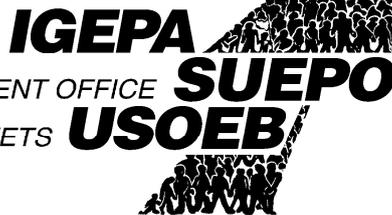


INTERNATIONALE GEWERKSCHAFT IM EUROPÄISCHEN PATENTAMT



STAFF UNION OF THE EUROPEAN PATENT OFFICE

UNION SYNDICALE DE L'OFFICE EUROPEEN DES BREVETS

Zentraler Vorstand . Central Executive Committee . Bureau Central

Vienne, le 13.06.2013
su13080cl- 0.3.1/3.1/0.4.2

M. Le Premier ministre

M. Jean-Marc Ayrault
Hôtel de Matignon
57, rue de Varenne
FR - 75700 Paris

Objet : Risque pour l'image de la France à l'Office Européen des Brevets

Monsieur le Premier Ministre, Mesdames et Messieurs les Ministres,

L'Union Syndicale de l'Office Européen des Brevets¹ tient à vous informer de faits sérieux dont nous pensons qu'ils sont de nature à nuire à l'image de la France.

Alors que l'Office Européen des Brevets² (OEB) se voit confier par l'Union Européenne la délivrance du *Brevet Unitaire* à partir de 2014, un conflit social oppose depuis bientôt trois mois le personnel de l'OEB à son Président français, monsieur Benoît Battistelli.

Peu après son arrivée en juillet 2010, les suspicions de favoritisme de la part de monsieur Battistelli avait déjà fortement choqué les agents et entaché la réputation de la France au sein de l'organisation. Au lieu d'engager un dialogue social afin de mettre un terme au conflit en cours, M. Battistelli travaille aujourd'hui activement à limiter les droits fondamentaux des agents : liberté d'expression³, liberté d'association et droit de grève.

Il vient ainsi d'imposer de sérieuses restrictions aux moyens de communication des représentants du personnel et a mis en œuvre un filtrage technique de tous les courriels syndicaux. Il va soumettre à l'organe de supervision de l'OEB, le Conseil d'Administration,

¹ www.suepo.org - Environ 50 % des fonctionnaires de l'Office Européen des Brevets sont membres de l'Union Syndicale de l'Office Européen des Brevets (USOEB).

² www.epo.org - L'OEB emploie 6500 agents dont environ 4500 scientifiques et ingénieurs provenant de 38 États Membres (comprenant plus de 1200 ressortissants français).

³ M. Battistelli a ordonné le blocage depuis le 3 juin des moyens de communication de la représentation du personnel et des syndicats par la mise en place de mesures d'entraves (par exemple le filtrage total de tout courriel syndical, y compris interne, ou l'interdiction d'impression et de distribution (papier et électronique) des publications des représentants du personnel).

les 26 et 27 juin 2013 une réglementation du droit de grève si restrictive qu'elle remet en cause ce droit lui même (voir annexe 1, disponible en Anglais).

Si les apparences d'une consultation statutaire sont préservées, aucune consultation sincère n'a eu lieu. La partie de la réglementation soumise au Conseil d'Administration (cf. nouvel article 30a) donne - entre autre - tout pouvoir au Président de l'OEB pour établir à sa guise les conditions de durée et de vote des grèves, ce qui constitue une ingérence inacceptable pour l'indépendance des syndicats.

Si cette réglementation devait être adoptée par le Conseil d'Administration en juin (la France y étant représentée), les nouveaux pouvoirs conférés à M. Battistelli lui permettraient de mettre en place une circulaire sans aucune supervision (cf. annexe 2, en particulier les pages référencées 8/11 à 10/11). Entre autres éléments cette circulaire :

- confie à l'administration de l'OEB la tâche d'organiser le vote, obligeant de facto les syndicats à fournir la liste nominative de leurs membres,
- impose un préavis d'un mois et limite la durée d'une grève à un mois,
- fixe le quorum d'agents devant voter et la majorité à atteindre pour valider le vote d'une grève.

