

# Annual Report 2021

**epi**

Institute of Professional  
Representatives before the  
European Patent Office

# »A glimpse of hope«



Several events marked the life of our Institute last year. Our

Executive Director, Ms Tatjana Lissak, took her position on 1<sup>st</sup> February 2021. It has been my pleasure to support her during her on boarding, and thereafter as much as I could. After a thorough review of the Secretariat's operations, Ms. Lissak began to implement procedures for administrative, accounting and IT matters, with immediately noticeable results. I have no doubt that after continued efforts in 2022, our Secretariat, which is already performing well, will achieve excellence. In this regard, I would mention the recruitment of a new Head of Accounting with an impressive CV, Ms Verena Olivier, whose entry in function has been set to 1<sup>st</sup> January 2022.

A new Secretary General, Ms Olga Sirakova, was elected at the spring Council meeting (C90) that, like the autumn meeting (C91), was held by videoconference. I would like to seize this opportunity to thank and congratulate all those who contributed to the masterful organisation of these – and all other – meetings.

In order to take into account continuing remarks from some Council members, that

too much time is devoted during the Council meetings to the internal affairs of our Institute, the Secretary General and her Deputy, together with the Secretariat, proposed during C91 to amend the rules governing the election of Committee members, such that the election can take place by internet as of the next election year. The Council happily accepted, and the new rules will be proposed during C92 to apply at the next general election of committee members ahead of C95.

I can report that meetings with the EPO continued to be held with a regular frequency. My thanks go to Ms Elvanda Mece for her patience and continuous assistance in smoothing our relationship with the EPO. As promised last year, Mr Campinos participated in the 91<sup>st</sup> Council meeting, and we are grateful that he again accepted to take the time to answer questions from the audience. I wish we could soon have again face-to-face and informal meetings with Mr Campinos, in a more relaxed atmosphere.



I cannot fail to mention the organisation of the first online EQE, to which our members made a significant contribution, notably by preparing mock papers that candidates could test on the Wiseflow platform. I believe that shifting the EQE from an in presence format to an online format has put a significant burden and stress on the shoulders of candidates. I would nonetheless like to express my gratitude to all those who supported the EQE in the difficult conditions created by the fully virtual environment.

2021 was still marked by the prevalence of the pandemic, which did not allow us to organise many face-to-face meetings. We could nevertheless see some signs of hope of a return to a "normal life". Although our virtual meetings

were masterfully organised by the Secretariat, they slowly started showing their limit. Our Institute is clearly missing the informal contacts on the fringe of meetings. Our delegates struggle to prepare and coordinate the **epi** reaction during official meetings. I trust we all look forward to the possibility of in-person meetings, with a hybrid component as we already had implemented before the pandemic, alongside virtual meetings that will retain a useful role.

Thank you all for your dedication. This Institute is yours!  
Take care of yourself and your loved ones.

**Francis Leyder**  
**epi** President

# »A cultural change within the epi Secretariat«



In addition to organising the day-to-day operational activities in the Secretariat, various large and small projects were initiated last year.

The ongoing administrative activities included the support of Presidium, Board, Council and Committee members as well as the administration of Finances and Accounting and the area of Education & Training. The Presidium has met weekly with the Executive Director since April 2021 to discuss operational activities in the Secretariat.

The continuing pandemic still prevented travel, which was compensated by the possibility to meet online, resulting in an increase of frequency of meetings.

As published in an **epi** Information article (issue 4|2021), the 12<sup>th</sup> **epi** Artists Exhibition was launched virtually on the **epi** website on 28<sup>th</sup> October 2021, celebrating the 30<sup>th</sup> anniversary of the exhibition. 31 creative members participated in the exhibition, with 206 great artworks of different kinds on display. To duly honour the pre-

