

Copies to: Competent Ministries of the Member States

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The social situation at the EPO and the Administrative Council's responsibility

Dear heads and members of the delegations to the Administrative Council of the European Patent Organisation, dear Chairman, dear Mr Grandjean,

We would like to share our concerns about the current social climate at the EPO and urge you to take appropriate action.

'Social Conference' – how to avoid social dialogue

You will probably agree that in any organisation the first step towards genuine dialogue is to work towards a shared understanding of the problems at hand and of the long term goals, in other words, to share an agreed agenda. This seems a reasonably evident requirement for the future success of the EPO. Sadly, the Office missed a chance to take a first step towards this, when it alone set the agenda of the 'Social Conference' scheduled for 11 October. Consultants will present a 'social study'¹ while the President refuses to discuss the results of a staff survey² commissioned by the EPO's largest staff union. It is difficult to imagine how even the seeds of social dialogue can exist while the Office continues with its unilateral approach to the most multilateral of issues. The President's threats to and persecution of elected representatives³ of his social partner only serve to shift the situation from bad to worse. Through his actions he makes social dialogue impossible. For staff across the Office, the 'Social Conference' can only be seen as just another useless attempt to mould a distorted perception of the reality at the EPO. And to avoid true social dialogue.

The social situation at the EPO – a matter of perception?

You may already have seen a letter of the President of the Dutch Institute of Patent Attorneys, 'Nederlandse Orde van Octrooigemachtigden' (Orde)⁴, dated 12 February 2016 and addressed to the Council, which recently became public⁵. The Orde perceives the social climate in the Office as follows:

'... We note that, when we seek information from EPO employees, they are reluctant to communicate in fear of retribution by internal investigative units. It seems that the people at the EPO are afraid of their own management. The Orde rejects this situation vehemently. We cannot understand that the President of an organization that envisages to "set worldwide standards in quality and efficiency" is not capable or not willing to apply the same standards to its people management. We refer also to the ruling of the Dutch Appeal Court that the EPO appears to be violating basic human rights.

A disgrace, irrespective whether the EPO benefits from its immunity as an international organisation or not. A reputable international organization such as EPO should not have its employment conditions and employee rights held up against such a basic thing as human rights.'

¹ European Patent Office – Social Study 2016, by PwC

² https://www.suepo.org/results_of_the_2016_european_patent_office_staff_survey/d-43311

³ **B28/10/16** (21.09.2016): "the Board noted information provided by the President about three current investigations/disciplinary proceedings involving SUEPO members in The Hague"

⁴ The Dutch Institute of Patent Attorneys is the professional organisation of Dutch patent attorneys; its about 500 members are active in private practice and in industry, most of them are also European Patent Attorneys

⁵ <http://techrighs.org/2016/09/29/netherlands-institute-of-patent-attorneys-on-battistelli/>

Consequences of the current social climate for the future of the European patent

It is illusory to think that a human resources policy without any negotiation, founded on intimidation and the non-respect of fundamental rights can bind highly skilled staff to the Organisation. The Orde is right to use the word “disgrace” to describe any violation of human rights that takes place at the EPO. No amount of immunity can diminish that disgrace. Disengaged and demotivated employees will clearly not be able to examine patent applications with the critical focused mind needed for delivering a legally valid monopoly right. We cannot imagine that the delegations to the Administrative Council still believe that it will be possible to maintain a successful European patent and foster economic growth without the active support of staff. We certainly don't.

An estimated⁶ 2016/2014 increase in production (+ 23%) and productivity (+11%) is not a sign of successful reforms but rather proves that the examiners have lost any ambition to withstand unrealistic and arbitrary production targets imposed on them by the Administration. The current management style has destroyed staff's professional attitude and pride to work for an organisation whose aim is, or at least was, to support economic growth by delivering high quality patents. It is our view that the European Patent Organisation finds itself in the deepest crisis⁷ of its history.

The currently planned reforms, if adopted, would aggravate the crisis

If proposal **CA/53/16 Rev. 1** (reviewed Disciplinary Guidelines) gets approval, Mr Battistelli will be in a position to dismiss staff members for '*professional incompetence*' without any meaningful advisory review instance. He will be able to expose EPO employees to unemployment without the safety net of a social security system. For fear of dismissal, staff will no doubt do their best to deliver another productivity increase. The quality of search reports and the legal validity of European patents will drop further.

By adopting the reviewed Investigation Guidelines (**CA/52/16 Rev. 1**) the Council would authorise the Administration, i.e. Mr Battistelli, Mr Topić and Ms Bergot, to proceed with investigative and disciplinary proceedings in a way that is in contradiction to the principles of due legal process. Before adopting any revised proposal, we ask the delegations to consider the recent proposal for WIPO's new Investigation Guidelines⁸. WIPO has immense problems in its staff relations. But in this case, they seem to have put forward a balanced proposal, at least on first inspection. It takes account of lessons learned⁹, provides an independent investigative unit, and guarantees due process and whistle-blower protection, including the case of investigations against senior officials¹⁰.

Please do not support the current proposals CA/52/16 Rev. 1 and CA/53/16 Rev. 1. There can be no doubt that they give new tools of abuse to those at high level who wish to use them, and increase the risk of victimisation, harassment and miscarriages of justice in a system that is already under fire for not fulfilling the requirements of legal process.

Staff protest against the treatment of their elected representatives by the President and the passive attitude of the Board 28 vis-à-vis this issue in its recent meeting³. We kindly ask all delegations to remember the AC's resolution¹¹ of this March and to take the steps that must follow it:

“to ensure that disciplinary sanctions and proceedings are not only fair but also seen to be so, and to consider the possibility of involvement of an external reviewer or of arbitration or mediation pending the outcome of this process and before further decisions in disciplinary cases are taken, to inform the AC in appropriate detail and make proposals that enhance confidence in fair and reasonable proceedings and sanctions;”

We further plead that matters of such grave concern no longer be discussed in closed session. Arguments put forward need to be visible to the affected parties, being staff and applicant community.

With our best regards,

The EPO-FLIER team

a group of concerned staff of the EPO who wish to remain anonymous
due to the prevailing harsh social climate and absence of rule of law at the European Patent Office

⁶ <http://techrights.org/wp-content/uploads/2016/09/sc16170cp.pdf>

⁷ **B28/2/16** (02.02.2016): “The Board qualified the situation as a crisis – a view challenged by the President.”

⁸ http://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_48/wo_ga_48_16.pdf

⁹ <http://www.ip-watch.org/2016/09/30/gurry-speaks-on-allegations-for-first-time-as-wipo-members-discussion-actions>

¹⁰ <http://www.ip-watch.org/2016/10/10/members-debate-changes-to-oversight-at-wipo/>

¹¹ <http://www.epo.org/about-us/organisation/communiques.html#a23>