

Kluwer Patent Blog

Top 10 Posts on the Kluwer Patent Blog in 2015

Kluwer Patent blogger · Tuesday, January 5th, 2016

Early January people often reflect on the past year. A good moment to give you an overview of the 10 most popular posts on the Kluwer Patent Blog in 2015. Going through the list, it is immediately clear our readers are closely following the developments and conflicts at the European Patent Office. The top two blogposts, dating from March and December respectively, are both critical reflections on the EPO management.

And what else is in the top ten? Several articles on EPO Board of Appeal decisions concerning aspects of ‘clarity’, added matter in Germany on the one hand and at the EPO on the other hand, as well as two reports concerning the upcoming Unitary Patent system. Please check out the list and see if you’ve missed anything!

1) ‘Behavior Benoît Battistelli is bad for the EPO’s reputation’

‘Whoever is right in the many social conflicts at the EPO, as president of that organization you have to find a way to tackle these issues, instead of turning your back to the unions, ignoring court decisions, prohibiting strikes and threatening with disciplinary measures against people who complain.’



2) 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?

‘Having apparently experienced too much resistance from the German government against moving

the EPO Boards of Appeal to Berlin, President Battistelli, who is French (...), now tries to exile them to Vienna.'

3) Finally, More Clarity from the Boards of Appeal of the EPO

'All in all, a very reasonable and well-reasoned decision that will (hopefully) make an end to the practice of some EPO examiners to reject all claims with optional, preferred features from the outset, owing to an alleged contravention of the formal requirements of the EPC.'

4) T 2130/11 or how to escape the added matter – clarity trap for disclaimers

'(...) a disclaimer removing more than strictly necessary to restore novelty would not be in contradiction with the spirit of G 1/03 if it was required to satisfy Article 84 EPC and it did not lead to an arbitrary reshaping of the claims.'

5) The decision „Schleifprodukt“ of the German Federal Court of Justice – a step towards harmonisation with the EPO practice?

'The court thus carried out the test for the admissibility of claim amendments by assessing whether the feature combination of the amended claim in its entirety represents a technical teaching which is identifiable from the original application as being suitable for achieving the effects of the invention. This brings the German practice closer to the very strict approach of the EPO Boards of Appeal.'

6) How attractive will the European Patent with Unitary Effect (EP-UE) be for Applicants?

'Whether any of these proposals, if implemented, will make the EP-UE attractive for the majority of its potential users, remains to be seen. At least users might now have a better feeling on where this is going and can start planning on a more rational basis.'

7) Will the “Inescapable Trap” of Article 123 (2) and (3) EPC Catch German Parts of European Patents?

'Even though the Federal Court of Justice rejected the EPO case law on Article 123 (2) and (3) EPC with regard to German national patents, it remains to be seen whether the German parts of European patents will get caught in the “inescapable trap” of Article 123 (2) and (3) EPC.'

8) EPO's Enlarged Board clears up clarity

'...granted claims, including combinations of independent claims and their proper dependent claims, cannot be formally challenged for a lack of clarity. Rather, a formal objection of lack of clarity can only be made when the substance of a granted claim, dependent or independent, is changed by an amendment to that claim, and then only to the extent that the lack of clarity is introduced by the amendment.'

9) Can Summer Heat Melt Polymer Compositions?

'Viewed in a broader context, this pair of decisions may show the difficulties with which a court may be faced when confronted with the legal task of interpreting technical terms in a patent, particularly if the court (as the FCJ in this case) has no own technical expertise and is no longer supported by a technical expert, as it was under the old nullity procedure in Germany.'

10) ‘Differences between national law and Unified Patent Court law could be major problem’

'...my initial thought was that national law and UPC law are quite the same and that a discussion about divergences will be merely theoretical. However, the more I discuss this issue with patent lawyers in other countries, the more I learn about differences, especially in the field of the twelve

limitations on the effect of a patent, mentioned in Article 27 UPC Agreement.'

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