

**From:** Wiek Crasborn

**Sent:** Thursday, December 11, 2014 9:12 AM

**Cc:** PRESIDENT; Wim Van der Eijk

**Subject:** Letter by external members of the Enlarged Board of Appeal

Dear Representative,

Please be informed that the letter by two external members of the Enlarged Board of Appeal which was forwarded to you on 9 December 2014, has been agreed by 6 more external members:

Mr Per CARLSON, President Market Court – SE

Ms Kathrin KLETT, Swiss Federal Supreme Court – CH

Mr Stelios NATHANAEL, Judge Supreme Court of Cyprus – CY

Mr Henrik ROTHE, Chief Justice The Maritime & Commercial High Court – DK

Ms Octavia SPINEANU-MATEI, High Court of Cassation and Justice – RO

Mr Ari WIREN, Judge - FI

Two external members asked me to forward their letters to you and they are attached to this note.

Yours sincerely,

Wiek Crasborn

Senior Registrar of the Enlarged Board of Appeal

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JUDICIARY OF  
ENGLAND AND WALES

THE RIGHT HON LORD JUSTICE FLOYD

To the Representatives of the Delegations  
to the Administrative Council of the  
European Patent Organisation

9<sup>th</sup> December 2014


Dear Sirs


We, as external members of the Enlarged Board of Appeal of the European Patent Office, wish to express our extreme concern at the action of the President of the European Patent Office in imposing a house ban on a member of the Board of Appeals. We have seen a letter from the internal members of the Enlarged Board of Appeals to the Representatives of the Delegations to the Administrative Council of the EPO, also copied to us. we agree with its contents.

We would stress that we have nothing to say about the merits of the charge made against the member in question. However, quite separately, we would wish to remind the President that the Boards of Appeal of the European Patent Office are, in all material respects courts, and its members judges. They are not his staff. Internationally recognised principles of judicial independence forbid members of the executive from interfering with courts and judges in the carrying out of their functions. If there is concern about the conduct of a judge, the matter should be dealt with according to law, in order to preserve the independence of the judges and of the court as a whole. This is not just a matter for the rules of the EPO: these principles are enshrined in the European Convention on Human Rights and the EU Charter of Fundamental Freedoms. When they appear to be lightly brushed aside it is a matter of the highest concern.

We write because as members of the court it is our independence which is threatened by this action. We unhesitatingly condemn it.

Yours faithfully,

  
Christopher Floyd  
The Rt Hon Lord Justice Floyd

Robert van Peursem   
Advocate-General  
Supreme Court of The Netherlands

cc The President of the European Patent Office



MARKET COURT  
President

Stockholm  
2014-12-10

To  
The Representatives of the Delegations  
to the Administrative Council  
of the European Patent Organisation

Dear Sirs,

As an external member of the Enlarged Board of Appeal of the European Patent Office, I would like to concur in the concern expressed by the internal members of the Enlarged Board of Appeal, to the Representatives of the Delegations to the Administrative Council of the European Patent Organisation, in their letter of 8<sup>th</sup> December 2014, and in the concern expressed and the statements made by the external members of the Enlarged Board of Appeal, Mr Christopher Floyd and Mr Robert van Peurse, in their letter to the Representatives of 9<sup>th</sup> December 2014.

Yours faithfully

Per Carlson

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To the Representatives of the Delegations to the Administrative Council of the European Patent Organisation

10th December 2014

Dear Sirs,

Having read the letter signed on 9th December 2014 by The Right Hon Lord Justice Floyd and Advocate-General van Peurseem I as external member of the Enlarged Board of Appeal of The European Patent Office wish to inform You that I fully agree with the content of the above-mentioned letter.

As well, I must stress that the concern of the independence of the Boards of Appeal of the European Patent Office expressed in the letter is very deep. There are legal provisions to be taken into account if there is any doubt or concern about the conduct of any judge, including members of the Boards of Appeal. This independence shall never be set aside by any administrative organ.

Yours faithfully,

Ari Wirén

Judge, External Member of the Enlarged Board of Appeal of the European Patent Office

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cc The President of the European Patent Office