

# *European Patent Office*

## **They call the Boss Putin**

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Power struggle inside the European Patent Office: Quality of patents at risk.

Picture: PR  
by [Simon Book](#)

A power struggle is raging inside the European Patent Office, which is threatening the quality of the patents. The strife between the President, the staff, and the Administrative Council could prove costly for medium-sized German companies.

One day after his biggest defeat, the President of the European Patent Office (EPO) in Munich stood up and enumerated his greatest victories. Benoît Battistelli, 67, clasped the podium. He was there to open a patent conference, with the focus on the protection of intellectual property in Europe; but everyone in the room knew that whatever Battistelli said, the main issue was his own protection.

It is the beginning of July. For 24 hours the President has known that his job is officially open for applicants. The Administrative Council of the Office is looking for a successor for Battistelli. The Frenchman still has this much ahead of him: He is determined to issue the first EU Unitary Patent, and open the European Patent Court. And, above all, he has achieved so much: “We have increased efficiency, our quality, our productivity, and our profitability”, Battistelli tells the room. “Europe is now once again an attractive place for patents.”

The Frenchman does not let slip one word about his possible departure. His speech is one single call to arms: They won’t get rid of me that easily.

## Germany, where the inventors are: Europe's Top 5 Patent Applicants

- **First place**

**Germany**

25,086 patent applicants

- **Second place**

**France**

10,486 patent applicants

- **Third place**

**Switzerland**

7,293 patent applicants

- **Fourth place**

**Netherlands**

6,889 patent applicants

- **Fifth place**

**Great Britain**

5,142 patent applicants

The appearance in Munich only marked the most recent stage in the escalation of an increasingly bizarre conflict. Ever since Battistelli took over the leadership of the super-sized authority in 2010, there has never been a situation like it. This is Europe's most important agency for the protection of intellectual property, and the President, the staff, and the Administrative Council are locked in a struggle with none of them giving way. The staff feel themselves overworked, overseen, and overlooked. The President feels he is misunderstood. "You have a surly, power-conscious, and self-willed boss set against a surly, power-conscious, and self-willed mass", is how the Administrative Council of the Office sees it. The people who are suffering, as is becoming abundantly more evident, are the clients of the Office – the entrepreneurs and the inventors. They are increasingly unwilling to appreciate the success story which the Frenchman is so keen to tout around.

There is no improvement in sight, either; rather, the opposite. In the autumn the Administrative Council are going to choose a new President; the adverts are no bluff. But the rumour refuses to go away that Mister Unpopular could actually end up staying on. In any event, a successor would not start work until June 2018. And that means the Office is threatened with a whole year stagnating if still-President Battistelli becomes a lame duck.

For people like Günter Hufschmid, that is bad news. The vigorous [Bavarian](#), who often wears his traditional national costume, has had some bad experiences with Battistelli's Office. With his company Deurex he develops waxes for the paint and varnish industry. An easygoing chemical company which does not have much to do with patents. But in 2010, when one of

Hufschmid's chemists inadvertently made an incorrect adjustment to a machine and mixed up the values for pressure and temperature, instead of wax it spat out ten tonnes of white wadding, which turned out to be a miracle weapon in the fight against oil spillage disasters. One kilo of Hufschmid's wadding can suck up six kilograms of oil from the surface of the water.

Hufschmid promptly realised that he had come up with the invention of his life. And he wanted a patent. But being an entrepreneur he did not engage an expensive patent attorney, he wrote to the Office himself. After all, he runs his company alone, and he handles his taxes very personally.

But the EPO turned down the application out of hand. Twice, in fact, without giving Hufschmid a hearing. It was only when he insisted on demonstrating his wadding that he was granted an appointment at the annexe Office at The Hague. It didn't take the inventor 20 minutes to persuade the patent examiners. After three and a half years of struggling he finally received his patent.

## **Premium *Deurex* boss Günter Hufschmid How a medium-sized company despairs about the European Patent Office**

The European Patent Office likes to present itself as an advocate for small entrepreneurs and medium-sized businesses, Germany's economic backbone. What entrepreneur Günter Hufschmid experienced was an entirely different story. A tale of woe.



