

Kluwer Patent Blog

The 10 most popular articles in 2019: EPO guidelines, EPO unrest, SPCs and UPC

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A post on the new guidelines for examination of the European Patent Office tops the list of most popular articles of the Kluwer Patent Blog in 2019. The enduring social problems at the EPO led to a series of well read blogposts as well; the leadership change at the organisation has unfortunately not led to the improvements many hoped EPO president António Campinos would bring.

[Top 10 changes to the 2019 EPO Guidelines for Examination](#) (October) is the title of the blogpost which is the number 1 in the yearly Top 10 of the Kluwer Patent Blog. The article, written by Laurence Lai of Simmons & Simmons, sets out in detail the most relevant changes in the EPO Guidelines, which came into force last November. They concern the technical character of artificial intelligence inventions, among others: “The EPO is (...) taking a step forwards towards recognising contributions that machine learning and efficient algorithms can make as patentable inventions.” Other changes concern novelty of subranges, clarity of parameters and of purposes in claims, there is a new section discussing what would be obvious to a skilled person in the field of biotech research and the section on the European regional phase of PCT applications has been extended.

Number two in the list is [The Haar in the Soup](#), an article published last March and discussing a referral to the Enlarged Board of Appeal which included the question whether the Board can hold oral proceedings in Haar (a town on the outskirts of Munich) without violating Article 116 EPC, if the appellant complains that this location is not in conformity with the EPC and requests that the oral proceedings be moved to Munich. As the author, Thorsten Bausch, wrote: “In my own view, this is quite an interesting and remarkable development. I have always queried why the Boards had to move out of the Isar building at all and never believed the official excuse that this might help to increase the appearance of the Boards’ independence.”

The issue was indeed closely linked to controversial measures introduced by former EPO president Benoît Battistelli to increase the independence of the Boards of Appeal, but according to many didn't help to achieve that at all.



As to the location of Haar, the Enlarged Board of Appeal explained last July that, in its view, Haar belonged to the greater Munich area and thus did not contradict the provisions of the EPC concerning the location of the EPO. Four cases which relate to the independence of the Boards of Appeal of the EPO, however, are pending before the German Federal Constitutional Court (BVerfG); a decision is expected in the upcoming months.

The **numbers three to six, eight and ten** are all blogposts which have to do with the functioning of the EPO as well. They demonstrate that António Campinos, who became the new EPO president in July 2018, has not been able or willing to end the social unrest at the organisation (among others because Battistelli-era managers are still in place and the Administrative Council doesn't seem willing or able to do anything either).

As the **number three** in the list with most popular articles, [EPO staff survey: concerns about quality, low confidence in management, lack of respect](#) (April), explains: “Only two thirds of EPO staff are proud to work at the European Patent Office. Four in ten say they face substantial obstacles to doing their job well. They have a very negative view of management effectiveness, with low confidence in senior management decisions, lack of clarity about direction, and insufficient contact between senior management and staff. Concerns are high about the Office's commitment to quality, and about its reputation and service focus. The majority of staff have autonomy to do their work, but far fewer think it is safe to speak up, or feel encouraged to contribute new ideas. (...) These are the most important conclusions of ‘Your voice, our future: The EPO Staff Engagement Survey’.”

Number four, [Es gibt nichts Gutes. Außer man tut es. Both within and outside the EPO.](#) (May) is a long blogpost on the 2023 Strategic Plan, quality, social dialogue, financial sustainability and the Boards of Appeal.

Two characteristic quotes: “While the new President displays much more openness to input from stakeholders (...) than his predecessor, actions would speak louder than words.”

And: “The latest news on this front is an [open letter](#) sent by the Central Bureau of the Staff Union of the EPO to the EPO President and the members of the Administrative Committee. This letter goes to show how difficult it is to resume a genuine dialogue without a minimum of trust-building actions to begin with, such as settling the previous administration's sanctions against several prominent SUEPO leaders. (...) I do not really know what exactly the SUEPO leaders are accused of and whether they did anything wrong. Considering the EPO's history during the Battistelli era, I have my doubts (based on verifiable facts, as the Corcoran story shows) that the severe sanctions against the SUEPO leaders were justified. But even if they were, would it not now be an excellent time for the new president to make peace with the staff union and settle the sanctions against its leaders? (...) Mr Campinos has now been in power for almost one year. He has proclaimed that he is interested in restoring the social dialogue in the EPO. Now would be a good time to put actions to words.”

