



Institute of Professional
Representatives before
the European Patent Office

Annual report **2020**



« The pandemic has accelerated digitalisation and strengthened epi's organisation »

I am so happy to report how well **epi** did in the difficult conditions of 2020. The year was marked by the beginning of a pandemic, which affected us all, professionally and personally. It has highlighted our resilience and our ability to adapt. The first months of 2020 were marked by the election of 140 Council members for the 2020-2023 term, masterfully conducted by the Electoral Committee led by Markus Müller. At the time, the virus was still called coronavirus, and the pandemic seemed far to most of us, although Italy had already declared a state of emergency end January. We started realising that it had spread around the world when our friends from JPAA cancelled their long-planned European tour in the first week of March. When the pandemic hit our organisation, the Secretariat, then under the responsibility of former Secretary General, João Pereira da Cruz, was ready to switch to remote working (that still functions admirably) and had adapted our videoconferencing tools. Whereas we already had hybrid meetings in the past, they became the norm and were key to the later developments. Our By-Laws were designed in the 20th century, literally requiring two physical Council meetings per year, and we could not change the By-Laws without a physical Council meeting! Yet, intense discussions during weekly Presidium/Board

meetings from March to May, with the dedicated support of Pascal Moutard, Chair of the By-Laws Committee, and a great deal of persuasiveness, got everyone to admit that a virtual Council meeting was possible under our By-Laws. It was a great achievement for all involved, under the outstanding leadership of John Gray, Chair of the Online Communication Committee, to organise the Spring Council meeting as an e-Council meeting with the election of a new Board, a new Disciplinary Committee and new internal auditors. It was an even greater achievement under the circumstances to manage to hold it only a few days after the end of the spring. Under the leadership of a new Secretary General, Cornelis (Cees) Mulder, assisted by his Deputy, Magdalena Augustyniak, the Secretariat organised the Autumn Council meeting, also as an e-Council meeting, again with the support of John Gray. I would happily mention that as soon as the pandemic hit, the President of the EPO, António Campinos, kindly offered to increase the frequency of our meetings. He later kept to his promise to meet with Council during its autumn meeting, and we are grateful that he again accepted to answer questions from the audience. In the meantime, the Supervisory Board had cancelled the 2020 EQE. The EQE is the cornerstone of our profession, and **epi** is committed to its success. **epi** supported this



decision, and immediately assured the EPO of its full support for transforming the EQE as we knew it into a fully digital examination, the eEQE, so as to offer everyone a chance to sit the examination whatever the travel restrictions or even local quarantines. We appointed delegates to a joint **epi**-EPO Working Group, and set up a Digital Support Group to support our delegates. Last but not least in 2020, a group of volunteers under the leadership of Margaret Mackett and Kateřina Hartvichová prepared papers for a mock eEQE in the three official languages, later providing model solutions also in the three languages. **epi** is very grateful for the tremendous efforts of all those who made it possible, not to forget the time and effort invested by candidates to prepare for it.

As a result of the cancellation of the 2020 EQE, **epi** only welcomed 53 new members who passed the EQE in previous years but did not immediately enter the list of professional representatives. A net loss of 205 members was observed in 2020 as compared to an average increase of about 300 members in recent years. We cannot wait to welcome the thousand or so new members expected in 2021! As part of the reaction to the pandemic, we had to cancel all in-presence educational events after mid-March; we decided to convert four of them into webinars and to offer these free of charge to our members and students, reaching them irrespective of the possible quarantines in all corners of the Member States. These webinars were such an

overwhelming success that we decided to offer more free webinars.

In 2019, Council had approved the creation of a position of Executive Director. Immediately after its election in June 2020, the Board initiated the search, advertised the position in September and successfully concluded the recruitment of Ms. Tatjana Lissak in December. Ms. Lissak took her position on 1 February 2021. We place great hopes in the Executive Director, to unburden the Secretary General and the Treasurer from day-to-day operational tasks so that they can devote more time to strategic matters.

The second half of 2020 also marked the wish of the Presidium to better structure our communication. It was decided to support the Editorial Committee with the help of a communication agency in 2021. This report is the first example of the collaboration with the agency.

Finally, **epi** is a key association at European level. In this regard, we have submitted a contribution to the public consultation of the European Union on its future Action Plan on Intellectual Property.

Thank you all for your dedication. This Institute is yours!

Take care of yourself and your loved ones.

Francis Leyder, epi President

Facts and figures 2020



12559
professional
representatives

in **epi** at the end of 2020. This is a net loss of 205 members compared to 2019 (258 members were deleted from the list of professional representatives, and 53 members who had passed the EQE before 2020 entered the list).



