

EPO Staff, Users List Priorities For Incoming President

19/06/2018 BY DUGIE STANDEFORD FOR INTELLECTUAL PROPERTY WATCH — [LEAVE A COMMENT](#)

As the European Patent Office (EPO) prepares to welcome a new president, staff members and patent practitioners are setting out their priorities and suggestions for the newcomer, António Campinos. Topping the list for patent examiners is ending the contentious relationship between management and employees. Patent attorneys and litigators, meanwhile, want to see more attention paid to creating a fair balance between the speed of patent grants and patent quality.

Campinos, who is currently head of the European IP Office, will take over at the EPO on 1 July for Benoit Battistelli, who has been president since 2010.



European Patent Organization

Staff Pans "Single-Minded Focus on Efficiency"

In an 8 June discussion paper [pdf], "Doing what needs to be done – the right time and opportunity for improving governance, transparency and accountability at the EPO," the Staff Union of the EPO (SUEPO) highlighted various governance issues "that threaten to have a negative impact on the overall functioning" of the Office and offered several recommendations for improvement.

Two key concerns, SUEPO said, are the composition of the Administrative Council (AC), the EPO's governing body, and its transparency. Among other things, the union wants the office to hold the required five-yearly conference of AC government representatives soon to discuss questions about governance, patent quality and social policies, and said the council should start publishing its agendas and minutes and allowing public access to its discussions.

Another issue is the governance of the Boards of Appeal, which deteriorated after Battistelli suspended a board member (*IPW*, Europe, 12 June 2017) and allegedly refused to publish important BoA decisions "that were not to his liking," according to SUEPO. It wants the presidency's decision-making powers over the BoA fully transferred to the president of the BoA, along with the eventual transformation of the board into a separate organ of the EPO governed by a council for the judiciary.

The union also seeks changes in the office's human resources governance, including a move away from the Battistelli administration's "single-minded focus on 'efficiency'" (productivity).

"The deficits in governance, transparency, accountability, due process, legal certainty for employees, legal validity of patents for the applicants are manifest," SUEPO said. "It is high time for these to be addressed in order to restore trust" of applicants and the European public in the EPO as a patent-granting authority on one hand and an attractive employer on the other, it said.

"With a new President assuming operational responsibility for the EPO on 1 July, the timing is ideal to discuss these issues with the stakeholders," including the staff, the letter said.

In response to SUEPO's paper, the EPO pointed to its 12 June report, "Modernising the EPO for excellence and sustainability. Achievements 2010 to 2018." <http://www.epo.org/service-support/publications.html?pubid=170#tab3> The report "presents a factual account of the results obtained at the EPO over the last eight years," its spokesman emailed. "As you will note from the contents, it provides a verifiable and measurable overview of the progress that has been made in multiple areas at the EPO and relating to the subjects mentioned in the [SUEPO paper]. The Office specifically called attention to the section on transparency, which it said addresses the measures it has taken to provide its users and the public transparency in areas such as social conditions, the work of the AC and patent quality.

Push for Speed Worries Practitioners

Patent attorneys are closely monitoring several changes Battistelli spearheaded. Some of those modifications — expedited timelines for obtaining and challenging patents — were introduced to speed up the patent examination and opposition processes. Finnegan, Henderson, Farabow, Garrett & Dunner LLP (London) patent attorney Leythem Wall said in an interview. One potential question is whether the system is moving too fast given the finite resources at the EPO, he said. The EPO "generally does a tremendous job," but if the process is faster, the question is whether in the long term quality can keep up, he said.

Another question is whether users of the EPO patent system could have more of a choice as to the speed and timeline of their patent applications, Wall said. There is no way to pause the process or slow it down beyond a few months, he said. The EPO proposed a suspended examination period for up to three years, but there has been no decision to implement, he said. The incoming president could revisit such a scheme, he said.

Some have said they see a change not so much with regard to the process of examining applications but in third-party challenges, Wall said. Since the process is now faster, it places more pressure on third parties to get their challenges right and means they may need to invest more in challenging patents, he said. For examination, following fairly recent changes in their Examination Guidelines, the EPO tends to offer more suggestions on how to overcome objections, which is good, but at the same time it appears to be getting quicker to summon parties to oral hearings at the office, which potentially imposes more costs on users, he said.

The new president should also address the question of hiring for the Boards of Appeal, because while the examination and opposition processes are speeding up, it's taking longer for appeals to reach conclusions, Wall said.

"Battistelli's term started quietly but as he built his mission to change the working practices there you'll have seen the morale impact," emailed Kilburn & Strode LLP (London) European patent attorney Gwilym Roberts. What's odd, he said, is that even the EPO workforce agreed that productivity needed improving, but Battistelli's methods caused the problems.

The office "must keep addressing its backlog," Roberts said. It's still common to see pending applications that are 10 or more years old, and the EPO "remains slower than most major jurisdictions." It's not acceptable to have more than half the lifetime of some patents spent in the patent pending phase, he said, adding that nevertheless, the office "provides amongst the best quality patents in the world and that reputation must not be prejudiced."

New "early certainty" measures may prove to be the turnaround, although some are achieved by putting additional pressure on the applicant, which is unfair, Roberts said. "But the expectation of a quicker turnaround is an important step, as long as corners are not cut in the examination process."

Campinos "has been very quiet so far," said Roberts. "He will need to walk a tightrope balancing speed and quality, with a pack of baying examiners below if he slips up. It would be helpful to hear a little more about his plans to put the minds of applicants, attorneys and most importantly his workforce to rest." Viewed from the outside, "Battistelli did achieve improvement albeit at the cost of major unrest," Roberts said. "If his successor can carry on the good work without the unwelcome unrest, the EPO will get itself back into pole position."

There are two things the EPO, and every patent office, should continuously try to improve, emailed Taylor Wessing LLP (London) patent litigator Christopher Thornham. One is quality: "How is the EPO embracing use of [artificial intelligence] to help improve the search and examination process to get better quality?" The second issue is speed: Taking a long time to examine and grants patents creates uncertainty for the public, Thornham said.

"This is compounded by a slow post-grant opposition procedure that can take many years," he added. "How is the EPO working to address and improve this?"

In a 14 June open letter to the current and incoming presidents and others, four German patent law firms said the office's "overreaching desire for high productivity" is causing problems. Grünecker, Hoffmann Eitle, Maiwald and Vossius & Partner voiced "great concern" with EPO modifications to the incentive systems for patent application examinations, saying they seem to be "increasingly directed towards rewarding or even requesting rapid 'termination' of proceedings and a correspondingly higher productivity. This has resulted in penalization of detailed and thorough assessment of cases."

While an increase in the average speed of proceedings is welcome, the overreaching productivity has led to several problems, the firms said, including, among other things, less effective prior art searches and examinations. If examinations are shorter, the EPO's high fees can't be justified, and patents that have been examined less thoroughly are more exposed to challenges, the attorneys said.

The EPO "needs to balance the interests of the public against the interests of patent applicants," they said.

Moreover, if users of the European system gain the impression that granted patents can't be relied upon due to insufficient searches and examinations, they may increasingly be discouraged from filing European patents, which "might unhinge the entire patent system," the letter said. It urged the office to set up new patent examination incentive schemes.

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