

23.12.2015

Another fine mess: EPO President loses restraint on Administrative Council for Court Reform

The reform which is intended to lead to greater independence of the Boards of Appeal of the European Patent Office (EPO) is encountering further delays. According to a number of concurring reports from sources close to the Munich-based patent authority, as of last week the Administrative Council has evidently been pursuing a new reform proposal. It seems that the supervisory body of the Office has refused to give its approval to the original reform package put forward by Benoît Battistelli. Up to now, the Council has been seen as the power base for the beleaguered EPO President.



Benoît Battistelli

In March Battistelli had proposed to detach the Boards of Appeal, as the Office's own in-house court is known, more significantly away from the Court. The function of the Boards of Appeal is to examine oppositions raised against the issue of European patent, but it is still subordinate to the Office itself. The reform was needed, following strident criticism about its close integration into the Office, which had accordingly given rise to doubts about its independence.

Battistelli wants to detach the Boards of Appeal structurally from the Office, and make them subordinate to the Administrative Council. The intention is that they should acquire their own President, who takes on the essential administrative functions, and is the superior authority in respect of disciplinary proceedings with regard to the members of the Boards of Appeal. In future, he is also intended to report to the newly-created Board of Appeal Committee (BOAC). The EPO President is nevertheless still going to retain his influence on the budget for the court.

After a year of consultations and a user survey, it looks as if Battistelli has failed to push through his proposal. Information provided to JUVE indicates that last week, at the last meeting of the Administrative Council for this year, a vote was held on the reform. The majority required among the 38 Member States of the European Patent Organization was not forthcoming, according to sources close to the Boards of Appeal. The EPO had no comment to make in response to an enquiry from JUVE. In a press release issued yesterday by the Administrative Council, however, the word was that: "The Council has conducted an exchange of views on the planned structural reform of the EPO Boards of Appeal. It has

instructed its Presidium to draw up guidelines on the basis of which the President of the Office will be able to prepare concrete proposals. The intention is, as far as possible, for these to be submitted to the Council at its meeting in March 2016 for a decision to be taken.” This means that the Administrative Council has taken the lead role in the reform process away from Battistelli. JUVE has learned from reliable sources that resistance on the Administrative Council was forthcoming in particular from the German, Dutch, and Swiss delegations.

The information provided to JUVE indicates that instead of this there is now a new reform proposal on the table. This proposal is said to be aimed at even greater independence, but more precise details have not been forthcoming to JUVE. A number of reform proposals, including some from the Boards of Appeal themselves, have in the past sought to achieve a total detachment of the court, following the model of the Federal German Patent Court.

Pressure growing for Judge Appointment

It seems that things are also on the move with regard to the issue of reappointment of members of the Boards of Appeal, as the EPO judges are officially known. The Administrative Council has given notice of the reappointment of a member of the Enlarged Board of Appeal, as well as of several members of the Boards of Appeal. Appointments are for five years. The process has recently ground to a halt. There are 23 vacancies for judges on the Boards of Appeal, of whom three are presiding judges. The EPO President has the right to submit proposals in the matter of the new appointments. Critics have always accused him of delaying in making the appointments in order to trim the Boards of Appeal down to greater efficiency.

Information provided to JUVE indicated that the Administrative Council has called on Battistelli to speed up the new appointments. This fits with the fact that the EPO President stated, in an interview published yesterday with the US magazine ‘Managing IP’, that he is apparently prepared to deal with this issue early in 2016. But he also said that he could see no urgent necessity in the new appointments for the positions of judges.

As far as is known, the future location of the Boards of Appeal is, at the moment, still a secondary concern. Most recently, Berlin, Vienna, and another building in Munich have been under discussion. Legal experts take the view that a move to Vienna would be incompatible with the European Patent Convention, which specifies Munich and The Hague as being the seats of the EPO. At present, Vienna is home only to an information centre of the Office, as an outside branch unit. Berlin, conversely, seems somewhat less practicable. Battistelli also told ‘Managing IP’ that in his view it was less the city that was determinant, than the location being outside the EPO building, in order to obtain a better appraisal of the independence of the Boards of Appeal. (Christina Schulze, Mathieu Klos)