

Report of the European Patent Practice Committee (EPPC)

F. Leyder (BE), Chair

This report completed on 13.02.2015 covers the period since my previous report dated 07.11.2014.

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 six permanent sub-committees (EPC, Guidelines, MSBA, PCT, Trilateral & IP5, and Unitary Patent). Additionally, *ad hoc* working groups are set up when the need arises. Thematic groups are also being set up.

1. G3/14

In my previous report, I reported that no *amicus curiae* brief had been timely sent by **epi** for pending case G3/14, because no volunteer had stepped forward. When a volunteer later circulated a draft, the discussion quickly involved many members, and a brief was finally sent (late) on 24.11.2014. It has already been published in **epi** Information 4/2014, pages 162-4.

2. EPPC meeting

The EPPC met on 02-03.02.2015. The Committee discussed guidelines and unitary patent protection (see below), and held preliminary discussions in preparation of the PCT Working Group (a meeting of the PCT sub-committee is being planned for when the working papers will be available). The **epi** Secretariat had organised a dinner.

On the second day, the EPPC discussed the independence of the Boards of Appeal in the light of R19/12, and agreed on the sending of a proposal. The EPPC was then honoured by the visit of our President, who led a discussion on the matter of hand-written amendments during oral proceedings. Further topics handled during the meeting include patents and standards (see below), poisonous priorities and divisionals (in preparation of the expected referral to the Enlarged Board of Appeal)

3. Patents and standards

In response to the public consultation on "Patents and Standards" launched by the European Commission (DG Enterprise), the EPPC prepared observations that were sent on 06.02.2015 (the deadline which was initially 31.01.2015 had been extended to 15.02.2015). The observations are attached.

4. Enlarged Board of Appeal

After R19/12, the question of the independence of the Enlarged Board of Appeal (EBoA) in review proceedings has become of interest. This prompted the relevant sub-committee to trigger the sending of a letter to the Chairman of the AC to advocate for having the EBoA comprise one external member in its composition under Rule 109 (2) (a) EPC and three in its composition under Rule 109 (2) (b) EPC.

5. Thematic groups

Two thematic groups are up and running: one in the field of Pure and Applied Organic Chemistry (PAOC), which includes medical uses, the other in the field of Computer-Implemented Inventions (CII). The fields covered by thematic groups should correspond to Principal Directorates: the CII group is thus being expanded to Information and communications technology (ICT). At the EPPC meeting, we started setting up a group dealing with the mechanical field.

Thematic groups are normally composed with EPPC members. Since we appear not to have enough members to set up all thematic groups, I made a call for candidates amongst the Council members at the last meeting. Council members who are specialising in one of the technical fields are kindly invited to contact me at eppc@patentepi.com.

6. European patent with unitary effect in the participating Member States

The actions of Spain against both Regulations (C-146/13 and C-147/13) were still pending before the Court of Justice of the EU at the time of finalising this report.

The SC (Select Committee of the Administrative Council of the EPOrg) held its 11th meeting on 09.12.2014.

One agenda item was particularly relevant to the EPPC, namely a decision on the Draft rules relating to unitary patent protection. The Committee in principle approved draft Rules 1 to 24, agreeing that draft Rule 25 is put into brackets and would be addressed in the context of further discussions of the budgetary and financial issues of unitary patent protection. The consolidated version of the draft Rules has been made available on the EPO website (<http://www.epo.org/about-us/organisation/select-committee/documentation.html>).

The SC then resumed discussions on simulations relating to fee levels, and noted some presentations given by the EPO on simulations of unitary fee levels and their impact on EPO income.

In closed session, the SC held a first exchange of views on the distribution key for the repartition of renewal fees between the participating member states. The 12th SC

meeting will deal exclusively with the methodology relating to the distribution key, again in closed session, on 19.02.2015.

The next meetings would be held in the margins of the AC meetings in March and June 2015 and of the BFC meeting in May 2015. The June meeting would see final decisions on all items.

7. SACEPO/WPG11

The annual meeting of the Working Party on Guidelines was held on 25.11.2014. Our delegates are happy about the constructive spirit of the WPG meetings. Of course, not all of our proposals for amendment of the Guidelines were accepted, but we will continue to press for the ones we feel most important.

Noteworthy is that the EPO proposed to introduce a separate set of Guidelines for PCT procedures before the EPO. This was warmly welcomed by the users, because the Euro-PCT Guide for Applicants does not have the status of Guidelines. These "PCT-EPO Guidelines" would follow the structure of the "Guidelines for Examination in the EPO", and would contain those parts of the Internal Instructions relating to PCT procedures which are of interest and importance to the public.

The Guidelines sub-committee would like to remind all **epi** members that we appreciate any comments/suggestions at any time during the year; please send them to its attention at eppc@patentepi.com.

8. SACEPO/WPR 12

We have received the invitation to the 12th meeting of the Working Party on Rules, to be held on 31.03.2015, but have not received the agenda at the time of finalising this report.

As promised, the EPPC will provide its updated "wish list" for rule amendments for consideration at the meeting.

9. Next meeting

The next EPPC meeting is intended to take place after the summer. In the meantime, in response to an offer from the EPO, a Partnership for Quality meeting will be organised with quality and IP5 harmonisation as key topics.

For further information see attachment in the section "Articles", page 14 "Observations of the **epi** on Patents and Standards"