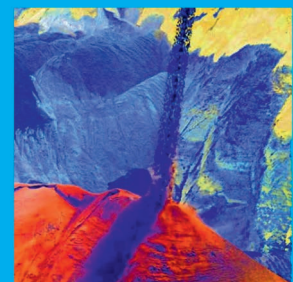
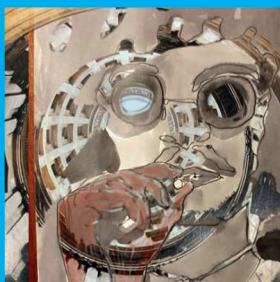
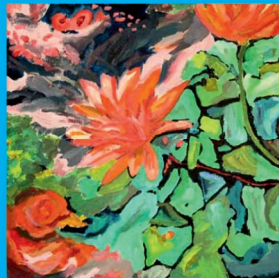
sentation of the **epi** artists and their artworks, **epi** organised a virtual “Get

Together” and gave the artists the opportunity to present themselves to the audience, introduce their artworks, and to exchange experiences and thoughts. The event took place right before the 91<sup>st</sup> Council Meeting. There was a lively atmosphere, and it was very much appreciated by all participating guests.

A summary of projects initiated in the **epi** Secretariat is provided below.

**Accounting:** the processes in accounting were fundamentally re-evaluated with the assistance of an external consultant and mostly implemented. Having regard to the comments of the external auditors about the 2020 financial statements, a complete reorganisation was deemed essential to pave the way for a smooth and punctual preparation of reliable 2021 financial statements. Several problems that had been open for years were very successfully solved and also concluded. Compared to previous years, this was a great step forward.





**IT:** 77 findings emerged from an IT Audit, which was also done with the assistance of an external consultant. 25 projects were launched of which 3 were finished in 2021, 7 were ongoing, 4 pending, 3 started towards end of 2021 and 8 still in backlog.

**Management and organisation:** the RACI (Responsible, Accountable, Consulted, Informed) matrix technique was introduced for the analysis and presentation of responsibilities and accountabilities, defining who is involved and when. This technique brings clarity and

avoids duplication of work. In addition, processes were defined within the Secretariat through the creation of an **organisational** manual: The work was still in progress at the end of 2021, but already contributed to significantly increase efficiency. First thoughts were also given to the implementation of **compliance rules** in the Secretariat. Overall, a **cultural change** was initiated within the team.

**Tatjana Lissak**  
epi Executive Director

# Facts and figures 2021

**1008**

**New professional representatives**

1008 new professional representatives entered the list in 2021.

**15**

**Presidium meetings**

The Presidium met on a regular basis (15 meetings held in 2021). A joint event with the Secretariat was organized in Munich during the summer.

**13366**

**Professional representatives**

The list comprised **13366** representatives at the end of 2021. This is a net gain of **807** members compared to 2020, and an increase of **almost 5%** compared to 2019, and of **10%** compared to 2017.

**5**

**Board meetings**

**5 Board meetings took place** from March to October.

**171**

**Trainee patent attorneys**

**171** trainee patent attorneys became **epi** Students and a total of **586 epi** students were counted at the end of the year.

**A new**

**Secretary General**

A **new Secretary General**, Ms. Olga Sirakova, was elected during the 90<sup>th</sup> Council meeting which took place by video-conference on 7<sup>th</sup> May 2021.

## Meetings with EPO

**Meetings with the EPO President** took place on a quarterly basis. As in the previous year **EPO President Mr Campinos addressed Council** during e-C91.

For further information please visit our website (<https://patentepi.org/en>). **epi** papers are also available online (<https://patentepi.org/en/epi-papers>).

An overview of the 2021 activities can be found in **epi** Information (<https://information.patentepi.org>).

# Life of the Committees

## Online Communications Committee (OCC)

**O**CC remained active in a number of collaborations with the EPO and other **epi** bodies; **epi** Board meetings; **epi** meetings with the EPO President & Boards of Appeal; e-EQE development; SACEPO working groups on Electronic Patent Process (eSACEPO) and Patent Documentation and Information (PDI); and liaison with WIPO (ePCT, WIPO Proof). A “DOCX” sub-group agreed between the EPO and OCC is up and running.

2021 saw the launch of the EPO’s newest online filing tool in “Online Filing 2.0” and the phasing out of the older “CMS” tool. **OCC** worked with the EPO to provide the clearest possible advice for users of the new system, while confirming that the “eOLF” tool, the most widely used online filing tool by **epi** members, is not under any threat of closure. **OCC** worked hard on behalf of users affected by the closure of CMS.

