

Kluwer Patent Blog

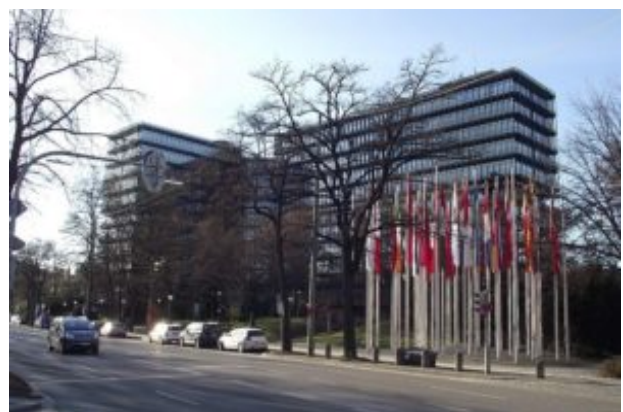
Top 10 of most popular articles in 2022: less UPC than expected, much on EPO social climate

Kluwer Patent blogger · Monday, January 9th, 2023

An outburst of anger of a president and his re-election, social tensions, industrial actions: for anyone familiar with the world of patents it will be clear that all this refers to the European Patent Office, which drew a lot of attention on the Kluwer Patent Blog last year, even more than the biggest change in the European patent landscape in decades, the upcoming Unitary Patent system. Below the overview of the ten most read articles of 2022.

Number 10: [Demonstration EPO staff during meeting about re-election president Campinos](#). The articles about the European Patent Office were published mostly in the first half year, preceding the June meeting of the Administrative Council, where the re-election of president António Campinos for a second five-year term was on the agenda. A quote from the article that ended on the tenth position: ‘According to an [announcement](#) distributed among Suepo members, Campinos was elected and mandated by the Administrative Council in 2018 to restore social dialogue at the EPO after the [harsh years of president Benoit Battistelli](#), but failed to do so. ‘EPO staff hoped the new President elect would put an end to the breaches of fundamental rights’, but is instead ‘protecting Mr Battistelli’s inheritance as long as possible and at all costs’.’

Two weeks before the June meeting, the **number 9** article was published on the blog: [Petition for ministerial conference on European Patent Organisation](#). The lack of action and control by the Administrative Council (AC) of the EPO management has long been a complaint of staff members. In the petition, directed at the AC, the EPO’s trade union SUEPO points out that according to Article 4a of the European Patent Convention, a conference of ministers of the Contracting States responsible for patent



matters is due to be held at least every five years, but since 2000, when the article was introduced, such conference has never been held. A quote from the article and petition: ‘It appears that the EPO is being more and more transformed into a profit center, which is – in our view – inappropriate for a public service with quasi-judicial bodies responsible for granting monopoly rights by sovereign acts, which have a wide impact on their owners, their competitors and on the public. (...) Backlogs in examination and search are increasing (...). At the same time the EPO plans to reduce the staffing level in core tasks even further.’

EU's SPC waiver provisions analysed

The post [Analysing the use of the SPC waiver provisions and its reach outside the EU](#) was last year's **number 8**. The post focuses on the use of the SPC waiver Regulation (EU) 2019/933 by generic manufacturers, and on the reach of its provisions outside of the EU. The article concludes the 'use of the SPC waiver within the EU is objectively and gradually growing, and companies have started filing the mandatory notifications at the national offices (and supposedly to the SPC owners as well, as required). Some countries' offices are still not fully prepared for handling the receipt of these notifications and no court decisions have yet been rendered on this matter. It is too early to say whether these provisions will become widely used or not – the EU Commission will carry out an official evaluation of the SPC waiver provisions no later than in July 2024 (...). Until then, we may see further countries outside of the EU/EEA adopting similar provisions in their national patent laws.'



Back to the EPO for **number 7**: [ILOAT sees more violations of staff rights at European Patent Office](#). The intro of this blogpost: 'The EPO has violated the right of free association by imposing restrictions on staff's choice of members for the Appeals Committee and other statutory bodies of the EPO. The Administrative Tribunal of the International Labour Organisation ruled this in a case which was published on 6 July 2022. In another case it judged that restrictions put on the use of the internal mail system in 2013 were unlawful and must be quashed.' The article is a sad reminder that breaches of the rights of staff have a long history, dating back mostly to the era of former EPO

president Benoit Battistelli. Over the last years there have been many cases in which the ILOAT, the International Labor Organisation's Administrative Tribunal ruled that fundamental rights had been brached at the EPO.

