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Editorial

J. Gowshall · J. Kaden · E. Liesegang · T. Schuffenecker

The *epi* family is growing. The number of countries represented within the *epi* is set to increase significantly in the near future if, as planned, the Czech Republic, Poland, Hungary, Slovakia, Slovenia, Estonia, Romania, Bulgaria, Latvia and Lithuania accede to the EPC. If all these countries join the European Patent Organisation then the membership of the *epi* will be enriched by about 2000 new members. To emphasise the importance to our organisation of this development, a high degree of interest is shown in the contributions provided by our Eastern colleagues, which contributions can be found in the present issue of *epi* information. Among others, the contributions include papers by the respective Presidents of the Chambers of Patent Attorneys from Hungary,

Poland, Romania, Estonia, the Czech Republic and the Slovak Republic. These contributions give a series of interesting points of view spanning the diversity of our profession. By way of this issue of *epi* information we express our hearty welcome to our new colleagues.

The *epi* secretariat is slowly but surely organising the new elections, which will be the last before *epi* reaches its proposed more mature size. You have already received the appropriate papers concerning your personal constituencies. The next elections will be particularly important, because the new council members will have the task of overseeing the development of our international organisation as it increases further in size.

Wahl zum Rat des Instituts

Anfang des nächsten Jahres ist der Rat des Instituts neu zu wählen.

Wir möchten auf die Versanddaten der Dokumente, die auszufüllen sind, sowie die Fristen für den Eingang der ausgefüllten Dokumente im Sekretariat des Instituts in München hinweisen.

1. Schritt

– *spätestens am 1. Oktober 2001:*

Versand des Wahlvorschlag-Formulars zum Nominieren von Kandidaten an die Institutsmitglieder.

– *1. November 2001:*

Fristablauf für den Eingang des ausgefüllten Wahlvorschlages im Sekretariat des Instituts.

2. Schritt

– *spätestens am 1. Dezember 2001:*

Versand der vorläufigen Kandidatenlisten an die Personen, die zur Wahl vorgeschlagen wurden.

– *10. Dezember 2001:*

Fristablauf für den Eingang schriftlicher Anträge zur Änderung der vorläufigen Kandidatenlisten im Sekretariat des Instituts.

3. Schritt

– *spätestens am 15. Januar 2002:*

Versand der Stimmzettel und der zugehörigen Wahlunterlagen an die Wahlberechtigten.

– *15. Februar 2002:*

Fristablauf für den Eingang des ausgefüllten Stimmzettels und der ausgefüllten und unterschriebenen Erklärung im Sekretariat des Instituts.

4. Schritt

– *spätestens am 15. März 2002:*

Mitteilung des Wahlergebnisses in der Ausgabe 1/2002 der epi-Information.

Die Regeln für Wahlen zum Rat sind nachstehend abgedruckt.

Regeln für Wahlen zum Rat

Regel 1: Wahlen

Die Wahlen zum Rat des Instituts der zugelassenen Vertreter werden gemäß den Vorschriften über die Errichtung des Instituts und in der nachstehend festgelegten Weise von diesem Institut durchgeführt.

Regel 2: Wahlberechtigte

2.1

Alle Personen, die in der beim Europäischen Patentamt geführten Liste der zugelassenen Vertreter bei Geschäftsschluss des Europäischen Patentamts in München am letzten Arbeitstag vor dem 15. September desjenigen Jahres eingetragen sind, das dem Jahr vorausgeht, in welchem der nachfolgende Rat sein Amt antritt („Vorjahr der Wahl“), haben das Recht, bei der nächsten ordentlichen Wahl zu wählen und zu kandidieren; andere Personen sind weder aktiv noch passiv wahlberechtigt.

2.2

Die Anzahl der Institutsmitglieder, die bei Geschäftsschluss des Europäischen Patentamts in München am letzten Arbeitstag vor dem 15. September des Vorjahres der Wahl in der Liste der zugelassenen Vertreter eingetragen sind, ist für die Festlegung der Anzahl der in

jedem Wahlbezirk zu wählenden Ratsmitglieder gemäß Artikel 7, Absatz 3 der Vorschriften über die Errichtung maßgebend.

Regel 3: Wahldurchführung

3.1

Jeder Wahlbezirk, dessen Wählerschaft in der direkt vorausgegangenen ordentlichen Wahl zum Rat einheitlich oder nicht-einheitlich gewählt hat, wird in der gleichen Weise wie zum vorhergehenden Rat wählen, es sei denn, ein Wahlbezirk hat vor dem 15. September des Vorjahres der Wahl dem Sekretariat des Instituts gegenüber erklärt, dass er sich nach der in Artikel 7, Absatz 6 der Vorschriften über die Errichtung niedergelegten Weise dafür ausgesprochen habe, die andere Art der Wahl anzuwenden.

3.2

Jeder Wahlbezirk, der während der laufenden Amtszeit des Rates vor dem 15. September des Vorjahres der Wahl geschaffen wurde, hat gemäß Artikel 7, Absatz 4 und 5 der Vorschriften über die Errichtung in der Weise zu wählen, die bei seiner Schaffung zutreffend war, es sei denn, er hat vor dem 15. September des Vorjahres der Wahl dem Sekretariat des Instituts gegenüber erklärt,

dass er sich nach der in Artikel 7, Absatz 6 der Vorschriften über die Errichtung niedergelegten Weise dafür ausgesprochen habe, die andere Art der Wahl anzuwenden.