**OCC** worked on the survey of **epi** members on oral proceedings by videoconferencing, with the report published in **epi information 1/21**. **OCC** also continued to advise the Presidium and the Secretariat on the technology for organizing virtual meetings.

Topics discussed between **OCC** and the EPO included:

- New OLF 2.0 online filing system – bugs remaining after launch, service status on EPO website, lack of opposition form, ZIP imports, longevity, out-of-date support material on EPO website.
- New “Front Office” for national filings.
- User area services – participation in pilot which started in November 2021, target users, interface with attorney firm IP management systems.
- XML/DOCX documents used in filing (possible in OLF 2.0) – legal certainty about the authentic text, standardisation, how users can ensure compliance.
- Patent Information Systems (EPO Register, Espacenet etc) – file size “inflation” in Espacenet, anti-‘bot’ protections vs legitimate users.
- Smart card compatibility problems and new authentication options.

# Life of the Committees

## Professional Education Committee (PEC)

2021 has been another busy year for the PEC, with many activities to support candidates preparing for the first online EQE and a substantial continued education program for **epi** members.

Online training sessions, tutor consultations and tutorials for each of the EQE finals papers were offered to EQE candidates together with feedback sessions on the first mock e:EQE which was prepared by **epi**. Another mock was also created by **epi** and was loaded on Wiseflow for use, free of charge, by all candidates preparing for the EQE 2022.

The Digitalisation Support Group was set up in 2020 with members of the PEC supplemented by experts in the field of the EQE and online exams. The DSG has been working with the EQE sub-committee and has been active in making suggestions for improvements in the digital tools for the 2022 e:EQE. Together the members have also been considering how best to adapt the EQE for the future. An **epi** discussion paper presenting a possible option for an updated EQE was published before the C90 meeting and PEC organised an online conference on 21<sup>st</sup> June to discuss how the EQE can be modernised. Work on this project is continuing and a revised proposal will be available in 2022.

Besides the EQE, the PEC also intensively worked on the continued education program, and has offered an unprecedented number of webinars throughout 2021. Most of these webinars were free to attend for **epi** members and attracted several hundred attendees. We hope to continue offering webinars in 2022 alongside face-to-face meetings.

Moreover, with news of the UP/UPC potentially coming into force in 2022, the UP/UPC working group was re-established. This is a joint working group formed from members of PEC, the Litigation Committee (LitCom) and the European Patent Practice Committee (EPPC). It will arrange the **epi** training program for the Unitary Patent and the Unified Patent Court.

There has also been work towards a European Patent Administrator Certificate (EPAC). Although this falls outside the scope of PEC, we have been kept informed of the discussions within the EPAC working group. A steering group has now been set out to agree the format, syllabus and level for the examination which it is hoped will run in 2022 for the first time.



# Life of the Committees

## European Patent Practice Committee (EPPC)

**E**PPC maintained its regular activities, worked on *amicus curiae* briefs for the Enlarged Board of Appeal and addressed the EPO's strict view of the need for amendments to the description.

EPPC continued to assist the Presidium throughout the year, for instance at the regular meetings between the Presidium and the President of the EPO, at **epi** Board meetings and at many ad hoc **epi** meetings. EPPC was also present at many SACEPO meetings, such as the Working Parties on Rules, Guidelines, Quality, e-Patent Process and Patent Documentation and Information and meeting of committees of the Administrative Council.

EPPC prepared **three** *amicus curiae* briefs for the Enlarged Board in G1/21 (oral proceedings by videoconference) (<https://patentepi.org/r/epo-case-law-appeals>). The first and second briefs were filed in light of possible exclusion of members of the Enlarged Board. The third addressed the substantive issue.

EPPC has also been active whenever possible to try to persuade the EPO that its attitude to amendment of the description is too strict. Much of this work has been done by EPPC's Guidelines Committee but the topic has been raised by EPPC members in many meetings with the EPO.

EPPC also arranged a meeting between the members of its four Thematic Groups (Pharma, Chemistry, Mechanics and Mechatronics and ICT) and representatives of the Biotech Committee with the upper echelons of DG1. This took place virtually and allowed **epi** to express its views on practical and legal aspects of the operation of DG1, either in general or in thematic areas.

