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EDITORIAL

"THE TIMES THEY ARE A-CHANGIN"

As we are old enough to remember those words look back to the days when they were written, none of us would surely have thought that such vast changes as those we are witnessing in the world would have occurred before the turn of the Century. It is too early to understand the full effects of these changes, but even from our own vantage point we can see an effect on our organisation, not least the influx of members "overnight" from the former East Germany. This year too, when the USSR dissolved, surely a revolution, saw the installation of a new EPI Council, Board, Secretariat, and last but not least, President. We are sure all the membership wishes them all well, and are confident that they will continue to foster the interests of the EPI in our own changing world; "Europe 2000", Patent Harmonization, GATT, CPC to name a few items each one of which could exercise a Council on its own. All will need attention, judgement, and care.

Other changes are not of such a positive nature. Since our last issue, we have learned of the death of Romuald Singer, a pioneer of the European Patent System. A sad loss to us all. You will find Memorials published in this issue.

As reported previously, Ken Veryard has decided to hang up his pen. We shall all in the EPI, not least the Editorial Board, miss his wise counsel and friendly presence. The Editorial Board wishes him well and we hope we can continue and maintain the high standards Ken set. No doubt we can expect the occasional sally, and salvo, from Spain as forthcoming issues appear!

Finally, this issue contains some authoritative advice from Drs. Denerley and Jeser, both EPI tutors, which we think will be of interest to candidates taking the European Qualifying Examination. So we ask our members to pass on this issue to their candidates.

Jean Brullé, Joachim Herzog, Terry Johnson

IN MEMORIAM DR. ROMUALD SINGER

Am 20. August 1991 hat Europa eine seiner größten Persönlichkeiten verloren. Nach (zum Glück) kurzer Krankheit ist Dr. Romuald Singer von uns gegangen. Er lässt eine große Lücke offen und alle, die ihn gekannt haben, trauern um ihn. Seine immense Erfahrung und sein persönliches Engagement werden unersetzlich bleiben.

Als ich ihn kennengelernt habe, hatte er schon eine lange und fruchtbare Laufbahn beim Deutschen Patentamt hinter sich und hatte maßgeblich an der Gestaltung des Europäischen Patentsystems mitgearbeitet. An anderer Stelle wird sicher ausführlich und kompetenter darüber berichtet werden. Ich möchte mich auf drei Schwerpunkte seiner Tätigkeit in den letzten 10 bis 15 Jahren konzentrieren. In dieser kurzen Periode leistete er schon viel mehr, als die meisten anderen auf dem Gipfel ihrer Schaffenskraft zustande bringen können. Dabei war er am Ende - man hat es nie so empfunden! - einer schon sehr erfolgreichen Laufbahn und hätte sich schon lange zur Ruhe setzen können.

Vom Eröffnungstag des EPA bis zur Pensionierung, Mitte 1985 war Dr. Romuald Singer Vorsitzender der Juristischen Beschwerdekommission und der Großen Beschwerdekommission. Es dürfte allen klar sein, was diese Funktion in der Anlaufzeit des Europäischen Systems für eine Bedeutung hatte, und diejenigen, die es miterlebt haben, wissen genau, was Singer daraus gemacht hat. Wenn die Praxis des EPA weltweit für ihre moderne Einstellung und ihre großzügige Haltung den Patentanmeldern gegenüber bekannt ist, so ist dies zu einem maßgeblichen Teil Dr. R. Singer zu verdanken. Sein Einfluss ist nach wie vor spürbar und wird hoffentlich noch lange nachwirken.

Parallel zu seiner offiziellen Aufgabe beim EPA hat sich Dr. Romuald Singer auch laufend für die Ausbildung von Fachleuten eingesetzt und sein fundiertes Wissen samt unermeßlicher Erfahrung in unzähligen Seminaren und Vorträgen zu vermitteln versucht. Zusammen mit seiner Frau, die ihm in den letzten Jahren für diese Tätigkeit eine ideale Partnerin und maßgebliche Unter-

stützung war, hat er zuletzt einen eingehenden Kommentar zum Europäischen Patentübereinkommen veröffentlicht, der von allen Fachleuten sofort als Standardwerk für ihre Arbeit eingestuft wurde.

Schließlich hat er sich - wieder zusammen mit seiner Frau - im Auftrag von CEIPI und EPI für eine Aufgabe eingesetzt, die ihn bis zuletzt voll absorbiert und die Ausbildung von Patentanwälten im gesamten Europa - einschließlich der Länder im Osten - geprägt hat und noch prägen wird. Es war für mich seinerzeit als EPI-Präsidenten eine besondere Ehre, bei der Vorbereitung der CEIPI/EPI-Tutorials beteiligt zu sein, und ich werde nie die Besprechung bei Maître Mathély in Paris vergessen, wo Romuald Singer schon mit einem fertigen Konzept erschien und wir zu dritt nur noch die Organisation diskutieren mußten. Auf diese Art und Weise genügte ein Tag, um diese Angelegenheit richtig in Schwung zu bringen, und wen wundert es, daß Dr. Singer nachher ganz alleine die Verwirklichung des erarbeiteten Konzepts einleiten konnte. Inzwischen sind diese CEIPI/EPI-Tutorials für alle angehenden Patentanwälte in den 14 Vertragsstaaten zum Inbegriff der Ausbildung geworden und bemühen sich alle Länder - und zwar vor allem diejenigen Ost-Europas - die einen Beitritt zum Europäischen Patentübereinkommen ins Auge fassen, um eine Beteiligung an dieser Ausbildungsform. Dr. Romuald Singer hat sich mit seiner unerschöpflichen Energie und voller Begeisterung bis zuletzt für den Aufbau dieser CEIPI/EPI-Tutorials eingesetzt und konnte zum Glück mit maßgeblicher Unterstützung nicht nur seiner Frau, sondern auch vom EPA und - das darf bei dieser Gelegenheit auch festgehalten werden - von allen Tutores, die von seiner Begeisterung animiert wurden, rechnen. Für diese EPI-Mitglieder war er mit seinem unermüdlichen Einsatz ein leuchtendes Vorbild und der unersetzliche Mentor. Auch wenn uns seine immense Erfahrung und seine einmalige Persönlichkeit fehlen werden, dürfen wir hoffen, daß die von Dr. R. Singer angefangene Arbeit weitergehen wird und daß der zukünftige Erfolg seiner CEIPI/EPI-Tutorials seinen Namen unvergessen bleiben läßt.

Jan D'haemer
Altpräsident

21st August 1991

Dear Mrs. Singer,

It is with profound sadness that the Officers and Members of my Institute have learned of the death of your husband, Romuald Singer.

Dr. Singer was one of the founding fathers, and one of the most prominent supporters, of the European Patent Convention, and it must have been of immense joy and satisfaction to him that it has achieved the great success which it has.

Many of the Members of my Institute were privileged to have known Dr. Singer personally, and to have benefited from his great knowledge, wisdom and kindness. We will remember him especially for his unstinting dedication to the cause of educating the younger ones among us, and keeping the rest of us up to date with our knowledge of the system of which he was so much a part.

We send you our very sincere condolences.

Yours sincerely,

David Votier
The President-EPI

Von Dipl.-Ing. Dieter K. Speiser, Patentanwalt
an den Präsidenten des Europäischen Patentamtes

12. Juni 1991

Sehr geehrter Herr Braendli,

ich habe mich sehr gefreut, daß es Ihr Kalender zugelassen hat, daß ich Sie und den neuen Vorstand mit meinem Nachfolger so kurz nach der Wahl offiziell miteinander bekannt machen konnte. Nachdem ich mich bei dieser Gelegenheit offiziell verabschieden konnte und anschließend keine Zeit mehr war, möchte ich Ihnen nun auch persönlich noch schreiben.

Als ich nach einigen Jahren im Vorstand und nach zwei Jahren als Vizepräsident das Präsidentenamt des EPI übernahm, waren zwei Aspekte für mich von besonderer Bedeutung.

Zur Zeit des Interims-Ausschusses hatte ich als Delegierter der CNIPA an den vorbereitenden Arbeiten für die Gründung des Institutes teilgenommen und habe seither daran mitgewirkt, daß die anfänglich fast dramatischen Differenzen zwischen Berufsgruppen und Nationen nach der Gründung des EPI stetig bis auf vernachlässigbare Reste abgebaut und in sehr harmonisches Miteinander umgewandelt werden konnten. Das mir dann angetragene Amt des Präsidenten war aus dieser Sicht natürlich in gewisser Weise ein krönender Höhepunkt.

Ähnlich habe ich aber mein Amt auch in der Zusammenarbeit mit Ihrem Vorgänger, mit Ihnen und mit Ihrem Haus empfunden. In all den Jahren seit der Gründung des EPI habe ich fast ständig und bei fast allen Angehörigen des Amtes eine mitreißende Aufbruchsstimmung erlebt, die ein Klima erzeugt und genährt hat, von dem die Vertreter mit ihren Auftraggebern in gleicher Weise profitiert haben dürften, wie die Angehörigen Ihres Amtes. Nicht zuletzt aufgrund dieses Klimas konnten bemerkenswerte Dinge bewegt und erstaunliche Fortschritte erzielt werden, für die es im nationalen Bereich nur sehr begrenzte Möglichkeiten gegeben hatte. Aus unsere Zusammenarbeit wissen Sie, für wie wichtig ich

das ausgezeichnete Klima zwischen EPI und EPA halte. Die vielen Jahre meiner engen Zusammenarbeit mit dem Amt in der Arbeitsgruppe Datimtex seit der Zeit ihrer Gründung bis hin zum Ende meiner Amtszeit als Präsident haben unter Beweis gestellt, daß eine derartige Zusammenarbeit zwischen den Mitgliedern des EPI und des EPA ein Optimum an Resultaten auf allen gemeinsamen Interessengebieten ermöglicht und daß es mit dem durch diese Zusammenarbeit aufgebauten Vertrauen vergleichsweise einfach ist, die natürlich nicht immer zu vermeidenden Problemsituationen ohne Rückwirkung auf Erreichtes zu überwinden.

Mir lag daran, diese Gedanken noch einmal zusammenzufassen, zumal es Zeit zu werden scheint, daß wir den neu hinzukommenden Kollegen im EPI und EPA, die im Gegensatz zu den Gründungsmitgliedern inzwischen etablierte Strukturen vorfinden, etwas von dem Pioniergeist mitgeben, der für den Aufbau beider Organisationen so wichtig und nützlich war. Ich selbst werde während meiner zukünftigen Arbeit im Rat des Institutes verstärkt in dieser Richtung arbeiten.

Sehr am Herzen liegt mir aber auch, mich heute persönlich bei Ihnen, bei Frau Remandas, bei den anderen Vizepräsidenten Ihres Amtes und nicht zuletzt bei allen Mitgliedern insbesondere der DG 5 für die überaus hilfreiche, intensive und konstruktive Unterstützung während meiner Amtszeit zu bedanken. Diese Unterstützung in einer durch die Krankheit von Herrn Bobbitt hervorgerufenen Krisensituaton war überwältigend. Sie war aber eine Hilfe nicht nur für das Institut und seine Mitarbeiter sondern ganz besonders auch für mich selbst, der ich mein Amt in der Annahme angetreten hatte, es ohne übermäßigen zusätzlichen Zeitaufwand hinreichend ausfüllen zu können. Mein Amt sollte kein Nebenberuf werden und hat dann doch immer wieder meinen eigentlichen Beruf übermäßig zurückgedrängt. Ohne die vielseitige Unterstützung des Amtes, ohne Ihr Verständnis und dasjenige Ihrer Mitarbeiter hätte ich meinen Beruf weit über das vertretbare Maß hinaus vernachlässigen müssen. Auch hat das mir von Ihnen persönlich, aber auch von allen Ihren Mitarbeitern entgegebrachte Vertrauen sehr bei der Erfüllung meiner Aufgaben geholfen.