Cette remise en cause des droits fondamentaux est sans précédent dans les annales de l'OEB. Il est regrettable que ceci soit le fait d'un ancien haut-fonctionnaire français.

L'immunité juridique de l'OEB et de son Président implique qu'il nous est impossible d'arrêter les agissements de Mr Battistelli par voie judiciaire⁴.

Il serait choquant que la délégation française apporte son soutien au projet de monsieur Battistelli pour créer un espace de non-droit⁵ au cœur de l'Europe en 2013. Alors que l'OEB mettra en œuvre le *Brevet Unitaire* pour le compte de l'Union Européenne prochainement. Il serait d'autant plus incompréhensible qu'il soit soutenu afin de s'exonérer de l'Acquis Communautaire.

Les médias européens et nationaux ne manqueraient pas de relater cette dérive autoritaire si les délégations nationales au conseil d'administration venaient à soutenir le projet de monsieur Battistelli.

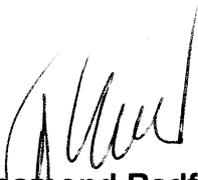
Nous nous adressons donc à vous, défenseurs des droits et valeurs humanistes qui fondent la République Française, en espérant que vous accorderez toute l'attention nécessaire à la présente lettre.

Nous sommes à votre entière disposition pour tout renseignement complémentaire et nous vous prions de croire, Monsieur le Premier Ministre, Mesdames et Messieurs les Ministres, de croire en l'expression de notre très haute considération.

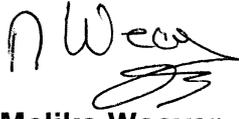
⁴ Les agents de l'OEB n'ont pas accès aux systèmes judiciaires nationaux. Le délai actuel pour obtenir une opinion de la Commission de Recours Interne (CRI) est d'environ trois ans. M. Battistelli ayant pris l'habitude d'ignorer quasi-systématiquement les opinions majoritaires et unanimes de la CRI, les agents victimes d'une violation de leurs droits doivent alors porter leur litige devant le Tribunal Administratif de l'Organisation Internationale du Travail où les délais de traitement sont supérieur à 10 ans. La voie judiciaire est de facto fermée pour faire cesser une situation illégale ou pour l'obtention de toute réparation dans un temps raisonnable.

⁵ Et en particulier vis-à-vis de la Convention Européenne des Droits de l'Homme ou de la convention 154 de l'Organisation Internationale du Travail incorporée par référence dans le droit national.

Pour l'Union Syndicale de l'Office Européen des Brevets (USOEB)



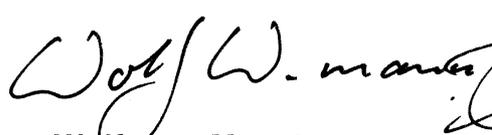
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**Comité Central Exécutif de Union Syndicale
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Mme. Hélène Conway-Mouret
- **Délégation Française au Conseil d'Administration de l'OEB**
- **Monsieur Battistelli, Président de l'Office Européen des Brevets**

ANNEXE 1

Draft version proposed to GAC consultation (17 May 2013)

CA/xx/13

Orig.: en

Munich, 17.05.2013

SUBJECT: Amendment of the Service Regulations concerning strikes and unauthorised absence

DRAWN UP BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for decision)

SUMMARY

Deriving from the freedom of association, the Office recognises and respects its employees' right to strike. This right is nevertheless not absolute and its exercise has to be subject to minimum requirements. Those requirements shall serve to balance the interest of the service with the interest of the employees under consideration of the principle of proportionality. The right to strike is not currently regulated in the Service Regulations. Therefore, and as a further step towards providing a solid basis for social dialogue in the Office, it is proposed to provide for a clear legal framework in which this right may be exercised and to amend the regime for unauthorised absence, for harmonisation purposes.

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I. STRATEGIC/OPERATIONAL

1. Operational.

II. RECOMMENDATION

2. The Administrative Council is requested to approve the draft decision set out in Part II below.

III. MAJORITY NEEDED

3. Three-quarters of the votes.

IV. CONTEXT

4. Based on Article 30 ServRegs, that provides for freedom of association, the Office recognises and respects its employees' right to strike.

