Institut der beim Europäischen Patentamt zugelassenen Vertreter

Institute of Professional Representatives before the European Patent Office

Institut des mandataires agréés près l'Office européen des brevets
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Beilagenhinweis:
ETL/an

February 27, 1996

Dear EPI member,

re: EPI Code of Professional Conduct and the EU Commission

You have received, with my letter of 22 January 1996, a copy of the Commission’s letter dated 17 November 1995.

After having consulted a French lawyer, Mr. Robert Collin, experienced in EU law, the EPI Board decided that an EPI delegation should meet the responsible people at the Commission in Brussels. This meeting took place in Brussels on 19 January 1996.

The EPI was represented by the President Mme Thouret-Lemaître, the Vice-President Mr. Duran and the Chairman of the Code of Conduct Committee Mr. Smulders. The lawyer, Mr. Collin, and Mrs. Combaldieu, his assistant also attended the meeting. The EPI delegation met Mr. Campogrande and Mrs. Bicho from DG IV of the Commission.

The EPI Professional Conduct Committee met on 12th and 13th February, 1996 and has concluded that the Code of Conduct should be amended to allow advertising, subject to certain conditions. A draft of proposed amendments to the Code of Conduct will be submitted to the EPI Board and, subsequently, to the EPI Council at its meeting in Dublin.

Sincerely yours,

E. THOURET-LEMAITRE

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Table of contents

Editorial ............................................. 2

Discipline ........................................ 3
Decision 15/94 ........................................ 3

EPI Membership .................................... 4
EPI membership chart as of 31.12.1995 ......... 4
Rechnung 1996 ....................................... 5

Committee Reports ................................. 6
EPPC Report, by R. Burt ......................... 6
The Green Paper on "The Protection of Utility Models in the Single Market", a comment from the EPI ............................................. 6
Report on the meeting of Members of SACEPO and the Boards of Appeal, 6 November 1995, by J. Beton ........................................... 9

European Qualifying Examination ................. 13
Students of the EPI, by K. Weatherald ........... 13
EPI Tutorials 1996 .................................. 13

European Patent Convention .................... 15
Ressitutio in integrum, by R. Burt and P. Shortt ............................................. 15
Reciprocity, by R. Petersen ....................... 22
Ratification of the EPC by Finland ................ 26

European Patent Office ............................ 26
Interpretation at the EPO, by P. Smith .......... 26

Letters to the Editor .................................. 28
Inventions de logiciels: L’arbre et la forêt, par P. Vidon ............................................. 28
Additional comments on EQE technique and tactics, by P.M. Klett ............................................. 29

Information from the Secretariat ................. 27
Vacancy sought ........................................ 27
Deadline 2/1996 ...................................... 30
A drafting questions in a National qualifying examination once asked candidates to draft a claim relating to an aerosol dispenser - before the days of CFCs. The propellant gas and medium to be dispensed were housed in separate containers. Most candidates wrote a claim specifying that one container communicates with the other (for the dispensing action to work). The Examiner’s comments were pithy - “How did they communicate - by telephone?”.

This we think is salutary, not only for claim drafting, but in general. How often does something turn on communication - we hear a great deal about this now, with the “net”, “web” and the like. But at a more basic level, how often have we personally seen a situation resolved with good communications - or vice versa.

Meanwhile, the interpreters at oral proceedings continue in their invaluable, and we hope, merry way. This issue has an article from one of that unsung band of souls who work in oral proceedings before the EPO, and whose their experiences of Communication we suggest might be of benefit to us all.

Jean Brullé · Joachim Herzog · Terry Johnson
Decision of the Disciplinary Committee of the Institute of Professional Representatives before the European Patent Office

Y against X

Disciplinary case CD 15/94
Composition of the Chamber:

Mr. N. Waddleton: Chairman
Mr. G. Leherte: Member (Rapporteur)
Mr. F. Charpali: Member
Mr. R. Pidgeon: Deputy Member
Language: English

Decision

The Chamber decided to dismiss the matter of complaint CD 15/94 against X for lack of sufficiently clear recommendation and guidelines from the Institute of Professional Representatives before the European Patent Office on certain issues of publicity raised by this complaint, in particular on the issue of national advertisement by national professionals who are also representatives before the European Patent Office.

The Chamber draws in this respect attention to Article 4 of the Regulation of Establishment of this Institute stating that the Institute shall have as an object to “promote compliance by its members with the Rules of Professional Conduct, inter alia through the formulation of recommendations”.

The Chamber therefore strongly recommends that the Institute should issue further guidelines and recommendations on the matter of advertising.

Pending such guidelines and recommendations the Chamber is of the opinion that members of the Institute should adopt a particular careful and conservative behaviour in matter of advertising, not only in the international arena but also nationally, in situations where the status of Representative before the European Patent Office may be explicitly or implicitly relevant.

Under Article 20 of the Additional Rules of Procedure of the Disciplinary Committee of the EPI, the Chamber therefore recommends to the President of the Council of the Institute to publish the Decision, in whole or in part, without revealing the identity of the Professional Representatives concerned and the complainant.

Summary of facts

The facts underlying the complaint from Y are the following:

During “the XXX Fair” held at YYY, the firm X, in which firm the representatives complained against operate their professional activity, had an exhibition stand.

A display panel in the name of X has been used on said stand bearing the mention “European Patent Attorneys”.

Brochures of the firm X were distributed at the stand, which brochures included references to the activities of the firm’s European Patent Attorneys.

The issues raised by these facts can be summarised as follows:

- attracting clients by explicitly making publicity as European Patent Attorneys,
- attracting clients by having a stand at an exhibition, as national professionals,
- attracting clients by handing out brochures to visitors of an exhibition who are explicitly soliciting documentation.

Reasons for the decision

The matter of advertisement by Members of the Institute is ruled by Article 1 of the Regulation on discipline for professional representatives. The general principles of professional conduct are laid down in the Code of Conduct of the Institute. The Code of Conduct, as lastly updated on 5/11/85, reflects the latest view of the Council on these general principles (cfr. Article 1(b) of the Code of Conduct). Article 2 of the Code of Conduct defines the general principles of professional conduct on the issue of advertisement.

However, from discussions with members of the Institute of different nationality, from different origin or with different background, it is clear that there is no uniform interpretation of these recommendations among the Members of the Institute.

There is apparently clear agreement that an advertisement panel by a member, bearing the mention “European Patent Attorneys” is not acceptable.

The representatives complained against recognise this and they convincingly established that the use of such a display panel resulted form an unintentional mistake. In view of this the Chamber refrains from issuing a reprimand for this aspect of the complaint, i.e. explicitly making publicity as European Patent Attorney, which by itself is an act which indeed contravenes Article 1 of the Regulation on discipline for professional representatives, and the recommendations of Article 2 of the Code of Conduct.

There is less clear agreement among the Members of the Institute.
to what extent the recommendations of Article 2 of the Code of Conduct also relate to members when they advertise their national activity explicitly referring to their membership of the Institute.

Particular reference is made in this respect to decisions CD 4/91 (published in EPI Information 3/93, p. 170) and CD 1/92 (published in EPI Information 4/93, p. 326), which reprimand advertisements involving specific reference to the title "European Patent Attorney", but leave open the question whether advertisements by members of the Institute in which no specific reference is made to the title "European Patent Attorney", would be considered proper practice. In this context the Chamber does not think that a statement by the EPI General Secretary, in a personal communication of 12 March 1990 to one of the representatives complained about, indicating that, if a firm "were to engage in a... publication, which might be viewed as advertising, (that firm) should... avoid any reference to European Patent Attorneys", should be viewed as a comprehensive guideline from the Institute on this specific question.

Under these circumstances the Chamber feels it should not issue a negative decision on the second and third aspects of the complaint (i.e. having a stand at an exhibition as national professionals; handing out brochures to visitors of an exhibition) as this involves conduct which some of the members of the Institute disapprove but others currently seem to consider normal practice.

Decision

In view of the above facts and reasons the Chamber has decided in conformity with Article 4, and 6(2)a of the Regulation on Discipline, to dismiss the matter of the complaint of Y, and to recommend that in accordance with Article 4 c) of the Regulation on the establishment of an Institute of Professional Representatives before the European Patent Office the Institute issue further guidelines and recommendations on the matter of advertising by national professionals who are also representatives before the European Patent Office.

Under Article 20 of the Additional Rules of Procedure of the Disciplinary Committee of the EPI, the Chamber recommends to the President of the Council of the Institute that the Decision be published, in whole or in part, without revealing the identity of the professional representatives concerned and the complainant, unless they consent to be named.

Under Article 21 of the Regulation on Discipline and Article 19(1) of the Additional Rules of Procedure, the complainant is to be informed of the result of the proceedings by being sent a copy of the decision.

The Chairman of the Chamber

N. Waddleton

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**List of Professional Representatives as of 31.12.1995 by their place of Business**

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**Total** | **5632** | **100.00**

a) = West DE | 1620 | 28.76
b) = Former DDR | 406 | 7.21

\( a + b \) | **2026** | **35.97**
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EPI-Beitrag 1996

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Der Schatzmeister
Knud Erik Vingtoft

February 1996

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The Treasurer
Knud Erik Vingtoft

2 January 1996

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Report of EPPC Meeting of 6th December 1995

R J Burt (GB)


A subcommittee of the EPPC (Mr Shortt, Mr Armijo, Mr Gibler, Mr Hoogstraten, and Mr Rydahl Kristensen) prepared a draft paper commenting on the Green Paper; the draft paper formed the basis for discussion. The subcommittee had firstly to decide what was meant by the term “Utility Model” and they defined a Utility Model right as being protection for smaller/less important inventions although not less inventive steps: the right is therefore needed in a short time and at low cost.

The question was raised whether a European Union wide Utility Model system was wanted or whether national systems were sufficient; the EPPC was not in favour of an EU wide system and was in favour of national systems, with the majority favouring some form of harmonisation of the systems.

The paper prepared by the EPPC on behalf of the EPI, and submitted to the European Commission by the President is published in full following this report.

Trilateral Harmonisation - Double standard of Unity of Invention in the US - New request to the EPO to take steps

The EPO and the Japanese Patent Office have implemented the trilaterally-agreed standard of unity of invention and PCT Rule 13 has been amended accordingly. However, the US Patent Office has only done so for PCT applications. At the request of the EPPC and the EPI, the President of the EPO has reminded the US Commissioner of Patents and Trademarks that the standard of unity of invention agreed in November 1988 between the US Patent Office, Japanese Patent Office and the EPO should also be applied to national US patent applications.

PCT - Removal of Secrecy in the International Preliminary Examination after entry into the national (regional) phase in an early publication country

There has been a call for the removal of the secrecy of the International Preliminary Examination (Article 38(1) PCT) particularly for those PCT applications where the EPO acts as IPEA. The EPO has confirmed that it applies a restrictive interpretation of Article 38(1) PCT but would contact the PCT Department at WIPO to discuss the practice. The topic will be further discussed at the next SACEPO meeting.


A comment from EPI, worked out by a Subcommittee of the EPPC

1) Introduction

The Institute of Professional Representatives before the European Patent Office (hereinafter referred to as the "EPI") is pleased to comment on the Green Paper on the Protection of Utility Models in the Single Market issued by the Commission on 19th July, 1995.

As a preliminary point, it must be stated that utility model protection is not a right to use an innovation, but is a right which may be used to prevent third parties from using the innovation protected by the utility model. Consequently, EPI believes that a more detailed study is needed of the impact which the Commission's proposals would have on third parties. For example, the investigations by IFO Institut did not include the question of whether SMEs would like their competitors to have utility model protection for their innovations.

We question whether the term "utility model" is, in fact, appropriate to the form of protection proposed by the Commission, but for the sake of convenience we will continue with the use of this name in this commentary.

Turning now to the specific questions raised by the Commission in the Green Paper, we have the following answers to make.

a) System of Protection

The EPI is not convinced that "among the existing systems of protection, the one most readily accepted is that which calls for a smaller inventive step than does a patent...". The EPI considers that the characteristics of existing systems of utility model protection which are most readily acceptable, are the advantages that the systems provide for quick registration at a low up front cost, and provide temporary protection pending the grant of a patent.

b) Economic Sector

The EPI agrees that utility model protection is most frequently taken advantage of in the mechanical engineering, electrical engineering and precision instruments and optics industries. However, it may even be of interest in certain other industries such as industries producing food, feedstuffs, detergents etc.
c) Size of Firm
We agree that interest in utility model protection is greater among small and medium-sized firms, and individual inventors than it is among large companies. In particular, we believe that large companies in the chemical, pharmaceutical and electronic industries are not particularly interested in utility model protection.

d) Reasons for Applying
In our experience, the main reasons for seeking utility model protection are to provide for quick, simple registration, at low cost, and also to provide temporary protection pending the grant of a patent. A majority of the EPI is not convinced that the provision for less stringent requirements than for patents is one of the main reasons for seeking utility model protection, while a minority of the EPI is of the opposite opinion.

e) Further Developments
In relation to future developments, we agree that in certain industries, products having shorter life cycles than heretofore, will grow in importance and may require protection by the utility model system.

