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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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Editorial

This edition of *epi* is the first "themed" edition with the majority of the articles revolving around a single concept. To begin our "themed" editions, no better topic could be found than the examinations. In terms of the function of the *epi*, as both the body that regulates and aids members in the profession, its involvement in the examinations is one of its most important functions. They are also one of the common threads touching all in the profession almost everyone has taken the examinations, trained someone for the examinations, or assisted in the setting and supervision of the examinations. Or, at least, knows someone who has.

As with everything in life, ones approach to the examination depends on ones perspective. A perspective of someone who has only taken the examinations will differ from someone who has taken the examinations and since tutored for them, which will, in turn, differ from someone who has only set the examinations. Human nature inclines one to believe that those aspects of which one has had experience are the ones fraught with problems whereas the others must be straightforward, if only because they appear so.

The aim of this themed edition is to give the point of view from as many aspects of the examination experience as possible to allow people to gain a flavour of the experience from all points of view and, therefore, to gain as rounded a perspective on the examination experience as possible. We hope that we have gone some way towards doing this.

Jon Gowshall · Thierry Schuffenecker · Edith Vinazzer

Bericht über die 44. Ratssitzung in Helsinki am 11./12. Mai 1998

Die Ratssitzung in Helsinki bestand aus der üblichen Mischung von interessanten Diskussionen und harter Arbeit. Verschiedene wichtige Themen wurden diskutiert und Lösungen gefunden.

Der Präsident, Herr Arthur Huygens, eröffnete die Sitzung offiziell am Montag, dem 11. Mai 1998 um 9 Uhr morgens. Nach der Ernennung der Stimmenzähler und der Annahme der Tagesordnung wurde das Protokoll der 43. Ratssitzung in Straßburg am 3. Oktober 1997 gebilligt. Anschließend unterbreitete der Präsident den Bericht über seine geleistete Arbeit seit der letzten Ratssitzung. Dieser Bericht ist in dieser Ausgabe der *epi* Information abgedruckt. Der Präsident wies darauf hin, daß zur Halbzeit seiner Amtszeit offensichtlich sei, daß seine Absicht, den Bekanntheitsgrad von *epi* auf den entsprechenden Gebieten zu vergrößern, gute Fortschritte gemacht habe. Auf größtes Interesse stieß der Hinweis, daß im Europäischen Patentamt weitere Diskussionen geführt werden, welche die vorgeschlagenen zukünftigen Änderungen des Europäischen Patentübereinkommens und die eventuell notwendige diplomatische Konferenz betreffen. Herr Huygens dankte dem Vizepräsidenten, Herrn Ryckeboer, der sein Amt als Vizepräsident der ersten Amtszeit abgab und hieß Herrn Holzer, der nun das Amt des Vizepräsidenten übernimmt, willkommen.

Der Bericht des Generalsekretärs folgte. Ausführliche Diskussionen zu künftigen Engagements des *epi* und gemeinsamen Seminaren folgten.

Die Berichte des Schatzmeisters und der internen Rechnungsprüfer wurden ebenso wie die entsprechende Jahresabrechnung unterbreitet und gebilligt. Anschließend wurde der Entwurf des Haushaltsplans für das Jahr 1998 zur Kenntnis genommen.

Dann wurde der *epi*-Rat um Zustimmung zur Wiederernennung von Herrn Vivian als Mitglied und Vorsitzenden der Prüfungskommission für eine weitere Amtsperiode gebeten. Diese Bitte um Zustimmung wurde erhalten weil Herrn Vivians Amtszeit im Oktober 1998 zu Ende geht und er sich im Oktober 1999 von seinem Posten im Europäischen Patentamt verabschiedet. Die Wiederernennung wurde einstimmig gebilligt, obwohl dies zu Diskussionen bezüglich der französischen Übersetzung der Prüfungsaufgaben D des Jahres 1998 der europäischen Eignungsprüfung führte.

Die Sitzung wurde dann für eine Ansprache von Herrn Rapinoja, dem finnischen Industrie- und Wirtschaftsminister, unterbrochen . Herr Rapinoja hieß die Ratsmitglieder in Finnland willkommen und gab anschließend einen kurzen Überblick über aktuelle Themen von Interesse für den Berufsstand des Patentvertreters. Dieser umfaßte auch das Problem der Übersetzung von Patentschriften, die bevorstehende Direktive der Europäischen Kommission zur Biotechnologie, Gebrauchsmuster und die Patentierung von Software. Seine Ansprache wurde mit herzlichem Applaus aufgenommen.

Nach der Ansprache von Herrn Rapinoja wandte sich die Diskussion der EU-Direktive zum Schutz von Gebrauchsmustern zu. Dies führte zu einer intensiven Diskussion verschiedener Punkte, insbesondere der Art der Ausgrenzung dieser Gebrauchsmuster und ob eine ebenso hohe Erfindungshöhe wie für ein europäisches Patent erforderlich sei. Zu diesem letzten Punkt waren die unterschiedlichen Meinungen beinahe gleich stark vertreten.

Der Präsident wich dann von der vorgesehenen Tagesordnung ab und bat den Geschäftsordnungsausschuß, seine Vorschläge für eine Änderung der Regeln 18 und 24 der Geschäftsordnung zu unterbreiten, gefolgt von Vorschlägen für eine Änderung der Regeln für Wahlen zum Rat, der Zuständigkeit des Wahlausschusses und der Zuständigkeit des Wahl- Einspruchsausschusses, um die entsprechenden Änderungen im Hinblick auf die bevorstehenden Wahlen zum Abschluß zu bringen. Die Änderungen wurden einstimmig vom Rat gebilligt. Nach dieser Diskussion legte der EASY-Ausschuß seinen Bericht vor und bat um Zustimmung dafür, sich weiterhin mit den Datenübertragungstests des EPA befassen zu dürfen. Der Rat gab seine Zustimmung.

Schließlich wurde vom Vizepräsidenten, Herrn Leo Ryckeboer, ein kurzer Bericht über den Fortschritt bei der Verteilung der *epi*-Broschüre "Patente in Europa" vorgetragen. Der Versand der Broschüren in den drei Amtssprachen laufe gut and ernsthafte Vorbereitungen für die Übersetzung der Broschüre in verschiedene Sprachen der Vertragsstaaten, die keine Amtssprachen seien, würden getroffen.

Mit Bedauern wurde zur Kenntnis genommen, daß das Europäische Patentamt die Bitte um finanzielle Unterstützung für die Herstellung der Broschüren in den Sprachen, die keine Amtssprachen sind, abgeschlagen hatte.

Anschließend beendete der Präsident die Sitzung des ersten Tages.

Die Sitzung wurde am Morgen des 12. Mai 1998 um 9 Uhr morgens wieder aufgenommen und begann mit einer kurzen Demonstration der Schriftleitung, welche die *epi*-Homepage sowie kurz die EPA-Homepage und EPA-Homepage Links zu anderen Patentinformationsquellen vorführte. Die Schriftleitung unterbreitete anschließend ihren Bericht über die geleistete Arbeit seit der letzten Ratssitzung. Der Bitte um Aufnahme eines vierten Mitglieds in die Schriftleitung, mit einer entsprechenden Änderung der Geschäftsordnung, wurde entsprochen.

Der Präsident wandte sich dann dem Stand der Dinge verschiedener Projekte zu, die er bei Amtsbeginn im Hinblick auf die Zukunft des *epi* in Angriff genommen hatte. Auf allen Gebieten seien große Fortschritte erzielt worden und die Kontakte zu den verschiedenen nationalen Organisationen würden ständig verbessert. Erste Schritte

würden unternommen, um Gebiete zu finden auf denen sich das *epi* zusammen mit anderen Organisationen profilieren könne. Die Homepage werde überarbeitet und ausgeweitet und Vorschläge für ein Trainingsprogramm würden in Erwägung gezogen. Alles in allem wurde über zufriedenstellende Fortschritte auf allen Gebieten berichtet.

Der Vorsitzende des EPPC unterbreitete danach Vorschläge zum Grünbuch und insbesondere zum Entwurf des EPAC-Protokolls. Dies führte zu langen Diskussionen über mögliche Widerspruchsverfahren auf europaweiter Ebene und dem Vor- oder Nachteil eines Beschwerdegerichtes auf europäischer Ebene. Der Rat beschloß, den neuesten Bericht der EU-Kommission abzuwarten, bevor er weitere Schritte unternimmt.

Anschließend wurden die Berichte verschiedener Ausschüsse unterbreitet, von denen einige in der epi Information abgedruckt sind. Berichte lagen u.a. vor vom Ausschuß für Biotechnologie, dem Disziplinarrat, dem EASY-Ausschuß, dem Finanzausschuß und den Ausschüssen für EPA-Gebühren, EPPC, Harmonisierung und berufliche Qualifikation. Unter den interessanten Punkten, die vorgebracht wurden, wies der Ausschuß für EPA-Gebühren ganz klar darauf hin, daß das EPA reich an finanziellen Mitteln sei und daß die nationalen Staaten effektiv die Finanzmittel des EPA dazu benutzten, verschiedene Internet Projekte zu unterstützen. Der EPPC-Bericht enthielt verschiedene interessante Punkte zu Formularen, die für das Einreichen von Einsprüchen vorgeschlagen wurden, die Möglichkeit, daß die Beschwerdekammern der Vorladung zur mündlichen Verhandlung Anlagen beifügen könnten, wie sie bereits von den Einspruchs- und Prüfungsabteilungen verwendet würden, der Möglichkeit, offizielle Übersetzungen mit beglaubigten Kopien der europäischen Patentanmeldungen zu erhalten, die nicht in einer Amtsprache angemeldet wurden und auf mögliche Probleme bei Videokonferenzen. Schließlich unterbreitete der Ausschuß für berufliche Qualifikation Vorschläge für Änderungen der Regeln für die europäische Eignungsprüfung im Jahr 1999.

Der Rat billigte dann die Ernennung von drei Mitgliedern in den Wahlausschuß. Einem niederländischen Vorschlag, den entsprechenden Begriff für "European Patent Attorney" zu ändern, wurde zugestimmt und die Daten für die nächsten Ratssitzungen wurden festgelegt.

Schließlich wurde darauf hingewiesen, daß die EPA-Wanderausstellung in sehr naher Zukunft verschiedene europäische Länder besuchen werde und die Sitzung wurde mit einer kurzen Diskussion zum Status früherer Präsidenten des Institutes beendet. Daraufhin erklärte der Präsident die Sitzung für beendet.

Eine Aufstellung aller Ratsbeschlüsse ist nachstehend abgedruckt.

Entwurf der Ratsbeschlüsse, 44. Ratssitzung in Helsinki, 11.-12. Mai 1998

1. Die Jahresabrechnung für 1997 wurde gebilligt und der Schatzmeister wurde entlastet.
2. Der geänderte Haushaltsplan für 1998 wurde gebilligt.
3. Der Rat billigte die Wiederernennung von Herrn Vivian als Mitglied und Vorsitzenden der Prüfungskommission.
4. Der Rat stimmte mit einer klaren Mehrheit dafür, die Angelegenheiten der Standesregeln nicht auf dem *epi*/VPP-Seminar, das am 5. und 6. November 1998 in Ulm stattfindet, zu behandeln.
5. Der Rat sprach sich mit knapper Mehrheit dafür aus, daß die Erfindungshöhe für Gebrauchsmuster derjenigen europäischer Patente entsprechen sollte (siehe EPPC-Bericht).
6. Der Rat beschloß, den Entwurf des EPAC-Protokolls noch nicht zu veröffentlichen (siehe EPPC-Bericht).
7. Der Rat billigte einstimmig den Artikel 18.1 der Geschäftsordnung zu möglichen Nachwahlen in den Disziplinarrat während der laufenden Amtszeit (siehe Bericht des Geschäftsordnungsausschusses).
8. Der Rat billigte einstimmig den neuen Artikel 24.5 der Geschäftsordnung, der den Rat ermächtigt, einen Wahlausschuß zu ernennen, statt diese Entscheidung dem Präsidenten zu überlassen (siehe Bericht des Geschäftsordnungsausschusses).
9. Der Rat billigte einstimmig die geänderten Regeln für Wahlen zum Rat, die eine Vereinfachung des Wahlverfahrens sowohl für die Mitglieder als auch für das Sekretariat bedeuten (siehe Bericht des Geschäftsordnungsausschusses).
10. Der Rat billigte einstimmig die geänderte Zuständigkeit des Wahlausschusses, die der geänderten Geschäftsordnung und den geänderten Regeln für Wahlen zum Rat angepaßt wurde (siehe Bericht des Geschäftsordnungsausschusses).
11. Der Rat billigte einstimmig die Zuständigkeit des neu geschaffenen Wahl-Einspruchsausschusses, die auf der geänderten Geschäftsordnung beruht (siehe Bericht des Geschäftsordnungsausschusses).
12. Der Rat billigte einstimmig die geänderte Zuständigkeit des EASY-Ausschusses (siehe Bericht des Geschäftsordnungsausschusses).
13. Der Rat billigte die Vergrößerung der Schriftleitung um ein weiteres Mitglied.

14. Der Rat beschloß, dem Europäischen Patentamt in einem Schreiben mitzuteilen, daß die Benutzung von Formularen bei der Einreichung von Einsprüchen für die betroffenen Parteien und ihre Vertreter befürwortet werde (siehe EPPC-Bericht).
15. Der Rat beschloß, dem Europäischen Patentamt in einem Schreiben mitzuteilen, daß eine Änderung des Artikels 11(2) der Verfahrensrichtlinien der Beschwerdekammern dahingehend befürwortet werde, daß in jedem Fall Mitteilungen zur Vorbereitung mündlicher Verhandlungen zu versenden sind. Außerdem würde es das *epi* angesichts der Tatsache, daß die Vorladungen zu mündlichen Verhandlungen oft weit im voraus erfolgen, begrüßen, wenn diese Mitteilungen zusammen mit der Vorladung zu der mündlichen Verhandlung versandt würden (siehe EPPC-Bericht).
16. Der Rat beschloß, mit der Bitte an das Europäische Patentamt heranzutreten, ob Übersetzungen in einer der Amtssprachen mit beglaubigten Kopien von europäischen Patentanmeldungen, die nicht in einer Amtssprache angemeldet wurden, zur Verfügung gestellt werden können (siehe EPPC-Bericht).
17. Der Rat beschloß, ein Schreiben an das Europäische Patentamt zu richten, in dem darum gebeten wird, mündliche Verhandlungen in der bisher üblichen Form durchführen zu können, falls während einer mündlichen Verhandlung bei einer Videokonferenz techniche Probleme auftreten sollten. Bisher verliert der Antragsteller, falls er eine mündliche Verhandlung durch Videokonferenz beantragt, schon im voraus und unwiderruflich das Recht auf eine mündliche Verhandlung in der bisher üblichen Form (siehe EPPC-Bericht).
18. Die Herren H. BREITER (CH), J.J.H. VAN KAN (NL) und A. PARKES (IE) wurden für die Wahlen des Jahres 1999 in den Wahlausschuß gewählt.
19. Der Rat billigte den Vorschlag, die niederländische Bezeichnung für „European Patent Attorney" von „Europees Octrooivertegenwoordiger" in „Europees Octrooigemachtigde" zu ändern.

Report of 44th Council Meeting in Helsinki 11/12 May 1998

The Helsinki Council meeting was the usual mixture of interesting debate and hard work. Several important topics were discussed and resolved.

The President, Arthur Huygens, formally opened proceedings at 9am on Monday 11th May 1998. Following the appointment of the scrutineers and the adoption of the agenda, the minutes of the 43rd Council meeting in Strasbourg on 3rd October 1997 were approved. The President then put forward his report of his activities since the last Council meeting. The report is published elsewhere in this edition of epi Information. The President indicated that, seen as a mid-term report, it was clear that good progress was being made towards his intention of increasing the awareness of the *epi* in the relevant areas. Most interest was caused by the indication that further discussions were taking place in the European Patent Office regarding proposed future amendments of the European Patent Convention and the resulting Diplomatic Conference that might be required. President Huygens thanked Vice-President Ryckeboer standing down as deputy for the first year of the term of office and welcomed Mr. Holzer succeeding him as first Vice-President.

The Secretary General's report followed. This attracted considerable discussion regarding future *epi* participation and joint seminars.

The Treasurer and Internal Auditors reports were presented, including the relevant accounts, and were approved. Subsequently the 1998 draft budget was noted.

The *epi* Council was then requested to approve the appointment of Mr. Vivian as member and Chairman of the Examination Board for a further term, a request that was made because Mr. Vivian's term expires in October 1998 and Mr. Vivian is retiring from his post at the European Patent Office in October 1999. The appointment was unanimously approved although this led onto a discussion of the French translation of the 1998 paper D in the European Qualifying Examinations.

The meeting was then adjourned whilst the Council was addressed in welcome by Mr. Rapinoja, the Government Secretary from the Finnish Ministry of Trade and Industry. Mr. Rapinoja welcomed the members of Council to Finland and then gave a brief outline of topics of interest to the Patent profession at present. These included the problem of translations of Patents, the forthcoming biotechnology Directive before the European Commission, utility models and patenting of software. His address was received with warm applause.

Subsequent to the finishing of Mr. Rapinoja's address, discussion then turned to the EU Directive on the protection of utility models. This led to an in-depth discussion of various points, particularly the nature of exclusions for such utility models and whether or not an inventive step equivalent to that of European Patents should be required. On this last point, the Council was divided almost equally.

The President then moved from the running order of the agenda and asked the By-Laws Committee to present their proposals for amendments of Rules 18 and

24 of the By-Laws, followed by their proposals for amendments of the rules for election of Council, terms of reference of the Electoral Committee and terms of reference of the Electoral Objections Committee, to allow completion of the relevant amendments in line with the forthcoming election. The amendments were unanimously approved by Council. Subsequent to this discussion, the EASY Committee then reported and requested permission to continue becoming involved in data transmission tests of the EPO. Permission was given by Council.

Finally, a brief report on the progress of distribution of the *epi* booklet on Patents in Europe was presented by the Vice-President, Leo Ryckeboer. Distribution of the booklets in the three official languages was going well and serious preparations were in hand for translation of the booklet into several non-official languages of the contracting states.

Regret was expressed that the European Patent Office had declined a request for financial assistance in preparing the booklets in the non-official languages.

The President then closed the meeting for the day.

The Council meeting was re-opened at 9 o'clock on the morning of 12th May 1998 and commenced with a brief demonstration by the Editorial Board of the *epi* home page, as well as links with the EPO home page and EPO home page links to many other sources of Patent information. The Editorial Board then presented their report of their activities since the last Council meeting. A request that they be allowed to take a fourth member on to the Editorial Board, with an appropriate amendment to the By-Laws, was approved by Council.

The President then turned to the status of the various projects that he had commenced upon taking up office relating to the future of the *epi*. Good progress is being made in all areas and links with the various National organisations are being strengthened at all times. Initial steps are being taken to identify areas in which *epi* may, in combination with other organisations, raise its profile. The home page was being reviewed and expanded and proposals for a training programme were being investigated. All in all, satisfactory progress was reported on all fronts.

The Chairman of the EPPC then presented proposals relating to the green paper, and in particular, the draft EPAC protocol. This led to great discussion of potential revocation proceedings on a Europe-wide basis and the benefit or otherwise of a common appeal court. Council decided to await the follow-up to be given by the EU Commission before taking any further steps.

Reports were then taken from the various committees, some of which appear elsewhere in epi Information. Committees reporting included Biotechnology, Disciplinary, EASY, Finances, EPO Finances, EPPC, Harmonisation and PQC. Among the interesting points emerging, it was clear from the EPO Finances Committee that the EPO was cash rich and that the National states were effectively using EPO resources to fund various internet projects. The EPPC report contained a number of interesting points relating to proposed forms for use when filing Appeals, the possibility of Appeal Boards adding an annex to the summons for oral proceedings in the same way the Opposition and Examining Divisions do at present, the possibility of providing official language translations with certified copies of European Patent Applications not filed in an official language, and potential problems with video conferencing. Finally, the Professional Qualifications Committee presented proposed European Qualifying Examination rule changes for 1999.

The Council then approved election of three members for the Electoral Committee. A proposed change of the Dutch equivalent of the term "European Patent Attorney" was agreed and the dates of the next Council meetings were finalised.

Finally, it was noted that the EPO travelling exhibition would be visiting various countries in Europe in the very near future and the meeting closed with a brief discussion on the status of past presidents within the Institute. The President subsequently declared the meeting closed.

A list of all decisions taken at this Council meeting is published herafter.

Draft List of Decisions, 44th Council meeting in Helsinki, 11-12 May 1998

1. The 1997 accounts were approved and the Treasurer was discharged from liability.
2. The revised budget for 1998 was approved.
3. Council approved the reappointment of Mr. VIVIAN as Member and Chairman of the Examination Board.
4. Council voted by a clear majority against discussing Code of Conduct matters at the *epi*/VPP seminar on 5-6 November 1998 in Ulm.
5. Council expressed itself by a slender majority in favour of an inventive step for utility models equivalent to that of European patents (see EPPC Report).
6. Council approved that the EPAC Draft Protocol should not be made public yet (see EPPC Report).
7. Council approved unanimously Article 18.1 of the By-Laws, regarding possible by-elections in the Disciplinary Committee during the term of office (see By-Laws Report).
8. Council approved unanimously the new Article 24.5 of the By-Laws, giving power to Council to appoint an Electoral Committee instead of leaving it to the President's decision (see By-Laws Report).

9. Council approved unanimously the revised Rules for election, thus allowing a simplification of the election procedure for the *epi* members as well as for the secretariat (see By-Laws Report).
10. Council approved unanimously the revised terms of reference of the Electoral Committee, adapted to the revised By-Laws and Election rules (see By-Laws Report).
11. Council approved unanimously the terms of reference of the newly created Electoral Objections Committee, based on the revised By-Laws (see By-Laws Report).
12. Council approved unanimously the revised terms of reference of the EASY Committee (see By-Laws Report).
13. Council approved the expansion of the Editorial Board by a fourth member.
14. Council approved sending a letter to the European Patent Office, informing that it is in favour of giving to the parties and their representatives the opportunity of using forms for filing an appeal (see EPPC Report).
15. Council approved sending a letter to the European Patent Office, informing that it is in favour of amending Article 11(2) of the Rules of Procedure of the Boards of Appeal to provide that communications in preparation of oral proceedings should be sent in every case. Furthermore, in view of the fact that summons to the oral proceedings are sometimes issued a long time in advance, *epi* would favour that such a communication be sent together with the summons to the oral proceedings (see EPPC Report).
16. Council approved sending a letter to the European Patent Office, asking for the possibility of providing the filed translation in one of the official languages with certified copies of European patent applications not filed in an official language (see EPPC Report).
17. Council approved sending a letter to the European Patent Office, asking for the possibility of holding oral proceedings in the traditional form if technical problems arise during oral proceedings by video conference. To date, if the applicant requests oral proceedings by video conference, he has to renounce in advance and irrevocably to his rights to oral proceedings in the traditional form (see EPPC Report).
18. Messrs. H. BREITER (CH), J J H VAN KAN (NL) and A. PARKES (IE) were elected as members of the Electoral Committee for the 1999 elections.
19. Council approved the proposed amendment to change the Dutch language equivalent for "European Patent Attorney" from "Europees Octrooivertegenwoordiger" to "Europees Octrooigemachtigde".