That was when things started to get annoying. Hufschmid had a letter from the EPO, but still no patent protection in the whole of Europe. He had to apply to the different states individually, and, of course, in their different national languages. Only no-one at the EPO told him that to start with, so important time limits were allowed to lapse.

“The system is totally chaotic, and as a small company you're completely lost”, the inventor complains. Large companies might have their own departments to do this. But what about him? The bottom line, says Hufschmid, is that he has spent a hell of a lot of time and money on the patent, but his wadding is still not protected in many places. “Had I known what it would involve, I wouldn't have bothered.”

### **Unitary patent would make things much easier**

Such stories are rife since Battistelli has had the say in the Office. Examiners no longer have the time to get deal generously with clients and applications, and certainly not when the application comes from an amateur instead of from patent attorneys.

But isn't that exactly what a patent office is supposed to be there for: To help small and medium-sized companies, the ones who helped make "Made in Germany" the global brand it became? For inventors, who form the backbone of our innovation society?

That at least was the idea, when about 40 years ago Belgium, Great Britain, France, Germany, Switzerland, the Netherlands, and Luxemburg established the EPO. Today 38 nations belong to the Organization, including some non-European such as Turkey. They have all agreed to recognize mutually the protection of intellectual property. Since then, applications are examined centrally in Munich. But then they need to be laboriously declared valid in each case by the authorities in the countries concerned.

### **Battistelli's efficiency programme: Growth in all sectors, but at what price?**

- **Patents issued**  
+ 40 percent
- **Production**  
+ 8.5 percent
- **Work backlog**  
- 25 percent
- **Costs**  
- 20 percent

It has long been planned to issue a unitary patent in Munich for all the Member States, so as to harmonize Europe's patent landscape. For inventors like Hufschmid that would make things a lot easier. This year it was finally supposed to happen, or at least that was Battistelli's declared aim. But the Unitary Patent is still not a reality.

Unity is urgently needed. For many western national economies, patents are the sole raw material they can exploit. Germany's world market leaders from Schwäbische Alb need a reliable means of protection for their intellectual property to hold their own in global competition.

The question is, though: Can the EPO guarantee this protection? Or has President Battistelli, with his over-eagerness, actually only made things more difficult?

The President sees himself as an unappreciated reformer. Battistelli sits in an elegant restaurant in Brussels, orders the first bottle of expensive wine for lunch, and is entirely at peace with himself. "When I started at the Patent Office in 2010", the President muses during the starters, it had been a successful institution, "but with far too high costs". An average examiner earns 11,000 Euro net, while the EPO also pays substantial supplements, health insurance, private schooling, and even study fees for children in the USA.

According to Battistelli, this standard had to be maintained, but at the same time the existence of the Office had to be secured. That meant, it had to finance itself. True, the EPO, which is

financed solely by the charges paid by companies and entrepreneurs, dispenses 500 million Euro annually to its Member States. But the pension bills, running into billions, were threatening to drag the institution down. “That’s why we had to change something with the system and improve its performance”, says the President – and orders the next wine. Not for nothing is he a member of the French Beaujolais Brotherhood.

## [Patents on plants How a bizarre dispute about brewers yeast crippled the sector](#)

Thanks to a loophole in the patent law, agrarian concerns are dictating business with exclusive rights to foodstuffs. This is causing grief to middle-sized businesses and consumers. Patents on brewers yeast for beer are causing the strife to escalate.



Improving performance means for Battistelli, above all, issuing more patents per year. If the outgoings are going to remain high, the incomings must go up too.

So he merged procedures, cut search times, introduced digital filing, set time limits for oppositions. He agreed on co-operation arrangements, such as with [Google](#), so as to improve the search for the “prior art”, and interacted with Asian examination authorities.

### **Patent disputes: Profitable for the Office, potentially fatal for entrepreneurs**

The President also altered the career system, basing promotion and pay on performance. He also alienated the staff council and the staff union, which he was not prepared to recognize. Then he slashed at the right to strike, and caused staff members who reported sick to be examined while off work. Above all, according to the critics, he demoted colleagues who were too outspoken, and surrounded himself with yes-men as directors. Since then, Battistelli has been referred to internally as “Putin”.

