

Open Letter

to the
President of the European Patent Office
Mr Benoît Battistelli
ISAR – Room 1081
Munich

Europäisches Patentamt
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Zentraler Personalausschuss

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Authentication of communications, handwritten alterations in the authentic text for the grant or the maintenance of patents, and the text forming the basis for the publication of the patent specification

Dear Mr President,

We are addressing you in your function as responsible for the functioning of the EPO, including the adoption of internal administrative instructions according to Article 10(2)(a) EPC. Staff entrusted with duties falling to the Examining and Opposition Divisions recently reported to the CSC serious concerns regarding

- the authentication of automatically produced documents used to inform applicants in the context of Rule 71(3) EPC (“automatic IGRAs”),
- the treatment of handwritten alterations in the sense of Rule 49(12) EPC in the authentic text forming the basis for the decisions to grant or to maintain European patents.

Whereas the Divisions or Boards are responsible for the definition of the authentic text forming the basis for the decision to grant or to maintain a European patent (Articles 97(1), 101(3), 111 EPC), the EPO shall publish the specification of the European patent (Articles 98, 103 EPC) and the President shall determine the form of the publication (Rules 73(2) and 87 EPC).

In cases T 1635/10 and T 0918/09, the authentic texts forming the basis for the decisions to maintain respectively to grant had been defined by the respective Boards of Appeal, in both cases including handwritten alterations.

The CSC fully shares the Board's analysis of the first instance's “practice on handwritten amendments” (see point 5 of the Reasons for the Decision in case T 1635/10) as to the required check by the competent department and the effects on procedural economy, because technical and legal difficulties in the sense of Rule 11(3) EPC are involved.

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In case T 0918/09, however, the members of the competent Examining Division were not informed about the amended text filed by the applicant after remittal. Instead, the EPO sent an alleged "Communication under Rule 71(3) EPC" bearing authentications of the Examining Division's members and wrongly conveying to the applicant the impression that the enclosed documents were checked by the Examining Division as to be "[a]ccording to the decision of the board of appeal dated 25-09-2013".

The CSC does not regard the administration's impersonation as acceptable. It must be clear to an applicant and the public who bears the responsibility for each and every official communication. Formalities officers should not be entrusted with the execution of duties involving technical or legal difficulties without due supervision by the responsible department, and members of the departments should not publicly bear the responsibility for acts in which they were not at all involved.

The CSC furthermore observes the Boards' standing case law that the documents forming the basis for the publication of the patent specification can be altered at any time, i.e. not requiring a correction pursuant to Rules 139 or 140 EPC, as long as the authentic text forming the basis for the decision to grant is not thereby amended, see e.g. point 1.2 of the Reasons for the Decision in case T 1635/10). The CSC thus cannot see any reason to shift parts of the publication procedure, which falls into the responsibility of the administration, into the examination procedure thereby merely involving additional technical and legal difficulties.

The CSC therefore regards the practice of DG 1 and DG 2 on handwritten amendments and on unclear authentications (to say the least) as detrimental to the functioning of the EPO. The CSC thus also doubts that the practice is consistent with Article 10(2) EPC and Rule 11(3) EPC, and thus doubts its legitimacy.

You are therefore asked to further analyse the legal situation and to correct the current practice, in order to prevent any damage to the reputation of the EPO.

Yours sincerely,



Joachim Michels
On behalf of the CSC

It would help us a lot if, whenever addressing the (Chairman of) the Central Staff Committee in emails or meeting-notices, you could copy the note/invitation also to CentralSTCOM@epo.org. Thank you very much in advance for your assistance