Rapport de la 44ème réunion du Conseil à Helsinki 11/12 mai 1998

La réunion du Conseil à Helsinki a été comme d'habitude un mélange de débats intéressants et de travail intensif. Plusieurs sujets importants ont été discutés et résolus.

Le Président, Arthur Huygens ouvre officiellement la séance lundi 11 mai 1998, à 9 heures. Après la nomination des scrutateurs et l'adoption de l'ordre du jour, les minutes de la 43ème réunion du Conseil à Strasbourg sont approuvées. Le Président présente ensuite le rapport de ses activités depuis la dernière réunion du Conseil. Son rapport est publié dans ce numéro de epi Information. Le Président indique que, à la moitié de son mandat, des progrès évidents ont été réalisés en vue de faire mieux connaître l'*epi* dans les cercles intéressés. Le Conseil note avec grand intérêt que des discussions relatives aux propositions de futures modifications sur la Convention sur le brevet européen sont toujours en cours à l'Office européen des brevets et qu'une Conférence Diplomatique pourrait avoir lieu. Le Président Huygens remercie M. Ryckeboer pour les fonctions de Vice-Président qu'il a assumées durant la première année d'exercice et souhaite la bienvenue à M. Holzer qui lui succède.

Le Secrétaire Général présente ensuite son rapport qui soulève une discussion animée au sujet de la participation future de l'*epi* à des séminaires mixtes.

Le rapport du Trésorier et celui des Commissaires aux comptes internes, y compris les comptes y afférents, sont présentés et approuvés. Puis le budget révisé pour 1998 est noté.

Le Conseil de l'*epi* est ensuite appelé à approuver la nomination de M. Vivian en tant que membre et Président du Jury d'Examen pour un nouveau mandat. Cette requête s'explique par le fait que le mandat de M. Vivian expire en octobre 1998 et que ce dernier quitte son poste à l'Office européen des brevets en octobre 1999. La nomination est approuvée à l'unanimité mais donne lieu à une discussion sur la traduction française de l'épreuve D 1998 de l'examen européen de qualification.

La séance est suspendue pendant que M. Rapinoja, Secrétaire d'Etat au Ministère du Commerce et de l'Industrie finlandais, souhaite la bienvenue en Finlande aux membres du Conseil et fait une brève présentation sur des sujets d'actualité intéressant la profession, à savoir la question des traductions des brevets, la prochaine Directive en biotechnologie devant la Commission européenne, les modèles d'utilité et la brevetabilité de programmes d'ordinateur. Sa présentation est très applaudie.

Après l'intervention de M. Rapinoja, la discussion s'oriente vers la Directive de l'Union Européenne sur la pro-

tection des modèles d'utilité. Cette question soulève une discussion sur des points divers, en particulier la nature d'exclusions pour de tels modèles d'utilité et la question de savoir si le même critère d'activité inventive du brevet européen doit être utilisé pour le modèle d'utilité. Sur ce dernier point, l'opinion du Conseil n'est pas tranchée.

Le Président passe ensuite quelques points de l'ordre du jour et demande à la Commission du Règlement Intérieur de présenter les propositions d'amendements aux Règles 18 et 24 du Règlement intérieur. Celles-ci sont suivies par les propositions d'amendements aux Règles pour les élections au Conseil, les propositions de modifications des attributions de la Commission pour les élections au Conseil ainsi que l'approbation des attributions de la Commission des Contestations de l'élection, en vue des prochaines élections. Le Conseil approuve les modifications à l'unanimité. La Commission EASY présente ensuite son rapport. La requête de la commission visant à continuer à participer aux tests de l'OEB sur la transmission des données est approuvée par le Conseil.

Le Vice-Président, Leo Ryckeboer, termine en faisant un bref rapport sur la distribution de la brochure *epi* sur les Brevets en Europe. La distribution de la brochure dans les trois langues officielles fonctionne bien et des préparations sont en cours pour la traduction de celle-ci dans plusieurs langues non officielles des pays contractants.

Le Conseil déplore que l'Office européen des brevets ait refusé d'apporter son soutien financier à la préparation des brochures dans les langues non officielles.

Le Président clôt la séance pour la journée.

La réunion du Conseil est réouverte le 12 mai 1998 à 9 heures. Les membres du Comité de Rédaction commencent par une brève démonstration du site Internet de l'*epi,* des liens existant avec le site de l'OEB et de ceux reliant le site de l'OEB avec d'autres sources d'information concernant les brevets. Le Comité de Rédaction présente un rapport de ses activités depuis la dernière réunion du Conseil. La requête visant à porter son effectif à quatre membres, avec une modification correspondante du Règlement Intérieur, est approuvée par le Conseil.

Puis le Président aborde le statut des divers projets qu'il a mis en route, au début de son mandat, concernant le futur de l'*epi*. Des progrès considérables sont en cours dans tous les domaines et les liens avec les différentes organisations nationales continuent d'être renforcés. Des mesures sont prises en vue d'identifier les domaines dans lesquels l'*epi*, conjointement avec d'autres organisations, peut se profiler. Le site Internet est étudié et élargi, et des propositions pour un programme d'éducation sont examinées. Bref, on peut noter des résultats satisfaisants sur tous les fronts.

Le Président de l'EPPC présente ensuite des propositions relatives au Livre vert, et en particulier au projet de protocole de l'EPAC. Celles-ci sont le point de départ d'une longue discussion sur une éventuelle procédure de révocation à l'échelle européenne et sur l'intérêt potentiel d'une cour d'appel commune. Le Conseil décide d'attendre la suite donnée par la Commission européenne avant de prendre d'autres mesures.

Les diverses commissions présentent ensuite leurs rapports dont quelques-uns sont publiés dans ce numéro de epi Information. Les rapports présentés comprennent Biotechnologie, Discipline, EASY, Finances, Finances de l'OEB, EPPC, Harmonisation et PQC. Parmi les points intéressants qui en ressortent, la Commission des Finances de l'OEB indique que les comptes de l'OEB sont extrêmement positifs et que les Etats nationaux utilisent efficacement les ressources de l'OEB pour créer divers projets Internet. Le rapport de l'EPPC contient un certain nombre de points intéressants, p. ex. l'utilisation de formulaires proposés pour les demandes de recours, la possibilité pour les Chambres de recours de joindre une annexe à la citation en procédure orale, comme cela se fait actuellement dans les Divisions d'Examen et d'Opposition, la possibilité de fournir la traduction déposée dans une des langues officielles avec les copies certifiées de demandes de brevets européens non déposées dans une des langues officielles et les problèmes techniques susceptibles d'intervenir lors des vidéo conférences. Enfin, la Commission de Qualification Professionnelle présente les propositions de modifications au Règlement de l'examen européen de qualification pour 1999.

Le Conseil approuve l'élection des trois membres de la Commission pour les élections de même qu'une proposition de changement de l'équivalent néerlandais du terme "European Patent Attorney". Les dates des prochaines réunions du Conseil sont fixées.

Enfin, le Conseil note que l'exposition itinérante de l'OEB sera présente dans de nombreux pays d'Europe dans un futur très proche. La réunion se termine sur une brève discussion au sujet du statut des anciens présidents de l'Institut. Le Président déclare la réunion close.

Une liste des décisions prises à cette réunion du Conseil est publiée ci-après.

Projet de Liste des Décisions, 44ème réunion du Conseil à Helsinki, 11 – 12 mai 1998

1. Les comptes pour l'année 1997 sont approuvés et le quitus est donné au Trésorier.
2. Le budget révisé pour 1998 est approuvé.
3. Le Conseil approuve la re-nomination de M. VIVIAN comme Membre et Président du Jury d'Examen.
4. Le Conseil se prononce, à une forte majorité, contre une discussion sur des questions relatives au Code de conduite, au séminaire *epi*/VPP qui se tiendra à Ulm les 5 et 6 novembre 1998.
5. Le Conseil approuve, à une faible majorité, que le même critère d'activité inventive du brevet européen soit utilisé pour les modèles d'utilité (voir le rapport de l'EPPC).
6. Le Conseil approuve que le projet de Protocole EPAC ne soit pas encore rendu public (voir le rapport EPPC).
7. Le Conseil approuve à l'unanimité l'article 18.1 du Règlement Intérieur, concernant des élections complémentaires pouvant intervenir au sein de la Commission de discipline durant l'exercice (voir le rapport de la Commission du Règlement intérieur).
8. Le Conseil approuve à l'unanimité le nouvel Article 24.5. du Règlement Intérieur qui autorise le Conseil à nommer une Commision pour les élections au Conseil, au lieu d'en laisser la décision au Président (voir le rapport de la Commission du Règlement intérieur).
9. Le Conseil approuve à l'unanimité la version révisée des Règles pour les élections qui permettra de simplifier la procédure d'élection pour les membres de l'*epi* ainsi que pour le Secrétariat (voir le rapport de la Commission du Règlement intérieur).
10. Le Conseil approuve à l'unanimité la version révisée des attributions de la Commission pour les élections, adaptée à la version modifiée du Règlement intérieur de même qu'à celle des Règles pour les élections (voir le rapport de la Commission du Règlement intérieur).
11. Le Conseil approuve à l'unanimité les attributions de la Commission des Contestations de l'élection, nouvellement créée, qui se basent sur la version modifiée du Règlement intérieur (voir le rapport de la Commission du Règlement intérieur).
12. Le Conseil approuve à l'unanimité la version révisée des attributions de la Commission EASY (voir le rapport de la Commission du Règlement intérieur).
13. Le Conseil approuve la requête du Comité de Rédaction visant à porter son effectif à quatre membres.
14. Le Conseil approuve l'envoi d'un courrier à l'Office européen des brevets, donnant son avis favorable sur l'utilisation par les parties ou leurs représentants de formulaires pour former un recours (voir le rapport de l'EPPC).
15. Le Conseil approuve l'envoi d'un courrier à l'Office européen des brevets, informant qu'il considère favorablement une modification de l'Article 11(2) du Règlement de procédure des Chambres de recours afin de permettre que les informations pour la préparation de procédures orales soient envoyées pour chaque cas. De plus, la citation en procédure orale étant parfois communiquée longtemps à l'avance, l'*epi* est favorable à l'envoi de cette information avec la citation en procédure orale (voir le rapport de l'EPPC).
16. Le Conseil approuve l'envoi d'un courrier à l'Office européen des brevets pour demander que la traduction déposée dans une des langues officielles puisse être délivrée avec les copies certifiées de demandes de brevets européens non déposées dans une des langues officielles (voir le rapport de l'EPPC).
17. Le Conseil approuve l'envoi d'un courrier à l'Office européen des brevets afin de demander qu'une procédure orale puisse avoir lieu sous sa forme traditionnelle au cas où des problèmes techniques surviendraient pendant une procédure orale par vidéo conférence. Actuellement, si le déposant demande une procédure orale par vidéo conférence, il doit renoncer à l'avance et irrévocablement à tout droit à une procédure orale sous sa forme traditionnelle (voir le rapport de l'EPPC).
18. MM. H. BREITER (CH), J J H VAN KAN (NL) et A. PARKES (IE) sont élus membres de la Commission pour les élections au Conseil.
19. Le Conseil approuve la proposition de changer l'équivalent en néerlandais de "European Patent Attorney" de "Europees Octrooivertegenwoordiger" en "Europees Octrooigemachtigde".

President's Report to the Council covering the period from October 1997 – May 1998

A. V. Huygens (NL)

1. Following the Council meeting in Strasbourg on 3 October 1997, I had great pleasure in welcoming so many distinguished guests, members of the *epi* and accompanying persons the next day at the Symposium and Gala Dinner, which were organised to celebrate the 20th anniversary of the *epi*. I believe these events were a great success and I thank again all people who contributed to it.
2. I was pleased to receive an invitation to attend the ceremony for the celebration of the 20th anniversary of the European Patent Office in Munich on 7 October 1997 and to give a brief speech, which I did. Several members of the Board of the *epi* including the two Vice Presidents and the Secretary General were also able to attend.
3. Vice President Leo Ryckeboer and I represented the *epi* at the Administrative Council meeting on 8 October 1997 in Munich. A report of that meeting is annexed.
4. On 8 October 1997 I signed a letter to the Board of Appeal 3.3.4 enclosing observations by the *epi* under Article 115 EPC in a European patent application of Novartis AG, relating to the important subject of exclusions contained in Article 53(b) EPC. The necessary preparations were made by Mr. Chris Mercer, Secretary of the Biotech Committee.
5. On 22 and 23 October 1997 Vice President Leo Ryckeboer and I represented the *epi* at the 2nd International Symposium on Reduction of Patent Costs in Paris, jointly organised by AIPLA, FICPI and ICC. The opportunity was taken to meet with Officers of the Board incidentally present to further prepare *epi*'s comments on the Green Paper and the Hearing in Luxembourg.
6. On 6 November 1997 Axel Casalonga, Chairman of the EPPC, and I met with Mr. Kober, Mrs. Remandas, Mr. Schatz, Mr. Kolle and Mr. Stohr to discuss current issues and in particular the Green Paper. I highly appreciated that the *epi* was given ample opportunity to exchange views with President Kober and his staff.
7. I was invited to a meeting of the Administrative Council of CEIPI in Strasbourg on 7 November 1997 and was pleased that past President Elisabeth Thouret-Lemaître was prepared to represent the *epi* in my absence and to write a short report.
8. As previously reported, the annual meetings of chairmen of the Boards of Appeal with representatives of the *epi*, UNICE and IFIA, which were interrupted last year, have been resumed with a meeting on 10 November 1997, chaired by Mr. Messerli. I participated in the *epi* delegation which further consisted of the Chairman, the two Vice Chairmen and three members of the EPPC. A report of this meeting is contained in the EPPC report.
9. On 10 November 1997 the *epi* was visited by a delegation of the Japan Patent Attorneys Association for an exchange of views on the regulations regarding the practice of patent attorneys in various countries on the basis of an extensive questionnaire which was sent in advance. The *epi* was represented by Secretary General Rüdiger Zellentin who received the delegation and gave the requested information.
10. I was pleased to represent the *epi*, as an invited guest, at the 11th General Assembly of the Asian Association of Patent Attorneys (APAA) which was held in Sydney from 13-16 November 1997.
11. An invitation to speak at the INNO*FORUM '97 in Brussels on 18 November 1997 on "The future of patent protection in Europe" was passed to Vice President Leo Ryckeboer, who attended and spoke at the meeting.
12. The *epi* was invited to the hearing on the Green Paper held jointly by the Luxembourg Presidency and the Commission in Luxembourg on 25 and 26 November 1997. Since Axel Casalonga and I were unable to attend. I was very pleased that Vice-President Ryckeboer and the two Vice-Chairmen of EPPC, Wim Hoogstraten and Peter Shortt, could take over and represented the *epi* so well.
13. Vice President Leo Ryckeboer and I attended the Administrative Council meeting at the EPO in Rijswijk on 2-5 December 1997. A report of that meeting is annexed. We also attended the celebration of the 20th anniversary of the EPO in The Hague.
14. As previously reported, I received an invitation for a Round Table of UNION on "Patenting of Computer Software" in Munich on 9-10 December 1997. I was pleased that Vice President Walter Holzer and Roger Burt, Secretary of EPPC, were able to represent the *epi*. A report of this meeting is contained in the EPPC report.
15. On 20 January 1998, I started my round of consultations with national patent organisations in the EPC members states with a meeting with the Board of the Netherlands Institute of Patent Agents, to discuss possibilities of further collaboration between our two organisations.
16. I was pleased to participate in the opening of a Symposium together with Mr. Kober and Mr. Hieber (Representative of the European Commission in Munich) on the "Kooperation der Europäischen Union mit Asien am Beispiel des gewerblichen Rechtsschutzes", which was held at the EPO in Munich on 21 January 1998. The welcome speeches of Mr. Kober and myself were published in epi Information 1/1998.
17. Axel Casalonga and I attended the 6th meeting of the Committee on Patent Law in Munich on 27-

28 January 1998. A short report of that meeting is annexed to the EPPC report. On the second day of the meeting I had an informal lunch meeting with Mrs. Dybdahl (DG5) where we discussed ongoing topics such as education, permanent education and the EQE.

18. On 28 January 1998, I had a meeting in Munich with the Presidents of the Patentnaltsammer and VPP (German industry), Prof. Dr. Uwe Dreiss and Dr. Klaus Höller, respectively, to discuss possibilities for further collaboration between our organisations. Secretary General Rüdiger Zellentin joined us.
19. On 2 February 1998 I was pleased to be invited by the Netherlands Institute of Patent Agents for a meeting to welcome the newly admitted members of this Institute. I gave a short speech touching on the next step in the career which these young members likely want to achieve, viz. passing the EQE and becoming members of the *epi*.
20. I was pleased to receive an invitation from the Bundesverband Deutscher Patentanwälte e.V. for a parliamentary evening in Bonn on 4 February 1998. Secretary General Rüdiger Zellentin represented the *epi*.
21. On 26 February 1998, I was pleased to give a speech about the *epi* at a discussion meeting with young patent engineers at Philips in Eindhoven.
22. On 2 March 1998, I had a meeting in London with Mr. Robert Beckham, President of the Chartered Institute, to discuss possibilities for further collaboration between our organisations.
23. Vice President Leo Ryckeboer and I represented the *epi* at the Administrative Council meeting on 4 March 1998 in Munich. A report of that meeting is annexed.
24. On 6 March 1998, I had a consultative meeting in Eindhoven with Mr. Jan Galama, President of the IP committee of Dutch industry.
25. On 9 March 1998, Mrs. Remandas and I opened the Spring Exhibition of *epi* artists in Munich which was organised by Mrs. Dominique Monéger assisted by the EPO Communication/Culture Team.
26. I received an invitation from WIPO to attend the 32nd Series of Meetings of the Assemblies of the Member States of WIPO in Geneva on 25-27 March 1998. Vice President Walter Holzer represented the *epi*.
27. I was pleased to accept an invitation from the Irish Association of Patent and Trade Mark Agents as the guest of honour at the Annual Dinner in Dublin on 3 April 1998. I also had a meeting with Mr. Peter Shortt, President, and other Board members of the Association to discuss possibilities for further collaboration between our organisations.
28. I was pleased to receive an invitation from the EPO to appoint two *epi* delegates for the EPO stand at the Hannover Messe 1998 which will be held from 21-23 April 1998. As in previous years, Mrs. Jutta Kaden and Mr. Frank Barendregt represented the *epi*.
29. On 23 April 1998, I had a meeting in Paris with Mr. Henri Dupont, President of ASPI (French Industry) and Mr. Jean-Jacques Martin, President of CNCPI (French private practice), to discuss possibilities for further collaboration between our organisations.
30. I was pleased to accept an invitation from the VIPS (Swiss industry) to give a speech at the annual meeting in Lenzburg on 25 April 1998. I also had a meeting with Mr. Ernest Klein, President of VIPS, Mr. Franz Fischer, President of VESPA (Swiss private practice) and other Board members of VIPS, to discuss further collaboration between our organisations.
31. I was pleased to receive an invitation from the VPP (German industry) to attend a meeting in Berlin on 7-8 May 1998. On 6 May 1998, I had a second meeting with the Presidents of VPP and the Patentanwaltskammer, which was also attended by Mr. Rolf Einsele, Vice-President of VPP, and the two German *epi* Board members, Mr. Hermann Peuckert and Secretary General Rüdiger Zellentin.
32. I was pleased to accept an invitation to speak at the Symposium for the celebration of the 70th anniversary of the Finnish Association of Patent Agents in Helsinki on 8 May 1998.
33. I received an invitation to a meeting of the Administrative Council of CEIPI in Paris on 12 May 1998, which coincided with the *epi* Council meeting in Helsinki. Since no substitutes were available either, the *epi* was not represented at this meeting.
34. The 7th meeting of the Committee on Patent Law was held in Munich on 12-14 May 1998. The *epi* was represented by Mr. Wim Hoogstraten and Mr. Peter Shortt, Vice-Chairmen of the EPPC.
35. In conclusion, I would like to say that it has been an exciting first year as your President which I greatly enjoyed. Various initiatives have been taken and much work has been done by the team in which I participated and which I was pleased to chair. I should therefore like to thank Vice Presidents Leo Ryckeboer and Walter Holzer, Secretary General Rüdiger Zellentin, Treasurer Knud Erik Vingtoft, the *epi* Board and, not least, the Secretariat for their indispensable help, support and loyalty.

Treasurer's Report (Summary)

K.E. Vingtoft (DK)

The year 1997 resulted in an increase of our assets by 198 thousand DM. Thus, the accounts show a surplus of 198 thousand DM in contrast to a budgeted deficit of 17 thousand DM. The actual income was higher and the actual expenditures were lower than budgeted. Our booked assets now amount to about 2,5 million DM.

The non-paid membership subscriptions booked as "receivables" now amount to only 1.79% of our total assets. For the year 1994 the corresponding percentage was 7.71 and the percentage has been decreasing since then.

epi Expenses and Income 1997

	Budget 1996	Actual 1996	Budget 1997	Actual 1997	Shortfall in receipts Surplus of expenditure 1997	Surplus of receipts Shortfall in expenditure 1997
I. Income						
1. Subscriptions	1.632.000,—	1.676.098,61	1.671.000,—	1.685.930,60	-,—	14.930,60
2. Bank interests	110.000,—	77.148,33	110.000,—	71.128,25	./. 38.871,75	-,—
3. Others	35.000,—	131.094,51	40.000,—	111.013,37	-,—	71.013,37
	1.777.000,—	1.884.341,45	1.821.000,—	1.868.072,22	./. 38.871,75	85.943,97
II. Expenses						
1. Meetings						
Council	360.000,–	353.707,97	374.400,—	343.230,12	-,—	31.169,88
Board	60.000,—	71.597,92	62.400,—	53.819,08	-,—	8.580,92
Committees	260.000,—	211.794,18	270.400,—	237.351,23	-,—	33.048,77
Delegates & Others	100.000,—	70.916,42	154.000,—	158.682,29	4.682,29	-,—
2. Others						
epi-Information	100.000,—	74.137,07	100.000,—	82.911,69	-,—	17.088,31
By-Laws & non-foreseeable	10.000,—	3.842,—	130.000,—	68.602,54	-,—	61.397,46
ECC-Letter	125.000,—	124.397,66	-,—	27.948,69	27.948,69	-,—
3. President (+ Vice President)	8.000,—	9.066,83	8.000,—	22.289,62	14.289,62	-,—
4. Treasurer and Treasury						
Treasurer and Deputy	3.000,—	7.465,—	10.000,—	6.220,—	-,—	3.780,—
Bookkeeping	6.000,—	1.250,—	1.000,—	1.355,—	355,—	-,—
Audit	25.000,—	23.755,60	25.000,—	20.896,57	-,—	4.103,43
Bank charges	10.000,—	13.768,16	12.000,—	17.383,36	5.383,36	-,—
5. Secretariat						
Expenditure on personnel	575.000,—	459.204,24	440.000,—	379.471,73	-,—	60.528,27
Expenditure on materials						
EPO rent	100.000,—	85.464,96	100.000,—	85.224,96	-,—	14.775,04
Phone, Fax	18.000,—	11.055,32	18.000,—	14.805,83	-,—	3.194,17
Postage	55.000,—	43.245,07	55.000,—	52.500,55	-,—	2.499,45
Copy, print	20.000,—	36.750,74	25.000,—	31.440,04	6.440,04	-,—
Office supplies	10.000,—	12.825,10	16.000,—	8.779,86	-,—	7.220,14
Maintenance/Repair	2.000,—	2.925,08	3.000,—	8.462,78	5.462,78	-,—
Insurances	1.500,—	624,60	1.500,—	666,40	-,—	833,60
Secretary General+Deputy	2.000,—	1.142,20	2.000,—	4.684,95	2.684,95	-,—
Travel personnel	6.000,—	574,17	6.000,—	1.318,25	-,—	4.681,75
Acquisitions						
Soft-/Hardware	10.000,—	703,48	10.000,—	12.717,07	2.717,07	-,—
Office machines	3.000,—	-,—	5.000,—	29,95	-,—	4.970,05
Office equipment	2.000,—	18.689,09	3.000,—	-,—	-,—	3.000,—
Training	5.000,—	2.312,25	5.000,—	1.695,—	-,—	3.305,—
Representation	1.000,—	604,86	1.000,—	418,16	-,—	581,84
6. Extraordinary expenses	5.000,—	1.000,—	-,—	26.775,50	26.775,50	-,—
	1.882.500,—	1.642.819,97	1.837.700,—	1.669.681,22	96.739,30	264.758,08
III. Surplus of receipts/expenses	./. 105.000,—	241.521,48	./. 16.700,—	198.391,—	Surplus DM: 215.091,–	

epi Balance Statement on 31st December 1997

Assets

		DM	DM	DM	previous year (thousand) DM
A.	**Fixed assets**				
	I. Material assets		1,—		—
	Office machines and equipment				
	II. Finacial assets		1.479.400,—	1.479.401,—	1.005
	Securities portfolio				
B.	**Receivables**				
	I. Membership subscription and others				
	1. Membership subscriptions	45.463,08			54
	2. Others	32.037,76	77.500,84		15
	II. Bank & Cash (incl. money deposits		976.848,56	1.054.349,40	1.320
				2.533.750,40	2.394

Liabilities

		DM	DM	DM	previous year (thousand) DM
A.	**Net assets**				
	as of 01.01.1997			2.125.966,34	1.884
	results for the year			198.391,—	242
	as of 31.12.1997			2.324.357,34	2.126
B.	**Debts**				
	I. Provisions		39.900,–		56
	II. Liabilities				
	1. Bank	5,88			—
	2. Deliveries and services	32.179,76			93
	3. Others	137.307,42	169.493,06	209.393,06	119
				2.533.750,40	2.394

Report of the Committee on Biotechnological Inventions

B. H. Jensen (DK)

I. Introduction

Since the last Council meeting in Strasbourg on October 3, 1997, the Committee has had a meeting on November 1997 in Munich.

