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## Editorial

J. Gowshall · J. Kaden · E. Liesegang · T. Schuffenecker

This edition of *epi* information is, not surprisingly, dedicated primarily to the twenty-fifth anniversary seminar and Council meeting in Ettington Chase near Stratford-on-Avon in October this year. A number of excellent presentations were given, not least by the President of the European Patent Office, the Chief Executive of the UK Patent Office, the Head of Unit „Industrial Property“, DG Internal Market of the European Commission, the Director of the Patent Policy Department of WIPO, the Judge of the Patents County Court in the United Kingdom and a representative of the *epi*. As reports elsewhere will show, the speakers were not only informative but also extremely entertaining.

The dinner was a great success held in the grand surroundings of Warwick Castle and, as ever, the Council Meeting produced a great deal of information and dis-

cussion enabling *epi* to remain influential in the world of Patents.

The number of people at the seminar was extremely gratifying and it is clear that all participants had an enjoyable time.

Also in the current edition, are interesting contrasting sets of photographs. The first set, were taken by Donald Vincent, at some of the earliest *epi* Council Meetings. These can well be contrasted with the photographs taken at the most recent Council Meeting and Seminar, providing a fine reflection on how *epi* has both changed, but stayed the same, not least with regards to harmonious relations between the members, across the twenty-five years that it has been in existence. Finally, thanks to all who participated must go to the organisers of the seminar and dinner, in particular, Tim Powell, Chris Mercer and Terry Johnson.



*epi* 25<sup>th</sup> Anniversary Seminar, Warwick Castle

## epi 25<sup>th</sup> Anniversary Seminar

Ettington Chase Conference Centre  
Stratford-upon-Avon

Saturday 26 October 2002

### Opening Address

John Brown  
President of the Chartered Institute  
of Patent Agents

Ladies and gentlemen, it gives me great pleasure to welcome you all to the epi 25<sup>th</sup> Anniversary Seminar and celebrations, held here in Stratford upon Avon. Although I am a member of epi and have been since the founding thereof, I am today welcoming you in my capacity as President of The Chartered Institute of Patent Agents. This is a great honour for me and it is an honour to the

UK profession as a whole for the 25<sup>th</sup> anniversary celebrations to be held in England.

We have a very distinguished panel of speakers for you this afternoon, who will, no doubt, educate and inform you, but also who may well provoke a lively debate. Let us hope so!

Without more ado from me, I pass you over to our President, Walter Holzer.

### 25 years epi

Walter Holzer  
epi President

*„The establishment of an Institute of European Professional Representatives represents a noteworthy achievement considering that the new Institute brings together in a single independent body the patent professions of eight European states, each with its own tradition.... The main task of the Institute is to collaborate with the European Patent Office on matters relating to the patent profession.“* (From the first meeting of the Council of the Institute of Professional Representatives before the EPO).

The creation of the European patent system, which was a major step towards an eventually united Europe, has brought about a new species of professional, the *European Patent Attorney*, with an equal status in industry and in the liberal profession.

The EPO and the epi have now been partners for 25 years in developing the European patent system, in training and examining European patent attorneys and

in exercising the necessary disciplinary powers over epi members. 25 years of close contact either strain or intensify a relationship. From our point of view, to the benefit of the system, the latter is the case. To our satisfaction the epi has now also been formally anchored in the revised European Patent Convention. May I take this opportunity to wish the European Patent Office all the best for mastering the forthcoming workload or rather, its success – related challenges. I am confident it will succeed. I would also like to thank its management for the attention given to epi's concerns over the years.

In the past 25 years the patent system has undergone more profound changes than in its previous history. The European patent system has been a success, as evidenced by its workload. Why has it been a success? To start with:

*„We therefore feel that applicants for European patents can rest assured that their applications will be dealt*

with by a European procedure of the highest quality and efficiency.

However, professionalism alone will not be sufficient testimony of the European Patent office's calibre; it will have to be demonstrated in its relation with the applicants and their representatives. . . . The awareness of the real relationship existing in our field will inspire us to initiate effective and open communication with the interested circles based on the knowledge that we have a mutual interest in the development of the European patent system." (Bob van Benthem, EPO's first President, 1978)

We believe the promise has been kept. The European patent system overcame national systems and working methods by establishing an environment in which officials from different nations can exchange views on all topics in close contact and in a common spirit.

The epi Symposium comes at a crucial moment. The number of EPC member states will be increased by the welcome accession of ten new countries and at the same time the future structure of the patent system in Europe is in debate, in both its political and practical aspects.

Up to date, the *Professional Representatives before the European Patent Office* remain the only pan-European profession in the patent field. The epi therefore must endeavour to establish a common European standard of professional training and quality of service. Of course, the quality of the work of European patent attorneys mirrors the quality of the work of the European examiners and the Boards of Appeal.

The epi would become even more European should a Community patent come into existence. We would then also become Community Patent Attorneys. The project of a Community patent, by the way, is supported by the epi, provided the latter is embedded in the EPC and common rules of procedure apply. We believe that the applicant should have the last word at the end of the European procedure as to whether he wishes for Community – wide protection or not.

In this context we also look forward to a second Revision of the European Patent Convention further ameliorating the law to encompass explicitly for example software – related inventions, in order to avoid that subject matter is excluded, even if only apparently, on which patents are granted.

The epi is an observer. As an observer, notably with the Administrative Council of the EPO, the epi also voices political concerns. We believe, for example, that a well functioning centralised European patent system must be preserved by all means. This conviction we share with UNICE, our fellow observer. Any decentralisation of the work of the EPO would take us back to competing national institutions of different quality and interests. It would make it difficult to establish a common European

patent and IP policy for European industry. Quality control cannot replace the European spirit.

For the epi centralisation of course means an easier pursuit of its interests. As an example I would refer to the attorney/client privilege provision in Art 101 of the new Implementing Regulation which now can serve as a model for national laws. Quite evidently, it would not be possible for the epi to lobby for such a vital provision with 30 separate national ministries. As a legal person in each member state, the epi could on the other hand intervene with national governments.

The epi is networking and keeping contacts with its members through the epi Information and an extensive homepage. It liaises with other organisations active in the field of intellectual property, such as the European Commission, the WIPO and the ICC, and it collaborates on a regular basis with the CEIPI and the European International Academy. Regular contacts also exist with professional organisations such as FICPI, CNIPA, AIPPI, AIPLA and UNION. The epi also maintains about a dozen committees involving delegates from all member states, notably the EPPC and PQC as well as the OCC, and the Biotech committee, to name a few. These committees enable the Institute to react to any situation that calls for a position from interested circles at rather short notice, if necessary.

The members of the epi are indispensable in patent disputes. A major concern not only of European practitioners is the enforcement of patent rights. To be effective, enforcement procedures must be streamlined in terms of duration and cost. An effort must also be made to safeguard the best possible representation of patent owners by practitioners. It is one of the demands of the epi that notwithstanding the representation powers of attorneys at law, European patent attorneys should also be entitled to represent their clients' specific patent interests in court, in particular before any future pan-European courts which are supported by the epi. As a first step a right of audience is being provided for in the draft EPLP. This should be broadened in the future, at least as concerns those attorneys who have the competence to represent clients on their own, and at least in those cases where patent attorneys are normally allowed to deal with issues on their own nationally, such as nullity proceedings and proceedings on declarations of infringement or non-infringement. Efforts will have to be taken in terms of continued education and litigation courses. In short, there should be no litigation proceedings without patent attorneys. We can even imagine ourselves in the role of technical judges.

The epi's 25<sup>th</sup> anniversary is a cause for celebration. We now look forward to the next 25 years which will be forecasted by our distinguished speakers.

## The next 25 years for the EPO

Dr. h.c. Ingo Kober  
President of the European Patent Office

Ladies and gentlemen,

On behalf of the European Patent Office I would like to congratulate *epi* on its 25th anniversary and thank the *epi* for 25 years of fruitful co-operation.

You asked me to talk about the next 25 years for the EPO – and this in Stratford upon Avon – where William Shakespeare once lived. Allow me therefore to quote him from time to time during this address. Talking about the future, Shakespeare said in Hamlet: „We know what we are, but not what we may be“.

There may be a lot to be said about the future but I would like to agree with Shakespeare when he observed in Henry V: „Men of few words are the best men“.

So let me try to address a few items that shall impact the EPO and its work during the coming 25 years.

Before I go into details, I would like to present you with the road map of the EPO which will show the direction for the coming 25 years:

I am speaking of the EPO Mission Statement:

„The EPO's mission – *the* patent granting authority for Europe – has a mission to support innovation, competitiveness and economic growth for the benefit of the citizens of Europe“.

The Office wants to set patent standards which respond to the needs of the system's users; the EPO strives to maintain its position as a global player in the international patent world; in terms of technical information where the EPO is one of the world's leading providers, it wants to help promote a knowledge-based society in Europe and stand out as a model international public-service organisation.

I could stop here, because here you have – almost – everything the EPO wants to achieve in the future.

There are however, constraints and challenges which need to be addressed.

The new millennium, continuing globalisation and ongoing developments in technology and the economy have thrown up a number of new issues which we are attempting to deal with on behalf of the users of the European patent system.

Permit me to begin by commenting on a problem facing not only the EPO, but all examining patent offices today, and that is the question of *workload management*.

Ladies and gentlemen, the promotion and protection of innovation are among the top priorities in modern economic policy. The effective protection of inventions and innovations has become one of the keys to economic success and prosperity. The patent world can only welcome – and indeed has always encouraged – this development. But it is also an indication that the world of

patents has been undergoing something of a sea change, the full extent of which is only now becoming apparent.

Conventional patent law theories place the inventor and the individual invention in the foreground, from both the legal and the economic standpoint. Today and possibly also tomorrow, however, the focus is increasingly on the creation of patent portfolios and their use in competition. What this means is that the emphasis is on the position of a company in the global markets and the stock markets, a position which is determined amongst other things by the extent of its protective rights portfolio. Patent portfolios are becoming increasingly important for forging strategic alliances and mergers. Patents no longer simply support production lines, they themselves are the products, to be traded in the marketplace. The legal protection and enforcement of an invention now takes second place to the marketing of options for the exclusive use of innovative technologies.

Proof of this trend is provided by the worldwide rise in patent licensing revenue from approximately 17 billion US dollars in 1990 to an estimated 115 billion dollars in 2001. Experts estimate that income from patent licensing now makes up around 11% of the net profits of all listed companies.

When we talk about living in a „knowledge society“, what we mean is not only that our technical knowledge is growing at an exponential rate, but also that the systematic exploitation of this knowledge using worldwide protective rights has become a cornerstone of corporate strategies in the global economy.

The short and medium-term consequences of this development are only now beginning to become apparent.

What we can already see, however, is what can only be described as a dramatic rise in the number of patent applications filed worldwide. The total number of filings received by the Japanese Patent Office, for example, rose from 370 000 in 1995 to 450 000 in 2001, while in the same period the US Patent and Trade Mark Office saw filings leap from 210 000 to over 300 000, and the European Patent Office registered a rise from 78 000 to just under 160 000. According to our estimates filings with the EPO are likely to rise to far beyond 200 000 in the coming years. The major examining patent offices of our contracting states are witnessing equally pronounced increases.

With its growth rate of over 100%, the EPO is, and most likely will be, by far the most affected by this surge in the number of filings. In addition, our Office not only grants European patents, but also acts within the framework of the PCT as an international searching and

examining authority with worldwide competence. Since around 60% of all international applications are searched and examined by the EPO, we have also felt the effects of the massive increase in PCT applications. In fact, some 67% of all applications for a European patent are now filed via the PCT route.

Our Medium Term Business Plan expects this percentage to become 75% in 2007. Who knows, provocatively speaking, whether this figure will not be 100% in 25 years?

When carrying out searches and preliminary examinations on international applications the EPO is bound by very strict time limits which differ from those applicable to the examination of European patents. This has led to a concentration of the Office's search and examination capacity on its PCT work, which puts further strain on the procedure for granting European patents. This explains why the rapid rise in filings between 1996 and 2000 initially led to a drop in the number of granted European patents, despite the fact that the Office had already begun in 1995 to adapt its capacity to increasing needs.

Since then, our priority has been to increase search and examination capacity, improve efficiency and productivity, and further optimise our procedures, in order to be able to respond effectively to these tremendous challenges and yet still maintain our quality standards. And this will be one of our priorities in the years to come.

We not only increased our production, but also increased the number of examiners from 1 900 in 1995 to around 3 200 by the end of last year. It is also expected that the Office-wide introduction of what we call BEST examination, which will be completed within the next three to four years, will increase our efficiency still further. The training required for both new recruits and BEST examiners means that the effectiveness of these measures has not yet been fully realised. Yet, our productivity rose by nearly 10% during the period 1999-2001.

For reasons of time I don't want to go into the details of measures designed to monitor the PCT workload and the changes of the Implementing Regulations of which I believe you are all aware.

And here I do agree with a word of William Shakespeare in *All's Well that Ends Well*, namely: „They say miracles are past“.

We can't and we don't rely on miracles. We rely on our efforts and hard work and I am confident that the measures already taken and the reforms introduced will bring about the desired reduction in average duration of proceedings before the EPO.

The 1999 Paris Intergovernmental Conference set a political target, i.e. a granted patent delivered, on average, *three years* after the European Patent date of filing.

According to our plan entitled „Mastering the Workload“, which has just been published and discussed in the latest session of the Administrative Council, the Office is confident of achieving the Paris targets within the next five years. These are no miracles. It might look like a miracle, though, that the document „Mastering the Workload“ is openly supported by our staff and their

representation. But even there, miracles are not to be found. Staff and management have made very strong and very serious efforts in order to establish a culture of co-operation and dialogue rather than of mutual reproaches and endless disputes. I think it deserves being mentioned that in the Office for more than one year, there has been no single demonstration, no announcement of industrial action and the like. In turn the Office is looking forward to publishing approximately 45 000 patents during this year – more than ever before in one single year – and about 60% more than two years ago.

The extent to which we succeed in our objectives will, of course, also depend on whether the hypothesis of the sea change in patent law I referred to earlier is borne out in the long term, and whether the growth in the number of filings continues unabated. We will have to keep a very close eye on developments, not only by carefully analysing filing trends, but also by responding to those critics of patents whose voices now carry more weight as a result of putting patent law into the political arena. I am thinking here of the criticisms raised by the Open Source Initiative in particular, and objections to excessive protection for biotechnology inventions. In both cases the principle of the positive effect of patent protection on the promotion of innovation is being called into question.

Ladies and gentlemen, in addition to our workload problems, 25 years after the EPC came into force, there is of course a need for adaptation and modernisation in structural and legal terms as well, essentially in three areas:

- bringing the EPC into line with the latest technical and legal developments
- simplifying the grant procedure and reducing costs
- consolidating the EPC (litigation, Community patent).

In the first two of these areas, the successful revision of the EPC in 2000 and the conclusion of the London Agreement on the language issue set a firm agenda to ensure that the EPC can continue to operate and be attractive in the next 25 years.

The revised Convention has so far been ratified by Bulgaria, the Czech Republic, Estonia and the Slovak Republic, in connection with their accession on 1 July to the EPC in its applicable wording. As the other accession candidates are also obliged to ratify the revised version of the Convention on accession, we expect more states from this group to ratify before the year is out.

I shall now turn to the subject of *Languages and litigation*.

While revision of the EPC was primarily designed to improve and modernise the European patent grant procedure and the principles which underlie it, the work on cost reduction and litigation initiated by the Paris intergovernmental conference in 1999 relates to significant improvements in the post-grant phase.

The Paris initiative has already produced its first results. The agreement on the application of Article 65 EPC which the Working Party on Cost Reduction submitted

to the intergovernmental conference in London in October 2000 met with broad acceptance and has already been signed by ten contracting states (CH, DE, DK, FR, GB, LI, LU, MC, NL, SE).

The agreement is open to accession by all EPC contracting states, but to enter into force it must be ratified by at least eight contracting states, and these must include the three in which the most European patents took effect in 1999 (DE, FR, GB).

This constitutes a breakthrough on the language issue which in future should make the European patent system even more attractive and considerably more affordable. More than 50% could be cut off the current translation bill if the agreement entered into force in twelve states. It is now up to the governments of the contracting states to push for rapid ratification. During a discussion on how the language system might be 25 years from now, somebody recently said he could imagine that *one* language might have become the language of technology and that research, publication and patent offices would use this *one* language in practice. I felt tempted to respond with Shakespeare's words from „As You Like It“: „Thou speakest wiser than you art aware of.“

The conference in London also made progress on the issue of a unitary *litigation* system for European patents. Under the scheme presented in London, sole responsibility for settling disputes concerning European patents – ie infringement and revocation issues – would rest with specialist courts. It was not clear in London whether these duties would be performed at first instance by national courts or by a central European court. In any event, at second instance a European patent court would be responsible for further harmonisation of law in the field of application of a future optional agreement. This is and will be a difficult and complex matter, and the details still have to be worked out on some issues; so at the working party's request the intergovernmental conference extended its mandate to enable it to put together a full draft agreement on litigation. The working party has set up a steering committee which, with extensive support from the EPO, is currently working on a first draft, which it is expected to submit to the working party at the end of this year for further discussion and hopefully, a decision.

I want to point out in this respect, that issues such as the language regime and litigation have been addressed at intergovernmental level, by groups of States ready to take concrete steps within the coming years to this effect. Other EPC Contracting States who did not wish to participate in agreements were free not to participate.

It would seem to me that, for the time being, optional agreements are most likely to offer the patent user the solutions they have been working for for so many years.

