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# 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](#)**

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Friday, 28 March 2014

## Unrest at the EPO Part 3 - SUEPO Strikes Back

Merpel was looking forward to a day curling up under the late March sunshine in Lincoln's Inn Fields, but the IPKat has sent her once again to investigate and report the latest news of the worker unrest at the European Patent Office.



*What Merpel wanted to be doing*

Merpel has already reported on the issues at some length [here](#)

and [here](#), and both posts have attracted a considerable number of comments. Now Merpel has been informed that the EPO figures for the number of people observing the strike were 1,706 people on strike on Friday, 883 on Monday and 994 on Tuesday. This is of course rather less than the 3,697 people who voted for strike action. There seem to be two reasons for this. One is that, [as reported in the previous post](#), Examiners were not going to disrupt public functions such as Oral Proceedings. The other is that, whereas a "yes" vote is secret, striking itself is a rather public act, which some EPO employees may have thought less than career-enhancing.

Moreover yesterday, on Thursday 27 March, EPO employees staged a demonstration at noon in front of the Isar building. Despite frantic googling, Merpel has been unable to find detailed news of this. Did the crowds cross the Ludwigsbrücke? Did they storm the Museumsinsel? We do not know. But she has heard that police estimate the number at around 600, while unofficial estimates may be up to 1,000.

The IPKat does not know enough about the details of the dispute to suggest to

the blog readership what they should think, and as a fictional feline his opinions matter little in any case. But he does have some observations, and some further news to share.

- It is indisputable that working relations between the President of the EPO and a majority of workers are highly strained
- On the other hand, it has been generally agreed for many years that the EPO is in need of some considerable reform. As an extraterritorial organisation, the usual methods of control and oversight are absent. Therefore reform is particularly challenging.
- On yet another hand, the usual guarantees of worker rights are also absent because delays at the ILO-AT mean that there is no effective appeal process against unfair dismissal.
- On the final hand (luckily the IPKat has four paws), without trust and cooperation between the President and the Employees, successful reform seems highly unlikely.

But, the IPKat hears you cry, what of the Administrative Council? This is made up of independent members from each of the Contracting States, representing the patent office of each. The Administrative Council is there to exercise oversight over the President and the EPO administration, and also it is the Council, not the President directly, that makes so many of the rules complained of.

Well, this is where it gets complicated. Doubtless the President will consider that the fact the Administrative Council is passing many of the reforms complained of demonstrates that it approves of his conduct. Critics of the President point to a different fact, that, on reflection, puts the Administrative Council in a rather difficult (and some say hopelessly compromised) position. The Administrative Council is made up of representatives of national patent offices that are themselves highly reliant on fee income that ultimately derives from the EPO. So as long as the money keeps rolling, they will be encouraged to give the President free rein. The IPKat does not know whether this explains matters, but can see the force of the logic.

Against this background of mistrust, some further news becomes highly relevant. Readers will recall that one of the original [PEACES complaints](#) was the new strike regulations in Circular 347, that (apparently -- Merpel has not seen the full document) made it the administration, not the Union or other separate staff body, that conducts strike ballots and determines whether a strike is to be permitted. The "50 email" rule was reportedly developed to prevent unofficial mass communication. Well, now further Circulars are being considered by the Administrative Council that will further decrease the independence of staff representation on the proposed new Staff Committee. The nominations and elections are to be run by the Office, and the nomination provisions state "The President, upon proposal of the Supervisory Committee, shall reject all nominations which do not meet the conditions laid down in the applicable provisions or in the notice of elections..." Thus the administration and the President are intimately involved in the process, which EPO employees says undermines its independence.

In a further draft Circular concerning resources, while it is stated that "The Office shall make premises available to the Staff Committee to set up sufficient working space for Staff Committee members", it is then stated that "Such premises shall not be used for trade union activities". The IPKat wonders therefore where union activities are supposed to take place. Or are they to be banned entirely?

The proposed new voting system has also been criticised - for each Staff Committee (there is a Central one and a Local one at each branch of the Office) each employee gets only one vote, according to the proposal, whereas the Central Committee, for example, has 10 full and 10 alternate members. Allowing only a single vote for a multi-member election will result in highly skewed votes with less popular candidates getting in with very few votes indeed.

Many of the IPKat team represent users of the patent system. Users should be

concerned about this degree of unrest.