At the meeting the following officers were elected:

Chairman:	B. Hammer Jensen
Vice Chairman:	F. Chrétien
Secretary:	C. Mercer

II. Substantive Questions

A. Question 1 – EU Draft Directive on the legal protection of biotechnological inventions

The draft directive is now progressing to its second vote in the EU parliament, scheduled for May 12, 1998. The Common Position of the Council and Commission took all amendments passed in the first vote into consideration, but as expected a number of amendments have been proposed for the second vote. Hopefully Parliament accepts the common position without amendments thereby ending a 10 year long debate. The directive may then come into force in 1999 or 2000.

When the Directive is passed, the various governments may attempt to have the EPC amended. This could prove difficult because of Switzerland, if a Swiss national referendum goes against the patenting of biotechnological inventions.

B. Question 8 – UNCED Convention on Biological Diversity

The Convention contains a provision relating to intellectual property rights. Although this provision appears to favour such rights, many pressure groups are attempting to use it to insert limitations into patent laws. For instance, one of the amendments proposed for the second vote on the EU Directive relating to a requirement for indication of place of "origin and proof" and proof of "legal access" and "informed consent" has been inspired by this Convention. The same requirement is being raised in connection with the "TRIPS and the environment" issue.

It therefore appears to be necessary to observe closely developments in relation to the Convention as regards intellectual property rights. The members of the Committee were urged to contact their national delegation to put forward the benefits of protecting biotechnological inventions by use of intellectual property rights such as patents.

The Chairman plans to be attenting the COnference of the Parties in Bratislava in the days of May 1 to 5, 1998. The question of access will be discussed on May 8, and benefit sharing on May 12.

C. Question 10 – Scope of Claims in Biotech Patents

Patenting Transgenic Plants before the EPO

An Appeal Board has referred a number of questions to the Enlarged Board: The Committee has prepared an amicus curiae brief to the Enlarged Board, a copy of which has been distributed to Council members. The brief is in line with the one filed by the *epi* in connection with the PGS case, but addresses the questions specifically.

Report of the By-Laws Committee

C. E. Eder (CH)

Bericht über die Arbeiten des Geschäftsordnungsausschusses im Zeitraum vom 13. Mai 1997 bis 2. Oktober 1997

In seinen Sitzungen vom 12.6.1997 (Gemischte Kommission), 27.6.1997, 19.8.1997, 18.9.1997, 2.10.1997 hat der Ausschuss folgende Unterlagen in den 3 Amtssprachen zur Genehmigung durch den Rat redigiert:

1. Vorschlag an den Rat betreffend die Kompetenzen des Vorstandes und des Präsidenten
   - zur Ergänzung des Art. 13 der Geschäftsordnung durch einen neuen Art. 13.3., und
   - zur Änderung des Beschlusses betr. Reisekostenrückerstattung.
2. Überarbeitung der Zuständigkeit des Harmonisierungs-Ausschusses
3. Überarbeitung der Zuständigkeit des Ausschusses für berufliche Qualifikation.
4. Vorschlag an den Rat
   - zur Neufassung des Art. 18 der Geschäftsordnung

- zur Ergänzung des Art. 24 der Geschäftsordnung durch einen neuen Art. 24.5

beides als Vorbereitung für die Überarbeitung der Regeln für die Wahlen zum Rat (Wahl und Amtsdauer des Wahl-Ausschusses).

5. Vorschlag an den Rat zur Änderung von Art. 38.1 der Geschäftsordnung (Antragstellung im Rat).
6. Die Änderung der Regeln für die Wahlen zum Rat zwecks Vereinfachung der Wahlen gemäss den Empfehlungen der Gemischten Arbeitsgruppe (gebildet durch den Generalsekretär und eine Delegation des Wahlausschusses und des Geschäfts-ordnungsausschusses) wurden begonnen und werden dem Rat an seiner Tagung in Helsinki zur Genehmigung vorgelegt.

Report of the By-Laws Committee on the activities in the time between 13 May 1997 and 2 October 1997

In the working sessions of 12.6.1997 (mixed working group), 27.6.1997, 19.8.1997, 18.9.1997, 2.10.1997, the By-Laws Committee has finalised in the three official languages the following documents for submission to the Council:

1. Propositions to the Council concerning the competences of the Board and of the president
   - for a supplement to article 13 of the By-Laws with a new article 13.3, and
   - for a modification concerning the refund of travel expenses.
2. Revision of the terms of reference of the Harmonization Committee
3. Revision of the terms of reference of the professional qualification Committee.
4. Propositions to the Council
   - for a new version of article 18 of the By-Laws
   - for a supplement to article 24 of the By-Laws with a new article 24.5

   both as preparing steps for the revision of the rules for election of Council (election and term of office of the electoral Committee).
5. Proposition to the Council concerning the modification of article 38.1 of the By-Laws (presentation of motions to the Council).
6. The modification of the rules for election of Council according to the recommendations of the mixed working group (formed by the Secretary General and a delegation of the electoral Committee and the By-Laws Committee) has been started.It is intended to submit the modified rules for agreement to Council on the meeting in Helsinki.

Rapport de la Commission du Règlement intérieur sur ses travaux effectués entre le 13 mai 1997 et le 2 octobre 1997

Lors des sessions de travail du 12.6.1997 (groupe de travail mixte), 27.6.1997, 19.8.1997, 18.9.1997, 2.10.1997, la commission a rédigé les documents suivants dans les trois langues officielles pour les présenter au Conseil:

1. Proposition au Conseil concernant les compétences du Bureau et du président
   - concernant un supplément à l'article 13 du Règlement intérieur par un nouvel article 13.3., et
   - concernant une modification de la décision au sujet du remboursement des frais de voyage.
2. Révision des attributions de la Commission d'harmonisation.
3. Révision des attributions de la Commission de qualification professionnelle.
4. Proposition au Conseil
   - concernant la nouvelle version de l'article 18 du Règlement intérieur
   - concernant le supplément à l'article 24 du Règlement intérieur par un nouvel article 24.5

   tous deux pour préparer la révision des règles aux élections au Conseil (élection et période d'exercice de la Commission électorale).
5. Proposition au Conseil pour la modification de l'article 38.1 du Règlement intérieur (présentation de motions au Conseil).
6. La modification des règles aux élections au Conseil ayant pour but de simplifier les élections selon les recommandations du groupe de travail mixte (formé par le secrétaire général et une délégation de la Commission électorale et de la Commission du Règlement intérieur) a été prise en main. Il est prévu de les présenter au Conseil lors de la session à Helsinki.

Bericht an den Rat betreffend Vorschläge des Geschäftsordnungsausschusses

- zur Änderung der Artikel 18 und 24 der Geschäftsordnung
- zur Änderung der Regeln für Wahlen zum Rat
- zur Änderung der Zuständigkeit des Wahlausschusses
- zur Zuständigkeit des Wahl-Einspruchsausschusses

1. Um in Zukunft bei der Wahl zum Rat zu erreichen, dass die Zahl der ungültigen Stimmabgaben nicht mehr so gross ist wie bisher, hat der Rat bei seiner 42. Sitzung vom 12./13. Mai 1997 in München beschlossen, einen ad hoc Ausschuss zur Vereinfachung der Regeln für Wahlen zum Rat einzusetzen. Er hat aber für diesen Ausschuss keine Mitglieder ausgewählt. Daher haben der Generalsekretär und der Präsident des Wahlausschusses sowie der Präsident des Geschäftsordnungsausschusses beschlossen, für die rechtzeitige Durchführung der Arbeiten zu sorgen. Sie haben eine Arbeitsgruppe gebildet aus dem Generalsekretär und je einer Delegation aus den beiden Ausschüssen. Diese Arbeitsgruppe hat bei der Sitzung vom 12. Juni 1997 alle mit der Wahl zusammenhängenden Fragen besprochen und dem Geschäftsordnungsausschuss Wünsche und Weisungen für die Änderung der Geschäftsordnung, der Regeln für Wahlen zum Rat und der Zuständigkeit des Wahlausschusses sowie der diesbezüglichen Formulare mitgeteilt. Bei den Sitzungen vom 27. Juni, 19. August, 18. September, 2. Oktober und 15. Dezember 1997 hat der Geschäftsordnungsausschuss die Regeln für Wahlen zum Rat auftragsgemäss überarbeitet. Der Generalsekretär, der Wahlausschuss und der Geschäftsordnungsausschuss ersuchen den Rat, die vorliegenden Regeln anzunehmen.
2. Die Änderung der Regeln für Wahlen zum Rat machte auch eine Änderung der "Zuständigkeit des Wahlausschusses" nötig. Diese wurde daher entsprechend angepasst. Der Rat wird gebeten, die neue Fassung der Zuständigkeit zu beschliessen.
3. Da die Amtszeit des Wahlausschusses (*epi* 3.1.2, bisher Regel 12) nicht mit der Amtszeit des Rates und der übrigen Ausschüsse übereinstimmt, ist es nötig, in der Geschäftsordnung den Artikel 18.1 zu ändern und den Artikel 24 zu ergänzen. Der Rat wird gebeten, diese Änderungen zu genehmigen.
4. Bis jetzt existiert noch keine "Zuständigkeit des Wahl-Einspruchsausschusses". Daher wurde auch diese redigiert und der Rat wird ersucht, sie zu genehmigen.
5. Zum neuen Wortlaut von Artikel 18.1 ist noch folgendes zu bemerken:
   a) Am 12./13. Mai 1998 hat der Rat bei seiner 42. Sitzung in München auf Antrag des Präsidenten des Disziplinarrates beschlossen, daß 5 Mitglieder, die nicht zur Wiederwahl antreten, im Disziplinarrat verbleiben, bis die von ihnen bearbeiteten anhängigen Fälle abgeschlossen sind. Da der Geschäftsordnungsausschuss annimmt, dass auch in Zukunft ein Präsident des Disziplinarrates gleichartige Anträge stellen wird, hielt er es für nötig, den Artikel 18.1 der Geschäftsordnung entsprechend anzupassen. Der Geschäftsordnungsausschuss hat daher in seiner Sitzung am 2. Oktober 1997 in Strassburg bei der Überarbeitung des Art. 18.1 der Geschäftsordnung versucht, den Art. 18,1 so zu ändern, dass derartige Ratsbeschlüsse auch in Zukunft möglich sein sollten. Die Änderung wurde jedoch in der Sitzung vom 3. Oktober 1997 des Rats in Strassburg nicht behandelt.
   b) Der Vorstand hat dann in seiner Sitzung vom 14. März 1998 in Brüssel den Wunsch geäussert, dass der an die Mitglieder des Rats am 3. Oktober 1997 verteilte Entwurf geändert werde,
      1. weil es unzweckmässig sei, dass der Disziplinarrat aus Mitgliedern verschiedener Kategorien bestehe, nämlich gewöhnlichen Mitgliedern und zusätzlich solchen, die nur für eine bestimmte Aufgabe zur Verfügung stehen,
      2. weil durch eine derartige Zweiteilung in die Rechte des neuen Präsidenten des Disziplinarrates eingegriffen werde.
   c) Der Geschäftsordnungsausschuss hat daher den Artikel 18.1 der Geschäftsordnung, gemäss dem Wunsch des Vorstands, erneut überarbeitet, sodass der nun vorliegende Text den Wünschen des Vorstands entspricht.

Report to the Council concerning proposals of the By-Laws Committee

- for the modification of Article 18 and 24 of the By-Laws
- for the modification of the Rules for Election of Council
- for the modification of the Terms of Reference of the Electoral Committee
- for the Terms of Reference of the Electoral-Objections Committee.

1. In order to reach in future at the election of Council that the number of the void ballot papers are no longer so important, the Council decided at the 42nd meeting held on 12/13 May, 1997 in Munich

to set up an ad hoc committee for simplifying the Rules for election of Council. However, the Council did not appoint members of the committee. Therefore, the Secretary General and the chairmen of the Electoral Committee and of the By-Laws Committee decided to attend to this matter. They formed a working group consisting of the Secretary General and representatives of both committees. At a meeting on 12 June, 1997, this working group discussed the matter in connection with the Rules for Election of Council and gave to the By-Laws Committee requirements and instructions for the modification of the By-Laws, of the Rules for Election of Council, of the Terms of Reference of the Electoral Committee and of the relevant ballot documents. Consequently, the By-Laws Committee has worked on the new Rules for Election of Council at the meetings of June 27, August 19, September 18, October 2 and December 15, 1997. The Secretary General, the Electoral Committee and the By-Laws Committee ask the Council to accept the present rules.

2. The modification of the Rules for Election of Council imposed also a modification of the "Terms of Reference of the Electoral Committee". These terms of reference have been adapted accordingly and the Council is asked to accept also the new version of the terms of reference.

3. At the moment, the term of the Electoral Committee (*epi* 3.1.2, present Rule 12) is not the same as that of Council and other committees, which is not in accordance with the By-Laws now in force. Therefore, it is necessary to amend Article 18.1 and 24 of the By-Laws to bring them into conformity with actual practical requirements. The Council is asked to accept these texts.

4. Till now, no "Terms of Reference of the Electoral-Objections Committee" exist. These have now been redacted and the Council is asked to approve them.

5. As to the wording of Article 18.1:
   a) The Council decided at its 42nd meeting on 12/13 May, 1997 in Munich, at the request of the chairman of the Disciplinary Committee, that five members who are not standing for re-election shall remain on the Disciplinary Committee until the pending cases which they are examining are finalised. The By-Laws Committee took this decision into consideration and also considered that similar request might be made in the future and therefore recommends that the By-Laws be amended in this regard. At its meeting on 2 October, 1997 in Strasbourg, the By-Laws Committee tried to change Article 18.1 in a way that these kind of decisions of Council should be possible also in the future. Thus, the modification has not been treated in the session of the Council of 3 October, 1997 in Strasbourg.
   b) The Board asked at its session of 14 March, 1998 in Brussels to modify the draft distributed on 3 October, 1997 to the members of the Council
      1. as it seems unsuitable that the Disciplinary Committee consists of two categories of members, i.e. the simple members and in addition to them members who are only available for a determined function,
      2. as such a division encroaches on the right of the new chairman of the Disciplinary Committee.
   c) Therefore, the By-Laws Committee has again modified Article 18.1 of the By-Laws so that the present text is now in accordance with the request of the Board.

Rapport au Conseil concernant les propositions de la Commission du Règlement Intérieur

- en vue d'une révision de l'article 18 du Règlement intérieur
- en vue d'une révision des Règles pour les élections au Conseil
- en vue d'une révision des Attributions de la Commission pour les élections
- en vue des Attributions de la Commission des Contestations de l'élection

1. Afin de réduire le nombre des bulletins déclarés nuls aux élections au Conseil, le Conseil a décidé lors de sa 42ème session à Munich en date du 12/13 mai 1997 de constituer une commission ad hoc pour améliorer la rédaction des règles pour les élections au Conseil sans en désigner toutefois les membres. Le Secrétaire Général, le président de la Commission pour les élections et le président de la Commission du Règlement intérieur ont pris en main cette responsabilité et ont constitué un groupe de réflexion comprenant le Secrétaire Général ainsi que des représentants de ces deux Commissions. Celui-ci s'est réuni le 12 juin 1997 et a fourni ses recommandations en vue d'une révision du Règlement intérieur ainsi que de la réglementation relative aux élections au Conseil et documents y afférents. La Commission du Règlement intérieur s'est réunie à diverses reprises pour entreprendre la révision des Règles pour les élections au Conseil, dont le 27 juin, le 9 août, le 18 septembre, le 2 octobre et le 15 décembre 1997. Le Secrétaire Général, la Commission pour les élections et la Com-

mission du Règlement intérieur recommandent l'adoption de cette nouvelle formulation des Règles pour les élections au Conseil.

2. Les "Attributions de la Commission pour les élections" ont dû être adaptées et le Conseil est prié de consentir à cette révision.
3. En pratique, le bon déroulement des élections impose une durée d'exercice de la Commission pour les élections (visées par *epi* 3.1.2, Règle 12) différente de la durée d'exercice du Conseil et des autres Commissions. Il faut donc envisager la modification des articles 18.1 et 24 du Règlement intérieur. Le Conseil est prié de donner son accord à cette nouvelle formulation des articles 18.1 et 24 du Règlement intérieur.
4. Les "Attributions de la Commission des Contestations de l'élection" on été établies par la Commission du Règlement intérieur. Le Conseil est prié de les approuver.
5. Remarque au sujet de l'article 18.1:
   a) Lors de sa 42ème session des 12/13 mai 1997 le Conseil a décidé, sur la requête du Président de la Commission de Discipline, que cinq membres qui ne se présentent pas à l'élection puissent être maintenus dans leurs fonctions au sein de leurs chambres de discipline respectives pour terminer les cas en suspens. La Commission du Règlement intérieur a pris en considération cette demande et, dans la mesure où, selon l'opinion de la Commission du Règlement intérieur, cette demande est susceptible de se reproduire, recommande une modification du Règlement intérieur en ce sens. Lors de la session du 2 octobre 1997 à Strasbourg, la Commission du Règlement intérieur a entrepris la modification de l'article de l'article 18.1 du Règlement intérieur de manière que de telles décisions du Conseil demeurent possibles aussi à l'avenir. Toutefois, cette modification n'a pas été traitée lors de la session du Conseil du 3 octobre 1997.
   b) le Bureau a demandé lors de sa session du 14 mars 1998 que la proposition distribuée le 3 octobre 1997 aux membres du Conseil soit révisée,
      1. puisqu'il est inopportun que la Commission de Discipline se compose de membres de différentes catégories, c'est à dire de membres ordinaires et en plus de membres qui ne sont à disposition que pour un devoir déterminé,
      2. puisque une telle division empiète sur les droits du nouveau président de la Commission de Discipline.
   c) La Commission du Règlement intérieur a reformulé l'article 18.1 du Règlement intérieur de manière que le texte présent corresponde aux désirs du Bureau.

Report of the EASY Committee covering the time period between October 1997 and April 1998

D. Speiser (DE)

Two members of the EASY Committee attended an EASY Client/Server seminar of the EPO in The Hague on 16 December 1997 and stayed on for one day for a discussion with the EASY Group of the EPO regarding forthcoming developments.

In the last report of the EASY Committee it had been pointed out that the problems of online filing and of interfacing the EASY software with existing Patent Management Systems within our offices remained to be solved and these problems where the topics of the seminar and the subsequent *epi*/EPO meeting.

As regards online filing the seminar provided information regarding the forthcoming version 3 of EP-EASY which will be the online version. The work on this software is progressing and the EPO expects to be ready for first tests by mid 1998. The *epi* was asked by the EPO whether the *epi* was prepared to assist in the testing of the online version of the software and the EPO suggested that the *epi* organizes a group of approximately 10 volunteering offices from industry and private practice interesting in participating in the testing phase. It would be our task to coordinate this group and to carefully examine during the tests all aspects of online filing so as to enable us to subsequently advise our members and other users of EP EASY on test results and the existence or non-existence of problems.

As regards the integration of EP-EASY and existing Patent Management Systems the seminar and the subsequent discussion have shown that the EPO is fully aware of the need of such integration and once again we pointed out that in our view the absence of a full integration would severely and negatively influence the adoption of EP-EASY. During the seminar many details of the integration process were discussed. Very briefly, the Patent Management System (PMS) will probably have to be amended in a way allowing a user to click a button labled "provide data for EP-EASY online", where upon the PMS would collect all available data and store them separately in a standard data structure. The EASY software would subsequently collect these data and would ask the user only for such additional input that was not available from the PMS.

Details are difficult and probably not of particular interest. In any case the EPO is working hard and we can expect an adequate solution of the problem.

The EASY Committee after the meeting informed our board which approved the plan that the EASY Commit-

tee coordinates the user group and works together with the users and the EPO during the testing phase of EP EASY online.

On 30 April 1998 the EASY Committee of the *epi* had its first official meeting in Frankfurt. Dieter Speiser was elected chairman and Veli-Matti Kärkkäinen was elected secretary of the Committee.

The Committee then discussed a number of questions the EPO will have to be asked regarding the project of the online user group and the Committee also discussed and agreed on certain conditions that in the view of the Committee must be accepted by the users if they want to become members of the group.

These Draft Conditions of Participation should include an introduction to make clear that the *epi* as an independent body was asked by the EPO to form an independent opinion on the advisability of online filing.

Apart therefrom the conditions should include the following points:

1. Availability of desk to desk Internet Mail for filing and for communication with the EPO and the *epi*.
2. Undertaking of the user to inform the *epi* on all matters related to the EASY software for online filing and on all respective observations during the testing phase by means of copies of letters, E-Mail messages or faxes and on personal or telephone conversations between the user and the EPO by providing the *epi* with written summaries.
3. Undertaking of the user to answer questionnaires related to the tests and provided by the *epi* during the test phase and/or thereafter.
4. Undertaking to online file a minimum number of applications per month, the number still having to be agreed with a EPO. In the view of the Committee this number should be substantial.

