

Report of 71st Council Meeting, Darmstadt, 5th November, 2011

President Tony Tangena opened the meeting, his first full one since being elected to the Presidency of the Institute. In opening, he welcomed delegates from Serbia to their first meeting, proposed epi's delegates to SACEPO, advised Council that two epi members of the Disciplinary Board of Appeal had to be proposed to the EPO, and that members of the Institute's Disciplinary Committee had to be appointed. He then presented his **President's Report**:

He had previously circulated a note of meetings he had attended since taking office, which was accepted by Council. In addition, he reported that the Institute website was being updated, it would when finalised be accessible to members by an individual's username and password. Further, the membership should in future be able to access communications to Council via the Extranet.

He mentioned too the appointment of Karl Rackette as Director of Education (see below), and finally reported on discussions he has had with the EPO since taking office. In short, the EPO wants a transparent and open dialogue with the epi, stating that it sees the Institute as its main partner in providing services to applicants.

Secretary General:

Joao Pereira da Cruz gave his first report since becoming Secretary General. He too had previously circulated a summary of his activities since taking office. The present Institute offices provide an excellent working environment. The Institute's IT systems need to be upgraded (see President's report above), but care needs to be exercised as the epi databases and those of the EPO are not presently totally compatible, while the website needs to be more interactive. The Editorial Committee will have an input on these matters.

Having appointed a Director of Education (see above) for a 3 year term from 1st July, the Institute continues its search for a legal Coordinator or Legal Adviser. Hopefully there will be an appointment in the first quarter of 2012.

As of 2nd November, 2011, the epi has 10391 members.

The next Council meeting is on 21st April, 2012 in Bucharest, Romania.

Treasurer's Report:

Claude Quintelier spoke to his previously circulated report, giving the floor initially to the epi Finance Committee which had also previously circulated a report to Council. The main thrust of both reports was the ongoing legal case against a former employee for fraud. A formal letter had been sent to the epi's former external auditors by lawyers acting for the Institute, seeking compensation. The former auditors were seeking advice from their insurers before replying.

Claude Quintelier spoke to the draft budget 2011/2012. He advised that on the advice of the new external auditors there was no provision in the 2011 budget for double membership fee payments as there had only been about 10 requests for repayment thus far.

A major expense is the mailing of 'hard' copies of epi Information. He is investigating with the Editorial Committee possible ways to reduce this cost, which was 35,000 Euros in 2010.

The budget deficit proposed for 2012 is covered by the Institute's assets, so he proposed, supported by the Finance Committee, that the membership fee would remain at 160 Euros for 2012.

Regarding the membership fee payable on passing the EQE, historically exam results were only known late in the year and the membership fee was waived for that first year of qualification. Nowadays, the exam results are known much earlier, successful candidates can be registered by the end of August. He therefore proposed that the historical rule that:

"The annual membership fee is waived if a person is registered for the first time on the list of professional representatives after September 30th"

should be cancelled.

Council approved this cancellation, and the draft Budget, and adopted the Treasurer's report nem con.

Manual of EPO (Best) Practice:

Chris Mercer reported. There had been extensive discussions with the EPO, who had also consulted Business Europe. Mr. Mercer explained the epi's objections to the draft document originally produced by the EPO. The epi had submitted a revised draft, which he reported had been mainly accepted by the EPO and Business Europe. The document now has the title "Quality Processes before the EPO". The document is being revised by the EPO, and when adopted (the EPO hopes by the end of the year) it will not be mandatory.

Council approved the epi's continued involvement with the project, and thanked Mr. Mercer and Jim Boff, the Institutes main representatives on the project, for their work.

Quality Road Map:

Document CA/97/11 had been produced by the EPO. The aim is for the Office to become ISO 9001 compliant in its aspiration to grant high quality patents. A decision will be taken by the AC in due course, meanwhile Council agreed with Mr. Mercer that the epi will continue to consider what we as an institute want from the EPO.

Epi payment for epi costs of the EQE:

Chris Mercer again reported. The EPO presently absorbs epi costs for running the exam, these costs being mainly travel and subsistence costs of epi EQE committee members. The EPO would like the epi to pay at least these costs. The EPO had produced a table of overall costs, including their own, but these were not seemingly supported by hard evidence. Council, after a lively debate, approved epi continuing discussions with the EPO concerning the EPO's costs, and to discuss the topic again at a later Council meeting.

Disciplinary Committee:

Paul Rosenich reported. He proposed Committee members for Latvia and Malta, who were approved by Council. The Committee still needed members from Republic of Macedonia, Serbia and Cyprus. He reminded Council that the Committee is only responsible for EPAs, and not non-EPA representatives in for example law firms.

Regarding decisions of disciplinary Chambers, the current practice is not to publish them as to do so would name defendant(s), so providing them with 'punishment' in addition to that imposed by the Chamber. There was a discussion, following which Council requested the Committee to continue to consider whether or not decisions should be published with reasons for any penalty imposed on a defendant, and to report again at a later meeting.