5. However, the current statutory framework does not expressly provide for the right to strike and for the conditions to exercise this right. The Office has no collective agreements with the staff representation in place either.

6. Aspects such as registration of strike participation and deduction of remuneration have been regulated by the President and the administration in different administrative notes.

V. ARGUMENTS

7. Based on principles applied in many European countries, as well as acknowledged by the International Labour Organization, the right to strike may be subject to fulfilling certain minimum requirements. It is proposed to introduce in the Service Regulations a legal framework balancing the right to strike with the principles of sound organisation of the public service. This implies that, whilst respecting the right to strike, rules shall be set to ensure the minimum functioning of the Office, the respect of security and freedom and the self-determination of all employees.

8. For this purpose, a new Article 30a ServRegs shall be introduced that lays down the following principles which will be applicable to all employees, regardless of their appointing authority:
- definition of a strike as a collective and concerted work stoppage for a limited duration related to the conditions of employment, thereby drawing a clear distinction from other possible forms of industrial action;
 - acknowledgement of the right to call for strike for Staff Committee (Central or Local), for an association of employees or for a group of employees;
 - a vote by the employees is required before starting a strike;
 - a strike shall be notified in advance to the President of the Office;
 - all participating employees are obliged to inform the Office about their strike participation, otherwise they may risk that unauthorised absence is established;
 - strike participation shall lead to a deduction of remuneration;
 - the President may also issue, with regard to all staff, requisition orders and take other appropriate measures to guarantee the minimum functioning of the Office, as well as the security of the staff and the Office's property;
 - further terms and conditions with regard to all employees, regardless of their appointing authority, may be laid down by the President of the Office.
9. A deduction of remuneration at a rate of 1/20th of the monthly remuneration will apply per strike participation in a working day. Articles 63 and 65 ServRegs governing unauthorised absence and payment of remuneration will thus be amended accordingly for the purpose of harmonisation.

VI. ALTERNATIVES

10. None

VII. FINANCIAL IMPLICATIONS

11. None

VIII. LEGAL BASIS

12. Articles 10(2)(c) and 33(2)(b) EPC

IX. DOCUMENTS CITED

13. None

X. RECOMMENDATION FOR PUBLICATION

14. Yes

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
inserting an Article 30a and amending Articles 63
and 65 of the Service Regulations for permanent
employees of the European Patent Office.

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 10(2)(c) and Article 33(2)(b) thereof,

Having regard to the Service Regulations for permanent employees of the European Patent Office (hereinafter referred to as "the Service Regulations"), and in particular Article 63 and Article 65 thereof,

On a proposal from the President of the European Patent Office, submitted after consulting the General Advisory Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The following new Article 30a of the Service Regulations shall be inserted:

"Article 30a

Right to strike

(1) All employees have the right to strike.

- (2) A strike is defined as a collective and concerted work stoppage for a limited duration related to the conditions of employment.
- (3) A Staff Committee, an association of employees or a group of employees may call for a strike.
- (4) The decision to start a strike shall be the result of a vote by the employees.
- (5) A strike shall be notified in advance to the President of the Office. The prior notice shall at least specify the grounds for having resort to the strike, the scope, the beginning and the duration of the strike.
- (6) Employees shall inform the Office about their participation in the strike.
- (7) The freedom to work of non-strikers shall be respected.
- (8) Strike participation shall lead to a deduction of remuneration.
- (9) The President may take any appropriate measures, including requisitioning of employees, to guarantee the minimum functioning of the Office as well as the security of the Office's employees and property.
- (10) The President of the Office may lay down further terms and conditions, including the maximum duration and the voting process, for the application of this Article to all employees.

Article 2

Article 63(1) of the Service Regulations shall be amended to read as follows:

"(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall lead to a deduction of the remuneration of the permanent employee concerned, pursuant to Article 65(1)(d)."