Council at it's meeting of 11 Mai 1998 approved the intention of the EASY Committee to coordinate a group of online users along the lines of the forgoing concept.

The EASY Committee during its last meeting also discussed its terms of reference an amendment of which appeared to be advisable to allow the *epi* to at least monitor the activities of the European Commission regarding a system of secure electronic transmission and transaction in the intellectual property field know as the MIPEX project. It was decided to add a respective reference to the existing terms. The amended terms of reference were approved by Council.

Report of the Finance Committee (Abstract)

B. Feldmann (DE)

Constitution of Committees/Working Groups

A task on which the Committee has been working is to solve the problem of devising a scheme for constituting Committees/Working Groups (hereinafter called "Committees") which will

i. provide a framework enabling each constituency to know where it stands in seeking places in Committees, this being an object of particular relevance for the addition of new constituencies in the future
ii. enlarge and widen involvement and participation in the activities and work of Committees, inter alia for identifying, and familiarizing with the work of the Committees, the "new blood" for the future
iii. give Committee Chairmen new dimensions of flexibility for enabling more efficient conduct of the work
iv. achieve financial economies or at least restraint on rising costs.

In a scheme most recently considered, the inventive step in seeking a solution lies mainly in the introduction of associate status which would have an equivalence with substitute status. If a constituency has a full member, then an additional member would be a substitute (as at present in PQC). But, if there is no full member, then he or she would be an associate member and would, in the same way as substitute members, receive papers issued to the Committee so as to enable participation without normally attending meetings. A dimension of flexibility would be that Committee Chairmen could invite any substitute/associate member to a meeting, with reimbursement of expenses , if the Chairman considers that actual attendance at the meeting would be particularly helpful.

The present intention is to offer a draft of this scheme for consideration by the Board. If the Board's reactions are favorable, a final draft could be presented at Council's meeting in the Autumn.

Report of the Committee on EPO Finances (Summary)

J.U. Neukom (GB)

1. Our report to the previous Council meeting (October 1997) pointed out that another milestone had been reached by the EPO: Total reserves, standing at DEM 992.2m at the beginning of 1997 (as given in the 1996 Annual Report, p. 65) grew by the end of March 1997 to beyond a *billion* DEM. The next milestone, of total reserves being *one and a half billion*, looks likely to be reached by 2002 (and with only a mere 3% of external borrowing).
2. The days of runaway generation of surplus cash seem to be returning. The EPO, in the current business plan, itself acknowledges that "a further reduction in fees during the planning period \to 2002] appears to be in reach." At a recent meeting with senior EPO Officials we were told that Office policy is to continue reducing fees as and when circumstances permit. The *epi* should keep eyes open for opportunities to press for a further round of fee reductions.
3. Another matter to which we drew attention in the previous report is the so-called Cooperation Programme with contracting states in the field of patent information. The cost, drawn from EPO funds, is as much as DEM 7.5m per annum. More and more is being taken from EPO funds for the benefit of national offices, new additions being:
   i. The payment by EPO, estimated at DEM 2m, of initial costs at *national level* of setting up Internet access to national documents (a leading role for EPO is right but should it bear as much of the costs?).
   ii. The loss for EPO, estimated at DEM 7.5m per annum, of providing for contracting states (at their suggestion) a *free allowance* of access to EPOQUE/BNS.
4. The view may be taken of these developments that contracting states, having been unable for the present to modify the distribution key in their favour, are taking the alternative route of getting EPO money for themselves through the backdoor. One delegation in the Administrative Council has been conspicuous, and consistent, in its criticism of the Cooperation Programme, having said for example that it "could not agree to a system of subsidies which enabled member states to tap the Organisation's resources while renewal fee income went into the public purse."
5. It was stated at the Administrative Council meeting last October that "the *epi* could agree to the EPO paying for some activities outside the grant procedure - such as patent information." But are developments now going too far? The sums of money to which para. 3 above refers would, when added together, be enough, for example, to reduce search fees by DEM 200. Looked at another way, they are equivalent in total to about 3.3% percentage points of the distribution key (related to 1997 renewal fee income), thus the equivalent in round figures to the distribution key having been modified to 53% in favour of contracting states and 47% for EPO.
6. This subject has a political aspect. Therefore, at this stage, the Committee prefers to recommend no more than that the outcome of any discussion of it within our Council should be borne in mind for the opportunities which Council members may have to air *epi* views within the Administrative Council and with members of the national delegations.

Report of the EPPC meeting of 12th March, 1998

A Casalonga (FR)

1. Short report on the last meeting with DG3 on 10 November1997.

Substantive requirements for claiming a valid priority.

According to the traditional approach pursuant to Article 88(4) EPC, the previous application as a whole should disclose the elements claimed in the latter European patent application. In assessing the existence of the same invention in the previous application, the same criteria to determine new added matter or novelty of an invention was applied. The valid priority was therefore determined on the basis of a subject-matter at least implicitly disclosed in the first application. This traditional approach is still reflected in the guidelines for examination (CV,2.4).

In the "snackfood decision" (T73/88 OJ EPO 1992, 566) a different approach was taken. The Board of Appeal considered that a feature which is not related to the function and effect of the invention does not modify the character and nature of the invention. Consequently, such a technical feature which could be necessary for determining the scope of protection or for limiting the invention towards the state of the art does not necessarily constitute an essential feature for determining the validity of the priority.

Such an added feature limiting the invention could be compared to a disclaimer added in the claim to render the claimed subject-matter novel in comparison with the prior art.

T255/91 (OJ 1993, 318) is a further example of application of such a new approach. Here the claimed priority was denied because the priority application was not the first application for the same invention within the meaning of Article 87(1) EPC.

During the discussion of those two approaches, no unanimity could be found among the participants.

On the one hand, it was mentioned that the study of the validity of priority should be made by determining the teaching of the priority document for the skilled man exactly in the same way as a prior art reference is interpreted by the skilled man for assessing novelty of an invention. According to this position, the subject-matter is defined by all the features recited in the claim and a feature limiting this subject-matter modifies the invention. The only situation which could be different is the introduction of a disclaimer which is merely a drafting facility to avoid a more complicated definition of a subject-matter and which can only be used to ensure novelty.

On the other hand, according to the other position, various embodiments of one invention always constitute the same invention. What is important is the technical effect to solve a specific problem. If a feature is added to a claim with the effect of limiting the scope of protection, but without modifying the way the invention functions to solve the problem, the invention remains the same. Accordingly, if the priority document already discloses a general definition, the priority will be valid for a claim containing such a limitation.

Restitutio in integrum.

The *epi* took the position that an applicant or a proprietor of a European patent who has placed the patent application or patent in the hands of a qualified professional representative, has prima facie taken all reasonable care in the circumstances.

However, it was pointed out that the present practice of the EPO is rather liberal and that the responsability of a professional representative making a mistake should not be completely cancelled.

The French approach to restitutio was not favourably received for three reasons:

a) in effect, it nearly compelled the use of professional representatives;
b) it was felt that the professional representative should not be relieved from the duty of care;
c) the distinction between big and small mistakes was unclear and potentially dangerous.

A further proposal recommending to replace the system of restitutio in integrum by a system where re-establishment may be obtained on payment of a fee within a certain time limit was also discussed.

Forms for filing an appeal.

Various forms for filing an appeal were presented by DG3 which requested that the epi take position on this proposal.

The question was further discussed during the EPPC meeting. Some members felt that an excessive number of such different forms could lead to practical difficulties and were more in favour of a check-list document which could be used in all situations. The majority of the EPPC however was of the opinion that the proposed forms could be accepted as long as their use was not mandatory.

It was nevertheless pointed out that use of the proposed forms in one of the official languages of the EPO would preclude the appellant to benefit from a fee reduction when drafting the grounds for appeal in another language.

2. Rules of procedure of the Boards of Appeal.

DG3 is discussing the possibility of changing the present rules of procedure for the Boards of Appeal to make mandatory a communication from the Board to the parties before the oral proceedings in order to facilitate the preparation of the oral proceedings and minimize the possibility of being confronted with unexpected situations.

The EPPC considered generally that obtaining such a communication was useful and should be made mandatory as it is now the case according to Rule 71(a) EPC for the opposition.

Furthermore, it was generally felt that such a communication should be sent together with the summons to the oral proceedings. As a matter of fact, it may happen that the summons is issued a long time in advance of the oral proceedings. However, it was felt that the Boards of Appeal should have already studied the case at the time the summons is issued.

3. Short report of the Liaison Committee meeting of 11 November 1997.

Difficulties with payment to the EPO account in Helsinki.

Members from Finland have encountered problems depositing funds in the EPO account in Helsinki. The funds take some time to be acknowledged. However the EPO does not have privileged status with the banks; the EPO is only a client.

In any case the date of payment is the date of payment into an EPO account in a local bank, the only difficulty is getting details of payment and statements.

Acknowledgement of renewal fees paid to the EPO.

An *epi* member had complained because he did not get receipts of payment of renewal fees to the EPO and was therefore not able to send a receipt to the client. It was confirmed that, if the representative sends a duplicate of the debit order, the EPO will stamp the duplicate and

return it to the representative; this practice works well as far as the EPO is aware.

More information on the receipt would need a review by a formalities officer and could take much longer to issue than at present.

EPO forms in electronic form outside of the EASY system.

The EPO forms are published on the Internet in Word 6 format and it was questioned how these forms could be used.

One needs to enter details manually whereas national forms can be completed by a word processing merge. Applicants must use the prescribed form and cannot remove the other two languages. It does not appear possible to merge the form with other word processed material.

PCT Examination (possibility of telephone interviews with examiners, possibility to obtain more than one action).

Some *epi* members want the PCT examination procedure to be more interactive with the examiner thereby enabling the applicant to give more input.

Pursuant to Article 34(2) PCT, interviews with the examiner are possible; interviews (personal or via telephone) are useful to overcome minor objections but it is better to deal with major objections by written procedures. One problem with the PCT is that one is always very short of time; some applicants, when they file the demand request an interview as a matter of course. In the PCT procedure an interview must always be followed up by the applicant; the examiner may not make hand written amendments to application documents. There is a requirement in the PCT that all objections and deficiencies should be made clear to the applicant in the first communication and he should be given an opportunity to respond and amend as appropriate. If during examination more prior art is found then a second opinion is given.

Multiple communications from the examiner are sometimes needed to ensure that the result of the examination is a fully favourable examination

Duration of administrative steps after opposition before publication of awarded patent (Rule 58(5) EPC).

If a Board of Appeal maintains a patent with amendments and sends it back to the first instance, experience shows that the procedural steps before the Opposition Division (despite being almost purely administrative) take a long time. When a patent is amended after opposition, the patentee is generally keen to get the patent as decided and in all cases it is an urgent matter to finalise the procedure before the EPO.

Despite there being no official PACE program for the post opposition stage, if the patentee wants accelerated prosecution, it is possible. However the opponent may want to cause delay and can do so by waiting until the end of time limits before filing responses.

Even where no adjustment of the description is required, the procedure takes some time; there is the 3 months time limit to supply the translation of the new claims and pay the printing fee, and the time need for publication of the amended specification of the patent is 6 months in a normal case.

In any case the applicant can file the adapted description with the examiner without waiting for an official action from the EPO. To avoid all difficulties it is recommended to adapt the description during the proceedings before the Board of Appeal.

4. Short report of the Advisory Group on the Proposed Amendments of the PCT Regulations.

The 3rd meeting of the ad hoc Advisory Group was held in Geneva from 8 to 12 December 1997.

Certain indications in the request and related national phase requirements.

A new Rule 4.1 (cbis) was in principle accepted, subject to rewording by WIPO on the basis of the discussion. This rule would permit certain indications to be included in the request form (such as e.g. a declaration indicating how the applicant acquired the right to the patent or, as the case may be, to the priority right or indicating that the invention has been displayed at an exhibition). The designated offices would then not be able to challenge them later, since it was also decided to amend Rule 51bis.1 so that evidence to support statements made can only be asked for if the designated office may reasonably doubt the veracity of such a statement.

The amendment suggested for Rule 4.9 was in principle accepted, subject to a redrafting by WIPO. The amended rule provides (as an alternative to the "classical" designation of each state or regional patent by an individual check box) for a check box enabling all Contracting States to be designated for obtaining patents (only) [global designation].

Proposals by the United States Patent and Trademark Office.

The USPTO suggested amending Rule 11.13(a) to permit the filing of coloured drawings where the technical features may only be expressed using colours. This suggestion was supported by the users, but the offices were against.

The USPTO proposed a new rule according to which in extraordinary situations any requirement which is not covered by PCT Rule 88 and which is not a requirement of the Articles may be suspended or waived by the competent international authority after consultation with the IB.

Proposals by UNICE.

UNICE proposed amending Rule 4.15 so that the signatures of inventors/applicants-for-US-only may be omitted

if the application is signed by at least one other applicant. The declaration of the inventor/applicants would then only be necessary upon entry in the US-national phase. The majority of the offices were in favour of the proposal under the condition that only signatures of inventors/applicants-for-US-only may be omitted. If there are more than one "corporate" applicant, all of them must sign. If an inventor/applicant is also applicant for one or more other states than US, his signature could not be omitted either. WIPO will redraft the rule. The USPTO warned that the wording might be critical in order to satisfy the inventor community in the US.

Miscellaneous proposals.

The amendment of Rule 20.1 to permit the Contracting States to recognize, on the basis of its national law, the date on which documents (including applications) are deposited with the postal authorities as the filing date of those documents was in principle approved.

Amended Rule 20.2 shall give the applicant the option to ask the Receiving Office to disregard any later received sheets so as to avoid the consequence of re-dating the application to the date of receipt of the later received sheets. WIPO will redraft the provision in the light of the discussion.

KR, NL, SE and the EPO proposed replacing the provision of Rule 48.3(b) that the English translations for the purpose of international publication only shall be prepared under the responsability of the ISA by a new Rule 12.4 according to which it is the applicant who has to furnish the said English translation before the expiration of 16 months from the priority date. It appears that in practice the big majority of such English translations are already prepared by the applicants themselves. The proposal was accepted with some minor amendments.

5. Short report of the Committee on Patent Law.

The 6th meeting of the Committee on Patent Law was held on 27 and 28 January 1998. It was decided, in view of the amount of questions to be discussed, that in the future, three meetings of the Committee on Patent Law would be held each year instead of two and that those meetings would last three days instead of two days.

Revision of the EPC for introducing BEST.

Various amendments were proposed and discussed for deleting any geographical reference to Den Hague. Further amendments were proposed which are not directly linked with the introduction of BEST but which aim at increasing the flexibility of examination.

It was stressed again that the principle of three members in the examining division would be retained. On the other hand, it was made clear that after introduction of BEST, full search as well as examination and probably also opposition would be made in the same way in Den Hague, in Munich and in Berlin. This means also that interviews as well as oral procedures would have to be held at the place where the respective division of the EPO stands.

Language issue - package solution and alternatives.

The discussion was only held on possible alternatives to the package solution.

One delegation proposed that the national law of each Member State be amended so as to accept a granted European patent in one of the national languages or alternatively in one of the official languages of the EPO. For example, Germany could accept European patents in German or in English. Portugal could accept European patents in Portuguese or in French, etc. The *epi* indicated that such a proposal did not appear acceptable because it would lead to even more concentration of work and more discrimination as today among professionals of the various Member States.

Another delegation spoke in favour of an alternative solution similar to the reservation indicated in the CPC of 1975, that is if the translation is made before three years after grant, a reasonable compensation can be obtained but no injunction. If the translation is made within five years from the granting date, third parties retain their intervening rights. The EPO spoke strongly against this solution.

The compacted description was also discussed and supported by one delegation. It was clearly indicated that in any case, the applicant should be free to make himself any amendment in the description which he would find suitable. The examiner would only check the proposals of the applicant.

One delegation also suggested a translation on demand, i.e. only upon request, the costs being covered through insurance.

Some of the proposals will be presented to the next meeting of the Administrative Council.

Centralised filing of translations.

According to the EPO, the present wording of Article 65 EPC, which provides that the applicant supplies the translation to the national patent office, is not compulsory. A centralized filing would not be contrary to the provisions of Article 65. However bilateral agreements between the EPO and each Member State would be necessary and sufficient according to Article 33-4 EPC.

It was submitted that while some representatives are in favour of centralisation, other representatives are concerned by the uneven distribution of work and fear that firms specializing in translation will take up all translation work in case of centralisation. A possible solution would be that a certification be requested by national patent attorneys.

6. Proposed EPAC Draft Convention.

Following various remarks made by *epi* members, a new discussion of some points of the draft Convention pre-

sented to the last *epi* Council took place. The following main points were discussed.

Languages of the procedure before the Common Appeal Court .

A majority of the EPPC was in favour of using the language of the first instance, i.e. either the Revocation Board of the EPO or the European Patent Court of first instance. In the later case, the language of the procedure before the Common Appeal Court is therefore the official language of the Contracting State of the first instance Court. However the parties could also use one of the official languages of the European Patent Office as an alternative, the Common Appeal Court providing the necessary interpretation in the language of the proceedings.

Representation before the Common Appeal Court and other bodies.

It was proposed to state precisely that professional representatives entitled to represent before the Revocation Boards could in any case represent in appeal against decisions of the Revocation Boards. It was also accepted to add provisions for representation before the first and second instance European Patent Courts stating precisely that persons entitled to represent before those national Courts should be in any case assisted by a professional representative in view of the technical nature of the questions raised before those European Patent Courts. A possible future situation where professional representatives could appear alone before those Courts was also mentioned as an alternative.

Introduction of a peripatetic Common Appeal Court.

After discussion, it was considered possible to authorize the hearing of a Chamber of the Common Appeal Court to be made in locations other than its official seat, at the request of one of the parties.

Role of the Enlarged Board of Appeal of the European Patent Office.

After discussion, it was considered that the Enlarged Board of Appeal should remain as it stands presently even if in seldom cases, contrary decisions could occur between the Enlarged Board of Appeal and the Common Appeal Court of the new EPAC Convention.

Direct revocation procedure.

A slight majority of the EPPC members was in favour of giving jurisdiction for direct revocation actions to Revocation Boards of the European Patent Office even if the number of those direct revocations is small.

A strong minority of the EPPC was on the contrary in favour of an exclusive jurisdiction of the European Patent Court of first instance for direct revocation actions. In that case, the jurisdiction rules should be set up similarly to the jurisdiction rules of the Brussels Convention.

Limitation procedure.

It was generally felt that for the sake of simplicity, they should remain the task of Revocation Boards of the European Patent Office even if jurisdiction for direct revocation would be given exclusively to the European Patent Court of first instance.

Sanctions and remedies.

It was generally felt that determination of damages and further sanctions should be made by the European Patent Courts for acts of infringement committed within the territory of all the Contracting States. The European Patent Courts should be able to issue orders for injunction as well as sanctions and damages. Those orders would be executed according to the national law of each Contracting State.

7. Utility Models - EC Directive.

Exclusions from protectability (Article 4) and inventive step (Article 6).

It was considered by some members of the EPPC that in case of a lower inventive step requirement, exclusions from protectability should be provided.

No clear majority could be found within the EPPC for defining a new patentability concept, some members speaking in favour of "a clear obviousness" or "a clear lack of inventive step" and other members speaking in favour of trying to define a completely new concept of protectability.

It was decided that a more precise study would be made on this subject matter and further discussed during the next EPPC meeting.

The possibility of claiming internal priority from a utility model as well as the possibility of branching off a utility model from a patent application were suggested as additional measures. The possibility of introducing a grace period was mentioned but not retained.

8. Certified copies in a language different from the three official languages of the European Patent Office.

When an applicant files a European patent application in a language other than English, French or German, according to Article 14(2) EPC, he also has to file a translation of his application within one month.

However, the European Patent Office does not deliver copies of the translation together with the certified copy when the applicant requests such a certified copy for claiming the priority of the European application and this even if a translation is filed on the same day as the application in the non official language.

While this position of the European Patent Office appears legally founded, it was nevertheless considered

that the European Patent Office should, upon request for a certified copy, also forward the translation with a note indicating at what date such a translation was filed, so that any patent Office or national Court could decide in the future on the validity of the priority right.

9. Video Conferencing.

A member of the *epi* indicated his interest in the possibility of conducting oral proceedings by video conference. He was however concerned of the requirement to renounce in advance and irrevocably to his rights to oral proceedings being held in the traditional form on the same subject after the requested video conference. If the equipment would fail during the video conference, the applicant would then lose all possibilities to present arguments in a further oral proceedings.

The EPPC felt that a further possibility of a normal oral proceedings should be retained at least during a trial period if clear failure or poor performance of the video conferencing apparatus was noted during or shortly after the video conference.

Report of the Professional Qualification Committee to Council

F. Macchetta (IT)

1. EQE Rule changes

Since last Council, lot of the PQC and PQC Chair in particular had to be spent on this subject.

Meetings were also held with the EQE Secretariat to discuss this and other related topics (see below).

A substantial agreement was found on:

- simplifying the marking scheme (see also the Council's decision in Strasbourg)
- substantially maintain the current EQE system, without introducing any limitation on the number of attempts available to candidates for passing the examination, but with possible fee increase also for resitting any single paper
- devising common guidelines on the criteria for granting reduction of the required training period before taking the EQE (A 11 EQE Regulation; an ad hoc subgroup was formed)
- elaborate proposals for having shorter time between the EQE sitting and the publication of results
- reduce the time requested under A 6 EQE Implementing Regulation for candidates who do not possess a scientific degree or a title equivalent to it (currently 15 y)

In the joint meeting between the EQE Board and PQC of 28.04, a new EQE marking scheme has been presented on behalf of the Board, PQC presented its unanimous vote that no limitation to the number of sittings was to be introduced and the Chairman of the Board explicitly excluded any intention of the Board to promote proposals in this direction, in the foreseeable future.

On the bases of these assurances, PQC indicated its substantial agreement with the principles of the proposed new marking scheme [We were told that later the Board approved the new scheme, that will be published in the next possible EPO OJ and will affect the 1999 EQE].

Council is invited to note and approve the above reported activities and to vote a motion to support maintaining the current overall EQE structure, in particular, excluding any limitation on the number of sitting that are allowed to pass the EQE.

2. Recognition of work of *epi* members of EQE Committees

After having reviewed the situation, the following proposals met with the approval of the PQC at its November meeting, as means to express *epi* encouragement, support and appreciation to its members serving in the EQE Committees:

working and convivial meeting (with meal offered by *epi*) with *epi* President and PQC Chair on the occasion of a EQE meeting, possibly associated with a half day seminar on a subject of professional interest.

3. Remission of periods of professional activity, A11 EQE Regulation.

The principles of *epi* Guidelines in this matter were approved in at the November PQC meeting (see also the decisions of Council in Strasbourg) and an ad hoc WG was set up with EQE Secretariat to review the current situation and possibly elaborate common guidelines.

Council is invited to note the content of this paragraph and approved the reported activity of PQC.

4. *epi* tutorials and studentship

4.1 1997/98 tutorials

69 candidates for a total of about 400 papers were followed in the Summer session, involving 17 tutors.

For the first time this year we had also an Autumn session that was followed by 39 candidates, involving 12 tutors.

4.2 1998/99 tutorials

This year's tutorials have been already announced (see EPO OJ 1-2/98 and epi Information 1/98 page 12).

It is expected that the combined effect of the availability of the two sessions as well as the substantive fee reduction (decided at the Strasbourg Council) will induce more candidates to take this training opportunity.