As a result of the decision of the German Constitutional Court, EPPC revived its UP Committee and has been working with PEC and LitCom in the preparation of training events related to the UP and the UPC.

# Life of the Committees

## Litigation Committee (LitCom)

The LitCom had a very active and busy 2021. The year began with further uncertainty with regard to the Unitary Patent (UP) and the Unified Patent Court (UPC). Events swiftly turned in July with the news that Germany's Federal Constitutional Court had rejected the two complaints that had been filed at the end of 2020 against the Act for Approval necessary for ratifying the UPC Agreement (UPCA). Thus Germany could proceed with the ratification of the acts for both the UPCA and the Protocol on Provisional Application (PPA). This was swiftly followed in August 2021 with the news that the Federal President had signed the German act for ratification of the UPCA and the Protocols associated with the UPCA. In quick succession Germany and Slovenia deposited their instruments of ratification of the PPA. The year culminated with the news that Austria had also ratified the Protocol on Provisional Application (PPA) on 2<sup>nd</sup> December 2021 as 13<sup>th</sup> country reaching thereby the necessary number to start the new UP/UPC system. Austria deposited its instrument of ratification of the PPA finally on 18<sup>th</sup> January 2022 thus forecasting the operational start of the UP and the UPC in late 2022 or early 2023. The LitCom actively monitored these events and posted various news items on the **epi** website as they occurred for the benefit of **epi** members.

As a consequence of the imminent start of the UP/UPC, the UPC Rules of Procedure and Case Management System (CMS) Sub-Committee of the LitCom have begun to re-examine certain aspects of the current Rules of Procedure of the UPC (RoP). Together with the Virtual Proceedings Sub-Committee, initial focus was on the topic of videoconferencing as set out in the RoP. It was determined that the line across the RoP with regard to videoconferencing was not consistent. Accordingly, the two Sub-Committees prepared a letter on behalf of **epi** which was submitted to the Preparatory Committee after coordinating with other **epi** bodies to make it fully consistent with **epi**'s position regarding use of videoconferences before the EPO. A decision by the UPC bodies on making videoconferencing better usable in line with the suggestions of **epi** is expected within 2022.

The LitCom's delegate to the **epi** working group under the lead of the EPPC assisted with the preparation of the three **epi amicus curiae** briefs that were prepared and submitted to the EPO in relation to the Enlarged Board of Appeal case G1/21 (Oral Proceedings by Video-conference).

# Life of the Committees

The Enforcement and Jurisdiction Sub-Committee have undertaken to prepare various papers about general litigation matters that are of interest to the membership. The first of these papers is in relation to the practical implications of the changes that have been recently implemented by the German Patent Act Reform, in particular the introduction of a proportionality considerations when Courts issue a permanent injunction in patent cases.

The Sub-Committee on Representation and Privilege of the LitCom has been working with the Harmonisation Committee in relation to the Group B+ discussion on the draft of an international "Agreement on Cross-Border aspects of Client-Patent Attorney Privilege". **epi** was successful in inserting a reference to regional qualifications in the proposed text of the potential international instrument on privilege, thereby ensuring that European Patent Attorneys fall within the definition of a 'patent advisor'.

The LitCom has also actively been following events surrounding the draft of the amended Regulation on Discipline and Code of Conduct (CoC) of **epi** as prepared by the Professional Conduct Committee (PCC) and approved by **epi** Council in order to fully take into account new professional activities for European Patent Attorneys when the UP/UPC system will start. Possible solutions have been discussed with EPO and the UPC Preparatory Committee.

The LitCom's delegate to the **epi** working group under the lead of the EPPC assisted with the preparation of the three **epi amicus curiae** briefs that were prepared and submitted to the EPO in relation to the Enlarged Board of Appeal case G1/21 (Oral Proceedings by Videoconference).

The Sub-Committee on Brexit Implications on Patent Litigation continually monitors events in relation to litigation matters that are as a result of Brexit. Some of the major topics under discussion include the implications of the difficulties that hinder the UK to accede to the Lugano Convention and the UK Governments public consultation on 'Exhaustion of IP rights in the UK'.