3.3

In jedem Wahlbezirk, der nach dem 15. September des Vorjahres der Wahl und vor dem Zusammentreten des im folgenden Jahr („Wahljahr“) neu gewählten Rates geschaffen wurde, hat das Institut sobald wie möglich eine Nachwahl durchzuführen. Die Amtszeit der bei der Nachwahl gewählten Personen läuft zur selben Zeit wie die des Rates ab, zu dem sie gewählt wurden. Die Regeln für die Nachwahl sind soweit wie möglich die gleichen wie die zu ordentlichen Ratswahlen; soweit solche Regeln nicht anwendbar sind, werden vom Vorstand des Instituts geeignete Regeln aufgestellt.

Regel 4: Wahlausschuss

4.1

Der Rat setzt während der letzten Ratssitzung, die vor dem 15. September des Vorjahres der Wahl endet, einen Wahlausschuss ein, der aus drei Institutsmitgliedern, die nicht zur Wahl stehen, besteht. Wenigstens ein Mitglied des Wahlausschusses soll wenn möglich bereits Erfahrung als Mitglied eines Wahlausschusses haben.

4.2

Die Amtszeit des Wahlausschusses endet erst mit der Einsetzung des nächsten Wahlausschusses vor der nächsten ordentlichen Wahl zum Rat.

4.3

Artikel 6.2 und 18.2 der Geschäftsordnung gelten auch für den Wahlausschuss.

4.4

Der Wahlausschuss hat bei der Wahl, für die er eingesetzt worden ist, und bei jeder Nachwahl, die vor der nächsten ordentlichen Wahl stattfindet, die Einhaltung der anzuwendenden Vorschriften zu überwachen. Er hat insbesondere die gesamte Vorbereitung der Wahl, das Öffnen der Umschläge und das Auszählen der Stimmzettel zu überwachen, in Zweifelsfällen zu entscheiden, Losentscheidungen zu treffen, wann immer es diese Regeln erfordern, und über die Wahl dem Präsidenten des Rates schriftlich zu berichten.

4.5

Der Wahlausschuss tritt jeweils frühestens eine Woche, spätestens zwei Wochen nach den in Regeln 6.5 und 9.5 genannten Daten zusammen.

Regel 5: Vorbereitung der Wahl

So bald wie möglich nach dem 15. September und spätestens am 1. Oktober des Vorjahres der Wahl hat das Institut jedem Wahlberechtigten an seine Adresse gemäß der in Regel 2 genannten Liste ein Formular zur

Vorbereitung der Wahl zum Rat (Wahlvorschlag), mit dem er Kandidaten vorschlagen kann, zu übersenden.

Regel 6: Wahlvorschlag

6.1

Jeder Wahlberechtigte kann auf seinem Wahlvorschlag nur für die Wahl in seinem eigenen einheitlichen Wahlbezirk beziehungsweise in seiner eigenen Gruppe seines nicht einheitlichen Wahlbezirks sich selbst und/oder einen oder mehrere andere Institutsmitglieder, die einem beliebigen Wahlbezirk angehören können und die genau mit Name und Geschäftssitz oder Arbeitsplatz zu bezeichnen sind, als Kandidaten vorschlagen.

6.2

Ein Wahlberechtigter darf auf seinem Wahlvorschlag nicht mehr Personen als Kandidaten vorschlagen als Ratsmitglieder für seinen eigenen einheitlichen Wahlbezirk beziehungsweise für seine eigene Gruppe seines nicht einheitlichen Wahlbezirks zugelassen sind. Überzählige Vorschläge werden im Wahlvorschlag, vom Ende beginnend, vom Wahlausschuss gestrichen.

6.3

Vorgeschlagene Personen, die nur als stellvertretendes Ratsmitglied gewählt werden wollen, sind entsprechend zu bezeichnen.

6.4

Der Wahlberechtigte bestätigt mit seiner Unterschrift auf seinem Wahlvorschlag, dass jede von ihm vorgeschlagene Person mit ihrer Nominierung einverstanden ist und eine etwaige Wahl annehmen wird.

6.5

Der Vorschlag eines Wahlberechtigten ist nur gültig, wenn sein von ihm unterschriebener Wahlvorschlag spätestens am 1. November des Vorjahres der Wahl beim Sekretariat des Instituts eingeht.

Regel 7: Kandidatenlisten

7.1

Der Wahlausschuss erstellt aufgrund der Wahlvorschläge gemäß Regel 6 für jeden einheitlichen Wahlbezirk und für jede Gruppe jedes nicht-einheitlichen Wahlbezirks eine vorläufige Liste der von ihm zur Wahl zugelassenen Kandidaten.

7.2

Das Institut sendet spätestens am 1. Dezember des Vorjahres der Wahl jeder zur Wahl vorgeschlagenen Person jede vom Wahlausschuss erstellte vorläufige Kandidatenliste, für die diese Person vorgeschlagen worden ist, unabhängig davon, ob diese Person auf der vorläufigen Kandidatenliste aufgeführt ist oder nicht.

7.3

Nach dem Versand der vorläufigen Kandidatenlisten kann jede vorgeschlagene Person bis spätestens 10. Dezember (Eingang beim Sekretariat des Instituts) des Vorjahres der Wahl die Änderung der vorläufigen Kandidatenlisten schriftlich beantragen.

7.4

Der Wahlausschuss erstellt nach Prüfung etwaiger Änderungsanträge die endgültigen Kandidatenlisten bis spätestens 15. Dezember.

Regel 8: Kandidaten

Alle Kandidaten, die vom Wahlausschuss gemäß Regel 7.4 zur Wahl zugelassen sind, werden ungeachtet ihrer Anzahl zur Wahl gestellt.