Opening seminars in Spring or Autumn are being progressively introduced, at least on a voluntary and experimental basis, to make the tutorial system more complete and effective.

4.3 Studentship

There are currently 225 students. It is expected that this number may grow this year due to the positive effects of the progressive availability of material on our home page and the substantive discount the get to enroll to the tutorials.

5. Tutors and members of the EQE Committee need

PQC has always been very attentive to the demand for new *epi* tutors as well as *epi* members of the EQE Committee. Notices seeking candidates have also been published in EPO OJ (1-2/98) and epi Information (1/98, p.16).

Council is invited to take note of this PQC activity and promote the awareness of this need and the offering of volunteers among the epi members.

6. Continuing professional education.

PQC is working at a proposal including a list of topics that should be included in a program for continuing education for *epi*-members.

As indicated also at the Symposium in Strasbourg, this program should be characterized by being a common European program, with a geographically distributed future implementation, also through the cooperation of existing institutions. The same cooperation should assure that it will be easily affordable, economically, by members.

Another important feature is that the program should be voluntary and devised with a pragmatic professional approach, i.e. "by *epi* and for *epi*", to the benefit of the whole European patent system.

Council is invited to note the above and approve it and encourage PQC to continue the work in this direction.

Note: This report was approved unanimously at the Council meeting in Helsinki on 11–12 May 1998.

Professional Qualification Committee (PQC) Why, How, What and Who

M. Hatzmann (NL)

Introduction

The Professional Qualification Committee, PQC for short, of the *epi* has, in accordance with the By-Laws, the task of advising the Council on matters relating to all aspects of professional qualification. This includes (and as a patent attorney I should add 'but is not limited to') the European Qualifying Examination (EQE), continuing professional education (CPE), 'Students of the *epi*' and tutorials.

Why

Why is there a Professional Qualification Committee? In my opinion, this is a rhetorical question. Professional education is of essential importance to a European Patent Attorney.

- For those aspiring to become a European Patent Attorney, the first few years of training are to learning the job, including passing the EQE.
- For those who have already passed the EQE, it remains essential to keep up their level of expertise.
- For people like me, who have become European Patent Attorneys as 'grandfather', professional education is necessary to learn the job. This latter aspect will remain important as long as there are new countries entering the system.

This shows that for each and every European Patent Attorney professional education is very important, which was one of the reasons for *epi* to appoint a committee to deal with it. Further, for the profession as a whole, it is important that the people educated entering the profession are properly trained and, also very important, that the number of people entering the profession balances over the various countries, i.e. that in all countries there are sufficient well-trained European Patent Attorneys.

This complex task of co-ordinating all aspects of professional education has been entrusted to PQC, a task we try to do in the best way we can.

How

Typically, the full committee meets twice a year, once in spring and once in autumn. The spring meeting consists of two parts; in the morning we have a regular meeting of the committee, discussing numerous items, including a preliminary discussion about the recent EQE and preparation of the report for the coming Council meeting. In the afternoon, there is a joint meeting with the Examination Board, to exchange views on the past examinations and to discuss items of mutual interest. Generally, also a few tutors are present during the discussions of the EQE papers.

Obviously, this meeting with the Examination Board is of great importance. Even though the Board is composed of equal numbers of EPO and *epi* members, so that the interests of *epi* are certainly well voiced in the Board, it is clear, that the members of PQC are generally closer to the 'shop-floor' and thus in a good position to present the views of the profession. Further, during the joint meeting it is possible to havediscussions of a more general nature on the philosophy of the EQE and the ideas behind the EQE.

The meeting in autumn, usually mid-November, is preceded by a meeting of the tutors, some representatives of PQC, and members from Examination Committees I, II and III. The tutors are thus in a position to exchange views with the Examination Committees on the EQE of that year, in order to improve the quality of the tutorial. On the other hand, the comments from the tutors provide an important feedback for the Examination Committees. Last year's meeting was especially fruitful, as the Examination Board had agreed to provide advance copies of the Examiners Reports.

In between the two regular meetings, usually Working Groups get together to prepare reports for the whole committee.

What

Having explained when we do our work (trying not to think about the deadlines waiting for us in our Offices), I will now turn to the substance of the subjects that PQC deals with.

I have already indicated some of the items on which PQC is active, but in general it can be said that our work is either related to the EQE (most of the time) or to continuing professional education.

Regarding the EQE the following subdivision can be made:

- training for the profession and the EQE
- regulations for the EQE
- tutorial system
- Students of the *epi*
- case studies
- dissemination of information relating to EQE
- seminars providing good conditions for Examiners of the EQE, and ensuring that there are sufficient *epi* members in the Committees.

PQC has noted that the possibilities for EQE candidates to train for the profession and to prepare for the EQE are strongly dependent on the views of the employer. Quite often it is noted that employers do not enable candidates to train properly for the EQE. As a result, many candidates are insufficiently prepared by the time of the EQE.

Another aspect of the training is the geographic spread of the training facilities. The training facilities are not yet properly spread across the full number of contracting states. As a result, it is easier for a candidate in Germany or Great Britain to go to a course than for someone in Greece or Portugal. Unfortunately, this geographic discrepancy in training facilities coincides with a geographic discrepancy in experience in substantive patent examination. In the long run this would lead to a shortage of attorneys in certain countries.

The PQC tries to provide training by tutorials in all countries, especially in those underrepresented in training and those having a low pass rate. Further, for those who have insufficient exposure to substantive examination, a system of case studies is under development.

The aim is to provide teaching material based on actual cases, where a candidate can train various aspects of the job, together with his coach.

As a further improvement in the tutorial system, PQC is working on an opening seminar, regionally distributed, about a year before each EQE, to make the candidates aware of the need to study diligently and to emphasise the important aspects of the training.

The program "Students of the *epi*" has now left its provisional stage. It is used as a means to provide the future European Patent Attorneys with information and means to become acquainted with the system and with various training facilities. In future, the *epi* homepage http://www.patentepi.com will also include a special page for students, as a basis for mutual discussions and information to students.

Regarding the Regulations for the EQE, various items have recently been subjects of discussion with the Examination Secretariat and the Examination Board. Examples of subjects are the marking schedule for the Examination (revised schedule will be published soon); time schedule for the EQE, i.e. reduction of the interval between examination and result, availability of the names of successful candidates on Internet on the day of mailing of the results; reduction of the period of professional activity before taking the EQE, and many more.

A relatively new item on the agenda of PQC, added in compliance with the most recent amendment of our By-Laws, is the continuing professional education (CPE). We hope to be able to set up basic criteria for continuing professional education within the next month, so that in due time continuing professional education will become available throughout Europe, at a level adapted to the educational level in the various countries. In view of the wide variety of backgrounds of the professional representatives in the different countries, we aim at setting up courses adapted to the regional requirements.

Who

Not surprisingly, the PQC consists of professional representatives, with one representative from each country and one substitute. This representation of each country in PQC is very important, as quite often activities in or information from each country are required. The majority of the members are also council members; PQC further includes a number of members of EQE Examination Committees.

One thing all members have in common is an active interest and participation in at least some of the aspects of professional education.

Compensation in the EQE

D. Jackson (GB)

As an *epi* tutor I find many candidates appear not to understand fully the advantages of compensation with the result they are wasting their best opportunity of passing the examination.

When is compensation available?

Compensation is available only at the 'first sitting' of the examination. The first sitting can either be a full sitting of the examination where a candidate takes all four Papers A, B, C and D or a modular sitting where a candidate first sits Papers A and B and can sit Papers C and D within the next three subsequent examinations.

Thus a candidate sitting the examination in modules is not at a disadvantage where compensation is concerned.

Indeed, a candidate sitting the examination in modules can have a number of advantages. Preparation is easier because of the need to sit only two papers at a time. Moreover, any candidate who is dissatisfied with the grades on Papers A and B can elect to sit these papers again when sitting Papers C and D. Unfortunately, it is not possible to pick between the grades obtained for Papers A and B and the second set of grades are those that count.

How compensation works

Magic Number

Where compensation is available the magic number for the total of the grades for all four papers is 16 in order to pass. Where the grades total 17 or more there can be no pass under the compensation scheme.

One paper failed - Grade 5

Where a candidate has failed a single paper and has been awarded a Grade 5, the grade obtained in that paper can be offset by a Grade 3 or better in any other paper (for example, 3 + 4 + 4 + 5 = 16).

One paper failed - Grade 6

Compensation for a Grade 6 is more complicated and requires a Grade 3 or better in two other papers. In addition, one of the Grade 3 passes must be in the same group as the failed paper.

That is, for a Grade 6 in Paper A or B, there must be a Grade 3 or better in Paper B or A and a Grade 3 or better in Paper C or D (for example, 3 + 6 + 4 + 3 = 16).

For a Grade 6 in Paper C or D, there must be a Grade 3 or better in Paper D or C and a Grade 3 or better in Paper A or B (for example, 3 + 4 + 3 + 6 = 16).

Two papers failed - both Grade 5

Where a candidate has a Grade 5 in Paper A or B and a Grade 5 in Paper C or D compensation requires a Grade 3 or better in the other of Paper B or A and a Grade 3 or better in the other of Paper D or C (for example, 3 + 5 + 3 + 5 = 16).

Compensation not available

Compensation is not available where a candidate has a Grade 7, two Grade 6s, or two Grade 5s in either Papers A and B or Papers C and D.

Conclusion

In my experience as an EPI tutor, many candidates take the EQE before they are ready and the resulting fail makes it more difficult to pass in subsequent years when compensation is no longer available. Candidates should not take the EQE until they are ready.

Candidates should remember it can help to take the examination in modular form and that compensation is still available. If necessary candidates can take the first module (Papers A and B) twice and use the grades from their second attempt without losing the benefit of compensation.

A year in the life of an *epi* Tutor

P. Denerley (GB)

The *epi* tutorial system for 1998 is outlined in epi Information 1/1998 on pages 12-13. The system is intended for candidates wishing to prepare for the European Qualifying Examinations in the Spring of the following year so that the 1998 tutorial programme is intended to help to prepare candidates for the 1999 examinations.

The tutor's year starts around April when the *epi* Secretariat asks whether you would be willing to continue your involvement in the tutorial programme. The deadlines and hard work are many months away in the future (just a `blip' on the horizon) so it is easy to agree. All tutors are practising patent attorneys with busy schedules. The support of our employers is gratefully received, but most tutoring work is in the tutor's own time. We have about 20-25 regular tutors and we are always looking out for more volunteers; new tutors

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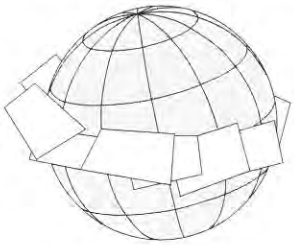

For over 15 years we have been exclusively concerned with the worldwide computerized monitoring and payment of renewal fees in order that our clients not only can save costs but also can spend their valuable time more productively.

Good reasons to get to know us.

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may join the programme by contacting the *epi* Secretariat at any time. The *epi* has a reasonable number of German and English tutors and is particularly keen for volunteers from other countries to join the programme.

The candidates enrol in the programme by June and are allocated to the tutors in July. This allocation is influenced by the drafting preference of the candidate (Chemistry or Mechanics/Electricity), by geographical considerations and by the availability of tutors. Typically, a tutor has a group of up to five candidates and sometimes two tutors may take responsibility for one group of candidates. I believe that the tutorial group is enriched if there is a mix of nationalities represented; also I believe that the group is enriched if there is a mix of industrial and private practitioners. Such mixing enables all of the members of the group (and the tutor) to learn from different approaches to the same problems.

In July, the *epi* Secretariat writes to each candidate with copies of the papers, details of the timetable and what is expected of them. The tutor may follow this up, introducing himself or herself, with a more personal letter setting out any particular wishes, thoughts and timing concerning the tutorial programme. Tutors may use this opportunity to provide general guidance and notes on `how to pass' to the candidates.

By mid-September, the candidates should have returned their answer papers to the tutor. Most candidates show good awareness of at least one aspect of patent practice and request an extension of time. One extension is usually allowed. By end-October, the tutor should have received four answer papers from each candidate in his/her group. A total of about 15 papers would be typical in my experience. The tutor can then form an preliminary assessment of the quality of the candidates.

It is now clear that some candidates have never looked at a European examination paper before; have rarely studied the EPC and have little practice at drafting, amendment and oppositions. The *epi* tutorial programme is not designed for these candidates. The tutorial programme does not provide a basic education in patent practice; this is the role of the employer and courses such as the multi-centre CEIPI course. The tutorial programme takes knowledgeable candidates and prepares them so that they perform well in the examinations.

On one day in November, the *epi* tutors meet in Munich to discuss the question papers and to share `best practice' in tutoring candidates for those particular papers. For part of this meeting, the tutors are extremely grateful to have input from representatives of the Examination Committees - who set and mark the papers. This dialogue is very valuable in understanding the standards that are expected.

There is no prescribed procedure for giving feedback to the candidates. This will depend on the tutor and the circumstances of the group. Most tutors have a face-to-face meeting with their group. Tutors do not receive any payment from the *epi* so the travelling expenses of any such meeting should be shared by the group. Some tutors return the answers, with detailed comments, before the face-to-face meeting; some tutors return answers at the meeting; and some tutors return the answers after the meeting. My current practice is to try to return answers before a meeting so that the candidates have an opportunity to think about their errors before they meet the tutor. If not done previously, the tutor can now distribute his/her own guidance notes on `how to pass' the examinations. Tutors are not able to give precise marks for any answer paper as we do not have access to the confidential marking schedule. We do, however, have a very good idea of what would satisfy the examiners. The meeting of the candidates with their tutor is generally in December or January. By now, the exams are only three months away.

The *epi* tutorial system also permits a candidate to prepare the papers from two years, for example from 1997 and 1998. Again, much depends on the circumstances of the group, but it is usual for the candidate to prepare answers to the earlier set of papers and for these answers to be returned with comments and guidance notes before the candidate attempts the later set of papers. The tutor then expects a big improvement in the second set of papers.

The *epi* tutorial system also covers candidates who are informed in October that they have failed one or more papers. Such candidates may enter the tutorial programme by end-October and return their answers by end-November. Frequently, the candidate simply forwards the failed answer paper to the tutor and asks `Where did I go wrong?'. The tutor may be able to arrange for these new candidates to join the meeting with his/her other group or it may be more sensible to set up a separate meeting in January/February.

The examinations are usually held in April. The tutor obtains copies of the papers as soon as possible and reviews these. We like to know what our candidates have suffered! There is the opportunity to feed back comments to the Professional Qualification Committee of the *epi* and to the Examination Board in April. These can be the tutor's own comments but preferably are thoughtful, justifiable comments from the candidates.

Is it worth it? Yes, there is great satisfaction in helping others - especially if they haven't received much other guidance - and we do eagerly await the list of successful candidates.

Le Travail d'une Commission d'Examen

D. David (FR)

A l'occasion de discussions avec des collègues sur l'examen de qualification européen, il m'est apparu que le travail effectué au sein des commissions était peu connu. Permettez-moi en tant que simple examinateur, de vous parler un peu de celle à laquelle je participe, la commission III.

Les commissions d'examen ont deux principales tâches: l'une de préparer les épreuves, l'autre de corriger les copies des candidats. Trois réunions en cours d'année ne sont pas de trop pour y parvenir. En effet, d'abord il faut arrêter le contenu des questions ou des sujets préparés par l'un ou l'autre membre de la commission. Les questions ne sont-elles pas trop difficiles ou trop faciles au contraire? Il faut un juste équilibre qui se retrouvera dans l'attribution des points. Leur exposé est-il suffisamment clair? Il serait malheureux que les candidats répondent à une autre question que celle qui est présentée. En outre une question ne doit pas être ambiguë au point d'autoriser plusieurs réponses en fonction d'hypothèses non exposées. Ne sont-elles pas trop longues pour le temps imparti? Le contrôle par un cobaye n'est certainement pas superflu. Il faut également établir un modèle de correction aussi précis et détaillé que possible. La nature de l'épreuve, composée d'une série de questions et d'une consultation juridique elle-même subdivisée en grandes questions, y conduit naturellement, il est vrai. Il a pour but de rendre le travail de correction plus aisé. Cependant nous devons également faire en sorte que la notation soit homogène entre les examinateurs. Le même type de réponse doit recevoir la même appréciation quel que soit le correcteur.

Chacun teste le modèle de correction sur une dizaine de copies rapidement après leur distribution et nous l'amendons le cas échéant, au vu de la façon dont les candidats ont répondu, au cours d'une réunion en juin préalable à la correction véritable. On tient bien sûr compte des observations que les candidats ont éventuellement pu faire au cours de l'examen ou d'un problème qui a pu y survenir.

Le nombre de candidats a considérablement augmenté ces dernières années, et avec lui celui des copies à corriger malgré l'augmentation des effectifs de la commission: nous approchons de la trentaine. En raison du temps nécessaire qu'il faut consacrer à chaque copie - cela peut aller jusqu'à deux heures - cinquante à soixante copies me paraissent un maximum acceptable. Par ailleurs, malgré le souhait légitime des candidats de connaître leur résultat le plus tôt possible, il paraît difficile de rendre les corrections avant la mi-septembre où il faut encore s'accorder avec le second correcteur, conformément au principe de la double correction. Il ne faut pas oublier que les correcteurs ne reçoivent aucune rémunération pour ce travail et qu'ils ne peuvent se mettre en congé de leur activité professionnelle.

Certains trouvent l'examen, et en particulier l'épreuve juridique, difficile. Pourtant cette dernière ne requiert aucune autre capacité que celle acquise par une solide préparation. L'expérience seule, acquise par la pratique quotidienne de la profession, ne suffit peut-être pas car il faut être à même de répondre à des questions sur des sujets variés en un temps limité. La difficulté, si difficulté il y a, ne peut résulter que de cette contrainte, et il me semble qu'on la surmonte d'autant plus facilement qu'on est suffisamment préparé.

Les candidats disposent maintenant de nombreux moyens pour se préparer convenablement. Je ne saurais énumérer tous les ouvrages pouvant servir de support, ni les organisations proposant une formation ou une préparation spécifique.

Il faut bien sûr d'abord acquérir en profondeur les connaissances nécessaires à l'exercice de la profession. Cependant il est vivement souhaitable aussi de se familiariser avec la pratique de l'examen. La participation à des séminaires ou des séances d'entraînement est certainement très utile pour mettre le maximum de chances de son côté. Les recueils de sujets des années précédentes, maintenant sous forme de Compendium, sont à cet égard également des outils précieux, ne serait-ce que pour tester ses connaissances. On ne peut que recommander la lecture attentive des rapports d'examen qui sont la source par exemple d'informations pratiques permettant d'éviter de perdre des points par inattention. En parcourant ces rapports sur plusieurs années, on constate d'ailleurs que tous les candidats n'en tirent pas la leçon puisqu'elles en constituent le leitmotiv.

Enfin, on entend parfois que des candidats se sachant insuffisamment préparés se présentent quand même, pour voir. Au vu de ce qui précède, on aura compris qu'il existe d'autres moyens plus efficaces d'aborder l'examen.

Experiences of an Italian Patent Attorney, relating to the European Qualifying Examination

G. A. Karaghiosoff

Since my Studies in Physics in Germany I had contacts with the world of patents in translating applications from German into Italian and in executing patent searches at the German Patent Office. At this time I did not know that in the future my life would have brought me into contact with the organisation seated in the modern building which was growing next to the flat where I met my friends to discuss the exercises we received at the university.

In the year 1993 although having followed only half of the two years program of the CEIPI course I decided to take my first examination which was not successful. The following year I passed the examination and in year 1995 I entered the list of the Qualified European Representatives. The experience of the examination is still alive in my mind and I remember these times where each moment of my life, this means every day and after twelve o'clock p.m., and even when I was travelling on the bus, I studied for preparing to take the European Qualifying Examination.

Looking at these times I can say today that I studied a little too much, as it was in effect relating to the mere knowledge necessary to pass the Examination but not too much for the level of experience and insight of the system also needed to pass the examination.

I must say in any case that my position was better than most of my colleagues, at least for the languages I was able to speak and write.

Concerning the difficulties that Italian candidates encounter in passing the EQE, I would like to differentiate them into difficulties which depends on the Italian tradition relating to patenting proceedings and practice and difficulties that relates more to general principle. Obviously there is a mutual dependence of the two categories.

A difficulty of the second kind has to be seen in the slight gap existing between the kind of relationship with EPO that we may experience in the normal practice in a Patent Office or Law Office and the kind of behaviour requested or expected from a candidate in the EQE. In order to avoid misunderstanding with "behaviour"I mean any kind of action or reaction of the representative towards the EPO in a granting procedure and the way of arguing correctly and successfully before the Examining Division and the Boards.

This kind of difficulty has a particular influence on the Italian candidates who come from a patent system with different traditions. Indeed in the Italian patent system there is no examination, no opposition and since 1978 the profession of patent attorney was free.

This does not mean that Italian patent attorneys are not as good as foreign attorneys but merely that the quality level of the Italian representatives is not homogeneous, or, better said, no minimum quality level could be set by any authority. Thus there was a strong dependence for the quality of the representatives on the offices in which they were working or were professionally grown up. As most of you know, the Italian system, provides examination of the validity of a Patent only before the civil courts and only under request for revocation of the patent by an interested party, or in the course of a suit for patent violation. This kind of examination is more difficult than acting before offices with more or less strict and constant ways of interpreting the validity requisites of a Patent. Indeed in Italy, the quality of the examination of the validity of a Patent deeply depends (also today) in the level of the specific knowledge of the courts in the particular branch of patents. Further the attorney does not act directly before the court but as a technical assistant to the party and the proceedings are led by a lawyer. On the other hand, although more difficult, the number of this kind of examinations are not as high as the number of examinations which a representative has to deal with in a patent system in which a patent is granted only after being examined.

Of course Italian Patent Attorneys have, nevertheless, great practice with examination due to the fact that the granting system with examination has been applied for a long time in many foreign countries. Unfortunately the distribution of the foreign cases was and is not homogeneous among the offices. This non- homogeneous distribution of cases strongly depends on the clients. The average knowledge of industry, relating to patents, is not high and is better of course in the more industrialised regions. Italian middle and small companies do not invest largely into patents and still today filing patents in foreign countries is seen as a very expensive and not justified investment. Furthermore the Italian patent system gives uninformed people the sensation that patent protection is unreliable due to the fact that lacking examination there is a high degree of uncertainty in enforcing patents. All this has the effect that the level of practical knowledge and training of candidates deeply depends on the offices where they have carried out their training, in particular opposition proceedings are not very frequent.

I want to underline that there is no question over the quality of the Italian representatives. The problem is merely and simply a matter of number of cases candidates have the possibility to treat during their training.

In the years many efforts were made by the preceding generations of attorneys which have spent time in teaching and have given to the candidates the opportunities and the instruments for experience. I think that the number of candidates which passes the EQE is slowly growing in relation to the increasing number of Italian representatives having passed the EQE and beginning to act as tutors. A qualified trainer helps to overcome the two above mentioned-problems and others which are discussed in the following.

Another traditional difficulty consists in the different kind of relationship between the administration and the citizen. The good faith relationship is something new and not known by Italian citizen although there are many laws stating this principle. Italian are more or less accustomed to a relationship with the administration of the kind based on mutual suspicion. To explain this point would request deeper sociological and historical investigations which needs the help of qualified specialists in this fields. In any case, normally we must learn how to deal with an administrative system acting on a different principle from that we are used to.

