

Report of the 75th Council Meeting in Prague, 16 November 2013

The meeting was opened by the President, Mr. Tony 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 74th 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. W. 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 Plans (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/CEIPI/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 Decision 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 75th Council meeting, the President closed the meeting at 17:33 pm.