

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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## Obituary – Carl Eder



*The Passing of Carl. E. Eder*

Dear Friends, Colleagues and Clients

It is with great sorrow that we inform you of the passing of our highly esteemed friend and colleague, Carl E. Eder, who passed away peacefully, in the evening of 28 September, 2013.

Carl was widely recognized for his professional skills and patent law expertise. He was an active member of EPI, VSP, VESPA and FICPI, and many of the rules and regulations regarding our profession have been influenced by him. Carl entrusted his firm to our care in 2005 but he remained interested in our business until a few weeks ago. He has left us at a very old age and we are grateful to have had the privilege of spending such a long time with him. Carl was a great leader and mentor throughout his life, he continued to be a model leader even until his last moments and he will be greatly missed.

André Braun

### 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 **14. Februar 2014**. 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 **February 14, 2014**. 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 **14 février 2014**. Les textes destinés à la publication devront être reçus par le Secrétariat avant cette date.



## Editorial

T. Johnson (GB)

It is possible that well before you read this, the contents of the electronically – delivered text will have been ‘monitored’ by some surveillance body or other.

Hacking of information is prevalent, indeed seems to be endemic in all walks of our 21<sup>st</sup> century life. The hacker seeks to obtain information which can provide him/her with an advantage, particularly in our present day world where we have heard it said that future major wars will be waged economically rather than militarily.

Patents are a source of technical information as well as providers of monopoly rights; (indeed we understand that one Patent Office (not the EPO) once had to withdraw a published application because it described the making of a ‘home made’ nuclear device!)

This patent technical information can be economically sensitive. The patent system is therefore of importance world-wide in general, and in Europe in particular where

it is estimated that IPRs including patents support nearly 50 % of the economy. Patent specifications will be ever more closely scrutinised; is it fanciful to speculate that records of attorney firms, companies and the EPO and National Offices will be fertile ground for hackers? This data can provide to the unscrupulous, information concerning developing economic trends, particularly in the period between filing and publication of a patent application.

We are sure that all responsible firms, companies and Offices take sensible precautions to guard against unauthorised gathering of information by third parties.

However, all of us involved in the patent system should be aware of the clear and present danger presented by hacking, and should seek to clear a way to open a path through the hacker’s jungle.

## Report of the 75<sup>th</sup> Council Meeting in Prague

16 November 2013

The meeting was opened by the President, Mr. Antonius Tangena, who called for the observation of a moment of silence in memory of Carl E. Eder, who passed away in the evening of September 28, 2013.

The scrutineers, Mr Jean-Loup Laget (FR) and Sylvain Le Vaguerèse (FR) were appointed.

Then the agenda was adopted, as well as the minutes of the 74<sup>th</sup> Council Meeting were approved.

Following the Report of the President, Vice Presidents and further Committees, the Secretary General provided his own report, and evoked the improvement made in the *epi* Information Technology (IT) system, which is now expected to work more smoothly. The database has been improved and invoices are expected to be issued more automatically. A question raised by Mr Armijo Enrique (ES) regarding the burden resulting from the receipt of successive Accumulated Files, which should be improved.

Then Mr Maikowski (DE), provided the report for the *epi* Finances Committee, addressing the issue of the abolishment of the so-called Krakow decision, and the existing discrimination between so-called A and B countries (note: B countries allowing a discount of fees for the students). The Chairman of the *epi* Finances Committee also addressed the general question of more transparency regarding the activity of the Secretariat. A positive decision was reached in the Council for improving such transparency, and for possibly developing some metrics for having a deeper insight of the activity done in the Secretariat. Regarding the discrimination in favour of B countries, there was a significant support from some Council delegations (TR, IT, BG, PL, CZ, ES) for not abolishing the present system, and such position was confirmed by a Council decision. Then a third issue was addressed by Mr Maikowski regarding the legal basis on which *epi* provides education, not only to its members, but also to third parties (lawyers, paralegals etc ...) and thus might appear as a service provider, with the resulting consequences. Such issue was debated by the Council and different opinions were exchanged.

The Report of the Treasurer was then provided to the Council. The Treasurer particularly evoked the issue of outsourcing of the bookkeeping and the resulting costs increase for encoding data. The Budget for 2014 was then presented with the implication of the impact on the *epi* budget on the changes occurring in the EQE, with the payment of *epi* members with funds transiting from the EPO via the *epi*. The budget for 2014 was then approved by the Council which also took the decision to keep unchanged the *epi* subscription fee.

The report for the Disciplinary Committee was then submitted to the Council, with a presentation by Mr. Fröhling of the results of the questionnaire to all

members of the Disciplinary Committee of the *epi*, particularly showing that the question of the publication of decisions depends on the national laws.

Then Mr Francis Leyder provided his report for the EPPC, and particularly addressed the more recent development regarding the issue of the European patent with unitary effect in the participating Member States, in particularly the meetings of the Select Committee (of the AC of the EPO organisation) and the review of the Draft Rules under development. Mr Francis Leyder then mentioned the last meeting of the SACEPO Working Party which took place on 14.11.2013. At the end of the presentation, President Antonius Tangena thanked Mr Francis Leyder and emphasized the enormous scope of questions the EPPC Committee has to cover. A debate was launched regarding different aspects among others the articulation of the unitary patent when several applicants are to be considered, the question of the 20 to 30 % reduction, the question of the compensation scheme, that of the re-establishment of rights in case of non compliance with time limits, and the protection of the proprietor of the unitary patent against the national rights attacks.

Then followed the report of Mr Jim Boff, Chairman of the Committee on EPO Finances, who made quite an interesting presentation on this important question of the definition of the total possible renewal fees, and the distribution of fees which should be set for the basis of fair, equitable and relevant criteria, namely the level of patent activity and the size of the market. Mr Jim Boff further evoked the issue of Compensation which is directed to the SMEs, thus resulting in the fact that the issue of languages be tied with the issue of SMEs. Following the presentation, diverse observations were exchanged by the Council. Some delegations observed that the EPO could have been motivated by political considerations and that the Mechanism of Rule 6 tends to create confusion between the problem of language and that of the SMEs.

Then followed the report from Vice-President Mihaela Teodorescu (RO) for the Candidate Support Project, tackling the issue of the better representation of IP rights in countries. Question was raised how to proceed with the project in case EPO refrains from support.

Then Mr Axel Casalonga presented the report for the Litigation Committee and the update on the Litigation system. He particularly addressed the important question of representation before the UPC by European patent attorneys. He pointed out that, for an EPA, the Authorization for Representation should be possible via two routes (Art. 48 Agreement)

1. Appropriate qualification of the EPA
2. A European qualification Certificate.

He evoked the modular system proposed by the EPO, based on a core module for basic legal questions and a litigation module for the UPC and its Rules of Procedure.

At the end of the presentation, many comments were exchanged in the Council, particularly regarding the level of the extra study required in the litigation module.

Then Mr Antero VIRKKALA (FI) presented the report for the Online Communications Committee, mentioning meetings with the EPO, starting from ideas to implementations (smart card problems, PIN code problems ...) He evoked the IT Roadmap Program of the EPO and the involvement of the *epi* in that program. The presentation was also followed by an exchange of questions and comments from the audience.

Then, Ms Ann DE CLERCQ (BE) presented the Report of the Biotech Committee and the important question of Human Embryonic Stem cells, the question of Sequence Listings (with the new decision J8/11), and the question of Patentability of Plants (G2/12 wrinkly tomato II and G2/13 – Broccoli II) and the future filing of an *amicus curiae* brief by *epi*.

Then the Harmonization Committee report was presented by M. John Brown and the on-going question of the grace period. Quite an interesting debate was initiated which was closed by two decisions from the Council. Firstly, the basic position that *epi* Council still remains opposed on the principle of a grace period, and secondly, that such grace period could only be considered as a safety net in the context of a harmonized system.

Then followed the Report on the European Qualifying Examination (EQE) presented by Vice-President Gabriele Leissler-Gerstl (DE), which successively evoked the question of pre-examination showing a passing rate beyond 95 % and the possible measures to be taken for making such pre-examination more discriminating. Measures might be taken at the next Supervisory Board Meeting, and amended rules, if any, will come into force not for pre-examination 2014, but presumably 2015. The Chair of the EQE Committee also addressed the question of travel costs for Examiners and the lowering of such costs, in particular by involving *epi* over the Administration of Travel costs of *epi* CE-members. Some new projects were evoked, in particular the possible creation of an independent institute run by EPO and *epi* for jointly organizing EQE, and the advantages of such organization. The presentation was then followed by a series of questions/comments from the audience, particularly regarding the pre-examination. In particular, members of the Spanish and French delegations questioned the opportunity of making the pre-examination more discriminating. President Antonius Tangena (NL) pointed out that the real issue is to arrange a filter for the pre-exam and to make sure that the people who pass the pre-examination have better results than the people who did not pass the pre-exam. Mr Maikowski raised the – always relevant –

question of the budget of the future Institute and, at last but not least, the critical question of the legal basis for creating a new Institute.

Mr Axel Casalonga (FR) expressed an unfavourable opinion regarding the creation of such an Institute since, clearly, the EPC and the founding regulation establishes the principle that the EQE is under the responsibility of the EPO, and that the pretext of high costs would not be relevant for establishing a private law Institute. Mr Chris Mercer suggested to postpone the decision to be taken regarding such creation until the question of the legal support for such creation is clarified.

Then Mr Paolo Rambelli (IT) presented the Report of the Professional Education Committee, and the meeting in Copenhagen on 5–6 September 2013. Education activities were presented, with the Candidates Support Project (CSP) as well as the Budget 2014. The new bilateral Memorandum of Understanding (MoU) dating back to June 2013 was evoked with the possible termination of the trilateral (EPC/CEPI/*epi*) MoU which is still in force. The Chairman then addressed the question of the modernisation of the Professional Education Committee, with the establishment of an “Executive Working Group” (EWG) within PEC. The presentation was then followed by a series of questions/comments from the audience.

The Report of the Electoral Committee was then presented to the Council, with the status of the nomination process.

Then, the By-Laws Committee presented its report, and Mr Pascal Moutard (FR) evoked the updated Collection of Decisions which is available, containing all relevant Council decisions, and including bookmarks. Then Mr Dieter Speiser (DE) made a presentation on the question of the legal provisions of the Council of the Institute in matter of CPE.

Then the Patent Documentation Committee (PDC) report was submitted to the Council by M. Peter Indahl (DK), evoking the new classification system which is being implemented, the improvements made to the European Patent register and the Global Dossier aligning the procedure and the access to the file.

M. Armijo: regarding the Global dossier, and access to other offices files. Do they access while examination is still pending, or after. Response: access while examination is pending. M Armijo noted that there is secret for the general public, but not for the offices.

Then a last issue was considered regarding the question of the protection of the trademark of the *epi*, particularly in view of Article 6ter of the Paris Convention. A decision was reached by Council to investigate this matter further.

After having warmly thanked the CZ delegation for the very successful organisation of the 75<sup>th</sup> Council meeting, the President closed the meeting at 17:33 pm.

## Report of the By-Laws Committee

P.Moutard (FR), Chair

### 1. Further amendments to the Rules for elections

After the Vienna Council, which had decided some substantial amendments to the Rules for Election, further discussions were conducted through email with the Electoral Committee for further formal amendments of these Rules. No substantial amendment was made.

These Rules were ready for publication with the June issue of the *epi* Information.

Further discussions took place in August on the interpretation of these new rules, in particular on the possibility to allow each *epi* member to decide individually about e-voting or postal voting at the forthcoming elections.

### 2. Adaptation of the Collection of Decisions (CoD) to decisions taken by Councils C 67 – C 74

**2.1.** 2 members of the By-Laws Committee (D. Speiser and P. Moutard) met on July 31 at the *epi* in Munich, together with Mrs Nicole van der Laan and Mrs Vernessa Pröll (Secretariat), to discuss the adaptation of different decisions taken by different Councils C 67 – C 74.

**2.2.** This was just a starting point of this work, since the adaptation of these decisions were further discussed by email and during the September meeting in Munich (see § 3 below) and, more recently, in view of the Prague Council Meeting.

We want to express special thanks to Mrs Nicole van der Laan and Mrs Vernessa Pröll for their assistance; their organizational skills were also very helpful.

**2.3** In particular, following decisions or resolutions were adapted to Council's resolutions and/or inserted into the

CoD (note that the numbering of the decisions in the Collection (CoD) was amended, more exactly rationalized, and that the decisions here below are cited with their new numbering):

#### C67 Düsseldorf:

- 4.2.4 Resolution regarding non-attendance at oral proceedings (Decision 3);

#### C69 Berlin:

- Recommendation that former members of the Presidium and former Chairpersons should continue to assist their respective successors for a period of about 6 months after the first Council meeting of a new term (Decision 4): A.18.5, 10C and 6.3 of the By Laws were amended correspondingly.

#### C70 Dublin:

- 5.2.1 Application of German Commercial Code (decision 3)
- Handling Double Payments (Decisions 1 and 2)

#### C71 Darmstadt

- 5.1.1 Rules governing payment of the annual subscription (Decision 7)

#### C71 Darmstadt und C72 Bucharest:

- 6.2 Website (Decision 4); the text of this decision still needs to be approved in Prague (C75)

#### C72 Bucharest:

- Art. 55 of the By Laws was amended (Decision 10)

Information about  
*epi* membership and membership subscription  
or  
Rules governing payment of the *epi* annual membership fee  
is available on the *epi* website [www.patentepi.com](http://www.patentepi.com)

C73 Hamburg:

- Art. 15.4 (b) of the By Laws was deleted (Decision 3)
- Art. 5.2 was amended (Decision 9)
- 3.2.6: ToR Electoral Committee was amended (Decision 12).
- 3.1.4: Rules for Election of Council were amended (Decision 13)
- 5.3: Decisions concerning the currency of investments was amended (Decision 7).

C74 Vienna:

- 3.2.2 ToR By Laws was amended (Decision 5)
- 3.3.2.5 ToR PEC was amended (Decision 13)
- 3.3.2.7 ToR Electoral Objections Committee (Decision 19)
- 5.4.1 Guidelines for reimbursement (Decision 8)

**2.4** The following document need to be approved by the Prague Council Meeting:

- 6.2 Website

**2.5** The new CoD will be available – on-line shortly before the Prague meeting.**3. Meeting of the By-Laws Committee in September (Munich)**

The By-Laws Committee met on September 18 in Munich.

In the morning, Dieter Speiser made a presentation of the By-Laws to 10 staff members of the Secretariat of the Institute and to the members of the By-Laws Committee.

During a first part of the afternoon session the paper on mandatory CPE which had to be prepared by the By-Laws Committee on request of the Vienna Council was further discussed and finalised (see also § 4 below).

During the second part of the afternoon session various modifications of the Collection of Decisions were discussed.

**4. Report on mandatory CPE**

The Vienna Council had appointed the By-Laws Committee to draft a document on the possibility of implementing a so-called mandatory CPE (mandatory Continuing Professional Education) within the Rules governing the obligations of the *epi* members.

Mr Dieter Speiser prepared different versions of this document which was also extensively discussed by the other members of the By-Laws Committee, either by email or during the September meeting in Munich (see § 3 above).

A final version of this document was sent to Mr Tangena (President of the *epi*), to M. Schweinzer (Professional Education Committee, PEC) and to Mr Pereira da Cruz (Secretary General of the *epi*) on September 24, 2013.

## Disciplinary Committee

### Decision CD3/12 of the Chamber Debled

The Chairman of the Disciplinary Committee Paul Rosenich found the Decision CD3/12 of the Chamber Debled remarkable and of general interest. He brings it herewith as useful information from the Disciplinary Committee.

**Exposé des faits**

I. La présente procédure concerne une plainte déposée par **le Plaignant** contre **le Défenseur** portant la date du 1 février 2012. La plainte est parvenue au secrétariat de l'Institut le 8 février 2012, date qui constitue la date de saisine de la Commission de Discipline conformément à l'article 7(3) et 7(4)a) du Règlement de Procédure Additionnel de la Commission de Discipline de

l'Institut des mandataires agréés près l'office Européen des brevets<sup>1</sup>). Le délai initial pour statuer sur le manquement présumé expirait le 8 novembre 2012 (article 6(3) du Règlement en matière de discipline des mandataires agréés<sup>2</sup>) et a été prolongé (RD: article 6(4)a)) jusqu'au 8 janvier 2013.

II. La présente décision de la Commission de Discipline est basée sur les pièces suivantes:

- lettre du plaignant du 1 février 2012;

1 Règlement de Procédure Additionnel de la Commission de Discipline de l'Institut des mandataires agréés près l'office Européen des brevets, ci-après RPACD, (voir Supplément au JO OEB 1/2010, page 130).

2 Règlement en matière de discipline des mandataires agréés, ci-après RD, (voir Supplément au JO OEB 1/2010, page 118).



- lettres du défenseur du 10 juillet 2012, 31 octobre 2012 et 6 décembre 2012.

**Le Défenseur** n'a pas souhaité recourir à la procédure orale.

III. **Le Plaignant** indique que **le Défenseur** a participé le 26 octobre 2011 à une procédure de saisie contrefaçon demandée par la Société NNN à l'encontre de la Société SSS, alors que le cabinet RRR, dont **le Défenseur** est l'un des principaux dirigeants, représentait SSS et était lié par un accord « OUTSIDE COUNSEL RETENTION AGREEMENT » signé le 29 avril 2011 par **le Défenseur**, pour le compte du cabinet RRR aux termes duquel (article 7; « **conflicts of interest** ») le Cabinet RRR s'engageait à ne pas représenter d'autres parties en cas de litige avec la société SSS ou l'une de ses filiales citées sous forme de liste. **Le Plaignant** mentionne en particulier que le Cabinet RRR, avait, entre autres, conseillé SSS dans ses projets de développement de médicaments génériques et en particulier, avait dispensé une formation portant sur l'attitude à adopter en cas de saisie-contrefaçon.

IV. **Le Plaignant** considère que **le Défenseur** a agi pour un tiers contre les intérêts de SSS et qu'un tel comportement représente une violation des articles 1(1), 1(2) et 3(2) du RD.

V. Dans sa réponse du 10 juillet 2012, **le Défenseur** confirme que le cabinet RRR représentait la Société SSS et était lié par le contrat du 29 avril 2011, mais que ce contrat ne s'appliquait qu'à un secteur d'activité spécifique de la Société SSS, à savoir la biotechnologie, qui n'avait aucun point commun avec le domaine des médicaments génériques faisant l'objet de la procédure controversée. Par ailleurs, il estime qu'il est essentiel de mentionner qu'il a participé au processus de saisie contrefaçon sur base d'une décision du tribunal, et uniquement en capacité d'expert en propriété industrielle assistant l'huissier et qu'il n'a nullement représenté la société SSS.

### Motifs de la décision

#### 1. Recevabilité de la plainte.

La présente procédure concerne des faits non-prescrits reprochés à un membre de l'Institut. La Commission considère la plainte recevable et se déclare compétente pour la traiter. Il convient de noter au passage que la recevabilité de la plainte n'a jamais été mise en cause par **le Défenseur**.

2. Compte tenu de ce qui précède, les points essentiels à déterminer sont ceux de savoir si, en participant à la procédure de saisie-contrefaçon engagée contre la Société SSS, **le Défenseur**

- a fait preuve d'un manque de conscience professionnelle,
- s'est comporté de manière à compromettre la confiance que son mandant doit pouvoir lui accorder,

- a conseillé ou représenté une société ayant des intérêts opposés à ceux de son mandant, et
- aurait par conséquent violé les dispositions de l'un ou plusieurs des articles RD 1(1), 1(2) et 3(2).

3. Les éléments au dossier démontrent que la société SSS et le Cabinet RRR étaient liées par contrat au moment de la procédure en saisie-contrefaçon et que **le Défenseur** avait connaissance, en tant que signataire de l'accord, de ces dispositions contractuelles. Selon la Commission, la participation **du Défenseur** à la procédure de saisie-contrefaçon ne respecte pas les termes du contrat.

L'argument avancé par **le Défenseur** suivant lequel l'accord concernait un domaine différent du domaine des médicaments génériques n'est pas retenu dès lors que l'accord n'est pas expressément limité à un domaine particulier. Par ailleurs, le Cabinet RRR, dont **le Défenseur** est l'un des principaux dirigeants, a également conseillé SSS en matière de procédures saisie-contrefaçon.

