

EPO **FLIER** No. 39

The EPO-FLIER wants to provide staff with uncensored, independent information at times of social conflict

Reputation and patent quality after eight years of Battistelli: ruined

On 27 and 28 June 2018, the Administrative Council (AC) of the European Patent Office (EPO) will hold its 156th meeting in Rijswijk (near The Hague). The delegations will celebrate the inauguration of the 'New Main', one of the most impressive office buildings in the Netherlands. On 25 and 26 June 2014, almost exactly four years ago, the AC held its 140th meeting at the same location. At that time, the Delegations convened to celebrate the laying of the first stone for the 'New Main' building, and to consider the renewal of the appointment of Mr Battistelli as the president, for the period from July 2015 to June 2018.

First cracks in Battistelli's building

In June 2014, we informed the delegations through an open letter¹ that *"the climate in the EPO ... is such that staff members no longer dare to voice dissent, as chances are that the President - using his own yardstick - will interpret it as misconduct or as not being in the interest of the Office."*

What had happened to the former *model international civil service organisation*? One year earlier, in June 2013, the Council had approved new strike rules, which – as a Dutch Appeals Court later ruled – violate the staff's basic rights². In March 2014, the AC had passed a reform allowing the president to define the rules for electing the staff committees and to impede the committees' proper working. Most staff consider also these provisions illegal – several internal appeals are pending. On 4 March 2014, more than 750 Munich staff members had gathered for a General Assembly and mandated their staff union committee to inform the Administrative Council as follows:

*"The staff has lost trust in Mr Battistelli and is concerned not only about its own future, but also about the negative repercussions on the functioning of the European patent system as a whole. It has become clear that the proper performance of the tasks of the individual staff members, and therefore of the European Patent Office, is incompatible with the continuing presidency of Mr Battistelli."*³

1 Open letter: [A shiny new building cannot gloss over serious governance deficits](#) (22 June 2014)

2 While the Dutch Supreme Court (Hoge Raad) later ruled that the Organisation enjoys immunity from jurisdiction, it did not reverse the decision of the Appeals Court on substance

3 Resolution of Munich staff who gathered on 4 March 2014 in a SUEPO General Assembly (see [EPO FLIER No. 4](#))

About that time, four law firms from different European countries sent a letter⁴ to the members of the AC on behalf of the EPO's largest staff union. The letter reminded the delegations of the deleterious social climate within the organisation, governance deficits and their prerogatives.

Our June 2014 open letter¹ warned: *"Not only 'New Main' will be a landmark in the history of the EPO. Your decision on the presidency of the Office for the period after expiry of Mr Battistelli's term will be remembered. ... As you are writing history, please make sure it will be remembered as a moment of inspired leadership, allowing the Office to return to being a place where motivated staff enjoys contributing to the success of Europe."*

The Council endorsed the prolongation of President Battistelli's term.

The following four years of his presidency were characterised by Battistelli's acts of institutional harassment and revenge^{5,6} against staff representatives, and ongoing legal harassment, stretching over 3½ years, of a Board of Appeal (DG3) judge, Patrick Corcoran. The institutional harassment of the DG3 member, through President Benoît Battistelli and VP4 Želiko Topić, extended even to national courts and continued after they had learned that the (falsely) accused was **innocent**!⁷

False incentives: examiners, open the floodgates!

According to Battistelli, there were good reasons for changing the previous successful career system: *"Except an exceptional professional conscience and personal motivation, nothing incents them to work harder or to work less." ... "By opening this technical career ... we will provide incentives until the very last day of their professional life."*⁸

In 2014, before the introduction of the new system, we warned the delegations that the *"intended change in labour law is at the same time an implicit change in the (effect of) patent law."*⁹ We argued that an *"entirely performance-based career system puts managers and employees under pressure to increase production. With the rule of law being absent, and in a working environment being dominated by fear and intimidation, not only ill-motivated managers but also weak and intimidated ones are tempted to put their subordinate employees under pressure to fulfill even the most unrealistic targets. And in the presence of threats, many of them will fulfill these expectations, while lowering the search and examination standards."* EPO examiners *"will no longer be able to support the priorities of the EU by delivering high quality patents, as maintaining the required professional standards seems to be against the political will of the EPO's president, and apparently of most of the member states"*, we concluded.^{10,11}

4 [Re: Social conflict at the European Patent Office](#) (letter from Bourdon & Forestier on behalf of SUEPO, 20.06.2014)

5 See [EPO FLIER No. 37 Battistelli's record: legal harassment and retaliation](#) (12.06.2018), [CA/20/16](#) and [CA/21/15](#)

6 [The tarnished legacy of an EPO president](#) (Kluwer patent blog, 21.06.2018)

7 Thorsten Bausch, [Landgericht München: Patrick Corcoran is Innocent and Acquitted of all Charges](#) (20.06.2018)

8 President Battistelli, defending his career reform proposal during the Budget and Finance Committee meeting on 20 November 2014

9 [EPO FLIER No. 13 - The spirit of the regulations](#) (08.12.2014)

10 [European Patent Office: examiners fear they won't "be able to ensure appropriate quality standards"](#) (Florian Mueller, FOSS Patents, 08.12.2014)

11 Dugie Standeford, [EPO Supervisory Body To Face Fears Over Patent Quality, Judicial Independence](#) (IP Watch, 10.12.2014)

When being confronted with strong criticism from several delegations, the president defended his proposal, successfully, with the following words:

