



Ortssektion München . Local Section Munich . Section locale de Munich

31.10.2017

su17065mp – 0.2.1/0.2.2/0.3.2

Theses for the EPO – Following Luther's example

1. Since our legislators state in the European Patent Convention that “European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application” (Article 52 EPC), they clearly wanted the Office to examine all patent applications.
2. This examination cannot be understood as a purely administrative act, i.e. as registration and payment.
3. The examination also does not relate exclusively to formalities, since such an action would not be complete if it were not also to lead to rejection on grounds of material errors.
4. It is legitimate to demand an effective and efficient performance of tasks by the employees of the Office.
5. Efficiency is a framework condition, and does not have any primacy over the material examination.
6. A system of assessment which is aimed primarily at productivity, and each year demands higher figures creates false incentives and leads to excessive pressure of work.
7. Such pressure at work may indeed lead to higher productivity, but also to superficiality and to errors, and therefore not to higher efficiency.
8. Patents which are issued with errors are a wrongful impediment to competition.
9. Patents which are issued with errors are a welcome recourse for what are referred to as patent trolls.
10. Patents which are issued with errors under the auspices of the EPO cause damage to the economy of Europe, in particular to small and medium-sized enterprises.
11. Accordingly, the material and formal examination, as provided for in the EPC, remains the core task of the Office and must not be neglected simply in order to increase the productivity and the income of the EPO and its contracting states.
12. The budget of the EPO serves primarily to accomplish this core task.
13. The amounts of the fees charged by the EPO are to be scaled in such a way that the income derived from them is sufficient for the budget of the organization to be balanced (Art. 40 EPC).
14. Under pressure on the part of the Office management, in the past few years the staff have increased annual production by more than a third.
15. As a result, the budget surpluses of the Office at the present time stand at about 360 million per year, i.e. one million Euro per calendar day.

16. The reserves of the Office amount at present to some 2.1 billion Euro.
17. The contracting states of the EPO receive some 350 million Euro per year in fees for patents which have been searched and examined by the EPO.
18. The EPO is at present constructing a new building in the Netherlands to a value of some 200 million Euro from its current budget.
19. The Office continues to undertake "co-operation projects" with the contracting states to a value of more than 13 million Euro, and even more than 25 million Euro if the service costs are taken into account.
20. The Office organizes annually an Inventor-of-the-Year event, the costs of which are estimated at between 1 million Euro (in Portugal) and 3 million Euro (in Paris).
21. Publicity for individual inventors or applicants is not included in the mandate of the EPO. It can only lead to distortion of competition and infringe the obligation of neutrality.
22. The closest confidantes of the President have risen in a very short time from simple administration officers to executive directors.
23. These closest confidantes of the President have approved for themselves substantial salary increases by statute adjustments to the career system.
24. The closest confidantes of the President approve for themselves double salary increases, bonuses, and what are referred to as "functional allowances".
25. The staff representatives have in the past successfully challenged the illegal appointment of the wife of a former President.
26. The staff representatives have also most recently drawn attention to the wrongful invitation for application for leading positions at the Patent Office.
27. The staff representatives must also in future remain bound to the appointment procedure, in order thereby to counter abuse in the form of the appointment of relatives and acquaintances, as well as errors and shortcomings in the appointment procedure.
28. The Civil Servants Statute and the salaries tables of the staff have been disclosed by the President. The salary of the President himself, and the supplements and costs reimbursements which are disbursed to him remain unknown.
29. The delegates and experts invited by the Office enjoy free health insurance for urgent medical care and dental care.
30. The normal employees of the Office, by contrast, see their career opportunities sharply circumscribed, retrograde health insurance cover, and severe deterioration in their tangible and intangible working circumstances.
31. Half of the Directors in Substantive Examination have been removed from their functions.
32. All of the Managers in Patent Administration have been removed from their functions.
33. The President of the Office has cut the religious public holidays of his officials, in that he has cancelled Reformation Day in 2017 and All Saints Day and Corpus Christi Day as from 2018 as public holidays.
34. The cancellation of statutory and Christian public holidays shows an unheard of lack of respect not only towards the staff, but also with regard to Germany as the host country and to the Church.
35. Cynically referring to the package of detriments imposed on his officials as "social democracy" shows indifference and a lack of respect on the part of the management towards those who work there and who contribute to the managers' salaries.
36. This cannot be regarded as a decent recompense for top quality performance.
37. When they join the EPO, the officials of the Patent Office conclude a form of "life contract", since after joining there are hardly any alternative career courses open any longer.
38. The service relationship between the Office and its employees is not a bilateral agreement. The staff of the EPO are subject to a statute which may be altered by the EPO unilaterally.
39. Legal recourse against changes in the statute, inasmuch as any exists at all, is extremely wearisome, cost-intensive, and has little prospect of success.