2. Discrepancies in National Systems of Utility Model Protection
The EPI is not aware that the wide discrepancy between the economic significance of utility models in different EU Member States, and the differing rules covering them, necessarily results in any significant obstruction in the free movement of goods, or distorts competition. Nevertheless, the EPI is of the view that it would be of advantage to harmonize the national systems of utility model protection.

3. Need for Protection
The EPI takes the view that the development of innovative activity in the European Union is generating a need for the availability of a harmonized form of national protection which would complement patent protection by providing a rapid, simple and inexpensive form of protection for technical inventions.

4. Possibilities open to the Commission
(a) The EPI favours the first course proposed by the Commission, namely an alignment of the various national systems of utility model protection by means of a directive. We believe that this would meet many of the aims of the Green Paper, would satisfy the needs of industry, and provide safeguards for third parties.

(b) The EPI considers that the proposal that the directive might also provide that Member States recognize the rights conferred by another Member State's system would be impracticable.

(c) The EPI does not support the Commission's proposal to create a new Community protection right governed by Community law, which would have precedence over the national systems of protection even if it would not replace them. We believe that the study is not complete because it did not consider the problems caused for third parties if there were unexamined rights not in the language of the third party. The requirement for translations into the various community languages would increase costs and the time for processing the application. Consequently, as with the Community Patent Convention, there would be little interest in such a system in industry.

Furthermore, utility models are seen as a local form of protection, and the vast majority are filed by nationals of the country concerned; this means that the interference with economic activities of third parties is kept to a minimum, and is in the place where it is most effective, i.e. where a small enterprise is setting up business; a Community right would lead to a large number of utility models in each country.

(d) In the event that a new single protection right is created, we agree that it would then be logical to align the substantive provisions of national laws with that of the new single protection right. However, as we have indicated above, we are not convinced that a new single protection right is required, or is desired by industry.

The Commission has asked interested parties to say which of the systems enumerated would best ensure the operation of the single market. It is the view of the EPI, that alignment of national systems as indicated under (a) above would best ensure the interests of European industry.

5. Action at Community Level
As indicated above, the EPI is not in favour of a scheme of utility model protection at Community level. However, EPI does support the proposal to harmonize national utility model protection systems throughout the European Union. In this regard, it agrees that a system which provides protection for technical inventions by means of a registered right without the need for examination for novelty and inventive step, would be appropriate as the basis for such harmonization.

6. Features of a Utility Model System
The Commission has asked whether the following points should be included in a Community system of utility model protection. Without prejudice to its view that a Community system is not desired, the EPI makes the following comments on the points raised in the context of harmonization of the national systems:

(i) Should the Level of Inventiveness required be lower than in the case of Patents?

On the question of the requirement of the level of inventiveness the EPI is divided. One part of the EPI considers that the level of inventiveness required should be the same as in the case of patents, for the following reasons:

a) it is difficult to deal with different levels of inventive step or activity;

b) for patents the inventive level requirements in the countries of the European Union are already at a sufficiently low level;

c) protection for even lower level innovations could cause problems for industry. The problems are caused by
the distortion of the balance between the interests of industry as a right holder and industry as a third party.

Another part of the EPI is of the view that an important attribute of utility model protection is that it can offer protection for innovations having a lower inventive step requirement than is the case for patents, and consequently the level of inventiveness, or of inventive activity required, should be lower than in the case of patents.

(ii) Should three-dimensional form be required?

The EPI considers that three-dimensional form should not be a requirement for protection.

(iii) Should process inventions and substances be excluded?

In principle, the EPI considers that all inventions susceptible of industrial application, within the terms of Article 52 of the EPC, should be protectable by a utility model.

However, certain sectors of European Industry, in particular the chemical, pharmaceutical and electronic industries, may wish to exclude certain categories of inventions, and their views must be taken into consideration. However, the exclusion of certain categories would raise difficulties in formality examination.

(iv) Should the novelty required be determined by reference to the state of the art restricted to the territory of the European Union?

The EPI considers that in the light of modern world-wide communications it is inappropriate to restrict novelty to the territory of the European Union. Absolute world-wide novelty should apply in the same terms as those of Articles 54 and 55 of the EPC.

(v) Should there be a twelve-month period of grace for novelty?

Even if a grace period is only to avoid the effects of self-disclosure, the EPI considers that no provision for a grace period should be provided unless such time as agreement on a grace period is reached in the Diplomatic Conference on the Patent Law Harmonization Treaty. If there is agreement on a grace period for patents in the Treaty, a similar provision could then apply to utility models.

(vi) Should there be an industrial application requirement, based on Article 57 of the European Patent Convention?

The EPI considers that there should be an industrial application requirement that an invention should be considered as susceptible of industrial application if it can be used in any kind of industry, including agriculture.

(vii) Should the procedure for applications be based on Articles 78 to 85 of the European Patent Convention?

The EPI considers that during harmonization of national laws, the procedures outlined in Articles 78 to 85 EPC should be adopted but points out that Article 79 EPC (designation of States) is not necessary in such national systems. In addition, we believe that there should be no limitation on the number of claims in the utility model application.

(viii) Should there be a formal check on protectability but no general examination of compliance with the requirements?

The EPI considers that there should be an examination as to formalities, which would include a check as to whether the invention complies with requirements as to industrial applicability and obvious lack of unity of invention. However, there should be no substantive examination extending to novelty and inventive step before registration.

(ix) Should optional searches be possible?

The EPI considers that there should be a provision for an optional search at the request of the applicant or a third party. The quality of the search should be to the same standard as that carried out by the EPO today.

(x) Should rights of use and of prohibition and their exhaustion be based on the existing rules of patent law?

The EPI considers that enforcement of the exclusive rights and their exhaustion should be in accordance with existing rules of patent and Community law.

(xi) Should the term of protection be renewable in steps of several years, the maximum term being ten years?

The EPI is in favour of a maximum term of 10 years and renewable in steps of one year.

(xii) Should a search report be drawn up in the event of legal proceedings for infringement?

The EPI considers that before infringement proceedings are initiated the holder of the utility model is required, at his cost, to request an official search report on the prior art. A legal opinion as to validity should only be required on demand of the Court.

(xiii) So as to avoid conferring too great a measure of protection, should combined use of patent and utility model rights for the same invention be ruled out?

The EPI has no objection to dual protection. In particular, an important aspect of a utility model is to provide provisional protection pending the grant of a patent. Furthermore, the EPI believes that it should be possible to derive a utility model application from a pending national or European patent application (including a PCT application), either by means of internal priority or by branching off.

Transformation of a utility model application into a patent application should not be permitted.

7. Other Matters

The EPI considers that the following additional points need to be taken into consideration:

a) At procedural level, provision needs to be included to enable an applicant, at his option, to defer grant and publication of the utility model to a date not later than 18 months from the first priority date claimed.

b) Provision should be included for a right of third parties based on prior use and right of personal possession similar to Article 37 of the Community Patent Convention.

c) Provisions for compulsory licences should be the same as for patents and should be compatible with the GATT/TRIPS Agreement.

d) The procedure for the enforcement of utility model rights in the different countries should be harmonized.
Meeting of members of SACEPO and the Boards of Appeal (MSBA-5) 6th November 1995

J. Beton (GB)

2) Submission of new facts and evidence
The Boards apply the relevance principle, which was generally supported. It was agreed again (that was the view in earlier MSBA meetings) that the Boards should be flexible. The presently applied flexibility seems correct. In general decisive matter must be admitted and low relevance matter should be excluded, with exercise of discretion in the middle ground. There were complaints that it is unrealistic to assume the representative for the other side can respond. In many cases there should be an adjournment with costs to be borne by the late submitter. Late test results are particularly troublesome; the opposite party may need time to file contrary test data, but the Boards will not tolerate tactical delays.

3) Submission of new arguments
New arguments can always be submitted.

4) Announcement of decisions at the end of oral proceedings
There is embarrassment if decisions cannot be properly supported by adequate reasoning. In difficult cases the Board should take time to reflect. But this should be short time (up to a week or so). In politically sensitive cases it might also be wise to defer the decision. It was concluded that generally decisions should be given at the end of the hearing unless it is a special need or a difficult case.

5) Streamlining of appeal proceedings
The present procedures are adequate. There were no suggestions for streamlining, apart from the old one of reducing the need for auxiliary requests. It is difficult to find improvements.

6) Detailed procedural rules?
The meeting was against detailed rules. Flexibility should be retained.

7) Whether the Board comes to the oral hearing with its mind made up and other complaints about procedure
There was general agreement by the user side that a Board must study the case before the hearing and there was satisfaction with the present practice. Some called for a preliminary decision on the merits and not just a statement of the relevant issues under rule 71a. This will facilitate the hearing, identify the detailed issues and the need for amendments.

It was denied that Boards exercise their discretionary powers in some areas in an abusive, discriminatory or otherwise incorrect manner. There was little support from the user side for the allegation that Board members sometimes appear to be insufficiently prepared to conduct fair and useful proceedings.

There were complaints about remitting cases back to the first instance because of late submissions, but it was pointed out that this can be avoided if the other side agrees. If a case is remitted as the result of late submissions, the late submitter should be penalised with the costs.

It was noted by a UNICE representative that filing 30-40 page briefs 2-3 days before the hearing is a serious abuse, being unfair to the other party. It was suggested by the user side that such briefs should not be considered by the Board at its preliminary review but the submitter should be told he can use the material orally at the hearing when the other side has the opportunity to reply.

Summary: In general there is nothing wrong with present practice on late submissions of claims, facts and evidence and procedure generally and the allegations under point 7 above were not supported.
2. Restitutio in Integrum

In a paper presented by a Sacpeco member, the Boards of Appeal were requested to adopt a reasonable approach to determining the duty of care and should apply the principle of proportionality. Isolated mistakes should be forgiven. The Boards were also requested to reconsider the attribution of the mistake of an authorised representative to the applicant.

A non-contracting party applicant has to use a representative; likewise a party who does not have full knowledge of the EPC system. There should not be a risk for the applicant in choice of representative. It is a disproportionate penalty for the applicant to lose the patent. There should be a financial penalty instead.

The EPO pointed out that in fact few cases are lost. Thus for 1994, in the first instance, 75% of the restoration requests were successful.

In the discussion, some Sacpeco members were concerned about hard decisions when a mistake was made by the representative's support staff; but others preferred a balanced approach. It was suggested again that the standard should be that of the reasonable care by the reasonable patent attorney. Article 122(6) giving user rights adequately protects third parties. There was one objection to the American "fine" approach which favours rich applicants. Applicants should not be fined for the errors of the representative. The applicant does not go through the representative’s office to check that his procedures are correct. The representative should be punished, not the applicant.

Board members worried about the 180 degree shift in attributing care to the applicant (as in France) rather than his representative. This point should be referred to the Enlarged Board. There was some sympathy for a lower standard, especially at early stages of the filing procedure and on payment of fees.

3. The novelty of Selection Inventions

A Sacpeco member gave a paper on selection inventions, outlining the present position. In EPO practice the concept of novelty comprises more than photographic novelty with the result that novelty is not a black and white question, but a matter of judgment as with obviousness. The EPO practice often differs from the practices in members states, particularly in cases of overlap and the difficulty is to know where to draw the line. Selection inventions based on a surprising and unexpected effect are sometimes found to lack novelty by the EPO on the basis of "making available" or the "seriously contemplating" concept.

He complained that novelty is no longer a question of objective fact. In the Netherlands an overlap lacks novelty if there is no specific effect, but not if there is a surprising effect.

The result of the European case law is that a small sub-range of such compounds lacks novelty where the individuals do not, illustrating the EPO's difficulty in knowing where to draw the line. On the one hand selection inventions are recognised as possible; but on the other, the possibilities for patenting selection inventions have been unjustifiably reduced.

In the discussion it was noted that there is a clash between selection inventions and the "seriously contemplate doctrine". Often a selection invention involves a surprising useful effect, but application of the seriously contemplate doctrine leads to lack of novelty.

Also inventions involving numerical ranges are treated differently to inventions involving individualised compounds. Nevertheless the three selection rules for range claims (small scope, far from the prior examples and a purposive selection) were generally approved.

A difficulty is that there is no consistent court practice on selection inventions in Europe. The BGH tends not to recognise selection inventions in terms of product claims. The Dutch practice where an unexpected effect governs novelty is quite different from the German practice. The subject will be reviewed again at the forthcoming Stockholm Judges conference.

Among Sacpeco members there was no agreement. One speaker said he always favoured photographic novelty as the system should foster technical progress and often selection inventions are commercially valuable enrichments of the art. But another was against photographic novelty. Yet another preferred to rely on whether the invention is the same (same problem, solution and effects), but another Sacpeco member objected to that; the fact that a different problem is involved may not suffice to give selection status (there may be accidental anticipation). In such cases the claims should be formulated in a different way and the same physical entity should not be claimed again. It was suggested that in such cases the Boards should try to find novelty, as was done in second indication/second use cases.

