

# Strategic renewal

## Mis(s) Leading the EPO?

### **Summary**

*To date the Strategic Renewal Process has had some of the characteristics of a religious cult with mantras ("the status quo is not an option"), disciples (the domain leaders), and even rallies (Prague). The question is, do we know where we are going with all this reform? The scenarios project has produced a set of speculations as to which pressures may be exerted on the patent system in the future, seemingly without taking account of the role of the EPO in steering the patent system. The overwhelming impression is that of a helmless ship being blown around a stormy ocean. After years of "analysis paralysis" the EPO management are now on the move, but where do they want to go? A rational approach would be to first define the goal of the future patent system, and then to define the role to be played by the EPO. Only once these issues have been satisfactorily addressed can "strategic renewal" begin, to propose change without such clear goals is like trying to navigate a stormy sea without a map. Our challenge to the management is: "We have seen your solutions, but what are the problems you are trying to solve?"*

### **1. Introduction**

The Senior Management of the Office has recently thrown itself into a frenzy of change called the Strategic Renewal Process, or SRP. The process has something of the character of a religious revolution in that, while supported by some facts, the scope and nature of the actions proposed disclose a belief-driven process, rather than a rational and measured one. Huge amounts of money and effort are being invested to proselytise the users of the EPO's services and our own middle management. The creation of the so-called SRP "domains" indicates the worryingly wide scope of the intended changes. It is not that change *per se* is to be feared, but we consider that changes are being proposed without a clear need or direction. This can only be harmful to the organisation, and create unnecessary turbulence.

Management argues that the need for change comes from outside the EPO, as demonstrated for example by the Scenarios project; if the EPO does not undergo radical reform, it will become sidelined and less relevant to the patent system in the (near) future. Is this assumption true? We think not. There is little concrete data to support the sweeping reforms proposed to the European patent system and the role of the EPO. In some areas strong arguments can be made for change and the need and goals of such change can be clearly and objectively defined, but this appears to be true only for a small fraction of the topics covered by the domains.

Comments from management indicate that they consider EPO staff to be resistant to change, but a brief look back at the recent history of the Office shows clearly that numerous changes have already taken place which have had a dramatic effect on the way staff in most DGs work and interact. Recent examples include BEST, Joint Clusters, PCT, restructuring of DGs 1 and 2, paperless procedures (MADRAS, Phoenix, DINO, epoline), EESR/WO-ISA, CL-OQC, EPC2000, etc., etc. Staff's acceptance of change and continuing commitment to the Office has thus been demonstrated time and time again.

While SUEPO believes that change is necessary in some areas and that staff will readily accept change where it is justified, it also considers that the aims of the SRP reforms are either inadequately defined, or are biased towards the wishes of national patent offices (NPOs). Nonetheless, some of the implications seem clear already:

- The NPOs will play a much greater role;
- The Administrative Council will have a greater role in the internal management of the EPO;
- The benefits for staff will be systematically reduced;
- An attempt will be made to automate patent application handling;
- What cannot be automated will be outsourced as far as possible;

SUEPO is convinced that should the all the domain proposals be implemented, this will not only be harmful to the Office but also the patent system generally. SUEPO will be publishing separate documents regarding the individual domains and the outcome of the Prague meeting. This current paper aims to set out the main issues and opinions of SUEPO relating to the SRP.

## 2. The Strategic Renewal Process (SRP)

The SRP supposedly consists of three parts<sup>1</sup>:

1. An analysis of the future, based on the outcome of the Scenarios for the Future project;
2. The development of a vision for the future based on the European Patent Office's Mission Statement;
3. A set of so-called "domains" or topics which the Office wants to work on

While it is understandable that each of these three parts could, or should, have a role to play in defining a new direction for the EPO it is very noticeable that:

- a) No general strategic direction has (yet?) been defined
- b) The SRP takes minimal account of the information generated by the Scenarios for the Future project
- c) No discussion has been undertaken with staff (despite the huge impact this could have for working conditions within the EPO). At the same time the staff are expected to buy in to the process.
- d) The "domains" provide a set of ready-made solutions which do not appear to correlate to any declared problems. The results of parts 1 and 2, if they exist, do not appear to have been included in the development of the domains, and have not been made public.

For these reasons alone, SUEPO is currently very sceptical about the SRP not only in terms of its benefits for staff, but also for the future of the Office and its role in the world of intellectual property as a whole.

