

# The IPKat

Thursday, 19 November 2015

## Eponia: Land of Suspense and Suspensions

As some readers will know, the European Patent Office (EPO) has been in some turmoil this week following the suspension of several union officials. Events have moved quicker than Merpel's little paws can type, and with this post, she hopes to outline the facts as she understands them.



### Background - fighting on the back seat

The background to this is the fractious relationship between the EPO President Mr Battistelli and the senior EPO management on one side, and the EPO staff on the other side, as represented by their elected representatives and the staff union, [SUEPO](#) on the other. The picture is not complete without considering the European Patent Organisation's [Administrative Council](#) (AC).



*"It's all his fault, he started it in the first place!"  
"Not true, she started it. she hit me back!"*

If Merpel can draw an analogy, imagine two siblings eternally fighting in the back seat of a luxury car. Let's call them Benny and Sue. The driver is their parent.

Fatigued by volume of work, pressure of time and weight of heavy responsibility, the driver is nodding off at the wheel and can barely keeping the car between the lines: this, in effect, is the Administrative Council. The parent does not intervene in the squabbling, which occasionally turns physical, but occasionally glances distractedly into the rear view mirror to make sure that little Benny still has the

upper hand. From time to time the parent utters the imprecation: "Do please try to get along, children". If Sue starts wailing too loudly at this unfair treatment, Benny demands that Sue be punished and the distracted parent (who secretly thinks Sue whines far too much and doesn't realise how fortunate she is to be in such a nice car) wearily agrees to let Benny administer a gratuitous extra smack or two.

In this very manner have Mr Battistelli and SUEPO been in conflict from the beginning -- and the AC, which cannot both focus on the road ahead and see exactly who is provoking whom, and to what extent -- has done little to intervene. The AC has expressed genuine concern at the "social tension" and has facilitated talks aimed at recognition of SUEPO, but those talks broke down very quickly. SUEPO has



refused to re-engage on the grounds that key union officials were being targeted and unfairly made the subject of disciplinary investigations.

The car's an [AC](#)

## What's happened now

Matters came to a head last weekend. The Investigative Unit of the EPO paid an unexpected visit to two officials in the Hague, who were taken away for an interview. On their return, they were badly shaken and required medical treatment and have been on sick leave since. Then two days ago, three or four further SUEPO officials, who knew they were being investigated for alleged disciplinary offences, were suspended from service and banned from EPO premises. The Office says, with a perfectly straight face, that it is not targeting the union. It just so happens that, at a stroke, the union has been decapitated -- but this is simply an unfortunate and entirely incidental side effect, or so we are supposed to believe.



What, Merpel wondered, could these union officials have done that required them to be suspended from duty and banned from the premises? Did they repeatedly set off the fire extinguishers, or vandalise EPO property? Were they intimidating staff from doing their work in peace? It would have to be serious, right?

## The accusations

\* Two of the officials are accused of having coerced a staff member into having signed an illegal contract three years ago (so hardly representing a clear and present danger). You see, SUEPO has a contract for providing legal support to staff members who are in a legal dispute with the Office. EPO management takes the view that this contract is unfair and even illegal under national laws, because it can require repayment of any financial support if the member breaches the rules attached to the contract, such as by engaging directly with the Office.

\* Two of the officials, who include the high-profile Els Hardon, are accused of having breached the first (and second) rule of Investigation Club: You do not talk about the Investigation Club. That's right. If you're the subject of a disciplinary investigation and decide to waive your own right to confidentiality, you have automatically exacerbated the situation and have committed a (further) serious breach of staff regulations which can lead to suspension from duties.

\* Ms. Hardon is also being investigated for having allegedly assisted "another staff member" - this being the "House Ban" Board of Appeal member suspended last year for allegedly spreading defamatory materials.

## Quiz Time

Settle down, boys and girls. Sharpened pencils at the ready, you have as long as you like to answer this question: What national laws apply in Eponia?

As you no doubt noticed, the first two union officials are at fault for having had someone sign a contract that may be illegal under national (German) law ("Such wickedness!", one might exclaim, "staff cannot be allowed to break German law!").

The second two officials are at fault for actions that would be upheld in any human rights

court or labour court in any EPC state: union officials letting staff know that management was disciplining them "Even greater wickedness! And how can they think of suggesting that the law protects them when they are in the EPO?!").

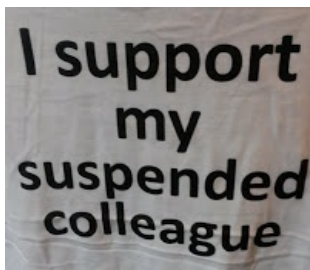
So, do national laws apply in Eponia or not? The answer requires a bit of mental agility: the law of the land can simultaneously apply and not apply. Two people can be working in the same office, cheek by jowl, with one benefiting from and being subject to the law of Germany, while the other is entirely deprived of the protections provided by the same law. Or even more bizarrely, one may be doing two things at once, e.g. typing an email and talking to someone. The speech might be deemed to be illegal under national law, but the written word might be immune from any legal considerations. Neat trick.

In legal terms it would appear that Mr Battistelli is the fortunate possessor of a magical artefact (Eponia is after all his domain), such as a Cloak of Immunity and Privilege. When he dons it, the law of the land stops applying to whatever activity he is currently thinking about. When he removes it, the law of the land applies with full rigour to the poor unfortunate on whom his gaze falls. I think we'd all like to have one of them.



## The fallout

Be in no doubt. These suspensions are very damaging to the EPO. They form part of a larger strategy which probably will involve the EPO management scratching its head in feigned confusion some day soon. "Where have all the staff representatives gone?" they will ask after firing the representatives. "It's not right that you are unrepresented. Let's hold some new elections. Who feels brave enough to stand?"



The targeting of union officials and staff representatives (for an objective appraisal of the available evidence suggests that is what is going on, no matter what denials emerge) may have an unintended backlash. Up until now, many EPO staff have meekly accepted the "difficult social situation" simply because they were afraid to raise their voices in protest. Human nature being what it is, Merpel suspects that the EPO contains thousands of employees who have been looking at the SUEPO leadership over the last few

years and thinking: "I'm glad you're standing up and putting yourself in the firing line. I wouldn't do that myself."

But the suspension of the officials this week may have the effect of radicalising the formerly meek. Within two hours of the news of the suspension spreading, some 2,000 employees had organised themselves into a demonstration. The Munich police closed off Erhardstrasse with almost no notice to facilitate this demonstration, and Merpel's very many eye-witness correspondents tell her that the most remarkable fact of this large attendance was that it contained a lot of new faces, particularly at Director level. These are the guys (and gals) who have had to enforce the relentless increase in production targets on the Examiners below them, and who have largely kept their heads well below the parapet ... until now. Radicalising the meek is usually a mistake because they get so very angry, having kept their secret rage tightly bottled in for so long.



*It Came From Eponia*

**STOP PRESS: the Enlarged Board decision on the House Ban has issued and Merpel will follow up with details very shortly.**

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## Further reading on activity in Eponia

A French Member of Parliament writes to his Minister [here](#) and [here](#)  
EPO recruitment advertisement for a new Investigator [here](#)  
Is there a conspiracy against the President? Handelsblad [here](#)

Posted by Merpel at 7:32:00 p.m.



Labels: Administrative Council, epo, European Patent Office, SUEPO, suspensions