Mit ganz herzlichem Dank an Sie und alle Damen und Herren Ihres Hauses, ohne deren persönlichen Einsatz mir mein Amt sehr schwer geworden wäre.

Ihr Dieter Speiser

Vom Präsidenten des Europäischen Patentamtes
an Dipl.-Ing. Dieter K. Speiser Patentanwalt

01.Juli 1991

Sehr geehrter Herr Speiser,

für Ihr Schreiben vom 12. Juni danke ich Ihnen sehr herzlich.

Ihre Ausführungen zu den zwei Aspekten, die besonders bedeutungsvoll für Ihre Tätigkeit als Präsident des EPI waren, möchte ich aus meiner Sicht gern ergänzen.

Sie erwähnen Ihren Beitrag als Delegierter der CNIPA in den 70er Jahren an der Schaffung der Rechtsgrundlage für die Errichtung des EPI. Dies gibt mir Gelegenheit, voller Anerkennung hervorzuheben, welche konstruktive Mitarbeit Ihr Berufsstand an der Schaffung der Infrastruktur für unser europäisches Patentsystem geleistet hat. Ich bin überzeugt davon, daß die meisten Mitglieder der Regierungsdelegationen im Interimsausschuß, zu denen auch ich damals gehörte, keine rechte Vorstellung davon hatten, wieviel Pioniergeist, Sachverstand und Kompromißbereitschaft von den Vertretern der vier berufsständischen Organisationen CNIPA, FICPI, UNION und FEMIPI aufgebracht werden mußten, um in knapp drei Jahren (1974-1977) über die Hürden nationaler und berufsständischer Traditionen hinweg die drei Verordnungen zu Artikel 134 (8) EPU ganz wesentlich mit zu gestalten. Es sollte mich nicht wundern, wenn dieser Beitrag eines Berufsstands zur Prägung seiner europäischen Zukunft in der europäischen Einigungsbewegung einmalig ist.

Ihre weiteren Ausführungen sind dem Klima zwischen EPI und EPA gewidmet. Wie allgemein bekannt, kommt das Klima von oben. Es war für uns beide und die von uns vertretenen Organisationen gewißlich ein glücklicher Umstand, daß zwischen uns - wenn ich so sagen darf - der Funke gleich übersprang. Es freut mich sehr, Ihrem Schreiben zu entnehmen, daß - um im Bild zu bleiben - auf Seiten des EPI und EPA offenbar zwischen vielen Menschen ein

Funke übergesprungen ist. So können wir auf die Zeit unserer gemeinsamen Amtsausübung gleichsam wie auf ein Feuerwerk zurück-schauen. Es wäre reizvoll, eine Bilanz unserer Zusammenarbeit zu ziehen. Spontan fallen mir "joint ventures" ein, die auf den ersten Blick eher am Rande unseres gemeinsamen Aufgabengebietes zu liegen scheinen: Das EPA-Ausbildungsprogramm für Patentvertreter und der Austausch Prüfer/Patentvertreter. Hier liegt meiner Ansicht nach jedoch der Schlüssel für die Erhaltung des ausgezeichneten Klimas zwischen unseren Organisationen. Wir müssen offen bleiben für die Probleme der anderen Seite und das geschieht am ehesten dadurch, daß wir uns für den anderen öffnen, ihn hineinschauen und miterleben lassen, wie wir die uns gemeinsam gestellte Aufgabe bewältigen: die Zusammenarbeit zwischen den europäischen Staaten auf dem Gebiet des Schutzes der Erfindungen zu verstärken (Präambel zum EPU).

Meine Vizepräsidentin und meine Vizepräsidenten schließen sich meinem Dank für Ihre freundlichen Worte an. Ich wünsche Ihnen, daß Sie an dem Wiedereinstieg in Ihr volles Berufsleben Freude und Befriedigung empfinden mögen, und danke Ihnen sehr für Ihre in hohem Maße verdienstvolle Tätigkeit zum Nutzen unseres europäischen Patentsystems.

Mit freundlichen Grüßen

Ihr Paul Braendli

INFORMATION FROM GENERAL SECRETARIAT

COUNCIL ELECTIONS

After the last Council elections, Mr. M. SEEHOF (CH) withdrew from his functions as substitute member of the Council in favour of Mr. D. JÖRCHEL (CH).

COUNCIL MEETING BEAUNE

(INTERNAL AUDITORS)

At last meeting in Beaune, the Council elected Mrs. E. JUNG (DE) and Mr. C. EDER (CH) as internal auditors. Their substitutes are Messrs. G. WIDTMANN (AT) and Mr. R. ZELLENTIN (DE).

RATSWAHLEN

Nach den letzten Ratswahlen trat Herr M. SEEHOF (CH) als stellvertretendes Ratsmitglied zugunsten von Herrn D. JÖRCHEL (CH) zurück.

RATSSITZUNG IN BEAUNE

(INTERNE KASSENPRÜFER)

Bei der letzten Sitzung in Beaune wählte der Rat Frau E. JUNG (DE) und Herrn C. EDER (CH) als interne Kassenprüfer. Ihre Stellvertreter sind die Herren G. WIDTMANN (AT) und R. ZELLENTIN (DE).

ELECTIONS DU CONSEIL

Après les dernières élections du Conseil, M. M. SEEHOF (CH) s'est désisté de ses fonctions de membre suppléant du Conseil en faveur de M. D. JÖRCHEL (CH).

REUNION DU CONSEIL A BEAUNE

(COMMISSAIRES AUX COMPTES INTERNES)

Lors de sa dernière réunion à Beaune le Conseil a élu Mme E. JUNG (DE) et Mr. C. EDER (CH) commissaires aux comptes. Leurs substituts sont MM. G. WIDTMANN (AT) et R. ZELLENTIN (DE).

THE WIPO HAGUE DIPLOMATIC CONFERENCE
June 1991

If the time spent upon preparatory work in connection with a diplomatic conference were to be any guide as to its duration and success, this Diplomatic Conference should have been short and successful. That it was neither was not the fault of WIPO, nor of those seeking harmonization in the field of patents. The original objective had been to establish a grace period, allowing inventors to publish their inventions before filing a patent application. To this were added various other matters of harmonization to ease the burden upon patent applicants wanting protection in countries other than their own. This almost imperceptibly led to further proliferation of areas of substantive law where countries saw the interests of their applicants, patentees and industrialists affected. Inevitably, therefore, controversy arose and could not be settled beforehand. In particular, GATT seized upon a number of intellectual and industrial property protection matters which were already under discussion in WIPO. The timing of the Diplomatic Conference was such that the Uruguay round of GATT talks should have been completed, including the patent matters. The latter could then have been included in the WIPO Treaty. It was not to be as the GATT talks broke down before agreement had been reached. Thus a big question mark was already hanging over Articles 10, 19, 22(1), 24, 25 and 26. To this was added in February a proposal by the United States of America to permit contracting states to have a first-to-invent system for determining priority of ownership of a patent.

The resultant confusion led to a proposal to postpone the Diplomatic Conference, which was not adopted, although given strong support in some quarters. Some, particularly those in favour of the grace period alone, considered this to be the opportunity to try and eliminate the discriminatory effects of the present U.S.A. law. Others saw an opportunity to torpedo the whole matter. Your delegate considered that there were sufficient practical advantages offered to applicants by provisions other

than the grace period, first-to-file, and the controversial matters under GATT discussion, to justify going ahead. In the event, the Diplomatic Conference was allowed to be held for a period of three weeks instead of four, but the proposed Patent Law Treaty was only to be discussed with no decisions taken. On this basis, it might be thought that there were no results, but some did emerge.

The Rules of Procedure were adopted and the officers of the conference were elected. These matters tend to be rather protracted and drawn out as they become political unless settled beforehand. This was indeed the case at The Hague and it was not until the fourth morning that agreement was achieved. However, this was all worthwhile as the adopted rules and elected officers will be valid for the second part of the Diplomatic Conference, whenever that is called, so that the latter will be able to start without delay.

It has to be borne in mind that WIPO is a specialized agency of the United Nations and that there are distinct political groupings amongst its members. Thus the developed countries, known as Group B, include the EPC countries, Japan and U.S.A. The developing countries, known as the Group of 77, have sub-groups in Asia, Africa and Latin America. The former non-market economy countries no longer act as a group. As voting is on a strict one vote one country basis, the problem of obtaining a two-thirds majority for any change in the proposed treaty will be immediately apparent. Probably the most powerful committee is the Steering Committee and on this there are nine members, one each from China, the Soviet Union and Poland, three from Group B countries and three from the Group of 77 countries (one for each sub-group). The chairmanships of Main Committees I and II went to M. Comte (Switzerland) and M. Trombetta (Argentina).

Whilst the negotiations for this were proceeding, preliminary statements were given on the third day in order not to waste too much time of the hundreds present. After all the national delegations and international organizations had spoken at length,

the observer organizations were called. With the exception of the U.S. organizations, there followed almost unanimous condemnation of the U.S. proposal to allow first-to-invent to continue, as destroying the balance of the package including the grace period. Your delegate started this off, but tried to stress the other practical improvements offered, especially Article 7, both of whose paragraphs were needed to help applicants. Others expressed their views which were generally similar, except that there was some support for a grace period without first-to-file.

After that, the conference really got started on substantive matters under M. Comte because it had been decided to hold the sessions of the Main Committees serially and not in parallel. The following is a brief summary of how each article was received and what followed, for part of which the writer is grateful to Mr. John Neukom.

Preamble

The developing countries supported the longer alternative A stressing their needs, but the developed countries suggested that a final decision was not possible until the final text of the Treaty was available. The matter will be discussed later.

Article 9: Right to a Patent

As the U.S. Commissioner of Patents had to return to the United States, this was taken out of order at once. In introducing the proposal, reference was made to the likelihood that Congress might refuse to ratify any draft Treaty which did not allow for "first-to-invent" to continue. However, discriminatory provisions in the present U.S. law would be addressed. Apart from Canada, all national delegates who spoke were against the proposals, varying from the unappreciative to those insistent upon "first-to-file" before the other provisions were accepted. All non-American observer organizations were likewise against the proposals. Your delegate welcomed the offer by the United States to overcome the present discriminatory effects of their law, but

saw little chance of much improvement in the practical position of non-American inventors, whereas adoption of the grace period would give immediate relief to the United States inventors who so frequently in the past have lost their foreign rights by pre-publication. This hardly seemed like a balance of interests.

Article 3: Disclosure and Description

The last optional phrase of article 3(1)(b) concerning the deposit of biologically reproducible material was criticized as it implied that deposit could be made after filing, whilst some countries, at least, might not recognize priority if deposit was not so made. A new text will be put forward. It was agreed to delete the reference to Regulations at the end of article 3(3).