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<sup>1</sup> See "Why the Strategic Renewal Process?" at [http://my.internal.epo.org/portal/private/epo/intranet/organisation/president?WCM\\_GLOBAL\\_CONTEXT=/intranet/organisation/president/Strategic\\_renewal/Why\\_SRP/index.php](http://my.internal.epo.org/portal/private/epo/intranet/organisation/president?WCM_GLOBAL_CONTEXT=/intranet/organisation/president/Strategic_renewal/Why_SRP/index.php)

### 3. The EPO's Mission

When the EPO management drew up the EPO's *Mission Statement*, it came with "strategic directions" which, broadly summarised, are:

- Master the workload ("balancing incoming applications with the output of granted patents")
- Promote the acceptance of a sense of personal responsibility at all levels

The Office's Mission Statement, contrary to what management may have led us to believe, was born out of a closed shop analysis. This analysis claimed to be the outcome of the Broad Consultation Process (BCP), but this has long been a bone of contention, since the data from the BCP was strongly "filtered". Furthermore, the failure of the senior management to implement the goals declared in the mission statement is quite obvious.

Particularly with regard to the *second goal*, it appears that management have never really been able to agree on what this statement means. Some have understood it to mean more accountability, implying consequences for under-performance, and emphasis on performance management and models like the "golden cage". Others consider the statement reflects staff's "duty" to take a personal responsibility for success of the EPO. In fact the consultant who insisted that this phrase was inserted into the mission statement, stated that it relates to adopting a management style which encourages and supports staff to take ownership of the problems of the EPO and contribute to their solution. This would require decentralisation of the EPO decision making process and the empowerment of staff. Rather than implement such measures, the management have failed to support staff, preferring to criticise under-performance and bemoan their inability to "punish" such staff<sup>2</sup>.

Having also failed to achieve the *first goal*, management now appears to adopt a different approach: change the Mission Statement. In the presentation materials of Celemi AB, the consultant hired to guide our management through the SRP, the Mission Statement reads:

*"The mission of the EPO [...] is to support innovation, competitiveness and economic growth for the benefit of the citizens of Europe".*

What happened to "... the patent granting authority for Europe ..."?

We fear that this change results from the Strategic Debate in the Administrative Council. The role of the EPO foreseen in the EPN is no more than a service provider in a network of NPOs, with the NPOs mastering our workload for us. For further details see the domain description "Building the EPN"<sup>3</sup> and the SUEPO paper "From EPO to EPN or: Decentralising the European Patent System"<sup>4</sup>.

The "proposed" changes related to the EPN are in stark contrast to the role demanded of the EPO by applicants and other users. To date these stakeholders have insisted on the need for strong, centralised examination services leading to a high presumption of validity in the resulting patents. SUEPO has consistently argued that the higher quality of the EPO as *patent granting authority* is due to the level of specialisation possible in a population of several thousand, technically-qualified, legally-trained, multilingual examiners. This is something which the NPOs, by their very nature, cannot offer. SUEPO has always contended that it is principally the maintenance of this density of

<sup>2</sup> See <http://www.suepo.org/archive/csc4906e.pdf> which discusses management measures to "motivate" staff

<sup>3</sup> See the description of all the *SRP domains* on the Intranet at [http://my.internal.epo.org/portal/private/lut/p/kcxml/04\\_Si9SPYkssy0xPLMnMz0vM0Y\\_QjzKLN4g3CgkASYGYjvqRMJEqfW99X4\\_83FT9AP2C3lhyR0dFRQANecan/delta/base64xml/LOIDU0IKQ1RPN29na21BISEvb0VvUUFBSVFnakZJQUFRaENFSVFgR0VBLzRKRmlDbzBlaDFpY29uUVZHaGQt0IRIS83XzBfoE1HLzY2?WCM\\_PORTLET=PC\\_7\\_0\\_8MG\\_WCM&WCM\\_GLOBAL\\_CONTEXT=/portal/wcm/connect/intranet/organisation/president/Strategic\\_renewal/Strategic\\_direction/index.php](http://my.internal.epo.org/portal/private/lut/p/kcxml/04_Si9SPYkssy0xPLMnMz0vM0Y_QjzKLN4g3CgkASYGYjvqRMJEqfW99X4_83FT9AP2C3lhyR0dFRQANecan/delta/base64xml/LOIDU0IKQ1RPN29na21BISEvb0VvUUFBSVFnakZJQUFRaENFSVFgR0VBLzRKRmlDbzBlaDFpY29uUVZHaGQt0IRIS83XzBfoE1HLzY2?WCM_PORTLET=PC_7_0_8MG_WCM&WCM_GLOBAL_CONTEXT=/portal/wcm/connect/intranet/organisation/president/Strategic_renewal/Strategic_direction/index.php)