Regel 9: Stimmzettel und andere Wahlunterlagen

9.1

Die Wahl zum Rat des Instituts wird durch Briefwahl ausgeübt. Die Stimmzettel und die zugehörigen Wahlunterlagen werden vom Institut bis spätestens 15. Januar der Wahljahres an die Wahlberechtigten zur Post gegeben.

9.2

In jedem nicht einheitlichen Wahlbezirk erhält jeder Wahlberechtigte zwei Stimmzettel unterschiedlicher Farbe, von denen jeder für eine der beiden Gruppen dieses Wahlbezirks gilt und von denen der Wähler nur den für seine eigene Gruppe auszufüllen hat. In jedem einheitlichen Wahlbezirk erhält jeder Wahlberechtigte einen einzigen, für diesen Wahlbezirk geltenden Stimmzettel in einer dritten Farbe. Jeder Wahlberechtigte erhält zur Rücksendung des Stimmzettels einen Umschlag, der die Identität des versendenden Wählers nicht erkennen lässt und beiderseits wenigstens eine Öffnung aufweist, die die Farbe des Stimmzettels, aber nicht die Stimmabgabe von außen erkennen lässt.

9.3

Jeder Stimmzettel gibt den einheitlichen Wahlbezirk oder die Gruppe des nicht-einheitlichen Wahlbezirks, zu dem beziehungsweise zu der der Wahlberechtigte gehört, und die Gesamtzahl der ordentlichen und stellvertretenden Ratsmitglieder dieses Wahlbezirks beziehungsweise dieser Gruppe an. Er führt alle Kandidaten auf, die für diesen Wahlbezirk beziehungsweise diese Gruppe zur Wahl gestellt werden, und gibt gegebenenfalls für jeden Kandidaten an, ob er im gegenwärtigen Rat ein ordentliches oder ein stellvertretendes Ratsmitglied ist. Falls ein Kandidat eine Wahl nur als stellvertretendes Ratsmitglied anzunehmen bereit ist, ist dies auf dem Stimmzettel angegeben. Jeder Stimmzettel hat den folgenden Text aufzuweisen: „Die Stimmabgabe für einen Kandidaten ist nur gültig, wenn der Wähler diese Stimmabgabe auf seinem Stimmzettel eindeutig erkennbar gemacht hat, beispielsweise durch Anzeichnen des Namens oder durch Streichen mindestens eines anderen Namens.“

9.4

Jeder Wahlberechtigte erhält mit dem Stimmzettel oder den Stimmzetteln eine zu unterschreibende Erklärung, dass er selbst den Stimmzettel ausgefüllt hat. Jeder Wähler in einem nicht-einheitlichen Wahlbezirk hat auf der Erklärung zusätzlich anzugeben, ob er zu der Gruppe der freiberuflich Tätigen oder ob er zu der Gruppe der anderweitig Tätigen gehört, und zu versichern, dass er nur den für seine eigene Gruppe zutreffenden Stimmzettel zurücksendet. Wird ein Wähler von einer oder mehreren Personen beschäftigt, die selbst freiberuflich tätig sind, so gilt auch diese Tätigkeit als freiberuflich. Der Wähler darf nur eine Art der Tätigkeit angeben. Der Wähler hat seine ordnungsgemäß ausgefüllte Erklärung gemeinsam mit dem zugehörigen Stimmzettel, der sich in dem Rücksendeumschlag befinden muss, dem Sekretariat des Instituts zurückzusenden.

9.5

Die Stimmen eines Wählers werden nur gezählt, wenn sein Stimmzettel gemeinsam mit seiner vollständig ausgefüllten und von ihm unterschriebenen Erklärung oder einer von ihm unterschriebenen Kopie davon spätestens am 15. Februar des Wahljahres beim Sekretariat des Instituts eingeht.

Regel 10: Stimmabgabe

Der Wähler hat seine Stimmen entsprechend der Anweisung auf dem Stimmzettel gemäß dem letzten Satz der Regel 9.3 abzugeben. Kein Wähler kann auf seinem Stimmzettel mehr Kandidaten gültig wählen als er insgesamt ordentliche und stellvertretende Mitglieder des Rates wählen kann. Überzählige Kandidaten werden, vom Ende beginnend, vom Wahlausschuss gestrichen.

Regel 11: Mängel der Stimmzettel

11.1

Stimmzettel, die den Willen des Wählers nicht eindeutig erkennen lassen oder denen nicht die ausgefüllte, unterschriebene und datierte Erklärung oder eine Kopie davon mit Originalunterschrift beigelegt ist oder die nicht den Angaben auf der Erklärung entsprechen, sind ungültig.

11.2

Bezeichnet ein Wähler auf seinem Stimmzettel einen Kandidaten mehr als einmal, so wird der Kandidat trotzdem nur einmal gezählt. Hinzugefügte Namen von Nichtkandidaten und Bemerkungen werden vom Wahlausschuss gestrichen. Die Gültigkeit des Stimmzettels bleibt davon unberührt.

Regel 12: Gewählte Mitglieder des Rates

12.1

Die Anzahl der Stimmen, die auf die Kandidaten entfallen, legt die Reihenfolge der Kandidaten fest, aus der sich ergibt, welche Kandidaten als ordentliche und

welche als stellvertretende Mitglieder des Rates gewählt sind. Haben zwei oder mehr Kandidaten eine gleiche Stimmenzahl erhalten, so wird die Reihenfolge vom Wahlausschuss durch das Los entschieden.

