

e**pi** **Information**

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

T. Johnson (GB)

Whilst we are getting to what Fleet Street Newspapers call the „silly season“ i.e. Summer when there is no news, this is generally not the case in IP where all manner of matters seem to arise on a continuing basis. Of immediate parochial concern to the Institute is the installation at the recent Council Meeting in Vilnius of new officers, Board and Council following the elections which took place earlier this year. More detailed reports are to be found elsewhere in this issue, but we on the Editorial Committee wish our new President, Kim Finilla of Finland, all the very best for the ensuing three years, and are sure that he will be ably assisted by the Board, Council and Membership, from whom we hope to receive many letters and other communications for publication.

Continuing the „parochial“ theme, we report in this issue on the Decision of the Council in Vilnius to delegate to the Board decision-taking powers, with the right of Council to question and indeed overturn decisions retrospectively. We are confident that in a fast-moving world, it is necessary for the epi to be able to respond quickly to challenges which arise between Council meetings, and for which the Board is ideally placed to take action. This Council decision followed an extended and informative debate in Council on the report of the ad hoc Committee set up by Chris Mercer, and steered by the Convener of the Committee, Dieter Speiser. It seems to us that the epi is in good shape for the future.

On wider issues, EPO 2000 is up and running. Further, the debate over inception of a Community Patent Regulation (CPR) continues unabated. We hope that the French Presidency of the EU, which takes effect from 1st July to the end of the year, will move the matter forward. It is our view that a CPR is necessary for the benefit of EU industry, not least SMEs, Universities and individual inventors. Whilst the London Agreement has assisted applicants financially, a unitary patent right to go alongside the CTM and CDR would we think put a

comprehensive EU IP system in place. Of immediate concern is that it has come to our attention that there are reports that parts of the EPO do not recognise the importance of the London Agreement and object to the use of further processing to gain the advantage of reduced translation costs on grant. This is an example of a sometimes expressed EPO „isolationist view“ that all the EPO exists for is to examine patent applications in vacuo. We feel it necessary to beat the drum of awareness again – granting of a patent is the beginning not the end of the process as far as applicants are concerned. The granted patent is a valuable IP right, which used strategically can (and does) enhance the „bottom line“ of a business i.e. of the Applicant. We are sure that at least part of the EPO recognises this. We hope so. Part of an efficient CPR system too, we believe, is the ability of a patentee to be represented in Court by a patent attorney of choice, on all matters which are pertinent to a patent, for example validity, infringement, assignment, contractual arrangements etc. We shall monitor developments on the representation regime for a CPR over the coming months.

At the 'proof' stage of this Editorial, we received the EPO Annual Report, 2007. We commend it to our Members, not least the statistical data on pages 76 and 77. For example, we learn that in 2007 there were 62,119 European and 78,606 Euro-PCT (regional phase) applications filed. (2006, 61,133 and 74,296 respectively). Searches on European applications were 84,698 (2006, 83,748), the *total* number of searches being 177,455 (2006, 172,033). There were 3,293 oppositions (2006, 3000), patents *granted* were 54,699 (2006, 62,777). Staff increased from 6,319 in 2006 to 6,499 in 2007. Interesting reading, and food for thought?

We hope that the foregoing does not fall within the „silly season“ ! We do, however, wish all our readers, both in the Institute, at the EPO, and elsewhere, a very happy and relaxing summer period.

Bericht über die 64. Ratssitzung Vilnius, 26.–27. Mai 2008

Da die Sitzung nach den Wahlen zum neuen Rat stattfand, war sie im Wesentlichen eine „Übergabesitzung“.

Die Ratssitzung wurde vom amtierenden Präsidenten, Chris MERCER, eröffnet, der unseren Gastgebern, der Litauischen Delegation, für die Organisation der Sitzung herzlich dankte.

Der Präsident hieß dann die neu gewählten Ratsmitglieder willkommen und zeigte eine kurze Powerpoint®-Präsentation mit nützlichen Hintergrundinformationen zum epi.

Der bisherige Generalsekretär und der Schatzmeister gaben kurze Berichte, wobei der letztere darlegte, dass die Finanzen des Institutes in guter Verfassung sind. Der Rat erteilte dem amtierenden Schatzmeister die Entlastung.

Der Rat erteilte sodann dem gesamten amtierenden Vorstand die Entlastung, und wählte die neuen *labelled members* wie folgt:

Präsident	Herr Kim FINNILÄ (FI)
Vize-Präsidenten:	Frau Selda ARKAN (TR)
	Herr Sylvain LE VAGUERÈSE (FR)
Generalsekretär:	Herr Paul Georg MAUÉ (CH)
Schatzmeister:	Herr Claude QUINTELIER (BE)
Stellvertretender Generalsekretär:	Herr Thierry SCHUFFENECKER (MC)
Stellvertretender Schatzmeister	Herr Frantisek KANIA (CZ)

Kim FINNILÄ dankte Chris MERCER für die ausgezeichnete Arbeit, die er als Präsident geleistet hatte, wofür Chris MERCER eine „standing ovation“ erhielt.

Die abtretenden *labelled members* gaben kurze Stellungnahmen ab, und Claude QUINTELIER, der als Schatzmeister wieder gewählt war, dankte dem Rat und bat um fortgesetzte Unterstützung.



64th epi Council Meeting Vilnius, 26.–27. May 2007

Foto: T. Schuffenecker



The outgoing President, Chris Mercer was given a standing ovation by Council

Foto: M. Jason

Nächster Redaktions- schluss für epi Information

Informieren Sie bitte den Redaktionsausschuss so früh wie möglich über das Thema, das Sie veröffentlichen möchten. Redaktionsschluss für die nächste Ausgabe der epi Information ist der **20. August 2008**. Die Dokumente, die veröffentlicht werden sollen, müssen bis zum diesem Datum im Sekretariat eingegangen sein.

Next deadline for epi Information

Please inform the Editorial Committee as soon as possible about the subject you want to publish. Deadline for the next issue of epi Information is **20 August 2008**. Documents for publication should have reached the Secretariat by this date.

Prochaine date limite pour epi Information

Veuillez informer la Commission de rédaction le plus tôt possible du sujet que vous souhaitez publier. La date limite de remise des documents pour le prochain numéro de epi Information est le **20 août 2008**. Les textes destinés à la publication devront être reçus par le Secrétariat avant cette date.



The Lithuanian delegation hosted the 64th Council meeting

Foto: M. Jason

Sodann wurden die Mitglieder der Ausschüsse gewählt.

Dieter SPEISER (DE) berichtete im Namen des von Chris MERCER einsetzten ad-hoc Ausschusses. Es folgte eine lange Debatte, nach der die Schlussfolgerungen und Empfehlungen angenommen wurden, im Wesentlichen mit dem Ergebnis, dass für eine effizientere Arbeitsweise des Institutes in der schnelllebigen Welt dem Vorstand Vollmachten übertragen werden, um zwischen den Ratssitzungen Entscheidungen treffen zu können, vorausgesetzt, dass der Rat informiert wird und das Recht auf Einwände behält.

Der Geschäftsordnungsausschuss wurde beauftragt, die Geschäftsordnung des Institutes entsprechend anzupassen.

Die nächste Ratssitzung findet in München am 24.-25. November 2008 statt.

Report of the 64th Council meeting Vilnius, 26th–27th May, 2008

T. Johnson (GB)

This meeting was essentially a „change over“ meeting as it took place after the elections for the new Council.

The meeting was opened by the President in Office, Chris MERCER, who thanked our hosts, the Lithuanian Delegation, warmly for their organisation of the meeting.

He then welcomed newly elected Council Members, and gave a short Power Point® presentation giving useful background information on the *epi*.

The incoming President, Kim Finnilä then presented to Council his Strategy Agenda for the *epi*.

The outgoing Secretary General and Treasurer reported briefly, the latter reporting that the finances of the institute are in good shape. Council discharged the Treasurer in Office.

The Council then discharged the whole of the Board in Office, and elected the new labelled Members of the Board, namely:

President:	Mr. Kim FINNILÄ (FI)
Vice-Presidents:	Mrs. Selda ARKAN (TR)
	Mr. Sylvain LE VAGUERÈSE (FR)
Secretary General:	Mr. Paul-Georg MAUÉ (CH)
Treasurer:	Mr. Claude QUINTELIER (BE)

Deputy Secretary

General: Mr. Thierry SCHUFFENECKER (MC)

Deputy Treasurer: Mr. Frantisek KANIA (CZ)

Kim FINNILÄ thanked Chris MERCER for the excellent job he had done as President, for which Chris was given a standing ovation by Council.

The other outgoing Officers gave a short address and Claude QUINTELIER, being re-elected as Treasurer, thanked Council and asked for its continuing support.

Members of Committees were then elected.

The Ad Hoc Committee set up by Chris MERCER reported via its Convener, Dieter SPEISER (DE). There was a long debate following which the conclusions and recommendations of the Committee were approved, basically to the effect that in order for the Institute to function efficiently in a fast moving world, Council delegated to the Board the power to make certain decisions as necessary between Council Meetings, providing that Council was informed and had the power to raise objections.

The By-Laws Committee was charged with up-dating the By-Laws of the Institute accordingly.

The next Council Meeting will be in Munich, 24th- 25th November, 2008.

Compte rendu de la 64ème réunion du Conseil Vilnius, 26 –27 mai 2008

Cette réunion étant la première après l'élection du nouveau Conseil, ce fut essentiellement une réunion de passation de pouvoirs.

La session est ouverte par le Président en fonction, Chris MERCER, qui remercie chaleureusement nos hôtes, la délégation lithuanienne, pour l'organisation de la réunion.

Il remercie ensuite les membres du Conseil nouvellement élus et fait une brève présentation générale apportant d'utiles informations concernant l'*epi*.

Suit un bref rapport du Secrétaire Général sortant ainsi que celui du Trésorier, lequel déclare que la situation financière de l'Institut est bonne. Le Conseil donne quitus au Trésorier en fonction.

Le Conseil donne ensuite quitus au Bureau sortant et élit les membres ci-après aux fonctions suivantes:

Président:	M. Kim FINNILÄ (FI)
Vice-Présidents:	Mme Selda ARKAN (TR)
	M. Sylvain LE VAGUERÈSE (FR)
Secrétaire Général:	M. Paul-Georg MAUÉ (CH)
Trésorier:	M. Claude QUINTELIER (BE)
Secrétaire Général Adjoint:	M. Thierry SCHUFFENECKER (MC)
Trésorier Adjoint:	M. Frantisek KANIA (CZ)

Kim FINNILÄ remercie le Président sortant, Chris Mercer, pour l'excellent travail réalisé pendant sa présidence. Le Conseil applaudit Chris chaleureusement.

Les autres membres sortant font une brève allocution, et Claude Quintelier, ré-élu trésorier, remercie les membres du Conseil et leur demande de continuer à apporter leur soutien.

Les membres des commissions sont ensuite élus.

M. SPEISER (DE), rapporteur de la Commission Ad Hoc, mise en place par Chris MERCER, présente son rapport. Un long débat s'ensuit qui se conclut par l'adoption des conclusions et recommandations de la Commission. A savoir que, pour optimiser le fonctionnement de l'Institut et permettre à celui-ci de s'adapter à un monde qui évolue de plus en plus vite, le Bureau a été habilité à prendre des décisions entre les réunions du Conseil, à condition que le Conseil soit informé et qu'il puisse soulever des objections.

Il revient à la Commission du Règlement Intérieur d'adapter le règlement intérieur de l'Institut en conséquence.

La prochaine réunion du Conseil aura lieu à Munich les 24 et 25 novembre 2008.

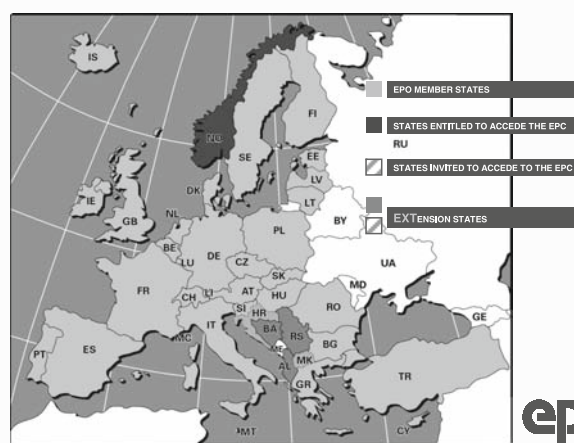
An introduction to *epi*

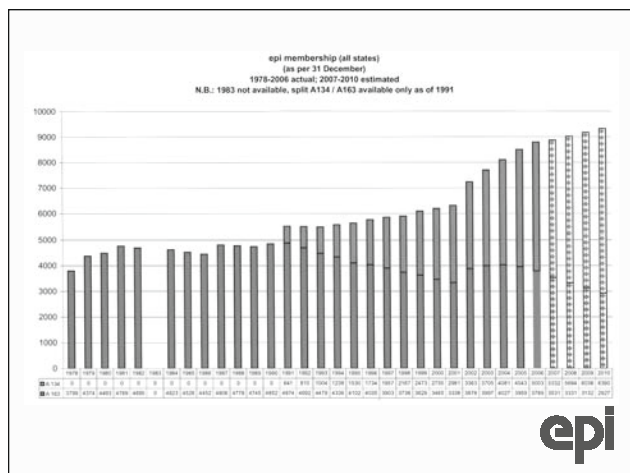
C. Mercer (GB)

At the Vilnius Council meeting the outgoing President Chris Mercer presented the *epi* to new members.