<sup>4</sup> See <http://www.suepo.org/archive/su07100cp.pdf>

specialisation, together with a strict approach to patent applicants, which will help the Office to master its workload in the long term, particularly if accompanied by appropriate recruitment, targeted fee policies and amendments to the EPC.<sup>5</sup>

#### 4. The Scenarios Projects

The SRP proposals are supposedly also based on the outcome of the *Scenarios for the Future* project. However, no evidence can be found in the strategic renewal documentation that indicates the use of the Scenarios. In fact the consultants which have supported the development of the domains (Celemi AB) operate on quite different models to those who developed the Scenarios (Shirin Elahi et al). It seems that the management has jumped to solutions without actually defining the problems. This gives the impression that the motivation for change comes from the desires of senior management and/or the Council rather than structured analysis of factual data.

The Scenarios project was originally designed in two parts: one looking at the external factors; and the other looking at the internal functioning and structure of the Office.

The *Internal Scenarios project* was abandoned, which was no surprise to SUEPO since indications were that it was reaching similar conclusions to that of a number of previous studies: i.e. that the way in which the Office is managed is completely inappropriate and is causing many of the problems. The previous studies (Science Pô, Human Resource Policy Team, Human Capital Survey 2004, Staff Survey 2006) had shown that fundamental changes were required. For example, the need to "go east", the need to stop controlling staff and recognise the fact that the EPO was a "knowledge based" organisation and must be managed accordingly. The management has so far failed to implement any of the key recommendations in these reports<sup>6</sup>. We assume that this is the reason that the internal scenarios project was discontinued, either due to a deliberate decision by management, or that the consultant realised there was no point in continuing.

The *External Scenarios project* was continued and resulted in the publication of the compendium. It was based on a series of interviews with "stakeholders" and resulted in the development of four scenarios, which were supposed to be used as a set of "wind tunnels" in which possible strategies could be tested. For example, were the EPO to reduce quality further, what effect would this have? While the geo-political view (Red scenario) might not be that affected, the public interest view (Green scenario) would be. Applicants (Blue skies scenario) might increase the filing of low quality patent applications, or junk patents, and the EPO could find itself under a deluge of work. Alternatively, what would happen if we increased quality, and adopted a policy of strictly applying the EPC? Would applicants think twice before filing trivial patents? Surely the questions about benefit to society would be addressed by ensuring rights granted were better matched to contributions. Would the pressure from NGOs and "green" groups reduce because of increasing confidence in the patent system? The rapid development of various domains shows little evidence that these "wind tunnels" were used to test them.

#### 5. Domains or hobby horses?

The "*domains*" are at the heart of the SRP; they essentially comprise a set of projects with established implementation timelines. But where did they come from?

The MAC, to some extent together with PDs, identified so-called "gaps", or supposedly "*critical areas which need to be addressed*". These "gaps" were then checked back with Board 28 and compared to the result of the Board 28's own deliberations on the "Future Workload", a study set

<sup>5</sup> See the papers "What Strategy?" at <http://munich.suepo.org/archive/ig1806.pdf>, and also "Objectives and Incentives at the European Patent Office" at [http://www.idei.fr/doc/by/seabright/report\\_epo.pdf](http://www.idei.fr/doc/by/seabright/report_epo.pdf)

<sup>6</sup> See "A Review of the Human Capital Survey 2004" at [http://www.suepo.org/archive/zb0306\\_cp06003l.pdf](http://www.suepo.org/archive/zb0306_cp06003l.pdf); "Shaping the future (a.k.a. analysis paralysis at the EPO)" at <http://www.suepo.org/archive/zb0605a.pdf>

up as part of the outcome of the Strategic Debate in the Administrative Council. The gaps appear to have been the basis for the domains. The astonishing aspect of this “gap analysis” is however, its complete lack of problem definition. The “gaps” and “domains” are solutions. The degree to which the domains correspond to the outcome of the Board 28’s “Future workload” study strongly suggests that this process is not driven predominantly by the Scenarios project but in fact driven by the desires of the Board 28 members (Ms. Brimelow included). Nearly all the domains have been assigned a “mentor” from the Board 28, and the domain leaders are expected to report to these mentors.