Demonstrations

However, actions to restore confidence, end sanctions against former SUEPO leaders and enter into a real dialogue with staff (representatives) didn't come. A strike in May (**number five**: [Union calls for strike at the EPO, first time since president António Campinos took office](#)) was called off, but in October and November the first demonstrations under Campinos' presidency were held.

Number six (November): [Protest in The Hague against deteriorating working conditions at the European Patent Office](#): “Back to sad old days at the European Patent Office. Last Thursday, hundreds of EPO staff members protested outside the Portuguese Embassy in The Hague against the lack of justice and deteriorating working conditions at the EPO. They are also concerned about the way the management is pushing for reforms without proper consultation of staff representatives. (...) Why the management has chosen to contact all staff members individually has not been made clear, but it seems quite strange and inappropriate to do this without consulting – and a way to circumvent – official staff representatives. If this is the idea of social dialogue of president Campinos and the EPO management, it is very likely discontent among staff will not wither away any time soon and more demonstrations and strikes can be expected.”

The article [DE, UK, EPO: A Few Thoughts on Constitutional Matters](#) (October) touches on the structural problems and social conflicts at the EPO as well. It is of course worthwhile reading completely, but after all that’s been written above, one quote from the author of this **number eight** in the list seems sufficient: “let me add a few thoughts about the ‘constitutional order’ of the European Patent Organisation. The problem is, there is very little of it.” **Number ten** is the blogpost: [EPO: consultation on Strategic Plan 2023, social tensions remain](#) (January).

SPC

Number seven in our Top 10 chart is the article: [SPC manufacturing waiver adopted by European Parliament](#) (April). The authors are Alexa von Uexküll and Oswin Ridderbusch of Vossius & Partner and editors of a [Wolters Kluwer handbook on European SPCs](#). Their article summarizes the key features of the SPC manufacturing waiver as adopted by the European Parliament in April (it entered into force in July 2019). Among others, “The effects of supplementary protection certificates will be curtailed to no longer confer protection against the manufacturing of SPC-protected active ingredients and corresponding medicinal products for the purpose of (i) export to third countries outside the EU as well as (ii) stockpiling for day-1 entry to the EU market immediately after SPC expiry.”

Unified Patent Court and Unitary Patent

The Unitary Patent system and the Unified Patent Court, very hot topics in past years, pop up this time only in the number eight (see above) and **number nine** in the list. 2019 was a year of stagnation, intellectual debate and/or speculation mostly for the UP and UPC, as the Brexit failed to materialize in 2019 and the German BVerfG didn’t come with a decision on the constitutional complaint against ratification of the UPCA as filed by Dr. Ingeve Stjerna either. Both are seen as potential stumbling blocks for the Unitary Patent system.

Many followers of this blog were obviously interested in an announcement from the German Justice Ministry that [Germany will not ratify UPCA as long as consequences Brexit are not known](#), (August) In answer to questions of parliament the ministry wrote: “The issue of the withdrawal of the United Kingdom from the European Union (so-called Brexit) and its implications for European patent reform play an important role in the further implementation process of the Unified Patent Court Agreement. The real and legal implications of withdrawing must be examined with regard to the Agreement and agreed at European level. This opinion forming is currently not finalized, not least because significant factors of the expected exit are not yet known.”

It has been said many times in the past years, still: 2020 will likely be a very crucial year for the

Unitary Patent project. German Federal Constitutional Court judge Peter Huber, who is in charge of the UPC case, has said he expects a decision in this crucial case will be announced in the first quarter of this year. Moreover, the UK will leave the European Union at the end of this month, and negotiations will make clear whether this implies a Brexit from the Unitary Patent system as well or, as the UK government has said in the past, it will try to remain in this mixed system of international law and EU Regulations.

Last but not least: we do not have a list with top ten commenters, but we would like to thank you all for your contributions, discussions, additions, questions and criticism below the posts on this blog. They are a valuable contribution and we hope to see you all back in 2020. Happy New Year!

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