4. L'argument avancé par **le Défenseur** selon lequel il a été désigné par le tribunal et participait à la procédure de saisie contrefaçon exclusivement en capacité d'expert en propriété industrielle assistant l'huissier de justice, n'est pas non plus retenu dès lors qu'à l'énoncé même de l'ordonnance du Tribunal, **le Défenseur** n'avait aucune obligation d'exercer en tant qu'expert. Selon la Commission, il aurait pu (et même aurait dû) se récuser. On retiendra également que le choix du Cabinet RRR pour assister l'huissier ne relève pas d'un choix arbitraire du Tribunal mais est fondé sur la requête de la partie saisissante.

5. **Le Défenseur** a également excipé du fait qu'il n'a nullement représenté la société NNN dans le cadre de la procédure dont, il lui est fait grief. La Commission ne peut retenir cette excuse dès lors que les articles 1(2) et 3(2) du RD n'imposent pas la représentation d'un tiers ayant 5/5 des intérêts opposés comme condition à la constitution du manquement. En participant à une procédure judiciaire au bénéfice de la société NNN à l'encontre des intérêts de son client SSS, **le Défenseur** a assisté une société ayant des intérêts opposés à ceux de son mandant et s'est comporté de manière à compromettre la confiance que son mandant pouvait attendre de lui en violation des articles RD1(2) et 3(2).

6. La Commission rejette la plainte pour le surplus. En particulier, elle considère qu'il ne peut être reproché **au Défenseur** d'avoir manqué de conscience professionnelle ou de ne pas avoir observé une attitude compatible avec la dignité de sa profession (article RD1(1)).

7. En statuant sur le type de mesure disciplinaire à prendre à l'encontre du défenseur, la Commission a tenu compte de circonstances atténuantes, notamment la très longue durée de la carrière du Défenseur en tant que mandataire agréé près l'Office Européen des brevets, ainsi que sa réputation sans taches.

## Dispositif

Par ces motifs,

La Commission décide d'adresser un avertissement au **Défenseur**.

Ghlin, le 7 janvier 2013.

Thierry Debled

Président de la Chambre

La Commission attire l'attention du **Défenseur** sur le fait que conformément à l'article 22(1) du RD, la présente décision est susceptible de recours.

**Le Défenseur** peut former un recours contre cette décision en déposant un acte de recours auprès de la Chambre de Recours statuant en matière disciplinaire et en acquittant la taxe de recours dans un délai d'un mois à compter de la date de la signification de la décision. Un mémoire exposant les motifs du recours doit être déposé dans un délai de deux mois à compter de la date de la signification de la décision.

# Report of the European Patent Practice Committee (EPPC)

F. Leyder (BE), Chair

This report completed on 04.11.2013 covers the period since my previous report dated 09.08.2013.

The EPPC is the largest committee of the *epi*, but also the one with the broadest remit: it has to consider and discuss all questions pertaining to, or connected with, practice under (1) the EPC, (2) the PCT, and (3) "the future EU Patent Regulation", including any revision thereof, except all questions in the fields of other committees: Biotech, OCC, PDC, LitCom, and EPO Finances.

The EPPC is presently organised with seven permanent sub-committees (EPC, Guidelines, MSBA, EPO-*epi* Liaison, PCT, Trilateral & IP5, and Unitary Patent). Additionally, *ad hoc* working groups are set up when the need arises; in particular, thematic groups have been created in the fields of CII (computer-implemented inventions) and PAOC (pure and applied chemistry).

## 1. European patent with unitary effect in the participating Member States

During its meeting of 18.09.2013, the Select Committee (of the Administrative Council of the EPOrg) has reviewed Rules 1-11 of the Draft Rules relating to unitary patent protection. Rules 12-22 are planned to be reviewed in a meeting on 10-11.12.2013.

In the meantime, the Select Committee held its 5<sup>th</sup> meeting on 30.10.2013, which meeting was a technical meeting dedicated exclusively to financial and budgetary aspects. Information was provided on renewal fees, and the compensation scheme was discussed.

Also, the Unitary Patent sub-committee met on 31.10.2013 to review its comments on the Draft Rules.

Incidentally, the EPO Economic and Scientific Advisory Board will focus on the unitary patent during a workshop on 03.12.2013. The results of an independent study, commissioned by the ESAB, will be presented at the workshop. The study aimed at identifying, quantifying

and understanding the individual drivers behind the behaviour of market players in applying for unitary patents.

## 2. SACEPO/WPR

The next meeting has long been summoned on 14.11.2013. The (provisional) agenda refers in particular to Rules 6 (fee reductions) and 126 (notifications by post). The working papers have not been issued at the time of completing this report (but the proposal relating to Rule 6 is known from a meeting of the Budget and Finance Committee: in a nutshell, the EPO proposes to review the 1973 political compromise, and to limit the benefit of the reduction to SME's).

## 3. 2013 Guidelines and the 2014 revision

The 2013 Guidelines issued on 20.09.2013.

During its meeting of 26.08.2013, the Guidelines sub-committee prepared its lists of proposed improvements to the Guidelines, which have now been sent to the EPO. The SACEPO/Working Party on Guidelines will meet on 06.11.2013 to review all users proposals.

*epi* members are kindly reminded that suggestions for amendment of the Guidelines are welcome at any time ([eppc@patentepi.com](mailto:eppc@patentepi.com)).

## 4. 43<sup>rd</sup> CPL meeting

The CPL met on 17.09.2013. Amendments to Rules 36 and 38, 103 and 164 EPC were discussed. These amendments have since been adopted by the Administrative Council and will enter into force on 01.04.2014.

## 5. VP1 meeting

A meeting with the EPO Vice-President 'Operations' (VP1) took place on 09.10.2013. The following topics relating to the EPPC were discussed:

'Examination matters': contribution of *epi*.  
Clarity of claims, particularly of dependent claims  
Third party observations  
Use of telephone and email  
PACE requests  
Oppositions: time to oral proceedings.  
Decision in Oppositions on several grounds.  
IT Roadmap – Paralegals project

## 6. 20<sup>th</sup> MSBA meeting

At the invitation of VP3, a delegation comprising several EPPC members will meet the Chairpersons of the Boards

of Appeal on 08.11.2013. A number of subjects have been proposed on behalf of *epi*.

## 7. Meetings with EPO Directors

A delegation of EPPC members met the EPO Directors in the field of CII. This meeting was the first to be organised in this technical area. It was successful and our members already expressed the wish to meet again.

## 8. 14th Meeting of the Partnership for Quality

The responsibility for the Partnership for Quality meetings has shifted from DG2 to DG5. The date for the next meeting should soon be announced.

# Report of the Litigation Committee (LitCom)

A. Casalonga (FR), Chair

## 1. Appropriate qualifications and certificate for representation by European patent attorneys

The Litigation Committee prepared a draft proposal concerning the requirements for European patent attorneys to be authorised to represent before the UPC. This draft was reviewed by the President and a final position paper sent to the Preparatory Committee. The complete paper is available at the *epi* secretariat.

The main points of this paper are the following:

### **Appropriate qualifications:**

A European Patent Attorney (EPA) is a person entitled to act as professional representative in all proceedings established by the EPC, whose name appears on a list maintained for this purpose by the European Patent Office according to Article 134 EPC.

EPAs are formally qualified to carry out contentious patent work and develop extensive experience of oral advocacy during opposition and appeal proceedings at the EPO.

The stated "appropriate qualifications" should demonstrate for an EPA additional abilities commensurate with their expected duties and going beyond the European qualification examination which EPAs are required to pass. They should, in particular, reflect the necessary and desirable skills and knowledge for representation before the UPC.

Many EPAs have already an extensive experience acquired as patent attorney in their respective EPC member state, going beyond representation before the Patent Office and should therefore be recognised as appropriately qualified on the day the UPC comes into force.

Examples of EPAs that are deemed appropriately qualified should include:

- a) EPAs already qualified to represent before a court in patent matters in an EPC member state and able to afford evidence of an effective experience of representation before such court.
- b) EPAs that have successfully completed, before entry into force of the UPC Agreement, one of the courses in patent litigation given by CEIPI, Nottingham and Hagen.
- c) EPAs with a Bachelor level law degree from a university of an EPC member state.
- d) EPAs demonstrating extensive practical experience of the conduct of patent litigation in an EPC member state, for example by assisting an authorized representative or a judge before national courts in at least five patent litigation cases and/or having commensurate practical experience of the conduct of opposition procedure before the EPO and the Boards of Appeal.
- e) EPAs who are qualified as attorney-at-law in an EPC member state.



## The European Patent Litigation Certificate:

The *epi* proposes a modular system for acquiring qualification whereby an individual may qualify for the individual modules by a number of different routes in order to be awarded the European Patent Litigation Certificate.

The *epi* suggests that the basic structure of the minimum requirements would comprise two modules:

### Core Module:

The core module is designed to bridge the gap between EQE training and an advanced national patent attorney training. It could comprise the following:

- a) Basic knowledge of the legal principles of civil law, covering common law and continental law,
  - b) Basic knowledge of the "Brussels" EU Regulation and various EU Directives in the IP area (particularly the Directive on Enforcement), EU competition law, International IP law (including the Trips agreement and the Hague Convention on recognition and enforcement of foreign judgements in civil and commercial matters), the European Human Rights Convention,
  - c) Main principles of contract law, IP ownership and company law.
  - d) Organisation and IP related important case law of the European Court of Justice and the Court of First Instance, including preliminary ruling procedure.
  - e) Patent infringement and validity, covering claim analysis, Article 69 EPC, literal/non-literal infringement, contributory infringement, exhaustion, defences against infringement, main case law of the UPC with an emphasis on providing practical strategic advice.
- EPAs having national qualifications that meet these requirements would not normally be required to repeat the core module.

Candidates completing the core module should be in a position to advise their clients in relation to the strengths and weaknesses of their case with respect to possible proceedings before the UPC both from a legal perspective and from an analytical perspective.

### Litigation Module:

This module is directed specifically to procedures before the UPC. It shall require completion of the core module or other equivalent competence as prerequisite.

It could cover:

- a) The Unified Patent Court Agreement and Statute as well as the Rules of Procedure;
- b) Pre-suit protocols and filing suit;c) Determining jurisdiction, forum shopping;
- d) Obtaining evidence, seizure procedure ("Saisie"), discovery procedure, other means;

- e) Actions for Declaration of Non-Infringement, Invalidity, defence and counterclaims;
  - f) Infringement Actions;
  - g) Drafting of briefs, formal and substantial requirements, case management;
  - h) Rights and obligations of Representatives including conduct toward other Representatives, toward the Judges, experts of the Court and witnesses during the procedure;
  - i) Use of experts, experiments and witnesses;
  - j) Enforcement of orders;
  - k) Arbitration and Mediation;
  - l) Sanctions and civil liability;
  - m) Interlocutory injunctions;
  - n) Practical Case Studies and mock trials;
- The litigation module would be expected to require between 100 and 150 hours of course participation. It should conclude with an examination.

## 2. Rules of procedure for the Unitary Patent Court (UPC)

The 15th draft, further amended by the Drafting Committee, was published for consultation and comments could be presented until the end of September 2013.

The Litigation Committee met on 16 September and prepared a draft comments. This draft was approved by the President and sent in due time to the Preparatory Committee of the UPC.

The paper is available at the *epi* secretariat.

Some main points of this paper are the following.

### A. Role of technically qualified Judges

We have noted that the draft RoP provide for different roles of legally and technically qualified judges. Whereas we understand that in most cases a legally qualified judge will be best suited to guide a case through the written and interim procedure as judge-rapporteur, we would suggest not absolutely excluding the appointment of a technically qualified Judge as the judge rapporteur. Such an appointment could be appropriate under specific circumstances, e.g. in a revocation action where specific technical questions become crucial already in the earlier phase of the proceedings. We therefore suggest aligning the wording of R. 18 of the draft RoP with the provisions of the Agreement wherein the presiding judge has the discretion to designate a legally or technically qualified judge as judge-rapporteur.

### B. Attorney-Client privilege

The *epi* appreciates the detailed rules on conferring privilege on documents prepared by IP-professionals providing legal advice in connection with any issue that

could become relevant before the new UPC. Those provisions will complement with other attorney-client privilege rules, e.g. in the EPC and in national law, and will ensure an open and complete communication between the IP-advisor and any client. However, in order to avoid any misunderstanding, the *epi* suggests always including “patent attorneys” when referring to lawyers as it has been implemented in most instances, e.g. in R. 288. Such a reference to “patent attorneys” is missing for instance in R. 287(1) and (2).

### **Rule 5 – Lodging of an Application to opt out and withdrawal of an opt out**

We suggest that the date of effect of an opt-out be the date of receipt by the Register, if the Registrar has checked that all necessary conditions for the validity of the application have been fulfilled.

We see the need for a special transitional provision making sure that any opt-out can be in the register on the first day the UPC-agreement comes into force. We therefore appreciate R. 5(9). We support the idea that the EPO would be in charge with this transitional registration procedure. However, because R. 5(9) will only come into force at the same time as the Agreement comes into force, we see a clear need for a corresponding provision with a legal basis, outside the UPC agreement.

A transitional provision of one or two months is in our view absolutely essential to give a patentee the possibility of choosing the Court system which should apply to his European Patent without the risk that a revocation or declaratory judgement filed on the first day when the agreement comes into force will automatically establish exclusive jurisdiction of the UPC. Upon acceptance of the opt-out request, the EPO or later the registry should make the opt-out publicly accessible so that third parties can decide on the proper Court for filing revocation/declaration of non-infringement actions.

Besides such a transitional provision, the RoP should confirm, that an opt-out request takes precedence over a filed revocation action or a declaration of non-infringement action, if the registration of the opt-out and the initiation date of the revocation/declaration of non-infringement action are effected on the very same day. We realize that R. 5(5) may already be interpreted in this sense, but would prefer an express clarification.

We appreciate the clarification of the drafting Committee that a particular European patent can only by opted-out for all designations in contracting states en bloc owned by the same patentee(s). However, we would see also a need to clarify further details of opt-out and opt-in options:

- a particular European Patent that is jointly owned or co-owned by several proprietors should only be opted-out or opted-in in its entirety for a specific contracting state, i.e. all proprietors of the patent need to act in accord regarding opt-out or opt-in; however, if there are different proprietors for a European Patent with regard to different contracting

states, it should be possible that one proprietor decides for “his” countries to opt-out whereas the other proprietor decides against an opt-out for “his” countries.

- a supplemental protection certificate (SPC) should only be opted-out or opted-in together with the European Patent on which it is based; it should not be possible to have the basic patent opted-out and an SPC being opted-in.

### **Rule 286 – Certificate that a representative is authorised to practice before the Court**

We understand that an exception for Swedish “jurists” being authorized by the Swedish Patent Attorneys Board has been introduced due to particularities of the situation in Sweden that prohibits lawyers practicing in the same firm together with patent attorneys. While we could see the need for such special exceptions, we would like to observe that such exceptions should be exactly defined. The current expression “or equivalent body in a Contracting Member State” is from our perspective too vague and does not reflect the character of a limited exception due to particularities in a certain Contracting Member State.

We therefore rather suggest exhaustively listing all exceptions from the general representation rule. A similar approach is followed already in the EU-directive 98/5 on the establishment of lawyers in an EU-country different from the country of qualification, wherein all recognized qualifications are listed.

### **Rule 287 – Attorney-client privilege**

Strong attorney-client privilege as laid down in R. 287–288 will ensure an open and complete communication between the client and his IP advisors and representatives. It will also provide the best possible basis to claim privilege for relevant documents in patent litigations in foreign jurisdictions with legal discovery procedures (e.g. USA, Australia). The *epi* therefore greatly welcomes the introduction of such provisions into the RoP. It is important that representatives pursuant to Art. 48(1), being lawyers, and those pursuant to Art. 48(2) UPC agreement being European Patent Attorneys with appropriate additional qualifications, are both covered and treated in the same way with regard to attorney-client privilege.

Therefore, we suggest also expressly including patent attorneys in R. 287(1), e.g. by making the amendment “Where a client seeks advice from a lawyer or a patent attorney, he has instructed ...”

In addition, since the “professional capacity” of a patent attorney is not limited to “patent matters”, we suggest amending R. 287(3) by cancelling the last words “to advise on patent matters”.

The Litigation Committee will continue to monitor the preparation of the entry into force of the UPC Agreement and particularly the question relating to representation.

# Report of the Patent Documentation Committee

P. Indahl (DK), Chair

## 1. Patent Classification Systems

The IP5 cooperation between patent offices has created important developments in the classification systems. The EPO and the USPTO decided to merge their classification systems into a common system, the Cooperative Classification System CPC. CPC was launched in January 2013 and is in the process of being implemented at the USPTO. The US examiners have until the end of 2014 to switch to the classification in CPC.

The Chinese Patent Office has agreed to implement CPC and this is expected to be fully in place by 2016. Also, the Korean Patent Office and the Russian Patent Office will begin using CPC.

The CPC corresponds largely to IPC, but is more detailed at the subgroup level, which allows more precise searches. CPC has the same 8 sections A-H as IPC, plus an additional section Y for the tagging of cross-sectional technologies, like climate change.

You can find out more about CPC at the following web sites:

- a) [http://worldwide.espacenet.com/classification?locale=en\\_EP](http://worldwide.espacenet.com/classification?locale=en_EP)

In a search field keywords can be typed in. You can enter a maximum of ten keywords in English in the search field. Keywords may be combined with Boolean operators. Wildcards such as \*, ? and # are allowable.

The result of the search is a listing of classification symbols. The list allows you to click in order to open subgroup descriptions. The desired symbols can be selected, and in a box you can see the selected symbols, and you can choose 'Copy to search form' which will open the advanced search screen in Espacenet with the relevant data in the CPC field. The important qualifier /low is set by default. This qualifier includes children classifications (lower level) in the search.

- b) <http://www.cooperativepatentclassification.org/cpcConcordances.html>

Here you find a "CPC to IPC" concordance table that maps CPC symbols to IPC symbols. This may be useful if you need to search with IPC symbols based on a set of CPC symbols. This concordance table is updated and kept current.

There is also an ECLA to the CPC concordance table that can be used if you have an old search profile in ECLA that needs to be converted to CPC. This table is not updated.

- c) <http://www.uspto.gov/web/patents/classification/index.htm>

If you have an old search in the USPC system and need a conversion of the USPC symbols into CPC, you can at this webpage select USPC as classification system, and then in the contents window select 'statistical mapping from USPC to CPC'. Then, you need to work your way through the various CPC definitions in order to select the required symbols.

- d) <http://www.cooperativepatentclassification.org/cpcSchemeAndDefinitions/table.html>

This is the official source for CPC setting out the specific schemes of the classification symbols. For a particular scheme like 'A01J Manufacture of dairy products' the technical coverage is set out together with a listing of the children symbols. There are currently 626 CPC schemes.

Each scheme has a corresponding definition with a listing of the children (sub-divisions). As an example, 'A01J5/00' covers 'milking robots and monitoring devices', and then the definition also sets out the holes in the cheese, namely the relevant technical areas covered by other sub-divisions, like A01J7/00 for 'cleaning milking installations and teats'. This allows you to select the right sub-division for searching purposes. It is often quite important to check what is not covered, and here the definitions are very useful.

- e) <http://www.epo.org/learning-events/e-learning/modules.html?topic=0002>

The European Patent Academy provides brief e-learning courses on the CPC and classification.

- f) <http://ops.epo.org/3.1/schema/CPCSchema.xsd>

Here OPS RESTful users can find information on the CPC system. It is possible to validate whether a specific code is in use or not.

The IP5 cooperation has also drawn attention to the classification system used by the Japanese Patent Office in the classification of Japanese patent and Utility Model publications. The Japanese FI (File Index) and F-term classifications are more detailed than the IPC, and in some technical areas FI and F-terms are more useful for searching than IPC, and in some areas also more effective than the CPC. On the other hand, CPC is more effective than the Japanese systems in other technical areas.

There is a desire to create a common classification system including the advantages of the CPC and the

Japanese classifications. A Global Classification Initiative has been formed by the IP5 offices with the aim of aligning classification schemes in the IPC, including features from FI, F-terms and CPC. This initiative will for a start focus on emerging technologies.

