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Can two wrongs make a right at the EPO?

Samuel Adams (Müller-Boré & Partner) · Friday, April 26th, 2019

Not too long ago we learned of a [referral question](#) from Technical Board of Appeal 3.5.03 regarding the legal basis for holding oral proceedings before the Boards of Appeal in Haar rather than in Munich.

While it does not directly relate to the legal question in the referral, a relevant consideration was recently published in [CA/5/19](#), which relates to an additional lease for further staff, conference rooms and common areas for the EPO in Haar. The document notes that the building in Haar has been leased for a period of 15 years. In [CA/82/16](#), the total budgetary impact of the lease in Haar, including building adaptation costs, was provided as EUR 40.7 million. The further costs laid out in [CA/5/19](#) for an additional lease contract are EUR 4.8 million, for a total of EUR 45.5 million.

Whether the EPO could negotiate its way out of some of these costs in the event of a decision to relocate the Boards of Appeal back to Munich is an open question. In any case, additional costs would undoubtedly be involved in the relocation itself, to say nothing of headaches for staff at the EPO who would be tasked with implementing the move and could be more productively engaged in other duties.

Although this is not explicitly reflected in the EPC, it is incumbent upon the EPO to treat the funds it receives with respect and ensure that they are wisely spent. Shuffling the Boards of Appeal back and forth between Munich and Haar is reminiscent of the “traveling circus” endured by the EU in the migration of its parliament between Strasbourg and Brussels at a cost of [EUR 113.8 million per year](#); this “traveling circus” has been a sad international joke [for some time](#). Even assuming that the EPO leadership was wrong to move the Boards from Munich to Haar in the first place, the damage to the EPO’s reputation that would result from reversing the move seems to outweigh any doubts about the legal basis. Put another way, we probably do not need any further evidence to show that two wrongs do not make a right.

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