40. Employees of the EPO are not only dependent on the EPO with regard to their salaries, but also in respect of all social security services, such as health insurance and nursing insurance. There is no insurance against unemployment.
41. The EPO does not regard itself as bound by any national labour law, nor by European labour law.
42. The EPO does not regard itself as bound by national or European guidelines or Directives with regard to medical care for employed persons or data protection.
43. The EPO does not regard itself as bound by international conventions such as the Convention on Human Rights.
44. The EPO enjoys an almost absolute immunity against judicial authority and judicial enforcement by national authorities.
45. The employees of the EPO have no access to national judicial authority. Instead, for the resolution of conflicts with their employer they are dependent on an EPO internal procedure which has been in place for a number of years, whereby the last court of instance is the International Labour Organization (ILO-AT), based in Geneva.
46. The International Labour Organization, ILO, recently raised objection to the composition of the Office's internal appeals committee, which is determined by the President and which has rejected several hundreds of complaints, which is leading to a further delay of these cases of many years.
47. The representatives of the contracting states of the European Patent Organization agree to legislative procedures which they would not be permitted to enact in their respective contracting states.
48. The contracting states of the European Patent Organization are also all contracting states of the Council of Europe, and are signatories to the European Convention on Human Rights and are bound by it.
49. The contracting states of the European Patent Organization implement laws in the EPO which are in contravention of the European Convention on Human Rights.
50. The contracting states of the European Patent Organization cannot be held to account for such shortcomings before national courts or international courts.
51. The European Patent Convention guarantees the independence of its judges (Article 23 (1) EPC).
52. The European Patent Office has infringed the independence of its judges, in that the President has suspended a judge.
53. The European Patent Office has infringed the independence of its judges, in that the President has attempted to dismiss this suspended judge without respecting the provisions of Article 23(1) EPC.
54. The European Patent Office has infringed the independence of its judges, in that the President has threatened the judges responsibility for the disciplinary proceedings against a fellow judge and colleague.
55. The European Patent Office has infringed the independence of its judges, in that the Administrative Council has allowed a judge to be suspended until his term of appointment expires, which equates to a *de facto* removal from office without the court ruling required for this.
56. The European Patent Office has infringed the independence of its judges, in that the Administrative Council has suspended a judge over a period of time which is contrary to human rights, and has allowed the proceedings against this judge to drag on.
57. By infringing the independence of its judges, the European Patent Office has triggered a large number of constitutional claims before the Federal Constitutional Court.
58. By infringing the independence of its judges, the European Patent Office must answer for the subsequent infringement of the TRIPS agreement of the World Trade Organization by all its member states.