12.2

Erhält ein Kandidat in zwei oder mehr einheitlichen Wahlbezirken und/oder Gruppen nicht einheitlicher Wahlbezirke eine Stimmenzahl, die ausreicht, als ordentliches und/oder stellvertretendes Ratsmitglied in jedem dieser Wahlbezirke oder jeder dieser Gruppen gewählt zu sein, so wird das Institut ihn so bald wie möglich hierüber informieren. Der Kandidat muss dann dem Sekretariat des Instituts umgehend mitteilen, in welchem Wahlbezirk oder in welcher Gruppe er ordentliches beziehungsweise stellvertretendes Ratsmitglied werden möchte. Versäumt er dies, wird die Frage vom Wahlausschuss durch das Los entschieden.

Regel 13: Wahlergebnis

Das Ergebnis der Wahl wird vom Institut bis spätestens 15. März des Wahljahres den Institutsmitgliedern schriftlich mitgeteilt. Diese Mitteilung enthält auch die Angabe der Stimmenzahl, die die Kandidaten erhalten haben, und das Resultat etwaiger Losentscheide.

Regel 14: Einsprüche

14.1

Institutsmitglieder, die gegen das Wahlergebnis Einwände erheben möchten, müssen ein entsprechendes Rechtsbegehren mit Begründung schriftlich fristgerecht beim Sekretariat des Instituts einreichen, wobei die Frist bei einer ordentlichen Wahl am 29. März des Wahljahres endet und das Fristende bei allen Nachwahlen vom Vorstand des Rates festgesetzt wird. Ein Rechtsbegehren, dem keine Begründung beigefügt ist, und ein solches, das nach Fristende eingeht, wird nicht berücksichtigt.

14.2

Der Präsident des Rates ernennt unverzüglich nach Eingang eines ordnungsgemäßen Rechtsbegehrens einen Wahl-Einspruchsausschuss, der aus drei Institutsmitgliedern besteht, die keine Kandidaten zur durchgeführten Wahl gewesen sind und keine Mitglieder des Wahlausschusses sind.

14.3

Die Amtszeit der Mitglieder des Wahl-Einspruchsausschusses beginnt mit ihrer Ernennung und endet mit der Erledigung der Aufgabe, für die sie ernannt worden sind. Artikel 6.2 und 18.2 der Geschäftsordnung gelten

auch für den Wahl-Einspruchsausschuss. Der Wahl-Einspruchsausschuss wird den Einspruch gemäß seiner vom Rat bestimmten Zuständigkeit prüfen.

14.4

Wenn die Art des Einspruchs eine Nachwahl oder eine neue Wahl erfordert, sind die Regeln für die Nachwahl oder neuen Wahl soweit wie möglich die gleichen wie die zu ordentlichen Ratswahlen; soweit solche Regeln nicht anwendbar sind, werden vom Vorstand des Rates geeignete Regeln aufgestellt.

Regel 15: Fristen

15.1

Das Sekretariat des Instituts hat alle bei ihm eingehenden Wahlunterlagen mit einem das Eingangsdatum aufweisenden Stempel zu versehen.

15.2

Vorbehaltlich der Regeln 15.3, 15.4 und 15.5 werden Unterlagen, die nach einem in diesen Regeln für Wahlen zum Rat festgelegten Datum beim Sekretariat des Instituts eingehen, nicht berücksichtigt.

15.3

Fällt das Ende einer Frist, die von einem Wahlberechtigten oder Kandidaten einzuhalten ist, auf einen Tag, an dem das Sekretariat des Instituts geschlossen ist, so endet die entsprechende Frist am ersten darauf folgenden Arbeitstag des Sekretariats des Instituts.

15.4

Wenn ein Wähler für den Wahlausschuss beziehungsweise den Wahl-Einspruchsausschuss zufriedenstellend nachweisen kann, dass er ein Schriftstück gemäß diesen Regeln zumindest acht Tage vor Ablauf einer Frist für den Eingang dieses Schriftstückes auf dem besten normalen Postweg, der zur Verfügung steht, an das Sekretariat des Instituts abgesandt hat, so wird dieses Schriftstück nach Eingang beim Sekretariat des Instituts als fristgerecht eingegangen angesehen, wenn zur Zeit des Eingangs andere Umstände eine Berücksichtigung dieses Schriftstückes noch erlauben.

15.5

Wenn die fristgerechte Erfüllung irgendeiner Bestimmung dieser Regeln nach Meinung des Wahlausschusses beziehungsweise des Wahl-Einspruchsausschusses durch außerhalb der Macht des Wahlberechtigten oder Kandidaten gelegene Umstände unmöglich wird, so kann der Wahlausschuss beziehungsweise der Wahl-Einspruchsausschuss anordnen, dass die Erfüllung zu einem anderen Termin angenommen werden wird.

Election to the Council of the Institute

At the beginning of next year, the Council of the Institute is due to be elected for its new term.

We would like to inform you of the mailing dates of the documents which have to be completed as well as of the deadlines for receiving the completed documents at the Secretariat of the Institute in Munich.

1st step

– by 1st October 2001 at the latest:

Mailing of the nomination form for the nomination of candidates to the members of the Institute.

– by 1st November 2001:

Deadline for receiving the completed nomination form at the Secretariat of the Institute.

2nd step

– by 1st December 2001 at the latest:

Mailing of the provisional lists of candidates to the persons nominated for election.

– by 10 December 2001:

Deadline for receiving requests in writing for corrections of the provisional lists at the Secretariat of the Institute.

3rd step

– by 15 January 2002 at the latest:

Mailing of the ballot papers and related documents to the electors.

– by 15 February 2002:

Deadline for receiving the completed ballot paper together with the completed and signed declaration form at the Secretariat of the Institute.

4th step

– by 15 March 2002 at the latest:

Publication of the results of the election in epi Information 1/2002.

The Rules for election of Council are published hereafter.

