

Report of 73rd Council Meeting,
Hamburg, 10th November, 2012

T. Johnson (GB)
Editorial Committee

1. President Tony Tangena opened the meeting at 9am. The Minutes of the 72nd Council Meeting in Bucharest were adopted with minor amendments.
2. **Legal Adviser:** the Institute has recently appointed a Legal Adviser, a new post in the **epi**. The President then introduced the appointee, Nicole van der Laan. She will report to the President and assist Committee chairmen in their work. Council welcomed her, and wished her well in her new job.
3. **EPCC:** Francis Leyder introduced an **epi** position paper on R36 EPC. Briefly the Rule was amended by the EPO purportedly to prevent “abusive” behaviour by certain applicants, particularly in the filing of divisional applications, which have allegedly “swamped” the EPO. The **epi** position paper proposes that R36 EPC should revert to its previous wording, namely allowing divisional applications to be filed during the pendency of the parent European application. Council approved sending the paper to the EPO.
4. **PQC:** there was a long discussion on Continued Professional Education (CPE), in particular as to whether CPE should be mandatory for members. The EU Commission is apparently considering the introduction of CPE requirements on a profession- by-profession basis, having already done so for doctors and lawyers. PQC has the view that the **epi** should have a Regulation and Guidelines in place in anticipation of any EU Commission initiative, and set up a Working Group to study the topic. The Working Group has produced a draft Regulation and Guidelines, Council noting that CPE would be mandatory, and that 12 hours CPE would need to be recorded annually. Simon Wright (GB) gave a presentation for the guidance of Council on the GB national experience of CPE (which has an annual requirement for 16 hrs. recorded CPE).
PQC proposed that the Working Group complete its work in December 2012, and that the Board and Council decide respectively in March and April 2013. If the outcome is positive, the Code of Conduct would be amended accordingly and would be put to Council for adoption in November 2013, with the aim of bringing CPE into force in or by January 2015.
Council approved this work, and the time-table.
The terms of Reference of the committee had been revised in conjunction with the By-Laws Committee.

Studentship: revised Rules governing Students were presented to Council, in particular stipulating that the studentship subscription fee for the first application would be 50% of the then current **epi** annual membership fee, and that students are entitled to a 50% reduction for **epi** training events.
Council approved the revised Rules.

EPO Candidate Support Project (CSP): Council agreed to **epi's** continuing support for CSP, which has the specific aim of ensuring that EQE candidates in countries where the number of EQE representatives is less than 5 attain an adequate level of knowledge such that they can pass the pre-exam and then the EQE.

Director of Education: following the resignation of the DOE, PQC considers that no replacement is required in the immediate future. Council supported this position.

5. **LitCom:** Mr Axel Casalonga gave a comprehensive update on the current position. He referred to the seat of the Central Division of the UPC (Paris) and its two sections (London and Munich).

Articles 6 - 8 of the Agreement on the UP. Council approved the **epi** position that the Articles (which relate to infringement and exceptions to infringement) should be deleted.

Article 28 of the UP Agreement: The Committee considers that the current wording (relating to representation) is too broad, and proposes that it should be tied to Art 134(1) EPC and Art 134 (3) (a)-(c), Rule 366 EPC remaining to interpret the title "patent attorney".
Council approved the proposal.

Next steps relating to the UPA and UPC: New draft Rules of procedure are expected from the EU Commission. LitCom will monitor the position. In addition, LitCom will produce with input from CEIPI a paper on Certificate Qualification for Council to consider.

Council approved the LitCom report.

6. **Disciplinary Committee:** Mr Fröhling reported, following which there was an extended discussion on whether the EPO should publish all decisions of the Disciplinary Board and Disciplinary Board of Appeal with the name of the representative the subject of a disciplinary action, and in addition whether any person with a legitimate interest in a disciplinary case should be informed as to the status of the representative
Council referred the matter back to the Committee for further study.
7. **Internal Auditors report:** Council was advised that the accounts for 2011 were being finalised with the assistance of external auditors so the Board could be discharged. Council approved this work, and then approved a proposal from the Treasurer that part of **epi** funds could be invested in funds other than the Euro.
8. **President's report:** Tony Tangena referred to a previously-circulated list of meetings he had attended since the last Council meeting, expanding on this in his interventions and contributions during discussion of relevant Agenda items.
9. **Secretary General's report:** João Pereira da Cruz referred to the appointment of the **epi** Legal Advisor as of 1st October, 2012 (see above).

In addition he advised Council of the implementation of a new automatic invoicing system, with commensurate updating of the **epi** IT system. This latter was work in progress.

He also mentioned the project to establish a new website (see report below).

As of 26th October, 2012 there were 10.656 **epi** members on the List of Professional Representatives before the EPO.

10. **Treasurer's report:** Claude Quintelier reported that he was discussing with the Finances Committee procedures for upgrading financial information provided to the Board, and Committee Chairmen. Council approved this work. He also introduced the Budget for 2013, which Council approved.