What I would like to underline is that, the achievements of the Paris and London conferences show that progress can be made on difficult issues, too and that major improvements to the European patent system are on the horizon.

Let me now make a few remarks about *the Community patent*.

With its proposal for a Community patent, issued on 1 August 2000, the European Commission has taken the first real step towards finally making the Community patent a reality. The details are well known and I do not need to go into them here. It is a great pity that it has not been possible to reach agreement on the Community patent as it had been designed by the European Commission some two years ago.

Instead, debate on the Commission's proposal to date has shown that the member states still do not see eye to eye on the critical issues – languages, litigation and the financing of the new system.

Previous work on the Community patent related solely to the creation of unitary law common to all the EU member states for the post-grant phase of the European patent; but now the focus is moving to major surgery on the central structure of the European grant procedure.

The moves towards decentralising the European patent system to which I referred earlier, to me reflect rather a trend towards emphasising national interests over common European concerns.

As was made quite clear last year, European industry is against any form of decentralisation of the European grant procedure. They fear that this would result in the fragmentation and re-nationalisation of the patent system in Europe, which would be totally inconsistent with applicants' needs in an increasingly homogeneous European market, and irreconcilable with the original idea behind a unitary Community patent. We strongly hope that the voices of the users are duly taken into consideration in Brussels and that appropriate solutions will be found for the Community patent.

Another item to be mentioned is the forthcoming *enlargement* of the European Patent Organisation. As I have already mentioned in connection with the ratification of the Revision Act, Bulgaria, the Czech Republic, Estonia and the Slovak Republic have already deposited their instruments of accession. They have become member states of the European Patent Organisation with effect from 1 July 2002. Slovenia will join the Organisation in December this year. Poland, Romania, Hungary, Lithuania and Latvia are expected to accede in 2003. This will bring the process of the unification of the patent system in Europe to a close for the time being.

The enlargement is very welcome and necessary. I believe it will further enhance the two-tier patenting system in Europe – made up of the national patent offices on the one side and the EPO on the other. Together they will deliver a valuable service to the economy. The time has come to understand that the issue is to accept the complementarity of roles helping Europe to compete globally in the knowledge economy. The issue should be how to re-configure the patent system in Europe such that the EPO and 30 national patent offices will form a coherent structure, guided by the same mission and fit to provide global value for Europe.

And now Ladies and Gentlemen, I am coming to my last, and certainly not least important item: the *continued co-operation with epi*.

Let me first state some facts: Ten years ago the so-called grandfathers from the „old“ member states constituted 88% of all professional representatives on the List. Today it is 52% – and this development will continue in the long run. In turn, the proportion of those professional representatives who are entered on the List after having passed the European Qualifying Examination will continuously increase. The growing importance of industrial property implies that well-trained patent specialists will be needed more than ever.

The implementation of the internal market in the European Union depends to a large extent on how this task will be managed. Those who invest in training today – I deliberately say „invest“ because it is a costly matter – are the winners of tomorrow. Taking into account the trend of globalisation and the possibilities of electronic exchange of any kind of data, the investors will not only

become the future winners on the local market – be it on a national or European scale – but of the world.

I would like to congratulate the *epi*, their former and present presidents and all their members on their successful work during the last 25 years in the interest of our common cause. I would also like to say a heartfelt thank you for the spirit of co-operation which you organisation and your members have always shown vis-à-vis the EPO. Our links and our cooperation will become even stronger in the 25 years to come.

Ladies and gentlemen, I have tried to deal with various items which will influence the future of the EPO.

Much will of course also depend on the people who, in the future, will have the responsibility to shape or influence our organisations. May Shakespeare have the last word when he encourages us in „Measure for Measure“: „Our doubts are traitors, and make us lose the good we oft might win, by fearing to attempt“.

Thank you for your attention.

## The next 25 Years for National Patent Offices

Alison Brimelow

Chief Executive of the UK Patent Office

I am very grateful to *epi* for inviting me to join this celebration in what is a good year for anniversaries in the United Kingdom. This year we celebrate the Queen's Golden Jubilee and the 150<sup>th</sup> anniversary of the UK Office (though in the inimitable way of Patent Offices our anniversaries are calculated by a variable arithmetic which means that if you wait until 2009 we have an excuse for celebrating 300 years).

Twenty five years is a long time in the IP world and indeed in any other world. In preparing for this talk I was reflecting on what 25 year intervals in this Century brought us. In 1927 hopes might still have been reasonably fair for a successful outcome to the post war settlement of 1918. Gustav Stresemann together with the French and British Foreign Ministers won the Nobel Peace Prize. By 1952 we knew better. However, by then the first stirrings of what was to become the European Union were emerging; a great vision for doing things better that has brought Europe 50 years of peace, democracy and prosperity. By 1977 a lot of that vision had come true but there appeared to be an immovable wall fixed across Europe. Now in 2002 that wall is down and European expansion is already a fact within the EPO and looming for the EU. It would be a rash woman who speculated against that background about what 2027 might hold.

I found myself wondering whether I should talk about my National Office or National Offices but let me start with the general. National Offices provide services, and threats to those services include the wrong services and bad services. There is no substitute for keeping closely in touch with users and also with developing best practice around the world. Looking at the changing environment in which those services are delivered it seems to me that in the post war period, or indeed this century, the fundamental changes we have seen have been in how Intellectual Property Rights are delivered. We have seen the growth of regional organisations, of shared databases and the inception of international harmonisation. All these are positive developments and reflect emerging user needs.

But while how the system works, whether nationally or regionally, has been evolving positively, new questions have arisen about the intrinsic value of Intellectual Property. Do we all believe that Intellectual Property is good for us? I need only mention four subjects to show that this is not a forgone conclusion – access to medicines, patenting „life“, trade mark exhaustion and the Lessig row. I offer a spread of examples to this audience because it is worth recalling that my National Office deals not just with patents but with trade marks and designs and indeed with copyright and the comments



made by Lessig go to the heart of the value and relevance of the copyright system in the digital age.

But if we assume that despite these problems we do value Intellectual Property and wish to continue putting resource into it, how much do we want to tie up in running a system where increasingly how we do things is converging and what we search is held in common? I have made clear my interest in promoting the elimination of waste in the Intellectual Property system as a key objective if we are to stay in touch, relevant and well used. And please note that I am not talking about guaranteeing future employment in a specific area. Indeed, I would like the UK Office to do less statutory work, not more.

And while I am on the theme of relevance, can I simply pose a question to you: what happens when technology moves faster than we do (or can?). That issue is a real one for Patent Offices.

There is another area of concern. I might say „nice rights, shame about the enforcement“. The current system of enforcement clearly needs improvement. There is no shortage of evidence that some users of the patent system are profoundly unhappy about certain aspects of enforcement. But if I may paraphrase what was a slogan under the previous Conservative Government in the United Kingdom „Does prison work?“ And perhaps a better question for all of us is how do we grow respect for the IP system? That respect has to be grown partly by willingness to address some of the questions I posed earlier about the differences of view on „patenting life“ or indeed regimes for exhaustion.

Can I quote my colleague Ian Heath, Director General of IP Australia, who has notably said „there is no future for island offices...“. I suppose it is open debate whether Australia is an island or a continent, but I think it is quite clear that his intention in making this remark was that island offices or small offices or discrete offices all need to recognise that the future has to be collaborative. Much Shakespeare has been quoted at this symposium but can I quote an English poet of a slightly later generation, John Donne:

„No man is an island, entire of himself,

Every man is a part of the continent, a piece of the main“.

From where I sit, National Offices are indeed recognising the demands for collaboration that changes to the system are producing and are finding ways to respond positively. This is not necessarily to be taken as threatening regional developments, but more a way of responding to some of the questions that I have already posed in this presentation. I would also add that National Offices are well placed for reaching out to the ignorant and the small, they can help surmount linguistic difficulties given that the world is not (yet) monoglot and they have the speed and tenacity of that excellent of breed of dog, the terrier, in nipping ankles to ensure that a reasonable rate of progress is maintained.

I am most grateful for this opportunity to share your celebrations and I wish EPI well for the next quarter century.

## The next 25 years for Industrial Property and the European Union

Erik Nooteboom

Head of Unit „Industrial Property“, DG Internal Market, European Commission

### Lisbon Council conclusions and the 3% target

In March 2000, at the Lisbon European Council, Heads of State and Government set the Union the goal to become by 2010 „the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion“.

Two years later at the Barcelona European Council, which reviewed progress towards the Lisbon goal, they agreed that research and technological development (R&D) investment in the EU must be increased with the aim of approaching 3 % of GDP by 2010, up from 1.9 % in 2000.

The heads of state and government also called for an increase of the level of business funding, which should

rise from its current level of 56% to two-thirds of total R&D investment, a proportion already achieved in the US and in some European countries.

What is behind these Barcelona objectives is the realisation of how important our R&D and innovation systems are to the Lisbon strategic goal. Achievement of this goal is threatened by the massive and growing gap of R&D investment in the EU compared to the US. This gap reached more than €120 billion in 2000.

The economy's capacity to turn new knowledge into innovation can't be separated from the role of R&D. Even if enterprises recognise the increased importance of investing in R&D, they will only be willing to do so if they see that they can exploit the results effectively. This depends on whether they can expect sufficient returns to balance the risks involved in investment.

The main challenge for inducing greater reliance on innovation is thus to make R&D investment more attractive and profitable to business. This calls for a coherent range of policies.

Among the factors we can think of influencing are adequate systems of intellectual property rights, research- and innovation-friendly regulations and competition rules, supportive financial markets and favourable macro-economic and fiscal conditions. On the input side of R&D, business must also be able to draw on excellent and available human resources as well as on a strong public research base.

The place of R&D in the overall business strategy of companies, as well as the effectiveness and efficiency of their R&D activities, are also important factors to consider.

In the light of this, the Commission has very recently adopted a communication<sup>1</sup>, clarifying the objective and identifying a number of areas where action appears to be needed. The communication will provide the basis for extensive discussions planned for the late autumn with industry and other stakeholders.

The Commission will then develop an action plan, which should be published in spring 2003 in the form of a second communication. This will contain specific and concrete recommendations for implementation especially, but not exclusively, by the Member States. The Commission intends to follow this process up with support and if necessary, assistance.

Now, with the transition to the knowledge economy, the protection, management and transfer of Intellectual Property (IPR) is an increasingly important and strategic issue for all those investing in research and innovation, including industry, universities and public research organisations. IPR is more than a legal matter; it is a key element in the transformation of knowledge into economic value.

Intellectual property can, especially in the digital economy, represent a very significant proportion of the total value of an enterprise. IPR as such can be used as security to raise capital as well as simply generating income. This underlines the importance of making the system as reliable as possible, and also raises issues about how IPR should be valued as assets.

Improving IPR systems and their use requires a coherent approach across research and innovation, internal market, international trade and competition policies.

### European Research Community

To give some examples of what the Commission is doing in this field, I could mention that the Commission's Directorate-General for Research is engaged in several activities intended to address the IPR-related needs of the European research community. These include identifying, promoting and disseminating best practices for the use of IPR in the research & innovation process. This

covers not only issues in specific scientific or technical sectors such as bioinformatics, but also generic issues, like Internet-based collaborations, and the need to clarify the rules applying to the ownership and management of IPRs arising from publicly funded R&D and university-industry collaborations.

I should also mention that the recently re-established IPR Helpdesk available on the Internet offers assistance on all aspects related to the protection of new technologies, including access to European Patent databases<sup>2</sup>.

Another interesting initiative recently launched is the „ProTon“ network<sup>3</sup>, which aims to encourage exchange of good practice and experience among academic institutions concerning technology transfer.

### DG Markt initiatives

On the international level, the protection and enforcement of IPR through the implementation of the WTO TRIPS agreement and the WIPO conventions are critical to the development of trade, international R&D collaboration and technology transfer.

The Commission is very active in the field of domestic intellectual property law. As I have remarked, a strong and harmonised framework of intellectual property law provides an environment in which returns on investment in R&D can be maximised.

We have already seen several important initiatives through to adoption at the Community level, including provisions on harmonisation of databases, copyright law in relation to digital technologies and biotechnological patents.

As far as biotechnology and genetic engineering is concerned, the Commission is preparing an important report on the development and implications of patent law in this field. This report is required by the biotechnology directive itself, and will very shortly be submitted to the Council and the European Parliament.

Also, the Commission adopted in January a Communication entitled 'Life Sciences and Biotechnology – a Strategy for Europe'. This includes an action plan which, among other things, urges Member States who have not implemented the directive to do so without delay. This has been welcomed by the Council.

I will now just spend a few moments outlining some current and future activities in three key areas.

### Software Directive

Currently, perhaps 15% of all new patent applications involve use of software. It is not easy to put a figure on it because software inventions are not just found in high-tech environments like computers. They are found in everyday items like washing machines, telephones and even children's toys. A washing machine can be made

1 „More Research for Europe: Towards 3% of GDP“ COM (2002) 499 of 11 September 2002

2 <http://www.ipr-helpdesk.org/index.htm>

3 [http://www.gate2growth.com/g2g/G2G\\_TN\\_PatentAcademia.asp](http://www.gate2growth.com/g2g/G2G_TN_PatentAcademia.asp)

into a better washing machine by nothing more than the software that controls it.

But the law in the European Union governing software inventions in all these fields is not satisfactory.

Not only are there differences in current interpretations of the law, but there is also a real risk that further divergences in practice could arise. This is because the law has evolved to cope with new technology in a piecemeal fashion by the courts.

So in February of this year the Commission made a proposal for a directive to harmonise Member States' laws as they treat patentability of computer-implemented inventions. There is also an indirect effect on the interpretation of the European Patent Convention.

The decision was made to base harmonisation on current practice, and not to introduce major change. In particular, the Commission concluded from the consultations that there was no strong demand in Europe, and indeed no justification, for legalising patents on pure software or business methods having no technical character.

This is a clear and unambiguous message that we do not intend to follow the United States down the road of allowing patents for non-technical subject matter.

The proposal is currently being discussed in the European Parliament and the Council. I can't predict the timing for an eventual adoption, but I am optimistic that the overall approach of the Commission will be agreed, namely to stick with the idea that inventions using software can only be patented on condition that they make a „technical contribution“.

### Piracy and Counterfeiting directive

The second initiative I want to talk about is action against counterfeiting.

Combating counterfeiting and piracy is very important for the proper functioning of the single market, and more generally for innovation, employment and competitiveness. High levels of counterfeiting and piracy negate the benefits of intellectual property rights and act as a disincentive to further investment in R&D.

For example, in the area of computer software alone, it has been estimated that one third of all software sold in western Europe is pirated, causing a loss of €3 billion per year to legitimate producers<sup>4</sup>. This is money lost to potential further R&D investment.

The large sums of money involved have also attracted the interest of organised crime, and counterfeiting can involve products like aircraft parts and pharmaceuticals. So this is not just an esoteric area of concern only to a few specialists.

This is why, in November 2000, the Commission adopted an action plan setting out concrete measures aimed at improving and strengthening the fight against counterfeiting and piracy in the single market.

This action plan sets out actions and proposals for the short and medium-term, as well as other initiatives. It is ambitious and requires the involvement of all concerned parties, starting with the right holders themselves.

Our major initiative is currently a proposal for a directive harmonising the means of enforcing intellectual property rights and establishing a framework for the exchange of information and administrative co-operation. We hope to have a draft formally adopted by the Commission on this in the very near future.

Although I can't go into details, I can say that the main focus of the directive will be on the penalties for infringement, the damages payable to injured rights holders, measures to define and secure evidence, and co-operation between national authorities and the Commission.

### Community Patent

Finally, I come to the central plank of the Commission's current work on industrial property: the Community Patent. At the moment our innovative companies are at a distinct disadvantage in their home market compared to their competitors in the US and Japan because of the fragmented patent system we have here.

The European Patent Office is a hugely successful organisation, with a well-deserved world-class reputation. But the patents they deliver are still effectively national patents, and very, very few inventions are protected across the whole territory of the European Union, let alone the soon-to-be enlarged Union.

The need to maintain and litigate patents on a national basis is especially burdensome for smaller enterprises with limited resources.

Just like the Community Trade Mark, which is administered centrally (and very ably) by the Office for the Harmonisation of the Internal Market in Alicante, the Community Patent project aims for a single unitary patent, issued by the European Patent Office in Munich, for the whole Community. Unlike the Community Trade Mark however, the Community Patent will be litigated in a single Community jurisdiction.

An affordable and strong Community Patent will bring obvious benefits as regards business strategies for suppliers of goods and services within the Community. Having a Community Patent means that there is no longer any need to think in terms of national boundaries when it comes to protection. Inevitably, horizons will be widened. This will be a hugely important practical and psychological step in the achievement of a fully-functioning internal market.

To work, the Community patent will have to be strong and reliable, and affordable enough to be worth while for ordinary companies in ordinary situations. It is not intended just for those who absolutely have to have cover in every last corner of the Community.

To meet these requirements is not easy and will need compromise on some difficult questions. Take the language arrangements, for example. To translate a patent into every official language of the Community, and there could soon be around 20 of them, would be impossibly

<sup>4</sup> Sixth Annual Report BSA (Business Software Alliance) Global Software, figures for the EU + Norway + Switzerland for the year 2000

expensive and totally impractical, bearing in mind that by the time the Community Patent is a reality, patent grants will probably account for more than two million printed pages annually.

Fortunately, what we find in practice is that patents are used overwhelmingly by specialists who can usually get on quite well without having patents translated into every language.

