

A new EPO president emerges from the fog

Benoît Battistelli will be the next president of the European Patent Office. But the way in which he was chosen lacked transparency and may make what is bound to be a tough job even harder

Back in May 2009, the *IAM* blog broke the news that Alison Brimelow had decided not to seek a further term as president of the European Patent Office (EPO). On the final day of February 2010, Brimelow's successor was chosen – Benoît Battistelli, the current head of France's *Institut National de la Propriété Industrielle* (INPI) and a recent chairman of the Administrative Council of the European Patent Organisation.

Battistelli got the job after having secured the necessary 75% of votes from organisation member states following a series of ballots that had begun six months earlier. Along the way, Battistelli saw off challenges from three other big hitters of the European patent scene: Roland Grossenbacher, the director of the Swiss Federal Institute of Intellectual Property; Susanne Ås Sivborg, president of the Swedish Patent Office; and Jesper Kongstad, director general of the Danish Patent and Trademark Office.

One of the striking aspects of the election process was its complete lack of transparency. Although all four candidates did go on the record about why they were standing and what their priorities would be as EPO president, at no stage was there any news about which countries were voting for which person and why. Even when Battistelli was elected there was no statement from the Administrative Council that explained the reasons for giving

him the job. In a Europe where patents are becoming politically and economically more important, and the role of the EPO is being subjected to greater scrutiny than ever before, this was a mistake. It is one that will leave many wondering what behind the scenes deals were done before Battistelli emerged triumphant; and even whether his suitability for the position was the principle reason for him getting it.

Compared to the way in which David Kappos was chosen to lead the US Patent and Trademark Office the whole process in Europe was Byzantine and seemed almost designed to cause confusion. Kappos was nominated by the Obama administration, which made clear in public exactly why he had been chosen. Kappos then had to appear before the US Senate Judiciary Committee to answer questions from its members before they confirmed him in place. The process has given the new USPTO director real authority to do the very tough job that is required of him.

By contrast, the lack of information about the EPO presidential election damages not only the standing of the office itself, but could also put Battistelli at a potential disadvantage when he takes charge in July. Those who do not like what he says and does have been handed a very useful weapon with which to challenge his authority. Battistelli will hope that it will not come to that, but it is no secret that both Brimelow and her predecessor Alain Pompidou had major political problems, not only with the Administrative Council itself,

but also with sections of the office's examiner corps.

That said, there was also one very positive aspect to the voting process. Some eyebrows were raised when Battistelli decided to stand in the first place as, in Pompidou France had supplied a president of the EPO in the very recent past. In the general way of European decision making, countries are supposed to take their turn for the top posts. The fact that France did not could actually end up being significant as it removes an obstacle in the way of the best qualified candidate becoming EPO president in future. And for those that believe the EPO has an essential role in the development of Europe's patent law, practice and policy that has to be good news.

And, however he got there, the fact is that Battistelli did finally receive 75% of the vote. It may have taken a bit of time, but that is a healthy mandate. He will head up an office that most observers consider issues the highest quality patents of any of the world's major granting authorities. However, it is also one that is having to deal with significant finance and backlog problems; as well as labour unions that are unhappy at what they see as detrimental changes to staff working terms and conditions, and have called their members out on strike on several recent occasions to emphasise this point. Then there are controversial rule changes that put more onus on applicants to support their applications and which, some feel, will lead to a decline in application numbers in the future.

In dealing with these and other issues, Battistelli has the inestimable advantage of having been on the scene for a number



Benoît Battistelli, head of France's *Institut National de la Propriété Industrielle* (INPI) and the next president of the European Patent Office

of years now. He took charge of INPI in 2004 and has been a prominent member of the Administrative Council for a number of years too. There are few in Europe who know better how patent politics works across the continent. This means that, like Kappos, he will be able to hit the ground running, while little that he comes up against will surprise him.

As head of the French IP office Battistelli was a key player in securing a commitment from President Sarkozy to reverse Jacques Chirac's opposition to France's ratification of the London Agreement on Translations. This paved the way for its enactment in 2008. It is noteworthy that Michel Barnier, the new EU commissioner for Europe's Internal Market DG, is also French. Part of Barnier's area of responsibility is the proposed EU patent and a single patent court. While it may be a fringe benefit that two of Europe's big patent protagonists are from the same country, it is not going to harm the prospects of a deal on a new patent regime for Europe finally being done; and it does mean that French claims for leadership on this issue are now hard to ignore. ■