11. **Electoral Committee:** Mr Markus Müller reported on the work the Committee had been doing in conjunction with the By-Laws Committee to amend the "Rules for Election to Council", the Terms of Reference of his Committee also being revised as a result. The election Rules' amendment were basically to cater for those countries where there was a change from a split to a unitary constituency, self-nomination, extending the grace period for nominations, to provide for an initial resolution phase in the event of an objection, to define the Secretariat's involvement in the elections more clearly, and to allow submissions by fax and email in exceptional circumstances. The draft Rules and Terms of Reference had previously been circulated. After discussion, Council approved them for adoption.

Mr Muller also reported that his Committee was discussing with the Online Communications Committee (qv) the introduction of electronic voting, including the ability to hold an e-vote in a member state to change a constituency from split to unitary, and vice versa.

Council approved the continuation of this work.

12. **By-Laws Committee:** Dieter Speiser confirmed the action taken in conjunction with the Electoral Committee.
He also reported to Council that his Committee had revised Art 4.3(a) and Art 5.2 of the By-Laws respectively to cater for the election of a subsequent substitute member of Council when an existing substitute ceases to hold office (Art 4.3 (a)), and to avoid the loss of Council members caused by a change of constituency or a change of electorate by removing these causes from Art 5.2.
Following discussion, Council approved the revised Articles.

Dieter Speiser announced to Council that he would be retiring as Chairman and from the Committee as of the next Council meeting and that his successor would be Jasmin Jantschy, who would take over as Chairman as of the current meeting.

The President then gave a warm encomium to Dieter Speiser in recognition of his services to **epi** as a Council member, Past President, and as Chair of the By-Laws committee, and presented him with a gift on behalf of Council, which confirmed the encomium with acclamation.

13. **New Website:** A presentation was given to Council by Mr Jan Imhoff on behalf of Agentur 22, the company engaged to provide the new website. He gave a demonstration of the currently 'live' part (95% of the final version) which it was hoped

would be launched in Q1 2013, the project having started from scratch in November 2011. there was a lively discussion, after which Council thanked Mr Imhoff for the presentation and approved the work done to date and the continuance of the project.

14. **Online Communications Committee:** Mr Antero Virkkala reported that the main work of his Committee was the evaluation of e-voting software in conjunction with the Secretary General and the Electoral Committee. As a result, "OAdeo" software of a Belgian Company, BlueKrypt, seemed to be the most suitable for **epi's** needs. Council approved the continuance of the evaluation work.
15. **EPO Finances Committee:** Mr Jim Boff reported. The latest figures show that direct EPO filings appear to be steady, Regional Phase entry from the International phase is now about 50% of PCTs, compared with 55% - 60% previously.

Interestingly, 3rd party observations were up by 50%.

16. **Harmonisation Committee:** Francis Leyder reported that vice-president Gabriele Leissler-Gerstl and he had attended the 42nd CPL meeting just before which the EPO released a report focusing on 4 topics, (1) grace period; (2) 18-month publication; (3) prior art effect of secret prior art (or treatment of conflicting applications); and (4) prior user rights. The EPO is preparing a questionnaire for user consultation. The Committee will prepare **epi's** comments. In relation to the grace period, John Brown gave a brief presentation on the topic and how **epi's** position, currently against such a concept, might be developed, there being various pressures for change, such as international and European pressures, pressure from some **epi** members for change, pressure from clients of EPAs, and the need not to be left out of discussions. Council approved the continuing work of the Committee in relation to the EPO report and the preparation of a response to the questionnaire.
17. **Biotech Committee:** Ann de Clercq reported. The EPO had introduced a new examination practice for human embryonic stem cell applications following C-34/10 (CJEU 2011 decision on stem cells). The Committee proposes to send a position paper on the topic to the EPO requesting the implementation of C-34/10 in a sensible manner. The EPO is developing new procedures for dealing with sequence listings. **epi** has commented, but there will be further developments, for example a Bio-Sequence Search Sequence which will be delivered to examiners for testing in December 2012. There is still concern in the committee about the frequency with which disunity objections are raised in bio-tech cases. The Committee will continue to urge the EPO to be more sensible when considering raising a disunity objection, which can also lead to subsequent dependant claims not being searched. The Committee is also still of the view that the EPO should continue with the current deposit systems with expert solution, with consequent maintenance of the current list of independent experts.

With regard to the 'wrinkly tomato' case, the Committee proposes to prepare an amicus curiae brief, in conjunction with the EPPC for submission to the EPO by the reply date the end of November, 2012. Council approved the report and the actions proposed in it.

18. **AOB:** The President remarked that he will look at changing the format of Council meetings to say 1.5 days in order to provide on occasion sufficient time to get through a lengthy Agenda.
He closed the meeting at 5.50 pm. The next Council meeting (the 74th) is scheduled to take place in Vienna, on 19th/ 20th April, 2013.