So, in an incautious moment, one could say that the language question is more of a political issue than a practical problem. In the circumstances, perhaps this is not such a bad thing, because political issues are susceptible to political solutions.

Then there are the court arrangements. This is also political, but also a very real practical issue for industry. The risk that a patent for the whole Community might be revoked in a single action means that industry will only use the Community Patent if there can be a very high degree of trust in the quality and consistency of the judgements of the Community Court.

The Commission believes that these objectives can best be met by having a strong centralised jurisdiction, but there is of course always a tension between centralisation and ease of local access.

The Commission, together with the Member States, are giving this matter high priority right now, and I think it is true to say that if we can find the right compromise here, all the other pieces will fall into place.

### Conclusions

So now I am coming to the end of this run through what is happening in Brussels on this vital question of encour-

aging transfer of technology from R&D through to the market. To recap:

The impetus comes right from the top: from the heads of state and government themselves, who have emphasised in successive summit conclusions the need to stimulate investment in R&D to generate growth and prosperity, and to put in place the necessary arrangements to facilitate this.

Among the initiatives which are in progress or planned are:

- the development of an action plan to increase R&D investment to 3 % of GDP by 2010;
- initiatives in the context of the framework programme including identification and promotion of best practice in management and use of IPRs;
- initiatives in the field of substantive IP law including proposed measures on enforcement, the protection of computer-implemented inventions, and of course the Community patent.

Finally, I would like to mention that we are organising a Conference in Italy next autumn which will take as its theme the question „where is intellectual property going next?“ We hope this will be „blue skies“ thinking and we will be encouraging participants to set aside their prejudices and think as freely as they can about what the IPR system is for and how it can best serve the challenges of the future. This will be a fascinating and seminal conference and I am sure that it will produce some very challenging results.

## The Next 25 Years for the PCT and the International Patent System

Philip Thomas  
Director, Patent Policy Department, WIPO

### The past 25 years

- 1977: Only national patent systems exist
  - PCT and EPC born together: June 1, 1978
  - EPC: 10,725 applications in 1979
  - PCT: 2,625 applications in 1979
- 2002: Regional and international systems now indispensable
  - ≈ 110,000 EP applications in 2001 – nearly half via PCT (and only counting regional-phase PCT applications)

– ≈ 100,000 PCT applications in 2001

### PCT and EPC: Two great successes

- Lower costs
  - duplication reduced, expensive decisions delayed
- Simpler procedures
  - just one front end system to understand
- Different States' systems more accessible
  - one formalities standard; broader harmonization also achieved (EPC) or at least encouraged (PCT)

- Responsive to users
  - systems amended in light of experience
- Patent attorneys rightly recommend both routes

### Impetus for change

- Increasingly internationalized trade
- Continued innovation in traditional and new fields
- New administrative options with modern IT
- Effective IP systems in more countries, having wide range of state of development
- Increasing public awareness and expectations – but also suspicions – of intellectual property

### Stakeholders and expectations

- Inventors and applicants
  - affordable, effective, minimum cost and effort
- Competitors and consumers
  - business conducted fairly, valid and clear rights
- States
  - overall economic benefit without prejudice to other public policy
- Patent Offices
  - able to handle applications effectively
- Patent attorneys

### The next 25 years:

#### Three issues to think about

- More internationalization – as a fact, not a threat nor a pipe-dream
- Meeting users' needs = coping with Office workload
- Role in the developing world – they expect more from the patent system

### Applicants' needs ~ Patent Offices' workload

- Less duplication, lower cost, more reliance on other Offices' work, implying:
  - sufficient (but not absolute) substantive harmonization
  - quality assurance
  - sharing of search and examination results
  - better use of modern IT, e.g. e-filing
- Expanded and improved PCT:
  - there and working for 118 countries
  - idea of International Authorities is established
  - balance between centralization and national needs

- optional add-ons (e.g. PCT certificate of patentability)

### Developing countries' needs

- The patent system is a growth hormone, not the elixir of life
- How to make patents work better for the developing world?
  - especially in relation to national public policy
- Participation requires administrative capability in small Patent Offices
  - including IT
  - but not full examination systems

### A more international patent system – at what stage of patent life?

- Single filing; single or rationalized processing
  - already moving fast in that direction
- Single grant; central register
  - at least as an option?
- Trans- or multi-national enforcement
  - e.g. a patent tribunal giving quick, cheap and uniform decisions concerning infringement and validity
  - cf. Community Patent experience
  - limited prospects in the next generation

### A world patent system?

- Many patentees (enforcing rights) and competitors (needing certainty) adore the idea
- Some countries (especially some developing countries) hate the idea
- Issue – sovereignty
- Issue – different needs of different States – one size cannot fit all
- Patent attorneys ... ?

### Some directions and modalities

- Convergence of systems – national, regional, international
  - rely on good quality work done elsewhere
- PCT as a vehicle for change – the momentum is there already
  - e.g. „abolition“ of designation system, enhanced international search and examination
- Roles for all Offices – big, medium and small
  - but not the same roles

## The next 25 years for *epi*

Thierry Sueur  
Vice-President, Intellectual Property  
Air Liquide

Somebody said that it is difficult to make prediction, more particularly for the future. This is why trying to describe the future of *epi* is a very challenging question.

Many things will be changing over the next 25 years i.e., the economy, the IP and patents, Europe and the world.

With respect to the economy, we are now more and more moving to a knowledge society and innovation is taking a very important place as we have seen from the recent declaration of Commissioner Busquin on the necessary increase of R & D expenses as well as on the Lisbon process which wants the European Union to become the most competitive place of the world.

At the same time, many economists seem to be rather not enthusiastic on the impact of patents on the economy and they wonder if the transaction costs are not too heavy and will not counterbalance the alleged positive effects of intellectual property.

With respect to Intellectual Property itself, we have seen during the last years the growing importance of intellectual capital and intellectual assets and of their management in order to extract the maximum value.

The importance of patenting is growing and even financial analysts ask now listed societies what is their patent portfolio, how they use intellectual property and what competitive advantage it creates for them.

On the other side, some people wonder if patents are really pro-competitive, if they don't have a negative impact on the growth of companies because the number of patents have been exploding during the last 10-15 years. In addition, many politicians wonder if IP and patents are adapted to the economic situation of developing countries and we have heard about the Doha process and of the possible definitive or temporary adaptation of TRIPS.

Europe, in the mean time, is creating more and more converging legislation (directives) or common legislation for the unique market.

Nevertheless, some tentative seems to be failing.

Community Patent is facing major difficulties – languages problems, role and future of national patent offices, creation of supranational courts dealing with private litigations are important questions. Will these issues, which are of major importance, be solved within the next 25 years together with the general problem of having a European enforcement system?

In the world, we have seen the achievement of the success of PCT, then the signature of PLT, and now the discussion about SPLT and about the possible „world patent“.

Even if this seems to be out of being reachable for the moment, the trend is to have more convergence in the world between systems which are supposed to be there to achieve the same goal.

### **In this permanent evolution or revolution, what role could play *epi*?**

*epi* is composed by men and women who are patent practitioners, either employees of owners (industry) or working in patent/law firms. So, they know, from a „technical point of view“, what patents are about but advisors of their employers or clients have a fair idea of the role of intellectual property in the economy.

Within the next 25 years, *epi*, based on the talent of its members, could and hopefully will play role with respect to :

- Economy,
- Intellectual property and patents,
- Europe and the world.

*epi* should participate in the economic debate in order to show, with real and concrete examples, that patents play a positive role on the economy and are not what many people believe.

In addition, they should also try to influence the European Patent system so that the transaction costs created by the patent are lower and that users have a more accessible system, accessible meaning less expensive, and easier to handle.

*epi* should probably be more involved in the question of management of intellectual property and also in the question of education, outside of what it is already doing very well for specialists.

Europe agrees that compared to other parts of the world and more particularly to US or Japan, the SMEs are not making a sufficient use of the patent system. *epi* contributes to the development of the awareness of SMEs.

With respect to Europe, *epi* members are coming from all over Europe. This should be an opportunity to benchmark, identify the best practices and try to have IP in Europe taking advantage from the best solution wherever you come from.

Within Europe, I believe that *epi* should be more involved in the governance of the EPO.

No doubt that *epi* within the next 25 years will become a full member of the Administrative Council and not only an observer.

In addition, *epi* should be closer to the examiners of the EPO in order to give them a deeper view of the role of

patents on the economy because I think there is a lack of knowledge there.

With respect to the world, *epi* will have to become more pro-active in order to express the EU practitioners point of view.

*epi* should really be considered as a real counterpart of organizations such as IPO or AIPLA.

Basically, *epi* should stick to the fundamentals which are the technical skills of the members, the ethics, which

play and will play an increasing role, and to the fact that there are real professionals.

For the future, I will suggest that *epi* becomes more proactive and is the natural source of new ideas and proposals.

For the next 25 years let *epi* jump out of the box, and let also *epi* remain *epi*!

### Nächster Redaktionsschluss für epi Information

Wegen der verspäteten Veröffentlichung der epi Information 4/2002, ist der Redaktionsschluss für die Ausgabe 1/2003 bei Erscheinen bereits verstrichen. Die Ausgabe 2/2003 wird Ende Juni 2003 erscheinen. Die Dokumente, die veröffentlicht werden sollen, müssen bis zum **16. Mai 2003** im Sekretariat eingegangen sein.

### Next deadline for epi Information

Due to the late publication of epi Information 4/2002, the deadline for issue no. 1/2003 will have expired by the time you read this notice. Issue no. 2/2003 will be published by the end of June 2003 and documents for publication should reach the Secretariat by **16 May 2003**.

### Prochaine date limite pour epi Information

En raison de la publication tardive de epi Information 4/2002, la date limite de remise des documents pour le numéro 1/2003 sera échuë à la parution de ce numéro. epi-Information 2/2003 sera publié à la fin du mois de juin 2003 et les textes destinés à la publication devront être reçus par le Secrétariat au plus tard le **16 mai 2003**.

### Then and Now



Photos: Donald Vincent

Reception at the inaugural meeting of the *epi* Council, Munich 8 April 1978



Photos: Gary Maxwell

25<sup>th</sup> *epi* Anniversary Seminar, Stratford-upon Avon, 26 October 2002



## Bericht über die 53. Ratssitzung, Stratford-upon-Avon 28. – 29. Oktober 2002

Die dreiundfünfzigste *epi* Ratssitzung fand dank des überaus erfolgreichen Galadiners und Seminars am voraus gehenden Wochenende in einer festlichen Atmosphäre statt.

Präsident Walter Holzer eröffnete die Sitzung am 28. Oktober 2002 um 9 Uhr. Nach der Benennung der Wahlhelfer und der Annahme der Tagesordnung mit kleinen Änderungen genehmigte der Rat das Protokoll und die Beschluss- und Maßnahmenliste der zweiundfünfzigsten Ratssitzung mit kleinen Änderungen. Bei den Angelegenheiten, die sich aus diesem Protokoll ergeben, ist nur erwähnenswert, dass für die Paragraphennummerierung in Europäischen Patenten eine Antwort noch aussteht.

Der Vorstand berichtete über die Beschlüsse und Maßnahmen, die seit der letzten Ratssitzung getroffen wurden, und der Präsident legte seinen Bericht vor, der vollständig an anderer Stelle in dieser Ausgabe veröffentlicht ist. Aus dem Bericht ergeben sich verschiedene Punkte, insbesondere eine Diskussion bezüglich des Antrags Finnlands auf Anerkennung als internationale Recherchestelle und ob dies eine Angelegenheit für das Europäische Patentamt ist. Weiterhin wurde kurz ein Dokument des Europäischen Patentamts besprochen mit dem Titel „Bewältigung der Arbeit“, ein Vorschlag des Europäischen Patentamts, wie die Verfahrensführung effizienter gemacht werden kann. Schließlich berichtete Vize-Präsident Macchetta über die Vorschläge des Direktors des französischen Patentamts zur Möglichkeit, bestimmte nationale Prüfer zur europäischen Eignungsprüfung zuzulassen.

Der Generalsekretär informierte in seinem Bericht, der anderswo veröffentlicht ist, dass jemand vom Europäischen Patentamt mündlich um Informationen zur Höhe der Patentanwaltsgebühren gebeten hatte. Der Rat beschloss, zunächst keine Antwort zu geben.

Während des Berichtes des Schatzmeisters und der Besprechung des Jahreshaushalts kam die Rede auf die Studenten. Man kam überein, dass das *epi* mehr für die Studenten tun soll. Dann wurde über die Ausgaben für Training diskutiert und mit Missfallen festgestellt, dass das Europäische Patentamt versucht hatte, die Tagesspesen für Prüfer zu verringern, wenn sie vom *epi* als Dank für ihre Bemühungen zum Diner eingeladen wurden.

Anschließend besprach der Rat die Berichte der verschiedenen Ausschüsse, von denen viele an anderer Stelle in der *epi* Information veröffentlicht sind.

Der Bericht des Ausschusses für berufliche Weiterbildung rief eine kurze Diskussion über eine Überarbeitung des Trainingszeitplans, die Probleme mit einigen Tutoren und die vorgeschlagenen neuen Seminare, die überall in Europa gehalten werden sollen, hervor. Wie immer verursachten die Ergebnisse der Europäischen Eignungsprüfung eine ausgedehnte Diskussion, deren Ergebnis

vom Ausschuss für berufliche Weiterbildung aufgenommen wurde.

Der Bericht der Schriftleitung gab Anlass zu einer Diskussion über die Website, welche Dokumente dort zur Verfügung gestellt werden sollen, sowie über den derzeitigen Fortschritt im Bereich des Ausschusses für berufliche Weiterbildung.

Wie immer wurde vom EPPC ein sorgfältig ausgearbeiteter, ausführlicher Bericht vorgelegt, der die Ausführungsvorschriften und ihren Fortschritt ansprach und über das Positionspapier berichtete, das dem EPA geschickt worden ist. Offensichtlich hat das EPA viele der vom EPPC vorgeschlagenen Änderungen akzeptiert. Man hat die Vorstellung, dass die Ausführungsvorschriften etwa 2006 oder 2007 in Kraft treten werden.

Es folgten relativ kurze Berichte vom Ausschuss für Online Filing, dass die Software für Online Anmeldungen gebrauchsfertig ist, vom Harmonisierungsausschuss, dass bei der WIPO über Harmonisierung gesprochen wird, vom *epi* Finanzausschuss, vom Ausschuss für biotechnologische Erfindungen, vom Geschäftsordnungsausschuss, der die Regeln über die Zuständigkeit der Schriftleitung vorstellte, die zur weiteren Revision zurückgegeben wurden, und vom Ausschuss für Standesregeln.

Im Anschluss an die verschiedenen Ausschussberichte folgte eine Diskussion über den Schutz der englischsprachigen Bezeichnung „European Patent Attorney“. Es wurde beschlossen, an das EPA heranzutreten, um die Bezeichnung möglichst in das Europäische Patentübereinkommen aufnehmen zu lassen und so einen Missbrauch oder einen Gebrauch als allgemeine Bezeichnung zu verhindern.

Dann berichtete die Arbeitsgruppe Streitregelung, insbesondere im Hinblick auf die Vertretungsberechtigung, die nochmals diskutiert wurde.

In Sachen CEIPI wurde der Rat informiert, dass für 2003 ein Workshop als Probekurs für CEIPI/*epi* Patentstreitrichter geplant ist. Auch über das bevorstehende Forum EPA Internationale Akademie über den Schutz von Computer bezogenen und *business model* Erfindungen am 21. und 22. November, an dem das *epi* teilgenommen hat, wurde berichtet.

Schließlich wurde dem Rat über den Beitritt der neuen Länder berichtet. Slowenien möchte dem Europäischen Patentübereinkommen am 1. Dezember 2002 beitreten, Ungarn am 1. Januar 2003, und der Beitritt Polens wird etwa im März 2003 erfolgen. Für die Slowakei und die Tschechische Republik wurden Vorstandsmitglieder gewählt.

Die nächsten Ratssitzungen werden im Mai 2003 in Gent und im Herbst 2003 in Cannes in Frankreich stattfinden.

Der Präsident dankte allen Ratsmitgliedern für ihre Teilnahme und Beteiligung und beendete die Sitzung.

## Entwurf der Ratsbeschlüsse, 53. Ratssitzung Stratford-upon-Avon, 28.-29. Oktober 2002

1. Der Rat stimmte mit zwei Enthaltungen gegen die Beantwortung informeller Anfragen von Angehörigen des EPA.
2. Der Rat beschloss einstimmig, dass der Mitgliedsbeitrag für das Jahr 2003 weiterhin 150 EUR betragen soll, wenn die Zahlung vor dem 1. Mai erfolgt, und 175 EUR, wenn die Zahlung am oder nach dem 1. Mai erfolgt.
3. Der Rat beschloss einstimmig, dass der Mitgliedsbeitrag für *epi* Studenten von 125 EUR auf 80 EUR herabgesetzt werden soll.
4. Der Rat beschloss den Nachdruck einer Broschüre der Geschäftsordnung im Format DIN A5.
5. Der Rat beschloss eine Revision der Finanzierung der Vorstands- und Ratssitzungen.
6. Der Rat beschloss den Haushalt für das Jahr 2003.
7. Der Rat beschloss, dass sich die Schriftleitung mit der Frage der Zusammenstellung und Überprüfung von Informationen beschäftigen soll, damit regelmäßig Informationen auf die *epi* Website gestellt werden.
8. Frau Pia STAHR (DK) wurde als Mitglied des EPPC gewählt.
9. Der Rat genehmigte, dass mit dem Verwaltungsrat der formelle Schutz des Begriffs „European Patent Attorney“ im EPÜ beantragt werden soll.
10. Herr Frantisek KANIA (CZ) und Frau Dagmar CECHVALOVA (SK) wurden als Vorstandsmitglieder gewählt.