An Introduction to *epi* by Chris P. Mercer

epi





Establishment of epi

- Statutory Organisation – Article 134 EPC
- Governed by Administrative Council
- Founding Regulation – EPO Administrative Council on proposal of epi
- By-Laws – under epi control



epi

Organisation of epi

- Board

- 1 member per state + 1 more from each of DE, FR and GB
- Elections every three years
- Meetings at least twice a year
- Power as delegated by Council



epi

Objects of epi – Article 4 FR

- Collaborate with EPO on EQE
- Disseminate knowledge
- Promote compliance with Rules of Conduct
- Liaise with EPO and other bodies on all matters relating to industrial property



epi

Organisation of epi

- Presidium

- President, 2 Vice Presidents, Secretary General and Treasurer
- Elections every three years
- Meetings as often as necessary



epi

Membership of epi – Articles 5 and 6 FR

- Everyone on the List MUST be a member
- To stay on List, must pay subscription



epi

Organisation of epi

- Committees

- Disciplinary Committee and others
- Elections every three years
- Meetings as often as necessary
- Report to Board and Council



epi

Organisation of epi

•President

- Represents epi – therefore attends many meetings
- Reports to Board and Council



epi

Organisation of epi

•By-Laws Committee

- Maximum four full members – with DE, FR and GB mother tongue members
- Maintains and advises on By-Laws
- Prepares amendments for approval by Council



epi

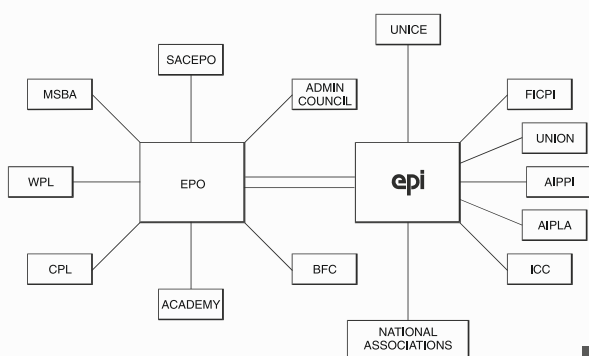
Organisation of epi

•Professional Conduct Committee

- One full member for each member state
- Provides advice to members on business practices



epi



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Organisation of epi

•Disciplinary Committee

- One member per member state
- Acts on Complaints regarding failures to observe Code of Conduct
- Limited Powers, but can refer to Disciplinary Board – epi/EPO
- Organised in pre-set panels in language groups



epi

Organisation of epi

•European Patent Practice Committee

- Two full members for each member state
- Monitors and advises Council on all changes to EPC, Rules and Guidelines and associated legal changes
- Very active – big work load



epi

Organisation of epi

•Epi Finances Committee

- Maximum ten full members
- Monitors epi Finances and advises Treasurer
- Reports to Council



epi

Organisation of epi

•Professional Qualifications Committee

- Two full members for each member state
- Organises education for candidates, experienced members and new members
- Now assisted by a Director of Education
- Very active – big work load



epi

Organisation of epi

- Biotech Committee
- One full member for each member state
- Deals with all aspects of law and practice as it relates to biotech
- Active – big work load



epi

Organisation of epi

- On-Line Communications Committee
- Seven full members
- Monitors developments in the use of electronic means of Communication between applicants and EPO
- On-line filing



epi

Organisation of epi

- Editorial Committee
- Three or Four full members with three language ability across committee
- Responsible for epi Information and epi website



epi

Organisation of epi

- Litigation Committee
- One full member for each member state
- Monitors developments patent litigation systems in Europe, in particular EPLA or its successor



epi

Organisation of epi

- EPO Finances Committee
- Four full members and four substitute members
- Monitors financial position of EPO, in particular proposals for fee increases



epi

Organisation of epi

- Patent Documentation Committee
- Four full members and four substitute members
- Monitors developments patent documentation systems run by the EPO and WIPO



epi

Organisation of epi

- Harmonisation Committee
- Seven full members and seven substitute members
- Monitors developments harmonisation of patent law – does not overlap with EPPC



epi

EDUCATION

CEIPI

PQC

ACADEMY

NEW ENTRANTS

GRANDFATHERS

NEW COUNTRIES

OLD COUNTRIES

LITIGATION



epi

Strategy Agenda for the *epi*



At the Vilnius Council meeting the incoming President of the *epi*, Mr. Kim FINNILÄ, presented a Strategy Agenda for the next Council term.

Mr. FINNILÄ first of all recalled the Founding Regulation of the *epi*, Article 4:

Article 4

Objects of the Institute

The objects of the Institute shall be to:

- (a) collaborate with the European Patent Organisation on matters relating to the profession of professional representatives and in particular on disciplinary matters and on the European Qualifying Examination;
- (b) aid in the dissemination of knowledge appertaining to the work of its members;
- (c) promote compliance by its members with the Rules of Professional Conduct, inter alia through the formulation of recommendations;
- (d) liaise as appropriate with the European Patent Organisation and other bodies on all matters relating to industrial property.

Turning to his Agenda the President referred to the following values as a **basis** for the work of the members of the *epi*:

- ethical professionalism
- up-to-date competence
- involvement

According to the **vision** of the President the *epi* should be:

- an attractive institute for the membership
- influential Europe wide
- a support for national constituencies

As concerns **objectives**, the *epi* should in practice strive:

- to provide a more effective and timely response to relevant issues
- to provide a more structured coordination of the internal work
- to increase the responsibility of Council, Board, Presidium and Committees with regard to the *epi* and national constituencies, thus enticing a more active involvement of members

These objectives, according to the President could be achieved by the following **means**:

- a planned approach enhancing *epi*'s proactivity on
 - monitoring actions and planned actions of other IP players
 - establishing closer contacts with other IP players
 - networking within the NGO Coordination Group
- an improvement of educational facilities and resources, which are the basis for *epi*'s existence and operation, involving:
 - the PQC
 - the Director of Education
 - the co-operation with other partners such as the European Patent Academy and the CEIPI
- internal support through:
 - input of the *epi* Secretariat
 - timely reports by *epi* members on activities performed
 - real time dissemination of information within the bodies and to the members of the *epi* (via the extranet)

The President looks forward to a fruitful cooperation of all *epi* members during the next three years. Any comments by members are welcome and should be addressed to the *epi* Secretariat.

Please visit our website for news !

www.patentepi.com

Treasurer's report

C. Quintelier (BE)

Accounts 2007

In 2007 *epi* had 8 892 members. As usual a large majority of them paid their contribution well in time. The 2007 figures show a 42.5 % increase in the subscription write off, which is due to the fact that claims and unpaid contributions, which are five years or older (i.e. up to 2002) have been written off in order to avoid that every year they come back and have to be taken into account without deciding what to do with them. As experience has shown that after three years it becomes nearly impossible to claim back unpaid contributions (the concerned members have in general been deleted in the mean time), it is proposed to bring the write off term to three years as from 2009.

On the income side an increase (16 %) of the interest income was realised with respect to 2006. This is mainly due to a slight increase of the interest rate and the changes in the investment policy (more short term investment). The income on the education post is mainly due to the EPC 2000 seminars. It should however be noted that some late payments of 2006 CPE seminars also contributed to the education income.

On the expense side the costs for Council meetings were clearly below budget and even substantially below (17 %) the 2006 Council costs, despite the 30 anniversary celebration. The costs of Board meetings were over budget. However in view of the fact that there have been three Board meetings in 2007 (instead of two in 2006), the average costs per Board meeting decreased.

Although the costs of Committee meetings increased over 2006, they remained well within the budget. The costs for the labelled members meetings (a total of three meetings) also remained within the budget. The increase in the expenses of the President and Vice-Presidents simply reflects the high amount of work performed by them as they were requested more than ever to represent *epi*.

On the expenses of the *epi* secretariat the increase in personnel costs (+ 25 %) is due on the one hand to the fact that, following Council's decision, no longer 35 000 € were injected from the seminar income and on the

other hand to the increased amount of work caused by the organisation of the EPC 2000 seminars and the „train the trainers“ event. The work involved with the organisation of the EPC 2000 seminars caused the enrolment of two part time persons in addition to the staff. The increase on postage and office expenses is due to the election.

The education item shows an expense which is somewhat below the income. This is due to the late payment (12 370€) of some of the CPE seminars held in 2006. It should however be noted that on December 31, 2007 not all invoices of the seminars had reached the *epi* secretariat, so that some of the 2007 seminar expenses will have to be accounted in 2008. So in practice the seminars did overall cost money to *epi*.

For the Director of Education a budget of 50 000 € is foreseen for this year. This has to cover his travel expenses and honoraria for this year.

Changes in the 2008 budget

It is proposed to reduce by 25 000 € the Council budget. In view of the 2007 Council expenses and the fact that the autumn Council meeting will take place in Munich, an amount of 300 000€ should be enough to cover the Council meeting costs. As three Board meetings are foreseen, it is proposed to raise the Board meeting cost up to 85 000€. On the secretariat budget a decrease of 7 000€ is proposed for each of the postage and furniture cost, as a majority of those costs relates to the elections and have been paid in 2007. An increase of 2 700€ is further proposed for staff training and 15 000€ should be reserved for the office manager.

Reimbursement

In order to take into account the inflation and raised hotel prices, it is proposed to increase the maximum for the hotel rate by 15€ bringing it to 165€ per night. This would lead to an extra expense of approximately 6 000€.

epi Balance Statement on 31st December 2007

Assets

	€	<u>2006</u> T€
A. Fixed assets		
I. Intangible and tangible assets		
Office machines and equipment, Software	1,-	—
II. Financial assets		
Securities portfolio	<u>1.707.476,64</u>	<u>1.789</u>
	<u>1.707.476,64</u>	<u>1.789</u>
B. Receivables		
I. Others current assets	<u>97.515,34</u>	<u>80</u>
II. Bank & Cash (incl. money deposits)	<u>1.061.563,10</u>	<u>638</u>
	<u><u>2.866.556,08</u></u>	<u><u>2.507</u></u>

Liabilities

	€	<u>2006</u> T€
A. Net assets		
as of 01.01.2007	2.242.312,00	2.035
results for the year	278.298,33	207
	<u>2.520.610,33</u>	<u>2.242</u>
as of 31.12.2006	<u>2.520.610,33</u>	<u>2.242</u>
B. Debts		
I. Provisions	<u>60.200,00</u>	<u>34</u>
II. Liabilities		
1. Deliveries and services	34.519,21	40
2. Others	<u>251.226,54</u>	<u>191</u>
	<u><u>285.745,75</u></u>	<u><u>231</u></u>
	<u><u>2.866.556,08</u></u>	<u><u>2.507</u></u>

epi Expenses and Income						
	Budget 2006	Actual 2006	Budget 2007	Actual 2007	Shortfall in receipts Surplus of expenditure 2007	Surplus of receipts Shortfall in expenditure 2007
	€	€	€	€	€	€
I. Receipts/Income						
1. from Members						
a. Subscriptions	1.207.500, –	1.252.500, –	1.344.000, –	1.422.720, –	–, –	78.720, –
b. Late payment increment	20.000, –	8.775, –	15.000, –	10.230, –	4.770, –	–, –
c. Abandonment of unpaid subscriptions (incl. subscriptions now recovered)	./.	44.000, –	./.	37.468,50	./.	50.000, –
2. Interests	55.607, –	53.325,06	82.000, –	60.480,30	21.519,70	–, –
3. CPE-Seminars	25.000, –	93.306,64	400.000, –	317.667,88	82.332,12	–, –
4. CEIPI	63.000, –	54.000, –	63.000, –	53.187,50	9.812,50	–, –
5. Others	25.050, –	37.018,92	16.650, –	42.594,95	–, –	25.944,95
	<u>1.352.157, –</u>	<u>1.461.457,12</u>	<u>1.870.650, –</u>	<u>1.853.482,18</u>	<u>121.832,77</u>	<u>104.664,95</u>
II. Expenses						
1. Meetings						
Council	300.000, –	290.954,59	320.000, –	241.937,56	–, –	78.062,44
Board	49.000, –	65.790,32	78.000, –	84.361,69	6.361,69	–, –
Committees	173.000, –	120.203,04	160.000, –	138.349,89	–, –	21.650,11
Delegates & Others	46.000, –	26.635,13	58.000, –	40.837,63	–, –	17.162,37
2. Other performances						
epi Information	76.000, –	73.917,57	77.000, –	72.912,29	–, –	4.087,71
By-Laws & non-foreseeable	1.000, –	–, –	1.000, –	–, –	–, –	1.000, –
Promotional Activities (incl. epi-Brochure)	22.000, –	16.003,60	40.000, –	25.295,57	–, –	14.704,43
CPE-Seminars	10.000, –	95.957,56	550.000, –	318.549,34	–, –	231.450,66
CEIPI	70.000, –	69.143,24	70.000, –	55.193,23	–, –	14.806,77
Examination Committee Dinner	5.000, –	1.618,28	7.000, –	3.765,94	–, –	3.234,06
3. President (+ Vice President)	28.000, –	17.389,29	30.000, –	25.362,39	–, –	4.637,61
4. Treasurer and Treasury						
Treasurer and Deputy	5.500, –	5.294,76	6.500, –	3.882,56	–, –	2.617,44
Bookkeeping / Audit	20.000, –	20.522,73	21.000, –	20.868,04	–, –	131,96
Bank charges	17.000, –	8.596,85	11.000, –	7.421,33	–, –	3.578,67
5. Secretariat						
Expenditure on personnel	326.000, –	293.405,10	342.500, –	366.235,84	23.735,84	–, –
Expenditure on materials						
Rent	88.880, –	86.265,24	90.000, –	85.661,77	–, –	4.338,23
Phone, Fax, e-mail	8.000, –	4.793,51	8.000, –	4.397,72	–, –	3.602,28
Postage	30.000, –	16.265,86	30.000, –	23.631,65	–, –	6.368,35
Office supplies/Representation	13.000, –	14.007,61	13.000, –	20.781,82	7.781,82	–, –
Maintenance/Repair (incl. Copy, print)	12.500, –	16.045,14	14.000, –	15.469,03	1.469,03	–, –
Insurances	1.000, –	1.043,72	1.100, –	914,60	–, –	185,40
Secretary General and Deputy	5.500, –	5.251,92	6.500, –	3.586,90	–, –	2.913,10
Travel personnel	1.100, –	542,50	1.200, –	330, –	–, –	870, –
Training	1.100, –	–, –	1.300, –	3.245, –	1.945, –	–, –
Acquisitions						
Office machines incl. Soft-/Hardware	6.000, –	819,15	7.000, –	9.749,44	2.749,44	–, –
Office equipment	25.000, –	–, –	15.000, –	–, –	–, –	15.000, –
6. Extraordinary expenses	–, –	3.604,09	–, –	2.442,62	2.442,62	–, –
	<u>1.340.580, –</u>	<u>1.254.070,80</u>	<u>1.959.100, –</u>	<u>1.575.183,85</u>	<u>46.485,44</u>	<u>430.401,59</u>
III. Surplus of receipts/ expenses	<u>11.577, –</u>	<u>207.386,32</u>	<u>./.</u> 88.450, –	<u>278.298,33</u>	<u>Surplus:</u>	<u>366.748,33</u>

Finance Committee Chairman Steps Down After Twenty-Five Year Association

T. J. Powell (GB)
Secretary

J. J. Pierre WEYLAND (LU) has stepped down as Chairman of the Finance Committee of the Institute after a twenty-five year association with that committee.

