

European Patent Office: A lot of ground to make up for the new President

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The European Patent Office in Munich

The new President of the European Patent Office has a lot to do: Conflicts with staff and criticism of the examination practices have been the trademarks of the past few years.

Benoît Battistelli took office as President of the European Patent Office (EPO) on 1 July 2010. Eight years later the job is being taken on by the previous Director of the European Intellectual Property Office (EUIPO), António Campinos. He will have to head up an authority of which the staff have been locked in a struggle with management for years. And as well as that, criticism has recently been growing from the outside of Battistelli's pet project, "greater efficiency" at the Office.

The fact that all is not well at the EPO was already becoming evident at the end of 2012. At that time the [management intended disbursing a part of the surplus of 89 million Euro to the staff](#). The staff union SUEPO turned the offer down, on the grounds that it would have been a false incentive to approve patent applications rather than reject them. Essentially, it is only from approved applications that the Office earns its money on a regular basis.



António Campinos, Director of the EU Intellectual Property Office (EUIPO), takes over the Presidency of the European Patent Office as from 1 July. (Picture: Portuguese Government)

Twice as many patents with the same personnel

The accusation that Battistelli was more interested in quantity than quality was made again and again over the years of his Presidency. In 2010 the EPO issued 58,000 patents; in 2017, at 105,000, there were almost twice as many. In the same period between 142,000 and 165,000 applications were received annually. There was little change among the patent examiners either: Their number rose from the end of 2011 to the end of 2017 by only six percent. Battistelli could congratulate himself on having almost doubled “productivity”.

The Office disputes the contention that the applications may not be being examined as thoroughly as they were in the past. Battistelli had his own “Quality Reports” produced for 2016 and 2017, which were supposed to prove that everything was for the good. But not everyone was convinced. Patent attorney [Thorsten Bausch, for example, says that a high proportion of “very satisfied” applicants can easily be explained by the rapid processing](#); of course someone is happy if they get their patent rapidly.

But whether the protective right was correctly issued is really only determined later, such as in legal action for patent infringement. Bausch points out that around three quarters of the EPO patents challenged in Germany are declared null and void by the Federal Patent Court. And that says nothing about the general quality, because only a very few patents actually get as far as going to court.

Concern about the robustness of patents

Shortly before the end of Battistelli’s time in office, four [Munich patent attorney firms published an open letter, in which they criticised the accelerated patent issue procedure](#). By their own estimation, the firms handle tens of thousands of patents. In their view, it is plain to see that the quality of patent examination is going to suffer if the main aim is to get the business over and done with as fast as possible. Back in March 2018 almost a quarter of the

EPO patent examiners approached Battistelli and the Administrative Council of the Office. They complained that they were more and more frequently being faced with choosing between the requirements laid down by the European Patent Convention and the demands of their superiors, and what they wanted was to churn out “products”.

[A sign](#)

But that was not the only concern for the staff during Battistelli’s eight year reign. Above all, the relationship between him and the union became steadily worse. This degeneration [culminated in the demotion and dismissal of staff representatives at the beginning of 2016](#). This meant that the EPO President was actually going over the heads of the disciplinary commission concerned. [Legal challenges by the people sacked resulted in success at the end of June 2018](#): The court with jurisdiction at the International Labour Organization (ILO) ruled the decisions by the disciplinary commission and Battistelli’s intensifying of penalties were wrongful in law, and awarded the union members compensatory damages.

Suspension without evidence

Battistelli got another slap in the face over the suspension of a judge at the EPO Board of Appeal. The procedure, according to criticism by many patent experts, had actually broken the Patent Office’s own rules. Battistelli had not been authorised to take action at all. He initiated an emergency situation, but without presenting any evidence for doing so. Instead, the EPO Press Department spread the word that the judge who was fired had been found to have weapons and fascist propaganda material in his office. The only support for Battistelli’s accusation that the judge had slandered him and the Office was a mysterious USB stick. The content of this stick was recently declared by Munich Regional Court to be inadmissible as evidence, after the ILO had already lifted Battistelli’s disciplinary measures against the judge.

So António Campinos is inheriting a heavy burden. Not only does he have mend the relationship with the staff, he also needs to restore lost confidence among clients of the EPO. For both issues, a departure from Battistelli’s beleaguered fortress mentality could help. During his time, the Office sometimes shied away from publicity as if it were some kind of family of Mafiosi.

EPO income is still gushing

But the 38 member States involved in the EPO have no particular interest in a more open approach. The Administrative Council, to which they appoint delegates, largely kept its nose out of the way Battistelli ran the Office, and the minutes of its meetings are models of largely how to say nothing. From the point of view of the Administrative Council, everything could presumably stay exactly the way it was. In the final analysis, rising income at the EPO creates substantial injections of cash for the national patent offices, and for the German in particular. During Battistelli’s term in office, annual profits at the EPO went up almost fivefold, to 394 million Euro.

Even if the relationships between the Office management and the staff do improve, a basic dilemma remains: The EPO is a supra-national institution. Despite its name, it has nothing to do with the EU. This means that the staff have no recourse to European labour law, nor to any other national labour legislation. Any conflicts which cannot be resolved inside the Office are

a matter for the International Labour Organization, and decisions there can take up to ten years. (*Christian Kirsch*) / ([ck](#))