## 2. Standardised legal status information

The PDG Working Group IMPACT has over the years asked for legal status information to be available, and of high quality, as this information is important for a reliable analysis of a patent situation. In this respect, the PDG working group obtained an important step forward in April 2013 when the Committee on WIPO Standards approved to prepare a proposal to establish a new WIPO standard for the exchange of patent legal status data by industrial property offices.

## 3. European Patent Register and a Federated register

The EPO improves the European Patent Register with deep linking to the national patent registers in the EPC member states. When a European patent is presented in the European register the tab 'Legal status' shows the designated contracting states. Deep linking is provided from these country codes to the corresponding national register. If you wish to verify the legal status of a validated European patent, a click on the country code opens the national register and displays information on the validated patent.

A new tab named 'Federated register' will also soon be activated in the European Patent Register. The Federated register tab collects basic information on the validated patents and displays in a single view the information from the national registers. In this manner, there will be one source where a European patent can be displayed together with the basic information from all designated states.

## 4. Global Dossier

Real progress was achieved at the 6<sup>th</sup> IP5 Heads meeting in June 2013. There was agreement to implement a public global file wrapper service allowing offices to syndicate each others' public file wrapper, citation and classification data. There was also agreement to have a barrier free patent information policy, in line with the EPO policy.

The Global Dossier Task Force (GDTF) set up by the IP5 offices, WIPO and industry members AIPLA, Business-Europe, IPO, JIPA, KINPA and PPAC has defined a vision with a single portal for global patent file inspection, and a single portal for global patent cross filing. With the agreement of the IP5 Heads to implement a public global file wrapper service the first part of the vision now seems feasible. The second part of the vision requires deeper harmonisation of procedures, like manner of claim drafting, formal requirements for applications, alignment of legal procedures, etc. There is agreement to further study this at the working level.

A global file wrapper service has been deployed to IP5 examiners, and the EPO tool for this is called DIPlus. The tool is quite neat, and the patent family members from the IP5 offices are viewed one at the time in a view similar to the "all documents view" in the European Patent Register. For the cases in Japan, China and South Korea the titles of the documents have been machine translated into English. When a document is selected, it is machine translated into English. Consequently, it is a requirement for access in English that the documents are in a machine readable format, and this is not yet the case for all files.

It is the aim to make the global file wrapper service available to the public. The EPO desires to enter reciprocal agreements with the other offices in order to move ahead to deliver a consolidated service, also to the public.



## Tutors' Report on the EQE 2013 Papers

A. Hards (DE), H. Marsman (NL), D. Jackson (UK), M. Mackett (BE),  
S. Roberts (UK), P. Pollard (NL), R. van Woudenberg (NL)

Each year in October, the European Patent Academy and the *epi* arrange a meeting between EQE tutors and the Examination Committees. The goal is discuss the papers sat in March, to influence future EQE's by openly exchanging ideas and to help tutors prepare candidates for next year's exam.

The Examination Board has kindly given the tutors permission to publish their own report of the important points so that candidates can more easily find this information. In addition, the comments can greatly assist when reading and interpreting the official EQE Compendium.

This year's meeting was held in Munich on October 11, and was attended by more than 100 tutors from Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Italy, Lichtenstein, Lithuania, Malta, The Netherlands, Poland, Romania, Spain, Sweden, Switzerland, Slovenia and United Kingdom.

This Tutors' Report appears each year in the end of year edition of *epi* Information. It is also distributed to all tutors who attended the meeting, as well being posted on the EPO's EQE Forum.

It contains the following sections:

1. A CH
2. B CH
3. A E/M
4. B E/M
5. C
6. D
7. Pre-Exam

On behalf of the tutors present in Munich, I would like to thank all the members of the Examination Board and the Examination Committees for their openness, and taking the time to seek our opinions and comments.

My thanks also to the tutors who asked questions and contributed to the discussions. My special thanks to Andrew Hards, Harrie Marsman, Derek Jackson, Margaret Mackett, Simon Roberts and Roel van Woudenberg for finding the time to prepare the individual paper summaries, and to John Peters for his additional comments.

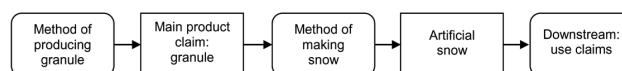
We all wish you good luck in 2014,  
Pete Pollard (Editor)

### 1. A CH – by Andrew Hards

EC I representatives: Tim Rickard, Wim van der Poel (Paper A) and Christian Hass (Paper B)

The invention was about artificial snow polymer granules.

As in previous years, the main claim to a water-absorbing polymer granule garnered the majority of points. Upstream independent claims were also expected, such as the method for making the granule and then also the downstream product of the snow itself and the method of making the snow by absorbing water. Also a use claim was envisaged for using the granule to make the artificial snow.



There was some discussion as to the nature of the present use claim, since it was related to a process of production. In German patent literature, a distinction is made between claims which are directed to a process of production (Herstellungsverfahren = untrue use claims = method claims) and uses of a product (Arbeitsverfahren = true use claims). As far as the EQE is concerned, downstream use claims are a common pattern and may occasionally be broader in scope than main product claim, without the same feature inventive restrictions. However, in such cases unity can become an issue as the use can be inventive for reasons (effects/advantages) not necessarily linked to the main product claim.

Multiple independent claims and alternatives: It is now established practise that in the case of multiple claims in the same category, only the worst will be marked! This is a clear message not to try for multiple bites of the cake. Only one main independent product claim should be submitted. A product-by-process claim was not expected since structural features were available and there were no hints for a product-by-process claim in the paper.

In addition, alternatives in a claim will be accepted, as they are in real practise, under the condition of clarity, but, candidates must keep in mind that these are also alternative independent claims in their own right, so trying to maximise scope by adding alternatives to the main claim can be disastrous, since the worst option will be marked.

Instead, particularly good examples or embodiments should be claimed as dependent claims. Plenty of marks could be gained here. However, it must be emphasised that a non-novel main claim cannot be healed by providing the more restrictive patentable solution in the dependent claim. As described above, the worst claim will be marked (in this case the non-patentable main claim). Another way of looking at this: the candidate is expected to provide a final patentable claim set at the onset – no haggling with the examiner is foreseen.

As in the past years, a battery of essential features had to be identified and correctly incorporated into the claims. The exact wording as used in the paper was

not expected in the claims, but it seems to be a good idea to adhere to the terms provided by the client as far as possible.

Note that unnecessary limitations were penalised, but not so much; therefore, to be on the safe side, more features are better than less. So, if in doubt, scope of protection should be sacrificed for patentability – a trade-off that does not come naturally to patent attorneys with the clients best interests at hand.

Finally, candidates should remember that drafting parts of the introduction, e.g. discussing the prior art, defining the problem and providing a description introduction, will also give easy marks and these low-hanging fruits should not be forsaken.

## B CH – by Harrie Marsman

EC I representatives: Tim Rickard, Wim van der Poel (Paper A) and Christian Hass (Paper B)

Passing rate: almost 67 %, and 6.2 % with compensable fail

The presenter, Mr Rickard, noted that the Committee read the examination rules in detail and used these rules to make the Paper. Candidates should read these rules, as well.

Officially this was the first year that a draft set of claims were provided, although last year's paper already gave some directions for the claims in the B-paper.

The subject was insect repellants, "simple organic chemistry". No letter to the client was required, but a number of candidates wrote such a letter. You lost time, while you could not get any marks for this. The same applied to Notes to the Correctors.

The purpose of the paper: provide the amendments in the claims and motivate this.

It is not required to add a high number of claims; rather the contrary. It is not a drafting paper. However, it was expected to add a claim to the most suitable product exemplified in the examples. That was seen as an important fall-back position.

It was emphasized that candidates should not defend the claims proposed by the client. This may be important in day-to-day practice, but not in the Exam. The claims are a guidance for the expected claims.

The client suggested a disclaimer. Candidates were not expected to make statements in view of G1/03 and G2/03, because (i) you are not expected to write a letter to the client, and (ii) the requirements given in these decisions are not applicable. G2/10 was not considered appropriate either, because the "disclaimer" was not an exact embodiment in the application as originally filed.

In the process, it is indicated that a crown ether gives better results. These better results were not supported by technical evidence in the paper and therefore this statement of better results was not regarded as sufficient to defend an inventive step. Certainly, it was not required to bring the crown ether in the process.

On the closest prior art, a good argument for one of the documents was sufficient. You did not need to argue why the other document was further away. By making

such an argument you would not get extra marks, but you had a better chance of getting all marks.

This year, D1 and D2 were both in the same technical field. Since D1 was more general, especially noticeable when comparing claim 1 of D1 with claim 1 of the application (which were essentially the same), this was the closest prior art.

It is very important for the inventive step reasoning that the features of a claim give rise to the technical effect.

All in all, this B-paper was seen as a very suitable exam paper.

## 2. A E/M – by Derek Jackson

EC I representatives: Ulla Allgayer and Christophe Chauvet

Paper A is the only paper that has not changed under the modifications to EQE following the introduction of the Pre-Exam.

This year we were taken through the intricacies of medical devices for dislodging lung secretions.

Of the prior art documents, D1 is concerned with a combination of a whistle and a drug dispenser, the whistle being provided to encourage the user to empty his or her lungs before inhaling the drug. D2 is different and serves to dislodge lung secretions by air pressure pulses without the use of drugs. To this end, a slotted wheel is rotated by a motor when the user blows into the device to create a pressure differential.

Turning to the invention, this works on the same principle as D2, but does not require a motor to produce the air pressure pulse.

### **a) Independent claim**

For the 50 available marks, the candidate is expected to draft a claim which:

- Covers all six embodiments, including both inhalation and exhalation.
- Defines the invention clearly.
- Is distinguished from the prior art.
- Ideally which is in two-part form taking account of the closest prior art.

There were several different ways in which this could be accomplished, but these were not discussed in any detail.

Fortunately, if the candidate reads the client's letter sufficiently carefully, he or she can find, towards the end of the letter, a paragraph which very helpfully summarises the invention. This appears to be a feature of recent Paper A's (and something we rarely see in real life!).

The Examiners' Report very clearly sets out an ideal set of features and explains how marks are lost and these matters are not summarised here. Overall, we did not learn anything significant about the independent claim that is not in the Examiners' Report.

## b) Dependent claims

Dependent claims were worth up to 35 marks and, as always, were assessed for clarity and structure and, of course, for content. Candidates needed to be selective in order to secure the best fallback options for the client within a framework of 14 dependent claims. One piece of advice that was emphasised by the Examiners is to group the topics for the dependent claims before attempting to draft them.

## c) Introduction

Finally, there is the introduction which is worth up to 15 marks. For this, the Examiners expected a discussion of the chosen closest prior art document (ideally D2) or, in the case of a one-part claim, a discussion of both prior art documents (which was often not present). This is to be followed by a discussion of the problems associated with the prior art and the way in which these problems are solved by the invention. The solution must be consistent with the independent claim, but it is more than a simple recitation of the claim and requires an explanation of the advantages associated with the invention as set out in the claim.

### B E/M – by Margaret Mackett

EC I representatives: Ulla Allgayer and Christophe Chauvet

Due to the introduction of the Pre-Examination in 2012, which tests the ability of candidates to understand novelty and inventive step, Paper B of the Main Examination has been changed. Some of the changes were evident in 2012, where the candidate was provided with an indication of the claims required.

This year, the candidates were provided with a draft set of claims for filing in response to the communication pursuant to Article 94(3) EPC and were given less time for completing the paper.

Specific instructions were provided in the client's letter that no new dependent claims were to be filed – this was a clear hint that the claim set provided was to be used, but clearly not without some evaluation of whether the claims would be allowable.

The invention related to the use of frequency to age wine, and there were two main embodiments that needed to be protected by the revised claim set. The first embodiment related to large containers, for example, vats, and the second embodiment related to bottles with an air channel. The invention was to provide vibration at a predetermined frequency or frequencies to age the wine or other beverage.

There were two prior art documents provided. D1 related to a purely mechanical device comprising a double-ended tuning fork located within the neck of a bottle so that one end was external to the bottle but connected to the other end within the bottle. The external end was energised at a single frequency which was then transmitted to the internal end via the con-

nection between the two ends. D2 was not intended for beverage ageing but for sediment removal. Here, the bottle was inverted and mounted within an arrangement where the whole bottle was shaken to force sediment into the neck region.

It was clear that the claim set as provided by client needed to be amended, as the client mentioned an electromagnetic vibrator in the claims which was not supported by the description. Candidates were expected to discuss this and make the necessary changes to comply with the EPC.

In relation to the air channel in the neck of the bottle, there was support in the description to remove it from claim 1 and still meet the requirements of Article 123(2) EPC.

Not only was a claim to the container required, but a system claim for the bottle and closure was also needed where the base of the bottle has an internal parabolic surface.

The Examiners indicated that some candidates had challenged the information provided in the Paper, and mixed documents with incorrect arguments.

Not surprisingly, there were no marks for filing the claims provided by the client without any amendments. 30 marks were available for the claim set that was filed, with the remaining 70 marks for the argumentation supporting the claim set.

Only 4 marks were available for the discussion of novelty with 37 marks for inventive step.

Many candidates did not deal with the intermediate generalisation proposed by the client, the electromagnetic vibrator, with a subsequent loss of marks.

Although the Examiners considered D1 to be the closest prior art as it related to accelerating the maturing process, points were also awarded if D2 was chosen as the closest prior art. The advantage of the invention over the disclosure of D1 is that it is possible to adjust the frequencies used for maturing the beverage.

Some candidates were not consistent in their argumentation, as the arguments they provided did not or respond the claim set they submitted in their answer. There must be consistency between the claim set, the introduction and the arguments presented in support of patentability.

The Examiners were only looking for a letter of response to the EPO and the claim set. No letter to client was required. No remarks to the Examiners were expected.

It is clear from this year's paper that there is a shift of emphasis to argumentation, including a discussion of common inventive concept between claim 1 and claim 5. There will also be discussion in relation to added subject-matter and the candidates will need to be able to provide reasoned arguments as to why amendments meet the requirements of Article 123(2) EPC.

Candidates were not penalised by the use of the term 'arrangement' instead of 'system' in claim 5.

### 3. C – by Simon Roberts

EC II representatives: Paolo Prowvisionato (Chairman EC II), Pedro Cipriano (main drafter of 2013 paper) and Vagn Nissen (Co-ordinator for practical issues)

#### a) Introduction

With a new trio of EQE examiners representing the paper C committee, there was a refreshing conviviality to this part of the meeting.

The committee considers the pass rate (42 %) to be fair. They are not sure why it is higher this year, but they did notice a general improvement in inventive step attacks compared to last year. Spotting problems and identifying technical effects were done better, but they still see poor argumentation for annex selection and for combining teachings. The tutors generally agreed it was a fair paper.

#### b) General

2013 saw the duration of the paper C examination reduced from 6 hours to 5, with a corresponding simplification of the question. The simplification involved having 5 rather than 6 items of prior art, and elimination of legal questions from the client's letter. It seems that this level of simplification can be expected for the foreseeable future. In addition, this year's examination had no priority claim and hence no issues of priority arose. It was made clear, however, that priority issues can be expected to re-appear in future examinations.

The examiners observed that the consequences of these simplifications was that candidates' answers showed less evidence of time pressure – indeed the examiners said that many answers had included extra attacks that were unexpected. This apparent lack of time pressure was not seen by the examiners to be a problem: there was no suggestion that future exam papers would be made more complicated to increase time pressure.

The examiners were keen to point out that the 2013 paper concerned both chemical and mechanical subject matter – and as such it was felt to be equally approachable by those with both chemical and mechanical backgrounds.

The focus of the paper was: distinguishing between novelty and inventive step, dealing with the sequence of divisionals (G1/05, G1/06 had not yet been tested on C), and formulating proper novelty and inventive step attacks. The inventive step attacks should include selection of the Closest Prior Art (CPA), identifying the effect and motivating the combination.

#### c) Legal references

In the Examiners' Report, the reasoning for extension against claim 5 required a citation of G1/05, G1/06, and a reference to the Guidelines was needed in the reasoning against claim 2. However, no reference to the Guidelines G-VI, 8(ii) – selection inventions – was required in

the reasoning against claim 5. This was because the Examination Committee felt that a lot of detail had already been required. A candidate who gave the reference could get a point if they were border-line for passing.

#### d) Specific issues

The client's letter identifies a potential problem relating to differences between divisional applications and their predecessors – the only legal issue in the question. This gave rise to several interesting points. To obtain maximum marks it was necessary to refer explicitly to G1/05 or G1/06 to explain the meaning of "earlier application" in Art. 76(1). It was not sufficient to know and recite the relevant interpretation. The examiners said that many candidates had mistaken this issue as one objectionable under Art. 123(2). It was also common for candidates to neglect to object to the presence of paragraph [0017] – the examiners' conjectured that this might have been the result of candidates using a tabular approach to assessing the claims. It is worth noting that, historically, once examiners find a topic that candidates struggle to answer they tend to continue to include the topic in examinations until candidates can deal with it adequately – so, we can expect to see this topic re-appearing.

This issue also gave rise to the one area of disagreement between tutors and the examiners – and this was whether or not it was possible to amend to overcome the objection under Art. 100(c). The published examiners' comments state that:

"A supplementary attack based on the combination of Annex 2 and Annex 4 was not expected, since the objection under Art. 100(c) cannot be overcome by any possible amendment." The examiners explained that they had reached this conclusion on the basis that they felt that no amendment would be allowed under R.80. The tutors found this surprising, as an amendment that deleted paragraph [0017] and that substituted the range of ratios from paragraph [0016] for the specific ratio of claim 5 would overcome the objection under Art. 100(c) and would contravene neither Art. 123(2) nor 123(3). Since such amendments would be "occasioned by a ground for opposition" they would also be permitted by R.80.

It was also interesting to hear the examiners explain that they would continue to expect "supplementary" attacks under these circumstances if the "primary" attack (under Art. 100c) could be overcome easily. The examiners indicated that they felt bound by precedents set by the committee itself – in past exams they have apparently expected a supplementary attack when the primary attack is "weak".

As a rule of thumb, the paper is designed to have only one very strong attack per claim. However, if the attack is based upon an Art. 54(3) document, or is not so strong, there is usually an additional novelty or inventive step attack.



Since the only disadvantage to providing such a supplementary attack is the time that it takes to provide, it is probably always sensible to include one.

### e) Problem-solution approach

The examiners reported that, in general, candidates had dealt better with the initial steps of the problem-solution approach this year than previously. The identification of the closest prior art, the differences between the claim and the closest prior art, and the objective technical problem were all handled better than in previous years. Weaknesses remain in explaining why the skilled person would select the secondary reference, why the combination is possible and why the combination would result in something falling within the claims.

However, many candidates fail to give adequate reasons for identifying a given disclosure as the closest prior art for a particular claim (a relevant CPA needs to be identified for each claim/claim variant) – as many candidates give only formulaic arguments or assertions, e.g. “most promising springboard” without explain **why** this is the case. Candidates need to use detailed “because” statements to support their positions.

Selection of the CPA should include identifying the field, identifying the purpose and identifying the features in common.

This year’s paper also provides a good example of a combination that is contra-indicated for inventive step – and that is the use of Annex 5 as CPA in combination with Annex 3 in an attack on claim 2. There are several pointers that should have told candidates that the examiners did not want this attack used – in Annex 5 the valve is made of non-stretchable fabric and is stitched to the fabric of the cushion, while in Annex 3 the valve was made of elastic material and was glued with a rubber adhesive to the cushion and it is explained that such adhesives work well with nylon cushions, polyester ones would require a nylon coating but such coatings make it hard to pack the airbag into small spaces – and Annex 3 is of course concerned with steering wheel airbags, that are fitted in small spaces. These are clear flags that should have led candidates to reject Annex 5 as CPA but to choose Annex 3 instead. The examiners use indications like these to discriminate between poor candidates and good candidates – since the former ignore the while the latter make use of them. Those sitting the exam in 2014 need to be prepared find such indicators as they are sure guides to the required answer.

### f) Use of form 2300

The examiners explained again that several marks are available for formal aspects of the opposition, such as identification of the opponent, identification of the contested patent, payment of the fee, signature, etc.

