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SUBJECT: Social Partnership in the EPO

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: 1. Budget and Finance Committee (for information)
2. Administrative Council (for information)

SUMMARY

This document is submitted by the staff representatives via the President of the European Patent Office, in accordance with Article 9 (2.2) (b) of the Administrative Council's rules of procedure (see CA/D 8/06).

The present document identifies some obstacles to social partnership in the Office and suggests ways to overcome these obstacles.

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I. INTRODUCTION

1. In her New Year's speech, the President of the Office has declared "social partnership" her no. 1 priority for 2009. The Central Staff Committee welcomes this initiative that, it hopes, will pave the way for a more constructive relationship between the administration of the Office and its staff.
2. The results of social studies made in the EPO, in particular the staff surveys, show that an improvement in the internal relations is necessary. Constructive relations do not, however, flourish easily in a situation wherein one party denies the other its basic rights.
3. To date the Organisation has not formally recognised fundamental rights accorded by the European Convention of Human Rights (ECHR), the European Social Charter (ESC) and the ILO Labour Conventions, particularly those concerned with freedom of association and health and safety at work, although these rights are accorded to the citizens of all of its Member States.
4. Similarly, the Office denies external staff working on its premises the basic representation rights accorded to them by national law. This is not only in contravention of the national law of the host states, but also denies such staff the fundamental right of freedom of association. The Central Staff Committee is of the opinion that recognizing these basic rights should be the first step towards improving social relations within the Office. It would furthermore permit a normative approach that will ensure that developments within the EPO are aligned with core European values.

II. RECOGNITION OF FUNDAMENTAL RIGHTS FOR EPO STAFF

5. The recognition of fundamental rights (human rights) for EPO staff has been a long-standing claim of the Staff Committee and of SUEPO. In response to a request by SUEPO, in 1994 the following paragraph was added as a preamble to the EPO Service Regulations (Codex):

"The Administrative Council and the President of the Office note that when reviewing the law applied to the EPO staff the ILO Tribunal considers not only the legal provisions in force at the European Patent Organisation but also general legal principles, including human rights. The Administrative Council also noted with approval the President's declaration that the Office adheres to the said legal provisions and principles."

6. This paragraph has often been cited by the EPO in defence of its position on fundamental rights. The preamble does not, however, recognize that “general legal principles, including human rights” actually apply to EPO staff. It merely states that the Administrative Council and the President **note** that these are “considered” by the ILO-AT “when reviewing the law applied to EPO staff”. The preamble also does not define the rights which the Council and the President “note” are “considered” by the ILO-AT. Furthermore, because the preamble is merely a statement of opinion by the EPO regarding the actions of the ILO-AT it cannot be considered as binding on the ILO Tribunal.

7. On the contrary, the ILO-AT has consistently stated its position that the EPO (and international organisations in general) is not a signatory to the European Convention on Human Rights and not bound by it.

Judgment 2292, ILO-AT stated: *“In fact, the EPO as such is not a member of the Council of Europe and is not bound by the Convention in the same way as signatory states.”*

The Tribunal failed to explain in what way the EPO is bound, or to define what law was to be applied in any satisfactory manner.

8. The European Convention on Human Rights is not the only Convention which confers rights on citizens of the EPO Member States that is not recognized by the EPO as applicable law. Others include the International Covenant on Civil and Political Rights (ICCPR), fundamental rights under the EC law, the European Social Charter and the so-called “core” ILO Conventions.

9. The Office also does not feel bound by the social law of the European Communities and of the Council of Europe.

10. A consequence of the lack of a definition of rights, and the unreliable application of many fundamental legal principles by the ILO-AT, is that in practice the staff of the EPO are without protection for many of the fundamental rights they have as citizens of the EPO member states.

11. The EPO has argued in the past that it is not obliged to apply such law, and that in some cases it may not have the standing to become a signatory to such treaties. This does not however, remove the obligation to protect such rights.