It seems that this group is being permitted to get out their hobby horses and start riding them around in public. For instance, when reading the domain descriptions for “Building EPN”, “Future Employment Package” and “Governance”, the overriding impression is that it is the Board 28, which is essentially designing Office policy. On the other hand, several of the remaining domains seem to be little more than a compendium of standard management tasks (automation, personnel management, etc.). As a whole, the domains contribute little to staff’s understanding as to how the solutions proposed therein shall define the new strategic direction of the Office, whatever that new strategic direction may happen to be.

In other words, the SRP has so far failed to identify and analyse the problems that the management is seeking to address. We note that using the domains to propose solutions without identifying clearly the problems they are intended to address has a number of advantages: First, it is not possible to assess whether or not a given solution is likely to solve the problem thus making decisions less transparent and harder to evaluate/criticise. Second, it neatly excludes many stakeholders from participating in the process and reduces their role to one of opposition; a role that is weakened by the lack of transparency regarding the motives. Third, once implemented, it is almost impossible to objectively assess the success of a solution, making way for subjective evaluation or, for the more cynical, automatic success criteria. This last point has often been a bone of contention between staff and the Office, since no project ever fails. Finally, it makes “convergence” with the Board 28’s “Future workload” study very easy.

## 6. Is there a need for change?

It is obvious to SUEPO that changes *are* necessary in a number of areas in the Office. As mentioned section 4 above, strong evidence supporting the need for change in management’s approach comes from a number of investigations into the problems of the EPO<sup>7</sup>. The outcomes of these studies conclude, among other things, that the EPO is being seriously mismanaged, thus rendering it significantly less effective than it could be. We do not see any evidence of the domains addressing the concerns highlighted by these studies (decreasing staff motivation, very low trust in management, insufficient training, low value perception of staff, lack of professional development opportunities, etc.). It remains to be seen if feedback from Prague or other sources will change this.

Despite the problems outlined above, there are some issues which we believe can nevertheless be successfully addressed via the SRP. One of these is the internal conflict resolution issues which SUEPO has been seeking to reform for years<sup>8</sup>. Another area is improvements in tools and training. A key area that continues to cripple the EPO is the way in which the EPO manages its staff; the negative attitude towards staff and their treatment as production line workers<sup>9</sup> has dramatic consequences for our working environment and (de)motivation of staff

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<sup>7</sup> Science Po study at [http://staffrep.internal.epo.org/Documents/ex\\_sciencespo.pdf](http://staffrep.internal.epo.org/Documents/ex_sciencespo.pdf)  
 Human Capital Survey (Staff Survey) 2004 at [http://staffrep.internal.epo.org/Documents/ex\\_humancap04.pdf](http://staffrep.internal.epo.org/Documents/ex_humancap04.pdf)  
 EPO follow-up survey (Staff Survey) 2006 at [http://newdq4.internal.epo.org/pd43/431/4313/staff\\_survey/followup\\_survey/pdf/Dec2006\\_follow\\_up\\_report.pdf](http://newdq4.internal.epo.org/pd43/431/4313/staff_survey/followup_survey/pdf/Dec2006_follow_up_report.pdf)

<sup>8</sup> Human Resource Policy Team, Relationship Management, at <http://mit.internal.epo.org/pdf/hrp-rm.pdf>  
<sup>8</sup> See <http://www.suepo.org/archive/su07099cp.pdf> for a recent article on problems with the appeals process

<sup>9</sup> Compare with Taylorism and McGregor Theory X

While SUEPO has real hopes that at least the domains “How we work” and “Raising the bar” result in real renewal to the benefit of staff and the efficiency and quality of the work we do, success will be possible only if the problem definitions in the numerous reports on this matter are accepted by staff as the basis for developing solutions. The domains "Performance Management" and "Future employment package" appear designed to put further pressure on staff to "do what they are told". If effective and high quality processing of patent applications could be undertaken by automatons, then such methods might be appropriate, but it cannot. It is high time that the management recognised this fact and designed its management models accordingly. Interestingly, in a discussion of the Human Capital Survey results in 2004, 80% of the MAC / PD members agreed that the management style of the EPO was not appropriate, and that instead of the hierarchical model currently employed a more modern approach was required based on the assumption that the EPO is a knowledge based organisation. The renewal process should fully take these factors into account instead of seeking to implement further control mechanisms to pressurise staff.

