

Report from the 79th Council Meeting (14 November 2015)

By Marc Névant (member of the Editorial Committee)

A full complement of members attended the 79th meeting of Council in Cologne and a pre-event on Friday, 13th November, namely a seminar entitled “Strong patents as a basis for successful patent litigation”. The panel of speakers included Dr Peter Kather (lawyer), Dr Dirk Schulz (European patent attorney) and Dr Tilmann Büttner (Judge at the Düsseldorf Court). The panellists addressed various topics, such as assessing the strength of patents and designing defensive or proactive strategies, notably in the context of the German bifurcation system. As was already the case for the first seminar organized in Barcelona (78th Council meeting), the event was very successful, instructive, and enjoyable for all participants who gained an insight of how litigation proceedings before the UPC could eventually unfold.

As to the Council meeting itself, President Tangena made an opening statement to express, on behalf of epi, its deepest sympathy for the victims of the terrorist attacks in Paris which occurred the day before, and for their families.

Axel Casalonga (chair of the LitCom Committee) gave a brief report on the status of the Unitary Patent and the Unified Patent Court (UPC). The Rules of procedure of the UPC have been finalized in August 2015 but have yet to be adopted by the Preparatory Committee. It is to be noted that representation before the UPC is now open to all European Patent Attorneys. Council was then informed that the Registrar and some local/regional divisions could be operating as soon as June 2016. . It was assumed that “opt-out” would be possible once the Registrar is up and working although the legal effect of the opt-out would be the date when the UPC agreement actually enters into force.

Antero Virkkala (chair of the Online Communication Committee) briefed Council on the problems arising from eDRex, i.e. the electronic Drückexemplar generated by the EPO by means of OCR. Further details can be found in issue 3/2015 of epi information. In short, although the EPO claims that OCR is error-free, this is not the case and one error every ten pages is to be expected. It is worth noting that when the Examining Division makes amendments in the text proposed for grant,

the authentic text is the annotated eDrex, not the clean copy thereof. It also appears that some fonts (e.g. Times, Courier, Arial) can induce OCR errors; on the other hand, Cambria seems to be OCR-friendly.

Pascal Moutard (chair of the By-Laws Committee) presented proposals to amend the By-Laws with respect to (i) the possibility for representatives (other than those from France, Germany and the UK) to have a version of the title “European Patent Attorney” in their own national language, and (ii) the requirement for a double signature (within the Presidium) for all activities with a financial impact above a given threshold value. These proposals will be taken up further by the Committee with the view of having Council vote thereon during the next meeting.

Luis Alfonso Duran and Chris Mercer, on behalf of the Reporting Group, presented the results of the survey that had been sent out to Council members during the summer. The work of the Reporting Group is discussed later in this issue. Based on their work, the Reporting Group made three proposals to Council.

The first proposal was to reduce the size of the Board to seven members with a voting right, i.e. the President, the two Vice-Presidents, the Secretary General, the Treasurer, the Deputy Secretary General, and the Deputy Treasurer, and invited guests (the chairs of the EPPC, PEC, By-Laws and epi finances committees) with no voting right. Other chairs of committees would be invited on an ad hoc basis. The Council adopted this proposal.

The second proposal was to designate Rapporteurs within the Committees to brief the Board and the Council on topics of interest, as they arise. The Council also adopted this proposal.

The third proposal was to reduce the size of the Council as of the next election in 2017; three scenarios were presented for the allocation of seats. After a fruitful discussion, the Council voted in favour of a reduction of the size of the Council; the Reporting Group was asked to make further proposals to implement this decision, the aim being to take a decision during the next meeting.

The Treasurer informed the Council of a deviation of the 2015 budget that had been presented during the last Council meeting. A deficit of about 390 kEUR was now expected. The reasons for the higher than planned deficit includes *inter alia* an increase in the expenses of the Committees,

and higher costs for the organization of the Council meetings. The Treasurer pointed out that epi would thus be in deficit for consecutive years (2014 & 2015), and suggested that steps be taken to improve the financial situation in 2016. The draft budget for 2016 was then presented with various scenarios depending on the amount of the subscription fee. A discussion followed, at the end of which the Council voted in favour of an increase of the subscription fee by 30 EUR, which should result in a balanced budget for next year. The student fee will also increase by 15 EUR.

Mr Leyder (chair of the EPPC) informed the Council that the EPO was about to launch a public consultation on deferred examination, i.e. the possibility to wait for a certain period of time (a few years) before actually requesting examination. Opinions were mixed amongst the Council members as to the interest, and the EPPC will draft a position paper on behalf of the epi. Comments and suggestions in that respect can be sent at EPPC@patentepi.com.