Pierre spent six years as Treasurer of epi during the 1980's and thereafter, as is somewhat traditional, brought the benefit of his experience to bear by serving on the committee itself.

During his association with the Committee Pierre has not missed a single meeting. In other words in one guise or another he has attended the 10th – 60th Meetings of the Committee!

Speaking on behalf of the Members of the Committee at their meeting on 15th April 2008, Peter KELLY (IE) paid warm tribute to the skills, resolve and dedication that Pierre has brought to his role.

The work of the Committee involves approving the financial policies of the Institute and this has sometimes led to situations requiring diplomacy and sensitivity. Pierre has taken these aspects in his stride together with the administrative and organizational burdens that accompany committee work. He also has been a mine of highly accurate statistical and historical information relating to membership trends in the Institute.

Pierre's abilities and personality will be much missed. The members of the Committee all wish him and Judith, who was with Pierre a regular attender of meetings of Council, a happy retirement from committee life, indulging his various hobbies and splitting his time between Luxembourg and Majorca.



Members of the *epi* Finance Committee (2005-2008 term) – From left: Tim Powell, Peter Kelly, Salvatore Bordonaro, Thomas Ritscher, Pierre Weyland, Michael Maikowski, Marius Jason, Sylvain Le Vaguerèse, KLAS NORIN

Report of the Disciplinary Committee

P. Rosenich (LI)
Chairman

1. epi Disciplinary Committee Fixed Chambers

At the beginning of the working period of the current Disciplinary Committee, it was decided to install fixed Chambers. The Chambers are working properly and can cover all cases. The Chambers have been named after the respective Chairmen of said Chambers. As from October 2005 these Chambers were:

Chamber Kinsella	GB
Chamber Monain	FR
Chamber Katschinka	DE
Chamber Fröhling	GB
Chamber Norgaard	GB
Chamber Rosenich	GB, DE

Mr. Katschinka declared his retirement from the Disciplinary Committee. For that reason his Chamber will be rebuilt. Council is asked to take notice of the great work Mr. Katschinka did for *epi* as a successful Member, Rapporteur and Chairman of the Disciplinary Committee. Among others he was one of the first who successfully used our updated Mediation skills, which have been trained in special training meetings.

It is further planned to install a second French speaking Chamber immediately after the elections for the Disciplinary Committee have been finished. This is necessary, as the current French Chamber came under time pressure being occupied with several cases and general workload.

2. Change of place of business of some members of epi Disciplinary Committee

As in the past, it happens that Members of Chambers of the *epi* Disciplinary Committee move to other countries and/or change their place of business. In order to allow the Chambers to properly close pending cases in the same composition, The Chairman of the Committee decided to keep the respective Members in the respective Chambers in their respective functions until all pending cases before said respective Chamber are closed. This is in line with long standing practice of this Committee and increases efficiency without reducing legal certainty.

3. New Chairman of the Disciplinary Board

The Chairman of the Disciplinary Committee is in positive contact with the new Chairman of the Disciplinary Board Mr. Hans-Christian Haugg of EPO. Firstly when the amendments of our Regulations have been elaborated in view of EPC 2000 and secondly, when the Chairman of this Committee forwarded a report of Dr. Jozsef Markó about a court case before the Hungarian Courts up to the last instance in a case of professional negligence. It is

planned to have a friendly meeting between Mr. Haugg and the Chairman of this Committee in due course.

4. Complaint against a firm of epi members

By chance one of the members of a firm, to which a general complaint was filed, is the Chairman of the responsible fixed Chamber. This problem was discussed between the Rapporteur of said fixed Chamber and the Chairman of this Committee. As a solution, it was decided, that the Substitute Member would take the position of the Chairman of this Chamber and the original Chairman would not be involved in the discussion of that case.

5. Deputy Members in Disciplinary Committee and Deputy Members in Chambers of said Committee

In one Chamber a question arose regarding the function of a Deputy Member of a Chamber. It is to be noted, that the Disciplinary Committee abandoned in the past the election of Deputy Members for the Committee. Nevertheless a fixed Chamber consists in all cases of a Chairman, a Rapporteur, a Member and a Substitute Member (Deputy Member). The function of said Substitute Member is to take the role of any of the Chairman, Rapporteur or Member in case that one of these is not able to fulfill his duties. This regulation warrants that the Chambers are operative even if one of its Members can not take part due to health or work circumstances or needs to be replaced due to conflict of interest (see e.g. point 4. above).

6. Delivery of a Decision of a Chamber of the Disciplinary Committee

In one case the decision of one of the Chambers of this Committee was returned as not deliverable. Today it is not clear if this is a procedural trick of the defendant or just a postal problem. The Registrar of this Committee was advised to seek phone contact with the defendant to clarify the situation. As soon as this will have been clarified the Chamber and/or the Disciplinary Committee will have to consider how to proceed in case of a procedural trick. Perhaps a possible solution would be to publish such decisions in *epi* Information.

7. Autumn Meeting of Disciplinary Committee

Very probably after the elections in the Vilnius Council new members will be welcomed in the Disciplinary Committee. For that reason and further for the reason of having internal elections, the Disciplinary Committee plans a meeting around the next Council. The Officers of the current Committee stand for reelection for a further period.

Report of the Editorial Committee

W. Holzer (AT)

epi Information

Due to technical reasons beyond the control (and knowledge) of the Committee (misunderstanding between the firm in charge of dispatching and CHV) the *epi* Information 1/2008 was delayed by two weeks, even more in some countries. The Editorial Committee therefore will closely watch the dispatching of the forthcoming issue 2/2008 which will be dispatched from July 31, 2008.

The number of copies which currently stands at 9.800 will have to be increased as from issue 2/2008, however, overall costs remain relatively stable.

Issue 2/2008 will mainly comprise Council and Committee reports as well as a few articles.

Issue 3/2008 (deadline for submissions August 20, 2008) will be dispatched from October 2, 2008.

Issue 4/2008 (deadline for submissions November 3, 2008) will be dispatched from 9 January 2009. Since the autumn Council meeting will be held on 24-25 November, 2008, there will not be sufficient time until Christmas to receive the Committee reports. Therefore, only a Council report will be published in the three languages. The Committee reports will be published on the *epi* website.

epi Extranet

A few papers were published in the section „Council“.

A link has been installed from the *epi* homepage to the Extranet.

Following the 2008 elections to Council a first update of the users' database was effected. A further update will be necessary after the election of the Board and Committee members. In order to ensure the confidentiality of documents, an individual password will be given to each user.

epi Website

A list of newly elected Board and Council members (with e-mail address) will be published on the website.

The website will be extended by more links, e.g. to the CEIPI website and others.

The website moreover will be structured to comprise portions for the general public, the *epi* members and the Extranet.

Report of the European Patent Practice Committee (EPPC)

E. Lyndon-Stanford (GB)
Past Chairman, EPPC

The Chairmanship of the EPPC

Mr. Edward Lyndon-Stanford has resigned from the chairmanship though he remains on the Committee. Dr. Francis Leyder has been elected the new Chairman.

The work of the EPPC during the last term of Council

The EPPC reviewed all the EPC 2000 Implementing Regulations insofar as they apply to patent practice, gave careful consideration to procedures before the Boards of Appeal, and reviewed all the EPC 2000 Guidelines. In addition, the Partnership for Quality meetings, which were a new institution, have introduced issues that needed consideration. Other inputs were the meet-

ings with the EPO Vice-President (DG1) and problems raised by *epi* members.

EPPC meetings

The EPPC has held meetings on 9th October 2007, 23rd and 24th April 2008 and 10th June 2008.

Community Patent Proposals

A Community Patent Sub-Committee has been constituted, under the chairmanship of Mr. Leo Steenbeek and with two other members.

The EPPC reported to the May 2008 Council meeting on Presidency paper 8928/08. The present proposal is that the EPO should provide machine translations of the

whole specification and claims, both at the publication stage and at the grant stage. No further translations would be required to maintain the patent in force and maintain the right to back damages. However before initiating legal proceedings, a full (and not machine) translation and of supporting documentation would have to be provided at the cost of the patent holder if he claims that his patent has been infringed and is requested to provide the translation. The Presidency paper also made detailed proposals regarding the distribution of renewal fees paid to the EPO.

Council approved a paper drafted by the EPPC. The paper did not comment on the translation proposal, in accordance with established *epi* policy, but commented that a significant part of the renewal fees not retained by the EPO should be used to fund the proposed Court system. The paper also commented that there was no necessity to amend the EPC or the EPC Centralisation Protocol. The paper further commented that the *epi* was not opposed to national offices carrying out tasks as International Searching Authorities or to the EPO using the results of examinations by national patent offices.

Client-EPA Privilege

A Client-EPA Privilege Sub-Committee has been constituted with Mrs. Anette Hegner as chair.

Meeting with the Boards of Appeal, 11th June 2008

Various topics were discussed in a collaborative atmosphere. We recognise the independence of Boards and the flexibility they wish to maintain, which makes it difficult to agree procedures which apply to all the Boards.

Inventive Level

Council approved a paper drafted by the EPPC, subject to a minor correction. The paper said that *epi* is of the opinion that in the majority of cases, the level of inventive step applied by the EPO is correct but that the problem is consistency of its application. There was no necessity to amend the EPC or the Implementing Regulation. The paper said that the consistency should be improved, implicitly approved the problem-solution approach, recommended that the knowledge of the skilled person should be better defined, and recommended that the decisions of the Boards of Appeal should be analysed to evaluate the inventive level applied.

The Paris Criteria and deferred examination

The October 2007 Council meeting chose a deferred examination approach and requested that the EPPC should elaborate it. At the May 2008 meeting, Council decided to take the decision on the draft paper submitted by the EPPC, rather than leaving it to the Board, and approved the paper. The paper proposes deferred examin-

ation on payment of a fee, accelerated examination on request (as at present), the right of a third party to request examination on payment of a fee, the obligation to respond to the search communication shortly after filing the examination request, the obligation of the EPO to issue a communication shortly after the response, and the obligation of the EPO to react to third party observations.

EPO handling of divisionals

Council had already approved a position paper. The paper needed amendment in view of formal proposals which would introduce time limits whose effect could cause applicants acting in good faith to lose the right to file a divisional. At the SACEPO meeting, an *epi* proposal was that R. 36 and 70 should be amended so that the applicant would have to request examination and pay the examination fee on filing. In any case, no absolute time bar should be imposed, but the filing of a divisional application should later be at the discretion of the Examining Division, as in the early history of the EPO. The situation will be discussed at the meeting of the Committee on Patent Law on 30th June.

Criteria for non-unity objections

The EPPC is investigating whether the EPO criteria for non-unity objections have been made stricter.

Complaints by practitioners

The EPPC will collect and analyse complaints, in order to identify deficiencies in the examination etc procedures, prior to discussing them with the EPO.

Quality of PCT extended search reports

The EPPC will raise with the Partnership for Quality the impression that the PCT extended search reports are of a smaller scope than the direct EP extended search reports.

EPO paper on success criteria and key performance indicators

The Board approved a paper commenting on the delay in providing EPO search results.

Third Party Pace Requests

The Board approved an EPPC paper requesting a discussion with the EPO about the possibility of third parties requesting accelerated prosecution, on payment of a fee.

Backlogs in Opposition Proceedings

The Board approved an EPPC paper discussing the present situation, for submission to the Partnership for Quality.

Amendment of Rule 164 (consideration of unity by the EPO in supplementary search reports)

The Board approved an EPPC paper proposing an amendment of Rule 164 to deal with the situation in the rare cases when the claims were considered by the ISA to have unity of invention but the EPO finds lack of unity of invention, proposing that the applicant should be allowed to obtain further supplementary search reports on payment of the relevant fees.

Article 115, Rule 114 and Third Party Observations

The Board approved two EPPC papers but required that they be expressed in a single paper. The paper will request that the EPO should have an obligation to consider third party observations in proceedings before the EPO, including limitation proceedings.