“We are not here trying to build a reform which is compatible with each of your nation's, with each of your state's law. We are trying to build something which is useful for the Office, for the Organisation. So, if in some cases, it is not compatible with the German law, or the UK law, or the French law, this is not the issue. The issue is: is it useful for the Organisation?”⁸

European patent flood

On a 2015 demo flyer, the Munich staff union asked *“How many patents does Europe need?”¹²*

In the meantime, answers to this question, and to the president's leading question as to whether his reform is *“useful for the Organisation”* have been given by different actors:

When staff representatives informed the member states' delegations in 2017 that the steep increase in production had been accompanied by a decline in service quality, VP1 and VP2 claimed in an internal announcement to staff that their representatives had *“publicly attacked ... the quality of the products delivered by EPO staff, without any evidence but unfounded allegations,”* and thereby shown *“a total lack of respect for the colleagues ...”¹³*. A few months later, even some of the delegations expressed concerns about a drop in patent quality¹⁴.

An independent 2016 patent survey¹⁵, conducted by the well-respected German legal magazine JUVE, revealed that less than half of the survey's participants were happy with the quality of the European patent examination process, and only one in 25 considered the president's efficiency strategy useful. The survey did not only show that a quality erosion had taken place, but also an alarming level of mistrust in Battistelli (zero percent confidence rating), with the majority of respondents calling for his resignation. Also other critical outside observers have noticed a significant drop in the quality of the services delivered by the EPO^{16,17}.

In a 2018 petition¹⁸ to the Administrative Council, more than 900 EPO examiners claimed that they were being prevented by instructions from their managers from carrying out a complete search and thorough patent examination^{19,20}:

‘We are far too often put in front of the dilemma of either working according to the European Patent Convention (EPC) and respecting the Examiner's Guidelines, or issuing “products” as our hierarchy demands.’

12 [European Patent Office staff asks a good question: How many patents does Europe need?](#) (19.02.2015)

13 Kieren McCarthy, [Effort to fire EPO president beaten back – again](#) (The Register, 20.03.2017)

14 [European Patent Office's document churning snatches Germany's attention: 'We are concerned about quality'](#) (Kieren McCarthy, The Register, 12.10.2017)

15 JUVE Rechtsmarkt, 2016 Patent Survey, *Clear orders* ([German](#), [English translation](#))

16 K. McCarthy, [Now German companies are beating the drum over poor patent quality](#) (The Register, 17.10.2017)

17 Thorsten Bausch, [The EPO's Vision \(III\) – Quality](#) (Kluwer patent blog, 05.03.2018)

18 [Petition from EPO examiners](#), (CSC letter to the AC, 09.03.2018)

19 Kieren McCarthy, [Patent quality has fallen, confirm Euro examiners](#) (The Register, 15.03.2018)

20 [Patent quality endangered by EPO management, claim examiners](#) (WIPR, 16.03.2018)

According to a recent survey, WIPR readers said they believe that the quality of the European patent is endangered²¹. One reader said that arbitrarily and annually increasing production targets “can only reduce quality”, another claimed that the “current management only seems to care about statistics” rather than the quality of granted patents.

In a recent open letter^{22,23}, four German law firms, who together file about 9,500 European patent applications per year, wrote:

“The incentive systems and internal directives appear to be increasingly directed towards rewarding or even requesting rapid “termination” of proceedings and a correspondingly higher productivity. This has resulted in penalization of detailed and thorough assessment of cases. Patents that have been examined less thoroughly tend to have an erroneous scope of protection”, they said, which “distorts and hinders economic competition within the EPC Member States.” They suggested urgently setting up “new incentive systems for examining European patents so that the high-quality of searches and examinations for which the European Patent Office used to be known will be guaranteed again.”

Typically an EPO spokesperson avoided addressing the criticism and instead said²⁴ that surveys and annual quality reports²⁵ showed that “the high-quality levels for which the office is known” was continuing to increase even further.

“The EPO takes feedback from all its users seriously and should the authors of the letter have concerns over quality levels then we would encourage them to provide evidence, rather than unsubstantiated claims,” noted the spokesperson.²⁵

Construction sites

'New Main' is far from being finished, but Battistelli insisted on being the president who inaugurates it. Regardless of how much he celebrates 'New Main', he leaves behind him a much bigger construction site.

Despite glossy brochures full of self-aggrandisement²⁶, it is clear now that Mr Battistelli's self-obsessed and destructive management style has been detrimental to patent applicants, third parties and the economy – and unhealthy for staff. His breakneck experiment with patent examination is failing⁶. L'organisation est tombée en panne!

Battistelli's failure leaves a herculean task for his successor, who must rapidly restore a healthy social climate and repair the European patent system.

We wish Mr Campinos good luck for mastering this challenge.

21 [EPO patent quality is endangered, claim readers](#) (WIPR, 26.03.2018)

22 [Open letter from German patent law firms: Quality of Examination Proceedings at the EPO](#) (07.06.2018)

23 [Leading German patent law firms criticize European Patent Office](#) (Kluwer patent blog, 14.06.2018)

24 [German law firms raise concerns over EPO patent quality](#) (WIPR, 15.06.2018)

25 EPO Quality Reports [2016](#) and [2017](#)

26 Eg [Modernising the EPO for excellence and sustainability - Achievements 2010 to 2018](#) (EPO brochure, 2018)