

77th Council Meeting, Milan, 15 November 2014

Terry Johnson, Editorial Committee

The 77th Council meeting brought together about 130 patent attorneys from the 38 member states. Under the good guidance of the President, the Council discussed the household of the Institute and the ongoing process to bring the Institute to a higher level of professionalism. The bookkeeping was improved so as to make the financial situation more transparent. Importantly, the Institute has in the past years increased its staff for making committees more efficient. In relation thereto, the Institute has rented more space within its building. The Council agreed with the proposed budget in 2015.

A major area of improvement is still the website and the information provided to all epi members on the ongoing activities of the epi in the field of education and statements made on behalf of the epi by the various committees. This was stressed also in relation to the outcome of the questionnaire sent out by the epi Reform Group. One of the decisions made in this respect is to convert the epi Information into a digital publication. This process will take place from 2016.

In view of the increased staff and budget, a first discussion took place on an increase of the membership fee. A decision on an increase of the membership fee starting in 2016 will be made at the next Council meeting. It seems that a higher membership fee than the current EUR 160 per member is feasible, but that the members should be made more aware of the activities and the benefits.

The epi Reform Group

Mr Durán Moya presented, as chair of the epi Reform Group, the results of the questionnaire sent out to epi members and gave several recommendations. He was happy to state that 20% of the epi members had filled in the questionnaire. The results demonstrated that epi is less visible than desired, and that its function as a lobby organisation should be increased. As to the epi Information, highly desired were contributions on articles on the European Patent Practice and any developments in relation to European Patent Law. Mr Durán Moya concluded that the current suggestions are not radical and asked the Council to continue the work in the epi Reform Group up to the next Council meeting. A more detailed report will be presented in a future issue of the epi Information. The Council approved the drawing-up of a Communication plan and actions on how to improve the provision of information to members.

Professional education

The Professional Education Committee (PEC) presented the progress on the cooperation between the epi and the EPO (particularly the Academy) in the organisation of seminars and the financial arrangements thereof. This is a positive development. It not only allows better information to the epi members on the EPO educational activities, but also provides the opportunity for both EPO staff and epi members to be invited as speakers at conferences. For 2015, the following conferences are planned:

- on the Unified Patent Court (UPC)

Chair Terry Johnson

epi Secretariat · Bayerstrasse 83 · 80335 Munich · Germany
Phone +49 89 242052-0 · Fax +49 89 242052-20
info@patentepi.com · www.patentepi.com

Direct Phone: +44 1798 869238
EditorialCommittee@patentepi.com

- on added matter (Art 123(2) EPC)
- on Opposition and Appeal

These conferences will be held more than once in various locations throughout Europe.

In addition, the epi will be responsible for exam preparation.

An important proposal was to merge the fee for pre-registration for the exam into the epi student membership fee.

European Professional Practice

Mr Leyder presented several activities of the Committee, in relation to the UPC, to PCT and an annual meeting with the Board of Appeal.

He obtained approval to present a paper to the Board of Appeal to slightly revise Article 12(4) of the Rules of Procedures, for better legal security, wherein the word 'could' in 'could have been submitted earlier' is to be replaced by 'should'. In relation thereto, an important observation was made on the point how to deal with documents that were not admitted into the proceedings by the first instance (i.e. opposition). Here the Board replied that non-admittance should be addressed in the Grounds of Appeal.

Mr Leyder further will send a paper to the Enlarged Board to request that at least one external member is involved in the Review Procedure so as to create greater independence (in view of R17/12). In fact, Mr Leyder pointed there out that the review is currently a review between peers, i.e. of chairmen of Boards of Appeal.

Litigation and Other Committees

Mr Casalonga presented a draft epi paper in relation to the four Rules of the Unitary Patent Regulation, to be discussed in a hearing at the end of November. Mr Casalonga made a number of useful observations on Rule 5 on the Opt Out, so that the process is clarified. As to Rule 14 on the language, Mr Casalonga proposed removal of the draft Rule 14(2)(c), in view of the created complexity. He further would specify comments to the Rule 286(1) on representation.

Ms Declercq gave an overview of developments in the field of biotechnology. Most important is that the epi Legal Advisor has coordinated the generation of a summary of the national laws on plants.

Changes to the EQE

Ms Leissler-Gerstl mentioned that the Supervisory Board decided to change the A/B paper in the sense that the distinction between electromechanics and chemistry is given up. Mr Tangena added that this is a decision made by EPO already. He would have preferred that the proposal had been discussed first in Council. Thereafter, the Council expressed its surprise and many members expressed their disagreement. In the exchange, it became clear that the arguments in favour of this change are that there are many subfields, and that the A/B paper does not test technical knowledge. The counterarguments are however that there are two main areas: electronics, mechanics and software on the one hand and chemistry and

biotechnology on the other hand. Furthermore, the exam is not for lawyers, but for candidates with technical or scientific background.

Ms Leissler-Gerstl reported that there are further plans to revise the EQE. A first proposal is a multiple choice exam. The Council strongly opposed multiple choice for several reasons. Some of those arguments are that multiple choice testing is merely knowledge testing rather than skills. It was further observed that making good multiple choice exams is extremely time-consuming, and that it is not representative of the work in the profession. Furthermore, it could be harmful to reputation of the examination.

A second proposal is that a paper be marked by one examiner rather than by two examiners, as currently. It was observed that two examiners are certainly desired for training new examiners and in situations which are close to the pass/fail limit (i.e. between 40-60 marks). Another view was that a second marker is anyhow needed, because even a first marker's view of clearly fail or pass may not be right. Also a single marker might lead to more appeals. Furthermore, half of the examiners are EPO staff, and the other half are patent attorneys. It would not be appropriate for exams to be reviewed by a single marker who is not part of the profession. Particularly, the epi members who have been markers expressed that they found that two markers are indispensable. The overall view was therefore in favour of two markers.

Further proposals were discussed to increase the pass rate. They are all intended to motivate people to prepare appropriately. Proposals were limiting the number of sittings, a limited validity of passed papers, fee increase for resitting. It was observed that there is no good data provided by the EPO, so it would be hard to make useful comments. It was further observed that it was not clear what the effect has been of the changes to the EQE of five years ago. One comment made was that candidates that need to resit often have a specific problem that they do not discover. If a higher fee were requested, it should therefore be used to provide training and support. The Council rejected with a big majority any such proposal that would restrict the options of candidates.