4. Scope of Claims and whether article 84 should be a ground of opposition

A paper presented by a Sacpeco member referred to the perception that in biotech patents the claims are broader than can reasonably be justified and cannot be challenged under article 84 in an opposition. Should article 84 become a ground for opposition? The paper reports that some argue that this article represents a formal requirement so that excessively broad claims should be dealt with under articles 56 and 83 and others argue that it has a substantive content.

Article 56 has been tried in many oppositions but is usually unsuccessful. Moreover Examiners should apply article 84 to that end but all too often fail to apply it. They rely, wrongly, on T292/95 (Genentech). Lack of support under article 84 can also be considered an objection of insufficient disclosure under article 83 where there is lack of enablement for the skilled person to carry out the invention over the whole field claimed. The relationship between these articles is elaborated in T409/91 and T1055/95. Both EPC articles express the principle that the patent monopoly must be justified by the technical contribution to the art and the extent of disclosure is highly relevant to the question of support. The paper concludes with the plea that if the EPO would be willing to adapt its practice, it would
be possible to attack speculative claims post-grant under article 83 and possibly under article 56. There would then be no reason to make article 84 a ground for opposition.

Again, members of Sacepo failed to agree. The main problem is open ended claims and claiming the problem where alternative solutions are not obvious. T292/85 (Genetech) has been widely misunderstood. It does not stand for the proposition that only one example is enough, but for that example being sufficient on the facts of that case. The gene transfer invention there was a system invention analogous to mechanical and electrical inventions, where other solutions were obvious (although they would have required years of work; to make the invention work in other micro-organisms merely required effort and it was unreasonable to require the applicant to perform the invention in a different host organism). Such a case has no application to the more usual empirical discovery type of case.

In the latter kind of case, some thought the use of article 56 (claiming beyond the problem and solution) was not satisfactory. One Sacepo member said that his own studies as well as those of the EPO in the historical documentation, seem to indicate that only a formal requirement was intended. Moreover, the support provision of article 84, in contrast to article 83, has no basis in the Strasbourg Convention.

It is commented, however, that cases such as T133/85, T409/91 and T484/92 indicate that such a formal requirement is broadly interpreted. The claims must contain the features the description indicates to be essential, should correspond to the technical contribution to the art and should not extend to matter not available to the skilled person.

5. Ordre public and morality, article 53(a)

A Sacepo member outlined the different meanings of the terms used in the three official texts of article 53(a), especially the different meaning of the French text if its wording is interpreted literally. The concepts of "ordre public" and "morality" could be decided differently in each member state. If something is regarded as contrary in one state, but not in the others, is article 53(a) applicable? Or does it have to be contrary in all contracting states? He thought an invention sufficiently objectionable under article 53(a) if objectionable in only one state. Furthermore, these concepts can change during the lifetime of a patent. He pointed out that the concept of morality is variable, depending on social status and public opinion at the time.

He also referred to decisions T356/93 and T19/90. He concluded that there is a case for deleting article 53(a) from the EPC. The EPO should not have to judge ethical matters since a patent does not give a right to work. He admitted that some are against encouraging research into inventions contrary to ordre public and morality. However, since the EPC does contain article 53(a) these difficult concepts of ordre public and morality need to be studied to increase the certainty of the users, especially in the field of biotechnology.

The following points were made by Sacepo and Board members:

1. The three official texts of article 53(a) are intended to express the same concepts and the French text is not at variance. In particular the travaux preparatoires to the Strasbourg Convention indicate there was only one meaning.

2. The application of the concept of morality in T356/93 was based on generally held views in European society. The question of misuse of plants by biotechnology arose, but was held unproved. The evidence did not show serious risk to the environment.

3. The proper interpretation of morality is that which is right and acceptable behaviour and not generally held to be wrong (in accordance with conventionally accepted standards of conduct in European culture). It has nothing to do with political correctness. It is necessary to go first to the Bible.

4. Article 53(a) is derived from the Strasbourg Convention and is not a question of the balance of benefit and disbenefit, but of whether the invention should be excluded in the contracting states. In T19/90 and T356/93 the Boards held that the first prerequisite is whether use is considered by a large majority to be contrary to ordre public and morality.

5. Since ideas on morality change more rapidly than the life of a patent, "morality" should be interpreted broadly.

6. Article 53(a) plays almost no role in national patent office practice and in the EPO there is no single authority which examines the question.

7. The concept of "contrary to public order and morality" is to be found in many laws, eg contract laws.

8. There are varying standards from one country to another, but should the EPO reject applications because of the concept of ordre public or morality in one of them?

It was concluded that the EPO has to live with the concept of morality, but this should not be used against commercially valuable patents. The EPO should rely on a general European view of ordre public and morality.

6. Computer related inventions

It was explained by one of the Sacepo members that the exclusion from patentability of computer programs as such had been raised in Sacepo some years ago as a possible breach of article 27(1), TRIPS which provides that patent rights should be available without discrimination as to field of technology. However there has to be the solution of a technical problem. Therefore a computer program not solving such a problem, eg relating to a business scheme, remains unpatentable. The case law now allows claims to computers in which a program is embedded, if a technical problem has been solved. So could this not be extrapolated further to a CD Rom for that purpose? This would put computer software onto
the same basis as biotechnology. However, the European computer industry are satisfied with the protection now given under the case law. For instance the CD Rom in question would be protected under indirect infringement.

Another Sacepo member welcomed the opportunity to compare this situation with the new US Guidelines, which states that a memory containing a program necessary to drive a computer is a statutory article of manufacture. In Europe the CD Rom is not an invention under article 52. He questioned where the invention is to be found and compared the content of the CD Rom with a written program which could be machine read. The invention is in the meaning and he doubted whether it is protectable matter.

The broader protection in USA is understandable because of their narrower contributory infringement law. This is not a problem in Europe.

As an example a program listing in source code might be written on paper. It is machine scanned, fed through a compiler which produces a program in object code and the latter controls a computer. The question is whether the listing should be patentable. He thought not. If the US go ahead with their present case law they will press to have the same patentability all over the world. European industry should be very careful about what is done. There will be searching, uncertainty and clearance difficulties.

Another Sacepo member questioned whether industry is really satisfied with the protection as it stands, since he had been at a London seminar where a large majority were in favour of protecting all software inventions, including non-technical business related ones. In his view if the program operates a computer that is sufficiently technical. Moreover, a general purpose computer becomes a novel special computer which is patentable. The movement is towards protection. There is a vast engineering effort going on in microprocessor development and protection is necessary for it. The EPO is gradually changing in that direction and is not far from protecting software per se. The Commission is considering a new protection system, but this should be done by patents in his view.

A member of DG5 of the EPO referred to the need for a fresh view on computer software. DG2 does not think the business of protecting software inventions should be overemphasized. There are in fact 20,000 software patents and 11,000 on information technology. Most inventions now have software elements. In fact the EPO has only rejected 100 inventions for lack of technical character. If the US proposal is followed a disc becomes patentable. The EPO will not follow this liberal US line. There is too great a problem with searching. Nevertheless there will be US pressure for harmonisation. In the emerging technologies of computer software and biotechnology there is a reluctance to harmonise with the US. Much comparative study and information collection by the EPO is needed. This will be sent to interested circles and then harmonisation can be considered.

The second Sacepo member referred to the Copyright Working Group of UNICE which does not want the extended protection. Following the US line would not only mean protection of computer software but also methods of doing business. As in US law no technical effect is required and we would have to protect such matter. The first Sacepo member pointed out that notwithstanding the UK workshop, the Trademarks Patents and Designs Federation in the UK is against amendment of article 52(2) so that computer programs as such, including business programs, become patentable.

7. Equal treatment of patentees and opponents

Two Sacepo members think there is a tendency to favour the patentee because the opponent can always ask for revocation or nullity in the national courts. But in many cases the national court will merely follow the decision of the Board of Appeal. The Enlarged Board has said there should be equality of treatment.

Another Sacepo member pointed out that it is not just a question of equal treatment and giving the benefit of doubt to the patentee. The opponent has the burden of proof to the normal civil law standard of the balance of the probabilities.

Another Sacepo member said it is not a question of favouring one of the parties, but giving the benefit of any doubt to the patentee where the opponent has not clearly made out his case. If there is no doubt there is no problem but in a last chance for the patentee case the benefit of the doubt must be given to him.

The next meeting will be on 11th November 1996.
Students of the EPI
K. Weatherald (GB)

The Professional Qualifications Committee (PQC) would like to remind readers of the benefits, to those wishing to get on the List by way of the European Qualifying Examination (EQE), of applying to become Students of the EPI.

Applying to become a Student involves payment of an entry fee of DEM 300, which provides the benefits to the end of the fourth year from the application date. (Application forms are available from the EPI Secretariat). Each registered Student will receive his/her own copy of "EPI Information", a list of registered Students, and, in due course, a "Training Manual". This latter will include a list of recommended reading material; a list of training resources in EPC States; the relevant EQE rules and provisions; training guidelines, and edited case studies. This fee is not intended to raise any profits for the EPI, but only to cover foreseen costs.

Council has also approved a reduction in the costs of EPI tutorials. Students wishing to take tutorials in all four papers need pay only DEM 300 (instead of DEM 450), while for those wanting them for only two papers the fee will be DEM 200 (instead of DEM 350).

The basic motive behind setting up this type of association with the EPI is to persuade and enable would-be EPAs to take responsibility (on a self-help basis) for getting the training and exposure to the work of a patent professional that each needs not only to pass the EQE but to function as a fully-competent patent attorney.

At the last count, there were only 86 Students. This seems to be too small a percentage of those taking the EQE for the scheme to be fully effective, and hence this notice. If you have any concern for the future of our profession, and know of a would-be candidate for the EQE, then please play your part by bringing this notice to his/her attention.

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EPI Tutorials 1996

EPI-Tutorium 1996

Das EPI bietet erneut ein Tutorium vorwiegend für diejenigen an, die die Eignungsprüfung 1997 ablegen werden. Es ist wichtig, daß Sie Ihre Kandidaten auf die Möglichkeit dieses Tutoriums aufmerksam machen, da diese die EPI Information nicht selbst erhalten.


Die Kandidaten werden wieder den nächstliegenden Tuten zugeteilt, die sowohl möglich, auf dem gleichen technischen Gebiet tätig sind.

EPI Tutorials 1996

The EPI will again offer tutorials, primarily for those who will be sitting the Qualifying Examination in 1997. It is important that all persons instructing candidates draw the attention of their candidates to these tutorials since they do not receive EPI Information themselves.

We shall be considering papers A, B, C and D of the year 1995 or 1996. The choice will be left to the candidates (Papers 1995 or 1996 or both years). The tuition fee will be 350 DM either for papers A and B, or for papers C and D, and 450 DM for the four papers of each year. For Students of the EPI, these fees are reduced to 200 DM and 300 DM.

Candidates will again be allocated to the nearest available tutors who, whenever possible, work in the same technical field.

Tutorat EPI 1996

L’EPI propose à nouveau un tutorat destiné principalement aux personnes qui se présenteront à l’Examen de Qualification en 1997. Il est important que vous attirez l’attention de vos candidats sur l’existence de ce tutorat puisqu’ils ne reçoivent pas EPI Information eux-mêmes.


Deux tuteurs seront de nouveau attribués à chaque candidat. Ces tuteurs résident géographiquement le plus près possible de leurs candidats et travaillent, autant que possible, dans le même domaine technique.
Die Kandidaten werden gebeten, ihre Antworten den Tutoren schriftlich bis zum 1. Oktober 1996 zuzusenden. Üblicherweise werden zwei Tutoren mit ihren Kandidaten ein gemeinsames Treffen arrangieren, um die Antworten zu besprechen.

Das EPI-Tutorium soll, soweit möglich, unter Prüfungsbedingungen stattfinden (Prüfungsunterlagen, Zeitvorgabe ...).

1995 haben 56 Kandidaten und 20 Tutoren am Tutorium teilgenommen.

Es sei darauf hingewiesen, daß die den Kandidaten in Rechnung gestellte Gebühr ausschließlich zur Deckung der Verwaltungs- und Reisekosten bestimmt ist, die beim EPI entstehen. Die Tutoren werden für ihren Zeitaufwand und ihre Arbeit nicht entschädigt.


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The candidates are asked to submit their solutions to these papers to the tutors by 1st October 1996. In general two tutors will arrange for a joint meeting with their candidates to discuss the answers.

The tutorial is a trial examination. The candidates should work, under examination conditions (documents, time...) as far as possible.

In 1995, 20 tutors instructed 56 candidates.

The fee charged to the candidates exclusively covers the EPI administrative and travelling costs. The tutors are not paid for their time and work.

Candidates who wish to participate in these tutorials must notify the EPI Secretariat as soon as possible but not later than 1st May 1996. They will be sent a questionnaire which they have to complete and return together with the tuition fee, before the deadline.

Les candidats devront envoyer leurs réponses aux tuteurs avant le 1er octobre 1996. Les deux tuteurs organisent généralement au moins une réunion réunissant leurs candidats afin de commenter les réponses aux épreuves. Le tutorat EPI est un examen test. Les candidats doivent travailler autant que possible dans les conditions d'examen (temps, documents...).