Candidates are therefore advised to use Form 2300, a copy of which is provided. Failing to indicate that the fee is being paid entails the loss of at least one mark! The

examiners noted that every year, some candidates wrongly identify the author of the client’s letter as the opponent, rather than giving the name of the company concerned. The relevant parts of the form can be completed quickly at the start of the exam by copying the details from the client’s letter and from the front page of Annex 1.

### g) Mapping claim features to features in the prior art

An important aspect of paper C is the argumentation that is needed to show the correspondence between the features of the claims and differently named features in the prior art. Often this argumentation requires candidates to draw on, and cite, the teaching of one or more annexes in order to show that the features of yet another annex correspond to the features of the claim. The question is often drafted in such a way as to tempt candidates to use their own knowledge in explaining how prior art features map to claim features.

Yet the questions are always drafted to contain **all** the information that is needed to answer the question. Failing to point to the basis in the question of any information used is punished by loss of marks for use of information – and the examiners will assume that the candidate has used his/her own information. In this year’s paper candidates could have been tempted to use their own knowledge to equate a dashboard mounted airbag with one for protecting a vehicle occupant in a frontal collision, and to equate nylon with a polyamide – yet there are marks for citing the relevant basis in the question for such mappings rather than just asserting their equivalence.

### h) Effect of a reference to another document

An innovation in the 2013 paper was the presence of a reference in one annex to another annex. Candidates had to decide upon the effect of this reference. This involved application of the approach set out in the Guidelines at G-IV.8, which states: “If a document (the “primary” document) refers explicitly to another document (the “secondary” document) as providing more detailed information on certain features, the teaching of the latter is to be regarded as incorporated into the primary document if the document was available to the public on the publication date of the primary document (see T 153/85) (for the state of the art pursuant to Art. 54(3), see G-IV, 5.1 and F-III, 8, penultimate paragraph). The relevant date for novelty purposes, however, is always the date of the primary document (see G-IV, 3).” It seems that candidates struggled with this problem – so we can expect to see this issue arise in future exams.

The attack on claim 3 was generally done very well, but a few candidates wrongly did a novelty attack by considering the whole of Annex 2 to be incorporated into Annex 5.

This question also involved an understanding of selection inventions – as set out in G-VI.8 (wrongly cited at one point in the examiners' comments as G.IV.8) – particularly that “a selection from a single list of specifically disclosed elements does not confer novelty”, and the “two-lists principle” – that says that “if a selection from two or more lists of a certain length has to be made in order to arrive at a specific combination of features then the resulting combination of features, not specifically disclosed in the prior art, confers novelty.” This is something known to all candidates with a chemical background but is perhaps not something known by candidates from the mechanical and electrical fields.

It is clear that all candidates preparing for the 2014 exam need to know an

d understand the law relating to selection inventions, at least as explained in the Guidelines. More generally, these issues support the idea that knowledge and use of the Guidelines are essential when tackling paper C. For 2014, candidates should of course be using the revised version of the Guidelines that was published in September 2013.

#### i) Claim 2: inventive step attack

The sample answer in the examiners' report suggests that Claim 2 is best attacked for obviousness based on the combination of Annex 3 and Annex 2. The only feature in claim 2 that distinguished over Annex 3 was that the housing was made of cuzinal. This distinction actually came from claim 1, from which claim 2 depended, rather than from the wording of claim 2. Yet the examiners' report proposed only a single attack on claim 1 – a novelty attack based on Annex 5. But of course if it is possible to construct a plausible obviousness attack on claim 2 based on Annex 3, then it must equally be possible to construct an equally plausible one against claim 1 on the same basis. In the meeting, the examiners explained that they did not require the obviousness attack to be made against claim 1 – they were happy to see the relevant reasoning set out in the attack on claim 2. They did not penalize candidates who only had the obviousness attack against claim 2.

In fact, on this paper, about ½ of all candidates did attack claim 1 with the combination of Annex 3 and Annex 2. Those that did not also use Annex 3 and Annex 2 to attack claim 2, they got the “claim 2” marks for the attack on claim 1. Candidates who did both did not get more points than were available for the attack on claim 2.

Although the examiners did not require the obviousness attack to be made against claim 1, it would have taken very little extra time to include such an attack and it would be prudent to include it – as no candidate could know (when sitting the exam) that omitting the attack would not lead to a loss of marks.

#### j) General conclusions

It seems that in its current composition, the paper C committee will sometimes expect multiple attacks against a claim, but will in any case not punish candidates who make extra attacks that were not expected – so the only downside to making such extra attacks arises if a candidate fails to provide an expected and more plausible attack against another claim. The examiners confirmed that when a candidate presents a new attack that was not expected, the new attack is marked fairly – if it is as good as the expected attack it will be awarded the same marks.

The standard solution is the one closest to the paper, and candidates should not use their creativity. Incorrect attacks, such as using the wrong CPA, **may** sometimes be awarded a few points, such as for the use of information. This is marked on a case-by-case basis.

Finally, the simplification of the paper that has come with the shortening of the exam's duration means that it is now easier than ever before to use an approach which does not rely on the creation of a table – it is sufficient to simply annotate the claims of the annex and the prior art annexes in order to identify the various possible attacks, and then to work these up fully when writing one's answer. This approach saves the hours of nugatory work that the creation of a chart generally involves. I have taught the approach to several groups of students and most find it easier to produce a good answer in time than when using a chart or table. As with any approach, it is important to practice doing some papers to time before sitting the actual exam.

#### D – by Pete Pollard

EC III representatives: Daniel Closa, Christian Kujat (commenting on DII), Brigitte Willems (commenting on DI)

Moderator: Jakob Kofoed

EB refers to the Examination Board, EC to the relevant Examination Committee, and TS to tutors.

#### **a) D 2013: approx. 43 % with 50 or more, approx. 54 % with 45 or more**

- EC: We were surprised by the increase in the passing rate, but it is not a problem. There is no target passing rate.
- EC: With the change to the new format, there was a conscious effort not to make the paper too difficult. But there is still enough exam to test whether a candidate is “fit to practice”
- EC: The paper was marked in the same way as in previous years.
- EC: The level of candidates seems about the same. Higher scores were seen in both DI and DII.
- TS: Are there any statistics comparing first-time sitters with re-sitters?
- EC: There are no official statistics available

**b) 2013 is the first year with the new 5 hour Paper D**

- TS: DI seemed a lot to do in 2 hours. DII seemed do-able within 3 hours
- EC: There is a feeling that time management has become an issue – some candidates appeared to be spending too long on DI – the D paper is designed to be done in 2 hours for DI and 3 hours for DII. We recommend candidates follow this.
- EC: It is not important where the points are scored – there are no separate targets for DI and DII.
- TS: Did a lot of candidates skip the PCT questions?
- EC: There was no real pattern in particular DI questions that were not answered.
- TS: Now candidates have the flexibility to do what they can do well
- EC: Yes, but also more responsibility for time management.
- TS: Maybe it is better to start with DII?
- EC: It is up to each candidate to decide.

**c) EQE compendium for Paper D**

- EC: The “Possible solution” is a complete answer that would get full marks. Writing more is not a problem, but wastes time. In some cases, the “Possible Solution” includes bonus points, so it may actually represent more than full marks
- EC: Bonus points = relevant comments, related to the question asked, which fit into the answer but represent a less than ideal solution. But bonus points cannot give you more than the points allotted for each DI question, and they cannot give you more than is allotted for DII as a whole.

**d) Paper D calendars**

- EC: The papers are made before all the holidays (especially at Christmas) are fixed. Paper D includes the calendar used to make the paper. Therefore, it is advised not to bring your own calendars to the exam – use the ones given.

This was announced earlier in a Notice from the EB dated 18 July 2013:

[http://documents.epo.org/projects/babylon/eponot.nsf/0/92CF8614E15FB90EC1257BAC002A2B01/\\$File/Notice\\_Examination\\_Board\\_Calendars\\_DandPre.pdf](http://documents.epo.org/projects/babylon/eponot.nsf/0/92CF8614E15FB90EC1257BAC002A2B01/$File/Notice_Examination_Board_Calendars_DandPre.pdf)

**e) D Paper in 2014**

- EC: We are planning to use more guinea pigs will be used to de-bug the D papers before the exam. This will help to remove more ambiguities in the text.
- TS: What must candidates know about the America Invents Act (AIA)?

- EC: These are only minor marks in DII. They are only expected to provide the very basic things, like being able to file in the name of the applicant instead of in the name of the inventor.
- EC: DI questions will not increase in size – there will be no 12–13 point questions.
- EC: To get full marks, the answer to a DI questions should contain:
  - Yes or No
  - Argumentation
  - Citation of legal basis
- EC: No points will be indicated in the paper for the separate DII questions. This flexibility is needed to adapt the marking if parts are unexpectedly done badly, and is an advantage for candidates.
- EC: Always consider a cross-licence on DII, but just mentioning it is not enough – you must also discuss what is to be licenced.
- EC: The current philosophy of DII will remain:
  - walk the candidate through with the explicit questions
  - no unusual/strange legal issues
  - have independent parts to limit the damage if something is missed or done badly
- EC: Many candidates still write down that having a patent gives the right to produce – this indicates that they are not really “fit to practice”.
- TS: This is a fundamental principal of patent law – it should be done correctly.
- EC: use the latest version of the Guidelines, as valid on 31 December 2013.

**f) DI 2013 – General**

- EC: Still some candidates are using old materials – old fee amounts, old Guidelines (2007), even EPC1973. You lose marks when these are required in an answer.
- TS: how much detail is need for the legal basis citation?
- EC: Articles and rules are always needed, supplemented (where needed) by Guidelines, OJEPO etc. Sometimes Guidelines citation is accepted – it depends on the question. For example, if a T-decision is expected and the T-decision has been integrated into the Guidelines, the Guideline reference is sometimes accepted.
- EC: the accuracy of the legal basis required depends on where it is in the focus of the required answer
- EC: Are the DI questions too theoretical?
- TS: Sometimes it appears so – it is important to keep the practical part in mind.

- EC: Many *epi* members are also involved in drafting the questions – they ensure the questions remain as practical as possible, whilst ensuring that diverse subjects can be tested (even in the “corners” of the EPC).
- EC: Legal situations are checked with the Board of Appeal – if the legal situation is unclear, the question is avoided. In some cases, we wait for the G-decision and then ask the question.
- EC: Don’t write an essay on the development of the law. Concentrate on applying the law.
- TS: It is not always clear what is required and how much detailed to give.
- EC: We are trying more and more to give clearer questions. The “Possible Solution” represents what we think is reasonable to expect from a candidate.

### g) DI Q.1

- TS: What do you want to see for an answer based primarily on a T-decision (like Q.1)? – a T-reference or is argumentation enough?
- EC: In general, if a question is answered by the explicit text in an article/rule or decision, it will be enough to just cite the reference for that part of the answer (you don’t need to copy everything out word-for-word).
- EC: For full points on such a T-decision question, you need to cite T-decision, the relevant articles/rules, the answer Yes or No, and the relevant argumentation.
- TS: Why was it not required to indicate that lack of enablement would be a valid ground of opposition (Art. 100(b))?
- EC: Because the opposition was indicated as “admissible” in the question
- TS: Why was no discussion expected about incorporating the specific passage of US1 into EP1?
- EC: It was considered less relevant to the answer

### h) DI Q.2

- EC: Accept the facts given – “application documents failed to arrive” means that they did not arrive at all. Some candidates discussed what would happen if the documents did eventually arrive.
- TS: This may be a language issue – many candidates read it implicitly as “failed to arrive in time”.
- TS: Few details were required for Re-establishment (Art. 122). Normally more is required for full marks on such a question.
- EC: This was not the focus of the answer, so fewer details were expected. The expected answer is more than complex than just suggesting Re-establishment.
- TS: Could OJ 2009, 481 be relied upon to calculate the time period from the date of the telephone call?

- EC: No – this would only be the case if the minutes were notified immediately, which is possible. For this question, the minutes were issued normally.
- TS: “Today” is mentioned in the last line of the question, but not specified explicitly. DII now always starts with a sentence “Today is ....”. The default is that “Today” is the actual date of the exam, but it would make things clearer if you put this at the start of DI as well
- EC: We will consider including this

### i) DI Q.3

- TS: Are up-to-date fee amounts to be paid to national offices actually part of the EQE syllabus? Or do you only expect the amounts given in last version of National Law book?
- EC: Candidates were expected to have the National Law book with them and to cite the amounts given. It is sufficient for full points if the amounts in the last printed version (May 2011, 15<sup>th</sup> Edition) are given.
- TS: Is this not addressing marginal information that is of no practical relevance to a practicing patent attorney?
- EC: We wanted to test aspects of the transfer from EPC to national law. Patent attorneys should know that payments to a national office are then required.

There was some discussion about what a candidate should provide for full points for example, a suggestion was made that candidates should update the National Law book themselves with the latest amounts of these national fees. This is on the edge of what candidates need to know – on balance, the most efficient use of your time is to just take latest printed version of the National Law book to the exam and give those amounts if it is asked for explicitly. Of course, more relevant information, such as ratifications of the London Agreement, should be updated in the printed version based upon notices in the Official Journal.

### j) DI Q.6

- TS: Is this not addressing marginal information that is of no practical relevance to a practicing patent attorney?
- EC: Almost all payments are made using a deposit account. Patent attorneys need to know the consequences of mistakes as detailed in the Arrangement for Deposit Accounts (ADA) – see Supplement to OJ EPO 3/2009. They also need to know how to fix things.
- TS: Paying fees is very close to real life

### k) DII 2013 – General

- EC: This DII was more compact, so more do-able in the time



- TS: The questions gave more direction about what to write – this is welcomed
- EC: This also makes it easier to mark. Generally, we are trying more to steer the answers to what we want to see.
- EC: DII questions may be answered in any order. Don't invent questions, and don't invent facts.
- EC: The philosophy of DII was:
  - walk the candidate through with the explicit questions
  - no unusual legal issues, although the normal issues such as "first application" and "dependent patent" were done badly by many candidates
  - have independent parts to limit the damage if something is missed or done badly, for example opposition and priority
- EC: Most candidates can analyze the patentability, but they struggle with the advice part. This is probably due to a lack of practical experience. Approx. 20-30 points are available on DII for the advice part.
- TS: Is it really just expected to state that it is inventive because it has the "advantage" given in the paper?
- EC: Just use the facts given – it is not the A, B or C paper approach. Technology and how it works is not important on D. This approach is chosen to avoid long discussion by candidates of inventive step.
- TS: The Examiners' Report states: "An alarming number of candidates incorrectly concluded that a granted IT-PYR will give BC a positive right" – are any points subtracted for this?
- EC: Many candidates still write down that having a patent gives the right to produce. This indicates that they are not really "fit to practice", but the D Paper does not have any negative points. They can therefore still pass by gaining points elsewhere.
- TS: This is worrying. Perhaps negative points should be introduced for such comments. How can such candidates advise a real client correctly if they think this.
- EC: The marking on D is positive – you start with 0 points and get points for everything you do correct. But if you write something like this, your answer is reviewed very critically.

There was some discussion on this. The EC would like to give negative marks, but that does not currently fit into the marking system. However, there is nothing in the rules to stop them doing this. So firstly make sure you do not think this, and secondly make sure you do not write it under the stress of the exam.

- TS: In the Examiners' Report, you state that candidates did not properly indicate in which application a specific type of protrusion was disclosed for the first time? What is the proper way? Why do you want to see this?
- EC: The proper way is found in the Possible Solution. We want to see it because it is important to point out to a client whether there is possible an earlier right.

This may be included anywhere in your answer, such as in the discussion on patentability

- TS: Paragraph [006] refers to "last January" – some interpreted this as in 2012 instead of 2013. Was this a common problem?
- EC: No – not a significant number. It is difficult to eliminate all ambiguities in the papers, but this phrase was checked in the dictionary, and the correct interpretation puts it in 2013. The fair was also titled "Hot Pans 2013". If you get it wrong, the A.55 doesn't work, which is only a minor number of points lost
- TS: As it is an exam with a clear indication of evident abuse (the letters), you should check that you haven't made a mistake when you realise that A.55 doesn't work

## I) DII – Q. II

- TS: Candidates were expected to comment on the ability of the enemy to get around objections that could be made. I am not sure that was clear from the language of the question.
- EC: The question was: "Discuss what can be achieved by our opposition...". Ultimately, the patent may be maintained in amended form – it is not necessary to go into all the details about this, but this was considered the likely outcome.

## m) DII – entitlement issues

- EC: There is more than one option – either take over DID-3D or file a new application. In such a case, discussing both can get "bonus points"
- TS: But doesn't entitlement only make sense if the stolen invention is claimed?
- EC: In this case, it was the main embodiment of the application
- TS: What about detailing where to file the entitlement suit – were there points for this?
- EC: If you mentioned details and staying prosecution at the EPO, you got points. It is not in the "Possible Solution" because almost nobody mentioned it

## n) DII – first application problem

- EC: Surprisingly many missed this – always check for this.  
This can also be in DI. Make it a habit to check this automatically when looking at the validity of priority, in the same way as the 12 month period is automatic.

## o) DII – EP-HEMI

- TS: Why is it not expected to discuss validation being automatic in Germany due to the London Agreement?

- EC: As validation is automatic, the only requirement needed for Germany is to pay the national renewal fees.
- TS: Yes, but based on the automatic validation, EP-HEMI will provide rights in Germany. The first national renewal fee is due on 30/4/13 for the 4<sup>th</sup> year – if the fee is not paid within the 6m surcharge period, the national patent will lapse in Germany.

There was some discussion about what “validation” means. In principle, it is the filing of the translation under Art. 65. However, in states where that is now automatic, it is important to mention to a client that you still have to pay national renewal fees.

- TS: Any points for discussing double patenting due to DIVI-3D and EP-HEMI?
- 3. EC: It was considered less relevant. It is only relevant for EP-HEMI claim 1 which is not novel over EP-3D. So any double patenting issue will be solved by the opposition.

#### 4. Pre-Exam – by Roel van Woudenberg & John Peters

EC IV representatives: Stefan Kastel (Chairman EC IV), Stefan Götsch (Claim Analysis) and Ian Harris (Chairman EB)

EB refers to the Examination Board, EC to an Examination Committee and TS to tutors.

#### a) Pre-Exam 2013

- EC: The pass rate in 2013 was very high at 99 %. Candidates did seem well-prepared.
- EC: Preparation and drafting of a multiple-choice exam is difficult. The level is adapted to 2 years experience
- EC: The claims analysis part is based on easy technology
- TS: The Pre-Exam doesn't test argumentation, a critical skill many candidates miss.
- EC: It is almost impossible to test with the multiple-choice format. Candidates may be presented with argument choices, and asked to pick the right one. This is something that may be developed further.
- EC: There was not much difference in the part where points are scored – both in the legal part and in the claims analysis part. In general, candidates in 2013 had slightly lower points in claim analysis – this could mean that they were less well prepared than those in 2012.
- TS: Are the papers still marked manually?
- EC: Yes. An automated system was tried (in parallel), but found not to be reliable. An automated system will only be introduced once it has been proved to be reliable.

#### b) Pre-Exam in 2014

- EC: To reduce the chance of passing by just guessing, the passing grade for Pre-Exam 2014 (and future exams) will be 70 marks instead of 50 marks:  
[http://documents.epo.org/projects/babylon/eponot.nsf/0/2A262D0CB6D7C559C1257BFF00516F0F/\\$FILE/Decision\\_Supervisory\\_Board\\_10\\_2013\\_en.pdf](http://documents.epo.org/projects/babylon/eponot.nsf/0/2A262D0CB6D7C559C1257BFF00516F0F/$FILE/Decision_Supervisory_Board_10_2013_en.pdf)
- EC: If 70 marks had been the passing grade in 2013, the pass rate would still have been in the high 80's. But we expect less chance of people passing with educated guesses.
- EC: the difficulty level and the 0/0/1/3/5 marking scheme in 2014 will be the same as in 2013.