“I have shown that it is possible for a large, multinational, trans-national organization to be reformed”, Battistelli insists, considering himself the greatest reformer since the opening of the EPO. Anything wrong with his figures, he asks? Patents issued: up 40 percent. Work backlog: down by a quarter. Costs: down 20 percent. And all that with improved quality. Allegedly.

Because there are a lot of people who have doubts about that, such as Thorsten Bausch, who meets and greets in the prestigious Munich suburb of Bogenhausen. This is home to the big law firm Hoffmann Eitle, for whom patent attorney Bausch, a man of distinction, works.

### **In 2016 these companies filed the most patents with the German Patent and Trademark Office (07.2017)**

- First place

**Robert Bosch GmbH**

Patent applications: 3,693

- **Second place**

**Schaeffler Technologies AG & Co. KG**

Patent applications: 2,316

- **Third place**

**Daimler AG**

Patent applications: 1,946

- **Fourth place**

**Ford Global Technologies LLC**

Patent applications: 1,790

- **Fifth place**

**Bayerische Motoren Werke AG**

Patent applications: 1,757

Bausch is no friend of Battistelli. Not because he knows him personally. This veteran of the patent game simply notes how, during his term in office, the quality of work has slumped, not risen.

## **Reforms today – Problems tomorrow**

The attorney has a lot to say about time pressure and the unbelievable challenges facing the patent examiner in trying to keep pace with the growing state of knowledge worldwide. Even with the very latest methods, this obviously takes more time than in the past. “How can anyone increase efficiency by 40 percent in one year”, Bausch wonders. “Either they were all asleep before. Or the patents today are of poorer quality.” Bausch plainly sets little store by the sleep hypothesis.

He is afraid that Battistelli’s efficiency campaign could come back to bite. Whether a patent is reliable, properly researched and registered, often does not become apparent until years later. Specifically, when someone somewhere claims to have come up with the patented invention still earlier, and the dispute starts.

For Bausch and his colleagues in the profession, such patent disputes are a steady source of income. But for the entrepreneur they can be potentially fatal. In the final analysis, whole companies can rise or fall simply on one patent. So why is Battistelli shaping his organization to do everything at speed? Is he taking quality shortfalls with the patents into account, because it will be some years at the earliest before the consequences become apparent?

## ***Innovation atlas 2017 Germany's ideas are forged in the south***

E-mobility, 3D printing, or Industry 4.0: New technologies are constantly crowding onto the market. And German companies are well equipped to handle them. At least, in some regions. Most of the innovators are based in the south.



At least, that is what the German Patent and Trademark Office is afraid of. The authority is a neighbour of the EPO on the bank of Isar in Munich. There used to be a tunnel connecting the two buildings, but it was closed off long ago. Nor are the organizations otherwise as close as they used to be. “The real question is, how robust are Battistelli’s patents”, says one leading figure on the German side. “I don’t want to denigrate colleagues about quality, but Battistelli is overdoing it with the efficiency thing.”

Here, in the grey concrete block opposite the German Museum, people do not think much of the new high-speed style. “We do things our way: Aim-focused, properly, the German way”, is the word at the Federal institution. “I don’t want to know what Mr. Battistelli has spent all that money on, without anything to show for it.” What is wanted now is a successor who puts the Office centre stage, not the person.

That is plainly what Battistelli is about. Such as on a summer evening in the Scuola Grande di San Rocco, postcard Venice. The guests come in shuttle boats to the evening reception of the European Inventors Prize, sponsored by the EPO. Beneath the entrance portal, itself the height of the average house, stand Mr. and Mrs. Battistelli and await their 300 guests. They shake every single one by the hand, such as Mario Moretti Polegato, founder of the shoe brand Geox and multimillionaire. The Italian Minister of the Economy is announced. Battistelli, a graduate of the elite French academy, the ENA, is beaming. He conceives his position as a political posting, of the same level and status as the high and mighty.

## ***EU Patent Office More patents on plants***

The European Patent Office (EPO) might be able to accord agrarian concerns more patent possibilities on seed materials. The dispute as to what extent patents on living things are permissible has been rumbling on for years. The EU Commission has actually banned them.



The Inventor Prize has been around for twelve years, but Battistelli has built it up – to be his show. The shindig has cost the Patent Office three million Euro. Shouldn't the Office actually be saving the money?