## Report of the 53<sup>rd</sup> Council meeting, Stratford-upon-Avon 28 – 29 October 2002

The fifty-third *epi* Council Meeting was held in an air of celebration following the extremely successful dinner and seminar during the preceding weekend.

The President, Walter Holzer, opened the meeting at 9.00 a.m. on 28 October 2002. Following the appointment of the scrutineers and the adoption of the agenda, including minor revisions, the attention of the Council turned to approval of the minutes and the list of decisions and actions taken at the fifty-second Council Meeting, which were approved with minor changes. With regard to the matters arising from those minutes, the only item of note related to the matter of paragraph numbering in European Patents, for which it was reported that a reply was awaited.

The Board then reported the decisions and measures that it had taken since the last Council Meeting and the President presented his report which appears in full elsewhere in this edition. Several points arose from the report particularly a discussion with regard to Finland becoming International Search Authority and whether or not this was a matter for the European Patent Office. There is also a brief review of a European Patent Office Document entitled „Mastering the Workload“ a proposal from the European Patent Office as to how to make the prosecution procedure more efficient. Finally Vice President Macchetta reported the ongoing proposals from the head of the French Patent Office regarding the possibility of certain National Examiners being allowed to take the European Qualifying Examination.

The Secretary General's Report, published elsewhere, included an indication that someone from the European Patent Office had verbally requested information regarding the level of attorneys' fees. Council decided that no response should be given at this time.

During the Treasurer's Report and the consideration of the annual accounts and budgets, discussion turned to the students. It was agreed that more should be done by the *epi* for the students. From this, talk turned to educational spending and it was noted with some disapproval that the European Patent Office had attempted to reduce the per diem refunds to Examiners when they had been offered an *epi* dinner as thanks for their efforts.

The Council then considered the reports of the various Committees many of which are published elsewhere in *epi* information.

The Professional Qualifications Committee Report lead to a brief discussion of a revision of the timetable of training, the problems with a number of tutors and the proposed new seminars to be held elsewhere across Europe. The results of the European Qualifying Examination, as ever, prompted extensive discussion, the results of which were taken in by the Professional Qualifications Committee.

The Editorial Board Report prompted a discussion of the web site and what documents should be available and current progress on the Professional Qualifications Committee Section.

As ever, a thorough and extensive report was presented by the EPPC particularly touching upon

implementing regulations and their progress and reporting to the position paper that had been sent to the EPO. It sounds that many of the changes supplied by EPPC have been accepted by the EPO. It was the idea that the implementing regulations would come into force around 2006 or 2007.

There followed relatively brief reports from the online Filing Committee, reporting that the online filing software is ready for use, the Harmonising Committee reporting on the Harmonisation talks at WIPO, the *epi* Finances Committee, the Biotechnology Committee, the Bylaws Committee, which presented the terms of reference of the Editorial Board about which terms of reference were rejected for further revision, and the Professional Conduct Committee.

Following the various Committee Reports, there was a discussion of the protection of the English language title „European Patent Attorney“. It was agreed that the EPO should be approached to possibly include the title in the European Patent Convention to avoid misuse or use in a generic form.

Next the Working Party on Litigation reported, particularly with regard to the representation issues which were discussed once again.

Council were then advised with regard to the CEIPI that a workshop was planned for 2003 as a trial run for a CEIPI/*epi* Patent Litigators' Course. A report was also given of the forthcoming EPO International Academy Forum on protection of computer-related and business model inventions on 21 to 22 November 2002 in which *epi* was participating.

Finally, a report was given to the Council of the accession of the new countries. Slovenia would accede to the European Patent Convention on 1 December 2002, Hungary would accede on 1 January 2003 and it was expected that Poland would accede around March 2003. There was an election of Board Members for Slovakia and the Czech Republic.

It was reported that the next Council Meeting would take place in Ghent in May 2003 and that the autumn Council Meeting 2003 would take place in Cannes in France.

The President thanked all the Council members for their attendance and input and closed the meeting.

## Draft List of Decisions, 53rd Council Meeting Stratford-upon-Avon, 28-29 October 2002

1. Council unanimously voted against answering informal requests for information from members of the EPO. There were two abstentions.
2. Council unanimously approved the maintenance of the membership subscription for the year 2003 at 150 EUR if paid before May 1 and at 175 EUR if paid on or after May 1.
3. Council unanimously approved the reduction of the student membership subscription from EUR 125 to EUR 80.
4. Council approved the reprint of a booklet of the By-Laws in DIN A5 format.
5. Council approved a review of the funding of costs for Board and Council meetings.
6. Council approved the Budget for the year 2003.
7. Council approved the Editorial Board investigating the question of collecting and screening information, in order to provide regular information on the *epi* website.
8. Mrs. Pia STAHR (DK) was appointed EPPC member.
9. Council approved that an application for formal protection for the title „European Patent Attorney“ in the EPC should be made to the Administrative Council.
10. Mr. Frantisek KANIA (CZ) and Mrs. Dagmar CECHVALOVA (SK) were appointed Board members.

## Compte rendu de la 53<sup>ème</sup> réunion du Conseil, Stratford-upon-Avon 28 -29 octobre 2002

Le succès du séminaire et du dîner de gala organisés à l'occasion du 25<sup>ème</sup> anniversaire de l'*epi* ont contribué à donner un certain air de fête à la 53<sup>ème</sup> réunion du Conseil de l'*epi*, qui leur faisait suite.

La session fut ouverte le 28 octobre 2002, à 9 heures, par le Président Walter Holzer. L'adoption de l'ordre du jour, avec quelques modifications mineures, se poursuit avec la nomination des scrutateurs. Après quelques amendements mineurs, le compte rendu et la liste des décisions et actions de la 52<sup>ème</sup> réunion du Conseil de l'*epi* sont approuvés. Parmi les questions soulevées dans le compte rendu, il faut noter que la question de la numérotation des paragraphes dans les brevets européens a été transmise à l'OEB. L'*epi* a été informé que la question était en cours d'examen.

Après avoir rappelé les décisions et mesures prises par le Bureau depuis la dernière réunion du Conseil, le Président présente son rapport, lequel est publié dans cette édition. Est notamment évoquée la demande présentée par la Finlande pour devenir une administration chargée de la Recherche Internationale. La question se pose de savoir si cela ne doit pas rester l'affaire de l'Office européen des brevets. Ensuite le Conseil examine brièvement un document de l'Office européen des brevets intitulé „Maîtrise de la charge de travail“, proposition faite par l'OEB en vue d'optimiser l'efficacité des procédures. Enfin, le Vice Président Macchetta fait un rapport sur les propositions récentes faites par le Directeur de l'Office national des brevets français, lesquelles visent à offrir à certains examinateurs d'offices de brevets nationaux la possibilité de se présenter à l'examen européen de qualification.

Le Secrétaire Général présente son rapport et mentionne qu'une personne de l'Office européen des brevets a demandé oralement des informations relatives aux honoraires de Conseils en brevets. Aucune requête officielle n'étant parvenue à l'*epi*, le Conseil décide de ne pas répondre.

Pendant la présentation du rapport du Trésorier et des comptes annuels, la discussion s'engage sur les étudiants de l'*epi*. Le Conseil décide que l'*epi* devrait soutenir davantage les étudiants en subventionnant la formation. C'est avec regret que le Conseil a constaté que l'Office européen des brevets a réduit sa part d'indemnisation des frais en prenant pour prétexte le dîner offert par l'*epi* en remerciement de leur travail.

Les Commissions présentent ensuite leur rapport. La plupart de ceux-ci sont publiés dans ce numéro de *epi* Information.

Le rapport de la Commission de Qualification Professionnelle conduit à un débat sur une révision du programme de formation, sur les problèmes rencontrés avec certains tuteurs ainsi que sur les nouveaux séminaires proposés à travers l'Europe. Les résultats de l'Examen européen de Qualification suscitent comme d'habitude

une longue discussion dont les résultats sont pris en note par la Commission de Qualification Professionnelle.

Suite à la présentation du rapport du Comité de Rédaction, une discussion s'engage au sujet du site de l'*epi*, des documents à publier sur le site, et du remaniement en cours concernant la section relative à la Commission de Qualification Professionnelle.

Comme d'habitude, un rapport long et détaillé est présenté par la Commission de Pratique du Brevet européen (EPPC). Les principaux sujets évoqués sont le Règlement d'exécution de la CBE, actuellement à l'étude, ainsi que la prise de position de l'*epi* adressée à l'OEB à ce sujet. On a pu constater que de nombreuses modifications proposées par l'EPPC ont été acceptées par l'OEB. Il semble que le règlement d'exécution de la CBE pourrait entrer en vigueur vers 2006 ou 2007.

Suivent ensuite le rapport de la Commission OCC informant que le logiciel pour les dépôts en ligne est prêt à l'utilisation, le rapport de la Commission d'Harmonisation sur les débats relatifs à l'Harmonisation à l'OMPI, ainsi que les rapports de la Commission des Finances, de la Commission sur les Inventions en Biotechnologie, et du Règlement intérieur. Dans ce dernier sont présentées les attributions du Comité de Rédaction, que le Conseil rejette et renvoie pour révision. Le rapport de la Commission de Conduite Professionnelle conclut la présentation des rapports de commissions.

Un débat s'est ouvert sur la question de la protection du titre „European Patent Attorney“ en langue anglaise. Le Conseil approuve le principe d'une action auprès de l'OEB visant à insérer ce titre dans la Convention sur le brevet européen afin d'éviter tout usage abusif du titre ou bien son emploi dans un sens générique.

Puis un rapport est présenté sur la réunion du groupe de travail „Contentieux“, soulignant plus particulièrement la question de représentation, laquelle a de nouveau fait l'objet de discussions.

En ce qui concerne le CEIPI, le Conseil est informé qu'une session de travail sera organisée en 2003, et servira d'essai pour le cours CEIPI/*epi* prévu dans le cadre de la formation de „Conseils dans le contentieux“. Le Président informe ensuite le Conseil qu'un Forum organisé par l'Académie Internationale de l'OEB, avec la participation de l'*epi*, aura lieu les 21 et 22 novembre 2002 sur le thème de „La protection des inventions dans le domaine des programmes d'ordinateurs et des inventions dans le domaine de la conduite des affaires“.

La réunion se termine avec un bref rapport sur l'adhésion des nouveaux pays. La Slovénie accèdera à la CBE le 1<sup>er</sup> décembre 2002, et la Hongrie le 1<sup>er</sup> janvier 2003. La Pologne devrait devenir pays membre vers mars 2003. Le Conseil nomme les membres du Bureau pour la Slovaquie et la République tchèque.

La prochaine réunion du Conseil aura lieu à Gand en mai 2003. La réunion suivante se tiendra en automne 2003 à Cannes en France.

Le Président clôt la séance et remercie les membres du Conseil pour leur participation et leur contribution.

## Projet de liste de décisions, 53ème réunion du Conseil Stratford-upon-Avon, 28-29 octobre 2002

1. Le Conseil rejette à l'unanimité, avec deux abstentions, le principe d'accorder une réponse à des demandes d'information inofficielles de la part de membres de l'OEB.
2. Le Conseil approuve à l'unanimité la décision de maintenir le montant de la cotisation au titre de l'année 2003 à 150 EUR si le paiement est effectué avant le 1<sup>er</sup> mai, et à 175 EUR si le paiement est effectué au-delà.
3. Le Conseil approuve à l'unanimité la réduction des droits d'inscription pour les étudiants de l'*epi* de 125 EUR à 80 EUR.
4. Le Conseil approuve la réédition d'une brochure du Règlement Intérieur dans le format DIN A5.
5. Le Conseil approuve une révision du financement des dépenses pour les réunions du Bureau et du Conseil.
6. Le Conseil approuve le budget pour l'année 2003.
7. Le Conseil approuve que le Comité de rédaction se charge de proposer des moyens de recueillir et de trier l'information en vue d'une publication régulière sur le site de l'*epi*.
8. Mme Pia STAHR (DK) est nommée membre de l'EPPC.
9. Le Conseil approuve qu'une demande de protection officielle du titre „European Patent Attorney“ dans la CBE soit faite auprès du Conseil d'Administration.
10. M. Frantisek KANIA (CZ) et Mme Dagmar CECHVALOVA (SK) sont nommés membres du Bureau.

## President's Report covering May 2002 to September 2002

W. Holzer (AT)

The President reported that after the Council meeting in Stockholm Vice-President Macchetta participated with him in the Administrative Council meeting of the EPO. In the course of this meeting the new DG 1 Vice-President, Mr. Lionel Baranes (FR) was elected to succeed Mr. Michel, as of November 1, 2002.

The President of the Office presented his report and our new member countries were welcomed, as from July 1, 2002 (SK, CZ, BG, EE). The highlight of the meeting was a political debate over a common European patent policy, strongly favoured by the European Commission. There is a certain tendency to decentralisation which would ultimately imbalance the coherent European patent system; this is also a primary concern of the *epi*. In the AC meeting the *epi* Regulation was amended.

Upon an invitation from the Nordisk Patent Attorneys' Congress he attended a meeting in Uppsala in June 2002, where he delivered a speech on the current and

future situation of the profession, in particular as concerns training and examination as well as the setting up of legally recognised representative bodies for attorneys.

Vice-President Macchetta participated in a Seminar organised by the RIPP in Ljubljana (Slovenia) in June to lecture on the principles of the *epi* as well as practical matters in the European grant procedure. A similar Seminar had been organised by the RIPP in Belgrade in May (Yugoslavia is now trying to ratify an extension agreement with the EPO), where the President gave a lecture on the structure of the *epi* and on PCT related issues in the EPO grant procedure.

At the CEIPI Board meeting which also took place in June, he presented a draft syllabus for a new patent litigation course to be introduced by CEIPI/*epi*, hopefully as of 2003. A workshop is planned in conjunction with another CEIPI event in the spring of 2003.

Still in June the annual SACEPO meeting took place, where inter alia the Draft Implementing Regulations and the EPLP were briefly dealt with.

After a farewell dinner given for the past Secretary General Zellentin in Munich the President participated in the meeting of the Sub-Group of the Working party on Litigation from July 9 to 11. The latest Draft Agreement on the establishment of a European Patent Litigation System and the Draft Statute of the European Patent Court, as prepared by the special task force of the EPO, was presented. The EPPC's latest position paper will now be redrafted in view of the different proposals for amendment made and will be presented to the meeting of the full Working Party on Litigation in December.

In July the President represented the *epi* at the 125 years celebration of the German Patent and Trademark Office in Munich.

Upon an invitation from the EPO and the Greek Patent Office he contributed a paper on European Patent Attorneys acting as information brokers at a seminar in September 2002. The seminar also provided an opportunity to discuss with the President of the Greek Patent Office the problems of training and examining European Patent Attorneys and of a possible national law.

Another invitation took him to Poland in September where he attended the Polish Patent Attorneys Conference in Cedzyna, convened by the President of the Polish Patent Office. The *epi* structure was again presented.

## Secretary General's Report covering May – October 2002

W. Baum (DE)

- 1.a) After the Council meeting in Stockholm, EPO President Kober welcomed President Holzer and the labelled members of the Board for an introductory meeting on 27 June 2002; the Secretary General attended the meeting.
- b) On July 8<sup>th</sup>, the Secretary General arranged a farewell dinner for the former Secretary General Mr. Zellentin who had been in the job for 7 years.
2. The secretariat purchased a note-book (PC) and a suitable beamer for on-screen presentation in the conference room of the *epi* secretariat. The committees are invited to use this new auxiliary and to perform as far as possible any committee meetings in the premises of the *epi* secretariat.
3. During the preparation of the half-year report of account, it appeared necessary to increase the staff capacity of the secretariat by temporary staff; due to the general holiday-time, considerable efforts were necessary to engage suitable personnel; with respect to the foreseeable time periods where we need additional staff capacity, the secretariat entered into an agreement with a loan-employment agency to ensure timely availability of expert personnel according to our specified qualification profile.
4. Domain names European Patent Attorney  
Continuing the activities of the Disciplinary Committee, Secretary General had telephone discussions with the two patent agencies who are

the registrants of the Domain names European Patent Attorney and European Patent Attorneys. The dispute with the said agencies could be settled by the arrangement that the current registrants will assign the registered domains to the *epi*, thus making sure that third parties are excluded from the possibility to register the names European Patent Attorney once more. We will install a link from the said domain names to our *epi*-website.

5. The German „Bundesamt für Finanzen“ refused repayment of VAT of 23,011.12 DM, which was charged in 2001 on the office rent by our landlord. Meanwhile the legal situation has been cleared up and we asked the Landlord for refund of the VAT.

6. Tax exemption for *epi* staff

The secretariat received an answer from the German Federal Ministry of Finances to our President's inquiry of 21<sup>st</sup> Jan. 2002 saying that a tax exemption could be practised after the Administrative Council has designated the staff of the *epi* as persons under Art. 16 EPO-Protocol (Art. 17, section 1, first sentence). PROTOCOL ON PRIVILEGES AND IMMUNITIES OF THE EUROPEAN PATENT ORGANISATION of 5 October 1973.

According to a decision of the Board a letter was sent to the president of the Administrative Council (AC) asking to induce the relevant designation by the AC.