Rules for Election of Council

Rule 1: Elections

Elections to the Council of the Institute of Professional Representatives are carried out by this Institute, in accordance with the Founding Regulation and in the manner laid down below.

Rule 2: Electors

2.1

All persons entered in the list of Professional Representatives maintained by the European Patent Office at the close of business of the European Patent Office in Munich on the last working day before 15th September of the year preceding the year in which the succeeding Council will take office („pre-election year“) shall be electors having the right to vote and to be candidates in the next ordinary election for the succeeding Council, and no other person.

2.2

The number of members of the Institute entered in the list of Professional Representatives at the close of business of the European Patent Office in Munich on the last working day before 15th September of the pre-election year shall be decisive for determining the number of Council members to be elected in each constituency,

according to Article 7, paragraph 3 of the Founding Regulation.

Rule 3: Voting

3.1

Every constituency which voted unitarily or non-unitarily in the immediately preceding ordinary election to the Council and not having indicated to the Secretariat of the Institute before 15th September of the pre-election year that it has decided, in the manner envisaged by Article 7, paragraph 6 of the Founding Regulation, to adopt the other method of voting, shall vote in the same manner in the election of the succeeding Council.

3.2

Every constituency created during the current term of office of the Council and before 15th September of the pre-election year shall vote in the manner that was appropriate at its creation, pursuant to Article 7, paragraphs 4 and 5, of the Founding Regulation, unless it has indicated before 15th September of the pre-election year to the Secretariat of the Institute that it has decided, in the manner envisaged by Article 7, paragraph 6, of the Founding Regulation, to adopt the other manner of voting.

3.3

In every constituency created after 15th September of the pre-election year and before the first meeting of the Council to be elected in the year thereafter („election year“), the Institute shall as soon as possible hold a by-election. The term of office of those elected at the by-election shall expire at the same time as that of the Council to which they were elected. The Rules governing the by-election shall as far as possible be the same as those governing ordinary elections to Council and where those Rules are not applicable, Rules shall be set by the Board of the Council.

Rule 4: Electoral Committee**4.1**

During the last Council Meeting, before the 15th September of the pre-election year, the Council shall set up an Electoral Committee consisting of three members of the Institute who shall not stand for election, and at least one of whom should, if possible, have experience within a previous Electoral Committee.

4.2

The term of the Electoral Committee shall continue until the setting up of the next Electoral Committee for the next ordinary election of Council.

4.3

Articles 6.2 and 18.2 of the By-Laws are also applicable to the Electoral Committee.

4.4

For the election of Council and for any by-election held before the next ordinary election of the Council for which the Electoral Committee has been set up, the Electoral Committee shall supervise conformity with the applicable Rules. The Electoral Committee shall in particular supervise all the steps relating to preparation for the election, the opening of the envelopes, the counting of the votes, shall decide in cases of doubt, shall draw lots whenever required by these Rules, shall declare the result of the election, and shall prepare a written report to the President of the Council on that election.

4.5

The Electoral Committee shall meet not before one week from and two weeks later than the respective dates mentioned in Rules 6.5 and 9.5.

Rule 5: Preparation for the Election

As soon as possible after 15th September and no later than 1st October of the pre-election year, the Institute shall send to each elector at his address as in the list referred to in Rule 2 a nomination form in preparation for the election of Council in which he may make nominations for candidates for election to Council.

Rule 6: Nomination**6.1**

Only for his own unitary constituency or group of a non-unitary constituency, every elector can nominate himself and/or one or more other member(s) of the Institute, including those from another constituency, as candidate(s) for election, providing he identifies him/them by name and place of business or employment on his nomination form.

6.2

An elector shall not nominate on his nomination form more persons for election than the maximum number of Council members that is determined for his own unitary constituency or his own group of his non-unitary constituency. Nomination(s) beyond the determined number shall be struck from his nomination form from the end towards the beginning by the Electoral Committee.

6.3

A nominated person, who is only prepared to stand as a substitute, shall be so indicated.

6.4

An elector who has signed his nomination form thereby confirms that each nominee accepts his nomination and election, if elected.

6.5

To be valid, a signed nomination form shall be received by the Secretariat of the Institute no later than 1st November of the pre-election year.

Rule 7: Lists of candidates**7.1**

For each unitary constituency and each group of each non-unitary constituency, the Electoral Committee shall prepare from the persons nominated, according to the provisions of Rule 6, a provisional list of candidates for election.

7.2

No later than 1st December of the pre-election year, the Institute shall send to each person nominated for election to Council the provisional list(s) drawn up by the Electoral Committee for the or each constituency for which he has been nominated. Persons whose nomination was disregarded shall also receive those provisional list(s).

7.3

After the provisional list(s) has/have been sent, any person nominated may request in writing correction of such provisional list(s). Any such request shall be received by the Secretariat of the Institute at the latest by 10th December of the pre-election year.

7.4

The Electoral Committee shall consider any such request and shall then draw up final lists of candidates for election until 15th December.

Rule 8: Candidates

All candidates appearing on final lists drawn up according to Rule 7.4 shall be put forward for election, regardless of their number.

Rule 9: Ballot Papers and related documents

9.1

The election of the Council shall be carried out by postal vote. At the latest by the 15 January of the election year, the Institute shall send ballot papers and related documents by post to the electors.

9.2

In every non-unitary constituency each elector will receive two ballot papers of different colour, applicable respectively to the two groups of that constituency, of which he will complete only the one applicable to his own group. In every unitary constituency each elector will receive a single ballot paper applicable to that constituency and of a third colour. Each elector will receive an envelope for returning the ballot paper, suitable for concealing the returning elector's identity, and with at least one opening on both sides, which allows identification of the ballot paper by colour, but not the content of the ballot paper.