Litigation Committee;

Axel Casalonga reported, speaking to his previously-circulated paper, which was also presented on Powerpoint, and which covered several topics concerning the proposed Unified Patent Court. In this regard, the Polish Presidency issued on 7th October, 2011 a revised version of the Draft Agreement on the Unified Patent Court and Draft Statute. The main topics addressed by the Committee were:

Jurisdiction of the future UPC for EP "bundle" patents:

Article 58 of the revised Agreement provides for a transitional period of 5 years from entry into force with an opt-out during that time for EP "bundle" patents granted before entry into force. After a long discussion, Council voted in favour of the following motion:

"The epi approves the fact that the jurisdiction of the future UPC extends to the Unitary patents as well as to the EP ("bundle") patents."

Turning to the transitional period, Council voted in favour of a separate motion reading:

"The transitional period, during which national Courts remain an open option, should be more than the presently proposed 5 years after entry into force."

Composition of the panels of the Court of First instance:

The draft agreement states in Article 6(2) that the panel of a local division should have two judges who are nationals of the host contracting country.

The Committee proposed that for each local or regional panel, there should be judges from three different nationalities and that one of these should be technically qualified.

Council approved the Committee's proposal.

Substantive law:

Articles 14f to 14i define infringement, limitation of the effect of infringement and prior user rights. These Articles only refer to a "European" patent. The opinion of the Committee is that these provisions should be applicable to the Unitary patent too, and that the definition should be in the Agreement, and not in any UP Regulation.

Council approved the Committee's opinion.

Jurisdiction of divisions of Court of First Instance:

Article 15a (2) retains the possibility of 'split' proceedings. The Committee is of the view that this is generally not desirable, and formed the opinion that where a revocation action is pending before the central division, a related counterclaim for infringement should be dealt with by the central division too (to avoid the expense and inconvenience of a transfer to another division).

Council approved the opinion of the Committee.

Representation:

Article 28(2) states that parties may be represented by EPAs who have appropriate extra qualifications. Article 28(2a) refers to 'representatives' being assisted by "patent attorneys", but there is no definition of "patent attorney", and this could lead in the opinion of the Committee to ambiguity and uncertainty. The Committee therefore proposed that "EPA" (ie European Patent Attorney) should be used when referring to a representative's assistant, and that an EPA assistant should be able to address the Court without the full certification required for an EPA acting alone.

Council approved this proposal by a large majority.

EPO Board of Appeal Members in litigation:

Council approved by a large majority the Committee's opinion that it would be desirable that serving EPO Board of Appeal Members should act as technical judges in the UPC system, but that they should not be the sole source of such technical judges.

The Committee had prepared a draft letter covering the above topics. Council approved the checking of the text for consistency with the discussions in Council, translating it as necessary and sending it to the EU President, the EU Council the European Parliament, and

to National authorities (by epi national groups). The epi Secretariat is to be notified as to addressees of the letter when it is sent.

PQC:

Paolo Rambelli, newly appointed Chairman, spoke to his previously-circulated report.

The committee has 33 members, 33% of whom are newcomers. There are no members from Greece, Serbia, Republic of Macedonia, Malta and Monaco.

Referring to the EQE, the pass rate in 2011 was 24.3% (2010: 29%). Candidates still find major difficulties with Papers C and D. The pass rate for Paper C, not including compensable fails) was 34.6% (2010: 39.3%). For Paper D, it was 27% (35.4% including compensable fails) against 43.4% in 2010 (54.4% including compensable fails).

According to a survey of candidates, the time factor seems to be their main problem.

Karl Rackette, the newly-appointed Director of Education was introduced to Council, which he addressed, setting out his aims and objectives as covered by his agreement with the epi. These are, briefly, to cooperate with the Academy and CEIPI, cooperate with national Groups on education, organise seminars, particularly in cooperation with national PQC members, to participate in at least one PQC meeting, and to support coordination between tutors and tutees of epi Tutorials.

A brief discussion ensued, during which a Council member suggested that in view of the falling pass rate, efforts should be concentrated on the EQE.

EPPC:

Francis had previously circulated a comprehensive report, which was for information. Council approved it nem con.

Mr. Leyder did add that the revised Guidelines for examination were hoped by the EPO to be in force about June 2012.

Harmonisation:

John Brown continues as Chairman of this Committee, Mr. Leyder being the Secretary. The Committee's previously circulated report was adopted by Council nem con.

Mr. Brown reported a recent development concerning WIPO. The Palestinian Authority, now a member of UNESCO, could now apply to join WIPO without needing a vote for membership. Developments, if any, will be monitored and reported to Council.

Biotech Committee:

Ann de Clercq, had previously circulated a report, which was approved and accepted by Council.

EPO Finances Committee:

Jim Boff , Chairman, had previously circulated a report, which was approved and accepted by Council. He added that a general increase in fees of 5% by the EPO (document CA/63/11) was in reality a 6% increase as the fees' increase would be rounded up to the nearest 5 Euro. Over a number of years, the cumulative effect of the increase could be much more than 5%.

AOB:

Members from Macedonia and Serbia were approved for the Disciplinary Committee. A Board member for Serbia was also approved as was a member from Macedonia for the PQC.

Vice President Gabriele Leissler–Gerstl proposed that with the increasing use of the internet, blogging etc. by inventors the epi should set up an ad hoc committee to follow EPO initiatives in this area.

Council approved this proposal nem con.

The President closed the meeting at 5.18pm.

Terry Johnson,
Editorial Committee