## Treasurer's Report

P. Kelly (IE)

The accounts to June 30, 2002 have been finalised. In summary certain budget overruns in the computer equipment and maintenance areas and higher half year costs on some meetings are balanced by a higher level of subscription income. This trend should have the effect over the year 2002 of reducing the projected deficit to a break-even position.

In relation to the budget 2002 the Board has authorised an increase of 2500 in the epi homepage costs and this increase is an item of revision to the budget 2002. In addition computer hardware costs will significantly exceed budget and a revision to 21000 is necessary.

The budget 2003 has been prepared and envisages a surplus of €19800. In preparing the budget the following matters have been taken into account namely

- a) An increase in membership – estimated at 6870 at January 1, 2003 – will give rise to a continuing increase in subscription income. It is proposed that the membership subscription remain unchanged and be fixed at 150 if paid before May 1 and €175 if paid after May 1.
- b) It is proposed to reduce the initial student membership subscription from €125 to 80. This results in a modest reduction in income of approximately €5000.

- c) On the expenditure side an increase in the cost of both Council Meetings and Board Meetings is provided. This is deemed necessary in order to take cognizance of both increased numbers attending these meetings and increased accommodation and meal costs.
- d) Secretariat costs are not expected to rise in 2003. In the personnel area higher costs in 2002 were expected but have not materialised significantly to date – the impact of new members will however be felt more in 2003 and therefore the higher personnel costs already provided for in 2002 are maintained for 2003.
- e) The level of computer equipment and maintenance costs is expected to reduce in 2003. A provision at 7000 is considered adequate
- f) Promotional activity costs are budgeted at a lower level for 2003. The 2002 costs included non recurring promotional costs of €33000 associated with the epi 25<sup>th</sup> anniversary symposium and dinner.
- g) The CPE Seminars are budgeted in 2003 to break even.

The investments at June 30, 2002 were valued at € 1,418,000. The bank balances at June 30, 2002 stood at € 846,000.

## Editorial Board Report

J. Gowshall · J. Kaden · E. Liesegang · T. Schuffenecker

The web site of the *epi* is constantly enriched. The *epi* regulations – including the By-laws – are already available in the standard PDF format as well as the Terms of References of the different committees. A mention „latest-update“ has been inserted in order to encourage quick visits to the web site for picking up the latest changes. The PQC section is being substantially restructured thus demonstrating that the information creation process is in action.

The Editorial Board reminds that the quality of the information which is published closely depends on every information provider within the *epi* in order to promote the *epi*'s voice towards the different countries, even the eastern countries. In this respect, each Committee chair-

man is reminded to appoint a member of his committee to serve as an interface to the Editorial Board. So far, the OCC, the PQC and the By-laws Committees have made such appointment.

Recent statistics shows an increase in the number of visitors: About 5000 pages requested in July 2002; 9000 in August 2002 and more than 12000 pages in September, thus demonstrating the success of the *epi* web site.

The Editorial Board has also investigated the availability of domain names including „epi“ and also „european patent attorney“, and made appropriate recommendations for a quick reservation.

## Report of the EPO Finances Committee

J. Boff (GB)

### Among the issues before the Committee are:-

#### 1) Productivity assessment methodology

The President of the EPO has prepared a report for the Budget and Finance Committee and Administrative Council discussing the methodology for assessing productivity. This is important both for us on the outside assessing the EPO's performance, but also from the inside for the effect it may have on discussing bonuses. The Committee will keep a watch on the EPO's methods of assessing productivity for both these reasons. There are reasons to suppose that the EPO's efforts to improve performance are beginning to have effect. Following a meeting with the EPO concerning statistics and productivity, a graph was provided by the EPO showing recent and projected production (See Annex below).

#### 2) Statistics

At the meeting with personnel at the EPO mentioned above, it was made clear that further and better statistics are available, and will become available. It is hoped to present a fuller discussion of statistics in a later issue of epi Information.

One item of particular interest is that for management purposes the EPO has re-arranged its search and examining activities into 14 technical sectors (known as „Joint Clusters“). It is clear from management statistics that the production and backlog figures for these joint clusters differ considerably so that some show a good production and low backlogs (e.g. polymers) and others show less good production and backlogs (e.g. computers). Such separate statistics for the joint clusters will become publicly available in due course, so that it will be appar-

ent to users what the expected timescale is for a given technology.

Consideration is being made to putting these statistics on the Internet so that users have ready access to this useful information.

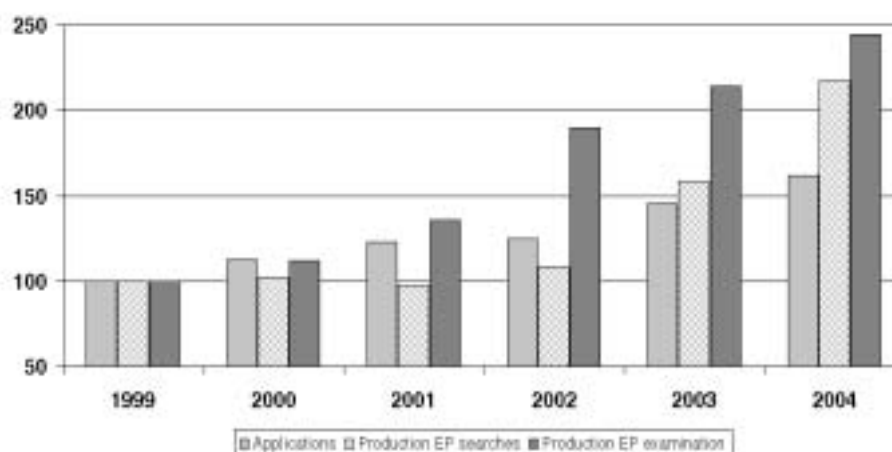
#### 3) Potential New sites for the European Patent Office

The Local Staff Committee at The Hague has proposed that the EPO establish additional offices. They have proposed that two new sites would be appropriate. Their reasoning is that the present arrangements were established at a time when the filing rate was forecast at 30,000 applications a year, and now the EPO processes five times as many applications. They also believe that this would make the EPO a more attractive employer. This is not a proposal to subcontract services. This would have significant financial implications. Munich is not the cheapest city in Europe to have offices in, and adding capacity elsewhere may be more cost effective than expanding existing sites. The Committee will watch developments with interest.

### Annex to Report of EPO Finances Committee

The following graph shows that since 1999, the growth in the production is much higher than that in the number of applications filed. In 2002, the number of EP examinations will have almost doubled compared with 1999, while applications will have increase by 25%. The Office expects this trend to continue, such that in 2004 the number of examinations will be 250% of the 1999 level, while the number of applications will be only 50% above the 1999 level as shown in the graph.

**Development of Workload and Production for the European Patent Procedure at the EPO**  
(Base 1999 = 100)





## Report of the European Patent Practice Committee (EPPC)

A. Casalonga (FR)

Following the meeting of the EPPC of 18 June 2002 in Munich.

### I. New proposed Implementing Regulations for the EPC 2000

The draft Implementing Regulations for the EPC 2000 handed down by the EPO was studied on the basis of the English version which was the only version published at that time.

The EPPC considered that the draft should be studied on the basis of the three languages so that any change or amendment should be considered at the same time in the three languages.

The EPPC noted that many changes were made on drafting style and questioned whether such changes were appropriate.

After a general discussion of the draft, a meeting of a sub-committee was convened on August 6, 2002 in Paris where further detailed discussions took place.

The result of the entire study was a draft of position paper which was circulated among the members of the EPPC through Internet before the final draft was issued and sent to the EPO via the *epi* secretariat (see Annex 1).

### II. Question 165 – Non-admissibility of disclaimers (T 323/97)

In decision T323/97 (Disclaimer/UNILEVER), the Board of Appeal indicated that introduction of a „negative“ technical feature in a claim resulting in the exclusion of certain embodiments (disclaimer) must find support in the application as filed.

According to the Board (and following G 2/98), the technical problem underlying a technical teaching can be redefined afterwards in such a way that a disclosure which was initially considered as „accidental“, i.e. not helping to solve the technical problem, could become relevant for determining inventive activity.

The Board then concludes in a very broad way that „any amendment of a claim not having support in the application as filed and aiming at distancing the claimed subject-matter further from the state of the art, in

particular by way of a disclaimer, contravenes Article 123(2) EPC and is consequently inadmissible“.

It may be that the Board was influenced by the fact that the proposed disclaimer was in itself not clearly based on an „accidental“ anticipation.

Following the decision of the *epi* Council, the EPPC had prepared a draft letter to be sent to the EPO. Since then, it appeared that the question will be submitted to the Enlarged Board of Appeal. It was decided to wait the outcome.

### III. Question 166 – Diagnostic Methods (T 964/99)

In decision T964/99 (Device and method for sampling of substances using alternating polarity/CYGNUS), the Board of Appeal stated that a diagnostic method should not only be considered when all the steps for reading a medical diagnosis are involved.

According to the Board, Article 52(4) EPC is meant to exclude from patent protection all methods practised on the human or animal body which „relate to diagnosis or which are of value for the purposes of diagnosis“.

A step of iontophoretically sampling a substance from the living body for diagnostic purposes has to be considered as a diagnostic method within the meaning of Article 52(4) EPC.

The EPPC considers that the position taken by the EPO Board of Appeal in the decision T 964/99 should be revised. For this purpose, the EPPC intends to take liaison with the Biotech Committee for preparing a letter to the EPO concerning this question.

### IV. PCT Reform

The EPPC took note that, according to the new provisions, separate designations have been cancelled.

The wish expressed by the EPPC that an applicant could avoid designating certain specific countries seems to have been satisfied in that it appears possible to file a letter with the application documents withdrawing a designation as from the filing date. According to new PCT Rule 90bis 6(b), where a designation is withdrawn on the same day, it is considered not to have been made.

## epi Position paper relating to the new Implementing Regulations under the EPC 2000

### I General Comments

1) It appears that the proposed new Implementing Regulations contain amendments of a linguistic or clerical character which were not made in order to adapt the implementing regulations to the revised EPC 2000.

The *epi* questions the need for these amendments. In fact, such amendments could lead to juridical uncertainty and interpretation difficulties. In many cases, a change made in only one language leads to questions as to why the other language versions have not been correspondingly modified. Generally speaking, the *epi* would favour maintaining the status quo for the wording of the Implementing Regulations in the three official languages unless an amendment is absolutely necessary for clarification or, particularly, for harmonization of the three versions of the Regulations.

2) As examples of such inappropriate amendments, the following may be cited, even if they may not be the best examples :

Rule 1(3) is amended in the English version by changing the first words „ documents to be used for purposes of evidence “ to read „ documentary evidence “. The corresponding French version reading „ les documents utilisés comme moyens de preuve “ remains unamended.

The corresponding German version presently reading „ Schriftstücke, die als Beweismittel .... “ is amended to read „ Schriftliche Beweismittel... “.

These proposed changes do not seem really necessary.

Rule 2(2), is amended by changing „ in the case of oral proceeding, the employees of the European Patent Office may, instead of the language of the proceedings, use one of the other official languages of the European Patent Office “ to read: „ in oral proceedings, employees of the European Patent Office may use any official language of the European Patent Office as the language of the proceedings “.

This amendment seems to imply that in oral proceedings, it would be possible for EPO employees to shift from one official language to another whilst the present wording seems to imply that only one official language should be used.

The corresponding change proposed in the French version : „ peuvent utiliser une langue officielle de l'Office Européen des Brevets autre que la langue de la procédure “ seems to have a different meaning from the newly amended English version.

The German version is left unamended.

It seems therefore that the proposed amendments in Rule 2(2) tend to introduce the possibility of discrepancies in interpretation of the three versions.

3) In view of the fact that the coming into force of the revised EPC 2000 cannot be expected for some years, it

does not appear advisable to decide now the definitive wording of the Implementing Regulations which would then be frozen until entry into force of the revised EPC 2000.

The *epi* therefore stresses that further amendments of the Implementing Regulations may appear necessary before the revised EPC 2000 comes into force.

### II Specific Comments on amended Rules

These comments are based mainly on the English version, assuming that mere clerical or linguistic changes should not be considered as substantial changes.

#### – Rule 1(3) Language in written proceedings

The indication of „ a period to be specified “ does not seem to us to be sufficiently precise. The *epi* would prefer to indicate that said period is „to be specified by the EPO in accordance with the provisions of Rule 84 “.

#### – Rule 2(1) Language in oral proceedings

The proposed amendment permitting the use of any official language of the EPO during oral proceedings is welcomed by practitioners.

#### – Rule 5 Certification of translations

The statement of „a period to be specified“ does not seem to be sufficiently precise. The *epi* would again suggest indicating that said period is „to be specified by the EPO in accordance with the provisions of Rule 84 “. The *epi* considers that the sanction for not filing the certificate in due time is rather harsh and we would suggest stating instead that „the EPO may consider the document as not having been filed“.

The statement „unless otherwise provided“ seems unclear and we suggest it be cancelled.

#### – Rule 6(1) Filing of translations and reduction of fees

The proposed amendment which is in line with article 6(7) of the PLT together with Rule 41(1) is acceptable.

As there is apparently no doubt that the provision also applies to divisional applications, cancellation of the second sentence of present Rule 6(1) appears acceptable.

#### – Rule 18 Publication of the mention of the inventor

The *epi* feels the proposed amendment constitutes a substantive change as it would make it possible for an applicant to avoid designating an inventor without filing evidence of the fact that the inventor has effectively waived his right to be mentioned.

The *epi* therefore suggests that the Rule be reworded to make clear that a letter or a written statement from the inventor has to be filed at the EPO by the applicant if an inventor does not wish to be mentioned. Of course,

such a letter or written statement should be kept in the non-public part of the file.

– *Rule 20(1) Registration of transfers*

The *epi* prefers the present wording of Rule 20(1) where it is clear that the EPO must be *satisfied* by the documents produced that the transfer has effectively taken place. The proposed amendment seems to imply that the EPO would no longer make any check of the documents produced.

The *epi* also notes that registration of transfers (as well as licenses) are presently accepted after grant of the European patent during the opposition procedure, if any. Consequently, it could be advisable to extend the provisions of Rule 20 (and also of Rules 21 and 22) to granted European patents.

Registration of transfers of a patent also seems required for the purposes of a limitation procedure as only the proprietor can be requester.

– *Rule 22 Special entries for license registrations*

It should be made clear that these special entries are sub-categories of the registration provided for in Rule 21 and that therefore, the provisions of Rule 20(1) also apply to making a record under Rule 22.

– *Rule 31 Claims incurring fees*

According to the proposed changes, it appears that an applicant would be liable to pay claims fees each time he files a new set of claims, the number of which exceeds ten and the number of the previously filed claims.

The *epi* therefore suggests that this Rule be amended to clearly state that claims fees for more than ten claims should only be payable „at the filing“ of the application.

In case of amended set of claims filed during prosecution, any claims fee should only be payable at the time of acceptance of the application simultaneously with the granting and printing fees.

– *Rule 32(2)(a) Form of the drawings*

While the use of colors on drawings should normally be avoided, some situations exist where colors are useful or even necessary.

The *epi* therefore suggests further amendment of this rule so that coloring would be accepted if really necessary.

– *Rule 34(2) and (3) Prohibited matter*

According to the proposed changes, it is not clear who is responsible for omitting prohibited matter from the application as published.

The *epi* prefers the previous wording, making clear that the EPO is responsible for omitting such matter from the application as published.

– *Rule 35(3) General provisions governing the presentation of the application documents*

The words „subject to paragraph 11“ should read „subject to paragraph 10“.

– *Rule 38(1) Declaration of priority*

It is suggested that „file number“ should be changed to the more usual wording „application number“.

– *Rule 38a(3) Priority documents*

According to the proposed amendment, a translation of a priority document in a language other than the three official languages of the EPO will not be in the file. A third party will have to make their own translation in order to assess the validity of the priority of the granted patent. The *epi*, conscious of the PLT provisions on this question, would nevertheless suggest adding into this rule that the EPO could invite the applicant or proprietor of the European patent to file a translation of the priority documents „upon request of a third party“.

– *Rule 39 Examination on filing*

It should be made clear that the two months mentioned are „from the notification of the EPO“.

– *Rule 39a Missing parts of the description or missing drawings*

The same comment can be made as for Rule 39.

In paragraph 1 of Rule 39a, the *epi* suggests canceling the last sentence reading „The applicant may not invoke the omission of such a communication“. In fact, the *epi* considers that a part inadvertently omitted in a patent application should not lead to a complete loss of rights. Receiving a communication from the EPO protects the applicant against such an excessive consequence.

– *Rule 42(2) Subsequent designation of the inventor*

This paragraph relating to divisional applications or to new applications under Article 61 is not clearly understood.

– *Rule 45 Incomplete search*

The *epi* considers that the EPO should at least explain the reasons why it considers that it is impossible to carry out a meaningful search. The *epi* suggests therefore that this rule be further amended to provide for the EPO to send a reasoned declaration.

– *Rule 46 European search report where the invention lacks unity*

The proposed changes now provide for the possibility of the EPO to determine which is the main invention.

The *epi* considers that the applicant is entitled to decide on which invention he wants the search report to be established. The *epi* therefore prefers the wording of present Rule 46 where the search is made on the invention or the group of inventions „first mentioned in the claims“.

– *Rule 54 Certificate for a European patent*

The *epi* suggests that the wording be revised to make clear that several certificates can successively be obtained upon request by the proprietor of the patent.

The new wording could possibly be drafted, taking into consideration paragraphs 1 and 2 of present Rule 54.