#### c) Pre-Exam in general

- TS: How effective was the Pre-Exam? – for example, how successful were the Pre-Exam 2012 candidates at the Main Exam in 2013?
- EC: There are no statistics on this. It may also be difficult to see because first-time sitters always (even under the old system) had a higher passing rate than re-sitters.
- TS: Will the Pre-Exam continue to encourage candidates to study early?
- EC: There is some concern about the high passing rate. The goal of the Pre-Exam is to get candidates to study early so that they are properly prepared for the Main Exam.  
The EC and EB are looking at other ways to make the Pre-Exam more difficult if they become necessary. For example, less time or more questions are possibilities, but that could penalize candidates who do not do the exam in their mother language.
- EC: Another idea is to limit the reference books allowed, or only allow unmarked legal texts. This may also help candidates not working in their mother language because the EPC commentaries (reference books) are only available in English, French and German.
- EC: It is not possible to make a multiple choice exam in many languages because the questions have to be unambiguous in each language.

There was some debate between the tutors about this. Many would be in favour of fewer books as they feel that a lot of candidates rely too much on the text books. This was the system many years ago. Others pointed out that there is currently so much case law that the test would be incomplete if it focused only on the articles and rules. Other possibilities discussed were making the legal questions more difficult, or having a minimum mark for each part of the Pre-Exam. Note that this was only a **discussion** – the only change for Pre-Exam 2014 is that the passing grade will be 70 marks.

## *epi* Tutors' Meeting in Munich on October 10, 2013

M. Fromm, *epi* Secretariat

After the very successful 2012 meeting, the PEC "*epi* tutors and EQE candidates" WG and *epi*'s Education Team organised an *epi* tutors meeting for this year.

About 55 *epi* tutors, out of around 120 registered *epi* tutors, attended the meeting. We are very happy that so many tutors from different EPC member states made their way to Munich. We covered Europe from south to north – from Italy to Finland – and from west to east – from Spain to Estonia.

Ms Mihaela Teodorescu, *epi* Vice-President, moderated the event, together with Mr Paolo Rambelli, chair of the Professional Education Committee (PEC).

The members of the PEC "*epi* tutors and EQE candidates" WG were also present, to talk to the tutors.

After Ms Teodorescu's welcoming address the PEC WG members updated the *epi* tutors on their work from the 2012 meeting, and the status of the different projects formulated during the 2012 tutors' meeting.

This was followed by presentations of current and planned projects, where *epi* tutors are involved or where their contribution will be needed.

First, the Candidate Support Programme (CSP) was introduced. Currently 12 tutors contribute to this project. Further information available here: <http://www.eqe-online.org/CSP/>

Second, an upcoming project was presented to set up an online course for preparing for paper C. The European Patent Academy and *epi* are cooperating in this. Currently 4 tutors contribute to this project.

Third, a different way of preparing for paper C was explained. This course is new and needs input from at least 2 tutors per course. Further information on this event is available on our website [www.patentepi.com](http://www.patentepi.com), in the „Education and Training“ section.

The more practical first part of the meeting was succeeded by a more theoretical part, to look at the current status of the Unitary Patent and the Unified Patent Court, as well as the Litigation Certificate. As expected, those topics prompted high interest among our tutors, and the presenters took their time to answer all questions, as best they could at this stage.

All presentations gave rise to fruitful and lively discussions. We would thank all presenters for their contributions, and for sharing their views with us.

The last part of the meeting was reserved for an open discussion between the tutors and the PEC members.

A very productive, constructive and friendly meeting came to an end with closing words from Mr Rambelli. He thanked the tutors for their input, the speakers for their valuable contributions, and the *epi* Education Team for its excellent organisation of this event.

PEC and the Education Team thank all tutors for their assistance and support throughout 2013. We wish all of you a Merry Christmas and a Happy New Year!

We look forward to a fruitful and eventful 2014 with you.

## News from *epi*'s „Education and Training“ Section

M. Fromm, *epi* Secretariat

Our anniversary year 2013 comes slowly but steadily to its end. Every ending also marks a beginning, so it's the perfect time to review the past months and to look forward to 2014.

### What have we achieved in the past months?

#### September:

Right after the summer break, the Professional Education Committee (PEC), well rested and recovered, held its autumn meeting in Copenhagen. Looking to the developments regarding the Unified Patent Court (UPC) and the Litigation Certificate, the Secretary of *epi*'s Litigation Committee (LitCom), Mr Peter R. Thomsen, was invited to give an update on the present situation, and to discuss possible contributions of PEC.

It was a very fruitful meeting. The most important result was the establishment of a joint inter-committee working group (WG), called "UP/UPC Education" WG. As well as PEC, LitCom and the European Patent Practice Committee (EPPC) appointed members.

The basic idea is to combine the competences of the three *epi* committees, to set up a Unitary Patent training programme, to cover all target groups and level of knowledge.

When this issue of *epi* information publishes, the kick-off meeting of this WG will have been held, on November 18. We will keep you informed of the work of this WG.

In the middle of the month, *epi* appointed tutors as new coaches to support the Candidate Support Programme. This programme is run by EPO, CEIPI and *epi*. The intention is to support EQE candidates from countries that have less than 5 EQE-qualified professional representatives in to assist preparation for passing the EQE.

Further information about this very valuable programme is available here:

<http://www.eqe-online.org/CSP/>

In total 12 *epi* tutors contribute to this programme at the moment, and we thank them for their support, and their dedication to the future of our profession.

Additionally we held two seminars in September.

The first was, an *epi*/EPO "Mock Oral Proceedings" seminar in Copenhagen, with an all-time high number of participants of 74. In view of this impressive number, and the evaluation forms, it is clear that the event was a huge success.

The second *epi*/EPO seminar, on "Drafting of applications", took place in Bucharest and a satisfying number of 22 participants registered for this event.

#### October:

In October we invited all our tutors to our annual tutors' meeting on October 10 (see separate article in this issue of *epi* information), and to the meeting of tutors with members of the Examination Committees on October 11.

The latter event is organised every year by the European Patent Academy, and successfully offers a platform to EQE tutors and Examination Committee members for discussion and exchange of opinions on that year's EQE papers. We thank the European Patent Academy for this very useful and informative event, and the excellent organisation.

About two weeks later we organised a seminar on "Patent Strategy & Valuation" in Munich. About 30 members interested in this particular field accepted, the invitation and attended this event (see separate article in this issue of *epi* information).

October came to an end with our Mock EQE in Munich, where EQE candidates sit exam papers under exam conditions, and have their papers reviewed by tutors who give them personal feedback on their work. 5 EQE candidates took part, and meet again on December 2–4 to have their papers evaluated by the tutors.

#### November:

The usually grey and wet month started with wonderful news for the participants of our interrupted Istanbul seminar from June. We were finally able to re-schedule the event on November 7–8. 56 participants registered for this event, and we thank all participants for their patience.

One week later we held the Mock EQE in Helsinki. We are very happy that the number of participants rose, from 7 in 2012 to 13 this year. The feedback sessions are scheduled for mid-December.

November could not come to an end with our annual seminar in Eindhoven. This year marked another milestone. We kept to our tradition of introducing new seminar topics, and included a new non-EPC, non-PCT topic – "US Patent Law". By the deadline for this issue of *epi* Information the registration for this event was still open. We will report this event in our next issue.

#### December:

Even the last month of 2013 kept us busy. We set up a new seminar on "Opposition and Appeal", with a member of the Boards of Appeal, Mr Marcus Müller, and Mr Cees Mulder, speaker for *epi*. The first seminar of



this series will be held in Milan on December 3, 2013. We will also report this event in the next issue.

Finally, by the end of December, EQE candidates that have registered for the autumn tutorial should have received feedback from our tutors. 27 candidates registered, and we allotted 23 tutors to them. In total our tutors marked 77 EQE papers.

#### What are we currently dealing with?

Apart from all the successful events and courses of the past months, there are some issues we are currently addressing, to improve our services and offer assistance to our members.

2014 is election year in *epi*, and the composition of the PEC will change after our spring Council meeting at the end of April 2014.

To make the transition from the "old" to the "new" PEC smooth and easy, PEC is currently working on a strategy for the future. The intention is to give the "new" PEC some guidance, so that it may start working right after the election.

The discussion is on-going and will be dealt with at the February 2014 PEC meeting in Vienna.

We invite all our members and students to let us have their comments and feedback on this issue.

The PEC "Editorial" WG is very pleased to inform all *epi* members and students that the re-structured website section, "Education and Training", is now live.

Our aim was to make this website section more user-friendly and more informative.

One new feature is that the email addresses of the national PEC members are available on the website, communication between national *epi* members and their PEC delegates.

Among their other duties, PEC members are responsible for setting up national seminars. We ask all *epi* members to contact their respective PEC member if they would like PEC to arrange a seminar in their city/country.

Please note that the email addresses published on our website may not be used for any purpose other than communication on educational/PEC matters.

As we are still fine-tuning the webpages, we invite all our members and students to visit the new section and to let us have their comments and feedback.

The restricted website section for our registered *epi* tutors also now live. Our tutors can now communicate with each other via a forum, can also search for other *epi* tutors via a new tool.

Again, we would very much appreciate any feedback from our tutors.

As already mentioned above, PEC, together with LitCom and EPPC, is working on a training programme on the Unitary Patent and the Unified Patent Court

system. We will keep our members informed of developments.

Among all issues we are currently handling, planning events for the upcoming year is certainly the most important issue. So, let's take a look into the future...

#### What are we looking forward to?

PEC will next meet in February 2014. We encourage all of our members and students to get in touch with us if you have suggestions, comments or any other kind of input. We are happy to discuss all education-related matters.

Additionally we are happy to let you know that a further "Opposition and Appeal" seminar is already scheduled. The seminar will take place with the cooperation of the Chartered Institute of Patent Attorneys (CIPA) in London on February 11, 2014.

Further information and the online registration form are available on the website section "Education and Training" under "Continuing Professional Education" on our website: [www.patentepi.com](http://www.patentepi.com).

We are also happy that the very successful seminar series on the life of a patent, which started in 2013 with the "Pre-drafting" and "Drafting of Applications" seminars, continues with a "Prosecution" seminar in Bucharest on March 3-4, 2014.

The programme and the link to the registration form are available on our website.

After our very successful 2013 Oral Proceedings seminar in Copenhagen, we are planning to return to that wonderful city in spring 2014, bringing a seminar on "Added subject matter".

We will publish further information about this event and all of our scheduled educational events on our website.

If you have further questions/feedback on education related matters or our educational events, please contact us:

PEC: [pec@patentepi.com](mailto:pec@patentepi.com)

Education Team: [education@patentepi.com](mailto:education@patentepi.com)

With this review of the 4<sup>th</sup> quarter of 2013 and a first outlook on 2014, our anniversary year 2013 comes to an end. We had fun times, busy times and eventful times. New features enriched our work and we constantly tried to improve our services for our members.

We thank all participants that made our 2013 events so successful – our tutors, seminar speakers and our PEC members for their hard work, their input and dedication.

Without the support of all these persons nothing might be achieved, could be achieved or will be achieved.

PEC and the Education Team wish all our members and students a Merry Christmas and a Prosperous and Happy 2014!

## *epi* „Patent Strategy & Valuation“ Seminar in Munich on October 28, 2013

M. Fromm (DE), *epi* Secretariat

Considering the growing importance of IPR in today's business environment as a strategic corporate tool contributing to the value of corporations, strategic patent creation and a precise patent strategy have become fundamental factors of success.

Due to this trend when developing business strategies, patents are a crucial element that managers should take into account when making their decisions.

As a follow up to our very successful "Patent Portfolio Management" seminar *epi* organised a new specialised seminar focussing on patent strategy and valuation as well as discussing other aspects of IPR, like patent trolls.

Mr Tony Tangena, Tangena & Van kan – *epi* President – IPEG, and Mr Severin De Wit, IPEG ([www.ipeg.com](http://www.ipeg.com)) hosted this exceptional seminar sharing their expert knowledge in this field.

About 30 participants interested in this particular field of IP coming from industry as well as from private practice travelled to Munich from all over Europe. The diverg-

ing backgrounds of the participants, the different levels of knowledge about this field and the internationality led to lively and fruitful discussions.

The seminar combined theoretical parts, such as implementation of IP strategies and valuation of IP, and practical examples. The latter seemed especially interesting and highly appreciated by the participants.

In the end Mr De Wit gave a lecture about patent trolls, an often discussed and always "hot" topic.

The participants rated this event as very useful and indicated that they would be interested in further seminars.

Based on this PEC is going to continue to offer this kind of specialised seminars. We will inform you about further events on our website: [www.patentepi.com](http://www.patentepi.com) within the „Education and Training" section.

If you have suggestions for topics or locations, you are very welcome to let us know: [education@patentepi.com](mailto:education@patentepi.com)

## Forthcoming *epi* educational events

### Scheduled *epi*/EPO Seminars

11 February 2014 – London (GB) – "Opposition and Appeal"

3-4 March 2014 – Bucharest (RO) – "Prosecution"

March/May 2014 – Copenhagen (DK) – "Added Subject Matter"

### Scheduled *epi*/EPO webinars

*epi* together with the EPO is about to set up a webinar series called "Guidelines2DAY" giving the participants an update on the new Guidelines 2013. This webinar series is a follow-up to the very successful "Guidelines2DAY" seminars held in 15 European cities in 2011 and 2012.

We plan to offer 6 online lectures within the series that are held weekly starting in March 2014.

We intend to start with an English webinar series first. However, if there is enough interest from the audience,

we are pleased to offer the webinar series also in German and French later in 2014.

Experienced *epi* and EPO speakers are going to give the online lectures together to provide the audience with both views on specific topics.

The envisaged topics of the webinars range from a general introduction of the changes in the 2013 Guidelines over presentations on "Essential features, Clarity and the Interplay between Article 83 and 84", "Disclaimers" and "Internet Disclosures" to "Steps close to Grant" and "Observations with respect to Oral Proceedings and the Right to be Heard".

The final structure of this online course will be set up by the end of 2013. We intend to open the registration immediately thereafter.

We will keep all our members informed on any developments on our website [www.patentepi.com](http://www.patentepi.com) – „Education and Training" section.

Further information can be also obtained from the *epi* Education Team [education@patentepi.com](mailto:education@patentepi.com).

## Information from the EPO

### **Praktika Intern**

Internship and training programme for patent professionals

#### **Module 1: Initial training**

12 – 23 May 2014

European Patent Office, Munich

#### **Module 2: Working with an examiner**

13 – 31 October 2014

European Patent Office, Munich

#### **Module 3: Technical board of appeal**

Dates are individually arranged for each participant  
European Patent Office, Munich

Change your perspective! The European Patent Academy's *Praktika Intern* programme gives patent professionals a chance to look at their daily work from an EPO viewpoint. Depending on their knowledge levels and professional experience, participants can attend a two-week training course (Module 1) or work with an examiner (Module 2) or a member of a technical board of appeal (Module 3). Either way, they will gain valuable insights into how the EPO works which will benefit them greatly back at their own desks. The programme thus ensures even more efficient cooperation between the EPO and its applicants.

For more information and online registration, go to [www.epo.org/praktika](http://www.epo.org/praktika)

The closing date is 31 January 2014.

## Results of the 2013 European Qualifying Examination

Statistics on the results of the 2013 EQE

Number of candidates per country and Passes pursuant to Article 14(1) of the Regulation on the European qualifying examination (REE)

Place of residence	Total number of candidates	Pass
AL	0	0
AT	17	3
BE	32	15
BG	0	0
CH	76	31
CY	0	0
CZ	0	0
DE	796	316
DK	84	23
EE	0	0
ES	75	14
FI	58	14
FR	143	55
GB	157	94
GR	1	1
HR	0	0
HU	2	1
IE	7	5
IS	0	0
IT	125	36
LI	3	3

Place of residence	Total number of candidates	Pass
LT	0	0
LU	3	2
LV	0	0
MC	1	0
MK	0	0
MT	1	0
NL	106	51
NO	11	1
PL	12	1
PT	4	2
RO	3	0
RS	0	0
SE	101	28
SI	1	1
SK	0	0
SM	0	0
TR	6	0
IL	1	0
SG	2	1
US	4	0
Grand Total	1832	698

This table includes all candidates who fulfil the conditions of Article 14(1) REE.

Candidates are free to choose which paper(s) they wish to sit. Candidates who have only sat a sub-set of papers cannot fulfil the conditions of Article 14(1) REE (have obtained the minimum grades for all four papers) and thus cannot be included in this table.

*Example: A candidate has only sat papers A and B and passed both papers. Nonetheless the conditions of Article 14(1) REE are not yet fulfilled and this candidate is not included in this table.*

### Nächste Ausgaben · Forthcoming issues · Prochaines éditions

#### Issue

#### Deadline

#### Publication

1/2014

February 14, 2014

March 31, 2014

2/2014

May 9, 2014

June 30, 2014

3/2014

August 8, 2014

September 30, 2014

4/2014

November 6, 2014

December 31, 2014

## List of Professional Representatives as at 31.10.2013

by their place of business or employment in the Contracting States

Contr. State	Number Total	% of Total Repr.
AL	19	0,17
AT	130	1,17
BE	205	1,84
BG	65	0,58
CH	504	4,54
CY	12	0,11
CZ	95	0,85
DE	3918	35,26
DK	247	2,22
EE	26	0,23
ES	189	1,70
FI	181	1,63
FR	1016	9,14
GB	2071	18,64
GR	24	0,22
HR	26	0,23
HU	79	0,71
IE	71	0,64
IS	22	0,20
IT	495	4,45

Contr. State	Number Total	% of Total Repr.
LI	22	0,20
LT	26	0,23
LU	20	0,18
LV	21	0,19
MC	4	0,04
MK	26	0,23
MT	5	0,04
NL	481	4,33
NO	99	0,89
PL	309	2,78
PT	41	0,37
RO	56	0,50
RS	53	0,48
SE	376	3,38
SI	30	0,27
SK	34	0,31
SM	23	0,21
TR	91	0,82
<b>Total:</b>	<b>11112</b>	<b>100,00</b>

Source: Legal Division / Dir. 5.2.3 / EPO

## Contact Data of Legal Division

Update of the European Patent Attorneys' database

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. The list of professional representatives, kept by the EPO, is also the list used by *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 523 of any change in your contact details.

Kindly note the following contact data of the Legal Division of the EPO (Dir. 5.2.3):

European Patent Office  
Dir. 5.2.3  
Legal Division  
80298 Munich  
Germany  
Tel.: +49 (0)89 2399-5231  
Fax: +49 (0)89 2399-5148  
legaldivision@epo.org  
www.epo.org

Thank you for your cooperation.

## Annual Subscription 2014

The invoices regarding the *epi* subscription 2014 will be sent at the beginning of January 2014. Please note that **every member will** receive an invoice, even if a direct debiting mandate is set up with *epi*.

In case of doubt and to avoid double payment, please get in touch with the *epi* Secretariat, to check whether a direct debiting mandate is set up for you.

The 2014 *epi* subscription fee (160 EUR without surcharge) can be settled as follows:

### 1. Direct debiting mandate

- By debiting the EPO deposit account on February 25, 2014 – valid only for payment of the 2014 subscription
- The form to set up/amend/delete a direct debiting mandate can be found on our website ([www.patentepi.com](http://www.patentepi.com)).
- In case a direct debit mandate is set up with *epi*, kindly note the following:

The due membership fee will be debited automatically from the EPO account on February 25, 2014, taking into account that the account holder is entitled to amend the direct debiting mandate before 15.02.2014.

If you have any questions relating to the direct debiting mandate, please get in touch with the *epi* Secretariat. [accounting@patentepi.com](mailto:accounting@patentepi.com)

### 2. Bank transfer

- By bank transfer in Euro (bank charges payable by subscriber)
- Please note that payment should be on *epi's* account at the latest by February 28th, 2014.

Account holder:	European Patent Institute
Bank Name:	Deutsche Bank AG
BLZ/Sort Code:	700 700 10
Account Number:	272 5505 00
BIC-SWIFT:	DEUTDEMMXXX
IBAN No:	DE49 7007 0010 0272 5505 00
Address:	Promenadeplatz 15 80333 München

### 3. PayPal

The link to the online payment tool can be found on our website ([www.patentepi.com](http://www.patentepi.com)).

### 4. Credit Card

- By credit card (Visa or Mastercard only)
- The link to the online payment tool can be found on our website ([www.patentepi.com](http://www.patentepi.com)).
- For payments with American Express please use PayPal.

