

Supervisory board EPO votes for reforms, increasing the pressure on president Benoît Battistelli

Kluwer Patent Blog
March 18, 2016

Kluwer Patent blogger

Please refer to this post as: Kluwer Patent blogger, 'Supervisory board EPO votes for reforms, increasing the pressure on president Benoît Battistelli'; Kluwer Patent Blog, March 18 2016, <http://patentblog.kluweriplaw.com/2016/03/18/supervisory-board-european-patent-office-votes-for-reforms-inc-reasing-the-pressure-on-president-benoit-battistelli/>

President Benoît Battistelli of the European Patent Office (EPO), criticized for his harsh leadership, has survived the meeting of the supervisory Administrative Council (AC), but he has been put under high pressure to end the social unrest at the organization.

During the meeting of the AC (the supervisory organ of the EPO with representatives of the 38 members states), 16 and 17 March in Munich, a Resolution was adopted requesting Battistelli to review staff investigation guidelines and disciplinary procedures, to suspend further decisions in disciplinary cases, to negotiate a Memorandum of Understanding with the trade unions and to speeden up the structural reform of the Boards of Appeal - all issues that have been the source of deep conflicts at the EPO.

The Resolution - adopted unanimously with 12 abstentions - shows the AC is very critical of Battistelli's performance:

'Having repeatedly expressed its deep concerns about the social unrest within the EPO office; having repeatedly urged the EPO office President and the trade unions to reach a consensus on an MOU which would establish a framework for negotiation between social partners; noting that disciplinary sanctions and proceedings against staff or trade union representatives have, among other reasons, made it more difficult to reach such a consensus; noting that these disciplinary sanctions and proceedings are widely being questioned in the public opinion (...).'

The president is requested to come up with clear results at the next meeting of the AC:

'to submit proposals at its June 2016 meeting, after discussion in B28 (Board 28, the Presidium of the AC, ed.), for immediate implementation of the structural reform of the BOA, on the lines of the 5 points agreed by the AC at its December 2015 meeting and of the legal advice given by Prof. Sarooshi, and taking into account comments from the Presidium of the BOA;

to submit proposals to the AC at its June 2016 meeting, after discussion in B28, for reinforcement of the AC secretariat and a clarification of its position in terms of governance.'

The last phrase is remarkable in the sense that it seems to suggest that the AC, often pictured as unwilling to confront Battistelli, has had its conflicts with the president as well.

The tensions at the EPO came to a new high last January, when Battistelli fired two and downgraded one leaders of the biggest trade union at the EPO, the SUEPO. The [leaking of a letter](#), including an earlier version of the Resolution that has now been adopted, showed that Battistelli had lost the support of his long-time ally, AC chairman Jesper Kongstad. In the letter Kongstad explained the AC members that Board 28 had tried in vain to engage in a meaningful dialogue with the EPO president.

It isn't clear what the Resolution that was adopted yesterday, means for the three SUEPO leaders, Elizabeth Hardon, Ion Brumme and Malika Weaver. Precisely that part of the earlier, leaked Resolution has been watered down. In the earlier version the AC requests Battistelli:

'to agree to an external review of the disciplinary sanctions and proceedings against SUEPO leaders; to suspend these disciplinary proceedings pending the outcome of the review;'

The final version, adopted yesterday, requests the president:

'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;'

In a phone conversation yesterday with Kluwer IP Law, EPO director external communications Jana Mittermaier and spokesperson Rainer Osterwalder stressed the importance of the fact that the sanctions system will be reviewed. But they said it would not change the position of the three SUEPO members. 'The Resolution is about future disciplinary actions only.'

However, a Kluwer IP Law source close to the process said that, although the Resolution only refers to the use of an external reviewer or arbitration or mediation in the future, AC members hope Battistelli will realize it would be wise to use such intermediaries to come to an agreement with the three SUEPO leaders as well.

According to Jana Mittermaier, the position of Benoît Battistelli as president of the EPO was not discussed at the AC meeting at all. She pointed out the AC welcomed the excellent results achieved by the Office in terms of production and productivity in 2015. She also stressed the Resolution calls for cooperation on all sides and for a constructive response from the staff representation and the trade unions, in particular to work rapidly to an agreement on Union recognition without preconditions.

She criticized the 'many rumours' about possible successors and about the [millions of euros](#) Battistelli would reportedly have demanded in exchange for stepping down.

The pressure on the EPO president is far from over, however. During the AC meeting a record number of about 2000 EPO workers, more than half of the Staff employed at the EPO in Munich, demonstrated outside, calling for his resignation. A staff survey, released yesterday by the SUEPO, shows people at the EPO are unhappier and more negative in many ways than in 2010 and 2013. Moreover, they gave Battistelli a zero percent confidence rating ([the Techrights blog published the results](#)).

A German TV-documentary recently showed what 'the climate of fear and repression', complained about by EPO workers, means in practice: demonstrators who turn their heads and don't want to be interviewed out of fear for sanctions, a doctor (also incognito) telling about workers who are ill but don't want to go on sick leave because they think they may be fired, an attorney who has to open EPO letters of his clients because they can't cope with the stress. And, tragically, the brother of EPO patent attorney Wolfgang Schiessl in the room where he found that Wolfgang had committed suicide. A disciplinary procedure that had been started against him was almost certainly a factor. 'I think it was the final straw,' says Klaus Schiessl. The program with English subtitles is available [at the Techrights blog](#).

Politicians in several countries have been asking questions or tried to intervene. In the Netherlands, Battistelli didn't make a good impression earlier this month by walking out angrily of a meeting with Economy Secretary Martijn van Dam, who had expressed his grave concerns about the working conditions at the EPO. Yesterday, Jana Mittermaier denied this happened. A source of Kluwer IP Law confirmed a report about this in the Dutch daily NRC Handelsblad, however.

In the meantime, an independent investigation into working conditions at the EPO ([which was planned by the AC in October 2015 in close cooperation with the president](#)), will start soon and should be finished by July. It will look at the results of the 'change management', the social system and compare the regulations and procedures at the EPO with other international organizations, among others.

Make sure you are always informed on the latest posts and subscribe to the [Kluwer Patent Blog newsletter!](#)