Rule 71 (grant procedure)

The Board approved an EPPC paper proposing a solution to the problem given when the applicant wishes to amend or correct the claims after receipt of the R 71(3) communication. The paper proposes that the amended claims may be filed without the translations; if the Examining Division does not consent, the applicant is requested to submit observations and any further amendments or corrections, again without the trans-

lations. If the Examining Division still does not consent, the application is refused. If the Examining Division consents, the translations are filed. Tight time limits are proposed.

Enlarged Board of Appeals case G2/08 – dosage régime referral (second medical use)

An amicus curiae brief will be prepared by the EPPC in consultation with the Biotech Committee and submitted to the Board for approval.

Oral Proceedings – Attorneys' Rooms

The EPPC is working in conjunction with the President to agree a list of facilities that should be available in the rooms provided for attorneys at oral proceedings.

Payment of National Renewal Fees during Petitions for Review

If national renewal fees are refused because the patent has lapsed, and the patent cannot then be restored as the result of the petition for review. The EPPC will request the EPO to do a survey of what members states have changed their national law regarding payment of renewal fees during petitions for review.

Report of the Harmonisation Committee

F. Leyder (BE)
Chairman

1. The Harmonisation Committee deals with all questions concerning the worldwide harmonization of Patent Law, and in particular within the framework of WIPO.
2. As mentioned in the previous report (epi Information 4/2007), the WIPO General Assembly (24 September to 3 October 2007) commissioned a report to be prepared by WIPO. The relevant part of the press release read as follows:
Standing Committee on the Law of Patents (SCP)
With regard to the future work program of the SCP, member states unanimously agreed to commission a report, by WIPO, on issues relating to the international patent system covering the different needs and interests of all member states. This report would, upon completion, constitute the working document for a session of the SCP to be held in the first half of 2008. Member states also agreed to

a draft outline for the report and specified that it would contain no conclusions. The report would be made available to all SCP members and observers by the end of March 2008.

3. The report actually issued mid-April (it is dated 15 April and was posted a few days later on the website). It contains no conclusions. It is available from the WIPO website: http://www.wipo.int/meetings/en/details.jsp?meeting_id=15486
4. To give an example of the content of the 88-page report, I have selected the first item in Chapter VII, Support Structures For The Patent System:
 - (a) *Patent Attorneys*

255. Among the various direct and indirect support mechanisms in respect of the patent system, patent attorneys and patent agents play a significant role in developing a functioning patent system. They are generally recorded

in a registry of industrial property offices after passing qualifying examinations. However, it is not possible to generally define the title „patent attorney“ or „patent agent“, since the qualification and the bestowed power under the applicable law are different from one country to the other. In some countries, patent attorneys may be legally qualified in general law and additionally pass an examination. Consequently, they are entitled to represent a party before the courts. In other countries, patent attorneys may not be required to have legal qualification (although they may need to have at least intellectual property law expertise and legal training).¹

256. *The role of patent attorneys is, in general, giving advice and assisting inventors and applicants in order to obtain and maintain patents: for example, drafting and preparation of patent applications, representing the applicant before the patent office, responding to office actions and assisting the patentee to maintain and enforce his right. The patent attorneys may also represent a third party during the opposition and invalidation proceedings. Therefore, not only the knowledge of technology, but also the knowledge of at least substantive and procedural patent law as well as some familiarity with case law are required to become a patent attorney. The patent attorney should be able to provide a full range of possible protection or enforcement option available to the client and*

assist the client if a patent was erroneously granted or an abuse of right was found.

257. *The patent attorneys, therefore, play an important role in the „checks and balances“ mechanism of the patent system. Whether a local inventor can obtain patent protection with a maximum scope of claims, whether he can defend his rights or whether he can successfully challenge another's patent may, to a significant extent, depend on the skills of his local patent attorney. A recent report shows that low public awareness of IP creates less IP business opportunities, which leads to a vicious circle of lower availability of professional IP services and lesser familiarity with IP.*²
5. Annex II (137 pages in total) is of general interest to the extent it contains information on a certain aspects of patent laws, gathered from the primary legislation of hundred States or Regional Offices:
- the definition of prior art;
 - novelty;
 - inventive step (obviousness);
 - a grace period;
 - sufficiency of disclosure;
 - exclusions from patentable subject matter;
 - exceptions and limitations to the patent rights.
6. The report ends with the following statement: *The SCP is invited to consider the information contained in the present document in defining the future work of the SCP.*
- The SCP will hold its 12th Session in Geneva from 23 June to 27 June 2008; epi will be represented as observer.

¹ In view of the diversity of the definition, the term „patent attorney“ is used in this paper to describe a person who is a professional representative, in a general sense, for the purposes of patent prosecution.

² Prof. T. Ogada „Challenges Faced by Developing Countries in Teaching and Conducting Research on Intellectual Property“ [http://www.wipo.int/academy/en/meetings/ipcd_sym_05/papers/pdf/ogada_paper.pdf].

Report of the Litigation Committee

E. Lyndon-Stanford (GB)

Chairman

The Officers of the Litigation Committee

Mr. Edward Lyndon-Stanford has been elected Chairman, Mr. Leo Steenbeek has been elected Vice-Chairman and Mr. Lindsay Casey has been elected Secretary.

LitCom meetings

The Committee held a formal meeting on 23rd April 2008 and had an informal meeting on 10th June 2008 to review the results of an e-mail consultation.

EU Patent Jurisdiction Proposals

Following a review of Presidency papers 7001/08 and 7728/08, the Committee proposed a letter addressed to the Presidency. The letter was sent after being reviewed and modified by the President and members of the Board. The letter stated that the claimant (plaintiff) should retain the option of bringing a case involving one country only before a national court of that country, but with validity of only *inter partes* effect; stated that there should be a central first instance court and only a limited number of national or regional first instance

courts; supported the proposal to have only a single second instance court; considered that every panel of judges should comprise a technically qualified judge and that all judges should be experienced in patent litigation; considered that the judges of a panel should all be of different nationalities; considered that infringement and revocation actions should be heard together; considered that parties should be free to choose any suitably qualified representative; considered that all European Patent Attorneys should be able to represent in validity procedures and that all European Patent Attorneys with an appropriate additional qualification should be able to represent in infringement procedures.

Presidency paper 9124/08 is a draft agreement of the European Union Patent Judiciary, elaborating the above-mentioned Presidency papers that EPI had already commented upon. The Committee will closely watch devel-

opments during the French Presidency, and draft comments if and when necessary.

Representation by European Patent Attorneys

The May 2008 Council approved a LitCom paper which urged the EU member states to ensure that European Patent Attorneys who possess an additional qualification are admitted as representatives before the EU Patent Court in all divisions and in all instances, and also that where an attorney-at-law is not also European Patent Attorney, a party needs to be represented by both an attorney-at-law and a European Patent Attorney.

The Committee will consider further what additional qualification would be appropriate.

Report of the On-line Communications Committee (OCC)

R. Burt (GB)
Chairman

The committee held its second meeting on April 18th with the EPO team in The Hague lead by Francois Knauer. Prior to the EPO meeting the OCC met to prepare for the meeting and for the post-May 2008 Council

Update on the current EPO systems:

1. The use of on-line filing passed the 50 % level of filings in January 2008. The PCT filings have reached 56 %. No figures are yet available for the percentage of electronic filings of subsequently filed documents.
2. The new version of the epoline software, v4, should be released in the second quarter of 2008 and will include a gateway to patent management software. By the end of 2008 there will also be a portal version of the software that requires no downloading and will run in any internet browser; this version is suitable for those who have had firewall problems with the existing software and will enable drafting the application, saving documents and signing of documents all to be done over the internet. The committee indicated to the EPO that it was generally satisfied that the on-line filing systems were working well with the only weakness being the difficulty with installation of upgrades. More help screens during the installation process would be useful. Updates will be restricted to one per year where possible although fee changes and WIPO changes can mean more frequent updates are necessary. There was

some disquiet expressed with the current status of the WIPO software.

The opposition and appeal plug-ins to the epoline software should be available by the end of 2008; in the meantime, electronic filing of any opposition or appeal documents would lead to a loss of rights.

3. The EPO has been unable to provide access for attorneys to their unpublished electronic files for security reasons centred upon a smart card access problem. The current method of updating attorney records and smart card access rights is unsatisfactory and slow. With effect from 2009 (actual date to be agreed) the industrial department or private practice employing the attorney will become responsible for the attorneys records and the onus will be on the employer to timely update the attorney records to remove access to the files. An online facility will be made available such that each department or firm has the ability to decide which files are accessed by which attorneys. The accurate relationship of smart card user to the EPO will be necessary to facilitate use of mailboxes for electronic communication by the EPO directly to attorneys and administration departments.
3. The objective of the EPO's work on machine translation is to provide a system that enables technical content to be understandable; the translations produced will not be legally accurate translations. The system is based on the construction of pairs of technology terms with a pairing in each case of the English term and the corresponding translation.

Work is being done on pairs of English with Italian, Swedish, French, Portuguese, Spanish, and German.

4. Updating of deposit accounts is currently too slow to enable accurate monitoring of the deposit account balances. The EPO have indicated that by the end of 2008, the intention is to have overnight updating of the records.
5. The EPO is heavily committed to its e2e electronic filing project and intends to fill all the „non-electronic“ holes in the patent applications and grant process to have the whole process carried out online. When the EPO refers to the whole process it includes those steps involving the European Patent Attorney. The original e2e project focussed on examiner tools and this is now integrated into the „Future of Work“ project to include all interactions outside the EPO; this new project requires a revision of the system architecture to enable rapid updating of the system, for example, when fee changes occur. Included in the Future of Work project is the following:
 - concept searching of the prior art,
 - a workflow steering element to guide users through the system to ensure they do it right,
 - automatic monitoring of deadlines,
 - a work planning module to enable examiners to deal with the most urgent issues first,
 - informal document exchange, such as an electronic Druckexemplar
 - more self-service for attorneys for requesting changes of attorney, extension requests and the like,
 - use of the Internet as the first point of contact for information, and

- extended working hours for access to the systems to allow 24-7 filings etc.

The EPO is considering a fast track procedure to bring the e2e project, to be known in future as „Future Patent Tools“, to fruition by 2010. It is accepted that some of the features may only be introduced following a Diplomatic Conference (the next such Diplomatic Conference is currently planned for 2010).

6. A presentation was given on the current status of the Key Account Managers organisation. The objective of the organisation for 2008 is to continue improving the cooperation between the EPO and large applicants or representatives by:
 - Contacting all large accounts (greater than 100 filings per year) on a regular basis

Aims:

- Remove and anticipate bottlenecks and constraints
- Relationship management
- Increasing the market penetration of OLF to 65 % at the end of 2008 by continuing to provide expert advice on a daily basis
 - Training 350 patent attorneys and IP staff in external workshops on OLF
 - Continuing onsite company workshops/visits.
- 7. The EPO wishes to set up a Focus Group to assist with introduction of the „Future Patent Tools“. The EPO would like 20 applicant/attorney members in the Focus Group to work with the EPO technical and legal departments to look at barriers to introducing new procedures that need to be removed to give an efficient process. The members of OCC have indicated their willingness to participate in the Focus Group. The EPO will suggest other members of the Focus Group.

Report of the Professional Qualification Committee (PQC)

S. Kaminski (LI)
Chairperson

PQC had two meetings, the first on November 26, 2007, the annual Joint Meeting PQC-Examination Board, and the second on March 10, 2008 which mainly dealt with the determination of the appropriate person for the new position of the so-called „director of education“.

1. Joint Meeting with the Examination Board

a) The essential point of discussion this year was the EQE 2007

Even though there were no problems with papers A, B or D, paper C was catastrophic. It was admitted by the Examin-

ation Board (at least by some of the members) that for paper C no escape was possible (only one solution), together with a disputable priority matter. Mr. PHILPOTT stated that for marking purposes the issue of priority did not make much difference; however, for the Examination Board it was so obvious to choose the right prior art document that afterwards they were surprised that 80 % chose the wrong one. For marking in a fair way they looked at the proper appreciation and to the usage of the problem-solution approach. When fully realizing the problems with paper C it was decided to add unanimously 10pts.

More insight information was given on how the preparation of the examination papers is really done. It

was explained how the papers are prepared years in advance, information was given on the guinea-pigs who sit the exams and on how the marking papers are prepared and used until the final marking.

b) Translation of papers

It was confirmed that almost everybody not having an official EPO language makes a cross but in reality not very many use the translation possibility. Mr. PHILPOTT informed that this year 400 candidates had asked for using their mother language which makes about 1000 papers. Of course, the EPO Examiners cannot be asked to translate the Examination papers. PQC confirmed that *epi* will continue to provide for the translations. In order to save time (copying, sending via post) it was proposed to provide PDF material instead of paper copies.

c) Topics arising from the proposed changes to the REE

The Examination Board was asked about the status of this draft, especially about the situation of the Secretariat. Different points were addressed. Is the Secretariat to decide on the qualification of the candidates, on the A/B list, the ECTS points, early registration etc.? PQC insisted that the marking of the papers must be made by 2 examiners, Mr. PHILPOTT took note of PQC's comments; he is, however, not in the position to say more for the time being.

Reduction of the time of professional practice:

The Examination Board presented new guidelines on how remission of time will be handled in the future. Candidates having attended certain institutions can apply for remission provided that the institutions prove each year that they meet the following conditions:

- The study must be at least 1 academic year
- The curriculum must be publicly available
- The curriculum must clearly show which parts are mandatory/voluntary. Per year at least 600 hr must be devoted to IP; 350 hr to patents and 150 hr to EP and PCT

At least 170 hr/year should be given by teachers who are representatives before the EPO.

It was planned to publish this decision by the end of 2007 so that the institutions can apply.

2. Memorandum of Understanding (MoU)

Two meetings took place, the first one on December 17, 2007, the second one on February 13, 2008; one further meeting is planned for May 15, 2008.