9.3

Each ballot paper will indicate the unitary constituency or the group of a non-unitary constituency for which that ballot paper is valid, and the total number of representatives and substitutes for that constituency or group. The ballot paper will indicate all the candidates standing for election to the respective constituency or group of a non-unitary constituency, and, where applicable, for each of them whether he is a representative or substitute of the current Council, and whether a candidate wishes only to stand for election as a substitute. Each ballot paper must include the following text: *„The vote for a candidate shall only be valid when the elector makes it clear on his ballot paper that he has voted for that candidate, particularly by putting a sign or mark against the name of that candidate, or by striking out the name(s) of (an)other candidate(s).“*

9.4

Each elector will receive with the ballot paper(s) a declaration for the elector to declare that he himself has completed the ballot paper. In addition, each elector in a non-unitary constituency shall on the declaration declare that he is a member of the group in private practice, or in the group of another capacity, and that he has only returned the ballot paper applicable to his own group. Employment in a private practice firm shall be considered

as being in the group in private practice. An elector is permitted to indicate on the declaration only one kind of practice. The elector shall return the duly completed declaration, together with the related ballot paper, which ballot paper must be in the envelope provided, to the Secretariat of the Institute.

9.5

The votes of the elector will only be counted if his ballot paper together with his completed and signed declaration, or a photocopy thereof (provided the signature is original), is received by the Secretariat of the Institute no later than 15 February of the election year.

Rule 10: Voting

An elector shall vote as directed on the ballot paper according to the last sentence of Rule 9.3. No elector may validly vote on his ballot paper for a number of candidates exceeding the determined number of representatives and substitutes, taken together, for whom he may vote. Votes cast exceeding the determined number will be struck from a ballot paper from the end towards the beginning by the Electoral Committee.

Rule 11: Ballot Deficiencies

11.1

Ballot papers which do not clearly allow a determination of the intention of the elector, or which are not accompanied by the completed, signed and dated declaration, or by a photocopy thereof on which the signature is original, or which do not correspond with the declaration, are null and void.

11.2

If an elector votes on his ballot paper more than once for a candidate, that candidate will be counted only once. Added names of persons who are not candidates and remarks shall be deleted by the Electoral Committee without prejudice to the validity of the ballot paper.

Rule 12: Elected Members of Council

12.1

The number of votes received by the candidates determines whether they are elected either as representatives or as substitutes, and in what order. If an equal number of votes is received by two or more candidates, their order will be decided by lots drawn by the Electoral Committee.

12.2

If a candidate receives in two or more unitary constituencies and/or groups of non-unitary constituencies a number of votes sufficient for being elected, as a representative and/or as a substitute, in each of those constituencies or groups, the Institute shall inform him accordingly as soon as possible, and he must then promptly advise the Secretariat of the Institute in which

one he chooses to become a representative or a substitute, as the case may be, failing which the question will be decided by lots drawn by the Electoral Committee.

Rule 13: Election results

At the latest by 15th March of the election year, the Institute shall send the result of the election by post to its members, indicating the number of votes received by all candidates and the result of any drawing of lots, if applicable.

Rule 14: Objections

14.1

Members of the Institute wishing to object against the election result shall submit their written requests with a reasoned statement to reach the Secretariat of the Institute at the latest by a date which for an ordinary election is 29th March of the election year and for any by-election will be set by the Board of the Council. Any request without a reasoned statement will not be taken into consideration, neither will a request reaching the Secretariat of the Institute after the respective date be taken into consideration.

14.2

After a correctly made request has been received by the Secretariat of the Institute, the President of the Council shall promptly designate an Electoral Objections Committee consisting of three members of the Institute who were not candidates in the disputed election and who are not members of the Electoral Committee.

14.3

The term of the Electoral Objections Committee shall continue until the completion of examination of the objections for which it was designated. Articles 6.2 and 18.2 of the By-Laws are applicable to the Electoral Objections Committee. The Electoral Objections Committee shall examine the objections in conformity with terms of reference fixed for it by the Council.

14.4

If the nature of the objections requires a by-election or new election, the Rules governing that election shall as

far as possible be the same as those governing ordinary elections to Council and where those Rules are not applicable, Rules will be set by the Board of the Council.

Rule 15: Time Limits

15.1

The Secretariat of the Institute shall stamp all papers concerning the elections received by the Institute with a stamp giving the date of receipt.

15.2

Any paper reaching the Institute after any respective date set by the Rules for election of Council shall be ignored, excepting as provided for in Rules 16.3, 16.4 and 16.5 hereafter.

15.3

If any time limit which must be observed by an elector or candidate falls on a day on which the Secretariat of the Institute is closed, that time limit shall extend until the first working day of the Secretariat of the Institute thereafter.

15.4

If an elector can prove to the satisfaction of the Electoral Committee or the Electoral Objections Committee respectively that he posted any paper referred to in these Rules to the Secretariat of the Institute by the best normal postal service available at least eight days before a time limit for receipt of that paper, the paper shall, after receipt by the Secretariat of the Institute, be deemed to have been received in time, if at that time of receipt other circumstances still permit account to be taken of that paper.

15.5

If compliance with any provision of these Rules by the date set is, in the opinion of the Electoral Committee or the Electoral Objections Committee respectively, rendered impossible by circumstances outside the elector's or candidate's control, the Electoral Committee or the Electoral Objections Committee respectively may rule that compliance by another date will be accepted.

Election au Conseil de l'Institut

Au début de l'année prochaine, le Conseil de l'Institut doit être renouvelé pour un nouveau mandat.