### Kindly note: No cheques accepted!

In order to minimise the workload in processing accurately and efficiently subscription payments, and independently of the transmitting way, each payment should be clearly identified indicating invoice number, name and membership number. Obviously unidentifiable payments subsequently cause considerable problems for the Secretariat and in many instances unnecessary protracted correspondence.

João Pereira da Cruz  
Secretary General



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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Phone: <u>+49 89 242052-0</u>	Phone:	_____
Fax: <u>+49 89 242052-20</u>	Fax:	_____

☐ **Issue a Direct Debiting Mandate:**

☐ issued for 1 person

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Institut der beim Europäischen Patentamt zugelassenen Vertreter  
 Institute of Professional Representatives before the European Patent Office  
 Institut des mandataires agréés près l'Office européen des brevets

### Einzugsermächtigung

Eingangsfrist im  
**epi**-Sekretariat:

**15. Februar 2014**

Das Institut der beim Europäischen Patentamt zugelassenen Vertreter (**epi**) wird hiermit ermächtigt, den jeweils gültigen **epi**-Jahresmitgliedsbeitrag für das genannte Mitglied einzuziehen. Der Einzug erfolgt einmalig am 25. Februar des laufenden Jahres von dem nachfolgend anzugebenden Konto beim Europäischen Patentamt (EPA). Die Einzugsermächtigung wird wirksam beginnend mit dem Jahresmitgliedsbeitrag 2014 und gilt für künftig fällige Mitgliedsbeiträge bis auf schriftlichen Widerruf. Der Einzug erfolgt auf der Grundlage der zwischen dem EPA und dem **epi** getroffenen Verwaltungsvereinbarung vom 5. April 1993 (ABl. EPA 1993, 367) und der Nr. 9 der Vorschriften über das laufende Konto (ABl. EPA 1993, 366).

Alle an das EPA am Abbuchungstag zu entrichtenden Gebühren und Auslagen werden dem Einzug des **epi**-Beitrags vorgezogen. Bitte stellen Sie sicher, dass im Abbuchungszeitraum Ihr EPA Konto über eine ausreichende Deckung verfügt. Wir weisen Sie darauf hin, dass bei unzureichender Deckung der komplette Abbuchungsauftrag nicht ausgeführt werden kann. Der Kontoinhaber und jedes **epi**-Mitglied werden darüber schriftlich in Kenntnis gesetzt.

☐ Ich stimme den oben genannten Bestimmungen zu.

### Direct debiting mandate

Deadline for receipt by the  
**epi** Secretariat:

**15<sup>th</sup> February 2014**

The Institute of Professional Representatives before the European Patent Office (**epi**) is hereby authorised to debit the **epi** annual subscription for the member named below at the appropriate rate. This direct debit occurs once on February 25 of the current year from the deposit account held with the European Patent Office (EPO) as specified below. This direct debiting mandate applies to the membership fee 2014 and the forthcoming subscriptions until it is revoked in writing. Debiting will be done on the basis of the Administrative Agreement dated 5 April 1993 between the EPO and the **epi** (OJ EPO 1993, 367) and point 9 of the Arrangements for deposit accounts (OJ EPO 1993, 366).

All fees and costs payable to the EPO on the debiting date have priority over the **epi** subscription. Please be sure that during the period of time surrounding the time of the debit order there are sufficient funds in your EPO account to cover the entire debit order. Kindly note that a partial coverage will prevent the entire debit order from being carried out. In such cases, the holder of the account as well as each **epi** member involved will be informed in writing.

☐ I agree with the stipulations cited above.

### Autorisation de prélèvement

Date limite de réception au  
 Secrétariat de l'**epi**:

**15<sup>er</sup> février 2014**

L'Institut des mandataires agréés près l'Office européen des brevets (**epi**) est autorisé par la présente à prélever le montant en vigueur de la cotisation annuelle de l'**epi** pour le membre dont le nom figure ci-dessous. La présente autorisation de prélèvement sur le compte ouvert à l'Office européen des brevets (OEB) prend effet une seule fois le 25 février de l'année en cours. Cette autorisation de prélèvement vaut pour la cotisation 2014 ainsi que pour les cotisations suivantes jusqu'à révocation par écrit.

Le prélèvement est opéré sur la base des dispositions de l'accord administratif en date du 5 avril 1993 entre l'OEB et l'**epi** (JO OEB 1993, 367) ainsi que de celles du point 9 de la décision modifiant la réglementation applicable aux comptes courants (JO OEB 1993, 366).

Le règlement de toutes les taxes et de tous les frais dus à l'OEB à la date de débit a priorité sur le prélèvement de la cotisation annuelle de l'**epi**. Veuillez- vous assurer que votre compte à l'OEB est suffisamment approvisionné pendant la période de débit. Nous attirons votre attention sur le fait que l'ordre de débit sera refusé dans sa totalité si le compte n'est pas suffisamment approvisionné. Dans ce cas, le titulaire du compte ainsi que chaque membre de l'**epi** seront informés par écrit.

☐ J'accepte les conditions mentionnées ci-dessus.

Date

Authorised Account Proxy's Name in block letters

Signature



## Next Board and Council Meetings

### Board Meetings

90<sup>th</sup> Board meeting on March 15, 2014 in Lyon (FR)  
91<sup>th</sup> Board meeting on September 27, 2014 in Zagreb (HR)

### Council Meetings

76<sup>th</sup> Council meeting on April 28/29, 2014 in Munich (DE)  
77<sup>th</sup> Council meeting on November 15, 2014 in Milan (IT)

## News concerning *epi* Council and Committees

### Litigation Committee

- Mr Jonathan White (IE) was elected substitute member

## New epi website – Instructions for login area

### Login area:

The new epi website went live on May 22, 2013.

Many new features are available in comparison to the previous one.

For your convenience the new epi website has a login area which replaces the old extranet. There you can find a lot of useful additional information and documents for download.

For downloading certain documents or for registering at special epi meetings it might be necessary that you are logged in to have access to the necessary information.

The prior login data for the former extranet is no longer applicable. To login you need your membership number=ID Code (8 digits) and a password which you create at the occasion of your first login.

### How can you access the login area?

For your first login please use the link:

[www.patentepi.com/anmeldung](http://www.patentepi.com/anmeldung)

(please note that you can use the link only once) and proceed as follows:

**1. Step:** Please fill in your ID Code (eight-digit membership number). If you don't have it to hand, please get back to the epi Secretariat or look it up on your EPO identity card (please just add a "0" at the beginning to gain your 8-digit membership number)

### Please set your password

IDCode:

Password:

[Click here to submit your new password](#)

**2. Step:** Please create a personal password and insert this password in the box "password".

**3. Step:** Click on the button "Click here to submit your new password"

After finalizing step 3 you will receive a confirmation email indicating that your password was changed successfully.

**You successfully changed your password.**

**Please login here.**

**4. Step:** Then, you are requested to login.

After logging in for the first time you will receive the following information:

In case you forgot your password please use the link below to reset your password:

[http://www.patentepi.com/en/login/?tx\\_felogin\\_pi1\[forgot\]=1](http://www.patentepi.com/en/login/?tx_felogin_pi1[forgot]=1)

You are asked to fill in your username, which is your ID Code.

If you need any further assistance or have any questions please do not hesitate to contact us by email [info@patentepi.com](mailto:info@patentepi.com) or phone +49 89 242052-0.

# Das papierlose Büro – eine Utopie?

Dr. A. Jeschke (DE)<sup>1</sup>

Die elektronische Akte ist den meisten durch das Europäische Patentamt (EPA) bekannt und wird umfangreich genutzt. Auch das Deutsche Patent- und Markenamt (DPMA) führt derzeit die elektronische Akte und das elektronische Arbeiten ein. Im Zuge dessen stellt sich für Patent- und Rechtsabteilungen sowie für Kanzleien die Frage, ob und vor allem wie eine derartige elektronische Akte auch im eigenen Unternehmen oder in der eigenen Kanzlei etabliert werden kann oder soll.

Dabei bietet die elektronische Akte viele Vorteile. Es werden z. B. häufig die schnelle und weltweite Verfügbarkeit von Informationen, das Entfallen von Lagerräumen für Papierakten und die schnelle Verarbeitung von anfallender Arbeit genannt. Diese Vorteile lassen sich realisieren, jedoch wird dabei häufig vergessen, dass für derartige Vorteile auch Nachteile in Kauf zu nehmen sind.

So ist es ein Trugschluss zu glauben, dass mit der Einführung eines papierlosen Büros weniger Arbeit anfällt oder gar Mitarbeiter ersetzbar sind. Teilweise erhöhen sich die Aufwände sogar, jedoch kann dem (internen) Kunden oder dem Mandanten eine bessere Dienstleistung zur Verfügung gestellt werden.

Schon viele Patent- und Rechtsabteilungen sowie Kanzleien haben versucht, ein papierloses Büro aufzusetzen. Leider misslingt dieses Unterfangen regelmäßig.

Im vorliegenden Artikel wird erörtert, warum das Aufsetzen eines papierlosen (papierarmen) Büros häufig scheitert und was bei einer erfolgreichen Umsetzung zu beachten ist.

## Gründe für das Scheitern

Beim Scheitern der Einführung einer elektronischen Akte, muss zwischen extrinsischen und intrinsischen Gründen unterschieden werden.

### Extrinsische Gründe für das Scheitern

Extrinsische Gründe sind die, auf welche die umsetzende Person keinen Einfluss hat.

Zu den extrinsischen Gründen zählen beispielsweise IT-Infrastruktur und -Abteilung. So hat die IT-Abteilung oftmals Vorbehalte bei der Unterstützung.

Weiterhin mangelt es häufig an der finanziellen Ausstattung (es wird für den Migrationsprozess nicht die finanzielle Grundlage seitens der Geschäftsführung zur Verfügung gestellt). Auch steht die erforderliche Personaldecke regelmäßig nicht zur Verfügung, so dass sich insbesondere die ergebende Mehrarbeit mit dem bisherigen – häufig bereits schon überlasteten – Personal zu leisten ist.

Extrinsische Probleme können i. d. R. nicht durch die umsetzende Person gelöst werden, denn hier ist die volle (finanzielle) Unterstützung der vorgesetzten Stelle oder

der Geschäftsführung gefragt. Ist diese Unterstützung jedoch erst einmal vorhanden, sind die Grundvoraussetzungen für die Umsetzung des papierlosen Büros geschaffen. Allerdings sind dann noch immer die intrinsischen Probleme zu überwinden.

### Intrinsische Gründe für das Scheitern

Die schwersten, aber dennoch lösbaren Probleme sind intrinsischer Natur. Diese untergliedern sich in Probleme in der Persönlichkeit/Motivation der Mitarbeiter/Kollegen und in Probleme bei der Umsetzung der (technischen und prozessualen) Struktur des papierlosen Büros.

#### *Motivationsprobleme*

Viele Mitarbeiter und Kollegen lehnen in ihrem tiefsten Herzen ein rein elektronisches Arbeiten ab. Dies kann beispielsweise in der Person selbst oder in der Angst vor Veränderung begründet sein.

Hier einige Aussagen dazu, wie sich derartige Widerstände offenbaren:

- „Ich brauche Papier, da der Kontrast des Bildschirms nicht ausreichend ist!“
- „Ich möchte die Akte anfassen können! Beim Aufschlagen einer Akte weiß ich sofort wo ich bin!“
- „Ich werde in zwei Jahren in Rente gehen.“ bzw. „Ich mache das schon seit 30 Jahren so, und aus diesem Grund möchte ich mir das nicht mehr antun.“
- „Warum sollen Arbeitsabläufe, die sich seit Jahren bewährt haben, nun geändert werden? Ich ändere mich nicht mehr“

Am schwierigsten ist die Gruppe der „Schweiger“ zu handhaben, da diese Personen ihre innere Ablehnung nicht nach außen tragen, jedoch das eigentliche Umsetzen behindern oder sogar sabotieren.

Es sei an dieser Stelle angemerkt, dass ohne die Mitarbeiter oder Kollegen die Umsetzung eines papierlosen Büros äußerst schwer oder gar unmöglich ist. Hier ist Führung und Überzeugungskraft durch die vorgesetzte Instanz notwendig.

An den hier aufgezeigten Motivationsproblemen muss permanent gearbeitet werden und die beteiligten Personen müssen durch Überzeugungskraft, Beharrlichkeit und Durchsetzungsvermögen motiviert werden.

Lösungsansätze für die Überwindung persönlicher Vorbehalte oder mangelnder Motivation werden vorliegend nicht erarbeitet, wobei eine gute Realisierung einer technischen und prozessualen Struktur des papierlosen Büros hilft, die Widerstände der Mitarbeiter/Kollegen abzubauen. Deshalb werden im Folgenden die Probleme derartiger Strukturen erörtert und anschließend Lösungsansätze dargestellt.

### *Probleme beim Umsetzen der Struktur*

Das Ergebnis einer gescheiterten Umsetzung oder die Probleme schon bestehender Systeme sind Hybridsysteme, bei denen eine elektronische Akte in Kombination mit einer Papierakte geführt wird. Praktisch führt häufig die Assistenz die elektronische Akte, während die Sachbearbeitung mit der Papierakte arbeitet. Dies zeigt sich z. B. in folgendem Fall:

Zu einer Akte ist ein Bescheid mit Dokumenten des Standes der Technik eingegangen. Die Papierakte wird von der Assistenz gesucht und der Bescheid mit den entsprechenden Anhängen zur Papierakte gefügt. Zudem werden die Fristen elektronisch im Patentverwaltungssystem vermerkt und (nochmals) auf dem Bescheid handschriftlich unter Kennzeichnung mit dem Mitarbeiterkürzel aufgeschrieben. Ggf. wird eine elektronische Kopie des Bescheids in ein elektronisches Archiv des Patentverwaltungssystems abgelegt.

Anschließend wird die Papierakte mit dem Bescheid an die Sachbearbeitung gereicht, welche den Bescheid anhand der Papierakte inhaltlich bearbeitet.

In derartigen Hybridsystemen ist nicht klar, welches System das Leitsystem ist. Im obigen Beispiel orientieren sich die Assistenz an der elektronischen Repräsentanz und die Sachbearbeitung an der Papierrepräsentanz. Vor dem Hintergrund, dass eine Aktenführung nur ein Abbild des wirklichen Verfahrens ist und es immer auch Fehler in den Akten gibt, erhöhen derartige Hybridsysteme die Fehlerwahrscheinlichkeit, insbesondere dann wenn sich Assistenz auf die elektronische Akte und die Sachbearbeitung sich auf die Papierakte verlässt.

In einem Hybridsystem ist zumindest faktisch die Papierakte das Leitmedium und Aufgaben (z. B. Bescheidserwiderung ausarbeiten) „hängen“ an der physischen Papierakte. Das elektronische System dient lediglich der Ergänzung und im besten Fall einer zügigen Recherche zu Metadaten der Akte (Anmeldetag, Aktenzeichen, gestellte Anträge etc.).

Ohne die Papierakte ist eine effektive Bearbeitung der Aufgabe nicht möglich, da die Aufgabe ein physischer Annex zur Papierakte ist.

Problematisch wird dies insbesondere dann, wenn ein Zugriff zur Akte benötigt wird, jedoch die Papierakte nicht (schnell) auffindbar ist. Typisches Beispiel ist ein Anruf eines Mandanten bei einem Patentanwalt, bei dem sich der Mandant über den Inhalt einer älteren Akte erkundigen möchte. Die praktische Antwort des Patentanwalts lautet dann häufig: „Die Akte ist im Archiv. Ich lasse mir diese zukommen und rufe Sie heute Nachmittag an“.

Dies ist unbefriedigend, da der Mandant gerne umgehend sein Problem gelöst haben möchte.

### **Wie kann eine arbeitsfähige Struktur umgesetzt werden?**

Nachdem dargestellt wurde, warum ein papierloses Büro häufig scheitert, soll im Folgenden analysiert werden, wie ein papierloses oder vielleicht eher papierarmes

Arbeiten umgesetzt werden kann. Dabei wird vorausgesetzt, dass exzellente extrinsische Rahmenbedingungen bestehen. Auch die Motivationsprobleme werden als gelöst bzw. als lösbar vorausgesetzt.

Die vorgeschlagene Lösung bezieht sich rein auf das Umsetzen einer arbeitsfähigen Struktur. Dazu wird im Weiteren zusammengefasst, wie mit Papierakten gearbeitet wird und ausgeführt, welches Arbeiten im Gegensatz dazu bei einer elektronischen Akte notwendig ist.

#### Analyse

Das Ziel ist die elektronische Akte. Wie überall ist jedoch auch hier der Weg das Entscheidende.

Übliches Arbeiten in Patent- und Rechtsabteilungen sowie Kanzleien ist papieraktenbasiert (siehe obiges Beispiel zu Hybridsystemen). Bei dieser Art der Bearbeitung ist die Papierakte das Leitmedium und es liegt somit ein papieraktenbasiertes Arbeiten vor, bei dem ein Vorgang (z. B. Bescheid zugegangen) die Aktenarbeit (im Weiteren Aufgabe) „anstößt“.

#### Lösung

Der Kern für den Erfolg zur Umsetzung eines papierlosen/papierarmen Büros mit elektronischer Akte ist die Abkehr vom papieraktenbasierten Arbeiten zu einem aufgabenbasierten Arbeiten mit der Konsequenz, dass das aufgabenbasierte Arbeiten elektronisch erfolgt und dass die Akte rein elektronisch geführt wird.

Beim aufgabenbasierten Arbeiten steht nicht mehr die Papierakte oder die elektronische Akte im Vordergrund, an welche die Aufgabe gebunden ist. Stattdessen liegt der Fokus auf der (elektronischen) Aufgabe, welche mit dem Hilfsmittel „Akte“ bearbeitet wird.

Das Grundkonzept ist EVA. EVA steht, wie vielen aus der Informatik bekannt ist, für Eingabe, Verarbeitung und Ausgabe.

Die Eingabe ist das Ereignis oder das Dokument, welches die Bearbeitung anstößt. Beispielsweise eine Erfindungsmeldung, ein Anruf, eine E-Mail, ein Bescheid oder eine Besprechung.

Die Verarbeitung umfasst das eigentliche Bearbeiten der Aufgabe, wie beispielsweise Prüfen der Erfindungsmeldung und Verfassen der Eingangsbestätigung, Rückruf zum Anruf, E-Mail-Antwort, Bescheidserwiderung, oder Besprechungsprotokoll.

Die Ausgabe umfasst das Verlassen der gelösten Aufgabe aus dem Herrschaftsbereich oder das Erledigen der Aufgabe. Beispiele dafür sind Eingangsbestätigung zur Post, Aktennotiz zum Rückruf, das Senden der Antwort-E-Mail, das Faxen der Bescheidserwiderung oder das Versenden eines Protokolls.

Um dieses aufgabenbasierte Arbeiten umzusetzen, müssen die Infrastruktur, die Aktenführung und die Arbeitsprozesse angepasst werden.

#### *Infrastruktur*

Sowohl an die Hardware als auch an die Software sind besondere Erfordernisse zu stellen. Aufgrund dessen, dass keine Papierakten gepflegt werden (sollen), muss eine Sicherheitsstruktur für das Arbeiten bereitgestellt werden. Daten-Netzwerke und auch die Back-Ups müs-

sen redundant ausgelegt sein, da die Gefahr eines Datenverlusts und somit Aufgaben- und Aktenverlust beachtet werden müssen. Das ist grundsätzlich nicht anders als bei Papierakten, welche durchaus durch einen Brand vernichtet werden können.

Es muss ein leistungsfähiges Netz zur Verfügung stehen, sodass innerhalb des Netzes z. B. Sachbearbeitung und Assistenz schnell und effektiv auf die (elektronischen) Aufgaben und die (elektronische) Akte zugreifen können.

Auch auf Kleinigkeiten ist zu achten, da diese die Akzeptanz des neuen Arbeitens erhöhen. Zwar können Nutzerrechner mit einfacher Hardware betrieben werden, jedoch ist großes Augenmerk auf die Monitore zu richten. Geringe Bildschirmdurchmesser oder nur ein einziger Monitor können das Arbeiten stark beeinträchtigen.