12. A further argument that has been presented is that the EPO is not required to recognize the rights in the treaties themselves, but only provide "equivalent" protection. This statement is consistent with the case law of the ECHR. However, neither the EPO nor the ILO-AT provides an equivalent catalogue of such rights. Whilst it is correct that the ILO-AT does protect some rights, these are hard to define, and only vaguely formulated in the case law. Discrepancies exist and thus there is no equivalent protection.
13. A final argument brought forward by the EPO is that there are no problems with regard to protection of fundamental rights, and that the actions of the Office are consistent with such rights. If this were true, then formally recognizing these rights will have little affect except to clarify the matter. Therefore the cost of formal recognition of fundamental rights and the impact on the day to day running of the EPO would not be significant.
14. Leaving aside other issues, the missing fundamental rights protection has a significant impact on how staff members perceive their working environment. New staff members and many external observers are shocked when they find out about this lacuna.
15. The Central Staff Committee is consequently at a loss to understand the motives for the refusal to recognise such basic rights as applicable to the EPO and it's staff.
16. The Staff Committee requests that the Organisation explicitly recognizes the rights accorded by the following instruments as applicable law in a manner which will enable them to be effectively enforced.
 - *the European Convention on Human Rights*
 - *the ILO conventions:*
 - C081 - Labour Inspection Convention, 1947*
 - C087 Freedom of Association and Protection of the Right to Organize 1948*
 - C098 Right to Organize and Collective Bargaining 1949*
 - C100 Equal remuneration 1951*
 - C111 Discrimination (Employment and Occupation) 1958*

C135 Workers' Representatives Convention, 1971

C151 Labour Relations (Public Service) Convention 1978

- *the European Social Charter 1996 (CoE)*
- *the social law of both the European Communities*

III. REPRESENTATION OF NON-PERMANENT STAFF TO THE EXTENT FORESEEN BY NATIONAL LAW

17. The Office increasingly relies on external staff for work done inside the Office. At the time of writing (April 2009) 1063¹ staff were listed as external in the EPO phone book (see below). This number does not include cleaning or canteen staff.

Description Job	no. of entries
External Admin. Employee	644
External Service Employee	197
External Administrator	46
External Admin. Council	21
External Interpreter	104
External Tenant / Other	51
total	1063

18. Presently Staff and the Staff Committee are not informed about the numbers of external staff employed, about the profile of these staff, about their administrative status or their contract conditions. Working conditions for permanent staff are, however, strongly influenced by the Office's decisions to hire external staff for any given activity.
19. The Central Staff Committee considers that the General Advisory Committee should have been consulted on the development of the external staffing levels and the working conditions of such staff. A complaint for breach of Art. 38 of the EPO Service Regulations is currently pending before ILO-AT.

¹ Only (computer) user IDs to which a job description has been assigned. There are another 5056 user IDs assigned without job description.

20. External staff is further subject to national labour law. The national law of the host countries foresees a role for the staff representation of the company or organization in which external staff (in German: "Leiharbeiter") work.
21. ILO-AT also recognizes the rights of the Staff Committee to represent external staff working in the Office in its Judgment 2649 (cons. 7, second par.): "It is natural that a temporary worker may have some influence over the conditions of employment at his/her workplace which directly affect his/her work station and which are the responsibility of the enterprise employing him/her, and that he/she may, in this context, seek the assistance of the staff representatives of the user enterprise (cf. Article 6 of the Austrian Act on the provision of temporary personnel, concerning employee protection; Article 14(2) of the German Act on the provision of temporary personnel; Directive 91/383/EEC). An entitlement of staff representatives to provide assistance might flow therefrom."
22. Recognition of these rights cannot be entirely budget neutral in view of the extra work this would generate for the Staff Committee. We are nevertheless of the opinion that the Office cannot in such matters simply ignore national and European law that clearly applies to staff working on its premises.
23. The Staff Committee therefore requests that the Organization recognizes its right to represent non-permanent staff working in the Office to the extent foreseen by the national law of the host countries.