And more EPO at **number 6**: [New Melodies at the EPO as of 1.4.2022?](#), at January article about a reshuffle of the EPO management structure. 'Whether this change in name and organizational structure will really signalize a difference in the EPO's approach towards its staff and whether it may even forebode a change in the responsible manager ("Chief") of this entity remains to be seen. The current Chief Corporate Policies Officer, Mme. Elodie Bergot, who used to be the EPO's PD for Human Resources under President Battistelli, has not exactly acquired a reputation in the EPO of standing for social harmony (...) and has at times even shown weaknesses in observing fundamental rights of employees such as the right to strike (...). while some scepticism is always appropriate (...) and there is always the possibility that these changes are just cosmetic (or even Orwellian) in nature, one might at least cautiously hope that these organizational changes are meant to signalize a bit of a change to the better.'

Unitary Patent system

At **number 4 and 5** we find the most popular of a total of 32 articles this blog dedicated to an issue that in another situation would probably have drawn by far most interest from our readers: the revolutionary change of the European patent landscape constituted by the Unitary Patent and the Unified Patent Court. The titles: [UPC: four reasons on why the PPA is not legally in force \(number 4\)](#), followed by [UPC: A reply to those who, with the help of a crystal ball, have](#)

questioned the arguments as to why the PPA is not legally in force (**number 5**). In his first article, Miquel Montaña gives five reasons that the PPA is not *legally* in force, ending with: ‘this author finds it fascinating that the patent community is entertaining itself discussing the nitty gritty technicalities (...) of this project when, in reality, the big picture is still entirely up in the air.’

The fact that amending the UPCA and related agreements may take time and that this would further delay the coming into force of this long-awaited project, does not justify the lack of respect for the rule of law and for the democratic principle. Neither the eagerness to see the UPC in place without further delays, nor the likelihood or unlikelihood of being caught, justify the blatant disrespect for the fundamental principles on which the European Union is supposed to be founded.’

The blogpost led to 35 comments from many sides, a discussion which was continued with Miquel Montaña’s next article and 27 more comments. His central point, whether the PPA has legally entered into force, will probably be decided upon in one way or another once the Unified Patent Court starts functioning later this year and cases start coming in.

Back to the EPO...

Number 3 and 1, let’s treat these together as well. They are, once more, about the social unrest at the EPO. **Number 1** for a low point at the organization: Deepening social tensions and an ‘extremely hostile’ president at the EPO and **number 3**: Silence at the EPO after angry outburst president António Campinos. Both articles were published in May, in a period of industrial actions.



A quote from the first one: ‘Social tensions at the European Patent Office seem to have reached new lows in a meeting last week between an ‘extremely hostile’ EPO president Antonio Campinos and staff representatives. In a letter about the event which was sent to staff members last week, the Central Staff Committee (CSC) wrote the atmosphere at a General Consultative Committee (GCC) meeting on 26 April was ‘abysmal. The President used foul language throughout, using expletives in various languages, and insulted most of the speakers. The CSC members were not just interrupted but prevented from speaking multiple times when the content was not complimentary of the President’s policies or when the way of presenting it did not suit him.’

The **number 3** was a follow up article, including among others the EPO’s reaction: ‘The latest General Consultative Committee (GCC) meeting took place on Tuesday 26 April. Unfortunately, the meeting was less constructive than expected, with some issues creating tension at times. Three topics, previously discussed productively in joint working groups or previous exchanges, were presented to the GCC.’ It is unfortunate that the EPO seems to prefer silence to transparency when it comes to what’s happening at the organization. Requests from Kluwer IP Law for a reaction or an interview have repeatedly been declined.

Guidelines for examination

Let’s end this overview of the best read articles of the Kluwer Patent Blog on a slightly more

positive note with the **number 2**: the [Top 4 changes to the 2022 EPO Guidelines for Examination](#). This blogpost shows that, at least in the field of description amendments, ‘the EPO have been receptive to users’ backlash. The EPO noted that many of the responses in the [consultation](#) on the 2021 Guidelines were on this topic. As a result, the EPO have engaged with professional associations to seek feedback, and taken on board proposed wording for the requirements from the SACEPO Working Party on Guidelines.’

Other subjects in this thorough article are the guidelines on establishing a technical effect of a simulation, partial priority considerations and the inventors’ location, among others.

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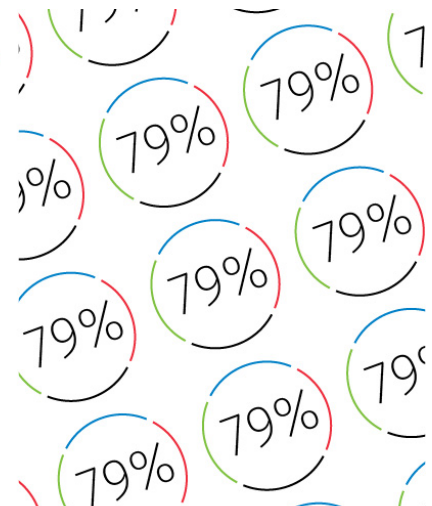
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