En 1995, 20 tuteurs ont assuré la préparation de 56 candidats.

Le droit d'inscription demandé aux candidats sert exclusivement à couvrir les frais d'administration de l'EPI et les frais de déplacement des tuteurs. Ceux-ci ne sont pas rémunérés pour leur temps de travail.

Les candidats désirant participer à ce tutorat sont priés d'informer le Secrétariat de l'EPI le plus rapidement possible, au plus tard le 1er mai 1996. Ils recevront ensuite un questionnaire qu'ils devront compléter et retourner avec leur droit d'inscription avant la date indiquée.
Summary & Recommendations

Article 122(1) EPC provides that the applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall, upon application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of this convention, of causing the refusal of the European patent application, or of a request, or the deeming of the European patent application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress.

Many decisions of the Legal Board of Appeal concerning Article 122 EPC are primarily concerned with the failure of the applicant to comply with the time limits given in Article 122(2) EPC; these decisions will not be considered in this paper.

Consideration will be given to the way the standard of "all due care" has been applied by the Legal and Technical Boards of Appeal under the following headings:

i) Adequacy of systems for observing time limits
ii) Professional representative before the EPO
iii) The assistant of a professional representative
iv) Foreign associate of a professional representative, and
v) The applicant.

In summary, the case law of the Legal and Technical Boards of Appeal clearly shows that each case before them is decided on its merits. In many cases, the burden of duty of care required of applicants/proprietors and their professional representatives has been very high indeed, and there has been some inconsistency in approach as between various Boards. The only clear general message is that the Boards consider an "isolated mistake in an otherwise satisfactory system" to be reasonable grounds for establishing due care. It is, of course, incumbent on the representatives to establish to the Board of Appeal that they had a "satisfactory system".

In later case law the Boards have applied "the principle of proportionality" and have acknowledged that the consequences of minor errors or irregularities can be extremely severe sanction of loss of a patent application. The understanding of the Boards of Appeal in this regard is to be much applauded and it is hoped that, although not lowering the standards of due care, the isolated mistakes inevitably made by the Applicants and representatives handling patent applications can be "forgiven" and restitution allowed in such cases.

We have the following recommendations:

i) In the short term, the EPI should attempt to impress on the Boards of Appeal the need for the Boards to adopt a reasonable approach in determining duty of care bearing in mind the complexity of the European patent system and the pressure under which many representatives have to work. In particular, the Boards should be encouraged to continue to apply the principle of proportionality, and to appreciate that the loss of patent or other rights is a very serious penalty for unintentional errors.

ii) In the longer term, in the context of a revision of the European Patent Convention, it is recommended that the present system of restitution in integrum be replaced by a system, similar to that pertaining in the United States, where re-establishment may be obtained on payment of a high fee, within a certain time-limit (see paragraphs 24 and 25 of Doc EPPC C/35).

iii) In this context it may be observed that AIPPI has studied the question of Restitution of Rights (Q.119) and, in 1994, noted inter alia, that an inventor can irreversibly lose his rights by a simple failure to meet an administrative requirement, that there is an increasing risk of such a failure due to the increasingly complex and international nature of portfolios, and that this risk remains despite the use of computerized systems; that the loss of rights in patents or applications due to such failures has disproportionate consequences; considering that where third parties may be affected, the applicant or patentee could be required to fulfilling some condition before restoration of a right, but that words and phrases such as "unavoidable" and "all due care", which are at present in use involved too difficult a test, unfair to the applicant/patentee; and resolved:

that restoration of rights must be provided and that no more severe conditions should be imposed than the demonstration that the lapse occurred through inadvertence or forfutitious circumstances. An official fee may be imposed (see Annuaire 1994/11).

Case Law of the Boards of Appeal

On whom does the burden of duty of care rest?

Article 122 appears to require that the applicant/proprietor must take due care. One could argue that an applicant/proprietor who places the application in the hands of a professional representative has in fact taken all reasonable due care to ensure that his patent application/patent is properly handled and should not suffer the results of mistakes made by the
professional representative. However, the words “all due care... having been taken” appear to have been interpreted to mean that the professional representative must also take all due care. It has been decided (in Case T 30/90 (GRAIN PROCESSING); for example) that the requirement to exercise all due care extends to the representative of the applicant/pro- pietor and, in particular, to his professional representation (in the sense defined in Arts. 133 and 134 EPC). It follows that lack of such care, either by the appellant himself or by his representative, in particular his professional representative, will preclude re-establishment of rights.

**Standard of Care**

1) Adequacy of Systems

A system for systematically checking that fees had been paid appears to be required even where a representative’s firm has a good record of procedure efficiency in general (case T 287/84 BRUNSWICK).

In case T223/88 (IBM) the Board refused re-establishment in a case where a notice of appeal was not filed in time. The date of receipt of the decision appealed against was incorrectly marked on a registered letter received by the appellant. The Board noted that the question whether a particular system used in a particular firm to ensure that procedural acts such as the filing of notices of appeal are completed in due time satisfies the requirements of “all due care” in Article 122, must depend upon the individual circumstances of each case. In a large firm where a large number of dates have to be monitored at any given time, it must normally be expected that at least one effective cross-check is built into the Mail Service’s system to ensure that official documents such as decisions by the EPO, which start time periods within which procedural steps have to be carried out, are properly taken care of. In the appellant’s Mail Service there existed no cross-check system to ascertain that all registered letters taken from the Post Office were duly dealt with by distributing them to the different services to which they are addressed. The Board was prepared to accept that the appellant had a very good record of procedural efficiency in general and that, normally, the system for keeping the time limits had never given rise to significant problems. The unobservance in the present case of the time limit for filing the notice of appeal stemmed from the lack of a cross-check system in the appellant’s Mail Service. The Board was of the opinion that the appellant had not taken all due care required so that the request for re-establishment of rights was refused.

In a large firm, where a considerable number of deadlines have to be monitored at any given time, it must normally be expected that at least an effective system of staff substitution in the case of illness and for absences in general is in operation in order to ensure that official documents such as decisions by the European Patent Office, which start periods within which procedural steps have to be carried out, are properly complied with. Lists containing various time limits should highlight the most important (i.e. inextensible) time limits. (Case T 324/90 HOECHST).

In case T 14/89 (UHDE) re-establishment was allowed where the time limit for filing the translation of the claims was not observed due to internal re-organisation in the company and the removal this entailed. It was accepted that this was an isolated mistake such as cannot be ruled out despite careful company organisation.

In case T369/91 (The Procter & Gamble Co.) the representative failed to file a statement of grounds of appeal in time. This was due to an omission to enter the case into a computerised reminder system combined with an additional mis-use of the manual reminder system that still operated in tandem with the computerised one. The Board accepted that an isolated mistake took place. However, it found there was not in operation at the relevant time, a normally satisfactory reminder system in which the isolated procedural mistake could be excusable on the basis of the jurisprudence of the Board.

2) Professional Representatives

In one of the earliest decisions of the Legal Board of Appeal (Case J 5/80 ANON) it was stated that account should be taken of the fact that by Article 134(1) EPC, the Contracting States to the EPC have in principle confined representation of applicants before the EPO to “professional representatives” who, by virtue of their qualification should guarantee the best possible representation. It was reasoned that a representative cannot relieve himself of responsibility for carrying out tasks, which by reason of his qualification, fall upon him personally, such as, for example, the interpretation of laws and treaties.

In decision J 1/84 (ORNSTEIN) the Board considered the case of a representative carrying out his practice, virtually single handed and under conditions of extremely acute personal stress. The representative missed the payment of a renewal fee; however, restoration was allowed on the basis that the representative did his best to put things right.

In decision J 19/84 (MEAD) the Board allowed restitution in the situation where the representative inadvertently posted the voucher and cheque for an appeal fee to the appellant rather than to the EPO.

In case T70/86 (Philips) re-establishment was refused where an appeal fee was not paid in time. The appellant’s representative explained that he had come from England to a Patent Attorney’s office in The Netherlands to assist with a backlog of work; that, due to these circumstances, he had been going through a period of great adjustment and that this was the reason why he had overlooked the payment of the appeal fee. Moreover, although the office in The Netherlands had a defined procedure for filing appeals and payment of the appeal fees, he was not aware of it, due to his recent arrival. The Board decided that the representative was placed in a position of responsibility in circumstances where it was conceivable that he might make some mistakes. Nevertheless, and although the international character of the Office employing the representative must be presumed to have
facilitated internal communication, the representative was not informed of the procedure provided for in that Office (such procedure is customary in Patent Attorney's offices) precisely to prevent or correct such errors as the non-observance of a time limit. It was found that all due care was not exercised.

In J 25/87 (DE TROYER) it was held that there is an obligation on the applicant and his representative to ensure the orderly prosecution of the patent application. Restoration of rights following non-payment of a renewal fee with surcharge was refused; the grounds for refusal were that the representative had not proven that he had taken all due care to ensure that the fees were paid at the correct time, but had relied on the EPO to inform the proprietor that renewal fees had not been paid.

There was a finding of lack of due care in decision J 31/89 (BEAVER) because the representative had failed to interpret the EPC correctly when calculating the last date for payment of a renewal fee. The representative argued that the commentary in the European Patents Handbook was misleading and had contributed to the error. In a subsequent decision of the Legal Board of Appeal J 4/91 (AHMAD and PACK) the "erroneous interpretation" was used by the Board to find in favour of the applicant.

Restitution was not allowed in decision J 41/92 (MARRON BLANCO) despite the failure to observe a time limit being cause by the serious illness of the representative. The Board stated in its decision: "If a professional representative runs a one person office, appropriate provisions should be made so that, in the case of absence through illness, the observance of time limits can be ensured with the help of other persons. If there is no substitute or assistant at the representative's office, co-operation with colleagues or with a professional association, could for example, be sought for this purpose."

The Technical Board of Appeal in T 287/84 (BRUNSWICK) refused re-establishment inter alia because:

1) the representative made no careful study of the procedural requirements for filing an appeal to the Boards of Appeal, although he had never previously filed one.

2) there was evidence of haste in the handling of the whole matter.

3) the Board was not satisfied on the evidence that the cause of the non-payment of the appeal fee was the originally alleged misunderstanding, and this alone would justify rejection of the application for re-establishment.

4) Conduct of the representative subsequent to the filing of the appeal, which suggested that he was not consistently methodical and punctilious in carrying out procedural requirements, was taken into account.

In case T 73/89 (Xerox) re-establishment was refused. The Board made the point that while the EPO Boards of Appeal recognise that Article 122 EPC is intended to ensure that in appropriate cases the loss of substantive rights does not result from an isolated procedural mistake within a normally satisfactory system, this does not mean that they automatically grant every application for re-establishment of rights, whatever the circumstances. The Board was not persuaded that the way in which the diary was used amounted to taking all due care required by the circumstances. It appears that the representative was well aware of the danger that time limits could expire during the Christmas holidays, and that rights could be lost as a result. In order to work properly, the normally satisfactory diary system required a qualified attorney to check whether, in any particular case, an extension was necessary or possible. No such check was made; the representative simply asked his secretary to prepare and send telexes requesting extensions on all those of his cases requiring responses before 3 January, without ascertaining for himself beforehand the nature of the actions required on those cases, or taking into account the possibility that one or more of the time limits might be inextensible. The representative did not satisfy the Board that he took all due care required by the circumstances. On the contrary, the Board found that he appeared to have taken an unjustifiable risk by omitting to check the file in a situation in which he was called upon to do so.

In case T 250/89 (AEG) the Technical Board of Appeal stressed that it must examine whether all due care required by the circumstances was exercised, the word "all" being of overriding importance, and assuming all due care exercised, whether the failure to observe the time limit was not the fault of the appellant but attributable to a simple oversight. The Board refused the request because by choosing to wait for a document, the production of which depended entirely on the goodwill of a third party, the appellants demonstrated a lack of care at variance with Art 122(1).

In case T 248/91 (VISOJIC) the Board found that a failure to file a notice of appeal in time seemed to be a result of an error in jure, rather than a mistake in facts. As errors regarding the law are not excusable, the request for re-establishment was considered out of time. An error in law was also the reason why re-establishment was refused in cases T 853/90 (Drexler) and T 69/91 (Drexler). In case T 853/90 (Drexler Technology), the Board found that non-observance of the time-limit for filing of the Grounds of Appeal caused merely by lack of knowledge of the Law (here the European Patent Convention) on the part of the professional representative. As the Disciplinary Board of Appeal already decided, "neither ignorance of the provisions applicable nor a mistake as to the resulting legal position can justify re-establishment of rights. The obligation to take "all due care required by the circumstances" means that persons engaged in proceedings before or involving the European Patent Office must acquaint themselves with the relevant procedural rules.