According to Art. 5 of the MoU the first meeting of the partners CEIPI, *epi* and the Academy, took place on December 17, 2007, in Munich. After a few introductory remarks by Mr. DESANTES each partner gave a short overview on the basic principles of the specific educational programmes. The Academy informed that the EPO has dedicated 800 thousand EURO for the education of the profession in its budget. This educational programme, however, will not only focus on the patent profession, i. e. patent attorneys and candidates, but also

on judges and lawyers (the training of judges would be free for them). Mr. ZILLIOX made clear that the Academy has to create an income, which, however, does not mean that they are planning to run a business. The Academy will create a „pool“ of tutors, a kind of „certified“ tutors. For the issues of the MoU, the Academy will adhere on EURO 800 per day to debit for tutors from the EPO, as agreed on by the partners of the MoU, as Mr. ZILLIOX emphasized.

3. Director of Education

There were 11 applications received to the advertisement made by email, and the PQC members were informed (CV, application letter), a first ranking was made accordingly. After an election process within PQC the vote was given to Henk HANNEMAN. The *epi* Board was informed accordingly and confirmed the nomination. Thereupon Mr. HANNEMAN participated in the joint meeting with CEIPI and the Academy. According to the list of tasks as decided by PQC, he started his work.

4. REE

At the start of 2008 Chris MERCER met with Mrs. BRIMELOW and pointed at the rather frustrating situation (three years with lots of meetings, lots of drafts, so-called agreements which did not reflect in subsequent drafts, etc.). Seemingly an agreement on the points of most interest was at last reached.

Annex to the above report

On May 15, 2008, the joint meeting *epi*/CEIPI/Academy took place in Eindhoven, unfortunately no one from CEIPI was present. The possible joint projects for 2008 were discussed and the coordination and task distribution were decided. The next projects are:

- *Study guide*
It was decided to prepare a general, factual study guide for students wishing to take the EQE. The study guide focuses on what items to study and when, the assistance which can be obtained (CEIPI courses, *epi* tutorials, EPO e-learning, to name but a few), the reference material available, the time and effort to be spent, etc. The guide is also meant to be useful as a reference manual for the mentors and supervisors of the students. A first draft shall be available before August 1, 2008
- *Online programs for self-testing of the EQE candidates*
A working group will investigate whether such a program is feasible. A first start will be directed to A, B, and D1.
- *Case studies on „My preparation for the EQE“*
Successful candidates are asked to describe their way of preparing for the EQE. This is meant as a way

to show other candidates that there are various ways to be successful.

– *Mentors' meeting*

The Academy fosters a kind of „education“ of mentors of EQE candidates by informing them of the experience of other mentors of successful candidates. The Academy will develop a concept for such a meeting.

– *Introduction to the EQE*

In 2006, a similar event took place in Sweden; it will be repeated in other countries in order to inform people interested in the EQE on related implications.

After the joint meeting, we had the opportunity to discuss the planned educational program intended especially for the new member states. It is meant to be

held in the form of the successful „train the trainers“ program. As a first try we propose to start with Hungary, Romania and Bulgaria. About 6 persons from each state should participate, three modules at four days each are planned to be held in succession in each of the states. As tutors for this program, *epi* people from Delta Patents are envisaged having a long and profound experience. The participants will be requested to sign a „contract“ according to which they have to spread their achieved knowledge within their national groups, with the help of experienced people (*epi*, EPO). The cost for this program is expected to amount to EUR 70'000, part of which should be borne by national bodies (national patent offices, ...), and hopefully the EPO. The program should start at the beginning of 2009 and will have to be considered in the budget for that year.

Elections results provided to the 15th epi Council

The final election results for Estonia and the Slovak Republic were not available by the deadline for publication in issue 1/2008. They are published hereafter.

EE – ESTONIA

Sent ballots: 29 Participation: 72,4 %

Unitary		SARAP Margus	20	3. URGAS Enn	19
Received ballots:	21	TOOME Jürgen*	8	4. NELSAS Tõnu	10
Valid ballots:	21	URGAS Enn	19	<i>Substitute members</i>	
Void ballots:	0	Allotment of seats		1. PIKKOR Riho*	15
KOITEL Heinu	7	<i>Full members</i>		2. TOOME Jürgen*	8
NELSAS Tõnu	10	1. SARAP Margus	20	3. KOITEL Heinu	7
OSTRAT Jaak	19	2. OSTRAT Jaak	19	* stood as substitute only	
PIKKOR Riho*	15				

SK – SLOVAK REPUBLIC

Sent ballots: 44 Participation: 59,1 %

Unitary		KUBÍNYI Peter	9	3. NEUSCHL Vladimir	13
Received ballots:	26	MAJLINGOVA Marta	13	4. GUNIS Jaroslav**	11
Valid ballots:	22	NEUSCHL Vladimir	13	<i>Substitute members</i>	
Void ballots:	4	Allotment of seats		1. BADUROVÁ Katarina**	11
BADUROVÁ Katarina	11	<i>Full members</i>		2. HÖRMANN Tomas**	11
CECHVALOVA Dagmar	17	1. CECHVALOVA Dagmar	17	3. KUBÍNYI Peter	9
GUNIS Jaroslav	11	2. MAJLINGOVA Marta	13	** tie vote position decided by lot	
HÖRMANN Tomas	11				

Corrigendum

ITALY

Mrs Elda DE CARLI had declared that she did not stand for election. She was therefore replaced by Mrs. Giulia TAGLIAFICO as a substitute member (** *tie vote position decided by lot*).

Changes

LUXEMBOURG

Private practice

With the approval of the Electoral Committee, Mr. Armand SCHMITT and Mr. Jean BEISSEL, who had an equal number of votes, switched positions. Mr. Jean BEISSEL has thus become a full Member and Mr. Armand SCHMITT a substitute Member.

Other practice

Mr. Bruce DEARLING moved from Luxembourg to the UK after his election as a substitute member. He therefore resigned from his position in Council.

DENMARK

Other practice

Mrs. Anette HEGNER who was elected Council member for industry has gone to private practice as from 1 July 2008. She therefore withdrew from Council and the Danish substitute member Bart VAN DEN HAZEL has become a full member.

AUSTRIA

Mrs. Dagmar HARRER-REDL who was elected Council member for industry has gone to private practice as from 1 August, 2008. She therefore resigned from her position in Council.

New Council members from Norway

The following Norwegian *epi* members were appointed to the *epi* Council by the EPO President:

Full Members

Mr. Svein Hofseth
Ms Kristine Rekdal
Mr. Per Geir Berg
Mr. Dag Thrane

Substitute Members

Mr. André Berg
Mr. Gunnar Ostensen
Mr. Gisle Midttun
Ms Elin Anderson

Next Board and Council Meetings

Board meetings:

77th Board Meeting: 11 October 2008, Barcelona

Council meetings:

65th Council Meeting: 24-25 November 2008, Munich

66th Council Meeting: 23 May 2009, Luxembourg

Vacancy/Office Director – *epi* Secretariat

Position: Office director for the *epi* (currently 8990 members from 34 countries).

The Board of the *epi* is seeking an office director for the *epi* Secretariat in Munich.

The candidate should have a legal background, preferably be a European Patent Attorney.

The position is a part-time job of one day per week at the Secretariat in Munich, either a whole day or preferably two half-days; for this reason the candidate should be resident in Munich.

He/she will have the five staff members of the Secretariat under his/her responsibility and he/she will report to the Secretary General.

The preferred working language at the *epi* Secretariat is German. A command of English and French is a prerequisite.

The main duty of the office director will be to assist the Secretary General, not resident in Germany, in his administrative tasks.

Tasks in detail:

- Preparing Council and Board meetings, i.e. looking for suitable venues, negotiating contracts for hotel accommodation, catering, and organising social programmes;
- Looking after the secretariat staff;
- Replying by telephone or in writing to general queries (mostly concerning legal matters) from *epi* members and third parties (for example concerning conditions for being entered on the list of professional representatives, Code of conduct, reimbursement of expenses);
- Getting office equipment (Hardware and Software)
- Handling of payments

As this position is new, the contract will have an initial term of one year at the end of which the decision on a continuation will be taken.

The starting date is expected to be the 1st September 2008.

Applications and further information: Paul Georg Maué, *epi* Secretary General, Tal 29, P.O Box 260112, D- 80058 Munich; info@patentepi.com

Director of Education of *epi*



Henk HANNEMAN became Director of Education of the *epi* in April 2008.

Mr. HANNEMAN is a European patent attorney since 1981 and has extensive experience in industry both as a professional as well as head of department of a multinational company. While

president of the national Dutch (unitary) association of patent attorneys he initiated a two-year national training programme for patent attorneys. Subsequently he sat on the Board of Trustees and tutored for many years two subjects. Henk HANNEMAN was an *epi* Council and Board member during the 1990s. He now works as an IP consultant. Recent projects include a project on IP-matters in the cooperation between universities and industry, raising IP-awareness for Turkish SMEs and as a supervising director at the technology transfer office of Maastricht university/medical centre.

Henk HANNEMAN can be reached at the following address: henk.hanneman@patentepi.com

The duties of the Director of Education are generally:

- to act as *epi* contact person for CEIPI, the European Patent Academy, National bodies and National training organisations;
- to develop cooperation with CEIPI with regard to basic training, continued professional training, and the patent litigation course;
- to organise seminars and *epi* tutorials for candidates to the EQE;
- to establish a tutor network for candidates to the EQE;
- to establish contacts with National representatives in order to offer and provide assistance in training, and for providing consistency of training across all Member States;
- to raise IP awareness in Member State educational establishments, such as universities.

Pre-announcement CPE seminars 2008

Two dates have been fixed for seminars in the framework of the current project of Continuing Professional Education (CPE). These seminars are organised in cooperation with the EPO Academy.

15.09.2008, Eindhoven:

„How to understand examiner's communications and amendments to European applications“

The purpose of the seminar is to give on the one hand the participants the possibility to see how examiners apply in practice the fundamental concepts of patentability under the EPC: clarity, novelty, inventive step.

On the other hand, all aspects to be taken into account when amending an application will be looked at.

Ways to overcome missed time limits will also be dealt with.

Special attention will be given to certain topics:

- Art. 123(2) and intermediate generalisations
- What could be the effect of the new claims fees
- Is it possible to draft an application taking into account European practice as well as that of other systems like the US, or in other words, how to draft an application valid for different practices around the world.

Whenever possible, the different topics will be illustrated by European case law.

Daniel Thomas (EPO) will hold this one-day seminar.

It will take place at the „Auditorium“ in the „Strip“ of the High Tech Campus.

For more information, please visit our website (www.patentepi.com).

06.10.2008, Istanbul:

„Opposition“

The purpose of the seminar will be how to deal with an opposition either as opponent or as proprietor. Key points will be admissibility of the opposition as well as substantive examination of the opposition.

A practical example of an opposition will be sent in mid-September to the participants for preparing the case beforehand. The possible solution will be discussed at the seminar.

Following subjects will be addressed:

- time period to file an opposition
- parties entitled to file an opposition
- notice of opposition
- grounds for opposition
- admissibility of opposition
- how to draft a notice of opposition (argumentation)
- oral proceeding
- practical examples

Daniel Thomas (EPO) and Claude Quintelier (*epi*) will give this one-day seminar.

It will take place at the Marmara Hotel in Istanbul.

For more information, please visit our website (www.patentepi.com).

6th CEIPI-*epi* Course on Patent Litigation in Europe

The programme of the 2008/2009 CEIPI-*epi* Course is available on the *epi* website www.patentepi.com as well as on the CEIPI website www.ceipi.edu

Any question should be put to the *epi* Secretariat.

epi Artists Exhibition 2009

The *epi* Artists Exhibition of *epi* Artists has become a tradition in the cultural life of the *epi* and of the EPO. Opened for the first time in 1991, it was followed by further shows in 1994, 1996, 1998, 2000, 2003 and 2006. The interesting works on display have ranged from paintings to graphical and fine art works, such as ceramics, sophisticated watches and jewellery, and artistic textile creations. The exhibitions which were opened by the Presidents of the *epi* and of the EPO met with great interest. We hope that the forthcoming exhibition will be just as successful. It is planned to take place from

19 February to 6 March 2009

at
European Patent Office
PschorrHöfe building
Bayerstrasse 34, Munich.

A prerequisite for the exhibition is a large participation of artists from various countries. Therefore, all creative spirits among the *epi* membership are invited to participate. Please disseminate the information!

For information please contact:

epi Secretariat
P.O. Box 260112
80058 München
Germany

Tel: +49 89 24 20 52-0
Fax: +49 89 24 20 52-20
e-mail: info@patentepi.com

Update of the European Patent Attorneys database

For the attention of all *epi* members

Please send any change of contact details to the European Patent Office so that the list of professional representatives can be kept up to date. Be aware that the list of professional representatives, kept by the EPO, is the list used by the *epi*. Therefore, to make sure that *epi* mailings as well as e-mail correspondence reach you at

the correct address, please inform the EPO Directorate 5.1.1 of any change in your contact details by sending an e-mail to legaldivision@epo.org

Thank you for your cooperation.

Comments by Alison Brimelow on the article entitled „Raising the Bar?“ by P. Rosenich in „epi Information“ 1/2008

The editors of „epi Information“ have asked me whether I would like to comment on the article by Mr Rosenich entitled „Raising the Bar?“ in the 1/2008 issue. Normally, I do not respond to contributions reflecting the personal views of individuals. However, this topic is so important that it justifies a reaction to Mr Rosenich's misleading statements.