“This is the Nobel Prize for inventors”, Battistelli cries to the assembled multitude in his opening address. Nothing less, according to him. Later he tots up the accounts for the evening: 21 interviews, 50 journalists from all over the world, put up at the expense of the EPO, two million clicks on YouTube. He has put his message across: The Patent Office under Battistelli is a power for innovation, the advocate of the individual inventor, the protector of medium-sized businesses.

### **Threat to “Made in Germany”?**

At a table near the President, quite another impression is forthcoming. Here, Brian Hinman is appreciating the scenery, an American, who introduces himself as the “Chief Intellectual Property Officer” of the Dutch technology giant [Philips](#). Over a chilled white wine he talks about technological change, about inventions and developments which are coming at an ever increasing pace. Hinman regards patents as a kind of competitive sport. “I absolutely want to be the person who gets the first European Unitary Patent”, he says. He has apparently already agreed about this with Battistelli.

If you talk longer with the Philips manager, you learn something: The patent business today is a world where share prices are as much an issue as fraternities. But there is something that seems to have slipped out of focus: The individual inventor tinkering away in the garage, who once in a lifetime comes up with an invention and founds a company on it. People like that are increasingly standing alone against global corporations, who collect patents the way other people collect postage stamps.

This evening Battistelli has little time for such musings. He would rather make contacts, and extend still further the power of the Patent Office – and therefore his own. The President wants to expand: He has already concluded preliminary agreements with Bosnia-Herzegovina and Montenegro. And the European Patent Office will in future be getting involved with Africa and Asia too: Brunei, Cambodia, Laos, Morocco and Tunisia already recognise EPO patents. And that means nothing less than the Europeans playing the part of the patent office for these states. The President is even negotiating about this with Angola.

### **[German Innovation Prize 2017 Winners, Ideas, Impressions](#)**





Battistelli, the way many people in the Office see it, wants to grow at any price, to extend his power – and pretend that internal problems don't exist.

This does not sound like having more empathy for middle-sized business, but more like a mission for world conquest. That may well be why the Administrative Council of the Office has gradually had enough of the vainglorious show master at the top. There were already rumours months ago that there were plans to be rid of Battistelli ahead of the due time. But the Frenchman, who has hitherto always craftily understood how to win the representatives of the small Member States on the Council onto his side, has been able to hold his own.

Then, when in the summer the previous leader of the Administrative Council, the Dane Jesper Kongstad, stood down, Germany grasped the opportunity and, in the person of Christoph Ernst, installed a critical overseer as the new Council executive. His first act in office: Advertising an opening for Battistelli's job.

Ernst, as a civil servant, meets people at his main place of work, the Federal Ministry of Justice, where he serves as a ministerial director. Officially, with the advertising for the top job everything is going according to the accepted plan, or so Ernst asserts. Battistelli apparently has never intended to remain for longer than the summer of 2018. In any event, he will hear nothing of any power vacuum or any falling out between himself and the President.

But Ernst is also prepared to criticise. It is true that there may have been progress under Battistelli. "But productivity and effectiveness are not ends in themselves", he says. "An institution such as the EPO also has an overall responsibility."

For Ernst, the tasks facing the next boss at the EPO are clear: "The social environment must be improved. The EPO has an importance in Europe that affects the entire economy, and the companies and entrepreneurs need a Patent Office that functions properly", he says. That is why the focus will be not only on social harmony within the Office, but also on "quality assurance and the relationship between the President and the Administrative Council."

Starting in the autumn, Ernst will be busy with the hunt for a successor for Battistelli. António Campinos, Portuguese, who for a long while has headed up the European Trademark Office, is seen as the candidate most likely to succeed. Another possibility is that Ernst, just selected as leader of the Administrative Council, might himself become President.

## ***Patent dispute Gillette and Wilkinson cross blades***

Razor manufacturers Gillette and Wilkinson are confronting one another at the Düsseldorf Regional Court. At issue is an economically priced replacement blade for a widely sold wet razor from Gillette, patent rights - and a lot of money.



And then of course there is Battistelli himself, who is not yet ready to give up his fight for his future – essentially, he values the independence of the Office so highly: “I have never been so free. I have no Ministry looking over my shoulder, no government”, as the Frenchman is happy to say. The way to change this might be, perhaps, the Patent Solution.