Rule 2: Contents and Order of Description

Many delegations spoke against the "best mode" requirement of rule 2(1)(vi). Your delegate pointed out that inventions tended to develop after publication at the start of the grace period, so that more was needed at first filing and even more at the following foreign filing, with consequential increases in expenses for applicant and office alike. Others spoke of the requirement as being an infringer's charter, but it was left to John Beton for UNICE to suggest that the provision could be better written as that, in the case of flagrant concealment of the best mode, there could be a right to revoke the patent. A long discussion on the alternatives A and B for rule (2) followed and it was by no means clear which, if either, was the more flexible for the applicant. The general consensus was for B allowing a different manner and order of presentation, but the specific provision of A in paragraph (b) received some support as an addition. Later the United Kingdom made this addition the subject of a formal proposal which was adopted. The special rule concerning nucleotides and amino acid sequences came in for criticism, and deletion is envisaged with a permissive note added.

Article 4: Claims

The "clear and concise" provision of article 4(3) was criticized as only applying to individual claims and the Director General suggested the addition of "both individually and in totality" which was welcomed by the United Kingdom who suggested that the requirement was for any claim to be distinct in content from other claims. This wording, though not formally before the Conference, was generally welcomed if hesitantly, the United States repeating their desire for no limitation on the number of claims.

Rule 3: Manner of Claiming

There was general support for the addition to rule 3(2) of the phrase "The technical features may be expressed, in particular, in structural, functional or mathematical terms". When rule 3(5)(b) was discussed again the references to multiple dependencies in the alternative or in the cumulative were questioned and the Director General stated that he had been unable to find such claims. This was surprising and after the German delegate had given an example of the alternative manner of multiple dependency, your delegate gave examples of cumulative multiple dependent claims. The Director General asked for examples of patents including such claims to be brought to his attention before the next part of the Conference.

Rule 5: Divisional Applications

After the Director General had explained the meaning of "in order for grant" to the Japanese delegates, there was no further consideration of rule 5(1). Your delegate therefore raised the change from "application to be divided" to "initial application", pointing out that if an applicant wanted early grant in order to pursue infringers, a narrow claim in the initial application might be acceptable, dividing out the rest of the matter including the broader claims. If then the divisional application required dividing subsequently, the new language seemed to

preclude this. FICPI raised the question in rule 5(2) as to whether priority claims, as well as documents, might be considered as having been made in the later filed divisional application, but this did not receive support.

Article 6: Identification and Mention of Inventor; Declaration Concerning the Entitlement of the Applicant

The provisions of article 6(2) by which an inventor may ask for no publication of the mention of his name, was criticized by many who failed to realize that his name must be available in the application documents, but there was no need for official publications to carry the name in the case, for example where an activist group did not like particular inventions. The Japanese delegate made a more valid point about article 6(4) in that it should not prevent an office requiring evidence of a change of ownership after filing. This will need further re-drafting.

Rule 6: Manner of Identification and Mention of Inventor

The provision for correction in rule 6(3) was criticized as not referring to the patentee being able to apply for correction. As the article is concerned with applications and not patents, this was dismissed. Some wanted the consent of the previously identified inventor to be mandatory, but it was pointed out that it was wrong that the incorrectly named inventor should have control. Finally, there was a fair degree of agreement that the wrong inventor should at least be informed.

Article 7: Belated Claiming of Priority

There was little support for a call for only two months within which to make a belated claim to priority under article 7(1) in the case of an application filed within the twelve months following the initial filing. Various ideas were floated, some of which were dependent upon the exact publication period to be set in article 15, because a priority claim should be available to the public upon such publication. Despite some strong support

from developed countries for article 7(2), there were several who spoke passionately of the illegality of allowing an extension of time for filing a priority application even when "force majeure" conditions could be proven. Most, but not all, developing countries spoke against the retention of the paragraph. Your delegate spoke strongly in favour amongst all but one of the observer organizations. There is a danger in the argument that this amends the Paris Convention, because then the developing countries will try to steer this into the abortive Paris Convention Revision discussions. The paragraph, article 7(2) is lost.

Article 8: Filing Date

An Irish proposal to provide a single time limit for compliance with omissions, presently in rule 7, would have set the time limit as at least one month from an invitation to comply, but it was revised by the Irish delegation to render the filing date that on which compliance occurred and not the date of fulfilling the mandatory requirements. This produced a torrent of objection from other European countries and the Swiss in particular re-introduced the original Irish proposal which did not contain the post-dating provision. The Swiss proposal received general support and will go forward to the next part of the Conference, so that if a national patent office is quick to issue invitations "promptly", the applicant will not have two months from filing to comply with requirements such as to file claims, pay fees and provide translations. In many cases, however, invitations will be sent out later and the applicants have more time. The Lebanese delegate led a demand for claims to be mandatory and did not appear to understand that this would force all countries to require them upon filing and before giving a filing date. Developed countries resisted strongly and only a few developing countries supported the idea. Amongst these was Bangladesh who considered that patents were a serious matter requiring serious applicants only, otherwise that patent office would be overwhelmed with amateur applications, and the Lebanese proposal would discourage these. Your delegate, when the observer

organizations were eventually called, pointed out that this discouragement to applicants would apply to all countries and not only to developing ones, who, in any case, could call for claims to be filed. Other organizations spoke in like vein. The requirement in article 8(3) that the applicant should opt for deletion of reference to missing drawings or be post-dated to the date of filing the drawings, has no time limit, as pointed out by the Japanese delegate. There was general agreement that some limit was needed to enable offices to proceed with publication preparations. Article 8(4) has two alternatives, to permit or to instruct, acceptance of applications which merely refer to previous applications by number. This, if mandatory by alternative A, would help national applicants when filing elsewhere. If optional by alternative B, it would be unlikely to be enacted anywhere as its effect is only helpful to others. Not surprisingly, there was almost total division of opinion between developing and developed countries and the provision is likely to remain optional. Your delegate, amongst other observer organizations, spoke in favour of alternative A. The Japanese delegate and others were worried about filing in a language other than an official language, from the point of view of determining prior art effect of co-pending applications. This fear was reduced by the observation that convention documents were often in another language. Further questions about article 8(5) were raised, in particular the very short time available to provide translations following an invitation. Any increase in this time was resisted by official delegations.

Rule 7: Details Concerning the Filing Date Requirements

The original rule 7(4) caused problems for the Netherlands who received support for their proposal to allow an "associated office" to receive documents for filing, as well as branches, sub-offices and regional offices. There was also discussion of the provision in rule 7(5) (re-numbered (3)) by which correction of translations can take place at any time up to the time when the application is in order for grant. The Swiss delegate emphasized that this should be "at least up to grant", and was not contradicted.

Article 9: Right to a Patent

Article 9(2) had been taken out of order earlier, and article 9(1) was dealt with separately. The United Kingdom was anxious that the right to a patent should be devolvable by operation of law, such as on death or bankruptcy. Its proposal to refer to a "successor in title" as an explicit alternative to the "inventor" was adopted. A United States proposal to introduce an article 9bis fell by the wayside. This was an attempt to revive the option of making secret use more than twelve months before the priority date a ground of invalidity, to allow patents to be revoked for breach of national security provisions, and to exempt experimental use in public from being prejudicial, all of which was far too parochially centred on U.S. practice to command significant support.

Article 11: Conditions of Patentability

The United States argued perseveringly for an exclusion from prior art of "matter which is not identified and organized in a manner that makes the matter accessible to the public". Foremost in mind was an unindexed thesis reposing in an academic backwater. Adoption was eventually rejected, as was also a further suggestion made orally by the United States, that the second sentence in article 11(2)(a) banning "mosaicing" should be deleted.

Article 12: Grace Period

The linkage with first-to-file was widely canvassed so that no conclusions were reached. Noteworthy was the mention by Japan of a preference for a grace period of six months (the United Kingdom talked later of three months in the context of article 20). Attention was drawn to the desirability of an amendment in article 12(1) to cover better the sort of disclosures that might emanate from patent offices, i.e. the replacement of the words "during the twelve months" by "not earlier than twelve months", an amendment for which sympathy was expressed.

Article 13: Prior Art Effect of Certain Applications

It became apparent that the issues here for the United States are much more critical than might hitherto have been expected. Entrenched in their philosophy is that overlapping patents shall not be granted to different owners, and, if to the same owner, shall be subject to terminal disclaimers. The eventual result of tortuous debate was that the anti-self-collision provision in article 13(4)(a) will go forward as an option for Contracting Parties ((4)(b) being deleted) and that it will be supplemented by a redrafted form of a United States proposal which, as presented, was to the effect that only one grant for given subject matter can be made to the same person.

Article 14: Amendment or Correction of Application

Concern was expressed that going beyond the original disclosure should not be precluded for the correction of obvious mistakes or clerical errors. It was noted that such correction should go on the record, and at the earliest opportunity. Because of the connection with the post-grant position, the matter was deferred for the discussion of article 17(2).

Article 15: Publication of Application

There was an attempt by Japan to put a limit, unspecified, on how long a Contracting Party might continue to publish after 24 months before being obliged to publish after 18. This failed for lack of sufficient support, although less dismissively treated was a different limb in the same attempt which sought enigmatically for the publication of divisionals, continuations and the like after 18 months from the priority date of the parent. Points concerned with drafting raised by Norway and the United States were earmarked for the Drafting Committee so that change is to be expected.

Article 16: Time Limits for Search and Substantive Examination

Japan and Germany together spearheaded a drive for deletion in toto. Against this, it was argued that the deferred examination issue of concern to these two countries had relevance only for article 16(2) and that the pressure for early publication of search reports in article 16(1) should be upheld, this being not only in aid of applicants but also of third parties seeking to review their positions at the earliest possible time. The United Kingdom supported this argument, saying that an early search report is crucial and more important than time limits on examination. It was concluded eventually that none of the proposals had been sufficiently supported to warrant any change at this stage.

Article 17: Changes in Patents

The United States provoked protracted discussion in proposing a freedom for Contracting Parties "to provide that changes made must be to correct errors made in good faith". The appalling drafting was unhelpful but, in view of sympathy in some quarters for the underlying principle, the Chairman suggested, in putting the proposal to one side, the more specific formula of adding to article 17(1) a sentence along the lines: "Nevertheless, the competent office shall be free to refuse a requested limitation where the purpose is to take into consideration an item of prior art known to the owner of the patent at the time of grant". On the question of extensions of the disclosure, already aired in the pre-grant context (article 14), your delegate reiterated the view that the correction of obvious mistakes and clerical errors should not be restricted. The Chairman's summary was to the effect that, on this question, articles 14 and 17 might be liberal either with narrow definitions of obvious mistakes and clerical errors or with explicit reservations for intervening use.

Article 18: Administrative Revocation

In a combination of article 18(1)(d) and (1)(e) put forward by the United States as a new (1)(d), the principal difference of providing explicitly for an opportunity to amend the claims stimulated debate about redundancy in view of article 17 and whether more than just the claims should be amendable. It was concluded that a redrafted form of the United States proposal should go forward, the Chairman observing that an appropriate wording might refer to amending at least the claims.