There is also the difficulty of the language. This difficulty must not be treated as a secondary one. Time is held very short in the EQE, and the fact of preparing the answers in a language different from the own mother language surely has the effect of slowing down the candidate. Also if the answer may be written in the official language of the contracting state of the candidate, the papers are in a foreign language and need a very careful analysis before starting preparing the answers.

Relating to the examination itself, we have problems with written examinations. At the Italian Universities most of the examinations are oral, and our candidates are less used to written ones. The problem lies in the lack of experience in preparing a written examination. Having studied at a German University where most of the examinations are in written form has helped me a lot.

Last but not least a big problem consists also in the time candidates have at their disposal for preparing themselves and in the time their tutors have the possibility to dedicate to deeply correct, discuss and analyse their work. I think this last difficulty is not only typical for Italian candidates but is a pathological one for our profession. In any case I think that this is a particularly delicate point. Indeed, I am of the opinion that if a candidate does not pass the examination, the practical tutor or trainer has to ask himself honestly whether he has given the right kind and the sufficient amount of assistence to his candidate.

In relation to my direct experience in preparing the EQE, I must say that it was very important having held my first and not successful EQE. This taught me about the strategy that must be applied in organising time during examination and in using the helpful instruments that are at the disposal of the candidates. This taught me that not only knowledge is needed but also practice, like mathematics, or like playing an instrument. The theory may be known but solving a problem or playing in a way that the result may be defined as music are other things and need specific preparation.

So, the week before the examination, I retired from work and went in a quiet and isolated place, with all the papers from the examinations of the years before that I was able to find. I began training not only my knowledges, but also the more practical aspects of the examination, like cutting paper, gluing pieces of text, physically finding an Article of the EPC or a Rule, in the "blue book"and so on.

I learned also to read correctly the papers in order to find and correctly use the information that are already given therein without writing too much. Analysing a sufficient number of papers helps to grow a sensibility of extracting therefrom clear indications of the probable correct solution. I learned to work with the clock in front of me, properly subdividing time and adjusting this distribution on my own. Very important is to learn having the courage to stop trying to answer a question if the time accorded to this one has passed.

I am of the opinion that this kind of training is very important and helps the candidate in getting used to the practical aspects of the examination. Particularly Italian candidates who are not very used to written examinations, should do a preparation like this.

The work before the last week consisted in taking part in a specialised course and in studying the Convention, guidelines, books and the decisions. The study of the decisions is fundamental in order to enter the spirit and the soul or the philosophy of the system, this means the way of thinking and acting-reacting of the EPO and the way of acting, reacting and arguing which is expected by the candidates in the EQE. I became very well accustomed with this way of thinking, so different from the Italian traditional one. The decisions are from my point of view of great importance for Italian candidates. In studying them the candidates have the possibility to overcome the difficulties specified above and to fill the gap between the experience in the practical work and what is requested in the EQE, thus entering wholly into the soul of the system. They can learn the correct way to draft and amend claims, to argue before the Examining Division and the Boards and the correct behaviour according to the EPC, all this by means of practical examples. Obviously this kind of preparation requests a lot of time, but I think that it does not stress candidates more than they are already stressed by the idea of the EQE. From my point of view this study can only contribute to give a sense of sureness to candidates. In other words, studying the decisions gave me the experience that I could not gather in the all day practical work. What is sure is that in order to pass the EQE each candidate has to take note of the fact that EQE is not an examination that can be passed by good luck or having gaps in the preparation.

Coming to a conclusion of my report I see the fundamental difficulties of Italian candidates in the gap between all day practice and EQE, in the strong dependence of the training they have made, in the different traditions relating to relationship to the administration and in the differences of the national patent system, in the difficulties relating to languages to written examinations. All these difficulties may be overcome by studying the decisions and training with the older EQE papers not only from the point of view of knowledge but also practically. A good starting point is taking note that the EQE needs a deep and intensive preparation. The growing number of qualified representatives helps and will help to increase the number of the successful candidates.

The European Qualifying Examination from the point of view of an Italian Patent Attorney

M. Spadaro

Very recently, I was asked by the *epi* to give a contribution to this issue on the theme EQE, in particular as a candidate who already sat the examination, but more particularly as an Italian candidate.

I accepted with pleasure this task, but, thinking about it, I realized that, probably it is not so interesting to read the personal impressions of a candidate, be Italian, or Spanish, or German or whatever other nationality, as far as to have a wider picture of the situation in which the specificity of a certain nation emerges.

In a more and more globalized world, the profession of a patent attorney must be a pace further than this trend, so to be prepared for the challenge of industry to face competition without boundaries.

This would be already a good subject for discussion, but it goes beyond the scope of this short contribution. Back to the specific matter of Italian candidates, unfortunately, I haven't had sufficient time to collect opinions, apart from a very low number of persons. So, I fear that my contribution will reflect, at least for its major part, my personal experience and opinions.

Certainly, this article could be the occasion for raising some arguments for wider and further discussion.Language is the first thing that comes to my mind.

As any other European colleague whose mother tongue is not one of the official languages of EPC, I have to face the problem of using a working language different from my own mother tongue acting before EPO.

I am accustomed to coping with the problem of working using a foreign language and I do not think language is *the problem*, but more realistically, just *a problem*.

I decided to write my papers directly in English, being perfectly aware that my papers would have never won a Pulitzer prize probably and neither reached a sufficient mark in an English classwork .

However, I was confident that my English, even if poor, would have been clear enough to make my response and my thought understandable to the Examiner. Further, I found it easier to read and understand the papers directly in English, without worrying to translate them into Italian, formulate my answer in Italian, and wondering whether my Italian response would have been clear to the translator, who had to give a fully faithful translation to the Examiner. I preferred to run the risk of making someone doubt my linguistic ability, rather than having an intermediate between me and my examiner. I know people who every year are entrusted with translations of papers from Italian candidates and I know that it is a responsibility to give a faithful translation without affecting the original meaning and intention of a person you don't know.

Another consideration about language is that English is your working language in your every day's professional practice. EQE is a simulation of working reality. Admittedly it is a quite difficult and cumbersome simulation, but in your real professional life you have to put on paper the solution of problems that sometimes (luckily not every day) are far more complicated than the argument you have to formulate in paper B, or C or the opinion in paper D.

Of course, I don't want to say that language is not a difficulty for an Italian candidate. On the contrary, it is, particularly when considering time pressure during the sitting of the examination. I remember the strong sense of panic that caught me when, writing the final part of paper B, a certain English word tenaciously refused to come to my mind. (I did not carry any dictionary with me, as it could have been a possible loss of time) and I would have preferred to defend inventive activity mimically. But, during the simulations of paper sitting (mock exams), I learned to use papers also as a dictionary. I found that you don't need a high linguistic ability in order to write your paper, if you stick to the paper wording. For example, paper A may be written almost entirely, and in all its essential parts (claims) just using the paper's wording. Paper B is a little more complex, since you have personally to reply to another person (the same for Paper D II). But also in this case, I found it rather easy to use the wordings of the application and of the prior art and some standard phrases occurring in normal practice. More particularly is, instead, paper C, with the prior art in all the official languages and a translation in one of the two others. I found the glossary not very useful; rather I used the prior art and the patent as a cross dictionary. I think that linguistic difficulty in paper C is more common to all the European candidates who do not speak very well a second, or third, official language.

Probably, language may be an obstacle slowing your study and preparation since there are no textbooks in Italian. Of course, having the EPC translated might be not so useful; in any case an Italian translation of EPC is available on collections of patent law. Rather I think it could be useful in translation of general textbooks, commentaries, exercise books. Italian authors are very welcome! Probably studying in Italian could make comprehension easier, even if all of us having a technical university degree experienced studying foreign (mostly English) textbooks.

Of course this is a task pertaining to the Italian patent community.

This last statement allows me to introduce the most serious topic. Tutoring.

Other than the CEIPI basic training course, and perhaps another course on EPC, which are not specifically directed to the preparation for the EQE, there are no organized courses or lectures on the EQE.

The candidate is practically left alone, and the only useful tool is a course held abroad (such as, for example,

Strasbourg, Brian Cronin, and Queen Mary College). Not all the candidates work in a structure, whether private firm or industry, which has a qualified European patent attorney or someone who sat EQE and, apart those people working in industrialized areas. There are only few possibilities to form studying groups.

There are people who work in firms or industries where some colleagues of theirs sat EQE and/or are even CEIPI tutors. Therefore, there is the opportunity to verify periodically ones preparation. Theoretically. In private firms, particularly the small ones, workload is the imperative category. Thus, in many situations one can make his or her own preparation only at home, in the evenings and during the weekends and workload allows nothing but few hours to discuss just some paper done in simulation.

But, once again, I doubt that this can be a specific situation of Italian candidates, I think that national tutoring can be a problem of all those areas or industrial realities where the structure or work load or employer's interest do not allow the organization of tutoring.

In order to practice before the Italian Patent and Trademark Office, a patent attorney has to sit a qualifying examination. Recently, the rules of examination have changed, but I refer to the form of examination I faced in 1995. You have to sit a first written exam, which is the same as Paper A of EQE. If you have passed this paper, you are admitted to an oral sitting where you are examined on Italian industrial property law system (patents, models, trademarks, and other aspects of industrial property protection). In Italy, the prosecution of a patent application is rather simple, the procedure is not so demanding as the European one. We do not have an opposition system. Accordingly, the Italian qualifying examination is mainly directed to ascertain the ability of drafting patent applications, filing procedure and the relationship between Italian law and international conventions.

6It is the evident that a candidate who starts preparing EQE has to face a more complicated system of filing and prosecuting applications, search and examination and opposition .

I suppose that a German colleague, just for example, who prepared the national qualifying examination is already aware of a patent system comprising patentability assessment and opposition. Then papers B and C are already in the mind of my German colleague.

In conclusion, in my view, an Italian candidate has to cope with some difficulties that are for the most part common to other candidates of the other contracting states. Some peculiar difficulties may be found in language, when combined with time pressure of the EQE, availability of text books in Italian, particularly exercise books and commentaries, useful for those people who anyway wish to sit the exam in their mother tongue. But my personal opinion is that the major problem can be the lack of national tutoring, which compels the candidate or the employer to face the cost of foreign courses. Some colleagues told me about this serious drawback in the lack of organization of tutoring by the Italian patent profession collectivity -and I share this feeling.

I think that Italian professional organizations ought to start thinking of the future of their profession.

European Qualifying Examination: Looking ahead

Ingo Kober
President of the European Patent Office

The European Qualifying Examination (EQE) was one of the first features to be brought into life after the European Patent Convention entered into force in 1977. The first examination took place in 1979 and since then almost 6.800 candidates sat the examination. A total of 1.963 successful candidates have been entered on the EPO list of professional representatives.

During these 20 years the main characteristics of the examination remained unchanged. However, in 1993 a new Regulation on the EQE was adopted by the Administrative Council of the EPO. One of the principal reasons for the changes were to facilitate the proper preparation of the candidates by allowing them to sit the examination in two modules. Moreover, a number of changes were made with the aim of rationalising the administrative work involved in managing the annual holding of the examination with a constantly growing number of candidates and, in consequence, an increasing number of members of the examination committees. Today there are more than 80 members in these committees. More than half of them are members of the *epi*. Some changes were also made in order to make the whole examination more transparent to the candidates.

More clarity and enhanced possibilities for preparing for the examination were the leading ideas behind the EPO's annual publication of the Compendium with all the examination papers of the year, the examiners' reports and examples of good answers from candidates.

In spite of the introduction of the modular system, last year's experience has been an ever growing number of candidates; in 1997, 1.100 candidates enrolled for the 1998 examination. Two factors seem to contribute to this high number of enrolments. First, the "aging"of the European patent system itself implies a change of generation. Towards the end of the '90s, many of the so-called Art. 163 EPC "grandfathers"having been

entered on the List of professional representatives without having to pass the EQE when the EPC entered into force are thinking of retiring soon. Secondly, the pass rate is less than 34% for first sitters, less than 8% for resitters in full and 28% for resitters in part.

There results prompt more and more candidates to resit the examination - sometimes in endless repetition. The time needed for proper preparation appears to be underestimated by the candidates whereas their employers who are often said not to allow enough time for their candidates' training and at the same time to press for enrolling for examination as soon as possible. The result of these mechanisms is that the Examination Board, the examination committees and the Examination Secretariat are confronted with a constant increase of work. Thus the concept of introducing a buffer in the inclination to enrol has been voiced.

The situation has also to be investigated in the perspective of the development to be expected in the next 10-20 years. The intensified integration in Europe implies that the European patent system, like industrial property rights in general, gains increasing importance. The EU Commission's publication of the Green Paper on the Community patent and the initiatives which will flow from it will promote a further increase of patent applications all over Europe. Moreover, the EU and the EPO will soon be enlarged to the East. A total of 2.600 national patent attorneys from Poland, the Czech Republic and Hungary are likely to become European Patent Attorneys, entered on the List of professional representatives according to Art. 163 EPC. They will file European patent applications from their national enterprises which are experiencing an annual growth beyond that of enterprises in the present EPO member states.

Neither the profession nor the EPO envisage to change the pass rate of the qualifying examination in the future. We should rather endeavour on promoting a new generation of highly-qualified European Patent Attorneys. Efforts should be undertaken as to make sure that the profession as such spends more time on training new candidates instead of repeatedly marking their examination papers. The Examination Board at its last meeting adopted a new marking system, which is expected, to facilitate the marking procedure. In order to add to its effect, and in line with other professional examinations throughout the member states of the EPO, a way of discouraging enrolment before adequate preparation should be investigated. The EPO would welcome discussions with the *epi* on the shaping of such a mechanism in the mutual interest of both institutions.

Table showing the number of candidates sitting the EQE each year:

	Candidates		Candidates
1979	44	1989	193
1980	no examination	1990	238
1981	18	1991	294
1982	26	1992	457
1983	64	1993	519
1984	86	1994	626
1985	90	1995	838
1986	144	1996	891
1987	159	1997	952
1988	151	1998	993

Restructuring the Qualifying Examination to Improve the Effectiveness of Training

B. Cronin (GB)

Introduction

Several years ago there was an awakening in the profession that there was a serious problem in training new entrants, especially regarding preparation for the European qualifying examination.

A great deal of effort was devoted to developing new training facilities and improving existing ones. Criticisms of the examination were addressed, which led to a major overhaul in the examination without sacrificing standards.

Creation of the CEIPI-EPI long-term decentralised basic legal course was a major breakthrough. Greater transparency in the examination and publication of the CompHowever, despite the ever increasing attention paid to training and the considerable efforts deployed by most candidates, the pass rate of the exam not only has remained "low"but has been decreasing.

The current situation

At present the exam is held once a year in Spring, usually early April. The four papers are held on three days. Candidates have the option of taking all four papers at once, or in modules, sitting the drafting and amendment papers A/B first and the opposition and legal papers C/D in a subsequent year.

The idea behind the modular system was excellent. Preparing to sit for 4 papers leads candidates to prepare excessively for the legal paper, to the detriment of practical training. The modular system presupposes begin-

ning with serious preparation for the drafting and amendment papers. This provides a sound basis for continuing, without interruption, to prepare for the opposition and legal papers during the ensuing year.

But modular sitting has proven to be less popular than sitting all four papers at the first attempt. Many candidates and their employers perceive that the 3-year training period is too long and they cannot afford to "lose" another year by sitting the exam in modules. The prospect of passing some papers and the possibility of repeating the others is a strong lure.

Preparing for and sitting the complete exam in one go is however a formidable task. Most trainees, having underestimated its difficulty, find themselves putting in a huge amount of work. A common sequel is that once the stress of preparing and taking the exam is behind, the summer recess is spent in a state of collapse, under the illusion of maybe having scraped through on some papers, spoiled by the nagging doubt that something may have gone wrong somewhere.

For resitting candidates - who are the majority - serious work resumes once the result has been received and digested, about December, and extends to March, followed by another summer recess full of anxiety.

Further, it is observed that whereas the 2-year basic legal course was designed to provide a good foundation it is out of phase with exam preparation for modular sitting, due to early emphasis on legal aspects, leaving practical training aside.

On the other hand, marking all the papers is an enormous undertaking for the Examination committees. The logistics are such that there is little hope of being able to announce the results before October. From the point of view of repeating candidates, bringing forward the results to early September would be an improvement, but even this would be difficult to achieve, taking into account the rising number of candidates.

It is suggested that if the exam were restructured as follows, this would lead to better results and enable training to be organised more effectively.

Split the exam into biannual sessions

Under the present arrangements, the exam is held once a year in Spring. The four papers are held on three days: DI and DII on day 1; A and B on day 2; and C on day 3.

It is suggested to split the exam into Spring and Autumn sessions: papers A and B to be taken in Autumn and D and C in Spring.

Papers A and B could be taken on one day, morning and afternoon, or two days, afternoon and next morning, possibly allowing half an hour longer for each paper: A 4 hours, B 4.5 hours. Increasing the time allowed for papers A and B may prove to be a logical consequence of the reform, introduced in 1998, where the drafting and amendment tasks are based on different inventions.

Papers D and C would be on two days, with substantially the same timing and organisation as at present. Allowing an extra quarter of an hour on paper DI would be a sensible measure.

Shorten the period before the first sitting

The present rules on the training period could be relaxed to allow candidates to sit the exam earlier if they wish. At present the training period is usually 3 years, possibly reduced to 2.5 years, to be accomplished before sitting the exam.

It should be possible to allow for modular sitting of the exam before completion of the training period. Completing a training period after passing the exam is already provided for EPO Examiners.

Candidates could for example be allowed to sit papers A/B one year before they have completed their training period, i.e. after having worked for 2 years, or 1.5 years for candidates entitled to a reduction. Early-sitting candidates who are successful the first time they sit all four papers, A/B plus C/D, will then have only a short wait before they can be entered onto the register, when their training period is completed.

This possibility of early sitting is of course linked to the reform that the exam would have to be sat in modules.

Early sitting of the exam *should moreover be made conditional on the candidate providing evidence of having followed relevant practical training* for the given papers, for instance by having completed 2 or more past papers in *epi* tutorials or equivalent.

A candidate wishing to take the exam early will also have to ask his/her supervisor to provide an endorsement "ready to sit the exam". Under the present rules, any candidate having completed the training period is "entitled" to obtain the required certificate.

For candidates wishing to benefit from the proposed early sitting, supervisors could justifiably refuse to provide a certificate if the candidate is underprepared. Obtaining the supervisor's approval for early sitting should provide an opportuninty to give early feedback to candidates. Those who are not yet ready should be induced to start or continue training so they will be ready a year later.

The prospect of early sitting should provide incentive for the candidates to train early and well. By placing papers A and B first, training for drafting and amendment should be taken more seriously.

Shorten the period for announcing the results

Splitting the exam into biannual sessions offers an opportunity to review the organisation with a view to shortening the time to announce the results.

One of the delaying factors is said to be the complications due to the summer holiday period.

By confining the Spring session to papers C and D, the workload of the Examining Committees in the Spring/Summer period is approximately halved. Could a way be found to announce the C and D results by early July?

For the A/B papers, it appears feasible to announce the results well in time before the date of the C/D papers.

Streamline the mechanism for decisions

Another complication in the present organisation is due to the reviews necessary to settle an overall pass/fail. Resolving numerous "borderline"grades holds up announcing the result for the entire mass of candidates.

With the proposed biannual sitting, it would be logical to be able to announce the results for individual papers relatively early. This could be followed a few weeks later by a declaration of those candidates who have achieved an overall pass in the four papers.

Any candidate having sat four papers who is not awarded an overall pass would receive an invitation to repeat the non-passed parts and would also be given the opportunity to request a decision. For non-passed borderline candidates, the ensuing review may lead to a pass decision. Otherwise, an appealable fail decision is issued. Presumably, this would lead to relatively few motivated fail decisions.

The above proposal implies that all candidates would know their grades, and those candidates who benefit from compensation will be aware of the fact. This seems reasonable.

In view of the large number of candidates, ways need to be found to simplify the marking process. A proposal to reduce from 7 marking grades to 4 has already been approved. The above proposal goes in the same direction.

Renounce or simplify compensations

The present rules allow for a failure in one or two papers to be compensated by a very good performance in other papers. The four papers have a common grading system (currently grades 1-7) but disparate marking schedules. Compensation is done by grade. A grade 5 or 6 can be compensated by a grade 3 or above.

This leads to difficulties in awarding grades in borderline situations, which complicates marking and delays publication of the results. Dispensing with these compensations would simplify marking and speed up announcing the results.

Compensation is nevertheless a good encouragement for first-time sitters and could be maintained in simplified form in the proposed all-modular sitting of the exam. Compensation per module, as opposed to compensation only for an overall pass on the four papers, could also be introduced.

The following proposal is based on the philosophy that compensation is particularly justified for candidates who are just below the pass mark for one or more papers.

Preferably the four papers would have a common marking basis, for example all marked out of 100 marks. Each paper can have is own pass mark. Under the present weighting, the pass mark is 24/48 for papers A and B, 50/100 for C and 55.5/100 for paper D.

There need only be three grades: pass; slightly insufficient and insufficient. Compensation would only be possible for "slightly insufficient"which would correspond to about a present 5 grade, say 10-15 marks below the pass level.

A slight insufficiency in paper A or B, or paper C or D, with a mark N below pass could be reprieved by a pass in the companion paper exceeding the pass mark by 2N, leading to a pass for that module. If the pass mark is not enough for compensation of the module, the missing difference of marks is referred to as a shortfall that can be compensated by a good performance in the other module.

A shortfall of M marks to achieve compensation in one module could be reprieved by a pass of the other module by 2M marks above the total needed. This shortfall could result from a partially-compensated slight insufficiency in one paper, or it could result from slight insufficiencies in both papers of a module, one by N1 marks and the other by N2 marks below pass. In this case, the shortfall M equals 2(N1+N2).

A few calculations suffice to show that this compensation system would work well. Compensation along these lines should be easier to manage than the present computation by grade. It also provides a pass for candidates who are just above and below the pass mark in different papers without having to make a quantum jump to grade 3, as at present. This ought to reduce the number of resittings.

Moreover, it would be possible to maintain this compensation beyond the first full sitting of the exam. This would alleviate some of the problems experienced by resitters, thereby reducing multiple resittings and further simplifying organisation of the exam.

Return of candidates papers

Under the present rules, all papers are returned to candidates who fail the exam. Modular sitting of papers A and B does not lead to a failure decision, and these candidates do not have their papers returned. This practice is discriminatory and should be brought to an end.

Any candidate who is awarded a below-pass grade on any paper (grade 4 under the present marking) should have his/her papers returned automatically. This is needed for the candidates to conduct the necessary "post-mortem"analysis as part of their training.

Going one step further, from a training standpoint many candidates could benefit from early return of their papers even before announcement of the results. In the past, the return of papers was opposed due to fear of possible appeals. If the decision-taking mechanism is streamlined as set out above, there should be few appeals. Photocopying of the papers is now decentralised. Surely a way could be found of returning a copy of their papers to candidates who request this and pay a fee.

Examiners reports

At present the publication of Examiners reports is delayed. These reports could be made available via the *epi* Internet website as soon as the results are announced.

Earlier publication of the Compendium would also be desirable. Under the proposed scheme, the A/B and C/D volumes would be published in Spring/Autumn respectively.

