Union members or Union representative is excluded except where provided by the relevant laws other than the Service Regulations of the EPO.

VII) Costs

- The costs of the arbitration procedure are to be paid by the EPO
- The cost of the parties are to be borne by the parties themselves.
- The arbitrator may, for grave and duly substantiated reasons, make an exceptional award of costs against one party. Such awards shall be reasonable and proportionate.