Article 20: Prior User

A Swiss proposal sought to add at the end of article 20(1) the sentence: "The mere fact that prior use is based on information disclosed within the meaning of article 12 shall not prejudice good faith". This was aimed at enshrining in the Treaty the brake on a first-to-publish system being established by the grace period. The United States protested vehemently; their own proposal, cleverly changing only one word in the basic text, sought to limit the article to prior use arising from independent conception. There was also controversy, mainly with the United States, over whether the article should have mandatory force. It was observed that, with a first-to-file system, omission would penalize home industry so that, even if not mandatory, a need would eventually be realized. The summing up invited WIPO to consider incorporating the Swiss proposal as an alternative.

Article 21: Extent of Protection and Interpretation of Claims

Out of a flurry of formally presented amendment proposals, and extensive discussion, came the conclusion that the basic text should stand except that article 21(3) should be changed along the lines of a French proposal requiring that statements limiting the scope of claims should be "unequivocal" in order to be taken into account for the determination of extent of protection. The United Kingdom preferred the word "unambiguous" and this was

accepted as being an improvement. In the course of the discussion, concern was expressed about tying equivalents to the time of alleged infringement and for the consequence that interpretation may become a moving target (this was a point supporting the omission of reference to that time, as in a proposal by Japan). A thought from UNICE gained some ground that equivalents, or the circumstances when they are not appropriate, should be defined in the Regulations rather than in the Treaty itself.

Article 23: Enforcement of Rights

Controversy raged, again mainly with the United States, over whether damages should be obtainable from a defendant who "should have been aware of the patent" (what is called "constructive notice"). The solution was self-evident at an early stage but took a long time in surfacing and in being adopted: the phrase "should have been aware" needs to be prefaced by wording such as "at the option of Contracting Parties". As regards pre-grant provisional protection, the subject of article 23(2), an attempt by Germany to streamline the test into one of whether the infringement falls within the claims both as published and as granted was ruled to have been insufficiently supported for any change to be made. An attempt in a United States proposal to provide for unauthorized Government use, and for product stocks held or in transit before knowledge of the patent, was deflected as being inappropriate to this article.

Article 27: Assembly

Under Main Committee II chairmanship an interesting discussion took place about article 27(2)(a)(ii) concerning the power of the Assembly to "modify, where it considers it desirable, any time limit provided for in Articles 3 to 26 ...". The United Kingdom thought that the requirement for unanimity was excessive as not reflecting the will of the great majority; three quarters might be enough for amendment of the Regulations and five sixths for the time limits: alternatively, two thirds and three quarters,

respectively. Outside the Conference the belief was widespread that the duration of the grace period is governed by such a time limit. However, no changes of the text were adopted.

Readers will have noticed the absence of reference to many articles of the draft Treaty. Apart from the later administrative articles 28 to 39, the earlier omitted articles concerned subject matter on which the developed and developing countries were in dispute and which were more likely to be settled in the context of the GATT negotiations, rather than perhaps prematurely in WIPO. These include article 10 on the fields of technology for which patents should be available. The developed countries want this to be as liberal as possible, whilst the developing countries want it to be restrictive. Article 19 concerned with rights conferred by the patent, also generates arguments because the developing countries want no article at all and the United States does not like contributory infringement. Article 22 sets a minimum term of patent of twenty years and is strongly resisted by the developing countries. Article 24 provides for reversal of the burden of proof in the case of process patents where the process by which the product is made is concealed. Here again, the developing countries want no article. The two articles 25 (obligations of the right holder) and 26 (remedial measures under national legislation) are proposed by the developing countries and would require working in every country plus draconian penalties for non-compliance with any law or regulation.

For the applicant, the loss of article 7(2) giving the possibility of recovery if a Convention date is missed by "force majeure", the non-mandatory character of article 8(4) allowing filing by reference to earlier filing, the retention, albeit optionally, of the "best model" requirement in rule 2(2)(vi) (unless UNICE's proposal is adopted), and the optional character of article 13(4)(a), the anti-self-collision clause, were probably the greatest disappointments after the United States proposal to make first-to-invent optional. The problem now is to

bring sufficient pressure and arguments to bear upon other countries' delegations as well as upon our own.

With the existing voting arrangements, one of the dangers will be that, in order to obtain a consensus, the countries may agree to compromises which may enable a treaty to be signed but which may not thereafter enable the treaty to be enacted into legislation by the countries concerned. There is little point in a treaty whose provisions are so full of compromises and options that there is no incentive for countries to ratify.

R.C. Petersen (GB)

NOTE ON EPPC RELATED ITEMS AT EPI COUNCIL

ON 6 MAY 1991

The Council had before them the 27th EPPC Report of 15 March 1991, to which was appended reports on the Trilateral User's Meeting in Munich on 25/26 October 1990 and the SACEPO Meeting of 6/7 March 1991, together with an EPPC Opinion on Prior Use in the European Community.

The Trilateral User's Meeting Report referred to the EPO's business plan "Horizon 2000" and to a large increase in USPTO Fees and whether these might rise steeply if the EPO's projection on its expected business are unfulfilled. It was agreed that the Committee on Fees should commence its studies but leave it for the time being to UNICE to point out the immediate financial dangers to the EPO and the Administrative Council.

The SACEPO Report focussed attention mainly on the Harmonisation of Patent Law and the new position of the United States in desiring to retain its first to invent system. This raised questions about the Americans retaining their discriminations against non-US applicants, discovery abroad, best mode and whether the remaining package can be the basis for a deal. The question of the EPO doing PCT work for Japan and USA was raised again and also the corresponding reciprocity in those countries - which is not yet arranged. Some positive views were given on the EPO proposal for exchanges between examiners and patent attorneys. EPO wishes to broaden the training of its new staff and also wishes to alleviate the boredom of search work, hence the BEST programme. But the 3 man examining division will be retained. On the question of talks between SACEPO members and the Technical and Legal Boards of Appeal, which will take place in October, EPI and UNICE will suggest subjects and send participants. Questions will be considered at the next EPPC meeting in July to make up an agenda for Mr. Gori, such as the procedure of the Boards, novelty and inventive step.

of the substantive items of the EPPC Report, the Council noted that the EPO procedures for the issue of receipts for European Patent Applications has been improved so that long delays in receiving them should be a thing of the past. On the right to be heard, while Decision T295/87 was considered to be an extreme case, there is still some concern that the proprietor might not be allowed to respond fully to the case made against him. The EPPC and the Council will continue to monitor developments as a basis for further steps.

The EPPC's Opinion on Prior Use in the European Community was approved and will be sent to the CPC Interim Committee where it should help the discussions on this subject, together with discussions on compulsory licences. It was pointed out that if these questions are not settled before the CPC comes into force they never will be, although the Community's position on compulsory licences cannot be adopted before this matter is settled in the Gatt negotiations.

A Council member raised the question of the technical scope of the prior use right, since a minority of the EPPC are against any extension of the prior use right to give a privilege beyond what was done before the relevant date, although the majority believe there should be some leeway. The member wanted obviousness considerations to apply, but the majority of the EPPC wish to leave it to the judge to decide on the basis of substantial identity.

The report of the Harmonisation Committee considered recent developments whereby the USA has withdrawn from the original basis for a deal in which it adopts first to file, Japan accepts a broader infringement right and no pregnant oppositions after a transition period, while Europe accepts a grace period. The basis of this package has been destroyed.

The Conference at The Hague will take place now for only three weeks, will not make decisions and will essentially be an expert

committee making drafting improvements. Many articles will be settled by the Gatt negotiations.

Regarding details, the Harmonisation Committee opposes best mode, especially when coupled to priority; wishes to retain force majeure late filed or late claimed priority; believes that the option to maintain the first to invent system should be in the reservations, all discriminations must go and there should be a time limit; will not accept a mandatory grace period, but attempts should be made to negotiate a grace period to come into force when the USA adopts first to file; whole contents should be used with novelty with a mandatory anti-self collision clause; there should be no time limits for search and examination and in any case such limits should not apply to the EPO; prior use should be mandatory for first to file countries but optional for those who retain a first to invent system; and due account should be taken of equivalents.

J.L. Beton

Rapporteur

13th May 1991

EXCESS LIABILITY INSURANCE
EXZEDENTEN-VERMÖGENSHAFTPFFLICHTVERSICHERUNG
ASSURANCE COMPLEMENTAIRE RESPONSABILITÉ PROFESSIONNELLE

EPI has renewed the contract for the Excess Liability Insurance Scheme for another year beginning on 1st October 1991. Interested EPI Members should renew or conclude their individual contract.

The conditions for the contract remain the same as in the past except for the increase in German insurance tax. It slightly raises the total amount, which has to be paid, from DM 668,80 to DM 687,50.

For renewal of your policy please note that the bank account to which your premium should be paid - free of charge and in German Marks - has changed. It is now:

Dresdner Bank, Munich
EPI Insurance Account
Account No.: 04 074 713 00
Bank Code: 700 800 00

All EPI Members interested in joining or renewing the policy should ask the General Secretariat for further information.

ADVICE TO CANDIDATES
TAKING THE EUROPEAN QUALIFYING EXAMINATION

Dr. P.M. DENERLEY of ICI (GB) and Dr. J.P. JESER, Patentanwalt in Heilbronn, both EPI tutors, have kindly agreed to have their notes, compiled in several years of tutoring, published in epi-Information.

Having passed the European Qualifying Examination, their views are based on their own experience as well as on the feedback from candidates attending their tutorials.

Candidates taking the European Professional Qualification Examination will without any doubt, find in their summaries highly valuable advice and practical tips.

The Professional Qualification Committee of the EPI thanks them herewith and is confident that these notes will help in improving the pass rate in the forthcoming Examinations.

Paul Leitz

N.B. EPI members are kindly asked to give or make a copy of these guidelines and pass them to the candidates to the European Qualifying Examination who do not have the possibility to read the EPI Information.

RATSSCHLÄGE FÜR KANDIDATEN
DER EUROPÄISCHEN EIGNUNGSPRÜFUNG

Dr. P.M. DENERLEY von ICI (GB) und Dr. J.P. JESER., Patentanwalt in Heilbronn, beide EPI-Tutoren, haben sich freundlicherweise bereit erklärt, ihre in mehreren Jahren Tutorenarbeit zusammengetragenen Notizen in der EPI Information zu veröffentlichen. Da sie selbst die Europäische Eignungsprüfung abgelegt haben, basieren ihre Ansichten sowohl auf eigener Erfahrung als auch auf den Informationen, die sie von ihren Kandidaten erhalten haben. Kandidaten der Europäischen Eignungsprüfung werden in ihrer Zusammenfassung zweifellos sehr wertvolle Ratschläge und praktische Tips finden.

Der Ausschuß für die Berufliche Qualifikation des EPI möchte ihnen hiermit seinen Dank aussprechen und ist sicher, daß diese Notizen dazu beitragen werden, die Erfolgsquote bei den kommenden Prüfungen zu erhöhen.

N.B. Mitglieder des EPI werden gebeten, Kopien dieser Ratschläge an die Kandidaten für die Europäische Eignungsprüfung weiterzureichen, die nicht die Möglichkeit haben, die EPI Information zu lesen.

CONSEILS AUX CANDIDATS
A L'EXAMEN EUROPEEN DE QUALIFICATION PROFESSIONNELLE

M. M.P. DENERLEY de ICI et M. J.P. JESER, Conseil en Brevets à Heilbronn, tous deux tuteurs de l'EPI ont aimablement accepté de publier dans EPI Information les notes qu'ils ont rassemblées au cours de leurs nombreuses années de tutorat.

