

EPO FLIER No. 33

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

The final straw for patent quality?

Proposed fixed-term contracts for examiners

In its October meeting, some delegations to the Budget and Finance Committee (BFC) heavily criticised proposal **CA/103/17** for a “modernisation of the employment framework” presented by the Office. It’s status was then reduced from *for opinion* to *for information*. The proposal would have allowed the Office to employ 100% of all new examiners on fixed-term contracts, starting from January 2018¹.

But the proposal is not off the table. During its last Board 28 meeting², it was agreed that a final proposal would be tabled for the March 2018 Council meeting. The revised proposal as it stands sets down that up to 40% of examiners may be employed on five-year renewable contracts. But permanent employment is a mandatory requirement for the independence of the examining divisions (Article 18 EPC), which have already suffered many “reforms” since 2013. We must therefore warn in the strongest terms against the implementation of any “reform” which would further deteriorate the working conditions, the working atmosphere, and the independence of the examining and opposition divisions.

Impact of past “reforms” on employees’ commitment to quality

Until few years ago, examiners and formalities officers were committed to delivering high quality services, including search reports and granted patents. This attitude has more and more given way to feelings of despair and resignation³. For many, the priority has shifted towards satisfying their line manager’s production demands in order to protect themselves from being targeted as “low performers”.

Examiners are finding it increasingly difficult, if not impossible, to comply with the still rising production demands whilst maintaining good quality. But the full adverse impact on the quality of the EPO’s services of the past “reforms” - the new career system **CA/D 10/14**, the DG1/DG2 reorganisation **CA/65/17**⁴ and the “reform” of the internal justice system **CA/D 7/17** - is yet to materialise.

Following **CA/D 7/17**, fast track procedures⁵ are currently being implemented which will make it rather simple to dismiss employees for professional incompetence - starting on 1

1 *LAST NAIL IN THE COFFIN?* (13.11.2017; su17019hp)

2 **B28/10/17** (04.12.2017)

3 *DG1: Rat race 2.0 - Part I - How did we get there? What will come next?* (04.12.2017; su17022hp)

4 See EPO-FLIER No. 30 *DG1-DG2 Reorganisation* (www.epostaff4rights.org)

5 A new body called “Joint Committee on Article 52 and 53” is in charge of dealing with professional incompetence

January 2018. In April 2017 the Techrights blog reported⁶ on rumours that the Office intended to dismiss a predefined number of examiners (at least 24 office-wide) in order to instill fear and drive examiners to accept and fulfil even higher production targets. PD-HR was requested to rebut the allegations swiftly, if indeed they were unfounded⁷. But there has apparently not been any reaction up to now.

Due to the excessive level of production forced out of examiners since the introduction of the new career system, examiners will soon run out of search files and will then be forced to generate their production primarily from examination⁸. It is likely that fear of dismissal for professional incompetence will drive examiners towards further lowering the quality bar for patent grants.

From 1 January 2018 on, opposition work will be increasingly done with a strong focus on “efficiency” and “timeliness”⁹. With less time given to deal with a case, members of opposition divisions are likely to examine the parties’ requests less thoroughly, with consequences for the legal certainty of their decisions. Users of the patent system should start seeing the effects in the second half of 2018. It will be interesting to see whether the parties to opposition proceedings consider poorly examined cases to constitute “efficiency”.

An independent 2016 patent survey¹⁰ found that less than half of the survey’s participants were happy with the quality of the European patent examination process. The situation has not improved since, rather the contrary¹¹.

Potential impact of planned “reform”

In the current situation, hiring examiners on fixed-term contracts is likely to be the final straw, and the examiners’ commitment to provide quality will collapse completely. This will be a road of no return.

The European Public Service Union (EPSU) expressed the following criticism on the original proposal:

“... introducing such a comprehensive reform just before the new Director Mr. Campinos takes office smells of bad administration, and frankly of cynicism. It makes the work of Mr. Campinos more difficult to have a proper social dialogue almost setting him up for failure.”¹²

We at the Flier Team fully agree with that statement.

6 <http://techrights.org/2017/04/21/wrong-patents-in-bulk/>

7 Letter from SUEPO The Hague to Ms Bergot on *Alleged HR dismissal policies for EPO examiners* (17.05.2017)

8 Open letter from the CSC to the president (08.11.2017; *sc17172cl*)

9 *Opposition & Central Formalities Directorates*; VP1 announcement (06.12.2017) and slideshow (05. & 06.10.2017)

10 Conducted by the well-respected German legal magazine JUVE (<https://suepo.org/public/ex17003cpe.pdf>)

11 *EPO - All Problems Solved?* (<http://patentblog.kluweriplaw.com/2017/10/16/epo-all-problems-solved/>)

12 Letter on *Employment Framework at EPO* (<https://www.suepo.org/documents/44455/56843.pdf>)