Nicht zuletzt ist spezielles Augenmerk auf die Software zu richten. Es gibt mehrere bekannte oder auch unbekannte Patentverwaltungsprogramme, teilweise werden selbsterstellte Programme eingesetzt. Grundsätzlich gilt, dass alle bekannten Programme auf ein aufgabenbasiertes Arbeiten anpassbar sind. Die zugehörigen Aufwände unterscheiden sich teils erheblich. So gibt es Programme, welche bereits durch ihre Struktur das aufgabenorientierte Arbeiten unterstützen. Andere Programme müssen angepasst oder mit Zusatzsoftware versehen werden.

Grundsätzlich kann durch das Verwenden entsprechender Infrastruktur mit entsprechend angepasster Software ein sicheres, effektives und dezentrales Arbeiten ermöglicht werden.

### Aktenführung

Um auf die Papierakte zu verzichten, ist eine besondere Sorgfalt bei der Aktenpflege zu gewährleisten. Während im obig beschriebenen hybridbasierten Arbeiten ein Abgleich zwischen Papierakte und elektronischer Akte erfolgen kann, ist dies bei einer elektronischen Akte ungleich schwieriger.

Sämtliche Daten und Dokumente müssen bei einer elektronischen Akte immer verfügbar sein. Das heißt für die Praxis, dass alles (auch E-Mails, Bescheide, Stand der Technik und Telefonnotizen) in einer Akte gespeichert werden muss. Paralleles Speichern, wie beispielsweise im E-Mail-Client, ist zu unterlassen, da dies zur Folge hat, dass diese Daten in der Akte nicht verfügbar sind. Zwar liegt dann immer noch ein papierloses/papierarmes Arbeiten vor, jedoch kann mit dem System nicht mehr (rechts- bzw. haftungs-)sicher gearbeitet werden. Das System scheitert.

Als Konsequenz aus dem Speichern aller Daten und Dokumente ergibt sich, dass die Anzahl der gespeicherten Dokumente zu einer Akte so groß wird, dass ein elektronisches Archiv der Akte sehr schnell sehr unübersichtlich wird. Um jedoch schnell die richtigen Dokumente aufzufinden, muss das Archiv strukturiert geführt werden. Hier bietet sich beispielsweise ein vorgangsbasiertes Ablegen der Dokumente an. Diese Vorgänge können im Falle einer Patentanmeldung beispielsweise Anmeldung, Formalbescheid, Recherchenbericht, Prüf-

bescheid, Erfinderfreigabe oder Bescheidserwiderung sein. Mit einem Sortieren nach Vorgängen, kann das elektronische Archiv sinnvoll gruppiert werden und die Sachbearbeitung kann sich schnell einen Überblick verschaffen.

Auch müssen sämtliche Mitarbeiter permanent die elektronische Akte auf Konsistenz prüfen. So müssen z. B. die Angaben im Überblick und in den Fristen mit den Informationen im Archiv übereinstimmen. Dies hört sich zwar trivial an, jedoch liegen erfahrungsgemäß hier die größten (praktischen) Schwierigkeiten.

### Arbeitsprozesse/Arbeitsabläufe

Einheitliche Arbeitsprozesse sind das A und O. Nur wenn alle dieselben Arbeitsabläufe berücksichtigen und alle dieselben Prozesse verwenden, kann ein papierloses/papierarmes Arbeiten erfolgreich umgesetzt werden.

Im Prinzip müssen Standards (Arbeitsabläufe) analog einer DIN-Norm eingesetzt werden. Diese Standards beziehen sich nur auf die Abläufe/Prozesse, inhaltlich ändert sich an der Arbeit nichts. Jedem muss klar sein wie er/sie zu arbeiten hat und es muss die Verlässlichkeit gegeben sein, dass auch alle anderen Mitarbeiter sich genau an diese Abläufe halten. Somit weiß jeder was der andere zu tun hat und wie dieser arbeitet.

### Beispiele

Vorliegend soll das EVA-Prinzip anhand des Beispiels einer Bescheidserwiderung zu einer Patentanmeldung in einer (Industrie-)Patentabteilung stark verkürzt dargestellt werden. Die folgenden Ausführungen gelten analog für sämtliche anderen „Aufgaben“.

**Eingabe:** Die Assistenz versieht den zugegangenen Prüfungsbescheid mit einem Eingangsstempel. Die zugehörigen Fristen werden elektronisch aufgemerkt. Der Prüfungsbescheid wird (mit Anhängen) eingescannt und in der Akte abgelegt. Es wird eine elektronische **Aufgabe** erstellt und mit den Bescheidsdokumenten und der aufnotierten Frist an die zuständige Sachbearbeitung weitergeleitet.

**Verarbeitung:** Die Sachbearbeitung prüft die **Aufgabe** und prüft dabei das korrekte Aufnotieren der Fristen. Die **Aufgabe** wird durch die Sachbearbeitung vielleicht um einige Tage verschoben, bevor das eigentliche Ausarbeiten der Bescheidserwiderung erfolgt.

**Ausgabe:** Nach dem Erstellen der Bescheidserwiderung, wird diese an das Amt gefaxt. Die Bescheidserwiderung und der Faxnachweis werden in der Akte abgelegt und die **Aufgabe** an die Assistenz weitergeleitet. Die Assistenz prüft im Rahmen der **Aufgabe** den Faxnachweis, benamt und sortiert die verschickten Dokumente und legt diese in dem Archiv der Akte ab. Abschließend werden etwaige Fristen gelöscht.

### Zwischenfazit

Nachdem nun die nötige Infrastruktur bereitgestellt wurde und die Aktenführung und die Arbeitsprozesse strukturiert sind, ist eine Papierakte obsolet. Das papierlose aufgabenbasierte Arbeiten (mittels elektronischer Aufgaben und elektronischer Akte) ist ermöglicht.



Zu beachten ist, dass diese Arbeitsweise regelmäßig den Zeitaufwand für das anfängliche Bearbeiten erhöht. So müssen sämtliche Dokumente digital bereitgestellt werden (scannen) und ein strukturiertes Ablegen im Archiv unter guter Benennung erfolgen.

Der Vorteil liegt aber darin, dass Akten immer verfügbar sind. So kann der (interne) Kunde/ der Mandant immer anrufen und informiert werden. Es entfällt der Satz „Wir müssen die Akte noch aus dem Archiv holen, wir rufen Sie heute Nachmittag an“. Somit ergeben sich Zeitvorteile langfristig, also meist erst im Laufe eines Aktenlebens.

## Fazit

Im vorliegenden Artikel wurden die Herausforderungen beim rein elektronischen Arbeiten mittels elektronischer Akten aufgezeigt. Es wurden sowohl die intrinsischen als auch extrinsischen Schwierigkeiten beleuchtet. Zudem wurde an einem Beispiel gezeigt, dass ein aufgabenbasiertes Arbeiten möglich ist, welches Teilaspekte der intrinsischen Schwierigkeiten löst.

Wir setzen dieses aufgabenbasierte Arbeiten in unserer Kanzlei ein und können all die bekannten Vorteile realisieren. Jedoch soll nicht verhehlt werden, dass sich natürlich auch die beschriebenen Nachteile ergeben.

## CPD in the UK

C. Mercer (GB)

Under the regulations for remaining a registered patent attorney (RPA) in the UK, it is necessary to carry out 16 hours of continued professional development. Compliance with this requirement is by way of self-certification. When an RPA is asked by IPReg (the body which maintains the register) to pay his annual registration fee, she/he is also asked to certify that she/he has completed 16 hours of CPD or explain why he has not (for instance that he took an extended period of leave or she was on maternity leave). Every year, IPReg assesses a random selection of people for compliance.

There are many events and activities which can be attended or carried out to fulfil IPReg's requirements. However, it is not required for the events to be fee-charging or approved by IPReg. It is up to each RPA to decide whether any particular event or activity falls within the requirements of IPReg.

Attending fee-charging events is one way of meeting part or all of IPReg's requirements. For instance, CIPA provides a number of seminars, webinars and other events which an RPA could attend as part of his/her CPD activities. There are also commercial providers of events which could be attended for this purpose. However, there are many other ways to meet IPReg's requirements. For instance, some of the time can be accumulated by private study, such as of EPO and UK case law or of amended law, rules and regulations or reading

journals. At the firm for which I work, there are internal seminars and meetings of practice groups which, as long as they relate to matters which IPReg regards as important, can be counted towards the required 16 hours. The requirements of IPReg can be met by providing education to others, for instance by giving part or all of a seminar.

Accumulating CPD hours is generally not a problem. Most RPAs carry out enough private study to meet a large proportion of the required 16 hours. Many RPAs supervise candidates and assist in their training, which can meet a further, if not the rest, of the required time. If an RPA feels that he cannot meet the requirement without an outside contribution, he/she can readily attend events such as the CIPA seminars and webinars or attend commercially-run courses.

As far as I am aware, IPReg has not had any reason to object to an RPAs compliance with the CPD requirement. Although many CIPA members objected strongly to the imposition of CPD, there seem to have been no complaints about the system following its introduction. It has become a normal part of the activities of all practising RPAs and does not cause any significant problems. It appears that it ensures that all RPAs keep abreast of all important developments and up-to-date with UK and EPO case law at least.

# Obligation of Continuing Professional Education of Patent Attorneys in Poland

A. Somińska-Dziubek (PL) and M. Besler (PL)

## Obligation of Continuing Professional Education of Patent Attorneys in Poland

In Poland, the obligation of Continuing Professional Education (CPE) of the Polish patent attorneys was established by the Act of 24.09.2010 amending the Act on Patent Attorneys (Dz. U. No. 197, item 308), being in force since 26.01.2011. The amending Act (consolidated text: Dz. U. No. 155, item 925 of 2011) introduces a new regulation, Art. 14a) reading as follows:

- "1. A patent attorney is obliged to improve its professional knowledge.
2. The National Council of Patent Attorneys determines, by its resolution, a way of fulfilling the obligation mentioned in Section 1, in particular the frequency, range and forms of continuing professional education."

Fulfilling the above provision, the National Council of Patent Attorneys (the National Council of the Polish Chamber of Patent Attorneys) adopted a Resolution No. 614/V/2011 of 17.06.2011 on Continuing Professional Education (CPE)

According to section 2 of the above-mentioned Resolution:

"CPE may be carried out in particular in the following forms:

1. Distance education in the form of e-learning
2. Participation in post-graduate studies and Ph.D. courses organized by higher-education institutions
3. Training courses for students, Ph.D. students and participants of post-graduate courses
4. Training courses for patent attorney trainees, other trainees and representatives of other professions.
5. Publications relating to IP law
6. Participation in training courses, lectures, seminars and conferences organized by patent attorney associations and other vocational training institutions
7. Participation in EQE training and qualifying exam for patent attorney
8. Participation in scientific meetings and events
9. Self-education

Section 4 of the above Resolution determines a minimum limit of the training within one year. According to section 5 of the Resolution, once in each three years each patent attorney is obliged to submit a report on the realisation of the obligation to the relevant District Council of the Polish Chamber of Patent Attorneys (there are 12 District Councils within the Polish Chamber of Patent Attorneys).

The Act on Patent Attorneys imposes an obligation on the Polish Chamber of Patent Attorneys to provide

patent attorneys with CPE (Article 43, section 1, point 4 of the Act) and indicates, in further provisions, organs of the Polish Chamber of Patent Attorneys that should fulfil the obligation.

According to Article 51, section 8 of the Act "The National Council of Patent Attorneys should (...) organize training courses and other forms of continuing professional education for patent attorneys."

One of the tasks of District Councils of the Polish Chamber of Patent Attorneys is "improving skills and providing professional education to patent attorneys" (Art. 54, section 6, point 3 of the Act). This task is effected by providing regional trainings, including trainings carrying out free of charge.

Improving professional skills is one of the obligations of a Polish patent attorney determined by the Act on Patent Attorneys. This is very important for the interpretation of Article 57, section 1 of the Act, which defines the principles of disciplinary liability of a patent attorney. According to the above regulation: "A patent attorney and patent attorney trainee are subject to disciplinary liability for deliberately improper execution of their professional duties as patent attorneys and **other duties determined in the Act**, in particular for acts contrary to the oath and code of ethics of a patent attorney." It should be mentioned, however, that neither the text of the oath or current code of ethics of Polish patent attorneys provides for the obligation of continuing professional education.

As regards the question whether "failure to fulfil the obligation of continuing professional education may be a reason for disciplinary liability of a patent attorney", the Polish legal literature presents the following opinion:

"A response will be univocal if such behaviour results in an infringement of specific principles of practicing the profession. In such case, one must prove that malpractice, lack of knowledge resulting from passive attitude to education have led to the improper performance of professional acts. It seems, however, that before an offence is actually committed, one can hardly regard such attitude as an independent reason to held someone liable" ("Ustawa o rzecznikach patentowych. Komentarz" [Act on Patent Attorneys. Commentary], E. Tokarczyk, LexisNexis, Warsaw 2012, p. 91).

Disciplinary jurisprudence relating to patent attorneys has not verified the above view so far.

The Polish regulation on the obligation of continuing professional education of patent attorneys refers to earlier norms relating to Polish legal counsels and advocates.

The obligation of professional education in respect of the above-mentioned professions results from the provisions of respective codes of ethics. In the case of legal

counsels it is the "Code of Professional Conduct", and in the case of advocates it is the "Rules of Ethics for Advocates and the Dignity of the Profession /Code of Ethics for Advocates/".

#### Norms relating to Polish legal counsels

According to Article 23 of currently binding Code of Professional Conduct:

"1. It is duty of each and every legal counsel to take care of his/her professional development via lifelong learning.

2. The legal counsel is obliged to participate in professional trainings in accordance with principles laid down by the appropriate self-government body".

The appropriate self-government body is the National Council for Legal Counsels, whose scope of activities includes, among other things, "coordinating professional education of legal counsel."

The National Council for Legal Counsels has set forth the rules of fulfilling the legal counsel's duty to participate in professional education.

The following forms of education that fulfill the above obligation have been specified:

1. Participating as a trainee or lecturer in trainings organized by the National Council of Legal Counsels and district councils of chambers of legal counsels;
2. Participating as a trainee or lecturer in professional trainings organized or recommended by employers or in professional trainings organized by other educational institutions;
3. Participating as a lecturer in the education of legal counsel trainees and advocate trainees;
4. Publishing: works on legal subjects, articles in professional magazines, including those published by self-government bodies of legal counsels, advocates and notaries, glosses on rulings of courts and tribunals, and legal commentaries."

A minimum number of 'training points' has been established that a legal council must obtain in each period of successive three years, as well as number of points obtained for participation in specific types of training. A legal counsel should submit relevant training certificates to a district council of legal counsels' chamber to prove

that he/she has fulfilled the duty of professional education. Failure to fulfill the duties relating to professional education is subject to disciplinary responsibility. The rules of disciplinary responsibility are specified in the Act on Legal Counsels, which sets forth that a legal counsel is subject to disciplinary responsibility for "acts contrary ... to the principles of legal counsel's ethics".

#### Norms relating to Polish advocates

According to the Code of Ethics for Advocates:

"An advocate shall perform professional duties in accordance with the best intention and expertise, with all due integrity, conscientiousness and zeal. An advocate has a duty to continually improve his or her professional qualifications and to strive to maintain a high level of professional competence."

The Law of 26 May 1982 on the Advocates' Profession provides that one of the task of the Bar being a self-governing body is "development of professional skills and training of advocates".

On the basis of regulations included in the above Law the Bar has specified the norms for fulfilling the obligation of professional education:

- "(a) Participation in professional trainings organized by advocates' self-government;
- (b) Participation in trainings, seminars, conferences or lectures organized by institutions other than advocates' self-government;
- (c) Self-education realized by preparing and publishing research and popular-science works on legal subjects, or preparing and delivering lectures within forms of education mentioned in points (a) and (b) above."

A minimum number of 'training points' has been established that an advocate must obtain in each calendar year, as well as number of points obtained for participation in specific types of professional training. An advocate should submit a yearly report on the performance of duty for professional education. Performance of duty for professional education is supervised by a district chamber of advocates, which should take disciplinary measures, including initiation of disciplinary procedure, in the case of intended failure to fulfill the above duty.

# Revision of Examination Guideline for „Requirement of Unity of Invention“, „Amendment that Changes a Special Technical Feature of an Invention“ in Japan

T. Tada (JP)

## Abstract of the revision of the Examination Guidelines

The Japan Patent Office (JPO) revised the Examination Guidelines for Patent and Utility Model in Japan for the “Requirements of Unity of Invention” and the “Amendment that Changes a Special Technical Feature of an Invention”.

Concerning the Examination Guidelines for the “Requirements of unity of invention”, the subject of the examination was expanded from two perspectives, “the special technical feature” (STF) and “the examination efficiency”. Concurrently, examples relating to the decision of the subject of the examination (Example 14–28) were added. Furthermore, concerning the Examination Guidelines for the “Amendment that changes a STF of an invention,” based on the same concept as the revision of the Examination Guidelines for the “Requirements of unity of invention,” the scope that the requirement in the Patent Act Article 17 bis (4) does not apply was expanded.

## Introduction

There were criticisms from users that the scope of the subject of the examination and extent that amendment was allowed was narrow in case STF doesn’t exist in claim 1.

The Japan Patent Office (JPO) revised the Examination Guidelines for Patent and Utility Model in Japan for the “Requirements of Unity of Invention” and the “Amendment that Changes a Special Technical Feature of an Invention”.

## Related Article and regulation

Related to Unity of Invention

Article 37, Patent Act

Two or more inventions may be the subject of a single patent application in the same application, provided that these inventions are of a group of inventions recognized as fulfilling the requirement of unity of invention based on their technical relationship designated in the Ordinance of the Ministry of Economy, Trade and Industry (METI).

Article 25octies, Regulations of the Patent Act (the Ordinance of the METI)

The technical relationship specified by the Ordinance of the METI set forth in Article 37 of the Patent Act is the technical relationship of two or more inventions which have the same or corresponding special technical feature, and thus are associated with each other to form a single general inventive concept.

2. The special technical feature under the previous paragraph is a technical feature that clearly indicates contribution over the prior art of the invention.

3. (Omitted)

This rule corresponds to Rule 13.2 of the Regulation under the PCT.

Related to Unity of Amendment that changes a STF of the invention

... when making amendments to patent claims, the invention for which a determination on its patentability was stated in the notice of reasons for refusal before the amendment and the invention defined by matters stated in the amended scope of claims shall be of a group of inventions recognized as fulfilling the requirement of unity of invention set forth in Article 37.

The article and regulation are not changed during this revision.

## The Guidelines for Unity of invention before the revision

Special Technical Feature (STF):

According to the Rule, an STF is a technical feature clearly indicating contribution over the prior art of the invention. An STF is identified based on the content of the description, scope of claim, drawings, and common technical knowledge at the time of filing. However, a feature considered to be an STF will not be an STF when it becomes clear that it does not make any contribution over the prior art of the invention.

A feature will not be identified as a STF if:

- the feature is found in the prior art
  - the feature is an addition, conversion, or deletion of well-known or commonly used technology to a prior art and does not produce any new effect
  - the feature is merely a design variation of a prior art
- (There is no change regarding the definition of “STF” even after the revision of the Guidelines.)

Scope of the subject of the examination other than the requirement of unity, such as novelty, inventive step, etc (the subject of the examination) is compared using the following example.