Nous vous informons des dates d'envoi des documents à remplir et des dates auxquelles ces documents devront être retournés au secrétariat de l'Institut à Munich.

1ère étape

– au plus tard le 1er octobre 2001:

Envoi du formulaire de candidature pour la nomination de candidats aux membres de l'Institut.

– 1er novembre 2001:

Date limite de réception du formulaire de candidature au secrétariat de l'Institut.

2ème étape

– au plus tard le 1er décembre 2001:

Envoi des listes provisoires de candidats aux personnes dont la candidature a été proposée.

– 10 décembre 2001:

Date limite de réception, au secrétariat de l'Institut, de toute requête écrite visant à apporter une correction sur les listes provisoires de candidats.

3ème étape

– au plus tard le 15 janvier 2002:

Envoi des bulletins de vote et documents annexés aux électeurs.

– 15 février 2002:

Date limite de réception du bulletin de vote dûment rempli ainsi que du formulaire de déclaration, dûment rempli et signé, au secrétariat de l'Institut.

4ème étape

– au plus tard le 15 mars 2002:

Communication des résultats des élections dans epi Information 1/2002.

Les Règles pour l'élection au Conseil sont publiées ci-après.

Règles pour les élections au Conseil

Règle 1: Elections

Les élections au Conseil de l'Institut des mandataires agréés sont organisées par cet Institut en application du Règlement de création et de la manière précisée ci-dessous.

Règle 2: Electeurs

2.1

Toute personne qui est inscrite sur la liste des mandataires agréés, tenue par l'Office européen des brevets, à l'heure de fermeture de l'Office européen des brevets à Munich le dernier jour ouvrable avant le 15 septembre de l'année précédant celle au cours de laquelle le nouveau Conseil entrera en exercice („année pré-électorale“), aura la qualité d'électeur ayant le droit de voter et d'être candidat pour la prochaine élection ordinaire au nouveau Conseil, et ce à l'exclusion de toute autre personne.

2.2

Le nombre des membres à l'Institut inscrits sur la liste des mandataires agréés à l'heure de fermeture de l'Office européen des brevets à Munich le dernier jour ouvrable avant le 15 septembre de l'année pré-électorale, sera pris en considération pour fixer le nombre de membres du Conseil qui seront élus dans chaque circonscription,

conformément à l'article 7, paragraphe 3 du Règlement de création.

Règle 3: Vote

3.1

Toute circonscription ayant voté suivant le système à collège unique ou à double collège lors des élections ordinaires immédiatement précédentes au Conseil, et n'ayant pas indiqué au Secrétariat de l'Institut avant le 15 septembre de l'année pré-électorale que, en vertu de l'Article 7, paragraphe 6 du Règlement de création, elle a décidé d'adopter l'autre système, devra voter suivant le précédent système aux élections du nouveau Conseil.

3.2

Toute circonscription créée avant le 15 septembre d'une année pré-électorale pendant la durée d'exercice du Conseil devra voter suivant le système applicable à la date de sa création en vertu de l'Article 7, paragraphe 4 et 5 du Règlement de création, à moins qu'elle n'ait indiqué au Secrétariat de l'Institut avant le 15 septembre de l'année pré-électorale que, conformément à l'Article 7, paragraphe 6 du Règlement de création, elle adoptera l'autre système.

3.3

Dans toute circonscription créée après le 15 septembre de l'année pré-électorale et avant la première session du Conseil qui devra être nouvellement élu l'année suivante („année de l'élection“), l'Institut devra organiser dans les meilleurs délais une élection complémentaire. Le mandat des personnes élues lors d'une élection complémentaire expirera en même temps que celui du Conseil auquel elles auront été élues. Les Règles régissant l'élection complémentaire seront, autant que possible, celles en vigueur pour l'élection ordinaire du Conseil, sous réserve de l'application de Règles spécifiques fixées par le Bureau du Conseil.

Règle 4: Commission Electorale

4.1

Lors de la dernière réunion du Conseil prenant fin avant le 15 septembre de l'année pré-électorale, le Conseil devra désigner une Commission Electorale constituée de trois membres de l'Institut qui ne se présentent pas aux élections. L'un d'entre eux au moins devrait avoir si possible une expérience antérieure au sein d'une Commission Electorale.

4.2

L'exercice de la Commission Electorale se poursuit jusqu'à la mise en place d'une nouvelle Commission Electorale en vue de la prochaine élection ordinaire du Conseil.

4.3

Les dispositions de l'Article 6.2 et 18.2 du Règlement Intérieur sont aussi applicables à la Commission Electorale.

4.4

Pour l'élection pour laquelle elle a été désignée et pour toute élection complémentaire ayant lieu avant l'élection ordinaire suivante, ladite Commission veillera au respect des règles en vigueur. Elle supervisera toutes les tâches préparatoires afférentes à l'élection, le dépouillement du scrutin, tranchera en cas de doute et effectuera en tant que de besoin les tirages au sort prévus par les présentes règles; elle annoncera les résultats de l'élection et établira un compte-rendu de celle-ci à l'attention du Président du Conseil.

4.5

La Commission Electorale se réunit au plus tôt une semaine après et au plus tard deux semaines après les dates visées aux Règles 6.5 et 9.5.

Règle 5: Préparation de l'élection

Dès que possible, après le 15 septembre de l'année pré-électorale, mais au plus tard le 1er octobre de cette même année, l'Institut enverra à chaque électeur, à son adresse indiquée sur la liste visée à la Règle 2, un formulaire de candidature destiné à la préparation de

l'élection du Conseil, grâce auquel chaque électeur peut soumettre des candidatures.

