

EPO Dispute: Judges feel threatened by Office Boss Battistelli

The decision taken last week by the Enlarged Boards of Appeal of the European Patent Office (EPO) to stop disciplinary proceedings against a suspended judge is, in a sense, a settling of scores with Office President Benoît Battistelli. Specifically, present members of the EPO Boards of Appeal also feel themselves threatened, according to the document. Under these circumstances, their independence as judges is no longer guaranteed.

For many months a bitter dispute has been ongoing within the Office, with its 7,000 strong workforce, between the management and a large number of the employees and the staff unions. This has been prompted by the efforts at reform initiated by Battistelli – and the methods with which he intends to put his plans into practice. Employees complain of interference with their basic rights, including by way of internal investigation procedures.

The dispute over the suspension from office of a judge is the high point of the conflict – so far. The proceedings started to become noticeably unusual when the Enlarged Boards of Appeal arranged for a public hearing in the suspension proceedings, so as to ensure transparency in what was already a contentious issue, whereupon Office President Battistelli intervened in writing. He demanded a hearing behind closed doors – and that, as the judges saw it, was impermissible meddling in the proceedings.

Judges see a “general, abstract threat”

According to the decision which JUVE has in its possession, Battistelli had argued that a public hearing was unlawful. The personal presence of witnesses from the Office was something he considered unnecessary for the proceedings, and nor would he authorise it. Moreover, the Enlarged Boards of Appeal were apparently not even allowed to investigate the matter again. And on top of all this, he made it clear that he would do everything in his power to ensure that business at the Munich patent authority could in future be run in an orderly fashion.

The court viewed this as a “general, abstract threat”, which affected every member of the Enlarged Boards. The intervention by the President, and thereby the Executive, was impermissible in terms of legal procedure, according to the judges, because Battistelli is not a party to these proceedings. The judges see their independence, which is firmly anchored in Article 23 of the European Patent Convention (EPC), as being fundamentally undermined.

Off-centre from the outset

Last autumn the Administrative Council of the EPO, on which representatives of the 38 Member States sit, called upon the Enlarged Boards of Appeal responsible to recommend dismissal in the disciplinary proceedings against the suspended judge. In so doing, the Administrative Council were already bowing to pressure from the President, who at the end of 2014 had imposed a ban on the former member of the Board of Appeal from entering the premises, and had him escorted out of the Office building in Munich. Over the following

months, despite the uproar, the Administrative Council did not distance itself from the proceedings which had been initiated, nor from Battistelli's most recent letter.

The suspended judge maintains, among other things, that the investigations against him incurred formal procedural errors – and for this reason alone the presumption of innocence could no longer be entertained in this respect, because the Office itself had broken the confidentiality of the proceedings.

In view of the circumstances, last week the Board of Appeal refused to dismiss the accused judge. The proceedings were terminated without a substantive decision, and, specifically on the significant grounds that, in view of the threats from the Office management, an independent ruling was impossible. As well as that, the Board recommended that the suspended judge be reimbursed for all the costs of the proceedings. They did not, however, regard themselves as empowered to order the compensation. The judges also accorded with the defendant's wishes that the decision be made public.

Whether Battistelli, in the top position at the Office, continues to enjoy the support of the Administrative Council will become clear soon enough: At the end of June the Council is actually scheduled to rule on the reform of court procedures within the EPO. (Sonja Behrens)