

The LitCom debated the proposed ceilings for the recoverable costs. These apply per instance and party and are hence not dependent on the number of representatives.

After discussion, the LitCom decided that the ceiling should be less progressive. Where the value of the action is more than 30 Million, the ceiling should be 1,5 Million and not 3 Million as proposed in the draft. This would also be in line with the table for the value-based fees.

The recoverable costs and the value of the dispute if there are multiple parties on one side was also discussed. This could happen for instance, in the case of generic companies in a pharmaceutical case that file a revocation action. It was suggested that the UPC should carefully consider such situations of multiple parties in the assessment under Rule 152 which provides that only "reasonable and proportionate costs for representation" can be recovered.

A draft **epi** position paper was prepared on the basis of the discussion held during the meeting of the Litigation Committee. This draft was approved by the President of the **epi** and posted in due time on the UPC website in answer to the consultation. (this paper is available on the **epi** website)

IV. Code of Conduct for UPC Representatives

The Preparatory Committee intends to attach a Code of Conduct (CoC) to the Rules of Procedure (see Rule 290(2)). Within the **epi**, the Professional Conduct Committee (PCC) takes the lead in this regard. The Litigation Committee may assist the PCC by providing ideas and reviewing the draft.

A fundamental question is whether to have separate Codes for lawyers and EPAs or a unified CoC. Furthermore, it must be decided whether there should be a stand alone CoC or a complementary CoC with reference to the existing Codes.

The Litigation Committee is in favor of a single CoC for both lawyers and EPAs. An independent disciplinary body for violations of this code should also be considered.

It was noted that Art 48(3) UPCA only provides for a list of EPAs kept by the UPC Registrar. There is no such list for lawyers (Rule 286 RoP does not foresee any legal consequences). Thus, it is not possible to strike lawyers from the list of representatives. However, according to Rule 291 RoP, a representative may be excluded from proceedings.

It was also stressed that the UPC CoC should address the specific situation of representatives working in industry.

Report of the European Patent Practice Committee (EPPC)

F. Leyder (BE), Chair

This report completed on 12.08.2015 covers the period since my previous report dated 07.05.2015.

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 reserved for 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. Independence of the Boards of Appeal

At the AC meeting of 25-26.03.2015, there was presented a paper (CA/16/15) submitted by the President of the EPO, entitled "Proposal for a structural reform of the

EPO Boards of Appeal (BOA)". On behalf of **epi**, our delegates to the AC meeting expressed that we would not support moving the Boards, even less outside Munich, and that we would need more time to review in detail these proposals

Paper CA/16/15 has been included in the accumulated file for C78, with a request for comments by Council members. An *ad hoc* working group has been set, which prepared a draft answer. Mr Kongstad, Chairman of the Administrative Council, agreed to a meeting on 15.06.2015 with a delegation of **epi**, headed by our President, to exchange views. The final draft was submitted to the EPPC for review. The **epi** response to the consultation is published in this issue.

The *ad hoc* working group will shortly review the Questionnaire on the Reform of the Boards of Appeal of the Association of the Members of the Boards of Appeal of the EPO (available on the AMBA website <http://www.amba-epo.org/reform>).

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

The 14th SC meeting (26.–27.5.2015) dealt with various financial issues and (in closed session) the distribution key. The SC held an exchange of views on an outline of possible provisions for the Rules relating to Fees for Unitary Patent Protection (RFeesUPP)

The 15th SC meeting (23.–24.6.2015) dealt with the level of renewal fees, a proposal on the level of renewal fees, draft Rules relating to Fees for the unitary patent, a safety net provision for late rejections' of a UPP request, and (again in closed session), the distribution key. The SC endorsed the "True Top 4" proposal wherein the renewal fees applicable to the unitary patent correspond to the sum of the renewal fees currently paid for the four participating Member States in which European patents are most frequently validated today (DE, FR, GB, NL).

The 16th SC meeting was planned in September, but has been postponed to 13.–14.10.2015 to take into account the request of Italy to join the enhanced cooperation. It is expected that the whole package, comprising the level of renewal fees and the distribution key, can be finalised and adopted in the autumn.

3. Committee on Patent Law

The 45th meeting of the Committee on Patent Law (CPL45) will take place on 15.9.2015.

The draft agenda was not yet available at the time of finalising this report, however I expect the amendment of Rule 82 EPC discussed at the 12th meeting of the Working Party on Rules to be submitted to the CPL. This amendment relates to the requirement for typed documents in opposition: it is proposed to add a third sentence to Rule 82(2) EPC *"Where decisions under to Article 106(2) or Article 111(2) have been based on documents not complying with Rule 49(8) the proprietor of the patent shall be invited to file them within the three month time period."*

4. 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). A meeting with directors in the field of PAOC took place on 9.6.2015; the draft report is still to be agreed. A meeting with directors in the field of ICT will take place on 2.12.2015.

Thematic groups are normally composed with EPPC members. Since we appear not to have enough members to set up all thematic groups, my call for

candidates amongst the Council members is still open: Council members who are specialising in one of the other technical fields are kindly invited to contact me at eppc@patentepi.com.

5. Guidelines

The Guidelines Sub-Committee will meet in the offices of its chair, on 26.–27.8.2015. The meeting will be longer than usual, because the EPO has submitted for our review a separate set of Guidelines for PCT procedures before the EPO.

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.

6. PCT WG

The PCT Working Group was established by the PCT Assembly to do preparatory work for matters, which require submission to the Assembly. Since 2008, the Working Group meets once a year in Geneva. The 8th Session of the WG took place in Geneva, on 26.–9.5.2015. The documents relating to this session, including the Summary by the Chair, are available on the WIPO website:

http://www.wipo.int/meetings/en/details.jsp?meeting_id=35593

It is recalled that Council approved a position on "National phase entry using ePCT" during its meeting in Barcelona on 25.04.2015 (the position was published in issue 2/2015 of **epi** Information). The Summary by the Chair reported as follows about this agenda item:

97. The Working Group noted that the International Bureau intended to prepare a first draft interface in the Demo ePCT environment, likely in autumn 2015, which would help to inform more concrete discussions with potential pilot Offices and users. It further noted the intention of the International Bureau to invite participation by pilot Offices and users, by way of a PCT Circular, in the near future.

7. MSBA

The series of consultative meetings of user representatives with the Boards of Appeal will continue with the 22nd MSBA (Meeting of SACEPO with the Boards of Appeal) on 7.10.2015.

One of the topics of the meeting will be the current proposals for the institutional reform of DG3. Another will no doubt be the paper "Increasing Formalism in Appeal Proceedings – The EPO Boards of Appeal Headed to a Mere Reviewing Instance?" by G. Anetsberger *et al.* published in **epi** Information (issue 2/2015, pp. 63-70). The other topics were not yet known at the time of finalising this report.