Ayant eux-mêmes passé l'Examen de Qualification, leurs points de vue se basent sur leur propre expérience ainsi que sur les observations et réactions des candidats qui suivent leurs cours. Les candidats à l'Examen Européen de Qualification Professionnelle trouveront dans ces notes une source d'informations et de conseils précieux.

La Commission de Qualification Professionnelle tient à remercier M. DENERLEY et M. JESER et est persuadée que ces notes contribueront à augmenter le pourcentage de réussite aux examens prochains.

N.B. Nous prions les membres de l'EPI de bien vouloir faire une copie de ces conseils et de les communiquer aux candidats à l'Examen Européen de Qualification qui n'ont pas la possibilité de lire EPI Information.

PAPER A (CHEMISTRY)

1. Spend most of the time on the claims. These attract the majority of the marks. The remainder of the specifications is structured according to the claims and carries only a small proportion of the total marks (in the past about 20%)
2. Analyse the inventions of the client's letter carefully. If appropriate draw up a flow-chart of activity eg chemical intermediate - product - composition - article treated with the composition. In this way the various "product" claim types are apparent as well as "process" claim types. It is important to include all possible claim types that are appropriate for protecting the invention.
3. Analyse the client's letter and underline terminology such as essential and must. Such terminology may indicate mandatory limitations to the claims.
4. Analyse the client's letter and indicate terminology such as "preferably", "particularly favoured", etc. Such terminology may indicate subject matter suitable for sub-claims.
5. The claimed subject matter must be novel and, at least arguably inventive. Frequently, Paper A does not require detailed consideration of inventive step; the skill is in neatly and accurately restricting the claim to avoid anticipation.
6. Use the terminology of the client and do not be inventive or unduly speculative.
7. The client's letter should be modified to form a specification according with Rule 27. In particular "problem" and "solution" should be mentioned.
8. The number of claims is not though to be critical -

- approximately 10-14 may be appropriate and candidates should be reluctant to exceed say 18.
9. Be aware of the possibility of separate claims for Spain and/or Greece.
- PAPER B (CHEMISTRY)**
1. A full response to the Official Letter is required. This normally comprises arguments, claim amendments and amendments to the description.
 2. The Official Letter is generally reasonable; however the major factor is the content of the prior art in particular the prior art newly introduced for Paper B. Normally a question of limitation is involved. The amended claims must be novel and inventive. Inventive step is taken seriously and the candidate is required to produce meaningful arguments - these are often based on comparative data in the specification. Formal novelty and a mere argument of "no suggestion in the references" is normally inadequate if the prior art is in the same technical field.
 3. The description will require amendment for example:
 - : limitation of consistency clause
 - : acknowledgement of new prior art
 - : deletion of aspects of the invention
 - : deletion of examples
 - : restatement of "problem-solution"
 4. It may be appropriate to consider the filing of divisional applications.
 5. Analysis of the invention should be performed, as in Paper A, and the appropriate claim categories should be included (ie. do not be restricted to the categories of the applicant's claims).
 6. In arguing for inventive step of the amended claims, cite case law but only where applicable.
- PAPER C**
1. Commence with the formal aspects of the notice of Opposition to ensure that they are not forgotten later in the exam. Then proceed to the Grounds on which the Opposition is based.
 2. Study each annex to ascertain whether it may be used as a 54(2) citation, 54(3) citation or whether it cannot be used at all. Take care with this study as there is often a big "trap". Sometimes, it is not certain as to whether an annex is citable or not; it may be necessary to discuss case law. Discuss all legal points in an introduction to the opposition.
 3. In the event that you are not sure as to whether an annex is admissible then treat it as a citation and inform the Examiner (in a note) of your doubts. If the annex is inadmissible then do not use it; again explain this in a note to the Examiner.
 4. Sometimes it is not certain whether the patent in suit is entitled to priority or not. Unless the facts given lead to a contrary conclusion, it is recommended that the candidate does not assume entitlement to priority. This leads to further arguments being available to the candidate. The candidate should then indicate, in an auxiliary statement (or note to the Examiner) that, if there were priority entitlement, certain arguments would be redundant.
 5. Study each annex for indication of other available prior art.
 6. Attach the patent on a Claim by Claim approach; taking great

- care with 54(3) citations. Where more than one attack is possible then use all arguments.
7. It should be ensured that attacks against dependent claims must be consistent with attacks on the claims from which they depend. For example if a novelty attack is feasible against a dependent claim 2, then it should also be feasible against claim 1.
 8. Personally, I draw up a table of the integers of the claims of the patent in suit and compare these integers with the disclosure of the annexes. This one-sheet aide memoire helps throughout the five hour examination but is not part of the answer nor is it a substitute for the answer.
 9. Always consider the problem and solution approach particularly when combining documents.
 10. When making reference to an annex, state the relevant page and line numbers and state why this passage destroys novelty of an integer/aids an argument of inventive step/etc.
 11. Finally, do not obey the client's instructions if they are contrary to the EPC and rules. For example an attorney cannot file in his/her own name. Point this out to the Examiner.

PAPER D

1. All questions should be answered. 50% of the marks are awarded for the short questions (Part I) and 50% of the marks are awarded for the Legal opinion (Part II). The answer to Part II may involve discussion of a variety of options and the candidate may spend more time than is necessary on this. Therefore, it is my advice that the Part I questions are answered first, in particular the easier questions. Part II may then be answered and the candidate may then return to any remaining Part I questions.

2. The examination is about SHOWING the Examiners that the candidate knows the EPC and Rules. Always quote the relevant Article and Rule numbers - preferably at the start of the answer. It is essential to quote the Article and Rule numbers - this is the legal basis for the answer.
3. In answering the Part I questions, read them carefully (eg don't confuse applications and patents), cite the Article and Rule numbers - then apply the law to the facts of the question. The answer should be supported by reference to case law, as appropriate. Finally, it may be useful in answering certain questions to state in one sentence the advice to the client.
4. Remember that marks are not distributed evenly amongst the Part I questions. Thus, occasionally it is not necessary to provide an extensive answer as the question clearly requires a short answer only.
5. In answering the Part I questions, show the reasoning. Do not take short-cuts otherwise you could miss an important aspect of the question.
6. It is undeniable that candidates in recent years are expected to know more case law. This can not be avoided. It is suggested that a basic reading list be:
 - The Enlarged Board of Appeal Decisions (all)
 - The Legal Board of Appeal Decisions (most)
 - The Technical Board of Appeal Decisions (about 70-100 minimum).

It should be realised that all candidates are expected to have knowledge of "specialist" case law eg pharmaceutical and computer-related inventions.

Many European Patent Attorney's will have prepared a reading list of important cases for their students. In addition it

is suggested that the candidates read Guidelines, textbooks and journal articles and study carefully the cases mentioned therein - always referring to the Convention and Rules.

The legal basis of any decision must be firmly understood.

7. Candidates should not restrict themselves to decisions published in the OJEPO. Knowledge of decisions published in the OJEPO may be sufficient for examination purposes but candidates should be encouraged to study decisions published in other journals, eg European Patent Office Reports. In addition, important decisions are sometimes published earlier in such journals.
8. With regard to the Part II question, remember that this is a practical examination. There may be various options to consider (for example requesting interruption of proceedings, requesting further processing or requesting an extension) and the client should be alerted to these options. Furthermore this displays your knowledge to the Examiner. [Remember that a low-cost slightly unsatisfactory solution may be more attractive to impecunious clients than a high-cost solution]. The answer should finish with your clear advice.
9. Although a practical examination, it is recommended not to give long-winded commercial advice on negotiations, licence terms, etc. This examination has been focused mainly on European patent prosecution.

P.M. Denerley

Punkte, die für die Europäische Eignungsprüfung besonders zu beachten sind

DAS WICHTIGSTE

(für die Prüfung)

Sie benötigen bei jeder Aufgabe "nur" 50% der Punkte, um die Aufgabe zu bestehen. Dies hat u.a. zur Folge, daß Sie nur das beantworten sollten, was eindeutig gefragt ist. Tritt ein Zweifelsfall auf, was ab und zu der Fall ist, dann beschäftigen Sie sich mit diesem nicht. In derjenigen Zeit, in der Sie den Zweifelsfall bearbeiten, können Sie mit größter Wahrscheinlichkeit mindestens die doppelte Punktzahl mit dem Bearbeiten eindeutig anstehender Fragen gewinnen. Entsprechendes gilt, wenn Sie an ein für Sie schwierig zu beantwortendes Problem kommen. Gehen Sie sofort zum nächsten über. Fassen Sie sich so kurz wie möglich. Denken Sie immer an die "nur" 50%!

AUFGABE A

(Ansprüche und Beschreibungseinleitung)

Aufgabe A hat seit Jahren einen im Grunde unveränderten Aufbau. Es wird nämlich sehr zutreffend der praktische Regelfall simuliert, gemäß dem ein Erfinder zu Ihnen kommt, der ein Produkt oder ein Verfahren in verschiedener Hinsicht weiterentwickelt hat und Ihnen Details hierzu vorträgt. Unterschiedlich gegenüber der Praxis, und zwar in vereinfachender Richtung, ist lediglich, daß die Ihnen vorgelegten Unterlagen versteckt einen Hinweis enthalten, daß die im Detail vorgetragenen Lehren eigentlich etwas allgemeiner zu sehen sind.

Sie müssen versuchen, die Detaillehren zu verallgemeinern und die verschiedenen Ausführungsformen in einer Anmeldung unterzubringen, also versuchen, dem Anmelder zum größtmöglichen Schutzmfang zu verhelfen. In dieser Richtung gehen auch die meisten Kandidaten vor, übersehen dabei aber die Forderung gemäß den "Anweisungen an die Bewerber", daß nämlich die Ansprüche gute Aussichten haben müssen, vor dem EPA zu bestehen. Dieses Übersehen entspricht einer Vorgehensweise, die in der Praxis von

vielen gewählt wird, nämlich in einer Anmeldung die unabhängigen Ansprüche bewußt zu breit abgefaßt einzureichen und erst im Erteilungsverfahren Einschränkungen vorzunehmen. In der Europäischen Eignungsprüfung ist dies mit der größte Fehler, den Sie bei Aufgabe A begehen können.

AUFGABE B

(Bescheidserwiderung einschließlich neuer Unterlagen)

Aufgabe B ist, wie Aufgabe A, eine ausgezeichnete Simulation der Praxis. Sie erhalten nämlich einen Prüfungsbescheid, der kein gutes Haar an der Anmeldung läßt. Beim Beantworten des Bescheids sind drei Grundprobleme zu beachten, die abhängig von der jeweiligen Aufgabe mehr oder weniger im Vordergrund stehen. Entweder ist von den Ansprüchen der Anmeldung kein einziger haltbar und Sie müssen völlig neue Ansprüche aufstellen - dann müssen Sie insbesondere darauf achten, daß Sie nicht über die ursprüngliche Offenbarung hinausgehen. Oder verschiedene Ansprüche sind zwar zu halten, aber die Argumentation in Bezug auf erfinderische Tätigkeit ist sehr schwer zu führen, da der Prüfer eine ganze Anzahl beachtlicher negativer Argumente abgehandelt hat. Oder es fällt der Dachanspruch für mehrere verschiedene Ausführungsbeispiele in einer Kategorie - dann müssen Sie sich in erster Linie damit beschäftigen, was nach Einheitlichkeitsgesichtspunkten noch in der Anmeldung verbleiben kann.

