

**EPO FLIER No. 17**

The EPO-FLIER wants to provide staff with uncensored, independent information at times of social conflict.

**Lies, damned lies and EPO management statements**

There is incredulity everywhere when you ask people's opinions on the "Statement from the Management" that appeared on the EPO website last week. For those who missed it, just google 'No, the EPO is not violating fundamental human rights' or go to IPKat<sup>1</sup> and enjoy the read. But be warned, it may make you cry, either with laughter at the ridiculousness of the text, or with pity at the patheticness of it.

In terms of its tone, this has to be the lowest the Office has ever sunk in its communiqués to the outside world. Written in a language that is both arrogant and childish at the same time, it implicitly accuses Dutch judges of incompetence. It then claims that a German court ruled that the EPO was respecting human rights, which – as far as we know - no German court has ever done: Battistelli's highest ranked legal expert, VP5 Raimund Lutz<sup>2</sup> recently said that the German court had neither entered into the substance NOR taken a decision on this matter<sup>3</sup>. But that did not hinder him from signing the communiqué stating just the opposite.

Going back a couple of weeks, Communiqué No. 69<sup>4</sup> (announcing that the Office would not execute the Dutch judgment) was more shocking than previous missives because it showed just how far from reality Battistelli has slipped – and it revealed his true face, full of disrespect, disdain even, for his fellow humans, for the principles upon which post-War Europe was built, and for the law. Despite this, he did not actually say the judgment was wrong, focusing more on his refusal to execute it. The new announcement, on the other hand, was public denial, this time by the entire Management Committee (MAC), of any breach of fundamental human rights at the EPO. It is noteworthy that the statement (the first from the entire MAC, we believe, since Battistelli took power) came exactly a week before the next Council meeting. What will Battistelli tell the delegations this time, and how long will the closed (non-public) session last?

**Growing signs of panic**

The pressure is clearly growing on Battistelli and his followers. They are making mistakes more often, and those mistakes are more damaging than before. Is it a coincidence that Flier No. 16 ("Five reasons ...") came out just hours before this absurd act from the EPO's management? We have received a lot of compliments for it, so maybe it was one element amid all the criticism they face that drove them to take such panic measures.

In an interview in a Dutch newspaper<sup>5</sup>, published on 21 March, Battistelli struggles to give credible answers to the journalist's well-worded questions. He clumsily blames

1 <http://ipkitten.blogspot.co.uk/2015/03/the-epo-breaks-silence-to-say-no-epo-is.html>

2 [https://de.wikipedia.org/wiki/Raimund\\_Lutz](https://de.wikipedia.org/wiki/Raimund_Lutz)

3 <http://ipkitten.blogspot.co.uk/2015/03/the-epo-breaks-silence-to-say-no-epo-is.html> (18.03.2015 18:56:00 GMT)

4 [http://ipkitten.blogspot.co.at/2015/02/the-epo-privileged-and-immune-says\\_24.html](http://ipkitten.blogspot.co.at/2015/02/the-epo-privileged-and-immune-says_24.html)

5 'Ik ben geen zonnekoning', NRC Handelsblad, 21.03.2015

the staff union: "... the staff union SUEPO runs a systematic counter campaign, with unjust information, via media, politicians and now even judges." ("Maar de vakbond SUEPO voert een systematische tegencampagne, met onjuiste informatie, via media, politici en nu ook rechters"). His position on the Dutch judgment is as follows: "The Court in The Hague committed a legal mistake by not recognising our immunity. Then the court interpreted the facts wrongly." ("Het Hof in Den Haag heeft een juridische vergissing begaan door onze immuniteit niet te erkennen. Daarnaast heeft het Hof de feiten die er zijn onjuist geïnterpreteerd."). We leave it to our readers to draw their own conclusions on this.

## Time for a change

It must now be clear to everyone, including the delegations to the Administrative Council, that the current situation cannot continue. The EPO is becoming a laughing stock. We know who is to blame for this, but the damage affects the entire European patent system and the values upon which it was built.

Patent attorney Wouter Pors<sup>6</sup> makes it clear that Battistelli has failed as a manager: "Whoever is right in the many social conflicts at the EPO, as president of that organization you have to find a way to tackle these issues, instead of turning your back to the unions, ignoring court decisions, prohibiting strikes and threatening with disciplinary measures against people who complain. You have to be able to go into a dialogue." We say it is too late for dialogue with Battistelli – he has irretrievably lost the trust of the staff, and everyone else. He must go, and so must those who have helped him, so that we can start the hard work of restoring the European Patent Organisation to the great institution it used to be.

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Here are a few examples of what others are saying, taken from the IPKat blog<sup>1</sup>:

*"EPO management is making a big gamble. If the reforms of the working conditions are declared invalid in 5-10 years, the mess will be rather substantial. But before that time national constitutional courts might already have blown the European patent system to pieces by ruling that the boards of appeal, or what's left of them, are not a court. Is the AC at all aware of these risks?"*  
(18.03.2015, 22:39:00 GMT)

*"There is still time to avert the implosion of the EPC based system - but it would require that the AC accepts its responsibilities and takes the necessary steps to exercise supervision of the Office as required by Art. 4 EPC.*

*More specifically, it must:*

- stop now to rubberstamp the president's proposals
- demand full transparency for all financial matters, such as, for example:
  - >> the president's remuneration
  - >> the financing of the new building in The Hague
  - >> all "projects" with the member states financed by the EPO
  - >> all the president's travel and hospitality expenses

*It seems late in the day, but with swift and decisive action the AC could halt the destruction and even restore some semblance of integrity to the Office. ...* (19.03.2015, 00:23:00 GMT)

*"And so the damaging war of words continues. The user community is also being damaged by this "fracas" and loss of reputation. Applicants look on in dismay (and even disgust) at these goings-on. The EPO is expensive and our business leaders rightly ask "why bother with this system?". I hope that the likes of CIPA and the equivalent bodies across Europe respond to this statement from the EPO management. They should also be lobbying their national representatives on the AC to educate them about the truth behind the statement, if they're not doing so already. Everyone in IP is being damaged by this issue, not just the staff at the Office..."* (19.03.2015, 11:30:00 GMT)

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<http://kluwerpatentblog.com/2015/03/20/behavior-benoit-battistelli-is-bad-for-the-epos-reputation/>