59. The President of the Office has infringed the independence of the judges, in that he has relocated the court to an inadequately appointed ancillary building outside its main headquarters.
60. The President of the Office has infringed the independence of the judges, in that he has not provided the court with the financial means for independent action.
61. As long as the President of the Office controls not only the finances but also the budget of the court, the court is not independent.
62. As long as the President of the Office exercises domiciliary rights over the court, and can thereby suspend judges at any time and *ad hoc*, the court is not independent.
63. The President of the Office has almost unrestricted power over the employees.
64. The President of the Office has *de facto* unrestricted power over the judges.
65. The President of the Office abuses his obligation of care towards his staff.
66. A "Memorandum of Understanding" between the Union and the Office is supposed to set out the rules of the relationship by mutual agreement (!).
67. It contravenes the fundamental rights of the Union members to dictate the rules in a "Memorandum of Understanding" unilaterally to the detriment of the collective and the Union.
68. It cannot be permitted under any circumstances that staff representatives, during the exercise of their office, are subjected to investigations and disciplinary proceedings, and then to be demoted or even dismissed from service. This runs contrary to all principles of employee co-determination within the European Union.
69. The staff are not taken seriously by the management of the Office, and are treated with no respect. There is no longer any credible consultation with the staff.
70. While the employees are obliged to maintain silence with regard to internal investigations even in respect of colleagues, the President has no qualms about issuing press releases.
71. Human dignity is unassailable. The EPO must respect the dignity of its staff.
72. The EPO must respect the human rights of its staff.
73. The EPO must protect the health of its staff.
74. The EPO must guarantee data protection with regard to its staff.
75. The EPO obliges its contracting states to hold a conference of the Ministers of these states responsible for matters relating to the patent sector at least every five years (Art. 4a EPC). Such a conference would therefore have been due at the latest in December 2012.
76. How can the contracting states, all of which ratified the EPC and adopted it into national legislation, then ride roughshod over such provisions?
77. How can a democratic country with rule of law such as the Federal Republic of Germany participate in an international organization which flouts fundamental principles of labour law and fundamental human rights?
78. How can a democratic country with rule of law such as the Federal Republic of Germany tolerate the flouting of fundamental principles of labour law by an international organization in which it participates?
79. How can a democratic country with rule of law such as the Federal Republic of Germany accept the flouting of basic principles of labour law on its own national territory and soil?
80. How can an administrative council, which is supposed to scrutinise an office, voluntarily agree to do away with the tools for independent scrutiny?
81. How can persons with legal training look away when fundamental rights are withheld or withdrawn from the staff?
82. The President can only implement disciplinary penalties if the Civil Servants Statute has made provision for this at the time of the shortcoming being committed.
83. The President cannot implement any disciplinary penalties against staff members of whom he is not the nominated authority, or was not so at the time of the shortcoming being committed.

84. If a disciplinary penalty imposed by the President involves the curtailing of pension benefits, this curtailment is to be subject to a time limit.
85. The contracting states of the European Patent Organization have assigned to the European Patent Office the sovereign task of the granting of patents, but not the power to expropriate its staff members.
86. The access controls to the buildings of the Patent Office have repeatedly been made more stringent. "Security" is portrayed as being the reason. The blocking of entrances does not in any way increase security, however, but serves above all the increase control over the staff, and is viewed by them as chicanery.
87. In accordance with Article 10 EPC, the President of the European Patent Office is vested with a large array of powers. Not all personalities are equally well suited to deal responsibly with such a large array of powers.
88. In the selection of a President of the European Patent Office attention must be paid to the fact of suitability of character for occupying this high office.
89. Within the framework of the supervision of the President, which is incumbent on the Council, attention is to be paid to the fact that the Council is not restricted, in its task of supervision, to information from the very person whom it is intended it should supervise.
90. Within the framework of its task of supervision, the Council should be availed of its own resources, in order to be able to guarantee effective supervision of the President of the Office.
91. Within the framework of its task of supervision, the Council should be availed of a secretariat of which it is itself the authority with regard to appointment, and not, for example, the President of the Office.
92. To impose tasks on the President within the framework of a resolution and not being able to implement their fulfilment contradicts the basic principles of proper governance.
93. The exercise of the function of supervision and monitoring also includes the obligation of dismissing a President if the interests worthy of protection of the Organization itself make this step necessary.
94. An organization which is deaf and blind to the concerns of its staff, and who persecutes their representatives by disciplinary proceedings, is doomed to fail.
95. In the light of the uncertain perspectives which pertain at this time, joining this Patent Office would be a step that can only be discouraged.

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