

## Criticism of former Boss of the European Patent Office - Update



European Patent Office (EPO) in Munich.

What was intended as a technical discussion about the future of the European Patent Office with the new leader of the EPO Administrative Council on Friday evening developed into a sharp attack on the outgoing President.

Tough criticism of the deteriorating quality of patent examinations at the European Patent Office (EPO) as a result of the overloading of patent examiners was heaped on the [newly initiated](#) leader of the Administrative Council of the European Patent Office, Christoph Ernst, Ministerial Director at the Federal Ministry of Justice, last Friday. At the invitation of the Munich-based Max-Planck-Institute (MPI) for Innovation and Competition, Ernst painted an optimistic picture of the future of the European patent system, but then said that he was prepared to lead the discussion on the quality problem with the specialists present.

The numbers of patents at the EPO is on the rise, the Office is fully geared up for new challenges, and the European Community Patent is as good as ready, was Ernst's optimistic message. On the first of October the Government man took over the leadership of the Administrative Council, after having previously served as head of the German delegation on the supervisory body of the 38 Member States, and representing Germany at the World Intellectual Property Organization.

### **Pressure to perform and poor atmosphere at work**

For years the EPO has had a bad press, in particular because of the dire clashes between [outgoing](#) President Benoît Battistelli, due to depart next year, and staff members and staff unions. The extreme pressure to perform and also mental stress exerted on the staff inside the Office has resulted in misleading incentives, warned Gero Maatz-Jansen from the law firm of Grünecker in München.

Instead of checking the applications thoroughly, EPO employees are striving in the first instance to get the files off their desks again as fast as they can. In the middle term, the deteriorating quality could drive users away, and cause the entire EPO system to start tottering, the attorney said, to great applause from the 60 or so participants at the MPI, many of whom were keen to add their own observations.

## **Proofs of poorer quality?**

Weaker opposition assessments and superficial search reports into the prior art, as well as problems with the formal procedures, underline the fact that the work of the staff at the EPO is suffering. The rigid efficiency drive pursued by EPO boss Battistelli is increasingly being countered by the examiners by their rejecting applications simply because of minor procedural shortcomings, according to one attorney.

Ernst called for data to back up the allegations. He maintained that up to now there has been no real proof provided of any fall in quality. The number of oppositions to applications which had been issued is actually on the decline, as are cancellations, and the “annulment quota” is dwindling to nothing. “The mere fact that more patents are being issued does not mean that quality is suffering,” was his response to the patent attorneys.

Elizabeth Hardon, the EPO examiner and staff union executive whom Battistelli sacked in 2016 recalled that deficiencies in quality first become apparent some years after the event, when cancellation proceedings start. The union leader particularly welcomed the fact that other people associated with the MPI were standing up and criticising the work situation at the EPO. “For years no-one has listened to us”, she said.

## **Patent system in crisis?**

In the view of Reto Hilty, host of the event and Managing Director of the MPI for Innovation and Competition, rising numbers of patent applications are no proof of an increase in innovation, which is what the patent system is actually all about. Researchers have been watching what is essentially a race for high patent application figures in China, the USA, and Europe too, and for a long time they have been talking about a “crisis in the patent system”.

Ernst also spoke about individual symptoms of crisis in his speech to the MPI. For example, at the United Nations there has been intense discussion about the shortages of vital medications which have been artificially brought about due to the patent issues. But he referred to the UN report concerned as being “one-sided”, and “not pointing in the right direction”. The disputed issue of biopatents has not yet been resolved, either, and new opposition proceedings are just being negotiated at the EPO against the patenting of beer. Finally, high on the agenda at the Federal Ministry of Justice is a consultation procedure about patents which are deemed essential with regard to standards.