The LitCom has also been supporting and assisting the Professional Education Committee (PEC) in preparation of litigation related educational topics. At the end of the year, the Intercommittee Working Group for planning of **epi**'s educational activities in connection with the new UP/UPC system has been re-activated wherein members of the LitCom are working together with members of the European Patent Practice Committee (EPPC) and members and chair of the PEC.

# Life of the Committees

## Professional Conduct Committee (PCC)

**P**CC activities mainly focused in 2021 on (i) its “core business”, namely delivering opinions per Article 7(d) of the **epi** Code of Conduct (CoC), (ii) the revision of the CoC, and (iii) preparing support material for **epi** members.

With respect to item (ii), it should be noted that the CoC has never been substantially amended since its creation in November 1979. A dedicated Working Group was tasked with proposing amendments, to be adopted by **epi** Council in 2022, to cover the (then) possible entry into force of the UPC in the near future. As always, proposed amendments are discussed with the By-Laws Committee.

With respect to item (iii), a dedicated Working Group organized, in close cooperation with the Professional Education Committee, two webinars on disciplinary matters; other webinars will follow. Another Working Group has been tasked with the creation of a “database” available to all **epi** members with useful information about opinions already delivered in the past.

# Life of the Committees

## Committee on Biotechnological Inventions (Biotech Committee)

**T**he activities of the Biotech Committee in 2021 reflect the changes in patent standards to catch up with the fast-evolving realities of biotechnology.

The attention of the Committee has been focused on the biotech aspects of the new 2022 Guidelines (GLs), in particular on the plant disclaimers and antibodies. For plant disclaimers, the Committee suggested that the EPO should not cite objections as to the need of a disclaimer for a plant which could have potentially been obtained by an essentially biological method without evidence. The objections must be reasoned, and the burden of proof should be on the EPO. For antibodies, the Committee suggested the generalization of some of the passages so that they are not limited to IgG's. The Committee would also welcome clarifications on how many CDRs need to be defined in different situations. As for antibodies, there is a need to stress to the EPO that antibodies should still be found patentable. The inventive step requirements for antibodies are perceived to be too strict in the current GLs.

In 2021, the Committee also took the opportunity to reflect on G3/19 – Patentability of plants and animals. Patents on plants present a general societal concern and some interested parties plead to also exclude plants produced by random mutagenesis from patentability. Spill-over initiatives, aiming to exclude targeted mutagenesis and marker assisted bred plants have been observed.

Another area of interest concerns the deposits of biological material. In T 32/17, a reference to a deposit of a hybridoma was considered not to be the same as a reference to the amino acid sequence of the antibody produced by the hybridoma. In other words, the deposit was not considered to also limit the claim to the actual amino acid sequences of the antibody it produced. Because the claim to the hybridoma was not considered to disclose the sequence of the antibody it produced and because the burden was on the patentee, a lack of novelty ensued.