Example)

Claim 1: An apparatus comprising A

Claim 2: An apparatus as recited in claim 1 wherein said apparatus further comprises B

Claim 3: An apparatus as recited in claim 2 wherein said apparatus further comprises C

Claim 4: An apparatus as recited in claim 3 wherein said apparatus further comprises D

Claim 5: An apparatus as recited in claim 1 wherein said apparatus further comprises C

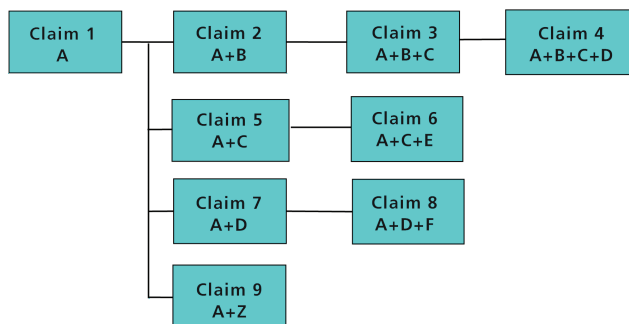
Claim 6: An apparatus as recited in claim 5 wherein said apparatus further comprises E

Claim 7: An apparatus as recited in claim 1 wherein said apparatus further comprises D

Claim 8: An apparatus as recited in claim 7 wherein said apparatus further comprises F

Claim 9: An apparatus as recited in claim 1 wherein said apparatus further comprises Z

Schematic block diagram of the above claims



In case an STF exists in claim 1

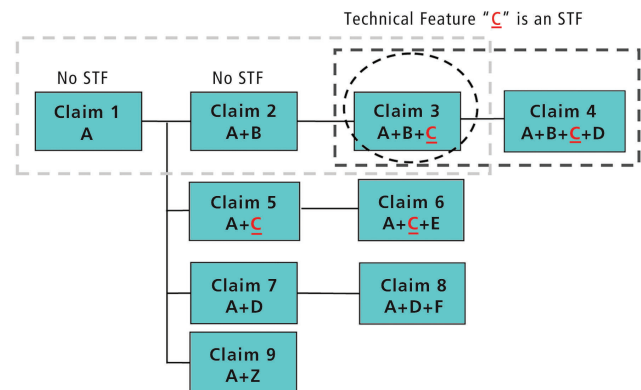
When an STF is found in claim 1, the invention that has the same or corresponding STF will be the subject of examinations of novelty, inventive step, etc. under the old guidelines. There is no change in such case under the current guidelines.

When the technical feature "A" is an STF in the above case, all of claims, claim 1-9, will be the subject of the examination, because all of claims had the same STF "A".

In case an STF doesn't exist in claim 1

When the invention claimed in claim 1 does not have an STF, "inventions in the same category that include all matters specifying the invention for which the STF was first found" and "inventions for which the existence of an STF has already been determined" will be the subject of examinations under the old guidelines.

For example, invention "A+B" was found in prior art in the above case and "C" is an STF in the above case, situation is as follows under the old guidelines.



In this case, claim 1-3 become the subject of the examination under "inventions for which the existence of an STF has already been determined" (Green box in the diagram) and claim 3 and 4 become the subject of the examination under "inventions in the same category that include all matters specifying the invention for which the STF was first found" (blue box in the diagram).

Claim 5-9 are excluded from the subject of the examination, in principle.

### The Guidelines for Unity of invention after the revision

Regardless of whether or not the invention claimed in claim 1 has an STF, (1) "inventions that will be the subject of examinations based on STF" and (2) "inventions found to be efficient to examine together with inventions in (1) are the subject of examinations of patentability requirements other than the requirement of unity of invention.

(1) Inventions that will be the subject of examinations based on STF

- inventions that have the same or corresponding STF, as the STF that has been first found
- Inventions for which the existence of STF has already been determined

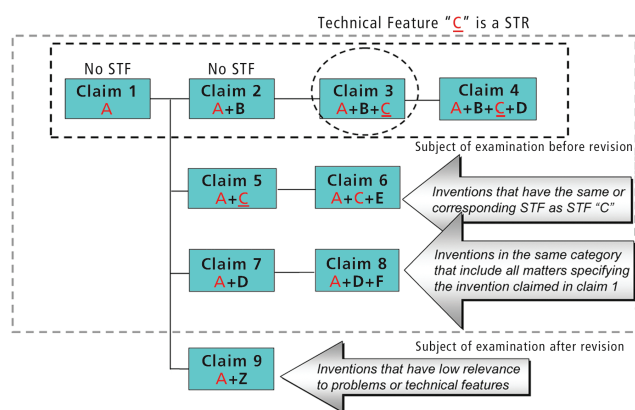
(2) Inventions found to be efficient to examine together with inventions in (1) above

- Inventions in the same category that include all matters specifying the invention in claim 1 (excluding those with low relevance to inventions claimed in claim 1 in terms of problems to be solved or technical features)
- Inventions that can be substantially examined without conducting additional prior art searches or making additional judgments, etc.

Put simply, all of dependent claims of claim 1 become the subject of the examination with some exception, regardless of whether or not the invention claimed in claim 1 has an STF after the revision.

For example, invention "A+B" was found in the prior art in the above case and "C" is an STF in the above case, the situation is as follows under the revised guidelines.





Under the revised guidelines, not only claim 1–4 but also claim 5, 6 as “inventions that have the same or corresponding STF, as the STF that has been first found” and claim 7, 8 as “Inventions in the same category that include all matters specifying the invention in claim 1”. Even if the claims are “Inventions in the same category that include all matters specifying the invention in claim 1” but have low relevance to inventions claimed in claim 1 in terms of problems to be solved or technical features, such claims are excluded from the subject of the examination, as seen claim 9 in the diagram.

### The Guidelines for Amendment that Changes a Special Technical Feature of an Invention”.

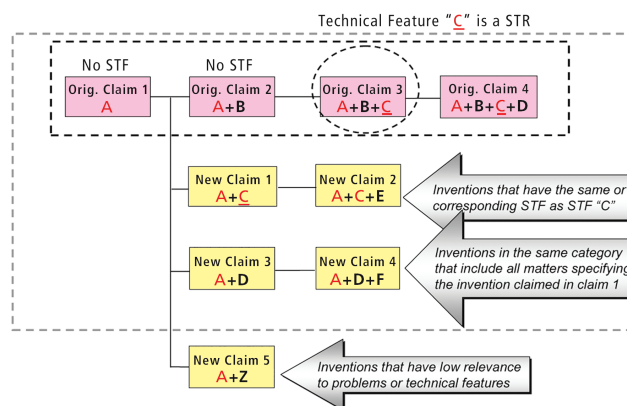
Assuming that all inventions identified by the matters described in the amended scope of claims are described continuously after all inventions for which the requirements for patentability such as novelty and inventive step have been examined before the amendment, the amended inventions that become the subject of the examination with regard to the requirements other than those of unity of invention in the light of Requirements of Unity of Invention fulfill the requirements of the shift amendment.

Put simply, whether all of the claims before and after the amendment fulfill the requirement of unity of invention at the same time is examined to decide whether the amendment changes an STF. This basic concept didn't change in the revised guidelines. Because the subject of the examination under the unity was expanded by the

revision, the scope that the requirement in the Patent Act Article 17 bis (4) does not apply was expanded.

This can be seen in the following example which is similar to the above cases.

For example, invention “A+B” was found in the prior art in the above case and “C” is and STF in the examination of original claim 1–4.



Since “inventions in the same category that include all matters specifying the invention for which the STF was first found” was the scope of the subject of the examination under the old guidelines of unity, amendment of new claim 1–5 was not allowed before the revision. After the revision, new claim 1–4 are now allowed based on the consideration of requirement of unity of the invention.

### Application

The revision of Examination Guidelines for the “Requirements of Unity of Invention” is applied to the examination on or after July 1, 2013 (Applications filed on or after January 1, 2004). The revision of Examination Guidelines for the “Amendment that Changes a Special Technical Feature of an Invention” is applied to the examination on or after July 1, 2013 (Applications filed on or after April 1, 2007).

All of Examination Guidelines including the revised guidelines are available in English (provisional translation) at [http://www.jpo.go.jp/tetuzuki\\_e/t\\_tokkyo\\_e/1312-002\\_e.htm](http://www.jpo.go.jp/tetuzuki_e/t_tokkyo_e/1312-002_e.htm)

## Defensive Publication – Protection against patent trolls and other ‘copy cats’

P. Rosenich (LI)

*Patenting an invention is not always the be-all and end-all. Creative individuals and companies – that often have a limited budget at their disposal only – are constantly looking for alternatives to patenting, in order to protect their interests as widely as possible. Creating prior art by means of a publication is a strategic and cost-effective alternative to one's own intellectual property right in case there are other inventors/developers around – at about the same time – with about the same or similar inventions or developments.*

Meanwhile, in addition to patent filings of large companies we see them publishing about 15% defensive publications. Especially in view of costs, particularly when considering patent examination in international patent families, decision-makers in R&D departments understand defensive publication as more and more attractive.

The advantage of a defensive publication is obvious: Good publishing houses that offer defensive publications issue a confirmation certificate regarding the date of publication. This is – in addition to normal publication data of publishers – an “insurance policy” for the developer/inventor. If necessary, such defensive publications together with a confirmation certificate allow them to fend off later filed intellectual property rights’ claims of third parties.

The defensive publication, however, can also protect against purely non-producing patent exploiters (previously termed as patent trolls): After a defensive publication, the non-producing exploiter may be prevented from earning high licence revenue for patent applications with a later effective filing date.

The United States of America is currently suffering unprecedented attacks from such patent trolls. On 4th June 2013, the White House announced major steps to improve incentives for future innovation in high tech patents <http://www.whitehouse.gov/the-press-office/2013/06/04/fact-sheet-white-house-task-force-high-tech-patent-issues>. US President Barack Obama referred the rocketing costs for companies performing research that had fallen victim to patent trolls. The initiative of the White House foresees attaching more importance to the role of defensive publications.

The world biggest closed market, namely China is likely to see similar developments very soon. Firstly because these millions of patent applications are costly – even if most of the fees would be paid by governmental institutions. Further because Chinese free riders often use the trick to file patent applications or utility model applications on technologies they see somewhere else in the world in order to then squeeze the original IP-creator with infringement court action.

### Patent protection – strategic considerations

The strategy discussion with patent lawyers includes an increasingly wider analysis as to what purpose and aim an invention is pursued. Quite often the research or development team is so involved in its own material and web of thoughts that a strategy consultation through IP-Managers is required. Experienced IP managers and/or patent lawyers with management experience are then brought on board to find the best solutions for dealing with all the ideas of an R&D department. This certainly includes defensive publications.

Depending on the way on which the publication is performed, defensive publications are cost-efficient and the published document can contain extensive information on technique and design. All data mentioned in the publication principally become state-of-the-art after publication. However – unlike the patent – neither patent claims, nor a clever and comprehensive representation of various versions of the invention are needed. For defensive publications components and details are sufficient in that the particular inventor/developer wishes to specifically manufacture or use unhindered.

### Examples

In the pharmaceutical industry, extensive records of internal manufacturing procedures and formulations are the norm. Nevertheless, it is often very difficult to prove whether they are copied by third parties – unless their manufacturing procedures and formulations become publicly known. Such records could, for example, be defensively published without additional cost – if it is expected that secrecy will not last forever or when competitors are also working on similar procedures or formulations. Patent applications would be equally suitable for a defensive publication in principle. However, the internal application process of a patent always consumes several months at least and without acceleration requests it lasts 18 months after filing. Up to then patent applications are usually confidential. Manufacturing methods which can't be kept secret are thus frequently published defensively. In case of third parties' later patent filings and if they then threaten with infringement actions, the defensive publication is applied as prior art against the third-party patents.

Particularly in the IT sector, the interaction of different patented and non-patented developments inhibits the additional granting of intellectual property rights. Here, defensive publications are a solution against what imitators might undertake in the patent arena. Open source

software developers therefore apply the defensive publication successfully; often in order also to provide evidence of their own early copyright.

In the machine building sector, often small (obvious) developments are protected using defensive publications, because patents seem too expensive.

### Time of the publication

For each defensive publication, confirmation of the publishing date is the most important basis of evidence for one's own state-of-the-art. Suppliers of printed media (e.g. the IBM® Technical Disclosure Bulletin), technical libraries (e.g. the German National Library, university libraries or the Technical Library in Liechtenstein) or electronic databases (e.g. [www.protegas.com](http://www.protegas.com) and [www.IP.com](http://www.IP.com)) provide different means of proof.

When comparing publication platforms, one should consider to what extent the publication is available to both the party publishing and researchers. The Appeal Boards of the EPA attach particular importance to internet publications – in contrast to libraries. For both types of institution it is sufficient that third parties can read the documents, regardless of whether third parties have actually used this facility or not. However, the Boards of Appeal require that the documents are accessible for search for at least three weeks if the publication can only be accessed via the internet.

Some persons may think that defensive publications are just alternatives to the patent system. This however is not right, as the author declares:

First of all a patent application or a granted patent as such does not positively allow an inventor to produce or use his invention. Especially then, when others have protected parts or the principle of the invention by patents or utility models. That means in turn, that a properly instructed inventor has to take care not only about his own invention but also about the patent activities of others. The EPC has an important provision, namely the Article 54(3), which does provide that earlier applications can be used against later filed applications. This however is – in contrary to the law in the USA and other countries – restricted to questions of novelty only. Under European practice an invention is novel as long as it is not predated by an identical disclosure (in other words: all features of a claimed invention need to be found in the prior filed application in combination in order to make that earlier application prior art against the later filed application. There must be identity, else a technological follower may be entitled to get a patent as well, even if his or her "invention" is very similar or even almost the same as the previous one. Such an unpleasant situation is solved by US-patent law, as questions of obviousness have to be considered also and not only questions of novelty with regard to earlier filed applications with a later publication date. This means in turn, that an inventor with the first idea might be hindered in practicing his invention due to patents stemming out of later patent applications. Just because the claims of the

later applications cannot be destroyed with novelty attack.

The only way out of this dilemma is to publish an invention at the same time when filing it the first time. If an inventor does perform a defensive publication he or she has the advantage of having a patent granted which provides positive protection for his or her invention and at the same time a later application or a later patent can be attacked also by using Article 56 EPC. For that reason well instructed applicants consider not only patent filing but in addition defensive publishing. Both elements complete a thorough IP strategy.

### The Chinese practise

The Chinese Patent Office and the Chinese Courts have a different perspective in this regard. They only require that documents have been available once on the internet (e.g. a home page that was online for just one day). On-line availability has to be notarised, as is the case for most evidence that must be considered in the Chinese system.

The author is of the view that the norm of the EPA's Boards of Appeal should be the better legal norm compared to said current Chinese practise, because, for example, availability for one day of a document on the internet only and as one's own home page, may prevent access for research. This is because a crawler (data robot) may not have visited this particular home page in order to provide researchable data from its content. On the other hand, the public does not know the home page address. The author therefore believes that the Chinese procedure does not indicate adequately that a publication has taken place.

### Consideration of evidence

Consideration of evidence is another problem with defensive publications. All the defensive publication platforms examined by the author essentially provide, as security, the security of the particular database or library respectively which, according to recognised principles, record publication data and document it clearly. In this regard, a new platform with the brand *protegas®* and some smaller non commercial publisher (mainly patent attorneys who do publish for their clients) go one step further: They provide even an additional certificate of publication. *protegas®* does issue a distinct publication number and such a signed certificate. It engages for that purpose an independent, official inspection body which documents that publication has taken place and thereby certifies this.

The author is of the opinion that this step by the *protegas®* platform provides increased assurance that a Judge or Examiner will recognise during their free consideration of evidence that a document was actually available. They do not have to rely on just the statement of a party or just some inherent proof of the publication platform – indeed they also have before them an inde-

pendent confirmation that the publication has taken place.

A large German industrial business had similar considerations many years ago. It reportedly attached defensive publications in display cases in front of its company headquarters, took photographs of them and had them certified by a notary public.

Publication of patent applications with a simultaneous request for early publication is generally well documen-

ted. However, it often takes months before a real publication takes place which is usually too long. This is because, empirically, similar inventions often arise within a time slot of just about a fortnight.

Summary: Defensive publications are an integral part of a modern IP strategy. Worldwide there are a number of ways of publishing defensively. The preferred option are those platforms that allow immediate publication and provide a high degree of evidence of publication.

## Book Review – Overview of the Appeal Proceedings According to the EPC

Meinders, Beckedorf and Weiss

Three members of the Boards of Appeal at the EPO have produced a useful book setting out the basic structure of the procedures before the Boards of Appeal at the EPO. It is very usefully set out in each of the EPO's procedural languages. It is a welcome addition to the literature on appeals before the EPO, especially for those who are not often involved in appeal proceedings.

The book is not very long nor is it very detailed. However, it sets out in very clear terms the various stages of the appeal process, including an explanation in Section 10 of what the Boards of Appeal do "behind the scenes". Moreover, it provides good footnotes with references to the EPC and its Rules, important decided cases, the Guidelines and other texts so that good guidance is given for those who want or need to have a deeper understanding of the procedures before the Boards of Appeal. The book makes it clear that those

appearing before Boards of Appeal at the EPO need in particular to be familiar with the Rules of Procedure of the Boards of Appeal.

This book will be very useful for practitioners who have not had much experience of proceedings before the Boards of Appeal and will also be very useful for informing clients of what to expect in appeal proceedings. More experienced practitioners may find the book useful for training candidates and less experienced colleagues.

The book has a few minor points where it could be improved. For instance, at places, the English (which is the language in which it was written) is a little obtuse and it refers to a now outdated version of the Guidelines. However, these do not detract from the general clarity and usefulness of the book as a guide for the inexperienced.

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

<b>Disziplinnarrat (epi)</b>		<b>Disciplinary Committee (epi)</b>		<b>Commission de Discipline (epi)</b>	
AL	– Melina Nika	GB	– John Gray	MT	– Antoine Camilleri
AT	– Wolfgang Poth <sup>oo</sup>	GR	– Athanasios Tsimikalis	NL	– Arjen Hooiveld
BE	– Thierry Debled	HR	– Dina Korper Zemva	NO	– Elin Anderson
BG	– Vesel Pendichev	HU	– József Markó	PL	– Alicja Rogozinska
CH	– Raymond Reuteler	IE	– Shane Smyth	PT	– Antonio J. Dias Machado
CY	– Vasiliki A. Rousounidou	IS	– Árni Vilhjálmsson**	RO	– Calin Pop
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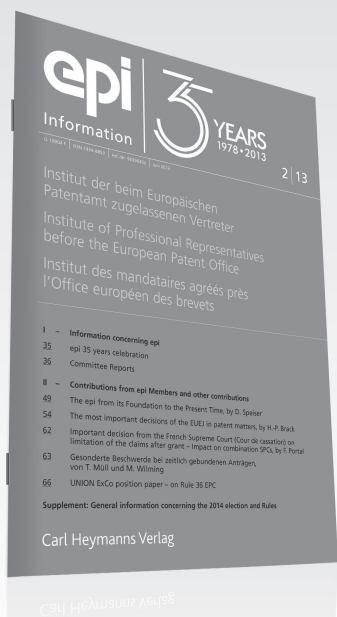
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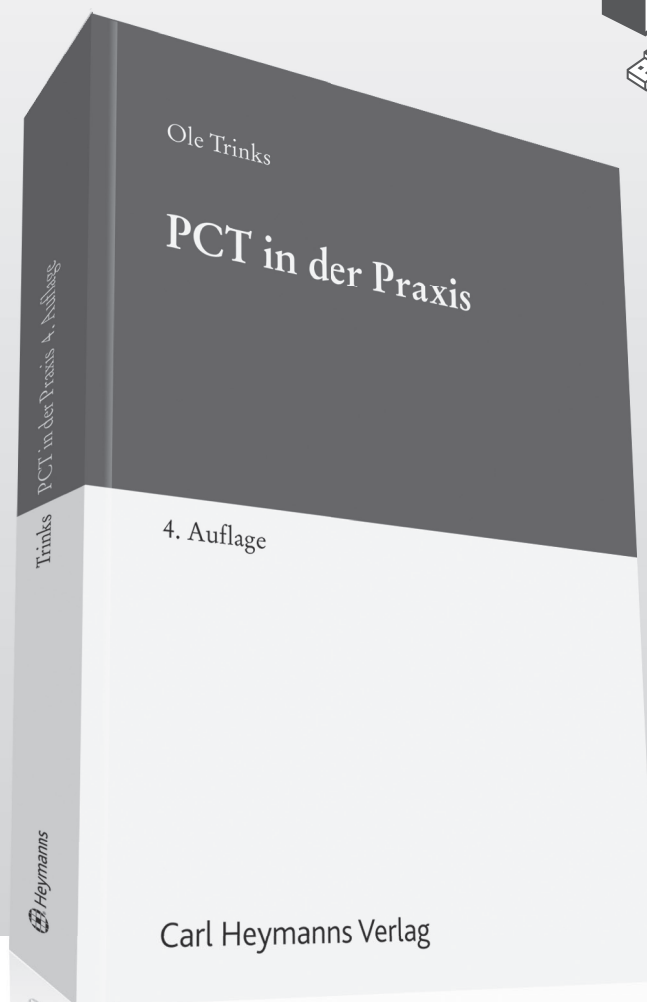
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