A new Council

was elected for the term 2020-2023. **3489 members** voted for **319 candidates** who stood for the 280 seats available (140 full members and 140 substitute members). The turnout rate was 27.4 %, to be compared with a rate of 26.1% in 2017, 31.5% in 2014 and 39.1% in 2011.

During e-C88 the Council elected the Board members: Mr. Francis Leyder (BE) was elected President, Ms. Heike Vogelsang-Wenke (DE) and Mr. Bogoljub Ilievski (MK) were elected Vice-Presidents, Mr. Cornelis Mulder (NL) was elected Secretary General, Mr. Peter Thomsen (CH) was elected Treasurer, Ms. Magdalena Augustyniak (PL) was elected Deputy Secretary General, and Mr. Zsolt Szentpéteri (HU) was elected Deputy Treasurer. Council also elected the members of the Disciplinary Committee (one per contracting state) and internal auditors.

During e-C89 the Council elected Committee members for 14 Committees, including the newly established IP Commercialization Committee. Election of members of the European Patent Practice Committee included also the election of members for 4 technological groups. For the committee elections the **epi** Secretariat processed 426 applications for the 337 seats available, and around 850 emails.



162
trainee
patent attorneys

applied for the **epi** Student membership and a total of **367 epi Students** were counted at the end of the year.

19

Presidium meetings

took place from March to December 2020 (3 in March, 4 in April, 2 in May, 1 in June, 1 in July, 1 in August, 2 in September, 2 in October, 2 in November and 1 in December). All meetings were held via videoconference.

The Presidium also met with the Editorial committee and with the Executive subcommittee of the Professional Education Committee.

8

Board meetings

took place from February to October (1 in February, 1 in April, 2 in May, 1 in June, 1 in July, 1 in September and 1 in October). The first meeting was held in Munich whereas the remaining meetings were all held via videoconference.

Relations with the EPO

During e-C89, Council was addressed by EPO President Mr. Campinos. Board Members participated in 4 meetings with Mr. Campinos from April to October. Another 19 meetings between **epi** members and EPO representatives took place. Additionally, the **epi** Secretariat held its annual meeting with the EPO Legal Division in October.



Adapting to the pandemic

When the Covid-19 pandemic struck Germany in early March 2020, the **epi** Secretariat developed a 3-step action plan, taking into consideration different scenarios to be anticipated. This action plan entered into force on 11 March 2020. A week later, a lockdown was imposed in Bavaria.

Thanks to the flexibility of IT equipment – the whole team was already equipped with laptops – remote work from home was made possible very quickly and relatively easily. Within a week, all phone calls could be redirected to laptops, and the Secretariat was fully operational. The next challenge consisted in having the accounting department – which still processed a number of paper documents – also operational. This was made possible within a short period of time.

To also ensure the service in the office, an emergency service was created, which is still currently in force. This service, which was implemented to ensure that all work that could only be carried out from the office was always guaranteed, was made possible thanks to the commitment of all those who took shifts every week so that the service could run smoothly.

Members of the Secretariat also worked long hours to successfully organize two virtual Council meetings, and further contributed to the organization of webinars on account of the Professional Education Committee, and of virtual meetings for the Presidium, the Board and Committees.

Life of the Committees



Online Communications Committee (OCC)



OCC did conduct its regular activities, notably its meetings with the EPO (including e-SACEPO meetings) to discuss problems and potential improvements associated with online filing systems and with mailbox. It was again noted that early involvement of users in IT projects proved very valuable. **OCC** also contributed to improve the structure of the forum dedicated to **epi** members on the website.

On top of its regular activities, **OCC** was also involved in videoconferencing in many ways. **OCC** contributed to develop a survey sent to all members in November-December 2020 to find out what they like/dislike about the (then) current and evolving rules and proposals for oral proceedings by videoconferencing. **OCC** also advised the Presidium and the Secretariat on the choice of the technology that would work best for organizing virtual meetings with many participants, such as Council meetings. Members of **OCC** also participated in the mock oral proceedings by videoconference organized by the EPO in May and September 2020, and in follow-up webinars.

Life of the Committees

As in previous years, PEC focused on CPE and e-EQE related matters. PEC has long recognized the value of online training but at the start of 2020 was somewhat dependent on the EPO Academy to design and organize online events. The learning course «**Life of a Patent**», designed in cooperation with the Academy, was **successfully** held in 2020, during the pandemic period from April to mid-June.