In case T 30/90 (GRAIN PROCESSING CORP) where telegraph instructions, sent by the applicant to the professional representative one day before the due date, were misdirected and not
received by the professional representative, the Board had this to say concerning the representative:

"As far as the conduct of the professional representative is concerned, it may or may not be true that by 30 November 1989 it was too late for him to take effective action by contacting the US instructing agent to seek relevant instructions, and thereafter to carry out those instructions. What is decisive, however, is that he took no action whatsoever some time before that date. His stated expectation of not receiving final instructions until very shortly before 30 November 1989 does not, in the Board’s finding, justify his failure to seek those instructions at least a few days before the expiry of the time limit which was known to him, particularly in view of the difficulties (upon which he expressly relies), of last minute communications with his US instructing agent, and of the problems of making urgent payments to the EPO.

This failure on the part of the professional representative to seek timely instructions either exacerbated the consequences of the appellant’s (patentee’s) own tardy decision-making, or was a contributory cause of it. In consequence, the Board found that neither the appellant nor his professional representative had exercised the degree of care prescribed by Article 122(1) EPC and, accordingly, refuses the application for restoration.”

In allowing re-establishment in Case T 869/90 (Texaco Development Corporation), the Board relied on the principle of proportionality, saying “In accordance with general principles of law, as applied in the context of administrative law, a procedural means used to achieve a given end (e.g. a sanction following a procedural non-compliance) should be no more than that which is appropriate and necessary to achieve that end; this is commonly referred to as the principle of proportionality. While the Board is not specifically applying this principle to the present case, nevertheless it would seem to be reasonable, in a case such as the present where there may be some doubt as to whether or not “all due care required by the circumstances” was exercised, to have this principle in mind. Any person who has been misled in the sense of Article 122(6) EPC by the fact that the statement of grounds of appeal was filed one day late would be protected by Article 122(6) EPC. In contrast, the loss of the patent application because of such a procedural irregularity would be a severe result. In assessing the question of “all due care” in the present case, the Board has in mind the fact that if there was any lack of due care, “the circumstances” include the fact that the result of any such lack of due care was that the time limit was only missed by one day.”

The Board also relied on the principle of proportionality in Case T 111/92 (Sony Corporation). The Board considered that the mistake in calculating the ten-day period due to human error at a time when the person in question was under pressure was an isolated mistake in an otherwise satisfactory system. The Board had some doubts as to whether all due care was exercised on behalf of the appellant during the entire ten-day period. The absence of any cross-check in circumstances similar to the present case might well lead to a finding of lack of due care in future cases. The Board is satisfied that the error, which occurred for the first time, was due to a genuine miscalculation and not to negligence on the part of the appellant’s representative.

A request for re-establishment was allowed in case T 253/90 (AMPEX). The applicant’s representative used a computer system for generating and monitoring compliance with due dates. A sudden drop in the electricity supply necessitated a restoration routine which could not be completed because of “fatal system error”. The applicant restored the system from back-up data, but entered 9 March 1990 instead of 6 March 1990 as the due date for filing the Statement of Grounds of Appeal. This mistake was due to miscalculation resulting from fatigue. It was accepted that this was an isolated procedural mistake within a normally satisfactory system.

In case T 473/91 (Wegener) due care was found to have been observed, and re-establishment allowed in a case where a notice of appeal was posted to the EPO from London 4 days before the due date, but arrived 1 day after the due date. The Board observed:

"There is always a certain amount of discretion in deciding what constitutes due care under Article 122 EPC. One possible yardstick could be to use the ten-day rule (Rule 78(3) EPC) and from it construe a principle, which would provide that all due care would have been proven if a letter was posted at least ten days before the lapse of the time limit in question. On the other hand, such a principle would lead to an unnecessarily rigid rule, possibly discriminating certain geographical locations, and could therefore not be of any assistance in dealing with the due care issue with regard to expected delivery times.”

iii) Suitability and Conduct of Assistants/Clerical Staff

There is no objection to the fact that certain tasks of authorised representatives are delegated to administrative assistants especially for routine tasks such as payment of fees (T 137/86 THORN EMI).

A human error by an experienced administrative assistant, caused by a momentarily unusually high workload, is excusable (T 137/86 THORN EMI).

Re-establishment was also allowed in a case where a telex operator who sent incorrect telexed instructions for payment of a renewal fee, was found to be properly instructed both in general and in the particular case, and made a wholly inadvertent mistake (T 191/82 FIBRE-CHEM).

On the other hand, in decision J 5/80 (ANON) it was held that, if a professional representative gives an employee in charge of administration in his office the general task of paying all fees due within the prescribed periods, he cannot establish that he took all due care in the circumstances. A similar decision was given in case T 715/91, where the Board observed that a new assistant must be supervised for a period of at least some months (see also case J 3/88).

In case T 264/88 (Union Carbide) re-establishment was refused in a
case where a statement of ground was not filed in time due to confusion as to the due date. The Board found that the temporary confusion of the provisions of the EPC with those of the German Patent Law relating to the filing of the statement of grounds of appeal by the co-worker of the representative could be considered to be an excusable mistake. Since it was normal practice in the representative's office to automatically request extensions of time limits in the absence of any instructions from the client, the Board also considers that, due to the fact that the letter addressed to the EPO did not contain any reference indicating that the case was in the appeal stage, the failure of the representative to detect the mistake made by his co-worker could also be excusable. However, the determining error was made by the co-worker of the representative when she gave the appellant a new (incorrect) time limit for filing the statement of grounds of appeal. The only explanation given by the representative was that this error was a continuation of the first (excusable) error. The Board was not prepared to accept this unsupported submission and decided that all due care had not been established.

In decision J 23/92 (RUSSO) the Board considered the actions of an assistant who failed to pay a renewal fee and failed to correctly check the subsequent notice from the EPO. The assistant suffered from a nervous breakdown and because of their mental condition was alleged by the representative to have deceived him. The representative produced no evidence that the assistant was already ill at the time of failure to pay the renewal fee or at the time of expiry of the period of grace - in fact the Board held that if evidence of the illness at that time had been produced, it considered that the duty of care would have been all the greater.

The Board stated in decisions J 31/90 (MITSUI MINING), J 32/90 (NIPPON CARBON) and J 33/90 (NIPPON CARBON) that "the culpable error on the part of an assistant made in the course of carrying out routine tasks is not to be imputed to the representative if the latter has shown that the necessary due care was exercised in dealing with the assistant". In the case considered the representative worked at a small branch office of firm of patent attorneys and was assisted by a personal secretary of long standing. At the time of the errors (failure to include translations of Japanese language PCT applications with the filings of the EP regional phase) the assistant was under severe stress because of the illness of their marriage partner. The Board indicated that the representative should preferably have checked that the correct documents have been assembled for dispatch to the EPO, the absence of such a check is future was indicated by the Board as likely to lead to a finding of lack of due care.

The Board has to consider whether clerical employees were carefully chosen, properly instructed and reasonably supervised. The requirement of duty of care relates not only to the selection and instruction by also to the supervision of a substitute employee. Re-establishment was refused where a substitute employee was found not to have been properly supervised, and her work checked daily before despatch (T 105/85 ICI).

The Legal Board of Appeal in J 16/82 (THEURER and THEURER) considered the standard of care required in the selection and employment of substitute assistants to cover holidays. It was held to be insufficient that the training and previous experience of a holiday substitute gave every indication that the substitute would correctly carry out the duties assigned; the representative will be held liable for any mistakes on the part of the assistant unless he has chosen a similarly qualified substitute to the absent assistant. In the absence of a similarly qualified substitute assistant the attorney must take over the work from the absent assistant.

In case T 324/90 (HOECHST), the Technical Board of Appeal refused re-establishment because it concluded that no appropriate precautions had been taken in the event of unexpected absences of staff responsible for monitoring time limits.

In T 301/85 (ICI), re-establishment was allowed where the cause of non-compliance was due to the combined effect of a traffic accident involving the representative, and the fortuitous failure on the part of a clerk to enter the relevant date into a computer reminder system.

However, in case T 13/82 (BB), the Technical Board of Appeal refused re-establishment in a case where a reliable assistant, despite express and emphatic instructions, did not return a dossier to the representative in time for a statement of grounds of appeal to be prepared. Evidence was given that the applicant had a control system in operation, comprising date cards and a diary. The Board was not satisfied that a conclusive case was made out that a wrongful act or omission on the part of the assistant was to blame; and that the mere possibility is not sufficient to exculpate the applicant. The Board concluded that deficient instructions would seem the likelier explanation.

In J 3/88 (BEGGS) the requirement of all due care was deemed to be that of the appellant's US patent attorney - did he take all due care? In this case a newly appointed docket clerk, who's job it was to enter records on to index cards failed to do so. There was no evidence that any competent person in the US attorney's office undertook such period inspections of the docket clerks work that the requirements of reasonable supervision could be established. The lack of such supervision was held to be lack of due care.

In case T 315/90, (Baxter Travenol) the Board remarked that while a professional representative may entrust an assistant with routine tasks, he cannot relieve himself of responsibility for carrying out tasks which by reason of his qualification falls upon him personally. If he delegates such tasks to an employee, and if due to this fact an error is committed which would not otherwise have occurred, the representative cannot establish that he took all due care required by the circumstances. The representative in signing the statement of grounds prepared by his external collaborator without consulting the file, which would have enabled him to notice that the time limit for filing this statement had not been observed, did not take the due care required in such circumstances.
iv) Foreign Associate of a Professional Representative

Decisions J 2/86 and J 3/86 (MOTOROLA) concerned two divisional applications in the name of a US applicant. The US based patent co-ordinator of the applicant failed to give instructions to the European patent attorney employed by the applicant to pay renewal fees, due on the two divisionals, because she expected the professional representative who had filed the divisionals to pay the fees. The error occurred because of a change in procedure from using external representatives to using an in-house patent attorney, the two divisionals in question were exceptionally handled by the external representative after the change of procedure. The Board of Appeal allowed restitution of rights because they considered the loss of rights resulted from an isolated procedural mistake within a normally satisfactory system.

A clerical error by the assistant of a US attorney lead to a failure to include two designations for an EP application: the Board stated in decision J 27/88 (CALIFORNIA UNIVERSITY) that "such mistakes are unavoidable and Article 122 is intended to ensure that such mistakes do not lead to a loss of rights".

Restitution was allowed in decision J 13/90 (CASTLETON) in which the Board considered the circumstances of a small US firm, in the process of negotiating a takeover with another company. In the course of the negotiations a change of attorney took place. The negotiation failed and the planned transfer of responsibility for renewal fee payment never took place. As a result of the unforeseeable breakdown in negotiations, payment of a renewal fee was overlooked. It was held to be an isolated mistake in a special situation and restitution was allowed.

The Board held in decision J 17/90 (WHITE) that if an assistant of a US associate does not properly pay EPO letters, that assistant is not a suitable or properly instructed person and all due care has not been taken.

v) The Applicant

It was held in J 12/84 (PROWECO) that an applicant who does not take the trouble to note the due dates of renewal fees or to observe them has not taken all due care required by the circumstances; the applicant should not rely on receiving reminders from the EPO as the trigger to pay fees.

A misunderstanding between employees of the appellant was accepted in Decision J 15/84 (MOTOROLA) as grounds for restoration because the misunderstanding concerned who had responsibility for paying the fees and not lack of awareness of the time limit.

The Board of Appeal in decision J 22/88 (RADAKOVIC) indicated that, in the case of failure to pay fees because of financial difficulties, for "all due care" to be sufficiently proved it must be clear that the financial difficulties were genuine and were due to circumstances beyond the reasonable control of the applicant. In addition, they indicated that it is also necessary that the applicant should exercise all due care in seeking financial assistance.

In decision J 26/88 (TAMNAHARY DEVELOPMENTS) re-establishment was allowed on the basis that the appellant, a small company, had appointed a senior employee who would be expected to operate with minimum supervision, the fact this employee failed to pay a renewal fee was only discovered after the employee was dismissed. The Board agreed that the appellants had believed they had set up an adequate organisation system, and it was unreasonable to expect the Managing Director of the company to foresee every eventuality.

In J 23/87 (K-CORPORATION OF JAPAN) re-establishment was rejected on the basis that the appellant, being completely ignorant of the special procedures of the PCT, should have chosen a sufficiently competent professional representative, and let him properly advise the appellant on the matters involved after having had an opportunity to study the details of the particular case. Seeking informal advice in order to save money shows lack of due care.

J 32/86 (TRUCCO) started out as an application by the appellant himself for re-establishment of the period for payment of the national, search and designation fees of his Euro-PCT application - the appellant had misinterpreted a communication from the Receiving Section of the EPO stating that the fees could be paid within a period of grace of two months after a date written as dd.mm.yy, but interpreted by the American appellant as mm.dd.yy, and had paid outside of the grace period. The appellant subsequently appointed a professional representative to handle the appeal; re-establishment was allowed.

In J 3/85 (DENEV) a statement from the appellant that "the Bank was putting the money late in the account and I will claim compensation" was insufficient to establish that he had taken all due care to ensure payment reached the EPO before the expiry of the time limit for payment.

In decision J 6/80 (SOCIETE PARI-SIENNE D'IMPRESSION ET DE CARTONNAGE) re-establishment was refused on the grounds that a general instruction to staff to pay all fees in time was not taking all due care.