– *Rule 56(1) Rejection of the opposition as inadmissible*

The *epi* does not agree with the addition of Rule 55b, paragraph 2(b). The *epi* considers that an opposition should not be rejected as inadmissible simply because the title of the invention has been omitted in the notice of opposition.

Alternatively, Rule 55b(2)(b) could be streamlined by cancelling any reference to the title or even the name of the patentee.

– *Rule 57(1) Preparation of the examination of the opposition*

The proposed changes could be misunderstood.

The *epi* prefers maintenance of the previous wording stating „to file amendments“.

– *Rule 58(1) Examination of opposition*

The *epi* is concerned about the length of the opposition procedure and particularly in case of appeal when the Board of Appeal refers the case back to the first instance. In order to avoid such a lengthy procedure, the EPI suggests that the opposition division examines *all the grounds* invoked by the opponent during the procedure.

The *epi* therefore suggests that the proposed wording be further amended to reflect this situation.

The proposed wording „the opposition division shall be *obliged*“ appears strange and not exactly in line with the French and German corresponding versions. The wording „shall examine“ could be preferred.

– *Rule 58a(2) Maintenance of the European patent in amended form*

With the proposed wording, the period of time in which the prescribed fee must be paid is not clear.

It is suggested to shift „within a period to be specified“ before paragraphs a) and b).

– *Rule 63c(2)(c) Requirements of the request for limitation*

In addition to the provisions proposed, the *epi* suggests that provision be made according to which the EPO shall inform a licensee if such a licensee is recorded at the EPO, so that said licensee be aware of a limitation request filed by the proprietor of the patent.

– *Rule 63e Termination of limitation proceeding*

The *epi* agrees with the proposed wording according to which the limitation proceeding is terminated if an opposition is subsequently filed. As a matter of fact, the opposition procedure is more balanced being an inter partes procedure and the Opposition Division has the possibility of also deciding on the validity of the limited claims, which is not the case during limitation procedure.

– *Rule 63f Examination of the request for limitation*

The *epi* agrees that the limitation procedure should be swift and simple. However, this should not lead to the result that the requester is obliged to file a new limitation request upon immediate rejection of the request by the EPO. Consequently, the *epi* wishes to make clear that the

Examining Division will authorize the requester to answer a notification expressing the opinion of the Examining Division, thus permitting the requester to file further amended limited claims.

A corresponding provision could be introduced in Rule 63f or alternatively in Rule 63g(4).

It should also be made clear that it is possible to request different limitations for different member states of the EPC.

– *Rule 63h Form of the amended European patent specification*

The *epi* wishes to stress that the description of the European patent after limitation should be amended to reflect the limited claims. Otherwise, the courts and third parties could have difficulties in interpreting the scope of protection according to Article 69 EPC.

– *Rule 64a(2) and (3)*

Concerning paragraph 2, the *epi* prefers the maintenance of the previous wording of Article 110 EPC 1973 stating „as often as necessary“. The appeal procedure is an important procedure where both parties must have the possibility of presenting all their arguments. It would be unfair and contrary to the interests of both parties to limit the rights of the parties to file observations.

The *epi* approves the proposed amendment of paragraph 3 in view of the fact that further processing according to Article 121 EPC will apply to this situation where the European patent application is deemed to be withdrawn.

– *Rule 67a(b) Further fundamental procedural defects (Procedure for Review)*

The *epi* is concerned that the procedure for Review now introduced could exaggeratedly lengthen many procedures.

In order to limit such a risk, the procedural defects which can be presented should be defined in a strictly limited way. While this is the case for paragraph a), the *epi* considers that paragraph b) leaves the door open to any kind of procedural defect and is therefore too broad.

The *epi* suggests further amending the proposal by stating in paragraph b) : „decided on the appeal without deciding on a *clearly stated* request relevant to that decision“.

– *Rule 67d(1) Contents of the petition for review*

The *epi* considers that the petition should also contain the grounds which are the basis of the petition.

– *Rule 67f(1) and (3) Procedure in dealing with petitions for review*

The *epi* agrees that the procedure should not be exaggeratedly long. However, in view of the importance of the matter, including the possibility of canceling a decision taken by a Board of Appeal, the *epi* considers that the procedure for review should be complete with the parties having the possibility of fully explaining their arguments. Consequently, the statement of the last sentence „time limits may be shortened“ which appears

to be somewhat undefined, could lead to a shortened and incomplete procedure.

The *epi* therefore suggests that this sentence be cancelled.

In paragraph 3, the *epi* notes that the procedure for review according to paragraph 2(a) appears to be an exclusively written procedure.

The *epi* however considers that the right to have oral proceedings is a fundamental right of the parties which should not be forgotten even in cases which are deemed to be „clear“. Furthermore, the *epi* disagrees with the idea that the Enlarged Board of Appeal would decide, even in such situations, „without the involvement of other parties“ In fact, the other parties must have the right to present their arguments.

– *Rule 72 Decision on taking of evidence*

The title of this rule should probably better be further amended simply to read „Taking of evidence“.

The *epi* considers that the hearing of witnesses or experts should always be recorded so that a transcript of the hearing could be used afterwards in the continuation of the proceedings. The *epi* therefore suggests that a corresponding provision be introduced in Rule 72 or in Rule 72b.

– *Rule 85a(2) Further processing*

The *epi* does not agree with the introduction, as exceptions which are ruled out from further processing, of the provisions of Rules 41 (correction of deficiencies in the application documents) and 41a (deficiencies in claiming priority). As a matter of fact, even if a legal remedy is provided for the situations mentioned in Rules 41 and 41a, those situations concern small deficiencies for which the *epi* does not see any reason for excluding further processing.

– *Rule 85b(3) Reestablishment of rights*

The proposed rule according to which reestablishment of rights is ruled out in respect of any period for which further processing is available does not seem advisable. In fact, in practice, difficulties could still arise in a situation for which further processing could have been made. Furthermore, the basis of a reestablishment of rights is the fact that an applicant or a proprietor was unable to observe a time limit in spite of all due care. It was not the intention, when revising Article 122 EPC, to exclude as a general rule all the situations for which further processing is possible.

It would be inequitable for applicants and proprietors to lose their rights, if they failed to request further processing, when they could still show that the non-observance of the time limit, which caused the refusal of

the relevant application, could be explained in such a way that reestablishment of rights could be obtained.

It must also not be forgotten that the difficulty which made it impossible to observe the time limit may well continue after expiry of the time limit for requesting further processing.

For all these reasons, the *epi* suggests modifying the proposal so as not to exclude the situations for which further processing is available.

– *Rule 89a(b) Information on prior art*

This newly introduced provision should not give rise to a broad interpretation. The *epi* suggests that communication of prior art be limited to a corresponding patent application. The wording could therefore be completed by stating „concerning a priority application or an application *claiming the same priority* as the European patent application“.

– *Rule 92(3) Entries in the Register of European Patents*

The *epi* does not understand the reason for deleting this paragraph. It must be noted that in some countries, certified extracts from the Register of European Patents are required (for example to obtain an order for „saisie-contrefaçon“ from a French judge).

Reintroduction of this paragraph is therefore suggested.

– *Rule 101a Attorney evidentiary privilege*

The *epi* warmly welcomes this new rule and would like to make the following small observation.

The French version (Règle 101bis) should be amended to replace the word „client“ by the word „mandant“ in accordance with the wording of the French version of the Regulation on discipline (Règlement en matière de discipline des mandataires agréés).

Similarly, the German version of Rule 101a should be amended by replacing „Mandant“ by „Auftraggeber“ for the same reasons as previously mentioned.

This would make clearer that the „client“ mentioned in the English version can be the company where the professional representative is an employee or a subsidiary of that company.

– *Rule 105(3)*

The *epi* is concerned that the independence of the three members composing the panel could be challenged. It may be argued that the proposed wording does not exactly comply with Article 6 of the European Convention on Human Rights.

Consequently, the *epi* suggests specifying that the three members are *selected from the Boards of Appeal*.

## Report of the Harmonisation Committee

F. Leyder (BE)

1. As Council knows, the Harmonisation Committee follows the work of the Standing Committee on the Law of Patents in the framework of WIPO.
2. The next session starts on 25 November 2002, and *epi* will be represented by John Brown and Klas Norin, as previously.
3. It had been usual in the previous instances that the draft documents for discussion were available about 2 months beforehand. This time, the new draft Substantive Patent Law Treaty was made available only last week.
4. The Harmonisation Committee will be invited to meet on 13 November, to review the draft and to instruct the *epi* delegates. A report on the meeting of the Standing Committee will follow in due course.
5. The Council is invited to note the contents of paragraphs 1 to 4 above.
6. All documents relating to the Standing Committee on the Law of Patents are available on the WIPO internet site via the link <http://www.OMPI.int/scp/en/>

## Report of the Online Communications Committee Covering June – October 2002

D. Speiser (DE)

Shortly after the last Council meeting in Stockholm the Committee met in Munich to organize itself and to discuss the next steps in its co-operation with the EPO. The meeting was interrupted for a test in the EPO with a beamer to get an impression on how a beamer could support the work of the Council during Council meetings and possibly even the work of the Board during Board meetings. It was found that a sufficiently strong beamer could indeed help the participants of meetings to more closely follow the discussion. We learned at this occasion that working groups of the Administrative Council of the European Patent Organisation have started to make use of a beamer during their sessions successfully.

The work of the EPO and its collaborators in the development of the electronic online filing software (eOLF software) is making substantial progress. At the beginning of July 2002 the completely new version 1.10 of the eOLF software was distributed by the EPO. A few problems surfaced but apparently have already been solved so that the Committee decided to replace the present web announcement by a positive and encouraging announcement reading as follows:

„The Online Communications Committee of the *epi* is pleased to announce that the EPO substantially improved the *epoline*® online filing software („eOLF“) in several aspects and most importantly with regard to the risk of disclosure problems which had been identified by members of this Committee.

Online filing of patent applications requires the submission of all technical documents (description, claims,

drawings, sequence listings, abstract) in a standardized format (PDF). The disclosure problems addressed above were related to the need of converting ordinary text files and drawing files („pre-conversion files“) into this standardized format. The conversion as such was easy but the results of the conversion were not always correct. Since the EPO originally accepted only electronic files in said standardized format (PDF) it could have happened, therefore, that the original disclosure was faulty. Because of Article 123 (2) EPC a subsequent correction was impossible.

Now, as of eOLF version 1.10 users will have the possibility to add to the technical documents in the standardized PDF format, their texts and drawings in the original formats of the pre-conversion files, such as Word, Word Pro or the WordPerfect formats as well as various drawing formats such as AutoCAD and Corel Draw. For details of which versions are accepted by the EPO please consult the Notice addressed below.

Since the package, which eOLF sends to the EPO, now may include these pre-conversion files in addition to the files, converted into said standardized PDF format all errors that may have occurred during conversion from the original pre-conversion format to PDF or from PDF to the EPO's internal format (TIFF in Phoenix) may be corrected from the filing date up to expiry of the patent under Rule 88 EPC on request for correction of obvious errors of electronic transcription. The correction will be obvious in the sense that it is immediately evident that nothing else would have been intended than what is

offered as the correction, i.e. on the basis of the included pre-conversion files, because these pre-conversion files are considered by the EPO to form a part of the original disclosure. See „Notice dated 1 June 2002 concerning the electronic filing of European patent applications and subsequent documents“ on [http://www.european-patent-office.org/news/info/2002\\_05\\_23\\_e.htm](http://www.european-patent-office.org/news/info/2002_05_23_e.htm)

This having been said it should be noted that the EPO case law with respect to corrections is applicable irrespective of whether an application is filed on paper or in electronic form so that it can never be guaranteed that all errors can be corrected at any time without negatively influencing the filing date.

A further improvement of eOLF terminates the need to split up the description, claims and abstract and hopefully drawings into three or more individual PDF files. At a later date it should be possible to also include in the single file the drawings and sequence listings. In this way the applicant can save time in the preparation of the application and a further possibility of errors is removed.

Also, it will be of interest that the EPO according to a note received by this Committee will accept online applications accompanied by PDF files generated not only by the above addressed conversion but alternatively generated by scanning the description, claims, abstract and drawings. This is important for those of us who receive filing instructions from abroad accompanied by the traditional description etc. printed on paper.

Still further, users will welcome the possibility of using the eOLF for entering the EP regional phase of a PCT application; as of eOLF version 1.10 entering the regional phase before the EPO („Euro-PCT“) simply requires the user to open a menu into which the publication number or PCT number of the respective PCT application and the signature of the user are entered, whereupon the user just has to click the submit button to submit the document to the EPO electronically. Subsequently receipt of the 1200 form is immediately acknowledged electronically. Entering the EP regional phase using eOLF, therefore, has become particularly simple.

In summary the Online Communications Committee is confident that eOLF by now has reached the needed level of reliability. Taking additionally into consideration the intended expansion of the staff of the *epoline*<sup>®</sup> Customer Services as well as the forthcoming installation of an *epoline*<sup>®</sup> backup server to improve availability, the *epoline*<sup>®</sup> system in all likelihood will work to the satisfaction of the users.

However, any computer system comprises software modules from several suppliers, and the software modules are not always perfectly compatible with each other. New versions, while correcting some errors, may introduce new ones. As a result, users are urged to always include the pre-conversion files.

The Online Communications Committee invites members to make proposals for further improvements of the system and the Committee is prepared to collect such proposals and discuss them with the EPO. Proposals may be sent to

1. the *epoline*<sup>®</sup> Customer Services at [epoline@epo.org](mailto:epoline@epo.org); and,
2. [info@patentepi.com](mailto:info@patentepi.com), for the attention of the OCC.“

Members of the Committee will have our web announcement published in their countries so as to spread the information more broadly. Files with the text in English or German are available from the chairman and a French translation is being prepared and will be available from M. L. Nuss.

Responses received by members of the OCC since the release of version 1.10 of the eOLF software are encouraging and it appears that more members and patent departments are beginning to become involved in online filing. Assisted by members of the OCC and the EPO some presentations and seminars on online filing took place at least in Belgium, Germany and Italy. CIPA are planning a seminar on on-line filing in the UK in early January at which there will be speakers from the EPO and the UK Patent Office. Members being interested in further seminars are kindly requested to contact the OCC and/or the *epoline*<sup>®</sup> team of the EPO using the addresses provided above.

The OCC and the EPO had agreed to have a further meeting on eOLF but since no major problems surfaced, the meeting was postponed until a later date. A number of minor problems were dealt with by the EPO by providing patches for the software. Within the near future the EPO will distribute a first Service Pack for eOLF. Also, within the very near future it will become possible to file PCT applications using the *epoline*<sup>®</sup> software.

The chairman of the OCC on 1 October 2002 attended a one day conference at the German Federal Patent Court on online communication between the attorneys and the court. A cor-responding option will become available shortly and will use encrypted email via the Internet. At this conference the German PTO presented its national development of an online filing software intended for filing all kinds of applications including trademarks. They mentioned talks with the EPO on this topic and we can but hope that at least some kind of harmonisation of the respective software packages can be achieved. Unless a very substantial degree of harmonisation is reached the OCC foresees considerable daily problems on the side of the users which will automatically result in a poor acceptance of the entire system.

Information reached the OCC that the Benelux Bureau for Trademarks started to offer online filing for trademarks and that the USPTO seriously considers to give up wasting money on a national online filing software in favour of an adapted version of the *epoline*<sup>®</sup> software. The EPO and the USPTO have commenced work on the adaptation. The French Patent Office intends to allow online filing of national patent applications using the *epoline*<sup>®</sup> software in December 2002 and the British office plans to open online filing by mid 2003 also using the *epoline*<sup>®</sup> software.

The OCC intends to further monitor national developments of online communication and would welcome any respective information from *epi* members.

## Report of the Professional Qualifications Committee (PQC)

T. Onn (SE)

### 1. Students of the epi

Today we have 394 students from 13 countries. Of these 95 have registered in 2002.

The training timetable helping the students in their preparation for the EQE is being revised. This will be distributed to the students as soon as the revision is finished.

### 2. epi Tutorials

Last year there was a severe shortage of tutors. Therefore we only organized one tutorial this year instead of the regular summer and autumn tutorials. The candidates can still write two years' papers and have them commented by a tutor. This has worked out well and we have in good time been able to find tutors to all tutees.

This year we have 75 candidates (from 11 countries) who are doing 391 papers. 22 tutors (from 8 countries) will comment the answers.

In order to improve the tutorials we are discussing a more radical change. We have thus appointed a working group to look into this matter and our aim is to be able to launch the revised tutorials in the summer of 2003.

### 3. Tutors' meeting

On 20 November 2002 the annual tutors' meeting will be held at the epi premises in Munich. It will be a one-day meeting together with chairmen/secretaries from Examination committees I, II and III and some tutors from CEIPI.

The date has been set in order to make it possible for the tutors to attend the International Forum, co-organized by epi and EPO and taking place on the two days subsequent to the tutors' meeting.

We are pleased to note that the Examination Secretariat has sent us the Examiners' Report as well as the statistics of the EQE 2002. This enables us to distribute the former to our tutors well in time before the Tutors' meeting.

### 4. Continuing Professional Education (CPE)

The fourth CPE seminar was held in the premises of the Finnish Patent Office in Helsinki on 4 October 2002. The topic was the same as in earlier seminars, namely „Some basic facts about Oral proceedings at the EPO“. Mr. Finnilä organized the seminar and Mr. Daniel Thomas of DG 2 chaired the programme. In addition to the Finnish colleagues taking part in the mock opposition there were 78 persons attending the seminar.

Portugal has announced its interest to organize this CPE seminar in the beginning of next year and countries to follow are Ireland and Sweden. We note with satisfaction the great interest in the CPE seminars.

