



INTELLECTUAL PROPERTY JUDGES ASSOCIATION

I.P.J.A.

5th January 2015

Jesper Kongstad,
Chairman of the Administrative Council of the EPO,
European Patent Office,
Bob-van-Bentham-Platz 1
80469 Munich
Germany

I am writing on behalf of the Intellectual Property Judges' Association (IPJA) to express the extreme concern of European Patent Judges to the recent events concerning a Member of the Boards of Appeal of the EPO. IPJA is the representative association of European National Patent Judges. This letter has been written after consultation with the IPJA membership. It has near unanimous support and no objection or reservation by anyone.

As we understand it the Member was, on the orders of the President acting on his own initiative, physically removed from his office and possession was taken of his computer. It is not, as far as we know, suggested that the Member has committed any criminal offence. That, in any event would be a matter for action by the criminal law enforcement authority, not the President.

We do not know what it is that the Member is alleged to have done wrong. Nor does it matter. What does matter is that the Member has been treated in a manner we deem to be inconsistent with the status and position of a Member of the Boards of Appeal as provided for in the EPC.

As Judges we are not in a position to take any concluded view of the legality of the President's action – the point could well come up in a real case concerning the status of Board of Appeal decisions. But we can say that according to article 23(1) (read in conjunction with articles 10 and 11) of the EPC it seems clear that it is for the Administrative Council and the Enlarged Board to take action, not the President, and that the Administrative Council should have so declared.

More generally we make one further observation. The present events seriously threaten the judicial independence of the Boards of Appeal and by doing that call in question the guarantee of an independent and impartial review of the European Office's decisions by a judicial body. Not tolerating that should be the common interest of all Member States of the European Patent Organisation.

A copy of this letter will shortly be sent to EPLAW, IPKAT and Managing IP magazine.