Finally, Merpel notes that documents from Mr Battistelli repeatedly refer to "social democracy" in relation to the ongoing and proposed reforms. Can anyone tell her what it means?

Posted by Merpel at 11:51:00 am



Labels: Administrative Council, epo, ILO-AT, President, strike, SUEPO

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Tuesday, 25 March 2014

## [Quis custodiet ipsos custodes: news and review of comments on EPO strike](#)

Last week Merpel [posted a piece](#) concerning news that the EPO employees were going on strike. Because of the difficulties in finding reliable information from authenticated sources, Merpel posted only the basic and apparently incontrovertible details as to what was going to happen. The piece attracted an astonishing 70 comments to date. The IPKat has therefore pressed Merpel into service again to post an update and report some of the threads of the comments. Both felines hope that this may be of particular interest to our dear readers who read mainly the email version of the blog, and therefore miss out on the comments.

First however Merpel looked for news of how the strike is going. This is apparently the second day, but she has found no reports of demonstrations, picket lines, or the like crossing the [Isar](#). In fact, looking at the ["News" section](#) of the [SUEPO](#) [Staff Union of the European Patent Office (EPO)]website, Merpel was highly tickled to find that the main news is her own piece. There has also been a report, before the strike, [on IP Watch website](#).



Merpel diligently reviews the many comments

She did however find on the SUEPO website some more useful information that was not available at the time of previous posting. A posting on 20 March sets out clearly and cogently the reasons for EPO staff dissatisfaction in a document labelled ["What do the EPO staff want?"](#) This document complains about the

current governance of the EPO, particular in the person of the current president Mr [Benôit Battistelli](#). This is said to be problematic because 'the EPO very much a "state within a state" without, however, the separation of powers that is the norm in modern democracies' so that the president is 'prosecutor, party and judge'. The specific complaints seem worth reproducing verbatim as they are more concise than any other source:

- Staff of the EPO no longer has timely access to justice. It now takes almost 4 years to get an opinion from the Internal Appeals Committee. Further, most of the time Mr Battistelli disregards the Committee's opinion if it is in favour of the employee. That then forces the claimant to file a complaint in front of the ILO-AT, the only Tribunal accessible for EPO staff. The total duration of the procedure may be up to 10 years. Justice is de facto denied in the EPO. [*The problem with such delays at the ILO- AT was discussed last year by the IPKat [here](#)*]
- The President has created his own internal police and introduced so-called "Investigation Guidelines" that encourage staff to report on each other and that deny staff fundamental rights such as the right to remain silent, the right to be represented by a legal counsel of one's choice, and the right to refuse access to one's home without a search warrant.
- Mr Battistelli strongly curtailed the communication means of the Staff Union of the EPO (SUEPO) and of the Staff Committee. Incoming emails sent from the SUEPO domain are blocked, the sending of emails to more than 50 colleagues is forbidden and punished with disciplinary measures. Documents submitted for the Administrative Council are blocked by the President.
- Mr Battistelli introduced strike regulations that give him the power to decide for what issues staff may strike and for what they may not. Strike ballots may no longer be organized by the Staff Union but only by the administration. All other actions than strike (e.g. work-by-rule) have been declared illegal.
- Next, Mr Battistelli plans to dissolve the democratically elected Staff Committee. Elections are to be called in June. The new election rules set by the President seem carefully designed to make the future Staff Committee unworkable. The elections will be organized and controlled by the administration, not by staff. The President will also decide on the admissibility of the candidatures and on the validity of the election results.
- In the meantime more than half of the elected staff representatives have been subjected to, or are threatened with, disciplinary measures in an apparent attempt to quash the opposition. Critical managers are simply transferred to empty posts.

[Another document](#) complains about the number of former [INPI](#) colleagues of Mr Battistelli currently at the EPO.

In the comments section of the previous blogpost, the following topics were addressed.

### 1. Bonus

A commentator referred to the Examiners "handing back bonuses". This apparently refers to a proposal to give EPO examiners a bonus in 2013 [reported by the IPKat here](#). This proposal did not however apparently happen in the end - it was said to have been withdrawn because Examiners did not want it in the form offered.