In J 18/82 (COCKERILL SAMBRE) force majeure was advanced as a ground for restoration of rights and although re-establishment was refused on other grounds (Article 122(5)) the Board considered the force majeure situation. In this case the reason for failure to observe the time limit was that a strike of the firm's employees brought the whole firm to a standstill and rendered access to the offices impossible for all members of staff, including supervisory and management levels. In the view of the appellant this constituted force majeure. The Board commented that a priori such a situation would probably justify re-establishment. According to the travaux preparatoires of the EPC, the article that was to become Article 122 (force majeure) was the sole cause of impediment allowing rights to be re-established. It was merely to satisfy a wish expressed by the interested circles that the concept was extended, and Article 122 was given its present wording. (cf minutes of the Munich Diplomatic Conference (1973) points 549 to 583.

(note force majeure is customarily defined as an external occurrence preventing a person (debtor) fulfilling an obligation - article 122 EPC is clearly less severe than that.)

Decision J 11/83 (CATALDO) concerns a request for re-establishment
on the grounds of the appellant's long lasting insolvency; he was only able to finance his business by obtaining a number of loans. The applicant failed to show why he could not borrow money to pay the fees on the present application and was thus held not to have demonstrated due care.

A failure to enter the European regional phase of a PCT application because the applicant no longer had a financial backer was held in decision J 9/89 (DARABI-FORD) to be insufficient grounds for restitution, for the reason that, no evidence was brought forward to show that efforts had been made to find a financial backer for this critical phase of the patent application.

In case T112/89 (Borg Warner Corporation), a statement of grounds was not filed in time. In support of the application for restitution, the representative pointed out that, in his view, although all due care required by the circumstances had been taken by the appellant, he had been unable to observe the time limit for filing a written Statement of Grounds due to the fact that the correspondence relating to the appeal had been misfiled during the transfer of the file from the Chicago to the Troy patent department of its subsidiary company. Due to the great number of files transferred at this time, such misfiling was beyond the control of the appellant.

The Board accepted the representative's arguments that regarding the due care required by Article 122(1) EPC, the obligations of the applicant and those of his representative are clearly distinct and that the due care to be exercised by the representative may depend on the relationship which exists between him and his client. However, it is also clear that both the representative and the applicant must exercise all due care in order to observe all the time limits during patent granting procedures, contrary to the opinion expressed by the representative of the appellant. The Board was not convinced that the duty of the representative is fully discharged when he has notified his client that a time limit is to be observed and is satisfied that the client has received the notification. The Board considered that when a representative has been instructed to lodge an appeal and does not receive in due time from his client the necessary additional instructions he needs to discharge his duty, he should take all necessary measures to try to obtain from his client these instructions.

The Board also considered that when a firm has a substantial patent department, this department has to take all due care when it transfers files to its firm's subsidiary company which has its place of business in another town in order to avoid loss of documents or misfiling of correspondence. It is obvious that a risk of misfiling exists whenever files are transferred. Therefore, the Board is of the opinion that in such circumstances, the appellant itself would only have exercised all due care during the reorganisation of its patent department, if it had given to its representatives special instructions for cases like the present one in which a time limit had to be met. However, such special instructions were not given to the representative.

In case T 30/90 (GRAIN PROCESSING CORP.) the Board was satisfied that the mistransmission of telefax instruction to the appellant's UK representative constituted an isolated mistake in an otherwise satisfactory system. This event, however, took place only one day before the expiry of the notional time limit pursuant to Article 108 and Rule 78(3) EPC. The Board said that the crucial question for deciding upon the allowability of the application for restoration is whether or not the conduct of the appellant himself and/or of his representatives throughout the whole period following the issuance of the decision under appeal amounted to the exercise of "all due care required by the circumstances". By "all due care" in this context is meant all reasonable care, that is to say, the standard of care that the notional reasonably competent patentee/applicant/representative would employ in all the relevant circumstances.

It is, of course, to be expected, and is quite normal, for parties to weigh the costs of appeal proceedings against their relevant commercial interests, as the patentee has had to do in this case. The Board fully accepted that this process does indeed take a fairly considerable amount of time so that a final decision will be made later rather than at an early stage in the proceedings. The decision was in fact made, and the appeal authorised, one day before the due date, but this was, in the Board's finding, too late, in all the circumstances of the case, to expect with reasonable certainty that timely action would still be taken by the representatives. The application for re-establishment was refused.

In decision J 22/92 (Louisiana State University) the request for restitution concerned the entry into the regional phase before the EPO acting as the designated office. The US attorney handling the PCT application had filed the request for international preliminary examination with the USPTO after expiry of the time limit for doing so; believing the request had been filed in due time the inevitable consequence was that the time period for entry into the regional phase before the EPO was missed, although the only time limit actually missed was for the payment of fees with surcharge pursuant to Rule 85a(1) EPC. The EPO had informed the Applicant directly of the period of grace in a communication pursuant to Rule 85a(1); however, the Applicant, having appointed attorneys to prosecute the application, believed the communication from the EPO was merely a copy and took no action. The first time the attorneys representing the Applicant realised there was a problem was in a telephone conversation with the EPO. Restitution was allowed on the basis that the error by the Applicant in ignoring the communication pursuant to Rule 85a(1) EPC from the EPO may be considered a minor procedural irregularity; the Board applied "the principle of proportionality" indicating that a result of the minor procedural irregularity would be extremely severe, namely the loss of the patent application.
## Decisions considered

### 1. Decisions of Legal Board of Appeal

<table>
<thead>
<tr>
<th>Decision No.</th>
<th>Applicant/Inventor</th>
<th>Decision Date</th>
<th>EPO IP Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>J5/80</td>
<td>Anon</td>
<td>EPO 1981/9 343</td>
<td>Published</td>
</tr>
<tr>
<td>J6/80</td>
<td>Cartonnage</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
</tr>
<tr>
<td>J16/82</td>
<td>Theurer &amp; Theurer</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
</tr>
<tr>
<td>J18/82</td>
<td>Cockrell Sambre</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
</tr>
<tr>
<td>J11/83</td>
<td>Catado</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
</tr>
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<td>J12/84</td>
<td>Ornstein</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
</tr>
<tr>
<td>J15/84</td>
<td>Proweco</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
</tr>
<tr>
<td>J19/84</td>
<td>Motorola</td>
<td>EPO 1983/9 343</td>
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<td>J3/85</td>
<td>Mead</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
</tr>
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<td>Denev</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
</tr>
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<td>J32/86</td>
<td>Trucco</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
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<td>J23/87</td>
<td>K Corporation</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
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<td>J25/87</td>
<td>De Troyer</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
</tr>
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<td>J3/88</td>
<td>Bagga</td>
<td>EPO 1983/9 343</td>
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<td>Radzko</td>
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<td>J26/88</td>
<td>Tamahany</td>
<td>EPO 1983/9 343</td>
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<td>J27/88</td>
<td>California University</td>
<td>EPO 1983/9 343</td>
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<td>J9/89</td>
<td>Darabi-Ford</td>
<td>EPO 1983/9 343</td>
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<td>Beaver</td>
<td>EPO 1983/9 343</td>
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<td>Castleton</td>
<td>EPO 1983/9 343</td>
<td>Published</td>
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<td>White</td>
<td>EPO 1983/9 343</td>
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<td>EPO 1983/9 343</td>
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<td>EPO 1983/9 343</td>
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### 2. Decisions of Technical Board of Appeal

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<thead>
<tr>
<th>Decision No.</th>
<th>Applicant/Inventor</th>
<th>Decision Date</th>
<th>EPO IP Code</th>
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<td>Published</td>
</tr>
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<td>T105/85</td>
<td>IC/Re-establishment</td>
<td>EPO 1983/9 343</td>
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<td>EPO 1983/9 343</td>
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## Reciprocity

R. C. Petersen (GB)

The question of reciprocity of representation between USA and the EPO is the subject of increasing interest and some discussion is needed as to what is meant by reciprocity, as applied to representation before patent offices.

At its broadest, it involves the recognition by the EPO and the USPTO of the right of representation before that office of anyone recognised by the USPTO or the EPO. Any such arrangement would certainly suggest a similar reciprocity between the EPO and the individual EPC countries. Thus, a German Patentanwalt would be able to represent before the EPO without taking the European Qualifying Examination. Practitioners in France, Switzerland and the United Kingdom would be in an even more curious position, because anyone is free to represent others in those countries.

At present, a US citizen, having worked and trained in Europe, can sit the EQE and, if successful, can enter the Register after ten years' practice in Europe, but must continue to have a place of business or employment in Europe to remain on the Register. A non-US citizen, having attained the status of permanent resident (green card), and having passed the US patent agent's examination, is allowed to represent clients before the USPTO, presumably whilst continuing resident.

If the requirement of place of business or employment were to be eliminated in the name of reciprocity, then European patent attorneys could file and prosecute applications directly with the USPTO, and US patent attorneys and agents could do likewise before the EPO. Bearing in mind that English is an official EPO language, and that the number of US patent attorneys is vastly greater than the number of English-conversant European patent attorneys, there is hardly that balance of convenience which should be sought in international agreements, and the effect upon EPO practice could be very great.

Whilst I think that the present arrangements are a satisfactory compromise, it may be that a reduction of the period of European practice required to constitute special circumstances under Article 134(2) (b) EPC, would not be such as to endanger our profession.
Comments on the proposal entitled “package-solution”

E. Armijo (ES), M. Curell Suñol (ES), A. de Elizaburu (ES), L.-A. Duran (ES)

Background

At the meeting of the Patent Law Committee, dependent on the Administrative Council of the European Organization, which took place on 23-24 October 1995 in Lisbon, the European Patent Office presented the CA/PL/10-95 document for discussion, in relation to a package-solution with respect to the subject of translation and validation of European Patent texts.

This “package-solution” would seek to replace the present system of full translation of European Patents by an abbreviated system, consisting of:

1. Publication, together with the application or as soon as possible thereafter of an enhanced abstract in the language of proceedings and subsequent translation into the languages of each designated State.
2. Translation of the claims only at grant;
3. Translation of the complete specification prior to any enforcement action by the patentee.

The national Delegations agreed to provide comments on these points towards the end of January 1996.

The question of principle

Against these artificial formulas, the Spanish Administration has reiterated the position that it has been maintaining without interruption, to the effect that the current “status-quo”, established by the Munich Convention, should be maintained, as a basic question of principle, as an outcome of a compromise with respect to the use of English, French and German as official languages of the European Patent Office, by which compromise Spain waived the inclusion of Spanish as an official language, solely in return for being able to demand translation into Spanish of all European Patents protected in Spain.

For such purpose it has to be stressed that the foundations on which the present system of protection for inventions by means of the European Patent is based, i.e., the procedure for obtaining the right, consisting of a first phase of centralized processing and a second decentralized validation phase - which includes filing of the translation of the full text of the Specification, cannot be modified for a whole series of reasons of a:

1. Technological
2. Cultural
3. Legal
4. Constitutional
5. Political
6. Commitment
7. Economic

nature, which have been dealt with in different publications.

Some of these reasons, such as those of the technological and cultural type have, with the passage of time, become even more weighty and more relevant for Spain. In this regard it is pertinent to recall that the constituent Conference of the Iberoamerican Patent Documentation Group has been convened for February 1996, one of whose main purposes is to enhance the Spanish language in all patent documents. The success of the “Dopales-primeras” series on CD-ROM optical disk corroborates the fact that the path taken by the Spanish Patent and Trade Marks Office in 1992, in its capacity of Iberoamerican Patent Documentation Centre, has been the right one.

Likewise a decisive factor, in connection with the demand for translation into Spanish of all technology protected in Spain through the European System, is the fact that Spain has been designated by the International Searching Authority, as from 1 January 1995, in the PCT international phase (Chapter I).

All of these reasons, which are to be found comprised in the seven aspects listed above, constitute powerful reasons why the Spanish Administration and interested Sectors are not prepared to change the present “status-quo”.

The “sine qua non” necessity for the translation into Spanish of all technology protected in Spain is, therefore, a premise that is not open to question.

The EPO Proposals

The three proposals submitted by the European Patent Office, in what it calls “package-solution”, are not acceptable, as indicated above, not only on account of altering the substantive premises mentioned above, but also because of the following reasons:

1. Regarding PROPOSAL I: Prompt publication of a high-quality abstract and subsequent translation of the same

One of the three key-elements of the so-called “package-solution” is publication, together with the application or as soon as thereafter possible, of a “high-quality abstract” in the language of the procedure and its subsequent translation into one of the languages of the designated countries. The unacceptability of this proposal can be based, among others, on the following considerations:

1.1. On the lack of legal value of the abstract

The abstract, even though involving a “high-quality abstract”, is governed by Article 85 of the European Patent Convention, whereby the abstract shall serve exclusively for technological information purposes, it cannot be taken into consideration for any other purpose and, in particular, cannot be used for determining the extension of the protection applied for (...).

