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To Members of the Board of Auditors

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## Status and Functioning of the Appeals Process

Dear Members of the Board of Auditors,

Since some years the staff has experienced problems with regard to the functioning of justice mechanisms within the EPO. In recent years these problems have increased. The current situation is that backlogs are such that access to court in a reasonable time can no longer be expected. There are also problems with regard to access to justice for other parties such as job applicants, external/contract staff, and staff associations such as SUEPO. These problems have the consequence that national courts may conclude that since no effective legal protection is provided, and consequently the immunity of the EPO must be set aside. This situation is a significant risk to the reputation of the EPO and also could have a considerable financial impact.

A further problem with regard to appeals is the approach EPO. With a limited number of exceptions, the EPO has a very aggressive line on appeals seeking to "win" the case rather than a more conciliatory approach which aims at identifying and resolving the underlying problems. This strategy probably has a significant cost but detailed data is not available.

We are also informed that the backlog of internal appeals have exceeded 700 cases. We have understood that rather than taking measures to increase the capacity of the appeal system, the resources available have been reduced 2013. At current expected processing rates of less than 80 cases per year, a complainant cannot expect to receive a final decision in less than 8 years. In addition, although the ILOAT has removed the 10 case per year cap on EPO cases, average pendency at the Tribunal remains in excess of 3 years. The result is that staff filing an appeal must expect to experience delays in excess of 10 years.

Current data on the delays is somewhat less than 10 years. This is due to the fact that the overloading of the appeals system has increased dramatically in recent years, but the cases which are currently published are, older cases which have been subject to less delay.

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There is also very little data published on the status and functioning of the newly introduced management review process

In order to assess the true scope of the problem and the risks to the EPO more detailed information is required. The Staff Committee believes that the following information would suffice to provide a good overview of the current problems and expected future problems. We are certain that this information is readily available to the EPO.

**Management Review Process**

The number of requests filed by year

The number of requests resulting in settled cases

The max / min and average processing time for requests by year

**Internal Appeal Process:**

The number of cases filed by year

The number of cases treated by year

The number of pending cases by year

The number of positive opinions by year (unanimous and majority)

The number of positive opinions followed by the President by year

The average cost per case and by year of the internal appeal process

The cost of awards against the EPO by year

**The ILOAT process**

The number of EPO pending cases by year

The number of EPO cases filed by year

The number of EPO cases concluded by year

The number of EPO judgements in favour of the complainants by year

The average cost per case and by year of the ILOAT process

The cost of awards against the EPO by year

A more detailed [report](#) on the current problems is available from the SUEPO Website. The validity of the data on the status of the EPO Justice system is the subject of ongoing dispute. The EPO has informed the Administrative Council that it is addressing the problems, and that improvement is to be expected. The Staff Committee is convinced that this is not the case and a significant worsening is inevitable. The situation for staff is serious and an effective denial of justice is strongly perceived by staff.

In the Presidents Communiqué No. 14 dated 10.09.2012, the EPO claimed that the reform of the Internal Appeal process would involve moving from a culture of litigation to one of dialogue, thus reducing the number of appeals. In the view of staff this has not taken place and the delays in access to justice have become much worse since the introduction of the Reform.

Given that all the data identified above is available to the EPO Administration and the significant risks to the EPO of the ongoing failure to effectively address these issues, the Staff Committee believes that this matter is appropriate for more detailed examination by the BoAs. Such an independent analysis will provide the Administrative Council, the Staff and the EPO with a much clearer assessment of the problems and a better basis for discussion on how to resolve them.

We therefore request that this matter is addressed by the BoA.

We remain at your disposal in case of any need for clarification.

Respectfully,



Joachim Michel

Chairman Central Staff Committee