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Front Lines Hardening: A Public Authority Teetering on the Brink

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Strife at the European Patent Office between President and staff veering more and more out of control

By Katja Riedel

According to the announcement on Wednesday by Benoît Battistelli, President of the European Patent Office (EPO), it is supposed to be an “agreement that truly breaks new ground”. For the first time in the history of the international organization, the word is that a staff union is now being recognized as a social partner, and social peace with the workforce, which up to now has been decidedly hostile, accordingly appears to be just around the corner. However, the Office has chosen to overlook one minor detail: The union with which Battistelli has signed the memorandum of understanding is called FFPE, and, in the world of the EPO, with a workforce more than 7,000 strong, that union so far boasts less than 100 members. And at the Office headquarters in Munich, where some 4,000 people work, and a war has been raging for three years between staff representatives and the President, there is not one single FFPE member. The social dialogue accordingly resembles more of a monologue.

The fact is that in the patent world, which is all but closed to outsiders, another staff union is deeply rooted. This is called Suepo, and it represents about half of the personnel. For decades Suepo was very powerful, and what it said really counted. That is, until Battistelli came, and, on orders from the 38 Member States which had elected him, set about shaping the Office towards greater efficiency. Since then both sides have been engaged in a bitter power struggle, but with unfair resources. The President has far-reaching powers, and he is not afraid to use them, liberally, which has ultimately led from escalation to escalation. For three long years Suepo has been protesting, not just internally, against Battistelli and what they see as his excessive authoritarianism, against reforms which restrict the fundamental rights of staff members, and against Battistelli’s extremely high-handed and heavily centralized management style.

For everyone to see, staff members have marched in their thousands through Munich and to the consulates, seeking to push the Member States into at least debating Battistelli’s reforms with him. But the only body which can give orders to Battistelli has long shown itself to side with the President, and has been gentle in its admonishments, even extending his term of office during the dispute and before the expiry date, until 2018. But now it looks as if Battistelli has overstepped the mark. Since last autumn he has been hitting back hard, suspending a patent judge, who in fact, given the power structure, does not actually come under his jurisdiction at all, which has caused a considerable stir in the various governing bodies as well as on the patent scene in general. According to the findings of an internal investigation unit, the man is supposed to have used more than 20 aliases to conduct a campaign of defamation against the President and other leading executives, and thereby created major upset within the Office. The man disputes the accusations. At the beginning of

the year, Battistelli then dismissed Suepo chief executive Elizabeth Hardon, due to alleged bullying and complicity with the judge. Two other members of the Suepo governing body went with her.

Currently doing the rounds in the Office is a letter from the head of the Administrative Council, Jesper Kongstad, a Dane, who once had his eyes on the Presidency. Since then, he has been a Battistelli man – or, more precisely, he was. Kongstad has indicated, on behalf of 28 Member States, that there was something of a showdown with the President within the close management circle at two meetings in February. The main issue appears to have been the social conflict within the Office. In particular, the governing body wanted to discuss the case of the dismissed union members with him. Regrettably, it seems that it was impossible to engage the President in a meaningful dialogue, according to Kongstad's letter. During the meeting he apparently rejected the requests out of hand, because the Member States were trying to undermine his authority. These attempts included the disciplinary issues as well as allowing the work of the controversial investigation unit to be vetted by an outside source. Battistelli appears to have then left the meeting.

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According to some newspapers, such as the Dutch *De Telegraaf*, the word was that Battistelli had envisaged stepping down, and was negotiating a golden handshake of 18 million Euro. “Utter rubbish” was the response from the circle around the President, and things appear to have calmed down again. Battistelli is said to be prepared to compromise on four out of six issues, but significantly not with regard to disciplinary procedures and external monitoring – the key points. Suepo are accused of stirring up the conflict alone, in order to secure their own survival. The union apparently refused to have further dealings with Battistelli due to the dismissals, nor were they prepared to enter into any agreement which would *de facto* have caused them to forego further influence.

How things turn out for the Office, for Battistelli, and for social peace, could well be decided in mid-March. Specifically, the demands from the Administrative Council will be high on the formal agenda at the next meeting of its full body. A straightforward majority of 38 votes could then force the President to implement the demands. Should he not do so, the Administrative Council could then, at the next meeting in June, call for him to step down, which would require three-quarters of the votes. The name of a possible successor for the top job is in fact already being bandied about, that of the German member of the Administrative Council, Christoph Ernst, from the Federal Ministry of Justice. Word has it that Battistelli considers that not even to be an option. He is in the best of moods – so it is said.