The abstract is likewise governed, albeit indirectly, by Article 69(1) of the European Patent Convention, in stating that the scope of the protection shall be determined by the content of the claims and that the description and the drawings shall serve to interpret the claims, as well
as Article 84 of the European Patent Convention, which establishes the relationship between claims and description, stating that “the claims define the object for which the protection is requested” and that “they should be clear and concise and have to be based on the description”. These provisions do not make any reference whatsoever to the “abstract”, excluding it, therefore, from the mentioned effects.

As a result of the foregoing, it is concluded that, from the legal point of view, the abstract (including a “high quality abstract”) lacks value for replacing the full description of the patent.

Even in the case of connecting it to the claims, to form a unit with them, the abstract would likewise lack legal value for replacing the full description, inasmuch as the interpretation of the claims has to be carried out on the basis of the description (and the drawings), it not being open to do this on the basis of the abstract.

1.2. On the technological insufficiency of the abstract

The abstract has a content less than that of the full description (claims and drawings included). But this is also true because of the provisions of Rule 33(2) of the Rules under The European Patent Convention, which refer to the abstract as a concise summary of the content of the description, of the claims and of the drawings. At the opposite extreme of this compulsory conciseness there is the legal requirement of “sufficiency of the description” imposed on the description itself, whereby the description has to set forth the invention in a sufficiently clear and complete manner for one skilled in the art to be able to apply it (Article 83 of the European Patent Convention).

Thus the abstract, even in the event of a hypothetical “high quality abstract” being concerned, would always suffer from the defect of having a technological information level below that of the corresponding full description itself. The full description contains numerous examples of embodiment, physical and/or chemical characteristics, operative data and remaining technological details that cannot be wholly included in an abstract, and so publication of just the abstract would deprive large sectors of the public of knowledge of valuable portions of the full text of the description.

As a result, it is concluded that, from the viewpoint of technological information, nor can the abstract substitute for the full description of the Patent, inasmuch as it has to be concise and provide an information level lower than the level of information of the “matter to be abstracted”, i.e., the full specification in the present case.

1.3. On the inefficacy of the translation of the abstract

Translation of just the abstract into the languages of the pertinent countries can in no way be a substitute for the translation of the full description, nor a substitute for the translation of the claims.

In effect, from the preceding conclusions, established in terms of “full description” and “abstract”, analogous conclusions clearly derive referring to the respective translations into the languages of the pertinent countries. Thus, translation of the abstract alone is ineffective to substitute for translation of the full specification, both from the legal viewpoint and from the viewpoint of technological information.

2. Regarding PROPOSAL 2: Translation of the claims on the application being granted and centralized filing of it at the European Patent Office

Translation of just the claims alone, on the application being granted, is the second key-element of the “package-solution”, which also advocates, as a preferred alternative, for the centralized filing of such translation at the European Patent Office. The unacceptability of this proposal can be based, among others, on the following considerations:

2.1. On the legal insufficiency of the translation of the claims alone

The translation of the claims into all the pertinent languages on the application being granted - whether of the translation by itself, or whether accompanied by the translation of the abstract - cannot amount to a valid substitute for the translation of the full description. In effect, in the same way as the correct legal interpretation of the scope of the claims should be based on knowledge of the full description (Article 84 of the European Patent Convention), the correct legal interpretation of claims translated into each pertinent language should be based on knowledge of the corresponding full translation of the description into the same language.

Furthermore, deferring translation of the claims until grant of the application would mean abandoning the possibility of obtaining provisional protection for the published application, unless translations of the claims of the application were duly filed in the pertinent designated countries, even if later, once the application were granted, the translation of the claims of the granted patent were filed.

2.2. On the risks of non-coordination and lack of information for the national offices in the centralized filing of translated claims

In certain aspects centralized filing, at the European Patent Office, of the claims translated into the language of each one of the pertinent designated countries, seeks to have effects equivalent to the current decentralized filing of the full translation of the patent in each one of the corresponding national Offices.

The present decentralized filing achieves a series of objectives and tasks in the respective member-State and/or in its national Office. The most important ones are:

(1) Recordal, in the national patents Register of the National Office of the Member State of the national part of the European Patent i.e., of the European Patent validated in that country).

(2) Legal certainty as to whether or not the European Patent produces national legal effects in the member-State and unmistakable determination of its date of entry into force.
(3) Identification of the owner of the validated European Patent (owner who might not be the same in the different member-States) and subsequent recordal of the changes of ownership, assignments and licences that may take place.

(4) Recordal, in the national Register of patents, of payment of the annual taxes necessary for maintenance of the validated European Patent in that country.

(5) Issuance of certifications relating to ownership and whether in force, in connection with the validated European Patent.

(6) Dissemination of the printed specifications of European Patents validated in the country, with the corresponding translation for legal and technological information purposes.

Centralized filing, at the European Patent Office, of the claims, translated into the language of each one of the pertinent designated countries, involves evident risks of non-coordination with the national offices and lack of information on the part of the latter, with the ensuing difficulties for obtaining effects equivalent to those from the decentralized filing in relation to each and every one of the objectives and tasks mentioned.

2.3. On violation of the principle of subsidiarity in the centralized filing of the translated claims

With centralized filing of the translated claims at the European Patent Office, the principle known as principle of subsidiarity, would be violated, set forth in the Treaty of the European Union (Maastricht, preamble) and in the Treaty constituting the European Community (Rome, Article 3B), which provides that decisions be taken in the closest possible way to citizens, and that the central Body intervene only to the extent the aims of the desired action cannot be sufficiently achieved by the member-States. Accordingly, this means, in the present case, that the mentioned objectives and tasks should be assigned to those Bodies (the national Administrations) that are closest, geographically and operatively, to the users and persons involved with granted and validated European Patents instead of being taken by the central Body (the European Patent Office).

Definitively speaking, this would lead to the cost of the translation being borne, not by the owner of the Patent, beneficiary of the protection, but by his competitors.

This proposal would, moreover, be unacceptable to those competitors affected by Patents of questionable validity, seeing that if they wished to challenge those Patents by nullity proceedings, they would likewise have to proceed to translate them, at their own cost, in order to know, without limitations, the scope of the same.

This proposal would, on general lines, suffer from lack of equity, insofar as it would go against the principle that he who holds a monopoly position is the one who should bear the cost of such monopoly position, which cost ought not to be borne by those having to accept and respect that monopoly position.

Conclusions

This set of three proposals by the European Patent Office, to form what is called a "package-solution", is unacceptable, inasmuch as it would raise a whole new manner of protecting inventions, in a way different from the one recognized, both in the present harmonized national legislations and in the European Patent Convention.

These harmonized national legislations recognise very clearly the different functions of the abstract (mission of assistance in carrying out documentary searches), of the claims (mission of defining what is protected) and of the description (mission of disclosure and mission of serving as basis for interpreting what is protected).

Modifying these functions and modifying their interrelationship would lead to having to modify in-depth, not just the national legislations but, especially, the substantive part of the European Patent Convention.

Strict compliance, on the other hand, with the provisions of the present European Patent Convention gives the owner the best protection for his invention and gives his competitors the best knowledge of that invention.
Finland accedes to the European Patent Convention


Finland can therefore be designated in European patent applications filed on or after 1 March 1996.

The EPO will however accord European patent applications filed during February 1996 and expressly designating Finland the filing date of 1 March 1996 if the applicant expressly requests that filing date when filing the application.

Since Finland has been a PCT contracting state since 1980, Finnish nationals and persons having their principal place of business or residence in Finland will also be entitled, as from 1 March 1996, to file international applications with the European Patent Office as Receiving Office. Furthermore, Finland may be designated for a European patent in international applications filed on or after 1 March 1996.

La Finlande adhère à la Convention sur le brevet européen

Le gouvernement de la République de Finlande a, le 29 décembre 1995, déposé son instrument d’adhésion à la Convention sur le brevet européen (CBE). En conséquence, la CBE entrera en vigueur pour la Finlande le 1er mars 1996.

La Finlande pourra donc être désignée dans les demandes de brevet européen déposées à compter du 1er mars 1996.

Toutefois, l’OEB attribuera aux demandes de brevet européen déposées dans le courant du mois de février 1996 et désignant explicitement la Finlande, la date du 1er mars 1996 comme date de dépôt, si le demandeur requiert expressément cette date lors du dépôt de la demande.


Interpretation at the EPO

When the EPO was founded there was some scepticism about the feasibility of providing simultaneous interpreting for oral proceedings in view of the highly technical subject-matter involved. These apprehensions have been dispelled, not least thanks to the skilful work of top-flight interpreters like Phil Smith. It is perhaps not always appreciated how much the unobtrusive work of the interpreter contributes to the smooth flow of the proceedings and that a lot of preparation goes into every hearing.

Phil’s article contains some useful hints and background information. It’s worth reading.

Brian McGinley, Acting Director, EPO Language Service

Interpreters at oral proceedings

Phil Smith
Conference interpreter

The European Patent Office has three official languages (English, French and German). One of the three is always the official language of proceedings, but attorneys may present their case in any of the three, and interpreters then provide simultaneous interpretation between the languages used at the proceedings. Thus any attorney whose practice takes him or her to Munich could be called upon to plead at a hearing with inter-
interpreters. The purpose of this short article is to describe how the interpreters work and how attorneys can help.

The interpreters who work for the EPO are freelancers, the Office has no staff interpreters. The Language Service therefore needs advance notice of language requirements so that the interpreters can be booked. In the period leading up to oral proceedings, parties are asked what their language requirements are; i.e. which language they will speak and which language or languages they will require interpretation from. On the basis of the information received from the parties, the Language Service at the Office will recruit interpreters from its available pool specifically for that hearing.

There are two interpreters for each language, so at a hearing which uses English and German, there would be four, two working from English into German and two from German into English. Interpreters work in pairs because of the high level of concentration needed for the duration of the proceedings. Interpreters work into their mother tongue from "passive" languages.

Opposition and Appeal proceedings are generally technical, so the interpreters need to invest effort into preparing the meeting. The language service ensures that the interpreters receive the main documents in advance: the patent itself, the main correspondence between opponent(s) and proprietor, the interim decision of the opposition division and the closest prior art citations. The interpreters always arrive about half an hour before the hearing begins, so they can meet members of the opposition division (or appeal board) to sort out any difficulties, receive the last-minute documents, and discuss aspects of the case. For particularly difficult meetings in areas like genetic engineering, the interpreters may have a full day for briefing and preparation if the language service thinks it appropriate. This happened recently with the Harvard mouse case.

The meeting rooms are equipped with microphones and headsets, and the chairman will explain how everything works before the proceedings are opened. Some chairmen even encourage a brief dry-run to make sure all participants know exactly where to find the required language and how to operate the microphones.

The user of interpreting services can do certain things to help. The most important thing is to make sure your microphone is on whenever you speak because interpreters can only interpret what they hear. Even if the interpreters are not working (they may be working from one language only) they still need to follow the arguments. In some of the rooms the microphones are fixed into the tables, so parties need to sit themselves in such a way as to be close to a microphone. There are stand mics and halter mics if you have to move to the flip-chart or overhead projector.

A meeting of any kind is about communication, so the rules of how to speak with interpreters are the same as for good public speaking in any comparable situation. Obviously every patent agent has his or her own style, but there are certain points to be borne in mind. You do not need to speak particularly slow, interpreters are trained to deal with speech at normal delivery; it is important to be clear. Numbers can cause confusion if said indistinctly - just think how easy it is to mis-hear 14 and 40 in English - and long numbers should be read digit by digit. Chemical compounds may well be your bread and butter, but they can be difficult if not said clearly. When citing text at a hearing, make sure you give the exact reference. If you intend distributing a new document at the meeting, remember to bring copies for the interpreters.

Most interpreters are language graduates with a postgraduate interpreting qualification. The EPO regularly have therefore acquired their technical and patent knowledge over the years. Interpreters will sometimes specialise in certain subject areas, genetic engineering is one example, and there are some interpreters who work on the administrative meetings of the EPO as well as at proceedings. In the main though interpreters are generalists and, after due preparation, they can handle the very diverse subject matter encountered at the European Patent Office.

There should be no great mystery about interpreting. The interpreters are there to provide a quality service to help you to do your work effectively.

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**Stelle gesucht** • **Vacancy sought** • **Demande d'emploi**


che. 3½ Jahre Berufserfahrung inklusive Praktika bei Betonzusatzmittel Firma, weiterhin tätig bei derselben Firma. EDV Grundkenntnisse. Suche Kandidatenstelle möglichst Raum Wien, Freiburg oder München zur Patentanwalt-Ausbildung mit Ziel EPA-Zulassung. Bin auch an Auslandsstä-


Anfragen werden vom EPI-Sekretariat vertraulich behandelt und weitergeleitet.
Inventions de logiciel : L’arbre et la forêt

P. Vidon (FR)

Décidément, en matière de brevetabilité des inventions de logiciels, l’arbre a de plus en plus de mal à cacher la forêt.

L’arbre, c’est évidemment l’Article 52.2.c de la Convention sur le Brevet Européen, et sa version dans les droits nationaux des pays membres (en France : l’Article L611-10.2 c), qui prononce l’exclusion formelle des programmes d’ordinateurs, en tant que tels, du champ des inventions brevetables.