Reorganisation of basic legal training

Originally, the decentralised CEIPI-EPI Basic Training Course was conceived as a two-year course to provide basic legal knowledge as a foundation for exam preparation, which was then based on a 4-year training period. It was set up in the expectation that once this legal foundation was in place the problem of the low exam pass rate (then 50%) would be solved. The pass rate having meantime progressively dropped to 30%, clearly this objective has not been achieved.

The proposed biannual structure and early sitting of the exam will entail rethinking the arrangements for basic legal training. If the basic course is maintained on a 2-year cycle, a logical rearrangement would be:

- Year 1 - foundation; Year 2 - exam-oriented. The syllabus for each year could be adjusted as follows:
- April-September: substantive patent law, practical oriented. October-March: legal oriented (procedural law), opposition.

Thus, the annual rhythm of basic legal training would be brought into tune with the proposed biannual organisation of the exam. This should realign the "basic"-course (which has evolved into an early advanced legal course) to fulfill its original purpose of providing a foundation level.

Further legal training should be considered in the context of ongoing education.

Tutorials/courses

Under the proposed biannual sitting of the exam, tutorials and preparation courses for the A/B and C/D papers should follow the biannual exam rhythm.

Tutorials/courses for papers A and B would run some time between April to October.

Tutorials/courses for papers C and D would run some time between October to March.

First time candidates and repeating candidates would follow the same tutorials/courses.

The proposal to make early sitting of the exam depend on completion of the *epi* tutorials would give some impetus to these tutorials which so far were less popular than other training possibilities.

Coordination with national exams

If candidates are given the option of taking the European exam earlier than at present, this may urge them to prepare for the European qualification first and deal with national qualification later. I think that would be a good thing.

The *epi* should coordinate with national institutes to synchronise the European and national exams.

Encouragement of *epi* student membership

It is pleasing to note that the *epi* tutorials now offer a reduction for student members, creating a financial incentive for membership. This, combined with the increased use of *epi* tutorials which could result from the proposed scheme, will hopefully in turn lead to an increase in the number of *epi* student members.

The objective should be that - except for EPO Examiners who are not entitled to student membership - nearly all candidates for the qualifying exam will choose to join the *epi* as student members.

Statistics

The published statistics on exam results are disappointing, particularly in emphasising the "low" pass rate, highlighting failures and ignoring achievements in obtaining partial passes.

Undue emphasis on the "low" pass rate has diverted attention from the increasing absolute numbers of successful candidates, which is a better reflection of the tremendous increase of training.

If the pass/fail mechanism is reformed as suggested above, the statistics would reflect: a good number of passes on each module; a good number of passes in individual papers; a good number of overall passes, first time on all four papers, or after repeating one or more papers; and a few fail decisions where borderline candidates request a decision.

For candidates who have sat all four papers without achieving an overall pass, statistics could be kept on those who have been successful in three, two or one of the papers.

These statistics would provide a much healthier perspective of the candidates achievements and of the effectiveness of training.

I would furthermore hope that the Examining bodies will see fit to discontinue the publication of statistics by nationality. Such statistics are misleading and have been misused in promoting discrimination between national groups. This should stop.

Benefits to be expected from the proposed scheme

Adopting the above-outlined proposals as a package should lead to numerous benefits:

- The difficulties associated with candidates preparing for all 4 papers in one sitting are avoided.
- By making it compulsory to sit the A/B papers first, trainees will be encouraged to work on the drafting and amendment papers during the early part of their training.
- Proper training for papers A/B first will provide a sound basis for preparing the opposition and legal papers.
- A slump in training during the summer period will be avoided. Training will be spread more evenly over the year.

- Earlier feedback of the results will help unsuccessful candidates address their problems sooner.
- Synchronising the basic legal training and tutorials/ courses with the Autumn/Spring exam papers should increase training efficiency.
- Better results are to be expected from first time candidates who will be forced to take the exam in modules.
- Better results are to be expected from repeating candidates who will continue training with less interruption.
- Well prepared candidates will be able to pass the exam earlier.
- Training should be better spread over the initial 3 year training period.
- Taking the exam early will be attractive for candidates and employers, and should induce proper training.
- The prospect of taking the exam early should encourage trainees to begin their preparation earlier.
- The prospect of taking the exam early should stimulate participation in the *epi* tutorials and could possibly boost *epi* student membership.
- The logistics of marking the papers would be simplified.
- Candidates close to the pass level will have a better chance of compensation.
- The number of resittings can be reduced by the revised compensation mechanism.
- The resulting statistics should better reflect the candidates achievements and the efficiency of training.

An alternative proposal

If it should prove impractical to organise the exam biannually, some of the above benefits could still be obtained by allowing modular sitting of papers A/B one year earlier. The present 3 or 2.5 year preliminary training period would be maintained for those candidates who choose to take all four papers in one sitting.

Allowing candidates to sit papers A/B one year early, subject to compulsory practical training such as participation in the *epi* tutorials, will shift the emphasis of training to these vital practical aspects.

If the exam is maintained with one session per year, the above-suggested reforms which would reduce the time to announce the results will be all the more important.

Conclusion

Restructuring the exam as proposed offers an opportunity to enhance the effectiveness of training - improving the benefits candidates derive from their work leading to passing the exam sooner - without compromising on the content of the exam or the expected professional standard to achieve a pass.

Allowing earlier modular sitting of the exam coupled with a training obligation will promote effective earlier training particularly on the drafting and amendment papers, and may help promote the *epi* tutorials and *epi* student membership.

The proposals regarding marking and compensation should simplify management of the exam, increase efficiency and reduce resitting.

Students of the *epi*

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 250, 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 a "Training Manual". This latter includes 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 (not available yet). 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. With regard to the fees, reference should be made to the *epi* tutorials enrolment forms published in epi Information 1/1998, page 14, for the summer session, and in this edition of epi information for the autumn session.

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 patents professional that each needs not only to pass the EQE but to function as a fully-competent patent attorney. 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.

epi-Tutorium 1998

Wie in der Ausgabe 1/1998 der epi Information bereits angekündigt, wird in diesem Jahr ein zweites Tutorium zur Vorbereitung auf die europäische Eignungsprüfung (EEP) 1999 angeboten. Der Herbsttermin (Anmeldung bis spätestens 30. Oktober 1998) ist für Kandidaten gedacht, die ein Tutorium für die 1998 nicht bestandenen Prüfungsaufgaben wünschen.

Die Daten für das Tutorium sind wie folgt:

Angebotene Prüfungsunterlagen:	nur 1998
Anmeldung bis spätestens:	30. 10. 1998
Versand der Prüfungsaufgaben an die Kandidaten bis:	06. 11. 1998
Eingang der Antworten auf die Prüfungsaufgaben 1998 bis:	15. 12. 1998
Kommentare zu den Prüfungsaufgaben 1998 bis:	15. 01. 1999
Besprechung:	Februar 1999

Kandidaten werden gebeten, sich sobald wie möglich, spätestens jedoch bis zum 30. Oktober 1998 durch Rücksendung des nachstehend abgedruckten, ausgefüllten Formulars an das *epi*-Sekretariat (Fax Nr. +49 89 202 15 48), anzumelden. Für weitere Auskünfte wenden Sie sich bitte an das *epi*-Sekretariat (Tel. +49 89 201 70 80).

epi tutorials 1998

As already announced in the issue 1/998 of epi Information, a second tutorial will be proposed this year for candidates wishing to prepare for the 1999 European qualifying examination (EQE). The autumnn term (enrolment deadline 30 October 1998) is particularly devised for those candidates who wish to have tutorials for those papers which they failed in the 1998 EQE.

The tutorials will run according to the following timetable:

Papers offered:	1998 only
enrolment:	30. 10. 1998
Papers sent to the candidates by:	06. 11. 1998
1998 papers, scripts in by:	15. 12. 1998
1998 papers, comments by:	15. 01. 1999
Meeting:	February 1999

Candidates for the autumn term are encouraged to enrol as soon as feasible, and by 30 October 1998 at the latest, by filling in and sending the form printed hereafter to the *epi* Secretariat (Fax No. +49 89 202 15 48). For further information, please contact the *epi* Secretariat (Tel. +49 89 201 70 80).

Tutorat *epi* 1998

Comme il a déjà été annoncé dans le numéro 1/1998 de epi Information, un tutorat destiné aux candidats qui souhaitent se présenter à l'examen européen de qualification en 1999 (EEQ) est de nouveau proposé cette année. La session d'automne (date limite d'inscription 30 octobre 1998) est spécialement conçue pour les candidats qui souhaitent un tutorat concernant les épreuves auxquelles ils ont échoué à l'EEQ de 1998.

Le tutorat se déroulera selon le calendrier suivant:

Epreuves proposées:	1998 seulement
Inscription:	30. 10. 1998
Envoi des épreuves aux candidats le:	06. 11. 1998
Epreuves 1998, envoi des réponses le:	15. 12. 1998
Epreuves 1998, commentaires retournés le:	15. 01. 1999
Réunion:	février 1999

Les candidats qui souhaitent participer à la session d'automne sont invités à s'inscrire le plus rapidement possible, au plus tard le 30 octobre 1998. Ils sont priés de retourner le questionnaire imprimé ci-après, dûment rempli, au Secrétariat de l'*epi* (Fax no. +49 89 202 15 48). Pour tous renseignements, prière de s'adresser au Secrétariat de l'*epi* (Tel. +49 89 201 70 80).

epi Tutorials, Autumn 1998

Please return by → **30 October 1998**

to: *epi* Secretariat
Postfach 26 01 12
D-80058 München

Tel: +49 89 201 70 80
Fax: +49 89 202 15 48

Name: .....

Address: .....

.....

Telephone No.: ..... Fax No.: .....

Preferred language: English ☐ German ☐ French ☐

Field of interest: Electricity/Mechanics ☐ Chemistry ☐

I should like to enrol for:

- all 1998 Papers ☐
- the following Papers: 1998 A ☐ B ☐ C ☐ D ☐

I need a copy of:

- all 1998 Papers ☐
- the following papers: 1998 A ☐ B ☐ C ☐ D ☐

I am a Student of the *epi* ☐ I am not a Student of the *epi* ☐

Fees	non-*epi* Student	*epi* Student
any single paper	120 DM	70 DM
2 papers	200 DM	100 DM
4 papers	350 DM	200 DM

Tutorial fees are halved for each Paper that the candidate declares he/she does not need a copy from *epi* Secretariat.

Previous courses attended on intellectual property: (CEIPI, QMW, previous preparatory courses etc.):

.....

.....

If you have already sat one or both of the following examinations, please indicate its date(s):

- a national examination .....

- the European Qualifying Examination:.....

Years of professional experience: .....

Would you be willing to travel to meet your tutors?

.....

Date of fee payment into the following *epi* account, and its amount:

Postbank München
Account No. 703-802
BLZ (Bank Sorting Code) 700 100 80

.....

(Please note that *epi* tutorial fees *cannot* be debited from accounts held with the European Patent Office)

Date: .....

Signature: .....

Name: .....

The Future of Patent Protection in Europe Reflections on the Green Paper and on possible future effects and consequences of it for Professional representatives

L. Ryckeboer (BE)

This paper was presented at a Keynote Conference, organised by INNO-FORUM on November 18, 1997 in Brussels. An abbreviated form is reproduced here. The essence of this presentation was also submitted as part of *epi*'s position at the Hearing in Luxembourg on November 25 and 26.

1. Introduction

It is always challenging to think and talk about the future. This applies also to reflecting on the Green Paper as a platform for the design of a coherent patent protection structure in the Union (and beyond) for supporting innovation efforts to the benefit of civilisation.

This Green Paper is a consequence of an earlier one on Innovation where it was concluded that the conversion of excellent scientific knowledge in Europe to new products is lagging behind other developed regions in the world, especially in high tech sectors. It is thus very welcome to put the subject on the programme of this "business protection week" before a right and pertinent forum: scientists, innovation managers and their consultants.

Patent protection is an incentive to invest in the generation and exploitation of new and useful things. Patent attorneys have the key function to professionally link those who generate and use patents (i.e. the Innovators) to the Administrations who grant and enforce them, including judicial bodies. These Administrations are expected now to put forward simplified rules to effectively support harmonised protection for the future. This is not an easy task, the more since patent matters are complicated. The task will thus require a true sense of equity, of political wisdom and courage. It will also require genuine goodwill from the three interested circles: Innovators, Administrations and Representatives for looking with a long term vision beyond short term concerns.

Some weeks ago, the rector of the Europa-college in Bruges stressed 3 main challenges for the European Union: the expansion to Eastern Europe, the integration into the drive for globalisation and keeping track with the rapid evolution of science and technology. These three challenges affect typically our subject of today both from the points of view of substance and legal formalities as for time frames and costs.

The *epi*, from its important intermediary role and experience in the protection of technological innovation thus summarized its comment to the Green Paper with the statement that *any further development of patent systems in Europe should offer efficient protection measures both at the granting and enforcement stage, at reasonable cost and with reasoable speed so that protection is readily available and affordable for all types of applicants, including single inventors, R&D institutions, SME's and larger companies.*

2. A flexible patent protection system in Europe

"Europe" often refers to a complex heterogeneous entity; complex through its multitude of regional cultures, habits, languages, regulations, levels of development etc. Further, Europe is a diversified (often poorly standardised) market and subject to a turbulent transformation, i.a. due to its opening to Eastern Europe. This complicates the innovation process and requires more energy – but also opportunities – to tailor protection, in particular patent protection, to local market situations. To cope with that complex reality, and to preserve certain continuity, *epi* thus recommends for the future a flexible organisation for patent protection in Europe offering the choice between:

- national patents to be enforced before national courts under harmonised national laws and practice;
- European patents granted under the EPC (as a bundle of national patents in the designated States) and for which (at least) validity and infringement is centrally decided;
- a *"(E)UNION patent system"* with unitary character for the entire EU with (at least) validity and infringement centrally assessed and decided by an independent Court organisation. However, the conversion of a Union patent immediately after grant into a European patent should be possible.

I have preferred for my presentation to use the term "UNION"-patent system in view of clearly distinguishing i.a. from CPC '75 and CPC '89.

3. Accelerated harmonisation by the central organisation of assessment of validity and infringement

The central organisation for assessment and judgment by Courts at least on validity and infringement in the same procedure is considered very important and in fact *a top priority* since it offers the advantage of strongly harmonising the jurisprudence. In addition it has the IMPORTANT SIDE EFFECT that innovators with their attorneys can estimate preventively with more certainty on these issues to better orient in the future their offensive and defensive actions, to judge on the scope of protection, on gathering evidence, on injunctions etc. In particular it would facilitate a judgment on whether a certain

embodiment would infringe or, on the contrary circumvent a patent claim and what changes to the embodiment would permit to avoid infringement.

This is important since the Innovators' operational managers have to take well founded strategic decisions for protection, sometimes on short notice. They will only consider protection as added value when they get clear and understandable advise and messages from the professional consultants and thus more than a complex list of if-if's, due to poorly harmonised legal situations.

The number of cases where Innovators have to decide preventively is generally much higher than the number of litigations they have to deal with. The more cases are reviewed in this central organisation, the stronger it can result in a harmonisation effect. Submitting disputes already at an early stage to a central court system would thus probably stimulate harmonisation.

We should also keep in mind in this respect that, besides a possible future Union patent, we have already more than 400.000 granted European patents which - given eg. the example of the Epilady-cases – also deserve a better centralised court system of high quality. The courts could even be given the task to deal in an innovation friendly manner on questions of exhaustion besides validity and infringement. However, it would be interesting to estimate the overall workload, i. e. the number of cases per year to be handled by such court(s). It seems that all over Europe per year only about 100 new and different (i. e. non related) patent suits are filed in courts.

4. Representation in the future

4.1 The work of representatives and its context

What is actually the task of a qualified representative in patent matters? Some interesting considerations were developed on the subject and its context in "epi Information" nos. 2/1995 (p. 53–57), 3/1995 (p. 115–117) and 4/1995 (p. 142–146). They were issued at the occasion of giving our comments to the EPO Script no. 3 (1994) on the "Utilisation of Patent Protection in Europe". epi also issued recently a booklet entited *"Introduction to Patents in Europe"* as a contribution to the conclusion of this EPO script regarding insufficient patent awareness in Europe. The booklet is intended for broad distribution to users and potential users of the patent system. It describes in a digestible way what patents are, how they can be obtained and what you can do with them.

The complex reality of patents in Europe brings us to the core challenge for the patent attorneys to assure high quality work. Patent granting and enforcement procedures require technically skilled people who are also knowledgeable in the relevant legal matters. As such, epi represents the first and single profession with a qualification at European level and which meets these requirements. Therefore, *epi* is of the opinion that European patent attorneys have the best expertise and qualification to play a key role in advising and representing patent proprietors and third parties before all instances including judicial authorities. Indeed, epi members are known to have high quality standards and must now pass a difficult examination for entry onto the List of Official Representatives.

4.2 The free movement of professional services for patents in the EU

Everybody will recognise and understand that the free movement of services in the Union is a concern of the Commission. I think we make progress in this area as far as patent attorneys are concerned. Firstly, some issues have already been clarified regarding requirements for domicile and address of service per country. The Green Paper points to the need under national laws to employ local representatives, either from the time of filing national patents or at the grant and transfer stage of a European patent to the national Offices. The European Court of Justice (EJC) considered that such rules, requiring a representative to be qualified and domiciled in the State concerned, appear acceptable under European law for work going beyond routine administrative matters such as eg. the payment of renewal fees (*Säger v. Dennemeyer*).

Secondly, the *EC Directive 89/48* facilitates the free movement by imposing the recognition throughout the EU of professional qualifications gained in a certain Member State. However each Member State can require a complementary adaptation period and/or aptitude test, but limited to what is necessary under the ECJ-Gebhard-judgment. The form of that test has however not yet been finally determined by all States.

In any event, with the institution of *a Union-wide patent system* only one representative for the whole Union would be needed to deal with filing and prosecuting Union patents up to grant. This may of course seriously affect the position of the patent attorney profession.

4.3 Distribution of patent attorneys throughout Europe; epi efforts to further develop patent expertise in Europe.

So what is at stake here if we want to give the whole Union equal chances to develop? Some ten years from now very few of the first generation of European patent attorneys will still be active in the profession. In the countries with a long tradition in patent search and examination the flywheel for renewing expertise is turning quite smoothly. They take traditionally the largest part of substantive prosecution work, oppositions and appeals.

This is not the case for a number of countries at the periphery of the Union, in particular for Southern and in the future for Eastern Europe. So far the patent attorneys in these countries have to rely heavily on European translation work. They are anxious that, if this work would be lost (in the short term) there would be a serious danger of the patent profession disappearing from those countries. This would be bad for innovation and employment in these countries since there will always be good

reasons for employing local representatives, such as proximity with advise to the local Innovators; to administration officers for urgent matters, better command of the national language etc.

However, before patentable inventions can be made in Europe's periphery, one needs useful R&D results as assets and thus a critical mass of R&D investments for conversion of the results into new products. The focus of EC support is going there first, I suppose in the framework of its Innovation Action Plan and to refrain underemployment. Supporting awareness campaigns and training for protection work in Europe's periphery should be part of the EC's infrastructure for R&D support. Putting that training effort in the right framework for higher education of other aspects of modern economy and adapt it to local needs is thereby highly recommended. The booklet of *epi* mentioned before may be helpul here. It is the intention to translate it into all languages of the Union.

Another challenge for *epi* is its support in the training for the European qualifying examination and the set up of a continuing education program. A Professional Qualification Committee (PQC) within *epi* is responsible therefor. It plans to coordinate it with other professional training programmes. We are eagerly looking for expanding the courses to a future Union patent system, i. a. to reserve representation rights beyond the EPO and beyond strictly patent matters. Expanding training in the management of patent portfolios and licensing, in the conducting of oral proceedings, in EC competition law and in conducting litigation is under consideration.

5. Summary and Conclusions

As a conclusion we cannot forego the fact that any patent system has to support meaningful innovation for the future with specific attention for economics. An efficient patent system will thus have to be cost-effective, flexible, as simple as possible, and offer legal certainty. Any interested circle besides the Innovators should keep that in mind.

Legal certainty on enforcement is probably the first priority. Indeed, patents are granted now quite easily so that the number of applications rises. This may generate an overkilling protection effect, à fortiori with patent friendly judges at the enforcement side. The added value of patents could suffer therefrom. Certainty on validity and scope of protection has thus to be harmonised.

Another European reality relates to the R&D-gap between the centre and the periphery of the Union. Working to that is a long term task with the help of the EC. It will certainly take one generation because it will need an education process and the build up of expertise in numerous areas in that periphery, including industrial property protection. The set-up of a well organised and credible Union-patent system and accompanying competence and expertise, also within the EC is considered part of that.

epi members are aware if having a pivot function as interested party in the whole process between the Innovators and the Administrations. As said before, they would welcome a Union patent system and they are prepared to take their part of the task to make it happen.

Gaining experience and expertise to systematically support R&D and setting up training networks for protection everywhere in Europe may offer us a lead to promote futher harmonisation on a global basis. Refining TRIPS in the future and following up the PLT-initiatives of WIPO belong to the challenges.

Being backed by a harmonised European patent system, in particular by a EUNION patent would help to close the gap for more and better protected new products.

I would conclude: Let's go for it NOW !

Antépénultièmes Variations sur le Thème des Traductions

J.J. Martin (FR) P. Vidon (FR)

Dans l'éditorial du numéro 1-1998 d'epi Information, notre Comité de Rédaction s'est livré à un brillant exercice d'équilibre entre diverses thèses en présence à propos de la traduction des brevets européens.

Mais surtout, il observe avec bon sens que le but essentiel des traductions est de donner au contrefacteur potentiel des informations suffisantes pour qu'il comprenne l'invention, la signification des revendications et la portée du brevet. Nous espérons que la rénovation du système des brevets en Europe dans le cadre de la Conférence Diplomatique qui vient d'être annoncée par le Premier Ministre Français nous permettra d'atteindre cet objectif.

Sans doute n'est-il cependant pas trop tard pour attirer l'attention des professionnels sur quelques vérités qui peuvent être mathématiquement ou statistiquement étudiées.

Le brevet européen est né il y a vingt ans (année 0 : 1978). Les premiers brevets ont été délivrés au bout de deux ans (année 2 : 1980).

Le thesaurus des brevets délivrés s'est accru à partir de la deuxième année, selon une fonction croissante; la croissance est au moins linéaire, au mieux exponentielle.

Si l'on suppose que, dans un pays donné, les documents sont consultés à x % quelle va être la probabilité statistique que la traduction déposée soit effectivement consultée ou utilisée pendant la durée du brevet?

Les informations publiées à ce jour ne sont pas complètement claires, particulièrement parce qu'on ne sait

pas sur quelles bases a été calculé le taux de x % variable selon les pays.

Mais, il semble que ce taux soit en tout cas un taux annuel.

Le problème est donc de savoir, sur la base d'un taux annuel de x %, pour la consultation du thesaurus quelle est la probabilité statistique pour que la traduction d'un brevet donné soit consultée pendant la vie du brevet ?

Tous les amateurs de calculs qui se fixeront des taux de croissance du thesaurus, linéaires ou exponentiels, s'apercevront que, selon que x varie entre 5 % et 20 %, les probabilités statistiques de consultation se situent dans une fourchette de 70 à 150 %.

L'argument de la non-consultation des traductions, ramené au pourcentage *annuel* du thesaurus consulté n'est pas une donnée sérieuse car un brevet dure vingt ans et une traduction donnée retrouve chaque année une chance nouvelle d'être dans celles qui sont consultées.