### 2. Examiner pay

Many commenters referred to the high pay and good ancillary benefits of EPO Examiners (the argument appearing to be that if you are paid well then you don't get to complain about other matters). On the other hand it was pointed out that those who can fulfil the technical and language requirements are rather rare. Epithets like "cushy" and "golden cage" catch the general tone of the adverse comments. Merpel does not see that high pay need be accompanied by reduced employment rights.

### 3. Examination quality

The post attracted a number of negative comments about examination quality at the EPO. Although this is an interesting discussion in its own right, Merpel feels it is little churlish of the IPKat's readers to bring this into the present topic.

### 4. Reasons for the strike

There were surprisingly few comments on this point, ie that actual reasons for the industrial action, but they largely reflected the reasons cited above. Some commentators who apparently were aware of the reasons were not sympathetic that these represented valid reasons for industrial action under the circumstances.

### 5. Oral proceedings

There was concern that Oral Proceedings might be affected. Apparently EPO staff are under instruction not to impede Oral Proceedings and involved Examiners are not to strike.

### 6. And finally

The latest comment at the time of writing revealed the perhaps surprising fact that EPO employees are required to submit details of spousal income to the EPO.

Overall, not many commenters who were not Examiners appeared to support the position of the striking EPO employees, either because of the pay issue, or the examination quality issue. The post was however never intended to be a referendum.

Merpel recalls that before Mr Battistelli, Alison Brimelow was hailed as the apparent saviour of the EPO, who would deal with the examination backlog and all of the internal issues. She was responsible for the [hated 2-year divisional deadline rule](#) that was recently repealed, and her tenure is not generally considered to have achieved any significant reform. No doubt Mr Battistelli felt that he could do better. Merpel awaits with interest the response to the current unrest.

In the nearer future, Merpel would be very interested to hear how the strike itself is going. She can't be in Munich in the near future, so invited informed comments below in the usual manner.

Posted by Merpel at 8:43:00 am



Labels: epo, ILO-AT, President, strike, SUEPO

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Monday, 17 March 2014

## Unrest at the EPO - Strikes are in the air

Merpel has, as is her wont, been prowling the corridors of power. This time she has been visiting her favourite corridors, those of the EPO, usually populated by anxious European patent attorneys and their clients, waiting to find out whether the 10th Auxiliary Request complies with Article 123(2) EPC, and now with their [laptops and mobile printers under their arm](#) as well.



*Lean, mean and highly trained: the EPO strike force*

But this time, she has found something different. A correspondent (to whom a Katpat - you know who you are) has alerted the IPKat to news of a STRIKE planned at the EPO, and so Merpel went to investigate.

Just a year ago, readers will recall, examiners at the UK [Patent Office Intellectual Property Office](#) were [taking industrial action over pay and progression](#). Now, the EPO employees are also announcing strike action. Their demands are more wide ranging. They are apparently encapsulated in the acronym PEACES, as follows:

- **P**residential communication:

1. the President needs to clarify his remarks regarding Chinese prior art in the ManagingIP.com interview via a Communique and to request a correction,
2. the CSC should be allowed to publish one page in the Gazette to put into context the President's trivialisation of the present social unrest as a situation normal at the EPO.

- **E**-mails: removal of the 50 recipients cap, abolishment of the block on all union e-mails to staff and withdrawal of the warning letters sent to staff.
- **A**doption of Social Democracy: introduction of separation of powers and social dialogue

- Change of Disciplinary committee: re-nomination of a DG3 member as Chairman in order to continue the 30-year independence of this body
- Evolution of the Investigation Guidelines: amendment of Circ. 341 and 342 in line with European Law
- Strike Regulations: withdrawal of Circ. 347 (new strike regulations)

The Managing IP article referred to in the first item [seems to be this one](#).

In furtherance of these objectives, a strike ballot has been held, and 4119 out of the 6803 eligible employees have voted, which represents a quorum (40% is required for a quorum). Of these, 3697, around 90% of the votes cast, are in favour of strike action.

It has been notified that the strike will be held on 21, 24 and 25 March, and 14, 15, 16, 17 April.

Merpel is only a feline, and a fictional one at that, so she does not know much about the internal conditions of the EPO. There seems however to be great dissatisfaction at the current governance by the President of the EPO. Moreover, the dissatisfaction appears intense and widespread. As ever, the comments section is open to those with further light to shed on this matter.

Posted by Merpel at 12:09:00 pm



Labels: epo, President, strike

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