La forêt, quant à elle, bruisse de plus en plus joyeusement du nombre considérable et croissant de brevets déposés sur tous les continents pour protéger des inventions de logiciels.

A cet égard, la révision en cours des Directives d’Examen de l’USPTO (Office des Brevets Américain) accompagne de façon très pragmatique et symptomatique cette vitalité des dépôts de brevets logiciels. Dans un projet daté du 2 juin 1995, le Patent Commissioner de l’USPTO invite à commentaire sur la base d’une proposition d’amendement très intéressante qui fait suite à la décision fondatrice prise le 29 juillet 1994 par la Cour d’Appel du Circuit Fédéral (CAFC) dans l’Affaire Alappat. En substance, l’Office Américain des Brevets s’estime prêt à considérer comme “statutory”, c’est-à-dire apte à être breveté (1) tout “computer-implemented process” dès lors que le procédé “présente un impact dans le monde réel”. L’Examen consisterait alors simplement à vérifier sur le fond la nature de l’invention, sans imposer a priori des contraintes spécifiques sur la rédaction formelle de la revendication (produit ou procédé). La conséquence la plus spectaculaire de cette proposition est que l’USPTO se déclare tout à fait prêt à délivrer une revendication principale s’énonçant sous la forme : “logiciel caractérisé en ce qui…” . La parution de la version définitive des Directives, prévue initialement pour décembre 95, a été différée pour raisons essentiellement politiques (2), sans que la substance des dispositions semble mise en cause.

Cette évolution balaye les tabous. Aux États-Unis, la non-brevetabilité des inventions de logiciels n’a pas de source dans les textes légaux. Les règles d’admissibilité (Article 35 USC100) proscivent seulement la brevetabilité des étapes mentales (mental steps). Par touches successives, la jurisprudence de l’Office et des tribunaux aboutit à supprimer tout régime d’exception pour les inventions de logiciels.

L’exclusion du champ de la brevetabilité, dans la proposition des Directives actuellement en discussion, ne peut être fondée que sur quatre critères :

- l’invention est une information pure,
- l’invention traduit directement un phénomène naturel,
- l’invention manipule des idées abstraites,
- ou l’invention apporte une solution à un problème purement mathématique.

En somme, les critères de non-brevetabilité pour défaut d’invention s’expriment fort bien sans faire une allusion aucune à la question de savoir si l’invention est ou non une invention de logiciel.

L’Office Japonais des Brevets avait déjà amorcé une mutation analogue dès les premières versions des Directives de 1975. On sait qu’au Pays du Soleil Levant, les logiciels de traitement de texte, notamment pour la transcription des romans en kanas et kanjis via menus déroulants constituent un paragraphe officiel d’invention brevetable. Certes, toutes les questions ne sont pas résolues, notamment la question de la difficulté de constituer des banques de données exhaustives permettant de réaliser les recherches d’antériorité. Mais ce problème ne peut que se résoudre à terme dans la dynamique, la croissance des dépôts assurant la complétude des bases de données.

Quoi qu’il en soit, l’inventeur avisé de ce secteur d’activité n’a plus aucune raison d’hésiter à protéger ses inventions par brevet.

Et l’Europe ? Malgré quelques dernières coquetteries, l’OEB joue les suiviteurs. Les récentes synthèses internes de l’Office ne rappellent-elles pas que moins de 1% des inventions de logiciels rejetées par l’Examinateur Européen le sont en application de l’Article 52.2.c. Là aussi, donc, les logiciels rentrent dans le rang.

Pourquoi alors conserver l’exclusion explicite de l’Article 52.2.c, dès lors qu’elle apparaît inutile, et surtout dangereusement désinformatrice. Il est navrant à cet égard, de noter que l’une des rares propositions sensées du Rapport “Thèse et Thèmes” du 03.05.95 sur la stratégie de l’OEB (Rapport Braendli) et qui va dans ce sens, est contredite par le préambule du rapport annuel 94 de l’Office dans lequel celui-ci temporise en s’octroyant un satisfecit sur la situation actuelle.

C’est une erreur. Par la persistance de cette exclusion inutile, de très nombreux industriels, sans parler de leurs Conseils (non CPI) continuent à renoncer à la protection à laquelle ils ont droit. Il suffit pour s’en convaincre de lire les tribunes doctrinales publiées encore maintenant par certains universitaires ou professionnels juridiques mal informés. Au sein des brevets européens déposés dans le domaine du traitement numérique des données (classe G06F), contrairement à de nombreux autres secteurs d’activité, l’industrie européenne est minoritaire en termes de brevets par rapport aux prises de droit des américains et asiatiques cumulés.

Maintenir cette exclusion littérale entretient un climat psychologique

(1) pourvu que les autres conditions de brevetabilité : essentiellement nouveau et activité inventive soient également remplies.
(2) liées essentiellement à l’évolution de l’USPTO, aux controverses budgétaires au sommet de l’État, et à l’élection présidentielle américaine.
Additional comments on EQE technique and tactics

P.M. Klett (CH)

In the 4/95 issue of the EPI information journal I read the opinion of Mr. Powell concerning Mr. Herzog's comment published in the 3/95 issue. This made me recall my own preparation for the EQE and the fact that I was very happy to have passed the exam, which to me somehow proved that my strategy was a good one. Herzog's comment prompted me to rethink several aspects of my preparation technique and I want to continue his effort and add some aspects to papers B and D that I find important and hope future candidates can profit from.

Powell expressed doubts about Herzog's statement concerning paper B. Let me say from the very start that I generally agree with Herzog as well as with Powell. One can reformulate the entire claim during the exam, as one can do in real life. However, the thing to keep in mind is time. Therefore my advice is to adopt Herzog's principle: Avoid amending the main claim entirely. The problem is not that you could be penalized for doing so by the Examiner. The point is that your time for the examination is limited, whereas this is not nearly as crucial in real life. Ask yourself: What is more time-consuming, to amend one or two features of a claim or to reformulate said claim in its entirety? During the CEPI Seminar in Straßburg I was confronted with this question and I made the consequence of this experience my principle for the exam: When in Straßburg I tried to answer paper B under exam conditions, I immediately attempted to obtain the broadest protection possible. I even deleted some features from the main claim and justified my doing so, including arguments about noncollision with Art 123(2) EPC in the text of my answer. However I didn't manage to write all arguments in time. I realized that and planned to speed up in the real exam still not knowing how. During the ensuing discussion with the EPI tutor and my colleagues, I recognized that, although my new claim was not wrong, it had cost me much more time than I would have spent simply adding a few features from the sub-claims. I would have been wiser to have used that time to improve the formulation of my answer to the communication.

The reason is that, in order to delete a feature without interfering with Art 123(2) EPC, you must not only have very good arguments indeed, you must also locate the different passages in the description, which you therefore have to read again and again. Furthermore I found that it was much riskier to do so because, under the time pressure of the exam, you might misinterpret the description or even fail to mention decisive arguments. And now comes the most relevant and decisive point: I was taught that both answer types should probably have received the same marks. So why go the hard way? Although it may not be the intention of the examination committee, I really do think that to pass paper B, it is better to have a narrower scope of protection and deliver a clear argumentation than to redraft the claim. In reality this may not always prove best but, as I say, an exam is not reality.

After having read various comments on Paper D and appreciating Herzog's suggestions, I added an idea of my own, which I warmly recommend because I truly believe that it played an important role during my exam. Maybe my proposal is so idiosyncratic that no one but me would find it useful, or maybe it is already common knowledge. Somehow I have the feeling that the following tip has never been mentioned because it is underestimated. Nevertheless I hope it might help some candidates who never realized that preparation for the exam also includes this point.

The whole idea could be summarized as "preparing one's material". Mr. Herzog mentioned the candidate who extracted the list of contents from the EPC book during the first minutes of his exam. He was clever. But with the new exam regulations, candidates may bring their own material, a rule I consider fair and realistic. So one can prepare one's material already in advance, unhurried and so as sophisticated an extent as one wishes. I personally spent a great deal
of time on this. Of course everybody has his own style. I prefer colours; they psychologically build a bridge to bring me closer to the text and make me subconsciously think that I have read these words before and hence am familiar with them. I also use a colour system that helps me find things faster. Some may find colours unprofessional and childish. If you don’t like writing in your books, you’ll have to find another technique. My opinion is that one should upgrade one’s EPC book as well as one’s PCT booklet with references. Time is not pressing during preparation, so don’t hold back. Especially the PCT is a deeply woven network of articles and rules. If during the exam one reads “as provided in the Regulations” and then starts to search for the desired rule, one is already lost. This occurred to me beforehand, so I prepared myself by scanning the entire PCT for such time-traps. My PCT copy is now full of such references. By the way, this also proves useful for everyday work.

Also, when a rule or an article in the PCT refers to another rule or article only by number, I often wrote its contents or title in short form near the reference to prevent me, during the exam, from flipping pages and looking up the rule, in most cases simply to find that it is not the rule I needed, going back and searching further. Of course it is also possible to mention the most recent decisions concerning a certain article or rule with a short label. The EPC should also be prepared in that manner. The right-hand margin offers the best place for such notes. And be aware that the references in the EPC are cited only by number and are incomplete. So don’t rely on them as they are, use them as a starting point to build your own reference system.

Such prepared material is the only useful tool during the exam. I found that additional, unprepared books which I thought would be useful proved useless because they only seduced me into wasting time by searching for something in them without knowing where I could find it. It is much better to have a well-prepared and well-chosen set of literature at hand. I carried with me the PCT, EPC, Paris Convention, Community Patent Agreement, a self-made overview of the decisions of the Enlarged Board of Appeal, the same for the Legal Advises, the white - of course well-prepared - booklet with the collected jurisdiction of the boards of appeal, and copies of several important articles from the Official Journal such as the telefax information, the arrangements for deposit accounts, the automatic debiting procedure, the Seven Measures, filing of authorizations, the Extension system, the contracting states with their two-letter codes, the agreement between the EPO and WIPO, and the Information for PCT Applicants. This was all I needed.

Finally, I would like to emphasize that group work can be helpful, but does not relieve you of the duty of doing a lot of work yourself. Preparing your material is one thing I think must be done personally. By doing this, one better understands the interrelations in the PCT and the EPC and of course can use one’s own reference style, abbreviations, colours and handwriting. All this saves valuable time in the exam and at the same time improves one’s knowledge.

One last tip: Adopting the EPC/PCT language is essential for all papers. It is reasonable to assume that an Examiner is more likely to give you a mark when he reads a word he can easily find in the EPC/PCT. Don’t leave it to him to interpret your language and to guess what you want to say with an expression unknown to him. Keep in mind that the Examiner’s mother tongue may not be English, German or French. This problem may even be exacerbated if your answer must be translated into one of the official languages. A certain degree of cooperation with an Examiner will win you more marks by facilitating the Examiner’s decisions and avoiding doubts. This can be achieved with little effort. Several German colleagues, for example, still say “Erfindungshöhe” instead of “Erfinderische Tätigkeit” when speaking of European Patents. This always makes me shudder. It is easy to become accustomed to the correct language if you are willing to and begin early enough.

You need not adopt my advice, of course, but I believe my strategy can help. I should be content if my opinion at least arouses further discussion of the aspects mentioned. In any case I hope my advice is helpful.
Heymanns Fachseminar

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Arbeitnehmererfindervergütung

Kommentar zu den Amtlichen Richtlinien für die Vergütung von Arbeitnehmererfindungen

Von Rechtsanwalt Dr. iur. Kurt Bartenbach und Dr. iur. Franz-Eugen Volz


Der neue Kommentar
erläutert die Amtlichen Richtlinien für die Vergütung von Arbeitnehmererfindungen. Die leicht verständliche Sprache und die präzise Darstellung machen das Werk zu einem idealen Informationsmittel für die Praxis.

Umfassend eingearbeitet
sind die Einigungsvorschläge der Schiedsstelle für Arbeitnehmererfindungen beim Deutschen Patentamt und die Entscheidungspraxis der Gerichte. Auch das einschlägige Schrifttum ist vollständig berücksichtigt.

Für die Qualität
des Werkes steht die jahrelange Erfahrung der Autoren. Sie sind ausgewiesene Kenner der Materie. Ihr in zweiter Auflage erschienener Kommentar zum Gesetz über Arbeitnehmererfindungen hat uneingeschränkte Anerkennung gefunden und gilt heute als Standardwerk.

Die wirtschaftliche Bedeutung
von Arbeitnehmererfindungen steht außer Frage. Etwa 80 bis 90% aller Patentanmeldungen beruhen auf Erfindungen von Arbeitnehmern. Arbeitgeber und Arbeitnehmer benötigen deshalb diesen Kommentar, um die oft schwierigen Fragen einer angemessenen Vergütung schnell und sachgerecht lösen zu können.

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Rechtsanwalt Ulrich Krieger, Düsseldorf, in: Zeitschrift für Gewerblichen Rechtsschutz und Urheberrecht 8-9/95

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Von Dr. iur.
Andreas Wirth,
Rechtsanwalt in München

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