We are also planning to arrange CPE seminars on other topics and have started the discussion on how an organization for these activities best will be established.

### 5. EQE

The EQE 2002 took place on 20-22 March and as usual a majority of the candidates were resitters. The passing rate for first sitters was 35.5% which figure is about the same as last year. The number of successful candidates sitting the examination in the modular way is increasing. The real good news this year is that the passing rate for resitters has increased from last year's figure of 23.1% to 38.8%.

The Examination Secretariat has been kind enough to distribute our questionnaire to the candidates of EQE 2002.

A preliminary report on the results of our questionnaire was presented to the Stockholm Council meeting. This time 245 of the candidates sitting last years EQE had answered. The answers to the questionnaire has now been analysed and the report from our working group on statistics is annexed.

The EQE 2003 will take place on 26-28 March and the last date to enrol is 8 November 2002.



## Report from the PQC Working Group on Statistics

G. Leissler-Gerstl (DE), F. Schweinzer (AT)  
E. Christiansen (DK), T. Onn (SE)

About 1100 questionnaires were distributed to the candidates of EQE 2001. We received 245 answers, which is a little more than the preceding year.

Unfortunately the responses are not statistically significant for the overall population of candidates as the total passing rate of the respondents was higher than that for all sitters.

Combining the answers of our respondents and the official statistics of the EPO reveals a significant difference in passing rate of candidates from countries having their mother tongue in one of the official languages as compared with those having another language as their mother tongue. It is also evident that candidates from countries with a national examination have a higher passing rate than those from countries without any examination.

A majority of the candidates pass at least after the 4<sup>th</sup> sitting.

From the answers received from the respondents and the EPO statistics we have compiled the following figures of the EQE 2000 and 2001 for a further analysis.

Passing rate (year)	2000	2001
<b>Respondents</b>	46.6%	48.6%
<b>All sitters</b>	29.2%	30.3%

Technical field	Profession		Prof.experience (years)	
	00	01	00	01
e/m	137	145	3	63
c	69	97	4	57
			5+	85
				79

The number of candidates from industry and private practice is about the same.

e/m	passed(%)		c	passed(%)	
	2000	2001		2000	2001
ex	20	40	ex	33	50
i	42	38	i	58	68
p	47	52	p	44	53

Also this year the passing rate for chemists is higher than that for candidates in the electro/mechanical field. It is to be noted the significant difference between chemists in industry and in private practice, whereas the reverse is valid for candidates in the electro/mechanical field.

Education	00		01		Sex	00		01	
University	195	222	female	51	64				
Other	6	18	male	154	179				

Most of the candidates hold a degree from university (List A qualification). The passing rate for female and male candidates is about the same.

Nationality	00		01		Language used	00		01	
AT	2	3	FR	31	34	German	87	111	
BE	5	6	GB	34	47	English	88	96	
CH	2	6	IE	2	3	French	30	34	
DE	83	102	IT	7	8	Other	1	3	
DK	7	8	NL	10	14				
ES	3	3	PT	1	0				
FI	5	2	SE	13	7				

There was an essential increase in the number of German candidates sitting EQE 2001.

In addition to the questionnaire we have compiled the following facts from the officially published EPO statistics (grey tables) for first sitters during the years 1996 – 2001:

Candidates	Passing rate %
TOTAL	38
from DE, FR, GB	41
from other countries	27

There is a significant difference between candidates from Germany, France and Great Britain as compared with candidates from the other countries. This is not surprising as the languages of these countries are the official languages of the EPO and in addition to this they have national examinations and a long tradition of training candidates.

The following figures including all EPC countries derive from the same statistics:

Candidates from countries	Passing rate %
with an official language	41
with no official language	24
with a national examination	39
with no national examination	22

The table indicates clearly that of all candidates those with a mother tongue in one of the official languages have a higher passing rate (41%) than those having another language as their mother tongue (24%). It is

also evident that candidates from countries with a national examination have a higher passing rate (39%) than those from countries without any examination (22%).

Is it the influence from the good figures of Germany, France and Great Britain that makes this difference? The answer is that there may be some influence, but a look at the figures of the statistics for the „other countries“ reveals the following:

Candidates from „other countries“	Passing rate %
with an official language	38
with no official language	24
with a national examination	30
with no national examination	22

Also for these countries there is almost the same, significant difference between candidates having the official language as their mother tongue as compared with those who do not have it. When it comes to national examination or not there is a difference also in this group of countries, but the difference is not as significant as when all countries are included.

The distribution of the official statistics for all sitters for the years 1997-2001 per paper and for countries having a number of candidates satisfying the statistical requirements are as follows:

#### Paper A

Country	No. of sitters	passed	%
AT	37	27	73
BE	60	34	57
CH	46	23	50
DE	1219	749	61
DK	91	42	46
FR	356	210	59
GB	535	355	66
IT	204	96	47
NL	122	67	55
SE	121	61	50

#### Paper B

Country	No. of sitters	passed	%
AT	38	26	68
BE	69	39	57
CH	42	24	57
DE	1148	796	69
DK	98	42	43
FR	354	224	63
GB	550	380	69
IT	221	112	51
NL	130	82	63
SE	140	69	49

#### Paper C

Country	No. of sitters	passed	%
AT	56	23	41
BE	68	27	40
CH	59	22	37
DE	1622	563	35
DK	127	27	21
FR	425	138	32
GB	581	290	50
IT	263	53	20
NL	141	58	41
SE	174	33	19

#### Paper D

Country	No. of sitters	passed	%
AT	48	20	42
BE	68	26	38
CH	62	22	35
DE	1514	634	42
DK	121	30	25
FR	421	142	34
GB	452	302	67
IT	253	61	24
NL	155	65	42
SE	159	36	23

If we transform these figures into the earlier categories (Germany, France, Great Britain and „other countries“ etcetera) we arrive at the following table:

All sitters	Passing rate %			
	Paper A	Paper B	Paper C	Paper D
TOTAL	59	64	35	41
From DE, FR, GB	62	68	38	45
From other countries	51	53	27	30
from countries:				
with an official language	62	68	38	45
with no official language	49	52	24	28
with a national examination	61	66	37	43
with no national examination	49	48	23	26

Not surprisingly we find a reflection of about the same general differences as earlier.

Reverting to the answers to our questionnaire we have the following figures for the years 2000 and 2001, respectively.

First sitting	00		01	
	tot	p	tot	p
yes	80	52	109	62
no	96	35	82	44
yes modular				
A+B	16	10	37	25
C+D	14	9	15	13

For the papers sat in 2000 and 2001, respectively we have the following figures:

Papers	00		01	
	p	f	p	f
A	99	28	138	34
B	103	22	142	28
C	93	69	124	55
D	94	46	111	51

As mentioned earlier respondents having passed are over-represented as compared with all candidates sitting the EQE. One trend that is recognized is that it has become more and more popular with modular sitting.

This is also confirmed in the official statistical material from EPO.

Most of the candidates pass a paper already at the first sitting, which can be seen from the figures below.

Paper A sitting			Paper B sitting		
	00	01		00	01
1	79 p	119 p	1	83 p	123 p
2	15 p	14 p	2	12 p	14 p
3	4 p	3 p	3	8 p	5 p
4	1 p	1 p	and	22 f	28 f
5	-	1 p			
and	28f	34f			

Paper C sitting			Paper D sitting		
	00	01		00	01
1	70 p	91 p	1	76 p	99 p
2	10 p	17 p	2	9 p	10 p
3	9 p	7 p	3	4 p	2 p
4	2 p	6 p	4	4 p	1 p
5	1 p	2 p	6	1 p	-
6	-	1 p	and	46f	51f
10	1 p	-			
and	69f	55f			

The figures show that after the 3<sup>rd</sup> sitting the chances to pass are not so good. The above results of paper C, passing at the 10<sup>th</sup> sitting is probably an exception to the rule.

Last year we were amazed by the fact that so few of the responding candidates did get training by their employer. The candidates this year have been more fortunate in this context and we have with great satisfaction noted that the employers seem to be more concerned about a proper preparation of the candidates before sitting the EQE.

Training by employer			Days off	
	00	01	00	01
yes	118	195	paid	69
no	75	45	unpaid	75
			p + up	8

In a final table we have summarized the courses attended by the respondents.

Courses attended	00	01
CEIPI basic	113	96
CEIPI train.	140	144
QMW	24	13
Forum	18	6
epi tutorials	52	31
national tut.	41	52
mock exam.	15	0
O'Reilly	26	34
Cronin	18	29

We also asked the candidates for comments and here we present some of them.

The answers give us valuable information about the candidates' opinions on how to improve the chances of passing.

#### **Candidates' comments to the examination papers:**

- If the exam would take place on Monday, Wednesday and Friday, I would expect an increase in pass
- It is not easy to pass (what is acceptable) but it is fair
- The biggest problem sitting the examination is the time pressure
- I would prefer a more flexible system allowing the candidates to sit the papers in whichever order they prefer and not have to attempt every paper before being allowed to resit
- If a professional has failed on part C there is less useful training to get better on that part, because there is no training in argumentation in CEIPI and so on
- Having all exams in three days may make logistical sense, but is extremely exhausting on candidates
- It is not normal to have no model solution (officially) when receiving the copies with the results to take as a reference for any possible appeal
- Papers C and D are getting more and more chemical
- Why isn't it possible to get a *real* correction of our exams? This would be of extreme help and rather easy to do at least for the law problems in C and D
- Exam commission should not award points for unasked answers neither should they take away points for any such missing answer. In papers A and B chemists have more to read than others and lose valuable time. It's easier and quicker to read figures than text

#### **Comments on the training:**

- CEIPI courses were excellent
- Study the compendia
- Train for a real examination situation
- Take enough time for training
- epi Tutorials most useful
- Internal training by employer very helpful
- No relevant feedback from Examination Committee to candidates

#### **Recommendations to other candidates:**

- Study old papers and do mock examinations
- Take your time to study
- Attend preparation courses/seminars
- Study the compendia
- Prepare with annotations in the blue book, the Guidelines etcetera
- Study together with some colleagues
- Think of the methodology (get organized etcetera)
- Time management for the different papers
- Take the modular sitting
- Take time off before the EQE
- To summarize: take enough time, try to do as many old papers as possible, study the law, prepare your books and attend courses

#### **What aspects of the profession do you find interesting:**

- The combination of technical and legal matters together with languages
- Variety of technology and work
- Interesting contacts
- Working at the edge of technology
- Strategic questions for business
- International and independent work

## Links to the epi website

At the *epi* Council Meeting in Stratford upon Avon, I was requested to prepare an advice note for members concerning links to the *epi* website.

Members are encouraged to provide a one-way link from their websites to that of the *epi*, so that more people outside the profession are alerted to the *epi* website. However, members must NOT attempt to provide a link from the *epi* website to their own website.

John D. Brown  
Chairman, *epi* Professional Conduct Committee

# RESULTS OF THE EUROPEAN QUALIFYING EXAMINATION 2002

FIRST SITTING – Examination in full and modular sitting

Nationality	Candidates (in total)	PASSED				FAILED			
		Total	%	Examination in full	modular sitting (2modules)	Total	%	Examination in full	modular sitting (2modules)
AT	7	0	0,0	0	0	7	100,0	6	1
BE	5	3	60,0	2	1	2	40,0	2	0
BU	1	0	0,0	0	0	1	100,0	1	0
CA	3	2	66,7	1	1	1	33,0	1	0
CH	19	4	21,1	2	2	15	78,9	14	1
DE	198	68	34,3	54	14	130	65,7	111	19
DK	17	4	23,5	4	0	13	76,5	13	0
ES	5	0	0,0	0	0	5	100,0	4	1
FI	6	1	16,7	1	0	5	83,3	4	1
FR	63	25	39,7	11	14	38	60,3	29	9
GB	99	49	49,5	40	9	50	50,5	39	11
GR	1	0	0,0	0	0	1	100,0	1	0
IE	1	0	0,0	0	0	1	100,0	1	0
IT	24	4	16,7	2	2	20	83,3	7	13
KR	1	1	100,0	1	0	0	0,0	0	0
LU	2	0	0,0	0	0	2	100,0	2	0
NL	23	8	34,8	5	3	15	65,2	14	1
RU	1	1	100,0	1	0	0	0,0	0	0
SE	20	7	35,0	4	3	13	65,0	12	1
US	2	0	0,0	0	0	2	100,0	2	0
<b>TOTAL</b>	<b>498</b>	<b>177</b>	<b>35,5%</b>	<b>128</b>	<b>49</b>	<b>321</b>	<b>64,5%</b>	<b>263</b>	<b>58</b>

RESITTING-Examination in full  
Total number of candidates: 31  
Passed: 2 (6,5%); Failed: 29 (93,5%)

RESITTING – Examination in part  
Total number of candidates: 624  
Passed: 252 (40,4%); Failed: 372 (59,6%)





Institut der beim Europäischen Patentamt  
zugelassenen Vertreter

Institute of Professional Representatives  
before the European Patent Office

Institut des mandataires agréés  
près l'Office européen des brevets

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2 January 2003

**RECHNUNG**  
epi-Beitrag 2003

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Cotisation epi 2003

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La cotisation reçue après le **30 avril 2003** est majorée de **25 EUR**.

Secretariat: P. O. Box 26 01 12 • 80058 München • Tal 29 • 80331 München • Deutschland  
Tel.: +49 (89) 201 70 80 • Fax: +49 (89) 202 15 48  
e-mail: info@patentepi.com

**Falls Ihr Beitragskonto schon einen Fehlbetrag aufweist, erhalten Sie ein zusätzliches Blatt. Bitte überweisen Sie dann auch den Fehlbetrag.**

Sollten Sie Ihren Jahresbeitrag nicht bezahlen, nehmen Sie bitte zur Kenntnis, dass **Ihr Name von der Liste der zugelassenen Vertreter gelöscht wird**, gemäß Regel 102(1) der Ausführungsordnung zum EPÜ. Ihr Name kann jedoch gemäß den derzeit gültigen Regeln wieder in die Liste aufgenommen werden, sobald Sie den ausstehenden Beitrag bezahlt haben, gemäß Regel 102(3).

**If your subscription account shows a deficit already, a separate sheet is attached. In this case please also transfer the outstanding amount.**

Please note that if you fail to pay your annual subscription **your name will be deleted from the list of professional representatives**, cf. Rule 102(1) of the Implementing Regulations of the EPC. However, you may, upon request, be re-entered under the current regulations on the list of professional representatives as soon as your outstanding subscription has been paid, cf. Rule 102(3).

**Si votre compte-cotisation accuse déjà un solde débiteur, vous trouverez une feuille en annexe. Dans ce cas veuillez aussi virer la somme manquante.**

Nous vous rappelons que, si vous n'avez pas acquitté votre cotisation annuelle, **voire nom sera radié de la liste des mandataires agréés**, voir Règle 102(1) du Règlement d'exécution de la CBE. Toutefois, vous pouvez faire une demande de réinscription sur la liste des mandataires agréés selon les règles en vigueur après avoir acquitté votre cotisation impayée, voir Règle 102(3).

Der Schatzmeister  
Peter Kelly

The Treasurer  
Peter Kelly

Le Trésorier  
Peter Kelly

## epi Subscriptions

P. Kelly, Treasurer

The Secretariat needs your co-operation in relation to the payment of *epi* subscriptions. In order to minimise the heavy workload in processing accurately and efficiently these subscription payments it is very important that each payment can be clearly identified with a specific member. At present we have each year a significant number of payments made to the *epi* in respect of subscriptions where the payment does not identify the member and/or his/her firm or company.

It will be appreciated that the additional work load in sorting out these problem payments is very time consuming. On behalf of the Secretariat I therefore request your help and ask that all members personally ensure that their subscription payment – whether by EPO deposit account, bank draft or eurocheque – gives as a basic level of information **your name and membership number**.

If your firm or company is making a single payment to pay the subscriptions of a number of members please ensure that the name and identification number of each member covered by this single payment is given.

I thank you on behalf of the Secretariat in anticipation of your understanding and co-operation.

## epi Art Exhibition 2003

As reported in previous issues of *epi* Information the next *epi* Art Exhibition will be held from

**13 to 31 March 2003.**

at the European Patent Office, Erhardtstraße, Munich.

The opening will take place on Thursday, 13 March at 6 p.m.