PEC realized shortly after the start of the pandemic that all in-person educational events would be cancelled and accordingly developed an e-learning platform to be able to offer its own webinars to **epi** members and students. Between 24 June and 15 July 2020, a series of **four we-binars** on the topics: plausibility, priority, clarity and disclaimers, were offered to **epi** members. Two further webinars on novelty were offered in December 2020. **All these webinars were free to members and are permanently available on the epi website (www.epi-learning.org).**

Additionally, the weekend workshops on EQE papers A, B and D, which were originally presented in person in 2019 within the frame of the **epi Student Programme**, were converted into an online interactive course format. These online workshops were made available to **epi** students in September and November 2020.

PEC was also involved in the training for the 2021 e-EQE via the PEC sub-committees «**epi Students and EQE Candidates**» and «**epi Tutors and Coaches**», in cooperation with **epi** tutors and Mr. Cees Mulder. A new set of papers A to D was prepared and offered, free of charge, to all candidates enrolled for the 2021 examination as a mock of the **digital exam** (Mock 2 held in 2021). All of the new papers were specifically designed for the new online format to be sat under examination conditions using the Wiseflow platform and a locked browser. Members of PEC and of the PEC EQE sub-committee were also involved in an ad hoc working group (the **Digitalisation Support Group**) which discussed the changes to the EQE resulting from digitalisation. Initially, these discussions focussed on the preparation for the e-EQE in 2021 but the group also discussed more fundamental reforms for the EQE which could be implemented from 2023 at the earliest. A first draft of position paper on the reform of the EQE was presented to Council during the C89 meeting.



Professional Education Committee (PEC)



ALL WEBINARS ARE
AVAILABLE ON
[HTTPS://WWW.EPI-LEARNING.ORG/](https://www.epi-learning.org/)

Life of the Committees



European Patent Practice Committee (EPPC)

EPPC did maintain its regular activities, and in addition worked extensively on the matter of oral proceedings to be held by videoconference.

EPPC indeed assisted the Presidium all through the year to comment on decisions of the President of the EPO (14 April, 13 May, 10 November and 17 December 2020) and on notices from the EPO (10 November and 17 December 2020). Members of the EPPC also participated in the mock oral proceedings by videoconference organized by the **EPO**. EPPC also contributed in November 2020 to the response to the user consultation on the proposed insertion of Article 15a RPBA **«clarifying that the Boards of Appeal may hold oral proceedings pursuant to Article 116 EPC by videoconference»**. Members of EPPC attended a follow-up meeting with the Boards of Appeal Committee.

EPPC was also involved, through SACEPO and its Working Parties, in various topics, notably the annual revision of the Guidelines for Examination at the EPO – which provides an opportunity to comment on proposed changes to the Guidelines to take into account recent case law and updated practice of the EPO.

EPPC also contributed to the **epi** amicus curiae brief in case G4/19 («double patenting») and to **epi**'s comments in response to the European Commission Roadmap concerning the Commission's Intellectual Property Action Plan.

Life of the Committees

LitCom was busy with the following activities in connection with legislative proceedings.

First **LitCom** analysed the long awaited decision by the Constitutional Court of Germany (**FCC**) in March which found the German ratification law of the Unified Patent Court Agreement (**UPCA**) to be void due to a voting turnout in the German Parliament below the required 2/3 majority. **LitCom** also closely observed further developments on that topic in Germany and other countries. In December 2020, the German Parliament passed a new ratification law with the required 2/3 majority, but two new constitutional complaints were then filed with the FCC, which will again cause some delay before the UPCA can enter into force.

LitCom, in cooperation with the **Harmonization Committee**, also successfully intervened in the negotiations on a possible new international instrument regulating a **Client-Attorney Privilege for patent professionals**: **LitCom** filed a submission to ensure that regional qualifications, such as that of European Patent Attorney, would be covered by such instrument beside national patent professional qualifications. The latest draft of a possible international instrument now includes also regional qualifications.

LitCom also prepared a submission that **epi** used in a consultation by the German Ministry of Justice on a national Patent law reform aiming, amongst other aspects, for a better interplay between infringement proceedings, revocation actions and oppositions. **epi** took the position (i) that the German legislator should consider abandoning the current absolute ban to start any national revocation action during a period when national or European opposition proceedings are still pending or could be filed, and (ii) that there should not be under any circumstances a chilling effect from national revocation actions on European opposition procedures, as suggested in the draft German law. It appears that the feature most criticized by **epi** has been removed from the draft.



Litigation Committee (LitCom)



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