

The IPKat

Passionate about IP! Since June 2003 the IPKat weblog has covered copyright, patent, trade mark, info-tech and privacy/confidentiality issues from a mainly UK and European perspective. The team is Birgit Clark, Merpel, Jeremy Phillips, Eleonora Rosati, Darren Smyth, Annsley Merelle Ward and Neil J. Wilkof. You're welcome to read, post comments and participate in our community. You can email the Kats [here](#)

Tuesday, 27 May 2014

More news of EPO unrest reaches the IPKat

Merpel was trying to spend her May bank holiday sunning herself on Mediterranean beaches, but she has been dragged back from her intended vacation by a flood of emails to the IPKat that have demanded her attention as International Kat of Mystery. Readers will already have seen the [news from across the Atlantic](#). But, closer to home, there have been two fascinating developments at the European Patent Office (EPO) which, although distinct, do not appear to be entirely unrelated. The first is yet more industrial unrest among the employees of the EPO, and the second is the stripping of the chairman of the Enlarged Board of Appeal of his administrative functions following decision R19/12 (for which [see the IPKat post here](#)).



Alas, it was not to be

Another strike

First, Merpel has learned that the quorum of signatures has been reached to allow a call for a further strike, [according to the Strike Regulations](#), and further to the strike that already took place [\[on which see earlier Katposts here, here and here\]](#).

As Merpel understands the rules, there is now a vote of EPO employees and, for the strike to go ahead, at least 50% of a quorum of 40% of EPO employees have to vote in favour. The issues are as follows:

1 - RULE OF LAW

- Effective access to independent justice and the division of powers
- The newly introduced EPO Investigation Guidelines
- The new nominations at the Disciplinary Committee

2 - FREEDOM OF ASSOCIATION

- Freedom of communication
- The newly introduced Strike Regulations
- The upcoming reform of the staff representation : "Social Democracy"

3 - NEW WORK PACKAGE

In relation to the first of these, the main complaint appears to be that the President is administratively responsible for the EPO, but also exercises disciplinary authority under Article 10(2)(h) of the European Patent Convention (EPC); this corresponds to judicial authority in the context of a supranational organisation, as well as having a legislative role (Article 10(2)(c) EPC). The internal appeal process apparently takes up to four years, and it is alleged that "Most of the time, the President disregards the Committee's opinion if it is in favour of the employee." The final appeal to the International Labour Organization's Appeal Tribunal ([ILO-AT](#)) takes around 10 years, so there is no effective recourse to justice. There are then more detailed concerns about the EPO Investigation Guidelines and the Disciplinary Committee.

In relation to the second of these these, the Strike Regulations and lack of recognition of unions have been covered in an [earlier post](#). Also, in relation to staff representation, the staff committees are apparently now proposed to be elected by [single non-transferable vote](#) - Merpel understands that this is an unusual voting system to be applied where multiple candidates are to be elected, because it will usually mean that many of the elected candidates have a very small number of votes.

And in relation to the third aspect, the new work package is alleged to reduce starting salaries and slow progression at the lower grades, while increasing salaries of the higher managerial grades. It is also complained that insufficient consultation has occurred on this.



Did someone say "Freedom of Association"?

Chairman relieved of administrative function

Against unrest directed at the management of the president of the EPO, Merpel wonders whether decision R19/12 (for which [see the IPKat post here](#)) is to be seen as part of the same discomfort about presidential power. After all, the situation identified in this partiality decision is not new and has subsisted for the whole of the life of the EPO (which opened for business on 1 June 1978). Yet suddenly for the first time this is considered to give rise to a justified suspicion of partiality. The IPKat wondered what would be the outcome of this decision, and now Merpel has been informed that the Vice President, DG3, aka the Chairman of the Enlarged Board of Appeal, has informed colleagues as follows:

"I am now in a position to inform you about the decisions taken with regard to my administrative functions as VP3, following decision R19/12.

1. With immediate effect I will not be called upon to exercise any function connected to the General Advisory Committee.
2. I will not be nominated as member of the General Consultative Committee.
3. With immediate effect I will not participate in MAC meetings as a member, but it is not excluded that I can participate as observer for agenda items that have a direct bearing on the Boards of Appeal or its support services.

Furthermore, the President has decided that financial authorizations granted to me relating to activities of members of the Boards of Appeal (missions, training, study visits) are suspended. This means that authorization of expenditure will be decided upon by the President. Also the delegation to me of the power to authorize external activities pursuant to Circular 135 of members of the Boards of Appeal, is suspended.

The above mentioned measures are precautionary and taken, pending further analysis, with the aim to enable me to exercise my judicial function as Chair of the Enlarged Board in full".

Merpel notes that the controversial administrative function is to be taken over by the President himself. So for those who are concerned about the expansion of presidential power, the situation seems to become exacerbated. Merpel also notes that the resolution of the situation appears to have been decided by the President and not the Chairman of the Enlarged Board of Appeal.

Merpel will continue to hunt for news on these matters and will endeavour to keep our readers informed.

Posted by Merpel at 3:04:00 pm



Labels: DG3, Enlarged Board of Appeal, epo, Examiners, strike, SUEPO, suspicion of partiality

14 comments:



Anonymous said...