# Life of the Committees

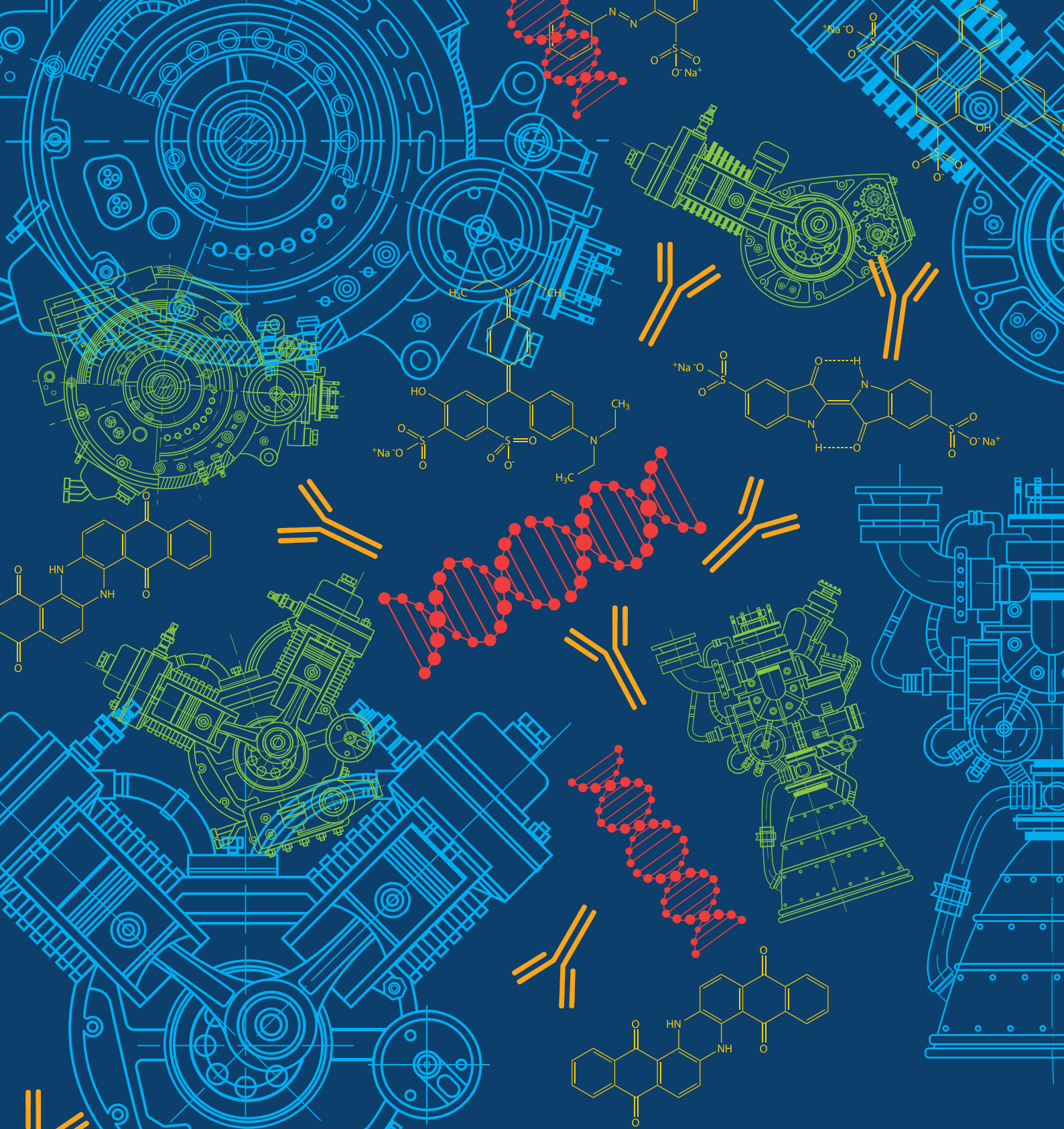
Some members think this is a correct decision whereas other members raise a question with respect to the long-held belief that G1/92 means that any property of a compound/molecule/peptide/protein would be available if the product as such could be obtained – including the amino acid sequence of a protein. Will the first instance follow this decision or G1/92 in this field? This topic will be discussed with EPO DG1 and probably in the next revision cycle of the GLs as they mention that an antibody can be defined by a hybridoma cell producing it.

Finally, the Committee reports that the introduction of the new WIPO ST26 standard for sequence listings has been postponed until 1<sup>st</sup> July 2022. The Committee is looking forward to training courses by the EPO and WIPO. An ad-hoc committee within the Committee is following the developments. The ad-hoc Committee is looking into any added matter or priority issues in view of the conversions from ST25 standard to ST26 standard that would have to be done for divisional applications and end of priority year filings after 1<sup>st</sup> July 2022.

# Life of the Committees

## Studentship Admissions Committee (SAC)

**T**he SAC is perhaps one of the least known committees of **epi**. Its job is to admit any properly-qualified applicants as an **epi** Student. In most cases, this causes no difficulty as the vast majority of applicants are very well qualified to become European Patent Attorneys. The SAC works mainly remotely and is well supported by the **epi** Secretariat. The only problem we have is that we do not have enough work to do. We would encourage any **epi** member with a trainee to encourage that trainee to become an **epi** Student.



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