Auch bei B müssen Sie wie bei A darauf achten, daß Sie für größtmöglichen Schutz durch eine einzige Anmeldung sorgen, mit Ansprüchen, die gute Chancen auf Gewährbarkeit haben. Die Tutorenpraxis zeigt, daß meistens diejenigen Kandidaten, die in A unhaltbar breite Ansprüche aufstellen, sich in B auf solche mit sehr engem Schutzmfang zurückziehen. Bedenken Sie, daß A und B von derselben Kommission geprüft werden. Beide Lösungen ergeben ein Gesamtbild dahingehend, ob Sie dazu in der Lage sind, mehrere Ausführungsbeispiele mit guter Aussicht auf Gewährbarkeit mit breitem Schutzmfang in einer einzigen Anmeldung unterzubringen.

AUFGABE C (Einspruch)

Bei C werden Sie immer mit einem Neuheitsproblem konfrontiert, meistens in Verbindung mit einer Prioritätsfrage. Dabei bekommen Sie zum Stand der Technik regelmäßig eine Schrift, deren Inhalt mit der Lehre zumindest der unabhängigen Ansprüche identisch ist. Wenn diese Schrift auf den ersten Blick einen Zeitrang hat, der Neuheitsschädlichkeit bedeutet, ist an diesem Zeitrang irgend etwas faul und die Schrift ist nicht anwendbar. Wenn umgekehrt die Schrift vom Zeitrang her nicht anwendbar erscheint, ist sie es, oder eine mit ihr in Verbindung stehende Schrift, doch.

Ansonsten geht es um Argumentation betreffend mangelnde erfinderische Tätigkeit. Hier ist die Aufgabenstellung immer so, daß genau auf unterschiedliche Merkmalskombinationen zu achten ist. Z.B. bezieht sich Anspruch 4 auf einen der Ansprüche 2 oder 3 zurück, die ihrerseits auf Anspruch 1 rückbeziehen. Es mag Anspruch 4 im Umfang seiner Rückbeziehung auf Anspruch 2 nicht neu, aber im Umfang seiner Rückbeziehung auf Anspruch 3 neu und sogar erfinderisch sein. Weiterhin ist bei der Argumentation darauf zu achten, daß es für den Nachweis des Fehlens erfinderischer Tätigkeit nicht ausreicht, zu zeigen, daß alle Einzelmerkmale für sich bekannt waren, sondern es muß im wesentlichen gezeigt werden, daß sich bei Anwendung der aus dem Stand der Technik bekannten Problemstellungen auf die aus dem Stand der Technik bekannten Problemlösungen die Lehre des anzugreifenden Anspruchs zwingend als eine Möglichkeit unter einer überschaubaren Anzahl von Lösungsmöglichkeiten ergab.

AUFGABE D (rechtlicher Teil)

Teil I betrifft einzelne Rechtsfragen (typischerweise 12 bis 14 Stück). Viele Fragen betreffen Anmeldeformalitäten, Gebührenzahlung und Fristenberechnung, sind also stark praxisorientiert. Teil II ist seit einigen Jahren so aufgebaut, daß mindestens zwei Erfindungsgegenstände beschrieben werden, die im allgemeinen

Grundlage für Neuheits- (Prioritäts-) oder Verletzungsprobleme sind. Teil II unterscheidet sich von Teil I eigentlich nur dadurch, daß Sie bei Teil II selbst die Rechtsfragen finden müssen, die zu beantworten sind. Meistens handelt es sich um einige Problemkomplexe (typischerweise etwa 8 bis 10).

Das Hauptproblem liegt für viele darin, sich die Zeit richtig einzuteilen. Sie sollten für die Teile I und II jeweils dieselbe Zeit ansetzen und für jede Einzelfrage in I und jeden Komplex in II jeweils dieselbe Teilzeit ansetzen. Sobald die Teilzeit abgelaufen ist, sollten sie zur nächsten Frage oder zum nächsten Komplex übergehen (denken sie immer an "Das Wichtigste", siehe oben).

ZU IHRER VORBEREITUNG

Bei allen Aufgaben ist die Frage erfinderischer Tätigkeit von Bedeutung. Hier hat etwa ein Drittel der Teilnehmer an den EPI-Kursen erhebliche Schwierigkeiten in der Argumentation. Im Kurs kann man den Kandidaten aber Details hierzu nicht beibringen, da es sich um Kenntnisse handelt, die in den Jahren der praktischen Arbeit vor der Zulassung zur Prüfung hätten erworben werden müssen. Im EPI-Vorbereitungskurs geht es darum, sie mit der Art von Problemen vertraut zu machen, die in der Prüfung mit Sicherheit auf Sie zukommen werden, und Ihnen grundsätzliche Vorgehensweisen beizubringen, die beim Bewältigen der Probleme hilfreich sind.

Um gute Argumentation in Bezug auf erfinderische Tätigkeit zu erlernen, sollten Sie einige Beschwerde-Entscheidungen, die sich mit diesem Thema beschäftigen gründlichst studieren, und zwar solche mit positivem Ergebnis (für B) wie auch solche mit negativem (für C). Dabei sollten Sie weniger auf irgendwelche speziellen rechtlichen Probleme achten, wegen der der jeweilige Fall eigentlich interessant ist, sondern Sie sollten besonders darauf achten, wie die Entscheidungen aufgebaut sind und wie argumentiert wird.

Weitere materiellrechtliche Hauptthemen sind Neuheit und Priorität. Hier lernen sie am besten aus dem Kommentar von SINGER und den Richtlinien für die Prüfung im EPA.

Was Einheitlichkeit anbetrifft, reicht es, wenn Sie von der Entscheidung "Benzylester" (Amtsbl. EPA 1983, 274) die Punkte 3 bis 9 gründlichst lesen und sich zu eigen machen.

Auf die Rechtsfragen bereiten Sie sich am besten durch das Buch von GALL vor. Erkundigen sie sich, welche Ausgabe gerade die aktuellere ist, die deutsche oder die englische. Die Unterschiede sind erheblich. Die englische Ausgabe erhalten Sie unter dem Titel "European Patent - Questions and Answers" bei Longman Group, Fourth Avenue, Harlow, Essex CM 19 5AA, GB.

Studieren Sie alle Vorschriften, die die Prüfung betreffen (Sie erhalten sie mit der Bestätigung der Anmeldung zur Prüfung) und lernen Sie die "Anweisungen an die Bewerber" quasi auswendig! Es wäre unverzeihlicher Leichtsinn, wenn Sie in der Prüfung kostbare Zeit verlieren müßten, um erst einmal diese Anweisungen zu studieren.

Lösen Sie nicht reihenweise Aufgaben aus den letzten Jahren im Eiltempo, sondern arbeiten Sie lieber die Aufgaben aus einem einzigen Jahr mehrfach unter Studieren der beigefügten Anmerkungen zu den einzelnen Aufgaben durch, bis Ihnen nämlich genau klar ist, wie die Aufgaben aufgebaut sind und warum dies so ist. Wenn Sie dann bei einem Jahrgang völlig klarsehen, nehmen sie einen zweiten, um zu überprüfen, ob Sie dort denselben prinzipiellen Aufbau wiederfinden. Kommt Ihnen alles ganz anders vor, sollten sie erneut die Aufgaben aus dem erstgewählten Jahr unter Berücksichtigen der genannten Anmerkungen studieren und den Wechsel zwischen den beiden Jahrgängen so lange wiederholen, bis Ihnen die prinzipielle Übereinstimmung klar ist. Anschließend brauchen Sie keine weiteren Aufgaben anzusehen, da Sie nichts grundsätzliches mehr lernen können. Eine Ausnahme ist allenfalls für die Probleme des Neuheits/Prio-Problems in C gerechtfertigt.

ZUM "HANDWERKLICHEN" VORGEHEN IN DER PRÜFUNG

Wenn Ihnen eine Aufgabe merkwürdig vorkommt, beschaffen Sie sich den Text in einer anderen Sprache. Verschiedentlich, wenn auch nicht oft, unterscheiden sich die Texte. Bei C kann denjenigen, die schlecht in Französisch sind, der französische Text des anzugreifenden Patents beim Erforschen des Inhalts einer französischen Entgegenhaltung hilfreich sein. Durch Vergleich des französischen Textes des Patents mit dem deutschen kann sich erahnen lassen, ob die Entgegenhaltung etwas ähnliches aussagt.

Nehmen Sie eine Anzahl Farbstifte oder verschiedenfarbiger Markierstifte in die Prüfung mit. Bei A und B können Sie diese dazu verwenden, jeweils gleichwirkende Teile der erfindungsgemäßen bzw. einer bekannten Vorrichtung jeweils gleichfarbig zu markieren. Bei C können Sie jedem Anspruch eine Farbe zuordnen und dann mit der jeweiligen Farbe in den Entgegenhaltungen die Stellen markieren, aus denen die kennzeichnenden Merkmale des Anspruchs bekannt sind. Bei Teil II von D können Sie materiellrechtliche Fragen mit einer ersten und formellrechtliche Fragen mit einer anderen Farbe markieren.

Untergliedern Sie alle Ihre Antworten so weit wie möglich und fangen Sie mit jedem neuen Punkt eine neue Seite an. Beginnen Sie also jeweils mit einer neuen Seite für jeden unabhängigen Anspruch bei A und B, für jeden Anspruch bei C und für jede Frage bei D. Wenn Sie dann irgendwo etwas anfügen müssen, haben Sie genügend Platz, da Sie ja auch problemlos eine Seite einschieben können, während Sie andernfalls Einfügungen vornehmen müssen, die oft nur schwer lesbar sind. Sie sollten unbedingt auf gutes Aussehen Ihrer Unterlagen achten.

Versuchen Sie alles sofort als Reinschrift anzufertigen. Es gibt kaum etwas sinnloseres, als die außerordentlich knapp bemessene Zeit mit Abschriften nach Vorentwürfen zu vergeuden. Eine Ausnahme stellt der erste Entwurf eines unabhängigen Anspruchs bei A oder B dar. Aber auch hier sollten Sie so schnell wie möglich zu einer Reinschrift kommen. Da diese mit Sicherheit noch mehrfach zu ändern sein wird, ist es von Vorteil, nach Merkmalen gegliederte Ansprüche aufzustellen - wenn Sie dann ein Merkmal

ergänzen oder einfügen müssen, können Sie dieses Merkmal heraustrennen, den oberen Teil Ihres Blattes auf ein neues Blatt kleben und dann den unteren Teil des Blattes aufkleben.

Das eben genannte Zertrennen eines Blattes nehmen Sie am besten dadurch vor, daß Sie es über ein Lineal reißen. Dies geht erheblich schneller als ein Zerteilen mit der Schere. Derartige Trenn- und Klebearbeiten müssen Sie in der Prüfung extensiv nutzen, damit Sie mit der knapp bemessenen Zeit auskommen. Bei A und B können Sie den größten Teil der Beschreibungseinleitung auf diese Art und Weise aus bereits vorhandenen Unterlagen erstellen. Bei C und D können Sie Teile Ihrer Argumentation versetzen oder solche Stellen entfernen, die wegen mehrfacher Korrekturen und schließlichen Streichens zeigen können, wie unsicher Sie waren.