Article 3

Article 65(1) of the Service Regulations shall be amended to read as follows:

"(1) (a) Payment of remuneration to employees shall be made at the end of each month for which it is due.

(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and

- where the actual number of days for which pay is due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;

- where the actual number of days for which pay is due is more than fifteen the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.

(c) Notwithstanding the provisions of paragraph 1(b), where remuneration is not payable in respect of a complete month due to the participation in a strike, the monthly amount shall be divided into twentieths for establishing the due deduction for each day of strike on a working day.

(d) Notwithstanding the provisions of paragraph 1(b), where remuneration is not payable in respect of a complete month due to an unauthorised absence, the monthly amount shall be divided into twentieths for establishing the due deduction for each day of unauthorised absence on a working day.

(e) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.

(f) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance."

Article 4

This decision shall enter into force on 1 July 2013.

Done at Munich, [date of decision]

For the Administrative Council
The Chairman

Jesper KONGSTAD

ANNEX 1

Existing text	New text
	<p style="text-align: center;">Article 30a</p> <p style="text-align: center;">Right to strike</p> <p>(1) All employees have the right to strike.</p> <p>(2) A strike is defined as a collective and concerted work stoppage for a limited duration related to the conditions of employment.</p> <p>(3) A Staff Committee, an association of employees or a group of employees may call for a strike.</p> <p>(4) The decision to start a strike shall be the result of a vote by the employees.</p> <p>(5) A strike shall be notified in advance to the President of the Office. The prior notice shall at least specify the grounds for having resort to the strike, the scope, the beginning and the duration of the strike.</p> <p>(6) Employees shall inform the Office about their participation in the strike.</p> <p>(7) The freedom to work of non-strikers shall be respected.</p> <p>(8) Strike participation shall lead to a deduction of remuneration.</p>

<p style="text-align: center;">Article 63</p> <p style="text-align: center;">Unauthorised absence</p> <p>(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall be deducted from the annual leave of the permanent employee concerned. If he has used up his annual leave, he shall forfeit his remuneration for an equivalent period.</p> <p style="text-align: center;">Article 65</p> <p style="text-align: center;">Payment of remuneration</p> <p>(1) (a) Payment of remuneration to employees shall be made at the end of each month for which it is due.</p> <p>(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and</p>	<p>(9) The President may take any appropriate measures, including requisitioning of employees, to guarantee the minimum functioning of the Office as well as the security of the Office's employees and property.</p> <p>(10) The President of the Office may lay down further terms and conditions, including the maximum duration and the voting process, for the application of this Article to all employees.</p> <p style="text-align: center;">Article 63</p> <p style="text-align: center;">Unauthorised absence</p> <p>(1) Except in case of incapacity to work due to sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior. Any unauthorised absence which is duly established shall be deducted from the annual leave of the permanent employee concerned. If he has used up his annual leave, he shall forfeit his remuneration for an equivalent period lead to a deduction of remuneration of the permanent employee concerned, pursuant to Article 65(1)(d).</p> <p style="text-align: center;">Article 65</p> <p style="text-align: center;">Payment of remuneration</p> <p>(1) (a) Payment of remuneration to employees shall be made at the end of each month for which it is due.</p> <p>(b) Where remuneration is not payable in respect of a complete month, the monthly amount shall be divided into thirtieths and</p>
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- where the actual number of days for which pay due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;

- where the actual number of days for which pay is due is more than fifteen the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.

- where the actual number of days for which pay is due is fifteen or less, the number of thirtieths payable shall equal the actual number of days for which pay is due;

- where the actual number of days for which pay is due is more than fifteen the number of thirtieths payable shall equal the difference between the actual number of days for which pay is not due and thirty.

(c) Notwithstanding the provisions of paragraph 1(b), where remuneration is not payable in respect of a complete month due to the participation in a strike, the monthly amount shall be divided into twentieths for establishing the due deduction for each day of strike on a working day.

(d) Notwithstanding the provisions of paragraph 1(b), where remuneration is not payable in respect of a complete month due to an unauthorised absence, the monthly amount shall be divided into twentieths for establishing the due deduction for each day of unauthorised absence on a working day.

