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DER TOD, DAS MUSS EIN WIENER SEIN – Will Georg Kreisler's Famous Song be the Writing on the Wall for the EPO's Boards of Appeal?

Thorsten Bausch (Hoffmann Eitle) · Monday, December 14th, 2015

Some musings about a song by Georg Kreisler and about the most recent plans of the President of the EPO to have the Boards of Appeal move to Vienna.

The unforgettable Austrian–American [Viennese-language](#) cabarettist, satirist, composer, and author [Georg Kreisler](#) (1922-2011) once wrote a famous song having the title „Death must be a Viennese, just like love must be a French (lady)“. May those among you, dear readers of this blog who understand German, first enjoy the beginning of this masterpiece in German:

Dort drobn auf der goldenen Himmelbastei
da sitzt unser Herrgott ganz munter
und trinkt a Glas Wein oder zwei oder drei
und schaut auf die Wienerstadt runter

Die Geister, die geistern bei ihm um anand'
ja er hat's in der Hand jederzeit
das Glück und das Unglück, den Tod und die Schand
und die Lieb' und den Zorn und den Neid

und den Geiz und die Gier und die Gall' und die Gicht
ja da gibt's eine sehr große Schar
wie die Geister dort ausschau'n, also das weiß ich nicht
aber eines ist mir völlig klar:

Der Tod, das muss ein Wiener sein,
genau wie die Liab a Französin.
Denn wer bringt dich pünktlich zur Himmelstür,
da hat nur a Wiener das Gspür dafür.
Der Tod, das muss ein Wiener sein,
nur er trifft den richtigen Ton:
Geh Schatzerl, geh Katzerl, ja was sperrst dich denn ein.
Der Tod muss a Weaner sein.

My feeble attempt at an English translation is here: [The Death must be a Viennese](#). It definitely sounds better in Viennese-German rhymes.

When reading news from the EPO (aka Eponia, see [this piece](#) from the invaluable IPKat blog) these days, the strangest associations pop up, sometimes even a Georg Kreisler song about Death being a Viennese and Love a French (lady). I am afraid that at least the latter statement could meanwhile be challenged. Why so? Here is the story:

Having apparently experienced too much resistance from the German government against moving the EPO Boards of Appeal to Berlin, President Battistelli, who is French (but unfortunately neither Love nor in love with the Boards of Appeal), now tries to exile them to Vienna. Indeed he has recently put such a request before the Administrative Council.

It is time to push back such ideas swiftly and forcefully. What the EPO and Europe need are truly independent, well-staffed Boards of Appeal who do their important job impartially and efficiently. In contrast thereto, the last thing the EPO needs is a President who seems to be almost obsessed by the idea that the Boards of Appeal must be pushed to leave Munich to some other place where he no longer has to see them when entering or leaving His Office, and who even seems to go as far as to refuse staffing the Boards of Appeal appropriately.

It is worth reading the statement by the Boards of Appeal on [IPKat](#) in full. I only reproduce the following bits here:

Greater autonomy is not achieved by moving the Boards to a place other than Munich, because it is the institutional separation, not the physical distance from the Office which is decisive. Moving the Boards to another city (e.g. Berlin or Vienna) runs the risk of losing a large number of highly experienced Board members. Such expertise is quite specific to the European patent system and cannot simply be replaced by increasing the recruitment of external candidates as suggested. Moreover, neither the EPC nor the Protocol on Centralisation provide a basis for moving the Boards of Appeal to Berlin or Vienna: Article 7 EPC allows only for sub-offices other than in Munich or The Hague, if they are for the purposes of “information and liaison”; the Protocol on Centralisation puts the sub-office of Berlin under the direction of the branch of The Hague.

and

Finally, the BoA are still faced with a stop on recruitment, even though compared to 2014 there has been no significant change in the number of appeals filed or in the number of withdrawals of appeals. As a result, the loss of manpower through retirements is negatively affecting the capacity of the Boards to deal with the incoming work not to mention reducing the back log.

In my opinion, Boards of Appeal are clearly right here. Even putting aside the incompatibility of the President’s proposal with Art 7 EPC, this proposal, if approved by the Administrative Committee and realized, would be a serious blow to the private lives of many members of the

Boards of Appeal and to Munich as one of the most important hubs of the patent community in Europe.

May I make a [modest counterproposal](#)? The EPO is currently building a fancy new office tower in Rijswijk. Why not move the President to a nice and brand new luxury suite on the top floor of this building and allow the Boards of Appeal some more rooms and, above all, significantly more staff members in the Isar building? Thereby independence of the Boards of Appeal could be secured (if it is at all supported by some physical distance between them and the President, as he seems to believe) and, most importantly, they can at least begin to reduce their backlog of cases. And if that is not enough and the President still needs rooms in Munich after his move to Rijswijk to exercise whatever official function, the EPO could probably also afford renting a nice small *palais* in Munich for a few years. For example, I could very well imagine that a few representative rooms are still to be had in Nymphenburg Castle. I would go for them, Mr. President, if there is no more sensible way to restore peace within the EPO (which I strongly advocate in the first place). But please don't bother the Boards of Appeal! We need them doing their job in Munich. And we need motivated rather than [intimidated or irritated examiners](#) as well!

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