

Copies to: Competent Ministries of the Member States

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Time to put an end to the deterioration of the European Patent system

Dear Heads and Members of the Delegations to the Administrative Council of the European Patent Organisation, dear Chairman,

Following debates in the Netherlands¹, the French² and the Bavarian³ parliaments, the social conflict at the EPO has become the subject of discussions at government level. French^{2,4} and Dutch⁵ ministers have publicly criticised Mr Battistelli for his intimidating and destructive management style. The Dutch Foreign Minister said in a recent letter: "*If no visible improvements take place in the short term in the relations within the EPO, I see no other option but to discuss the situation at a high political level with the member states of the European Patent Organisation.*"

The situation has not improved. On the contrary, the working atmosphere has become even more toxic. Proposed new house and security rules will, if they enter into force, entitle security staff to seize and search bags, phones and laptops of employees at any time^{6,7}. They will also prohibit the dissemination of posters and flyers. Assemblies of more than 25 persons will require management permission. Additionally, a further reform aimed at weakening the staff representation even more has been prepared^{8,9}.

Mr Battistelli can manage the Office without respecting staff's fundamental rights and international labour law standards while he enjoys the privileges and immunities accorded to diplomatic agents under the Vienna Convention. But these privileges and immunities are inseparable from the right of the host state to declare any diplomatic staff member *persona non grata* or *not acceptable* "at any time and without having to explain its decision"¹⁰. From this, it flows that the host states have a special responsibility for the employees of guest organisations. At this point, it is worth noting that the delegations of the EPO's major host states, Germany and The Netherlands, voted in favour of the *strike rules* (which violate Article 11 of the ECHR) and the *Social Democracy* reform. While it can be assumed that they were originally misguided by the president's presentation (with the help of the German vice-president DG5¹¹) of these reforms, in the meantime, these host

1 <https://www.suepo.org/documents/43960/56042.pdf>

2 http://www.theregister.co.uk/2016/12/03/epo_president_disgrace_to_france/

3 <https://www.suepo.org/documents/43906/55980.pdf>

4 <http://www.richardjung.fr/francais-de-l-etranger/questions-au-gouvernement-francais-etranger-cote-circonscription/4219-question-orale-sur-la-degradation-du-climat-social-au-sein-de-loeb-reponse-du-gouvernement.html>

5 https://www.theregister.co.uk/2017/03/07/come_in_battistelli_your_time_is_up/

6 https://www.theregister.co.uk/2017/03/03/euro_patent_office_interpol_phones_and_laptops/

7 Circulars GCC/DOC 4/2017 (physical security), GCC/DOC 6/2017 (information security) and GCC/DOC 5/2017 (house rules)

8 https://www.theregister.co.uk/2017/01/31/battistelli_tries_again_to_break_epo_union/

9 <http://techrighs.org/wp-content/uploads/2017/03/sc17027cl.pdf>

10 Vienna Convention on Diplomatic Relations of 18 April 1961

11 **CA/PV 136** Minutes of the 136th Administrative Council meeting (June 2013), page 21/48

states must have realised that the reforms have in fact undermined labour rights, and contributed to the current crisis¹² in the European Patent Organisation.

The social reforms and management by intimidation, in combination with unrealistic and arbitrary production targets, have had the effect of introducing *de facto* changes to the European Patent Convention (EPC) through the back door¹³. The European Patent Organisation has thus broken its legal contract not only with staff but also with its stakeholders (companies and consumers), including the applicants, who finance the patent system.

According to the president, these reforms were necessary to serve the EPO's "customers" better. However, a recent independent survey¹⁴ conducted by the well-respected German legal magazine JUVE revealed that this is far from the case: firstly, less than half of the survey's participants were happy with the current quality of the European patent examination process. Only one in 25 considers the president's efficiency strategy useful. The survey also showed an alarming level of mistrust in Mr Battistelli (zero percent confidence rating), with the majority of respondents calling for his resignation.

Last but not least, the survey shows that a quality erosion has taken place. Low quality patents create legal uncertainty for patent applicants and their competitors. Legal uncertainty hinders investments and leads to increased litigation, which is a drag on the economy¹⁵. Seen in this light, the president's announcement on 7 March 2017 of a 40% increase in patent grants in 2016 is alarming. It is difficult to believe that such a surge in productivity could be achievable without a drop in quality. Asserted low quality patents are equivalent to a tax on innovation since the costs are passed on to the consumers¹⁶.

The findings of the JUVE survey are in contrast with the EPO's own quality statistics. Due to a built-in conflict of interest, the ISO-9001-certified quality measuring system for the *procedure* at the EPO indicates an excellent quality, no matter what the actual quality of the *product* is¹⁷. Furthermore, the EPO's quality audit department (DQA) reports direct to the president. There, Mr Battistelli measures his own quality. The Administrative Council should consider transferring DQA activities to an independent institution in order to establish a more reliable quality measuring system. This could be a first step in the direction to regain the trust of the users of the patent system.

Accept your responsibility for safeguarding a patent system that delivers the quality required by the European public and do no longer support HR policies that are unfit for an intergovernmental organisation in the 21st century.

Make sure to select the right new person for the job.

With our best regards,

The EPO-FLIER team

a group of concerned staff of the EPO who wish to remain anonymous
due to the prevailing harsh social climate and absence of the rule of law
at the European Patent Office

12 **B28/2/16** (02.02.2016): "The Board qualified the situation as a crisis – a view challenged by the President."

13 Open Letters of 22 June 2016 and 11 October 2016; <http://epostaff4rights.org/openletters.html>

14 <https://suepo.org/public/ex17003cp.pdf> (German); <https://suepo.org/public/ex17003cpe.pdf> (English)

15 <http://thehill.com/blogs/congress-blog/technology/295542-fixing-why-uspto-issues-low-quality-patents-should-be>

16 http://publications.jrc.ec.europa.eu/repository/bitstream/JRC103321/jrc103321_online_version.pdf

17 <http://techrights.org/wp-content/uploads/2016/09/sc16170cp.pdf>