For information please contact:

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P.O. Box 26 01 12  
80058 München  
Germany

Tel: +49 89 201 70 80

Fax: +49 89 202 15 48

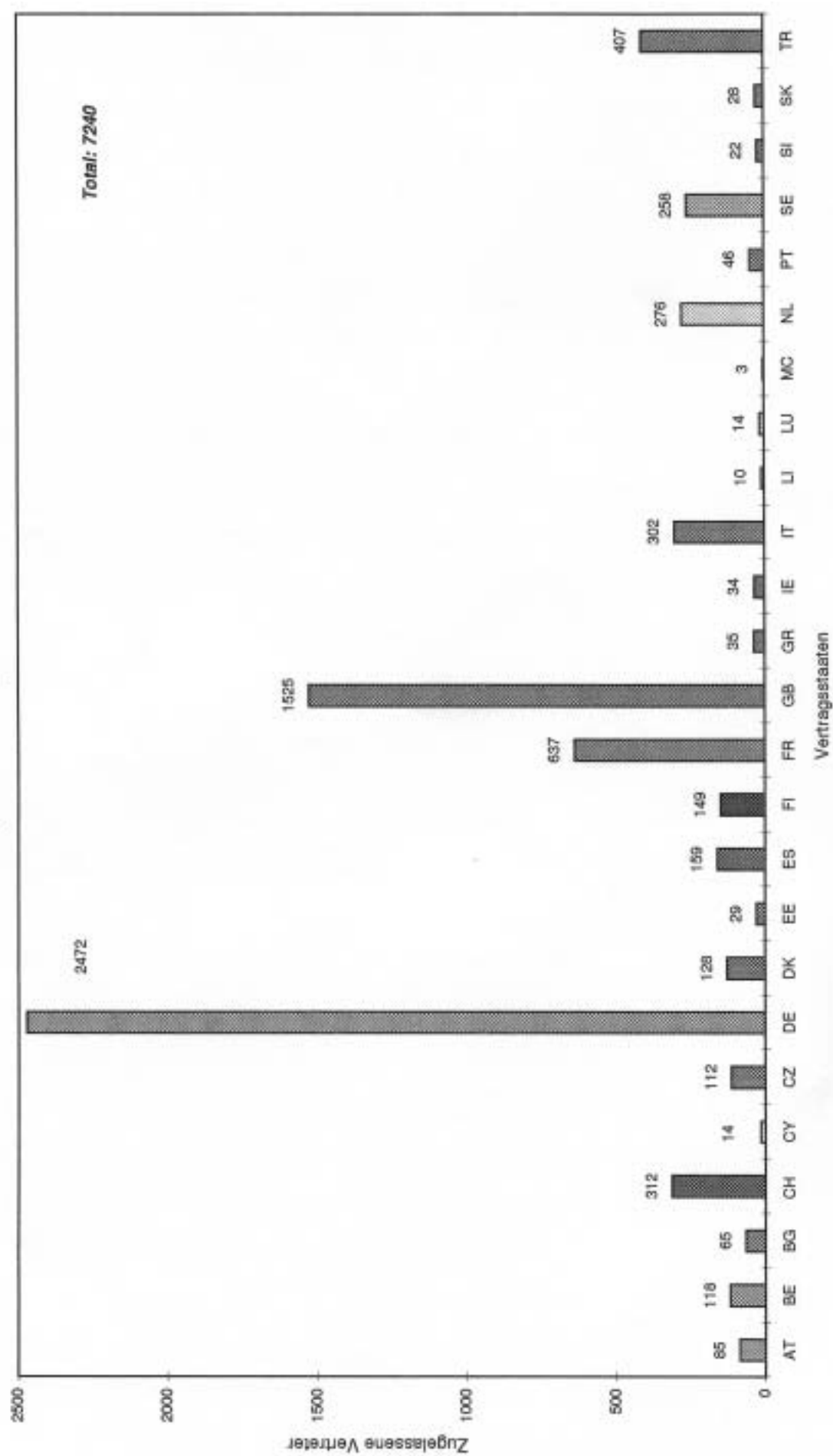
E-mail: [info@patentepi.com](mailto:info@patentepi.com)

**LIST OF PROFESSIONAL REPRESENTATIVES AS OF 16.12.2002**  
by their place of business or employment in the Contracting States and their entry according to A134 or A163

No.	Contr. State	A134	% A134	A163	% A163	Total Repr.	% of Tot/Repr.
1	AT	41	48	44	52	85	1,17
2	BE	67	57	51	43	118	1,63
3	BG		0	65	100	65	0,90
4	CH	153	49	159	51	312	4,31
5	CY		0	14	100	14	0,19
6	CZ		0	112	100	112	1,55
7	DE	1447	59	1025	41	2472	34,14
8	DK	47	37	81	63	128	1,77
9	EE		0	29	100	29	0,40
10	ES	4	3	155	97	159	2,20
11	FI	4	3	145	97	149	2,06
12	FR	326	51	311	49	637	8,80
13	GB	879	58	646	42	1525	21,06
14	GR		0	35	100	35	0,48
15	IE	6	18	28	82	34	0,47
16	IT	105	35	197	65	302	4,17
17	LI	5	50	5	50	10	0,14
18	LU	4	29	10	71	14	0,19
19	MC		0	3	100	3	0,04
20	NL	187	68	89	32	276	3,81
21	PT		0	46	100	46	0,64
22	SE	87	34	171	66	258	3,56
23	SI		0	22	100	22	0,30
24	SK		0	28	100	28	0,39
25	TR	1	0	406	100	407	5,62
	<b>Total</b>	<b>3363</b>	<b>46</b>	<b>3877</b>	<b>54</b>	<b>7240</b>	<b>100,00</b>



List of professional representatives as of 16.12.2002



## Address delivered by Mr. Jacques Michel to the Administrative Council on 23 October 2002 on the occasion of his retirement

Mr. Jacques Michel, EPO Vice President DG1 in the Hague retired as from 1<sup>st</sup> November, 2002. On behalf of the *epi* I would like to thank Mr. Michel for a fruitful cooperation over the years and wish him all the best for his retirement.

We take pleasure in publishing his address to the Administrative Council on 23 October 2002.

W. Holzer  
*epi* President

Mr Chairman,

Your kind and highly complimentary remarks are greatly appreciated, if not entirely deserved as I consider my contribution to the Organisation and the Office to have been no more than what was expected of me.

I am retiring after nearly 16 years spent working for the Organisation, the Office, and those whom they in turn serve. It would be disingenuous of me to say that I have no regrets, but looking back at the best 15 years of my working life, at such an interesting and stimulating career, it is no wonder that moving on is tinged with sadness.

I wish to thank all those who helped me throughout this extraordinary period of my life.

First and foremost those who helped set up the European Patent Organisation, especially the founding fathers. I am delighted that we have with us today Mr van Benthem, who played a key role in drafting the Munich Convention and establishing the European Patent Office. I had the good fortune, working at The Hague, often to have had the benefit of his good counsel, based on a deep and unwavering belief in the European idea. Let us not forget his words and *deeds* in the context of the European patent system.

I also wish to thank all of you, the members of the Council and its Committees (BFC, WPTI), for the confidence you have shown in me and your support over the years confidence and support which greatly boost motivation and enhance efficiency.

I wish to express my wholehearted gratitude to the President. We always had a meeting of minds when it came to major policy decisions and strategy for the Office, and this made my task immeasurably easier. What has been achieved, together with the other MAC members, under his leadership has been remarkable. Recent and excellent examples of the success of this joint approach are Council documents CA/132/02 and CA/147/02, which will be discussed at this meeting. So, many thanks too to my MAC colleagues for their collective efforts.

I would also like to acknowledge all of my Office colleagues and especially those in DG 1. Let me begin with those with managerial functions the principal directors, directors and heads of department to whom I am

greatly indebted: I am aware of the crucial role they have played and are still playing in pursuing set targets and implementing Office strategy. And a special „thank you“ to my DG 1 colleagues, one and all, in their various roles and capacities. They have cultivated a spirit of good will, commitment, expertise, dynamism and openness. I hope that these are qualities you associate with The Hague and Berlin in spite of the minor upsets from time to time; I, for one, know that they prevail.

DG 1 is not an island and relations with other DGs are rich and plentiful. This is particularly true in the case of DG 2 with the gradual phasing in of BEST and the imminent implementation of new structures. We also have strong links with the other DGs. I would like to mention in particular DG 4's IS Department at The Hague, which has successfully developed and implemented the automation plans that have had such an impact on the Office and Organisation. With DG 5 too, DG 1 enjoys close relations in the fields of trilateral cooperation and cooperation with present and future member states, and with other states such as China.

It has been a pleasure and an honour to work for the European Patent Organisation and its executive body, the European Patent Office, and I look back today with great pride on my involvement. The Organisation is a very special institution, which made a remarkable contribution to the construction of Europe, long before another decisive step was taken, that of introducing the euro.

It was made possible by the European spirit that drove those who negotiated the Munich Convention. These people understood that a venture of this nature would not be possible if the various parties involved had not been prepared to make certain concessions. The Munich Convention was signed only after years of negotiations involving sacrifices on the part of each state, and yet time has shown that all have benefited.

The main bone of contention was the delegation of power to grant European patents to a central, supranational body in the interests of neutrality, objectivity and quality.

Calling into question this principle, seeking to restore the old order, and belittling the joint sacrifices made is simply reopening the old debate and could ultimately lead to the demise of a European patent system which to this day has been an undisputed success. This would be a huge setback for Europe, given that the system is considered a crucial part of the *acquis communautaire*.

So, has the European Patent Organisation been a success story? Summing up the major achievements to date, I think we can safely say it has:

- (1) The Organisation is getting bigger: today there are 24 member states; very soon there will be 30.
- (2) The number of applications far exceeds all forecasts.

- (3) Users are strongly in favour of the system as it stands in spite of criticism of certain aspects, in particular deadlines.
- (4) The expertise and critical mass of examiners means that the quality of work is recognised by one and all.
- (5) Productivity levels are impressive although backlogs still exist. Discussions on CA/132/02 should, however, allow some headway to be made on this issue.
- (6) The Office, which is respected throughout the world, carries out over 60% of all PCT work and helps to set grant standards as illustrated by the recent PCT reform that paved the way for the international search opinion.
- (7) It has widely admired information systems.

None of this would have been possible without the Office.

Over the years, the role of the national offices affiliated to the EPO has become less clear. It is high time to establish each one's function to prevent a duplication of efforts, which is destructive and to be avoided at all costs. CA/147/02 represents a first step in this direction.

Risk management and risk assessment for companies and inventors is also an area that now demands consideration.

What are the risks facing an applicant looking for protection in respect of a market of a few hundred thousand or million people? Does the procedure have to be as complicated as that necessary for a market of tens or hundreds of million people? It would seem not! Would it not be wise to devise more appropriate or streamlined procedures when a single state is involved and the national market is limited in size? Is an EPO style approach warranted at all costs?

How can a national office best serve applicants, within the Spirit of the EPC, and protect them from pointlessly risking money, time, rights if they are looking for immediate, overextensive protection for an invention of no great significance?

And finally, why is it so difficult to achieve consensus on the legal aspects of the postgrant situation, which matter so much to industry and in the context of risk management? Although this is the main added value the Community patent would bring, it has been sidelined to date by confused discussions on the role of national offices.

If I might make one wish on my departure, it would be that this matter be cleared up in the interests of all, particularly those we are here to serve.

This is a pressing consideration given that the industrial property system is set to continue growing in size and importance. Future developments could take the form of:

- New fields of patentability
- Growth in the number of applications
- Quality control of applications particularly on the basis of case law
- Change in the role of national offices receiving a limited number of applications, leading to a reduction of their involvement at a procedural level and emphasising their advisory, analytical and information role
- Globalisation with a limited number of players will bring strong PCT growth
- Emergence of new big players (China, Russia)
- Intensified cooperation between these big players in the form of:
  - sharing search and examination results
  - improved reciprocal work competence
  - greater confidence
  - progressive harmonisation of grant practice
  - harmonisation of legislation
- and ultimately
  - the possibility of future mutual recognition

That is my vision of the next 20 years, and this is my advice: let us be patient; let us build the future; let us build a future for Europe and all its citizens!

**Disziplinarorgane und Ausschüsse**  
**Disciplinary bodies and Committees · Organes de discipline et Commissions**

<b>Disziplinarrat (epi)</b>	<b>Disciplinary Committee (epi)</b>	<b>Commission de discipline (epi)</b>
AT – W. Katschinka AT – P. Révy von Belvard BE – G. Leherte* CH – K. Schmauder DE – W. Fröhling DE – G. Keller** DK – U. Nørgaard ES – V. Gil Vega	FI – P. C. Sundman FR – P. Gendraud FR – J.-P. Kedingering GB – S. Wright GB – G. Szabo GR – T. Kilimiris IE – G. Kinsella IT – G. Mannucci	IT – B. Muraca LI – P. Rosenich LU – J. Waxweiler NL – J. de Vries NL – A. Ferguson PT – A. J. Pissara Dias Machado SE – P. O. Rosenquist TR – T. Yurtseven
<b>Disziplinarausschuss (EPA/epi)</b> epi-Mitglieder	<b>Disciplinary Board (EPO/epi)</b> epi Members	<b>Conseil de discipline (OEB/epi)</b> Membres de l'epi
CH – C.-A. Wavre DE – W. Dabringhaus	FR – M. Santarelli	GB – J. Boff
<b>Beschwerdekammer in Disziplinarangelegenheiten (EPA/epi)</b> epi-Mitglieder	<b>Disciplinary Board of Appeal (EPO/epi)</b> epi Members	<b>Chambre de recours en matière disciplinaire (OEB/epi)</b> Membres de l'epi
CH – C. Bertschinger DE – H. Lichti FR – A. Armengaud Aîné	GB – E. Lyndon-Stanford GR – C. Kaloniarou	IT – E. Klausner SE – C. Onn
<b>epi-Finanzen</b>	<b>epi Finances</b>	<b>Finances de l'epi</b>
AT – P. Pawloy BE – P. Vandersteen CH – T. Ritscher	DE – M. Maikowski DK – K. Vingtoft FR – H. Dupont GB – C. Mercer**	IT – S. Bordonaro LU – J. P. Weyland* SE – B. Erixon
<b>Geschäftsordnung</b>	<b>By-Laws</b>	<b>Règlement intérieur</b>
CH – C. E. Eder* DE – L. Steiling**	FR – T. Schuffenecker	GB – T. L. Johnson
<b>Standesregeln</b>	<b>Professional Conduct</b>	<b>Conduite professionnelle</b>
AT – E. Kunz AT – E. Piso BE – P. Overath CH – U. Blum DE – H.-H. Wilhelm DE – K. Zimmermann DK – L. Roerboel ES – C. Polo Flores	FI – J. Kupiainen FR – J. Bauvir FR – P. Vidon GB – J. D. Brown* GB – J. Gowshall GR – A. Patrinos-Kilimiris IE – M. Walsh IT – A. Perani	LU – J. Bleyer NL – F. Barendregt NL – F. Dietz PT – N. Cruz PT – F. Magno (Subst.) SE – L. Stolt SE – M. Linderoth TR – K. Dündar TR – E. Dericioglu

\*Chairman/\*\*Secretary

<b>Europäische Patentpraxis</b>	<b>European Patent Practice</b>	<b>Pratique du brevet européen</b>
AT – M. Beer AT – G. Widtmann BE – E. Dufrasne BE – J. van Malderen CH – W. Bernhardt CH – E. Irniger CY – C. Theodoulou DE – G. Schmitt-Nilson DE – F. Teufel DK – P. J. Indahl DK – P. Stahr	ES – E. Armijo ES – L. A. Duran FI – E. Grew FI – A. Weckman FR – A. Casalonga* FR – J. Bauvir GB – P. Denerley** GB – I. Muir GR – D. Oekonomidis IE – P. Shortt IE – C. Lane (Substitute) IT – E. de Carli	IT – A. Josif LU – Bruce Dearling NL – W. Hoogstraten NL – L. J. Steenbeek NL – R. Jorritsma (Substitute) PT – P. Alves Moreira PT – N. Cruz SE – A. Bornegård SE – M. Holmberg TR – A. Deris TR – O. Mutlu TR – S. Coral (Substitute)
<b>Berufliche Qualifikation</b> Ordentliche Mitglieder	<b>Professional Qualification</b> Full Members	<b>Qualification professionnelle</b> Membres titulaires
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Stellvertreter      Substitutes	Suppléants	
AT – P. Kliment BE – G. Voortmans CH – K. Schwander DE – L. B. Magin	DK – A. Secher FI – J. Salomäki FR – M. Le Pennec GB – J. Laredo	IT – P. Rambelli NL – A. Hulsebos PT – J. de Sampaio SE – M. Linderoth TR – B. Kalenderli
Beobachter      Observers      Observateurs (Examination Board Members on behalf of the epi)		
CH – M. Seehof DE – P. Weinhold	GB – I. Harris	IT – G. Checcacci
<b>Biotechnologische Erfindungen</b>	<b>Biotechnological Inventions</b>	<b>Inventions en biotechnologie</b>
AT – A. Schwarz BE – A. De Clercq* CH – D. Wächter DE – G. Keller DK – B. Hammer Jensen ES – A. Ponti Sales FI – M. Lax	FR – M. Le Pennec FR – J. Warcoin GB – S. Wright GB – C. Mercer** IE – C. Gates IT – G. Staub IT – D. Pieraccioli (Substitute)	NL – J. Kan PT – J. E. Dinis de Carvalho PT – A. Canelas (Substitute) SE – L. Höglund TR – H. Cayli TR – C. Özbay
<b>EPA-Finzen</b>	<b>EPO Finances</b>	<b>Finances OEB</b>
DE – W. Dabringhaus ES – I. Elosegui de la Pena	FR – S. Le Vaguerèse	GB – J. Boff*
<b>Harmonisierung</b>	<b>Harmonization</b>	<b>Harmonisation</b>
BE – F. Leyder* DE – R. Einsele	ES – J. Botella FR – S. Le Vaguerèse	GB – J. D. Brown** NL – L. Steenbeek SE – K. Norin

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<b>Wahlausschuss</b>	<b>Electoral Committee</b>	<b>Commission pour les élections</b>
CH – H. Breiter*	IE – A. Parkes	NL – J. Van Kan
<b>Interne Rechnungsprüfer</b> <small>Ordentliche Mitglieder</small>	<b>Internal Auditors</b> <small>Full Members</small>	<b>Commissaires aux Comptes internes</b> <small>Membres titulaires</small>
CH – A. Braun	DE – R. Zellentin	
<small>Stellvertreter</small>	<small>Substitutes</small>	<small>Suppléants</small>
DE – D. Laufhütte	DE – R. Keil	

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