In Zusammenhang mit der vorstehend erwähnten Unsicherheit weise ich auf die "Anmerkungen" hin, die man jeder Ausarbeitung beifügen darf. Ausarbeitungen guter Kandidaten weisen kaum Anmerkungen auf, während sie bei den schlechteren zum Teil beinahe so lange sind wie die Ausarbeitung selbst. Zwingenden Anlaß zu Anmerkungen gibt es nur in wenigen Fällen. So sollten Sie (also müssen Sie) bei A getrennt angeben, daß Sie für eine Erfindung, die Sie nicht in die Anmeldung übernommen haben, eine gesonderte Anmeldung einreichen würden.

Bei C und D werden regelmäßig Punkte angesprochen, auf die in der Ausarbeitung nicht einzugehen ist. Diese sind dann in den Anmerkungen kurz abzuhandeln. So mag der Mandant bei C Anweisung geben, wegen fehlender Einheitlichkeit Einspruch zu erheben. Weitere Beispiele gibt Punkt 3 der Anweisungen zu C.

Die Prüfung ist eine unglaubliche Anstrengung, der vor allem diejenigen nicht gewachsen sind, die nicht ausreichend ausgeruht sind. Die letzten Tage vor der Prüfung sollten Sie daher nicht mehr allzuviel lernen, sondern versuchen, so fit wie möglich zu werden, damit Sie möglichst wenig den Kopf verlieren und immer an "Das Wichtigste" (für die Prüfung) denken.

J.P. Jeser

IMPLICATIONS OF RECENT NATIONAL COURT DECISIONS
FOR THE EXAMINATION BEFORE THE EPO

Francis Hagel - Clamart, France

Recent decisions of national courts raise serious concerns and must be given full consideration by the EPO and practitioners.

1. Interpretation of claims : the EPILADY case

The first case, to my knowledge, where the infringement of a European patent came as an issue before courts in different countries (Düsseldorf District Court in Germany, Patents Court in England : see IIC 6/1990 pp. 860-868, including comments by B.Sherman) had the unfortunate outcome that the courts took opposing positions : the English court (not surprisingly) interpreted the claim in a more restrictive manner than the German court and decided that Remington's depilator did not infringe the patent held by Improver, whereas the German court reached the opposite conclusion. As a matter of fact, the English court, in applying the doctrine of equivalents, referred to the three-step analysis laid out in the Catnic case, the third step of which gives substantial weight to the wording of the claim, and insisted that this approach was in full accord with the Protocol of Interpretation of Article 69.

The implications of this "real-life" test are two-fold :

- the uncertainty created by such conflicting positions as to the interpretation of claims at national court level is in itself a major concern for all parties confronted to a European patent, as it brings about a large factor of risk in product development and marketing decisions.

The effort initiated by the EPO in order to get national judges to reconcile their views should be intensified. In the EPILADY case, the English and the German courts have applied different sets of rules for construing the claim.

While identical rules would not guarantee identical conclusions, different rules are certain to produce diverging results. The EPO should set for its action the objective of harmonizing the rules as regards the doctrine of equivalents and other questions of prime importance.

- meantime, the strict approach to claim interpretation adopted by the English Court must be taken for a fact, which applicants and practitioners cannot afford to ignore. If, as is legitimate, applicants' strategy is aimed at optimizing the scope of protection in all the countries designated in the application (and the U.K. is designated in a vast majority of cases), the only safe approach is for applicants to retain the strictest standard of interpretation as the relevant standard.

Bearing in mind this strict standard of interpretation, applicants will logically draft claims with the broadest possible language, implying, inter alia, extensive use of functional definitions ("means for .."), and take every opportunity, during the examination, to broaden the scope of claims, by removing unnecessary limitations or giving more general definitions to the elements of the claim.

But such a posture is certain to raise objections from the Examining Divisions, based on the requirements of Article 84 EPC that the claims be clear and be supported by the description, or (as to amendments of the claims) on the requirement of Article 123(2). Functional language, perceived as too vague and general by the Examining Divisions, is frequently objected to as "not clear". This extensive understanding of the "clarity" requirement finds some justification in the explanations set out in the Guidelines (C.III.4). It is my view that the "clarity" requirement as put into practice by the Examining Divisions is overly restrictive vis-à-vis functional definitions, in other words, the admissible degree of generalization is set at a level which is too low. As a result, applicants are confronted with a dilemma : if they refuse to "clarify" their claims in the manner suggested by the Examining Divisions, they put at risk their applications ; if they meet the Examining Division's requests, by e.g. entering structural limitations into the claims, they accept a restriction of the scope - as construed according to strict standards - which may be substantial and thus prejudice their forthcoming patent rights in the U.K.

As to Article 123(2), the restrictive approach adopted by the EPO has recently raised strong criticism, which in my opinion is entirely justified (see M.Guerin "Important inventions : do not file EPO" in EPI Information, 3-1990 pp 49-66; also O.Münch's comments in "EPI Information" 2/1991 pp 50-51).

My conclusion is, therefore, that current practices of the EPO as regards Articles 84 and 123(2), and the Guidelines, should be reviewed in the light of the EPILADY case, my hope being that such review will lead to a more liberal attitude.

2. Two-part claims : the French doctrine

Rule 29(1) EPC provides that the claims must comprise, wherever appropriate, a preamble reciting the features of the invention which, in combination, belong to the prior art, and a characterizing portion which recites the features which it is desired to protect and which are not part of the prior art.

Whether a given feature is recited in the preamble or in the characterizing portion is given no consideration by the Boards of Appeals in the determination of inventive step. Numerous decisions have consistently stated that the claim had to be considered as a whole. In one case ("Boehringer/Kodak", T 99/85), patentability was upheld in opposition proceedings, based on the novelty of a feature (a particle size within a specified range) which was recited in the preamble of the claim as granted. The Board of Appeals made a detailed analysis of the disclosure of the document cited by the opponent, and reached the conclusion that the particle size range was not contained in the disclosure of this document. The Board of Appeals then based its determination of inventive step on the combination of the particle size range and the features recited in the characterizing part, without paying any attention to the fact that the particle size range was recited in the preamble.

Recent decisions of French Courts are in clear contradiction with this principle. The leading case here is Labinal vs. AMP (Cour de Cassation November 4th, 1987), in which the Court stated that for the determination of inventive step, the subject matter of the invention was defined by the character-

rizing portion only. Therefore, no argument in support of inventive step could be based on features recited in the preamble of the claim, regardless of whether the feature in question actually belonged to the prior art. In a recent decision, Newtec vs. SFEIMA (February 14th, 1991), the Paris Court of Appeals held : "The inventive step of a patent can only be that shown by the invention as claimed by the applicant, i.e. as defined by the sole characterizing portion of the claim; to decide otherwise would amount to consider that the mere fact of knowing and using the public domain is inventive."

As under (1), two conclusions must be drawn :

- This peculiar way of "reading" claims for the determination of inventive step is deeply unfair to patentees, who had adopted the two-part form with the understanding that the claim would be considered as a whole, and who may feel "stabbed in the back". From the standpoint of the EPO, this type of discrepancy between the principles governing EPO examination and those applied by national courts is pernicious as it undermines the credibility of the European patent system, and it is hoped that the EPO will succeed in its efforts to convince the French judges that this conception is incorrect.

- As a practical matter, applicants must be aware of the French case law on that issue, whether they like it or not, and take precautions to avoid its detrimental implications. Applicants may be well inspired to start with claims drafted in one-part form, and then resist requests of the Examining Divisions that the claim be drafted in two parts, wherever it can be shown that the two-part form would be "inappropriate" because the mutilation of the claim as effected under the French doctrine would jeopardize the forthcoming French patent.

SEMINARS ON THE EUROPEAN PATENT

Seminars organised with the assistance
of the EPO and the European industrial property practitioners

The Centre for International Industrial Property Studies (CEIPI) is organising two seminars at Strasbourg each lasting one week and dealing with the current state of law and practice of the European Patent.

The seminars are addressed to:

- practitioners who want to perfect their knowledge
- candidates for the European examination for qualification of representatives before the European Patent Office.

The participants in these seminars will receive documents based on actual cases.

The first seminar which deals with legal problems will take place from 13 to 17 January 1992.

Programme: Legal problems concerning the European Patent Convention, the Paris Convention for the Protection of Industrial Property, the PCT and the Community Patent Convention, dealt with primarily on the basis of actual cases and of precedents relating to the EPC.

The second seminar has as its theme the practical drafting of claims and of oppositions and will take place from 17 to 21 February 1992.

Programme: Drafting of claims as well as an introduction to the description, drafting of responses to communications from the Examiner, drafting of notices of opposition on the basis of the examination papers of this year.

The seminars have been changed with regard to last year since the legal questions will be treated first.

We insist on the international character of the seminars due to the origins of the lecturers and participants.

Work will take place in groups in such a way as to allow discussion between the teachers and participants. In the second seminar the working groups will be divided between chemical subjects and non-chemical subjects.

Knowledge of one of the official languages of the EPO (German, English or French) will be enough to allow participation in the seminars.

To allow for proper discussions the number of participants may have to be limited.

The fees are 4.200 FF for each seminar. Costs for lunch are included in this price for three i.e. four days. CEIPI has detailed information pamphlets available.

For information and registration please contact:

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Tel.: 88 /61.43.75 or 88 /61.56.04

SEMINARE ÜBER DAS EUROPÄISCHE PATENT

Seminare, veranstaltet unter Mitwirkung des Europäischen Patentamts und europäischer Praktiker auf dem Gebiet des gewerblichen Rechtsschutzes

Das Institut für internationalen gewerblichen Rechtsschutz der Universität (CEIPI) veranstaltet in Straßburg zwei Seminare von je einer Woche über den gegenwärtigen Stand des europäischen Patentrechts und seiner Anwendung.

Die Seminare sind bestimmt

- für Praktiker, die ihre Kenntnisse vervollständigen wollen
- für die Kandidaten, die an einer europäischen Eignungsprüfung für die beim Europäischen Patentamt zugelassenen Vertreter teilnehmen wollen.

Den Seminarteilnehmern werden Arbeitsunterlagen zur Verfügung gestellt, die sich auf Beispiele aus der Praxis gründen.

Das erste Seminar, das Rechtsfragen zum Gegenstand hat, findet vom 13. bis 17. Januar 1992 statt.

Programm: Rechtsfragen zum Europäischen Patentübereinkommen, der PVÜ, dem PCT und dem Gemeinschaftspatentübereinkommen, vor allem anhand von praktischen Fällen und der Rechtssprechung zum EPÜ.

Das zweite Seminar, das die Abfassung von Patentansprüchen und Einsprüchen zum Gegenstand hat, findet vom 17. bis 21. Februar 1992 statt.

Programm: Abfassung von Patentansprüchen und der Beschreibungseinleitung. Beantwortung von Prüfungsbescheiden. Abfassung von Einspruchsschriften anhand der Prüfungsaufgaben dieses Jahres.