<p>(c) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.</p> <p>(d) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance.</p>	<p>(c) (e) Where entitlement to any of the allowances provided for in Article 67 commences at or after the date of entering the service, the employee shall receive such allowance as from the first day of the month in which such entitlement commences, provided that any request for the allowance is submitted within six months of the date on which entitlement commences, unless otherwise provided in these Regulations. If an allowance is requested after expiry of the above six-month period, it shall be granted retroactively but only for the six months preceding the month in which the request was submitted, except in a duly substantiated case of force majeure. On cessation of such entitlement the employee shall receive the sum due up to the last day of the month in which entitlement ceases.</p> <p>(d) (f) All permanent employees in receipt of an allowance shall inform the President of the Office immediately in writing of any change which may affect their entitlement to that allowance.</p>
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ANNEXE 2

Draft version proposed to GAC consultation (17 May 2013)

CIRCULAR ON STRIKES

The President of the European Patent Office;

Having regard to the European Patent Convention, and in particular Article 10 thereof;

Having regard to the Service Regulations for permanent employees of the European Patent Office, and notably Articles 30, 30a, 63 and 65 thereof;

Having consulted the General Advisory Committee;

Recognising the right to strike, whilst having regard to the need for specific terms and conditions for its exercise in order to ensure a proper functioning of the Office;

Has decided as follows:

Guidelines applicable in the event of strike

1. Scope and definition of a strike

A strike as defined in Article 30a(1) of the Service Regulations should be a proportionate action of last resort.

Industrial actions which are not a collective and concerted work stoppage, such as go-slow or work-to-rule actions, shall not be considered as a strike.

The protection granted by the right to strike does not apply to employees participating in industrial actions other than a strike.

2. Call for a strike

A Staff Committee (Central Staff Committee or a local section), an association of employees or a group of employees representing at least 10% of all employees may decide to call for a strike.

3. Start of a strike

The start of a strike shall be the result of a vote by the active employees either office-wide or at sites concerned by the strike which has been called for.

The voting process shall be organised by the Office within one month following the call for strike. The voters' confidentiality shall be guaranteed. Employees not able to vote personally shall have the possibility to vote by proxy. An employee can be given only one proxy vote.

The voting process shall be supervised by a committee composed of two employees designated by the President and two employees designated by the Central Staff Committee on an ad hoc basis.

To be valid, at least 50% of the employees entitled to vote shall participate in the ballot. The decision to start the strike has to be approved by a majority of more than 50% of the voters.

4. Prior notice and duration of a strike

Pursuant to Article 30a(5) of the Service Regulations, prior notice of a strike shall be given to the President at least five working days before the commencement of the strike action.

As regards the scope of the strike, the notice shall indicate which sites of the Office are concerned.

The duration of the strike shall not exceed one month. Beyond this maximum duration, any new strike shall be organised in compliance with Article 30a of the Service Regulations.

5. Declaration of participation in a strike

Employees participating in a strike shall inform their immediate superior and shall register via an electronic self-registration tool made available by the Office. The immediate superior will have access to the self-registration tool.

The registration shall occur before or, at the latest, on the day of the strike.

Employees may be considered on unauthorised absence within the meaning of Article 63 of the Service Regulations if they were not at their workplace

during a strike action, did not register and did not inform their immediate superior of their absence from work.

6. Deduction of remuneration

For each working day during which an employee participated in a strike, the Office will apply a deduction of the monthly remuneration, in accordance with Article 65(1)(c) of the Service Regulations.

For participation in a strike for more than four hours in a single working day, the Office will apply a deduction of 1/20th of the monthly remuneration.

For participation in a strike for four hours or less in a single working day, the Office will apply a deduction of 1/40th of the monthly remuneration.

For staff working part-time, the deduction will be adjusted proportionally.

The basis for calculating the deduction is the remuneration defined in Article 64(2) of the Service Regulations.

A strike participant remains covered by the social security scheme during strike and therefore continues to contribute in full to the scheme.

7. Entry into force

This decision shall enter into force on 1 July 2013.