At the event commemorating the *epi*'s 30th anniversary, I spoke in general terms of the future of the patent system in Europe. I pointed out that the patent system had, in the widest sense, become a victim of its own success. The number of patent applications has risen

sharply worldwide over the last ten years. At the EPO alone, over 208 000 applications were filed in 2006. This has led to backlogs not only at the USPTO and the JPO but also, to a lesser degree, the EPO. As a result of these backlogs, it often takes a very long time before the EPO decides whether or not a patent can be granted. We shall have to take appropriate measures to improve this situation. What measures these could be is currently being discussed at the EPO within the framework of our „Strategic Renewal Process“. The utilisation of work from other offices is one such measure which is already being tested in the so called „Utilisation Pilot Project

(UPP)“ and which could help to increase efficiency and improve the quality of the search and examination process. First results and an analysis of the pilot project are expected for this summer.

In addition, the patent offices are increasingly facing criticism for granting too many patents for inventions with an insufficient inventive step and thereby undermining the purpose of the patent system.

The inventive step requirement is meant to avoid that exclusive rights are granted for innovations that do not go beyond normal technological development. Granting patents for developments that are within reach of the average engineer or researcher would not promote innovation but hinder innovation.

Under Article 4(3) EPC, the EPO has the task (not the „duty“ as Mr Rosenich puts it) to grant patents in accordance with the EPC with effect in its 34 contracting states, so long as the legal conditions have been met. Conversely, it also has the task of refusing patent applications where the legal conditions for patenting have not been met. Hence, it is my duty to deal objectively with any criticism of the way in which the EPC's provisions on inventive step

are being implemented and to check whether the purpose behind those provisions is being respected in practice. A large majority of the delegations in our Administrative Council share that view. In fact the discussion about „raising the bar“ was initiated by a document on the patenting situation in Europe submitted by a group of contracting states to the Council in 2006. At its meeting in December 2007 the Administrative Council endorsed a study of its Board on Future Workload and the recommendations contained therein which support the EPO's work on this issue within the „Strategic Renewal Process“. We shall, of course, involve the patent profession in this fundamental discussion in due course.

The discussion on inventive step is not therefore being conducted for internal or „business-motivated“ reasons, as Mr Rosenich suggests, but for the „other reasons“ he refers to: maintaining quality, protecting the public and competitors from inappropriately granted exclusion rights and, in the final analysis, safeguarding the patent system as a whole. That, surely, is in Mr Rosenich's interest too.

MSBA is Good for You

C. Mercer (GB)

No, this is nothing to do with infections with MRSA. MSBA is the annual meeting between the Chairmen of the Boards of Appeal and the members of SACEPO. There are 10 epi-nominated members of SACEPO (as well as a number of epi members representing Business-Europe or themselves). This meeting is very interesting and informative and enables us to exchange views with the Chairmen in a very open manner. There is no discussion of individual cases but there is discussion of practices and possible changes in procedure that would benefit both the Boards and attorneys. The last meeting took place on 11th June, 2008.

Non-Attendance at Oral Proceedings

One of the points which arose during this meeting concerned the fact that, in an increasing number of cases, a party to an appeal does not attend the oral proceedings, even though that party has requested the oral proceedings. We were informed that this can cause difficulties for the Appeal Boards and in particular can mean that an Appeal Board has to spend time and effort in dealing with a case in which the applicant, patentee or opponent has no interest. This is in particular a problem where the non-attending party is the sole appellant.

As a matter of professional courtesy and good practice, any party intending not to attend an oral proceed-

ings must inform the Board as soon as possible. In the vast majority of cases, this occurs. However, even where the Board is informed, there can still be problems.

In many instances, the party, although indicating that it will not attend the oral proceedings, does not indicate whether the party is withdrawing its request for oral proceedings or, if it is the appellant, the appeal. This can leave the Board in doubt as to whether it is possible to cancel the oral proceedings. (It appears that some appellants want the oral proceedings to take place even though they will not be present – why they should do this is unclear.) It should be normal practice to indicate explicitly whether the request for oral proceedings is maintained and whether the appeal is maintained.

The party may also give notice of non-attendance only shortly before the date set for the oral proceedings. This may mean that the Board will be unable to cancel the oral proceedings if other parties are involved. Even if the Board can cancel the oral proceedings, this means that it is precluded from hearing other cases. It may also mean that the EPO has to pay for translators if the booking cannot be cancelled.

In all of these cases, the result of non-attendance at oral proceedings leads to an overall inefficiency in the appeal procedure. It certainly does not convey the impression that the client is interested in the outcome

of the case. It is difficult for the Boards to deal with cases more quickly if they have to hold oral proceedings on cases in which one party, in particular the appellant, has no interest.

It was suggested at the meeting that, in certain circumstances, it might be appropriate to impose a penalty on a party failing to attend the oral proceedings it has requested.

We noted that it would be a lot easier for us if all Boards set out a detailed reasoned preliminary opinion with the summons so that the client has a good basis on which to make a decision as to attendance or not at the oral proceedings.

However, it seems to me that we as professional representatives could improve the situation and avoid the need for the Boards to consider any penalties to change attorney behaviour. Better communication with the ultimate client, whether this is an in-house business unit or a company instructing a representative in private practice, would ensure that decisions as to whether to request and attend oral proceedings and whether to maintain an appeal are discussed and agreed.

If possible, we should monitor whether the client is still interested in the case. In any event, on receipt of the

summons to oral proceedings, we should ask the client whether it is still interested in the case. If it is not, we should find out whether the client is prepared to withdraw the appeal, thus closing the proceedings.

We should also inform the client what we will do if the client does not give us any instructions. The two main possibilities would be to indicate either that we will only attend the oral proceedings if the client specifically instructs us to do so or that we will definitely attend the oral proceedings unless the client specifically instructs us not to. In the first case, we should also indicate that, in the absence of instructions, we will notify the Board, as soon as possible after receipt of the summons, we will not be attending the oral proceeding and that we withdraw any request for oral proceedings.

If we make efforts to persuade clients to deal efficiently with appeal cases in which they no longer have any interest, it should be possible for the Boards to deal more efficiently with cases which are more important to our clients. The alternative, if we do not, is that the Boards may increase their efficiency by using penalties and restrictions that will make the procedure more difficult for attorneys.

Die Wiedereinsetzung in die Prioritätsfrist nach Artikel 87 EPÜ 2000 und die sich daraus ergebenden Probleme

U. Storz, J. Wind-Falk¹ (DE)

Einleitung

Seit der Einführung der revidierten Fassung des Europäischen Patentübereinkommens am 13. Dezember 2007 („EPÜ 2000“) gilt nunmehr erstmals auch die Prioritätsfrist als wiedereinsetzbare Frist im Sinne des Art. 87 EPÜ.

Diese Neuregelung, die im Zuge der Anpassung an den PLT-Vertrag, der eine ähnliche Regelung vorsieht, als geboten erschien², ermöglicht es einem Anmelder einer nationalen Erstanmeldung, der trotz der gebotenen Sorgfalt versäumt hat, gegenüber dem Europäischen Patentamt die Prioritätsfrist einzuhalten, sein Versäumnis ungeschehen zu machen. Stellt der Anmelder innerhalb von zwei Monaten nach Ablauf der Prioritätsfrist einen Antrag auf Wiedereinsetzung, zahlt die Gebühr und holt die versäumte Handlung nach, so kann er in den vorigen Stand eingesetzt werden (Art. 122 (1), R. 136 EPÜ), wenn er den Antrag auf Wiedereinsetzung begründet

und dabei die zur Begründung dienenden Tatsachen glaubhaft gemacht hat.

Da einem Anmelder bei erfolgreicher Wiedereinsetzung in die Prioritätsfrist eigene oder fremde Vorveröffentlichungen innerhalb des Prioritätsjahres nicht mehr als Stand der Technik entgegengehalten werden können, kann er so trotz Nichteinhaltung der dafür vorgesehenen Frist von zwölf Monaten für seine Erfindung doch noch ein Verbotungsrecht gegenüber Wettbewerbern in allen 34 Mitgliedsstaaten des EPÜ und den vier Erstreckungsstaaten generieren.

Mehrere Zeitränge bei Aufnahme weiterer Merkmale und Daten in die Nachanmeldung

Es ist in der Praxis üblich, die während des Prioritätsjahres neu gewonnenen Merkmale oder Daten in eine Prioritätsnachanmeldung aufzunehmen. Dies geschieht routinemäßig und ist an sich nicht problematisch. Dabei kommt den neu eingebrachten Merkmalen und Daten als Zeitrang der Anmeldetag der Nachanmeldung zu,

¹ Patentanwalt Dr. Ulrich Storz, Dipl.-Ing. (FH) Biotech. Julia Wind-Falk, Michalski Hüttermann Düsseldorf

² Siehe Dokument CA/PL 19/99 vom 10.06.1999 des Ausschusses „Patentrecht“ des Europäischen Patentamts

während die älteren Merkmale und Daten den Zeitrang der Erstanmeldung behalten.

Durch das nunmehr verfügbare Instrument der Wiedereinsetzung in die Prioritätsfrist ergeben sich bislang nicht bedachte Probleme. So ist es denkbar, dass ein Anmelder die Prioritätsfrist versäumt und nach Ablauf des Prioritätsjahres Kenntnis über neue Merkmale oder Daten gewinnt, die er gerne noch in seine Anmeldung aufnehmen würde. Ebenso ist vorstellbar, dass ein Anmelder bereits vor Ablauf der Prioritätsfrist feststellt, dass er erst nach deren Ablauf Kenntnis über neue Merkmale oder Daten gewinnen wird, die er für anmelderelevant hält. In beiden Fällen kann der Anmelder nun den Versuch machen, diese Merkmale oder Daten in die Nachanmeldung einzufügen, und eine Wiedereinsetzung in die Prioritätsfrist beantragen.

Die Problematik des Anmeldetages

Wie die Autoren festgestellt haben, ist an keiner Stelle im EPÜ geregelt, welchen Anmeldetag eine solche in den vorigen Stand eingesetzte Nachanmeldung bekommt. Die Prüfungsrichtlinien (Teil A, Kap III, 6.6) äußern sich zwar insoweit, dass die versäumte Handlung, d. h. die Festsetzung eines Anmeldetags für die europäische Anmeldung, innerhalb der zweimonatigen Frist nachzuholen ist. Allerdings fehlt auch hier der Hinweis, welches Datum für die Festsetzung des Anmeldetags heranzuziehen ist.

Dabei bestehen grundsätzlich zwei Möglichkeiten:

- a) Die Nachanmeldung bekommt den tatsächlichen Anmeldetag (also ein Datum nach Ablauf der Prioritätsfrist), oder
- b) Die Nachanmeldung bekommt ein fingiertes Anmeldedatum innerhalb der Prioritätsfrist.

Möglichkeit a) scheidet nach Auffassung der Autoren aus, weil die Laufzeit eines europäischen Patents gemäß Art. 63 (1) EPÜ zwanzig Jahre, gerechnet vom Anmeldetag an, beträgt. Auf diese Weise ist gewährleistet, dass die maximale effektive Schutzdauer einer Erfindung einschließlich der Prioritätsfrist 21 Jahre nicht überschreitet – wenn man einmal von eventuellen ergänzenden Schutzzertifikaten (SPC) absieht. Würde der verspätet eingereichten Nachanmeldung der tatsächliche Anmeldetag zuerkannt, könnte der Anmelder maximal weitere 2 Monate Schutzdauer generieren – würde also für sein Versäumnis auch noch belohnt. Dies wäre systemwidrig und würde geradezu zum Ausnutzen der neuen Wiedereinsetzungsmöglichkeit auffordern, da zwei Monate zusätzlicher Schutz insbesondere im Pharmabereich leicht zu mehreren Millionen Euro zusätzlichem Gewinn führen können.

Möglichkeit b) scheint daher das Mittel der Wahl. Hier bleibt allerdings die Frage offen, welches Datum es denn nun sein soll. Im Normalfall wird der Anmelder versuchen, das letztmögliche Datum zu wählen, also den Tag des 12. Monats nach dem Anmeldemonat, der durch seine Zahl dem Anmeldetag entspricht³, um so eine möglichst lange Schutzdauer zu generieren.

Sich aus dieser Regelung ergebende Probleme

Die Möglichkeit der Wiedereinsetzung birgt – z. T. unabhängig von der Frage, welcher Anmeldetag der Nachanmeldung zuerkannt wird – eine Reihe problematischer Konsequenzen, die wir im Folgenden darstellen möchten. Dabei soll zwischen „Daten“ und „Merkmalen“ unterschieden werden. Als „Daten“ sollen solche Daten verstanden werden, die die erfinderische Tätigkeit oder die Offenbarung einer Auswahl aus einer Gesamtheit stützen können, während „Merkmale“ in die Ansprüche aufgenommen werden und eventuell zur Stützung der Neuheit der Ansprüche herangezogen werden können.

1. Fallkonstellation: Nachreichen von Daten zur erfinderischen Tätigkeit

Einem Anmelder gelingt es nicht, die für die Stützung der erfinderischen Tätigkeit erforderlichen Daten innerhalb des Prioritätsjahres zusammenzutragen. Nach Ablauf des Prioritätsjahres liegt also nach wie vor ein neuer, aber – mangels Daten zur erfinderischen Tätigkeit – nicht erfinderischer Gegenstand vor. Gelingt es dem Anmelder, die erforderlichen Daten innerhalb von zwei Monaten nach Ablauf der Prioritätsfrist zu generieren, so kann er die Anmeldung durch Antrag auf Wiedereinsetzung retten. Dies ist insbesondere deswegen von Bedeutung, weil das EPA bei Einreichung von experimentellen Daten zur Stützung der erfinderischen Tätigkeit nach Ablauf der Prioritätsfrist immer strengere Maßstäbe anwendet⁴.