## 7. How should the process of renewal be approached?

Before the process of renewal can begin, some key issues must be clarified:

1. Is there real agreement on the need for change?
2. What will be the role of patenting in the future?
3. How do we address the conflict of interest at the heart of the Administrative Council?

By far the most important element of any change process is to first reach agreement on the need for change. This requires establishing a *shared understanding of problems by all parties* affected in a given domain. Without this, the process is almost certain to fail. We therefore hope that the management will stop the headlong rush at solutions which has characterised the SRP to date, and that the Prague event is the start of the dialogue needed to achieve this understanding.

Similarly, in order to understand what needs to be changed in the Organisation or the Office, agreement needs to be reached on what we consider to be the *future role of patenting*. Only then can the role to be played by the Office in such a future system follow. Although the Scenarios provide a backdrop and a framework for developing an understanding of the future role of patenting, real staff involvement in any such process has been almost non-existent.

Finally, if the EPO is to function effectively in the future the *conflict of interests that exists in the Council* must be recognised and, ideally, addressed. The vast majority of the delegations to the Council are also the representatives of the National Patent Offices. If it were possible to achieve a truly central patent system, what would the role of a national patent office be? Receiving office? Support centre? Training provider? In such a case the actions of the head of the national office would be to oversee the dissolution of his/her own empire<sup>10</sup>. In practice it looks as if the opposite is happening, as can be seen in the proposals regarding the EPN, regardless of protestations to the contrary by senior management. Decentralising the work of the EPO guarantees the future existence of the national offices. Whilst such actions may be in the interest of the national offices it is questionable if a decentralised system is in the interests of the citizens of the member states which they claim to represent. How can the EPO function with such a conflict of interests in its governing body? Is this what is meant by democratic control? Perhaps the first stage in the renewal process should be to take the debate outside the control of the Administrative Council, and put it in a broader political forum, which has better democratic credentials and reflects the true interests of the citizens of the member states. The most likely solution to this problem is intervention of the EU. Indeed, considering the harm that decentralising the patent system could cause, we find it surprising that the EU has not intervened more directly to date.

<sup>10</sup> See the MIP article „Back from the Brink of Extinction“ at [http://dg1-2.internal.epo.org/hpd/PD\\_Tools\\_and\\_Documentation/Publications/DocAlert/documents/Back\\_from\\_the\\_brink\\_of\\_extinction\\_Emma\\_Barraclough.pdf](http://dg1-2.internal.epo.org/hpd/PD_Tools_and_Documentation/Publications/DocAlert/documents/Back_from_the_brink_of_extinction_Emma_Barraclough.pdf)

## 8. Conclusions

So what does the above imply about SRP and its significance for staff?

Essentially, a set of solutions, has been drawn up by the MAC and the members of the Board 28. These solutions, outlined in the "domains", have not been tested in the Scenarios' expensive wind tunnels, nor do they take much account of the concerns of staff as voiced in the BCP, JAB (Human Resource Policy Team) and in the Staff Surveys. They concentrate on tools to control staff rather than deal with staff motivation, on e2e rather than effective examining and formalities tools, on the EPN rather than the EPO, on control of the staff representation rather than achieving effective social partnership and good governance of the Organisation. While this does not inspire confidence, it does not necessarily mean that nothing good will come out of SRP. If the Prague event is a genuine attempt to hear at least the Office's middle management and an opportunity to reach agreement on the need for change, then parts of the SRP may yet succeed. For this reason, SUEPO supports the participation of the chairmen of the Central Staff Committee at the Prague event. However, as stated in the publication "Mythen und Wahrheit" from our Communication department, if it were the case that "das Management die Strategie längst festgelegt [hätte]" ...then „wäre Prag tatsächlich eine Zeit- und Geldverschwendung." We fully agree.

Unfortunately, the evidence we have points to the Strategic Renewal process having been pre-cooked to the point of being somewhat overdone (and possibly unpalatable to most staff). The head chef overseeing this pre-cooking has been the Board 28, most of whose members have an inherent conflict of interest given their role as heads of NPOs, and governors of the EPO. The initial protestations of the President that she had "no blueprints" and no idea about the outcome of the SRP are unconvincing: the major concern for SUEPO is not management's insistence that there can be no turning back (*"the status quo is not an option"* dixit Brimelow) but that the very direction appears already fixed under the guidance, of the Board 28 and the Administrative Council. We fear that any outcome of the SRP other than one which supports the Board 28's own Future Workload study will be unacceptable to the Administrative Council.

We very much hope to be proved wrong.

The SUEPO Committee