To clarify the Single Non Transferrable Vote - the President changed the rules whereby staff selected their own system to one where he chooses the voting system. Namely, if there are 15 candidates for 7 posts (the old system) would mean each voter getting max. 7 crosses to place. Under the SNTV, each

voter gets 1 cross. This is designed purely to prevent the unions getting a number of seats. E.g. If there are 7 union candidates representing ca. 50% of staff! the union members have to decide how to spread their vote rather than all voting for the most preferred candidate. If the union members all vote for one member, then the other union candidates will probably not be elected. You can argue that the unions should only get 50% of the seats! and the old system could guarantee this if non-members voted for non-union candidates. The new system makes it more difficult for this to happen. In reality BB just wants to annoy the union and to get compliant members on board. With regard to DG3, rumour has it that BB has also suggested that he may be more active in DG3 (re-) appointments from now on i.e. don't cross me! Independence, where art thou now...

[Tuesday, 27 May 2014 18:30:00 BST](#)

Anonymous said...

Not the first 'step-down' reported by the Kattery this week. The risk of partiality is not the same as evidence of bias in making any specific decisions. The EPO complaints of partiality are just manoeuvrings in particular cases that would otherwise be lost more quickly, and justly. Desperation from the desperate.

On the strike: Make the EPO a directate of the EU Federal States of Europe and the employees can ride two gravy trains and have all their desires and wishes met.

[Tuesday, 27 May 2014 19:42:00 BST](#)

Anonymous said...

Now there is an anonymous in fear for his job

[Tuesday, 27 May 2014 20:17:00 BST](#)

Anonymous said...

"Merpel also notes that the resolution of the situation appears to have been decided by the President and not the Chairman of the Enlarged Board of Appeal."

More to the point, the matter should rightly have been referred to the Administrative Council which is the appointing authority for the Boards of Appeal. But the AC seems to be completely under the President's thumb these days so they are hardly likely to complain about such usurpation of their prerogatives ... :-)

[Tuesday, 27 May 2014 20:21:00 BST](#)

Anonymous said...

There has also been some interesting reporting over on IP Watch:

<http://www.ip-watch.org/2014/05/15/epo-internal-strife-spills-over-into-european-parliament-human-rights-court/>

[Tuesday, 27 May 2014 20:28:00 BST](#)

George said...

Shame on the Board member who has leaked the message of the chairman of the EBoA, and shame on Merpel for having published it. Is privacy of correspondence nothing to you?

[Wednesday, 28 May 2014 18:43:00 BST](#)

Anonymous said...

"After all, the situation identified in this partiality decision is not new and has subsisted for the whole of the life of the EPO (which opened for business on 1 June 1978). Yet suddenly for the first

time this is considered to give rise to a justified suspicion of partiality."
Apparently Merpel has not yet read the decision.....

[Wednesday, 28 May 2014 19:47:00 BST](#)

Merpel said...

Merpel does not understand what Anon at 19:47:00 is saying. She understood the facts as she reported them to be basically true, and she also believes that this was acknowledged in the decision at para 17.6. She reminds her commenters that this blog is about a community of IP enthusiasts and therefore clarification, amplification and correction are welcomed. Implications that a comment is not correct without any clarification are on the other hand rather unhelpful to the entire readership.

[Wednesday, 28 May 2014 22:48:00 BST](#)

Anonymous said...

I agree with Merpel - please clarify. Although, is it Merpel I am agreeing with as 'Merpel' appears to be speaking on Merpel's behalf.

[Thursday, 29 May 2014 08:49:00 BST](#)

Merpel said...

Anon at 08:49 - you are agreeing with Merpel. Merpel speaks in the third person, just like her friend the IPKat.

[Thursday, 29 May 2014 10:41:00 BST](#)

Roufousse T. Fairfly said...

If this is supposed to be good news, I shudder at the thought of what bad news could be like...

VP3 didn't exactly help his standing in the matter of the "EPO Investigation Guidelines" mentioned in the first part of your post. I was told that these provide the President's minions a *carte blanche* for indiscriminately snooping using just about any means conceivable with regard to any alleged misconduct. I never knew there were any problems of the sort, at least not with the operational staff.

These would also allow dishing out punishment to anyone who would refuse to incriminate himself. (I wonder how this is drafted, and under what circumstances this is supposed to be applied).

These "guidelines" are said to have been unanimously adopted without reservations by the instances to which VP3 was formerly a part of. Nothing in their wording would exempt DG3 members from their applications.

The atmosphere at the EPO is getting downright toxic.

[Thursday, 29 May 2014 13:19:00 BST](#)

Roufousse T. Fairfly said...

I'm also trying to picture the next sitting of a board which would comprise the (presently) former VP3.

[Thursday, 29 May 2014 13:22:00 BST](#)

Anonymous said...

Hardly as toxic an atmosphere as in many other workplaces. If I was an examiner sitting... sorry.. If anon was an examiner sitting in the airy EPO restaurant enjoying a 3-courser and a slowly drunk

mocha chocca latte double cream afterwards, anon may be breathing easily and relaxed. If anon was down a hot, dangerous coalmine, on the other hand, anon may understanding the true meaning of 'work'.

Compared to some, I'm sure 'anon the examiner' has it tough, but not compared to most.

[Thursday, 29 May 2014 17:00:00 BST](#)

Anonymous said...

FYI, the the "EPO Investigation Guidelines" were enacted unilaterally by means of a Presidential "Circular" which means that they were never subject to the legislative oversight of the Administrative Council.

They unilaterally granted the President wide-ranging powers to "investigate" all EPO employees including those for whom the AC is the appointing authority (i.e. Board of Appeal members and Vice-Presidents). The President's exercise of these powers is subject to no supervisory oversight whatsoever.

[Thursday, 29 May 2014 21:09:00 BST](#)

[Post a Comment](#)

[Newer Post](#)

[Home](#)

[Older Post](#)

Subscribe to: [Post Comments \(Atom\)](#)

Subscribe to the IPKat's posts by email here

Just pop your email address into the box and click 'Subscribe':

Subscribe