Le second problème soumis à votre sagacité est celui de la corrélation.

Les chiffres publiés semblent bien montrer que les pays les plus performants en matière de brevets sont également ceux qui ont le taux le plus élevé de consultation des traductions (Allemagne: 18 %).

Cela signifie que les traductions sont une aide indispensable à la compréhension des situations de propriété industrielle et des risques de contrefaçon.

Des études complètes, pour tous les pays, sont à entreprendre, mais la corrélation est très vraisemblable.

Enfin, il y aurait beaucoup à dire sur les diverses statistiques qui ont été publiées à ce jour.

Il y a beaucoup de préjugés à l'encontre des enquêtes statistiques. On dit par exemple couramment qu'il existe le mensonge ordinaire, le mensonge éhonté, et enfin le mensonge statistique. Plus sérieusement, il est démontré[1] que la succession des questions peut entraîner un effet de halo, l'enchaînement des questions conditionnant les réponses successives, que l'emploi de questions fermées (à nombre de réponses limitées) fausse également le résultat et que de façon générale les résultats statistiques doivent être pris avec beaucoup de précaution.

Sans vouloir critiquer un bon collègue allemand, nous pouvons par exemple observer que l'enquête de Monsieur SUCHY, publiée dans le numéro 4-1997, interroge exclusivement les titulaires de brevets européens, en leur demandant de choisir entre cinq niveaux de coûts. Avec une telle présentation, les sondés choisissent massivement les solutions les moins onéreuses, sans qu'on les ait replacées dans le contexte général de l'information des tiers et de l'économie européenne.

La profession libérale française a tenté de mener une enquête plus large.

Nous en donnons seulement ci-après le contexte et les conclusions, étant entendu que l'enquête complète, avec toutes les questions et toutes les réponses, se trouve sur Internet[2].

L'enquête a été menée au moyen d'une questionnaire adressé début décembre 1997 aux 1500 entreprises industrielles bretonnes de plus de 10 salariés à partir du fichier de la Chambre Régionale de Commerce et d'Industrie de Bretagne. Il s'agit d'une enquête déclarative dont le taux de réponses spontanées (près de 5 %) témoigne de l'intérêt des PME-PMI sur le sujet.

A notre connaissance, peu d'enquêtes ont été menées auprès d'un échantillon réellement représentatif de l'ensemble du tissu économique, en incluant *déposants de brevets et non déposants*, pour éclairer sérieusement certaines options envisagées au niveau européen.

Cette carence étonne car rien n'est plus simple que d'interroger toutes les entreprises, y compris les PME-PMI qui ne déposent pas de brevets, pour recueillir leur avis.

L'enquête a visé à commencer à combler cette lacune en axant les questions sur l'équation économique complète du brevet: protection des inventions, diffusions des connaissances, efficacité contre les contrefaçons et sécurité des tiers. Elle est en outre, semble-t-il, la première à poser clairement et directement à tous les intéressés la question de la langue des textes de brevets.

Et dans les limites inhérentes à ce type d'enquête déclarative, les réponses apparaissent sans ambiguïté.

La consultation des brevets de tiers

Contrairement à certaines idées reçues, il apparaît qu'une fraction non négligeable (24 %) des sondés déclare réaliser une surveillance systématique ou régulière des brevets. Seuls 30 % avouent un recours rare à la veille brevets. Ces résultats témoignent d'une certaine sensibilisation des entreprises au rôle central du brevet en matière d'intelligence économique.

Ils sont certainement un encouragement à continuer à réconcilier les entreprises et les brevets en leur permettant d'accéder encore plus aisément et directement à la littérature des brevets.

La langue des brevets

Dans le contexte de la construction européenne et de la mondialisation, la question de la langue de publication des brevets est posée avec acuité, bien que les moyens de traduction automatique puissent en faire dans un proche avenir un problème dépassé.

Près de 80 % des demandes de brevets européens sont déposées en anglais et en allemand. Actuellement, ces brevets doivent être traduits et publiés en français pour pouvoir produire des effets en France.

Le questionnaire a interrogé les entreprises du panel sur leur opinion quant à la nécessité que le brevet européen soit ou non disponible en langue française dès lors qu'il produit des droits en France.

1 Voir par exemple l'ouvrage «L'enquête en psycosociologie», Hélène Chauchat – PUF 1995 –

2 Web Internet: http://www.cncpi.fr

La netteté et l'homogénéité des réponses à ces questions constituent un enseignement majeur de l'enquête.

Quel que soit le critère retenu (taille de l'entreprise, étendue géographique du marché, déposant ou non de brevets, adepte ou non de la veille brevets), le pourcentage des sondés estimant la traduction en français nécessaire tourne entre 70 et 80 %.

De façon massive, le tissu industriel exige le maintien de traductions en français, c'est-à-dire de l'intelligibilité directe des brevets.

C'est en tenant compte de tous ces facteurs qu'il faut résoudre le problème des traductions.

La mondialisation heureuse ne peut être que le fait d'acteurs informés ayant le sens de l'intérêt général.

C'est dans ce sens que la profession libérale française agira pour assurer le succès de la Conférence Diplomatique annoncée.

Décision de la Commission de Discipline de l'Institut des Mandataires agréés près l'Office européen des brevets

A contre B et contre C

Cas disciplinaire CD 5/96
Composition de la Chambre:

M. A.J. Pissarra Dias Machado	Président
M. G. Leherte	Membre (Rapporteur)
M. J.J. Troesch	Membre
M. R.L. Lhuillier	Membre Suppléant

Décision

La Chambre décide de classer l'affaire de la plainte CD 5/96 contre B et contre C.

Résumé des faits

A fait valoir dans une plainte datée du xxx que B et C auraient commis des fautes dans l'exercice de leur activité de mandataire agréé près de l'Office européen des brevets, et auraient pratiqué une facturation excessive.

Une première analyse des observations et documents fournis par A ne permettent pas d'établir une faute de la part des personnes incriminées ni une facturation excessive de leur part. A a été prié par une lettre datée du yyy de prendre contact avec le Rapporteur de la Chambre de Discipline afin de s'entretenir avec lui de sa plainte ou d'en faire ensemble une analyse plus détaillée. Cette lettre du yyy est restée sans réponse. En réponse à une lettre de rappel du Rapporteur datée du zzz informant A qu'en l'absence des renseignements complémentaires demandés, la plainte devrait être classée, ce dernier a transmis à la Commission de Discipline une note d'observations se bornant à répéter ses allégations initiales et à joindre des copies de son dossier, sans toutefois fournir de nouveaux éléments d'explication quant à ses allégations de faute et de facturation excessive, et sans contacter le Rapporteur.

Motifs de la décision

Dans ces circonstances, et en l'absence d'éléments permettant d'établir une faute quelconque de la part des personnes accusées la Chambre a été amenée à décider le classement de l'affaire.

Conformément à l'article 20 du Règlement de Procédure Additionnel de la Commission de Discipline de l'*epi* la Chambre recommande au Président du Conseil de l'Institut de publier la Décision, intégralement ou partiellement, sans toutefois révéler l'identité des mandataires agréés concernés, ni du plaignant, à moins qu'ils n'y consentent.

Conformément à l'Article 21 du Règlement en matière de discipline et de l'Article 19(1) du Règlement de Procédure Additionnel le plaignant doit être informé du résultat de la procédure en recevant une copie de la décision.

Information quant à la possibilité d'appel

Un recours contre cette décision peut être formé par un mandataire agréé concerné par la décision, par le Président du Conseil de l'Institut et par le Président de l'Office européen des brevets. Le recours doit être formé auprès de la Chambre de Recours statuant en matière de Discipline dans un délai d'un mois à compter du jour de la signification de la décision.

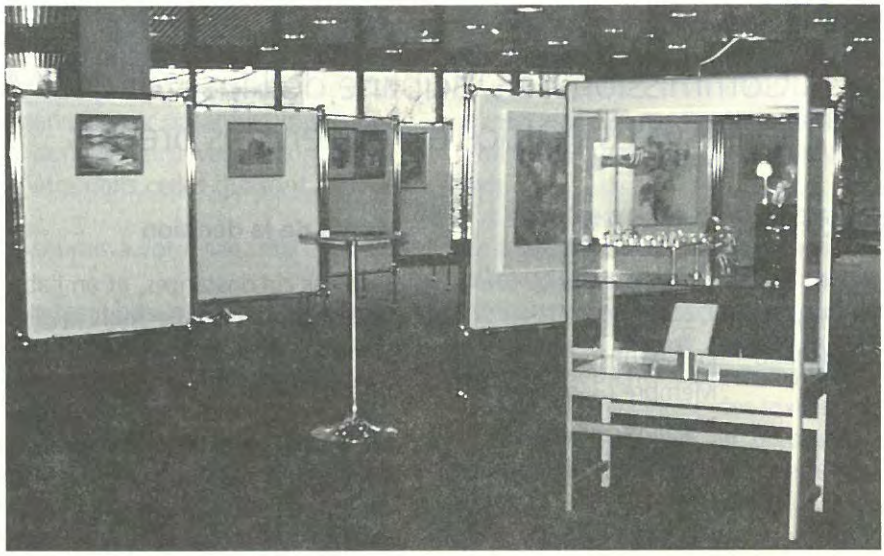
Un mémoire exposant les motifs du recours doit être déposé dans un délai de deux mois à compter du jour de la signification de la décision (Art. 8 et 22 du Règlement en matière de discipline des mandataires agréés, Journal Officiel de l'Office européen des brevets 1978, page 91 et suiv.).

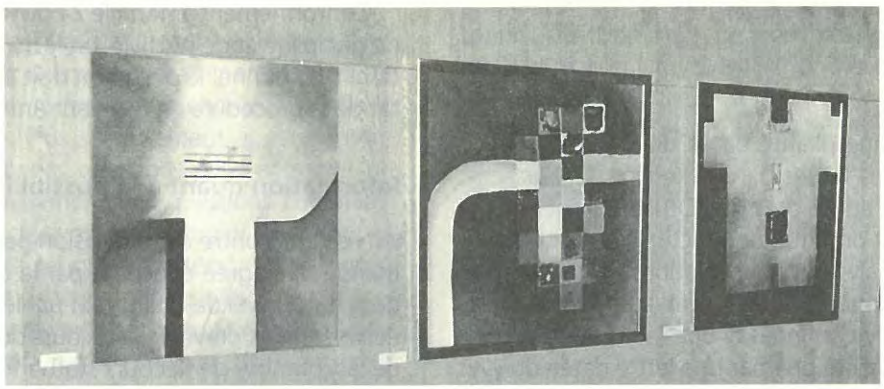
Pour la Chambre
le Rapporteur
Georges Leherte

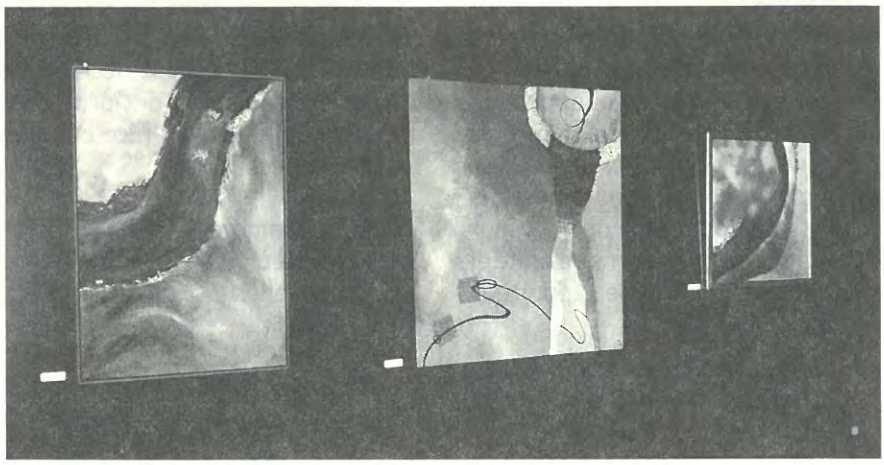
Short Report on the Spring Exhibition of *epi* Artists 1998

The 4th Exhibition of *epi* Artists took place from 9 to 27 March 1998 in the EPO main building, in Munich. The exhibition, opened by Mrs. Remandas, EPO Vice-President of DG5 and by the *epi* President, Mr. Huygens, was very successful. A large number of guests and visitors showed considerable interest in the works displayed.

The pictures which follow are dedicated to the artists, in particular those who unfortunately could not be present on that evening but were kind enough to send their paintings. We also hope that they will be an incentive to our readers and prospective exhibitors for the next exhibition which will be held in the year 2000.







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Seminar on Licenses
organised by CEIPI
Centre d'Etudes Internationales de la Propriété Industrielle
from 19 to 21 October 1998 in Strasbourg

Licenses Rules in the EU
Contents of a License Agreement

Lecturers will be:

Jeremy Brown, London, Bernhard Geissler, München,
Jochen Pagenberg, München
Thierry Sueur, Paris

Enrolment should be made before 1st August 1998; if there are not sufficient participants the seminar will be cancelled.

For any further information please contact:

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2. Vorankündigung

1. epi-VPP Fachtagung

5./6. November 1998 in **Ulm** · Beginn: 5. November 14.00 Uhr · Ende: 6. November ca. 17.00 Uhr
Simultanübersetzung Englisch–Deutsch

Eröffnung: **Renate Remandas**, Vizepräsidentin des EPO · **Arthur V. Huygens**, Präsident des **epi** · **Klaus Höller**, Präsident des VPP

Klaus Höller, Präsident des VPP · **Theodorus Smulders**, Patentanwalt in Den Haag

– Die Sprachenfrage –

The Hon Mr. Justice **Robin Jacob**, Royal Courts of Justice · **Rüdiger Rogge**, Vorsitzender Richter am Bundesgerichtshof

– Entscheidungen in Zusammenhang mit europäisch erteilten Patenten in Großbritannien und Deutschland –

Uwe Dreiss, Präsident der (deutschen) Patentanwaltskammer · **Peter Messerli**, Vizepräsident des EPO, DG 3 Beschwerde

– Entscheidungen der Beschwerdekammern des EPA –

Rolf W. Einsele, Vizepräsident des VPP · **Pascal Leardini**, Administrateur, Kommission der Europäischen Union

– Das Grünbuch zum Gemeinschaftspatent –

An je zwei Referate schließt sich eine Diskussion an.

Leitung: R. Einsele VPP · Vereinigung von Fachleuten auf dem Gebiet des gewerblichen Rechtsschutzes
R. Zellentin **epi** · Institut der beim EPA zugelassenen Patentvertreter

Weitere Informationen und das Anmeldeformular folgen im Heft 3 der **epi** Information.

2nd Advance notice

1st epi-VPP Seminar

5–6 November 1998 in **Ulm** · Beginning: 5 November, 2 pm · End: 6 November, about 5 pm
Simultaneous translation English–German

Opening: **Renate Remandas**, EPO Vice-President · **Arthur V. Huygens**, **epi** President · **Klaus Höller**, President of the VPP

Klaus Höller, VPP President · **Theodorus Smulders**, Patent Attorney, The Hague

– The language issue –

The Hon Mr. Justice **Robin Jacob**, Royal Courts of Justice · **Rüdiger Rogge**, Presiding Judge, Bundesgerichtshof

– Decisions relating to patents granted by the EPO in Great Britain and Germany –

Uwe Dreiss, President of the (German) "Patentanwaltskammer" · **Peter Messerli**, EPO Vice-President, DG 3 Appeals

– Decisions of the EPO Boards of Appeal –

Rolf W. Einsele, Vice-President of the VPP · **Pascal Leardini**, Administrateur, European Commission

– The Green Paper on the Community Patent –

Each topic will be followed by a discussion.

Moderators: R. Einsele VPP · Vereinigung von Fachleuten auf dem Gebiet des gewerblichen Rechtsschutzes
R. Zellentin **epi** · Institute of Professional Representatives before the EPO

Further information as well as a registration form will be available in the issue 3 of **epi** Information.

Searchable Patent Attorneys' database on the website of the European Patent Office

A searchable Patent Attorneys' database is maintained on the website of the European Patent Office (http:// www.european-patent-office.org). This database provides the full name and address of all professional representatives registered on the list held by the EPO.

Professional representatives who wish to have their e-mail address as well as their home page address added to the information presently available are invited to send this information to the European Patent Office, Direction 5.1.1, for the attention of Mr. G. Chistè.

CIPA Congress 1998

The Chartered Institute of Patent Agents holds its annual Congress on 23–25 September 1998 at Le Meridien, Piccadilly, London.

This years theme is *"the regionalisation of intellectual property"*, and the list of confirmed speakers already includes Arthur Huygens, President, *epi*, Ingo Kober, President, EPO, Bruce Lehman, Commissioner of Patent and Trade Marks, USPTO, Matthijs Geuze, Counsellor, World Trade Organisation, Paul Waterschoot, Deputy Director, DGXV European Commission, Mr. Justice Willems, Presiding Judge, District Court of the Hague and several other internationally respected speakers.

Early indications would suggest that demand for places is likely to be great and delegates are advised to make early reservations through the conference organisers, Conference Line (telephone Miranda Graham on 0181 9445050 or fax: 0181 9440866).

Redaktionsschluß für epi Information 3/1998

Redaktionsschluß für die nächste **epi** Information ist der **21. August 1998**. Die Dokumente, die veröffentlicht werden sollen, müssen bis zu diesem Datum im Sekretariat eingegangen sein.

Deadline for epi Information 3/1998

Our deadline for the next issue of **epi** Information is **21 August 1998**. Documents for publication should have reached the Secretariat by this date.

Date limite pour epi Information 3/1998

La date limite de remise des documents pour le prochain numéro de **epi** Information est le **21 août 1998**. Les textes destinés à la publication devront être reçus par le Secrétariat avant cette date.

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Durchführungsvorschriften zum Europäischen Patentübereinkommen 1998

Die überarbeitete und auf den neuesten Stand gebrachte Ausgabe der umfangreichen Zusammenstellung der wichtigsten seit 1977 erlassenen Vorschriften, geordnet nach Artikeln und Regeln des EPÜ und der Gebührenordnung, enthält auch ein Stichwortverzeichnis in den drei Amtssprachen des EPA.

Herausgegeben vom Europäischen Patentamt, Generaldirektion 3 (Beschwerde), Wissenschaftliche Dienste und Verwaltung

Ancillary Regulations to the European Patent Convention 1998

The revised and updated version of the comprehensive collection of the most important regulations adopted since 1977, arranged according to the articles and rules of the EPC and of the Rules relating to Fees, also contains an index in the three official languages of the EPO.

Edited by the European Patent Office, Directorate-General 3 (Appeals), Legal Research and Administration

Règles d'application de la Convention sur le brevet européen 1998

La nouvelle version entièrement mise à jour du recueil des principales dispositions adoptées depuis 1977, classées par articles et par règles de la CBE et du règlement relatif au taxes, contient aussi un index dans les trois langues officielles de l'OEB.

Publié par l'Office européen des brevets, Direction générale 3 (Recours), Recherche juridique et administration

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Die Sammlung enthält auf jetzt rund 850 Seiten eine umfassende Auswahl von Durchführungsvorschriften zum Europäischen Patentübereinkommen, die im Laufe der Zeit im Amtsblatt des EPA veröffentlicht worden sind. Es handelt sich dabei überwiegend um

- Beschlüsse des Verwaltungsrats
- Beschlüsse und Mitteilungen des Präsidenten des EPA
- Vereinbarungen zwischen dem EPA und nationalen Ämtern oder der WIPO.

Ferner enthält die Sammlung Hinweise auf wichtige Vordrucke des EPA.

Es handelt sich also um Texte, die für das europäische Erteilungsverfahren im weiteren Sinne von Bedeutung sind. Ferner enthält die Sammlung Vorschriften für die beim EPA zugelassenen Vertreter und für die europäische Eignungsprüfung.

Die erfaßten Durchführungsvorschriften sind im Volltext wiedergegeben und werden bei der täglichen Arbeit immer wieder benötigt. Die Veröffentlichungen stammen zum Teil noch aus den Anfangszeiten des Amtes und könnten ohne eine solche Zusammenstellung oft nur unter erheblichem Suchaufwand recherchiert werden.

Das Inhaltsverzeichnis ordnet die einzelnen Durchführungsvorschriften denjenigen Rechtsnormen zu, zu deren Ausführung sie ergangen sind. Stichwortverzeichnisse in den drei Amtssprachen erleichtern die Suche nach bestimmten Suchbegriffen.

Die Sammlung erscheint in den drei Amtssprachen des EPA. Die deutsche, englische und französische Ausgabe kostet jeweils DEM 48 (zuzüglich Porto und Versand); bei Bezug aller drei Bände ermäßigt sich der Gesamtpreis auf DEM 120 (zuzüglich Porto und Versand).

Bestellungen sind zu richten an die für den Schriftenversand zuständige Dienststelle des Amts in Wien.

Wir bitten Sie, Ihre Bestellungen erst nach Erhalt der Rechnung zu bezahlen.

This collection, now about 850 pages long, contains a comprehensive selection of regulations implementing the European Patent Convention, which have all been published at some time in the Official Journal of the EPO and mainly take the form of

- decisions by the Administrative Council
- decisions and communications by the President of the EPO
- agreements between the EPO and national offices or WIPO.

There are also notices concerning important EPO forms.

The collection thus contains texts which are important for the European grant procedure in the broader sense. It also features regulations concerning professional representatives before the EPO and the European qualifying examination.

An essential source of information from day to day, the regulations selected for inclusion are reproduced in full. Some of the texts date from the EPO's early days and could otherwise be quite difficult to track down.

The table of contents arranges the individual regulations according to the articles or rules for which they were adopted. Indexes in the three official languages make it easier to search for particular terms.

The collection is published in the three official languages of the EPO. The English, French and German editions each cost DEM 48 (plus postage); all three volumes ordered together are available at a reduced price of DEM 120 (plus postage).

Orders should be addressed to the EPO's sub-office in Vienna, which distributes publications.

Please only pay for your order after receiving an invoice.

Le recueil contient désormais, sur environ 850 pages, un large choix de règles d'application de la Convention sur le brevet européen, qui ont été publiées au fil des années au Journal officiel de l'OEB. Il s'agit essentiellement :

- de décisions du Conseil d'administration
- de décisions et de communiqués du Président de l'OEB
- d'accords conclus entre l'OEB et les offices nationaux ou l'OMPI.

Le recueil fait également référence aux principaux formulaires de l'OEB.

Ce sont donc là des textes importants pour la procédure européenne de délivrance au sens large. L'on retrouvera par ailleurs dans le recueil des dispositions relatives aux mandataires agréés près l'OEB et à l'examen européen de qualification.

Les règles d'application contenues dans ce recueil figurent dans leur texte intégral. Elles seront fréquemment consultées pour le travail quotidien. Certains des textes qui ont été publiés remontent aux débuts de l'Office et ne pourraient, si ce recueil n'existait pas, être retrouvés qu'au prix d'efforts considérables.

Les différentes règles d'application sont classées dans le sommaire par articles et règles de la CBE qu'elles visent à mettre en application. Des index dans les trois langues officielles facilitent la recherche.

Le recueil est publié dans les trois langues officielles de l'OEB. Les versions allemande, anglaise et française coûtent chacune 48 DEM (frais de port non compris); l'acquisition des trois volumes réduit le prix total à 120 DEM (frais de port non compris).

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