



19 January 2010
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For the attention of the Members of the European Parliament involved in intellectual property issues

Election of the President of the European Patent Office Future of the European Patent System

Dear Madam, dear Sir,

The Staff Union of the European Patent Office (SUEPO) is concerned about the continuing failure of the Administrative Council of the European Patent Organisation (EPO) to elect a successor for the outgoing President of its executive organ, the European Patent Office (Office), Ms Alison Brimelow. The Office, with an international staff of 7000, has an important task in supporting the European economy and should not be left without leadership.

The transition towards the task of handling the upcoming Community patent, a still unfinished cornerstone of the Lisbon agenda process, requires a leader who has a proven track record of supporting the EU Institutions in this process and will ensure that the European Patent Office is the key provider of search and examination of the Community patent.

The recent "shared" mandate for Ms Alison Brimelow and her predecessor, Mr Alain Pompidou, with two short mandates of three years each, was a compromise resulting from the failure to agree on *one* candidate. This has been instrumental in depriving the EPO of the long-term perspective it needs to support effectively not just major players, but also smaller innovators, in the context of the EU Institutions' policies for European innovation, competition and growth.

The election procedures within the Administrative Council have to date not inspired confidence in its governance structures. Despite two Council meetings dominated by the election, and several rounds of voting, none of the four candidates has managed to obtain the necessary 3/4 majority. The current election process is undermining the public confidence in the European patent system (see Annex).

Reconciling the mandate of the European Patent Convention with current EU-initiatives appears to create a conflict of interest for one candidate, a previous Chairman of the Administrative Council, in view of his declared opposition to the Commission's approach to the introduction of a Community patent. Two further candidates, the elected chairman and vice-chairman of the Administrative Council, have made attempts to "share" the Presidency of the Office and the Chairmanship of the Administrative Council. The fourth candidate has failed to achieve the necessary majority despite repeated rounds of voting. Now, having withdrawn from the presidential race, the vice-chairman of the Administrative Council is due to take over the chairmanship of both the Council and the selection committee overseeing the appointment of the new President. Viewed together, these events raise issues of role clarity, while putting into question the very principle of the separation of powers between the legislative and the executive.

In the current institutional setup, the European Patent Organisation appears to be unable to respond effectively to the challenges facing the European patent system. Despite the lack of sufficient support for any one of the four candidates, the Administrative Council has not made a renewed call for applications. A third attempt to elect a President of the European Patent Office will take place during an extraordinary meeting of the Administrative Council on 2 and 3 February 2010. We therefore respectfully request that if you share the concerns voiced in this letter which, in our opinion, justify scrutiny, you take the appropriate steps to air these concerns especially if the third attempt fails. Failure to do so risks jeopardizing the EU's Lisbon agenda together with the Community patent, and further depriving the EPO and the citizens of Europe of the long-term perspective and predictable policy-making and implementation they need. We will come back to you with a detailed SUEPO analysis and position on the EU Patent.

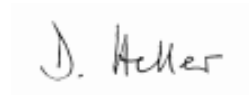
Yours sincerely,



Edward Daintith
Chairman SUEPO Central Executive Committee



Desmond Radford
Chairman SUEPO The Hague



Dorothee Heller
Chairwoman SUEPO Munich



Carmen Schuhmann
Chairwoman SUEPO Vienna



Peter Kempen
Chairman SUEPO Berlin

c.c.: Mr J. Buzek, President of the European Parliament
Ms A. Brimelow, President of the EPO
Mr B. Battistelli
Mr R. Grossenbacher
Mr J. Kongstad
Ms S. Sivborg

Annex: IAM blog of 15 January 2010: "EPO staff cry foul over presidential vote"

Intellectual Asset Management



blog

EPO staff cry foul over presidential vote

At the **beginning of February**, the Administrative Council of the European Patent Organisation is due to hold an extraordinary meeting at which it will attempt to choose a new President of the European Patent Office to succeed **Alison Brimelow**. This follows two failed attempts in 2009 - one in **October** and the other in **December**.

With three weeks still to go before the meeting takes place, the chairs of all the EPO's staff committees **have written to Jesper Kongstad**, acting chairman of the council, to ask him to clarify his position. Kongstad, you will recall was **a candidate** for the president's job himself before he withdrew after December's round of voting. You will also recall that back in October, he and **Benoit Batistelli**, the head of the French IP Office and chairman of the council before he stood down to fight the presidential election, suggested **a joint candidature**. Their plan was that Kongstad would be Chairman of the Administrative Council and Batistelli would be President of the EPO. In the proposal they put forward, which can be found at the end of the letter from the staff committee chairmen, the two write: "The joint presidency and chairmanship ... will be based on a broad cooperation with the AC and the staff with the aim of strengthening the organisation, in every aspect, to the benefit of users and European innovation in general." They then list a six point plan for achieving this.

Of course, we know that the council rejected the Batistelli/Kongstad joint ticket, which is why we are still looking for an EPO president. However, should Batistelli win the February vote, what the council rejected is what we will **end up with**. In their letter, the staff committee representatives point out that Kongstad will be chairing the extraordinary meeting in February. They continue: "To pre-empt any challenge to the outcome of the procedure, we see it as essential to observe the convention that anyone holding an election in which he or she is or was a candidate, and/or closely associated with a candidate, cannot be involved as the judge. We would therefore be grateful if you would clarify the procedure and the composition of the selection board for the next President of the EPO."

This blog has previously pointed out the **lack of transparency** at the EPO, where far too much seems to be done behind closed doors. The decision on who should be the office's next president is a critical one, and it is one that all those who use the EPO have a right to understand fully. I hope that Kongstad responds to the letter he has been sent and that his response is made public. At the moment most of the information we are getting about this whole presidential election process is based on leaked documents and off the record briefings. I am struggling to see how that helps the EPO's users and the cause of European innovation.

Sectors

IP politics, Patents