Die Reihenfolge der Seminare wurde gegenüber den vergangenen Jahren geändert. Besonderer Wert wird auf den internationalen Charakter der Ausbildung gelegt, der durch die internationale Zusammensetzung der Ausbilder und der Teilnehmer gewährleistet wird.

Die Arbeit erfolgt in Gruppen, die eine Diskussion zwischen Vortragenden und Teilnehmern gewährleisten. Im zweiten Seminar werden zeitweise Gruppen für Chemie und nichtchemische Gebiete gebildet.

Die Kenntnis einer der Amtssprachen des EPA (deutsch, englisch oder französisch) reicht für die Teilnahme aus.

Im Interesse einer hinreichenden Diskussion muß die Teilnehmerzahl u.U. beschränkt werden.

Der Unkostenbeitrag beträgt für jedes Seminar 4.200,-FF. In diesem Preis ist das Mittagessen für drei bzw. vier Tage eingeschlossen.

Verlangen Sie bitte die detaillierte Informationsschrift des CEIPI.

Für weitere Auskünfte und die Einschreibung wenden Sie sich bitte an:

Mme POUVATCHY-BEHRENS, CEIPI
Université Robert Schumann
Place d'Athènes
67000 STRASBOURG

Tel.: 88/61 43 75 oder 88/61 56 04

SEMINAIRES SUR LE BREVET EUROPEEN

Séminaires organisés avec le concours de l'Office Européen des Brevets et de praticiens européens en propriété industrielle

Le Centre d'Etudes Internationales de la Propriété Industrielle (CEIPI) organise à Strasbourg deux séminaires d'une semaine chacun portant sur l'état actuel de la pratique et droit du Brevet Européen.

Ces séminaires s'adressent:

- aux praticiens désireux de parfaire leurs connaissances
- aux candidats à l'Examen européen de qualification des mandataires agréés près l'Office Européen des Brevets.

Les participants à ces séminaires recevront des documents fondés sur des cas réels.

Le premier séminaire qui a pour thème les problèmes juridiques aura lieu du 13 au 17 janvier 1992.

Programme: Problèmes juridiques se rapportant à la Convention sur le brevet européen, à la Convention de Paris pour la protection de la propriété industrielle au PCT et à la Convention sur le brevet communautaire, traités avant tout à partir de cas concrets et de la jurisprudence relative à la CBE.

Le deuxième séminaire qui a pour thème la pratique de la rédaction de revendications et d'actes d'opposition aura lieu du 17 au 21 février 1992.

Programme: Rédaction de revendications ainsi que de l'introduction à la description, rédaction de réponses à des notifications d'examineurs, rédaction d'actes d'opposition sur la base des épreuves d'examen de cette année.

L'ordre des séminaires a été changé par rapport aux années précédentes. Les questions juridiques seront traitées au premier séminaire.

Nous soulignons le caractère international des séminaires qui résulte des origines des intervenants et des participants.

Les travaux se dérouleront au sein des groupes de manière à permettre une discussion entre conférenciers et participants. En ce qui concerne le deuxième séminaire, des groupes de travail répartis en sujets chimiques et en sujets non chimiques seront formés.

La connaissance d'une des langues officielles de l'OEB (allemand, anglais ou français) est suffisante pour participer aux séminaires.

L'intérêt des participants nous conduit à limiter éventuellement le nombre afin de permettre des discussions.

Les frais de participation pour chaque séminaire s'élèvent à 4.200.-FF. Dans ce prix sont inclus les frais pour les repas de midi pour trois ou quatre jours. Le CEIPI tient à votre disposition une brochure d'informations détaillée.

Pour tous renseignements et inscriptions,
prière de s'adresser à:

Mme POUVATCHY-BEHRENS, CEIPI
Université Robert Schuman
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The US "domestic" problem of US designation in PCT Applications
filed by Non-US Residents

Since in the past I could never detect any comments to the above problem in publications dealing with the EP or the PCT system I would like to discuss it here.

The US Patent Law (35 USC) stipulates in Sec. 102 (e), first part and Sec. 119 that the question whether a granted US Patent is earlier than another has to be decided only on the basis of the US filing date and irrespective to the Convention Date.

Art. 64 (4) (a) PCT gives the option to the Contracting States to declare a reservation if their national patent law contains a stipulation as mentioned above. The USA declared this reservation and, therefore, incorporated the second part of Sec. 102 (e) as well as Sec. 363.

The result is that only the date of entry into the national US PCT phase acc. to 35 USC 371 is deciding whether a granted US ex-PCT Patent is earlier than another. This date is printed on the first page of US ex-PCT Patents as "§ 371 Date" together with the "§ 102 (e) Date". Notwithstanding having an earlier Convention Date the Non-US Resident US Patent will be later "domestically" as the Competitor US Patent. In the worst case the latter can dominate the granting procedure of the first with the possible result that it will be rejected.

In particular if a US competitor of the Non-US-Resident PCT Applicant files US Applications on same technical fields this domestic US situation can have the following time disadvantages:
The Non-US Applicant can lose

1. 12 months when he exhausts the Convention Year,
2. 18 to 20 months when he chooses the PCT way without Chapter II,
3. 30 months when he chooses the PCT way with Chapter II.

The best way to circumvent this legal situation in the States is in my opinion, therefore, to never designate US via PCT from outside the States and to file only national US applications. For shortening also the 12 months "lost" I would recommend to file it as soon as possible after the filing of the first-filed application. In case that material prior art is discovered during the Convention Year, e.g. by an Official Action, which justifies introducing new matter a Continuation in Part Application could be filed.

V. Morstadt (CH)

Divisionals

Dear Sir,

The welcome given at The Hague Diplomatic Conference to Rule 5(1) of the draft Harmonization Treaty dealing with divisional applications was tempered by criticism of the change of language from the previous draft. The rule, as previously drafted, allowed division "at any time up to at least the time when the application from which a divisional application is derived is in order for grant". In contrast, the present draft refers to the time "when the initial application is in order for grant". The use of "initial" was justified by its use in Article 4G(2) of the Paris Convention, the first sentence of which reads: "The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any".

Readers will note that the right given by Article 4G(2) is to divide a patent application, not necessarily the initial application. This has enabled division of divisional applications, at least in some countries, because, in accordance with the second sentence of Article 4G(2), each country can settle its own conditions (presumably including time limits) for such division.

Under Rule 25 EPC, the European Patent Office, when a divisional has been filed before approval of the text of a patent to be granted upon an initial application, allows later division of the divisional. Thus, if an initial application discloses several features unified by a common feature which proves not to be novel, the applicant has a choice in how to proceed. The claims of the initial application can be restricted to one invention considered to be novel and inventive, and a divisional filed still disclosing the remainder of the several inventions,

possibly unified by another common feature. The alternative would be to file a divisional with the restricted claims and maintain the initial application with the remainder of the several inventions. The effects of the alternative ways of proceeding are similar in that one application will proceed to grant and the other will be able to be divided if the other unifying common feature also proves to be not novel or not inventive. The main difference is in the timing of the first grant of a patent. If the initial application is restricted, then grant will follow relatively quickly, but if a new divisional application with the restricted claims is filed, then all the administrative matters, such as publication, search and examination, have to be gone through before grant. This may not matter in some cases, but it becomes a very important issue when infringement is already occurring and the applicant will usually restrict the initial application and obtain early grant.

If the Treaty proceeds with the present text of Rule 5(1), it seems likely that most signatory countries will adopt the words of the rule without "at least", thus fulfilling the minimum requirements, but leaving the applicant with a serious dilemma if aware of a close infringement. By going for early grant, the chance of later division is lost.

There was no Governmental discussion of this point at The Hague Diplomatic Conference, and it seems to be one which should be pressed by the interested circles upon their Government delegations, if any improvement is to be achieved.

Yours faithfully,

Richard C. Petersen (GB)

A Victim of Success?

The latest Annual Report of the European Patent Office makes confused reading as some of the statistics given are difficult to interpret. From enquiries at the European Patent Office the situation appears to be as follows:-

- In 50% of cases the search report takes more than 10 months to issue (the graph at page 56 makes it clear that some search reports are taking 60 months!)
- In 50% of cases the time taken from filing until grant or refusal as a result of substantive examination is over 44 months (the graph at page 56 shows some final decisions taking over 72 months!)
- The performance of the European Patent Office since opening for business may be summarised as follows (figures as of 31.12.90):

	<u>Number</u>	<u>Percent</u>
Total application filed (EP Euro-PCT)	445788	100
Total applications granted	150060	33.7
Total number of applications refused, withdrawn or deemed to be withdrawn	98516	22
Total number of applications still pending before the European Patent Office	197212	44.2

i.e. over 44% of all European applications ever filed are still pending.

- Of the 197212 applications still pending as of 31.12.90 the status was as follows:-

	<u>Number</u>	<u>Percent</u>
Total awaiting search	64300	32.6
Total searched and awaiting first examination report	65900	33.4

i.e. 66% of all pending applications (equivalent to 29.2% of all applications ever filed) are still awaiting their first examination report.

The outlook for the future performance of the European Patent Office is equally interesting.

- The European Patent Office will now be doing searches and International Preliminary Examinations for PCT applications filed in Poland, in addition to those it already does for applicants in Canada, Japan, and the United States.
- Use of the PCT is increasing owing to the shorter time limits which mean that a search, and hence a view on validity, is usually obtained much earlier than by a direct European filing. Such increased use of the PCT must mean that directly filed European applications will be pushed further back in the queue for search.
- The United Kingdom Patent Office's contract for doing International Preliminary Examinations for UK applicants expires shortly. If not renewed this will increase the number of International Preliminary Examinations to be done by the European Patent Office substantially. (In 1990 the UK Patent Office received 1300 demands for International Preliminary Examination and completed 1324 examinations. The comparable figures for the European Patent Office are 3700 demands received, 2400 examinations completed. The rate of filing of demands is likely to rise considerably in the future owing to rapidly increasing use of the PCT (over 2000 applications by British applicants alone last year)).

Was the European Patent Office a success? Yes, it attracted business.

Is the European Patent Office a success? No, it does not do the business it attracts.

Will the European Patent Office be a success? ? ? ? ? ?

J.C. Boff (GB)

TRAINING PROGRAMME ON THE EUROPEAN PATENT

3 - 5 FEBRUARY 1992

QUEEN MARY COLLEGE
(University of London)

The Training Programme on the European Patent will be held on Monday, 3rd to Wednesday, 5th February 1992.
The lectures will be given at London House, Mecklenburgh Square, London WC1.

further details from:

The Secretary
IPL Unit
Centre for Commercial Law Studies
Queen Mary & Westfield College
339 Mile End Road
LONDON E1 4NS
Tel: 071-975 5126

TRAINING AT THE EPO FOR PATENT ATTORNEYS

See information and application form in EPI Information 2-1990.
The deadline for application for the candidates wishing to participate in the first 6 months of 1992 is

31 October 1991

Further information can be obtained from:

Mrs. Margaret Garvey
Directorate 5.1.1
(Representation and Register
of Patents)
Tel. (089) 2399-5155

STELLE GESUCHT - VACANCY SOUGHT - DEMANDE D'EMPLOI

We are advised that one of the first Chinese (ROC) Patent Attorney (a lady) is seeking to take up a visiting scholarship, provided by her government, in an office in industry or private practice. If any colleague would like further information, please contact the Secretariat.

E P I

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