2. Fallkonstellation: Nachreichen von Daten zur Stützung der Offenbarung einer Auswahl aus einer Gesamtheit

Einem Anmelder gelingt es nicht, die für die Offenbarung einer Auswahl aus einer in der Erstanmeldung offenbarten Gesamtheit erforderlichen Daten innerhalb des Prioritätsjahres zusammenzutragen. Besagte Auswahl aus der ursprünglich beanspruchten Gesamtheit hat sich aber aufgrund des Prüfungsbescheids gegenüber dem Stand der Technik als neu erwiesen. Gelingt es dem Anmelder, die erforderlichen Daten innerhalb von zwei Monaten nach Ablauf der Prioritätsfrist zu generieren, so kann er durch Antrag auf Wiedereinsetzung fristgerecht Daten einbringen, die die Auswahl aus einer in der Erstanmeldung offenbarten Gesamtheit stützen.

Da die genannte Auswahl aus einer Gesamtheit dann, wenn sie eng ist und überraschende Effekte aufweist (also Effekte, die insbesondere mit experimentellen Daten gezeigt und bewiesen werden können) neu und nicht in den ursprünglichen Unterlagen offenbart ist⁵, kann der Anmelder so nachträglich die Offenbarung der besagten Auswahl in die Anmeldung einbringen und die Anmeldung unter Wahrung des Zeitranges des Jahrestags des Prioritätsdatums retten.

3 Gemäß Art. 87, Art. 120 und R. 131 (4) EPÜ

4 Siehe z. B. die Entscheidungen T898/05 und T1329/04

5 Siehe z. B. die Entscheidung T 279/89

3. Fallkonstellation: Einbringen neuer Merkmale

Ein Anmelder fügt seiner Nachanmeldung ein Merkmal bei, über das er erst nach Ablauf der Prioritätsfrist Kenntnis gewonnen hat. Dies kann z. B. ein Merkmal sein, das er nach Ablauf der Prioritätsfrist bei seinem Wettbewerber (z. B. auf einer Messe) gesehen hat. Gelingt es ihm, durch die Rückdatierung des Anmeldetags per Wiedereinsetzung (d. h. unter Ausnutzung der oben genannten Möglichkeit b) für dieses neue Merkmal einen besseren Zeitrang zu erlangen als sein Wettbewerber, so ist er gegenüber seinem Wettbewerber neu im Sinne des Art. 54 EPÜ und wird ein Patent auf den Anmeldegegenstand bekommen, während eine etwaige Anmeldung seines Wettbewerbers mangels Neuheit zurückgewiesen wird.

Vergleichbare Regelungen in anderen Rechtssystemen

Der PLT (Patent Law Treaty) sieht gemäß Art. 13 (2) und R. 14 vor, dass einer verspätet eingereichten Nachanmeldung unter bestimmten Voraussetzungen das Prioritätsrecht zuerkannt werden kann. Allerdings findet sich im PLT-Vertrag keinerlei Hinweis auf die etwaige Fiktion eines Anmeldetags.

Gemäß Regel 26 bis.3 PCT (Patent Cooperation Treaty) kann einer nach Ablauf der Prioritätsfrist eingereichten Internationalen Patentanmeldung auf Antrag das Prioritätsrecht zuerkannt werden, wenn das Versäumnis trotz Einhaltung der erforderlichen Sorgfalt eingetreten ist und die Verspätung nicht mehr als zwei Monate beträgt. Einzelheiten betreffend das Anmelde- und das Bestimmungsamt sind in Regel 49ter.1 und 49ter.2 geregelt. Diese Regelungen sind jedoch sowohl für das betreffende Anmelde- als auch das Bestimmungsamt entbehrlich, wenn nationale Regelungen einer Wiedereinsetzung entgegenstehen. So akzeptiert das Europäische Patentamt Anträge auf Wiedereinsetzung in die Prioritätsfrist sowohl in seiner Rolle als Anmelde- und als Bestimmungsamt, während das DPMA in keinem Fall Anträge auf Wiedereinsetzung akzeptiert. Allerdings findet sich auch im PCT-Vertrag keinerlei Hinweis auf die etwaige Fiktion eines Anmeldetags.

Seit Änderung des deutschen Patentgesetzes am 1.11.1998 kann vor dem DPMA in Fällen des § 41 PatG (d. h. Inanspruchnahme einer äußeren Priorität) eine Wiedereinsetzung nach § 123 PatG gewährt werden, nicht jedoch in den Fällen des § 40 PatG (Inanspruchnahme einer inneren Priorität) oder des § 7 (2) PatG (Entnahmepriorität). Auch hier schweigt sich das Gesetz aus, welcher Anmeldetag der Nachanmeldung zuerkannt werden soll.

Der BGH⁶ konstatiert, dass die Wirkung der nach § 123 PatG ebenfalls möglichen Wiedereinsetzung darin besteht, dass die versäumte Handlung als rechtzeitig erfolgt fingiert wird, und dass die Folgen des Versäumnisses in vollem Umfange beseitigt werden⁷. Rechtsprechung in Bezug auf den Anmeldetag einer wiedereingetzten Prioritätsnachanmeldung – wie Sie im Falle der Inanspruchnahme einer äußeren Priorität gemäß § 41 PatG möglich ist – liegt derzeit nicht vor.

Das Schrifttum hat jedoch bereits erkannt, dass der einzig zuerkennbare Anmeldetag nur der letzte Tag des Prioritätszeitraums sein kann, weil andernfalls eine Verlängerung der Patentlaufzeit eintreten könne⁸. Dies freilich löst nicht das oben angesprochene Problem, dass auf diese Weise Daten und Merkmale gleichsam rückdatiert werden können.

Zusammenfassung und Ausblick

Die Möglichkeit der Inanspruchnahme der Priorität stellt nach Meinung der Autoren ein enormes Privileg für Patentanmelder dar. Letztere sollten daher mit diesem Privileg äußerst sorgfältig umgehen, und für die Einhaltung von Prioritätsfristen ein zuverlässiges und fehlerfreies Überwachungssystem etablieren – so wie es in Patentanwaltskanzleien seit langem gute Praxis ist.

Es kann nach Auffassung der Autoren nicht ausgeschlossen werden, dass Anmelder die neu geschaffene Möglichkeit der Wiedereinsetzung in die Prioritätsfrist zum Nachteil ihrer Wettbewerber ausnutzen werden.

Grundsätzlich scheint die Wiedereinsetzung in eine versäumte Prioritätsfrist ein fragwürdiges Mittel, da sie es einem Anmelder nachträglich ermöglicht, neue Merkmale oder Daten, über die er erst nach Ablauf des Prioritätsjahres Kenntnis gewinnt, in seine Anmeldung aufzunehmen. Hinzu kommt, dass in allen diskutierten Rechtssystemen – EPÜ, PLT, PCT und PatG – nicht geregelt ist, welchen Anmeldetag die wiedereingesezte Nachanmeldung zuerkannt bekommt.

Zumindest letzteres sollten die gesetzgebenden Instanzen dringend nachholen. Das Deutsche und das Europäische Patentamt sollten überdies Anträge auf Wiedereinsetzung in die Prioritätsfrist kritisch prüfen und eine Wiedereinsetzung an die Erfüllung höchster Anforderungen knüpfen; insbesondere sollten sie dabei Maßnahmen treffen, die geeignet erscheinen, zu verhindern, dass ein Anmelder Merkmale oder Daten, über die er erst nach Ablauf des Prioritätsjahres Kenntnis gewinnt, in die wiedereingesezte Anmeldung einfügt.

6 BGH GRUR 1995, 333 „Aluminium-Trihydroxid“

7 BGH GRUR 1993, 460 „Wandabstreifer“

8 Busse, PatG, 6. Auflage, § 35, RndNr. 17

Quality of patents: a matter of information inputs

F. Hagel (FR)

Definitions of quality

The quality of patents has become an issue of great concern for patent offices and governments and for all those interested in patent issues and innovation policies. It is frequently implicitly equated to the standard of inventive step applied by patent reviewing authorities – patent offices and competent courts. Quality is thus taken as a synonym for a high standard of inventive step. But there are other factors of patent quality which are in our view more important albeit less visible, primarily the quality of the prior art search, and also the review of the sufficiency of disclosure and of the breadth of claims in relation to the technical contribution. The risk is thus that these factors may not be given due consideration. In addition, the standard of inventive step relies on a definition of the person skilled in the art, which does not lend itself to an objective assessment, unlike the above-mentioned factors.

Taking a legal approach, a quality patent is a patent which meets all the legal requirements of validity – not just inventive step, but also eligibility of subject matter, novelty, sufficiency of disclosure, clarity of claims and support by the description. Since only judicial review can provide the factual information and argument relevant for a thorough determination of validity, it is arguable that the only reliable assessment of quality occurs when a patent challenged in court, typically during infringement proceedings, is held valid. This approach, however, fails to meet the practical requirements of quality assessment. Court decisions only relate to a very small percentage of all granted patents. They take place years, sometimes many years after the patent has been granted. They involve a case-by-case analysis from which general conclusions may be difficult or imprudent to reach.

A more practical approach of patent quality relies on the expectations and judgments of users of the patent system. We mean here by „users“ the end-users, in other words the beneficiaries of the patent system, not patent specialists, whether corporate or in private practice, even though they are also users of the patent system. We believe that an adequate assessment of patent quality must be based on the end-users' needs and expectations, since the patent system exists for their benefit. Such end-users possess the technical background necessary to understand the technical content of a patent and, whilst not being patent specialists, are familiar enough with the patent system to look at the claims for an assessment of its scope and of the implications. This term „end-user“ is still quite general, though, since there are various categories of end-users (industrial users, individual inventors, academic scientists, general

public, ...) who do not interact with the patent system in the same way and consequently will not share the same approach. In order to minimise the biases or preconceptions linked to these specific interactions with the patent system, we propose to select *industrial users* as the reference users. As an industrial company holds simultaneously, depending on the case, the positions of applicant/ patent owner, third party exposed to infringement risks, supplier, customer, licensee, prospective partner, member of the public at large, its personnel exposed to patent issues or the patent literature (such as scientists, design engineers, R&D managers, sales/marketing staff with a technical background) will likely approach the patent system and the issue of quality in a balanced manner, neither pro-patent nor anti-patent. This is also justified because an industrial user can be considered as the closest possible physical embodiment of the notional „person skilled in the art“, the key but elusive character of patent law. In addition, because the awareness of the patent system outside the sphere of patent specialists has grown in a spectacular manner over the last decade owing to internet access of patent databases, users' assessment of quality should be given great attention from a political and policy standpoint.

Industrial users' expectations

In our experience, an industrial user's expectations as to patent quality (the term „patent“ meaning here both published applications and granted patents) can be outlined as follows.

First, an industrial user expects the search of prior art conducted by the patent office to be comprehensive and miss no relevant prior art. An industrial user by definition possesses the common knowledge of the field concerned and is aware of what has been around in the industry, commercial solutions and publications relating to unsuccessful proposals. An industrial user is also able to conduct a search of the patent literature since the latter has become easily accessible through internet databases such as esp@cenet. An industrial user knows that non-patent prior art is not so easily accessible to examiners and can be submitted by the way of observations or be used to challenge validity by opposition proceedings.

Second, the gist of the invention, as can be understood from the patent or application, should appear as a good idea and a valuable contribution, it should not look straightforward vis-à-vis the prior art of which the user is aware, including common knowledge and commercial solutions. For example, a technical proposition will look straightforward if it consists of a trivial addition to the prior art, or if it is an obvious-to-do development, such as

the modification of a system to benefit from advances in IT technology.

Third, the specification should provide a description of feasible means for the implementation of the invention. If a means or step which appears critical is not described and only depicted as „within the purview of the person skilled in the art“, an industrial user will vocally protest that this is sheer wishful thinking, that a patent lacking such information has no technical substance and should not have been granted. This happens in the case of so-called prospective or speculative or pre-emptive patents aimed at capturing the predictable directions of development in a field, often the product of brain-storming sessions. For industrial users, the filing of such patents looks like a misuse of the patent system and their grant by a patent office affects the credibility of the patent system. This issue is given scant attention, if any, by examiners in the mechanical/electrical fields, even when a key component is clearly not available (for a telling example, see decision T1173/00 of the EPO Boards of Appeal, OJ EPO 1/2004, revoking a patent in which the key component was described as „under development“).

Fourth, the scope of the claims should be commensurate with the technical contribution, in tune with the embodiments disclosed in the specification. Overly broad claims cover a host of possibilities which are not disclosed in the specification. In such a case, the grant of the patent is viewed as an illegitimate, abusive pre-emption of a technical domain and the patent office appears unable to exercise its role as a reviewing authority.

Finally, industrial users are critical of patents having a very lengthy specification and a large number of claims. The length of the specification and the large number of claims make it difficult to comprehend the content and assess the scope. There is the sentiment that this is a deliberate tactic on the part of the applicant to overwhelm the patent office and make a thorough assessment so costly that it is not affordable for most third parties.

Ingredients of quality

A granted patent is the result of a multi-step process involving the applicant, the attorney entrusted with the case, if any, the patent office, and possibly third parties when observations or submissions are filed. The quality of a patent is the combined result of the quality of the individual steps – which implies a shared responsibility between the patent office and the applicant. Each step is performed on the basis of information inputs. *The quality of a patent critically depends on the value of these information inputs.*

A typical sequence includes the following steps. A patentability assessment of the invention is first completed on the basis of a preliminary search of the prior art by the inventor himself/herself or the patent specialist in charge, using internet patent data bases and non-patent publications at hand, taking into account the relevant

legal framework. Once a filing decision has been made, an initial application is prepared on the basis of the technical information developed by or on behalf of the applicant in relation to the invention, primarily the detailed description of embodiments, test data, and so forth, and of the prior art for the drafting of claims, which also relies for its syntax on the relevant legal rules (what is, or not, a limiting feature, etc). A search of the prior art is then performed by the competent patent office and the search report issued. The search report is obviously a critical input for applicant's decision to file EPO or PCT applications or other national applications. When the application is published, it is desirable for the search report to be part of the publication so that third parties can make a first judgment as to the value of the invention, the expected scope of the patent once granted and the potential implications. Substantive examination by the patent office relies on the search report and possibly search reports issued by other patent offices and sometimes additional searches, and the access of the examination file by third parties allows them to monitor the procedure and submit observations to influence the outcome, especially to restrict the scope of claims if they have a concern for their freedom of exploitation.

In summary, the information inputs applied in this process comprise: the relevant legal framework, the searches of the prior art performed using internet databases, the search report and the examination file. Quality requires this information to be reliable. The technical information disclosed in the patent can also be regarded as a critical input for the assessment by the patent office and third parties and the dissemination of information to the public.

The legal framework

The legal framework comprises national patent laws and regulations, including the fee structure, the case law of national courts and EPO Boards of Appeal, and guidelines for examination issued by the EPO and other patent offices.

The major concern of industrial users as regards the legal framework is their predictability. Rules should therefore be *simple*, since complexity generates for users uncertainties, legal costs, defensive strategies, it burdens the patent offices, and increases the risks of inconsistent court decisions.

A requirement for the legal framework to remain simple is that the case law of the competent authorities and jurisdictions be *consistent*. We can see that this is not so easy in the case of the European patent system, because it is fragmented and while patent laws have been unified, there are differences between the EPO Boards of Appeal and national courts as to significant issues. The inability of the EPO Boards of Appeal to define a simple rule as to the admissibility of computer-related inventions has been and remains a major problem and has deeply affected the credibility of the EPO. There is regrettably great uncertainty today as to the

validity assessment by national courts of patents granted by the EPO (see the UK decisions *Macrossan/Aerotel*). Other issues although less visible are significant for users, such as the rules applicable to the construction of claims. There is some uncertainty again as to whether national courts will construe the claim of a European patent in accordance with the same rules as the EPO, especially as regards the legal effect of the two-part structure of a claim and which feature is to be considered a limitation.

Turning to the more visible issue of inventive step, the standard applied by the EPO has been subject to criticism as being too liberal and favourable to applicants. It may be time for the EPO to revisit its „would vs. could“ test particularly in the light of the *KSR vs. Teleflex* of the US Supreme Court, which clearly signals a departure from the pro-patent policy in place in the US since the early 1980's.

Patent databases

Patent databases maintained by patent offices, now freely accessible on the internet, are an essential resource for generating valuable information inputs concerning the prior art. In particular, the database maintained by the EPO, *esp@cenet*, can be characterised as the „crown jewel“ of the European patent system. European patent attorneys are all familiar with its unique features : it provides a broad international coverage of patent documents, makes it possible to download the full text of patents and published applications issued by many patent offices, as well as the up-to-date examination files of EPO cases, gives information concerning the family of equivalent patents/applications. A recent addition provides access to the patents/applications in which a patent or application has been cited as a prior art document by the EPO. For users who are not patent specialists, primarily industrial users, *esp@cenet* is of enormous value, owing to its user-friendly interface and the various options it offers. It has been a key resource for improving the patent awareness of technical staff. It is now common for non-specialist users to perform prior art searches without expert guidance and to access full-text patent documents.

The value of *esp@cenet* to users of all kinds implies that its updating and development deserve the highest priority. Adequate resources must continue to be allocated for this purpose, including EPO examiners' linguistic skills and time necessary for correctly indexing the stream of incoming documents. This should not be

compromised by the cooperation between the EPO and national patent offices.

The higher awareness of the patent system by non-specialist users must be taken to advantage for the improvement of patent quality, by encouraging applicants to always perform a pre-filing search and include their findings in the application, and third parties to submit observations during examination.

Search reports

As stressed above, the search report is a critical information input : for the assessment of patentability by applicant and the decision to pursue the case and file abroad, for the substantive examination by the EPO or national patent offices, for the assessment of validity and scope by third parties. It is obviously desirable for the search report to be available as early as possible to applicant and to be published with the application.

It is to be pointed out that the quality of search reports can be objectively assessed on the basis of searches performed by other patent offices and third parties' contributions (pre-grant observations and oppositions).

Examination files

Up-to-date examination files are also a critical information input for the assessment of validity and scope by third parties. It is desirable for more and more national patent offices to provide internet access to this valuable information.

Conclusion

Internet access of databases has not only revolutionized the operation of patent offices, it has also considerably broadened the circle of users of the patent system, particularly within corporations, beyond the community of patent specialists. Industrial users should be considered as major stakeholders of the patent system. Patent offices esp. the EPO would greatly benefit from their knowledge of technology and business and their practical approach and should reach out to them so as to foster their contribution to the assessment and improvement of patent quality. Organisations such as professional societies which are highly representative of industrial users of particular fields and respected could be good vehicles for such communications.

Ultimative Erfindung

G. Kern (DE)

Anmerkung zu den Erklärungen in EPI information 2008/1, Seiten 30 ff. von S.V. Kulhavy (CH) über Inventivpsychologie und erfinderische Tätigkeit.

Nehmen wir die erstaunliche Offenbarung zur Kenntnis,

dass „uns nur die Psychologie die Wege aufzeigen (kann), wie Innovationen entstehen und wann eine neue Lösung eines technischen Problems auf erfinderischer Tätigkeit beruht und wann nicht.“ Diese Erkenntnis kann „dazu beitragen, dass Menschen nunmehr Innovationen in rationalerer Weise als

bisher schaffen werden. Die Kenntnis der genannten Wege ermöglicht jedoch auch, die Schaffung von Innovationen den Computern anzuvertrauen.“

Das muss sie wohl sein, die ultimative Erfindung. Non plus ultra innovativer Computer. Danach werden uns die Wirtschaftswissenschaftler und Börsen aus dem Geschäftsleben hinweg rationalisieren müssen. Und die Prüfer der Technik in den Patentämtern werden auch kein Studiendiplom in Psychologie mehr vorzuweisen haben.

Italy – Legislation Update

Reduction of Term For SPCs Granted Under Italian Law No. 349/1991, New Guidelines On How To Calculate The Reduction For The Last Year

F. de Benedetti (IT)

The saga of the reduction of Italian SPC terms continues, with the unannounced approval of a new provision. It all began in 2002, when Law No. 112 provided for a reduction of the exceptionally long duration of Supplementary Protection Certificates (SPCs) applied for before 2 January 1993 (granted under Italian Law No. 349/1991). The 2002 law provided for a gradual, 6-months-a-year reduction system, but left practical issues unanswered.

One of these was which criterion should be used to calculate the reduction for SPCs with a remaining term of under one calendar year. One interpretation was that since the law applies the 6-month reduction for each year, when the last year is less than one entire calendar year, the reduction should not be applied.

On February 27, 2008 the Italian Parliament gave final approval to a bill including, inter alia, a number of provisions concerning the pharmaceutical market.

A provision that was added to the original bill is aimed at making the expiry term of patents and SPCs clearer with regard to medicinal products on the Italian market which can be reimbursed by the national health service.

According to this provision a reduction always applies to the last year. If the last year's remaining term is less than 6 months, the SPC expires on 31 December of the

previous year. If the last year's remaining term is over 6 months, it is reduced by 6 months.

Comments

Although this provision settles an important point of uncertainty it is still unclear on another point. A small number of said SPCs were not yet in force in 2004, when the system reducing the term by 6 months for each calendar year started to be applied. It remains to be seen for these cases, whether the subtraction of 6 months should count in any case from the year 2004 or from the year when, upon the patent's expiry, the SPC entered into force.

Conclusions

It appears that a number of years after enactment of the law on Italian SPC term reduction, the pharma industry's interest has shifted away from fighting out issues concerning the law's constitutionality or enforceability, and is now increasingly focused on maintaining a positive relationship with the Italian health authorities and Drug Agency, which regulates both pricing and reimbursements by the national health system.

Novelty Search Kick-Off Expected in July

F. de Benedetti (IT)

Aiming to make the Italian patent stronger, Italy is introducing novelty searches for all national patent applications, and entrusting EPO with carrying them out and producing a search report and opinion. Searches are expected to take off as soon as July, at no cost for the applicant, and with a further advantage if the Italian application is used to apply for a European patent.

The possibility of introducing novelty searches for Italian patent applications is provided for by the Italian Industrial Property Code, in force since 2005.

Pursuant to an agreement between Italy and the European Patent Office (EPO), in October 2007 the Ministry for Economic Development published a decree officially appointing EPO as the authority „in charge of performing searches for prior rights concerning applications for invention patents filed with the Italian Patent and Trademark Office“ (IPTO).

Details concerning the agreement's implementation will be set forth in a further decree, but signs from the Italian administration now indicate 1 July 2008 as the date on which all Italian patent applications could start being subjected to novelty searches. Within 9 months of

the Italian application date, EPO will send IPTO a search report and written opinion. IPTO will forward the documents to the applicant.

The novelty search will not involve any additional fee for the applicant for an Italian patent, since the cost will be paid by the Italian administration with the funds collected through fees and rights paid by users for the filing and maintenance of industrial property rights in Italy. On the contrary, where an applicant for an Italian patent should choose to file an application for a European patent, either directly or through the international procedure, the search fee would be reimbursed by EPO to the applicant directly (and therefore not to the Italian administration) upon condition that the application filed essentially coincides with the Italian application which has already undergone the novelty search.

Nonetheless, the entry into force of this new procedure also means that a so far unapplied rule will start to be applied, requiring payment of a 45-euro fee for each claim in excess of 10. Furthermore, a payment of 200 euro will be required if no English translation of the claims is produced.

Italy Case Law

IP Litigation in Italy, Same Rules Apply in All Instances

G. Gripiotti (IT)

Italy's Constitutional Court has struck down a provision of the Industrial Property Code, and ruled in essence that appeals in cases concerning industrial property must be heard according to the same law under which first instance proceedings were brought.

The issue raised before the Constitutional Court concerns the jurisdiction on appeals of the specialised industrial property (IP) sections which were created in 2003 in 12 Italian courts.

Article 245 (2) of Italy's Industrial Property Code, which came into force in 2005, made the specialised IP sections competent for appeals also in cases in which the first instance or arbitration proceedings had been brought before the creation of the specialised IP sections, and therefore under different rules, in force at the time.

The practical effect of Article 245 (2) was that in proceedings originally brought before the creation of the specialised IP courts, appeals would not only be heard under different rules from the ones applied in first instance proceedings, but often they would be heard in a different forum, since not all Italian courts have specialised IP sections.

On 14 April 2008, the Constitutional Court issued its decision No. 112, ruling that Article 245 (2) of the Industrial Property Code is unconstitutional, and that therefore appeals in cases concerning industrial property must be heard according to the rules in force at the time when first instance proceedings were brought – and consequently also in the same forum.

A Guide to the EPC 2000 – Eine Anleitung zum EPÜ2000 – Guide de la CBE2000¹ N. Fox (GB)

Review by W. Holzer (AT)

Von einem Praktiker für Praktiker

Nicholas Fox hat als zugelassener Vertreter einen praktischen Führer durch das seit 13. Dezember 2007 geltende Europäische Patentübereinkommen geschrieben, der praktischen Problemen des EPÜ2000 Rechnung trägt, wie beispielsweise der Neubezifferung der Ausführungsordnung, in die wesentliche Inhalte aus den bisherigen Artikeln verschoben wurden, um in Zukunft Änderungen der Ausführungsordnung im Verwaltungsrat der europäischen Patentorganisation leichter bewerkstelligen zu können.

Der Kommentar, dessen deutschsprachige Ausgabe in Kürze auf den Markt kommt, macht die neuen Bestimmungen in übersichtlicher Weise zugänglich, indem er den Text der (unverändert bezifferten) Artikel mit den entsprechenden Regeln der Ausführungsordnung zusammenführt. Darüber hinaus werden kurze Kom-

mentare und am Seitenrand Verweise auf die entsprechenden bisherigen Regeln bzw. Artikel gegeben. Konsultiert man beispielsweise Artikel 54 zur Neuheit, so findet man am Seitenrand Zitate aus verwandten Artikeln, wie Artikel 85 oder 93, aber auch den Text von Regel 165 zu EuroPCT- Anmeldungen, und in einem separaten Kasten einen ausführlichen Kommentar zu Artikel 54 einschließlich grundlegender Entscheidungen der Großen Beschwerdekammer sowie Hinweisen auf die Rechtsprechung und die Prüfungsrichtlinien. Jeder Artikel wird somit vollständig in relevante Materie eingebettet. Konkordanzlisten der Artikel des Standard – EPÜ und der neuen Regeln der Ausführungsordnung sowie der alten und der neuen Regeln der Ausführungsordnung, ein Stichwortverzeichnis mit Hervorhebung wichtiger Materie, wie des Einspruchs oder der Patentierbarkeit, sind ebenso selbstverständliche Zutaten wie das Protokoll von London, das Anerkennungsprotokoll und die Regeln über Gebühren. Der praktische und im handlichen A-5 Format abgefasste Kommentar lässt somit an Vollständigkeit nichts zu wünschen übrig.

¹ A Guide to the EPC 2000 – Eine Anleitung zum EPÜ2000 – Guide de la CBE2000- von Nicholas Fox. Der Verkauf erfolgt über The Chartered Institute of Patent Attorneys (95 Chancery Lane London WC2A 1DT, Großbritannien; <http://www.epc2000guide.com>). Der Preis beträgt etwa EUR 32,-

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