Règle 6: Proposition de candidatures

6.1

Exclusivement pour sa circonscription à collège unique, ou son propre groupe dans le cas d'une circonscription à double collège, tout électeur peut soumettre sa propre candidature et/ou celle d'un ou de plusieurs autres membres de l'Institut, même provenant d'une autre circonscription. Les candidats doivent être dûment identifiés sur le formulaire de candidature par leur nom et leur lieu d'établissement ou d'emploi.

6.2

Un électeur ne doit pas soumettre sur son formulaire de candidature plus de candidatures à l'élection qu'il n'y a de sièges disponibles de membres du Conseil dans sa propre circonscription si celle-ci est à collège unique, ou son propre groupe si la circonscription est à double collège. Au-delà du nombre de sièges disponibles, les candidatures en trop seront biffées du formulaire de candidature de bas en haut par la Commission Electorale.

6.3

Les personnes dont la candidature est proposée et qui sont disposées à siéger en tant que membres suppléants uniquement, doivent être identifiées en tant que telles.

6.4

L'électeur qui a formulé une proposition de candidatures confirme par sa signature sur le formulaire de candidature que chaque candidat accepte sa candidature et son élection, le cas échéant.

6.5

Pour être valable, le formulaire de candidature doit parvenir dûment signé au secrétariat de l'Institut au plus tard le 1er novembre de l'année pré-électorale.

Règle 7: Listes des candidats

7.1

Pour chaque circonscription à collège unique et pour chaque groupe des circonscriptions à double collège, la Commission Electorale établit à partir des propositions de candidatures une liste provisoire de candidats conformément aux dispositions de la Règle 6.

7.2

Au plus tard le 1er décembre de l'année pré-électorale, l'Institut transmet à chaque personne dont la candidature a été proposée la ou les listes provisoires qui la concernent, et ce dans toutes les circonscriptions à collège unique et tous les groupes des circonscriptions à double collège pour lesquels sa candidature a été proposée. L'Institut fait également parvenir ces listes aux personnes dont le nom n'a pas été retenu par la Commission Electorale pour y figurer.

7.3

Après que les listes provisoires aient été transmises, toute personne dont la candidature a été proposée peut demander leur correction par écrit. Une requête à cette fin, doit parvenir au secrétariat de l'Institut au plus tard le 10 décembre de l'année pré-électorale.

7.4

La Commission Electorale statue sur les requêtes en correction et établit ensuite les listes définitives de candidats à l'élection jusqu'au 15 décembre.

Règle 8: Candidats

Tous les candidats dont les noms apparaissent sur les listes définitives visées à la Règle 7.4 sont présentés aux élections, au mépris de leur nombre.

Règle 9: Bulletins de vote et documents annexés

9.1

L'élection au Conseil s'effectue par correspondance postale. Au plus tard le 15 janvier de l'année de l'élection, l'Institut adresse les bulletins de vote et documents annexés par voie postale aux électeurs.

9.2

Dans toute circonscription à double collège, chaque électeur recevra deux bulletins de vote de couleur distincte, respectivement valables pour chacun des groupes de cette circonscription, et il ne devra remplir que le bulletin valable pour son propre groupe. Dans toute circonscription à collège unique, chaque électeur recevra un seul bulletin de vote valable pour cette circonscription, dans une troisième couleur. Chaque électeur recevra une enveloppe permettant de remettre le bulletin de vote sans révéler l'identité de l'électeur, et comportant au moins une ouverture sur les deux faces permettant de reconnaître la couleur du bulletin de vote mais non d'identifier son contenu.

9.3

Chaque bulletin de vote mentionne pour quelle circonscription à collège unique ou quel groupe d'une circonscription à double collège il est valable, ainsi que le nombre total de l'ensemble des représentants titulaires et suppléants pour cette circonscription ou ce groupe. Il indiquera en outre tous les candidats qui sont présentés dans la circonscription à collège unique ou le groupe de la circonscription à double collège considérés, et le cas échéant, pour chacun d'entre eux, s'il est représentant titulaire ou suppléant au sein du Conseil précédent, et si le candidat souhaite son élection uniquement en qualité de membre suppléant. Chaque bulletin de vote comprend en outre la mention suivante: „*Le vote en faveur d'un candidat sera réputé valable uniquement lorsque l'électeur montre clairement sur le bulletin de vote qu'il a voté pour ce candidat, notamment à l'aide d'un signe ou d'une marque en regard de son nom, ou en biffant les*

noms d'un ou des autres candidats qu'il ne souhaite pas élire.”

9.4

Chaque électeur reçoit avec le ou les bulletins de vote une déclaration au moyen de laquelle il déclare avoir rempli lui-même le bulletin de vote. Pour les circonscriptions à double collège, chaque électeur indique en outre s'il appartient au groupe de la profession libérale ou s'il exerce à tout autre titre, et qu'il renvoie seulement le bulletin de vote de son propre groupe. Si un membre exerce son activité auprès d'un employeur qui exerce lui-même à titre libéral, cette dernière sera également considérée comme relevant de la profession libérale. Un électeur n'est autorisé à mentionner qu'un seul titre d'exercice. L'électeur renvoie au Secrétariat de l'Institut la déclaration, dûment remplie, ainsi que le bulletin de vote qui doit être préalablement inséré dans l'enveloppe jointe.

9.5

Le vote d'un électeur ne sera compté que si le bulletin de vote et la déclaration, dûment remplie et signée, ou une photocopie de celle-ci, portant une signature originale, parviennent au Secrétariat de l'Institut au plus tard le 15 février de l'année de l'élection.

Règle 10: Vote

Chaque électeur doit voter suivant les instructions figurant sur le bulletin de vote, conformément à la dernière phrase de la Règle 9.3. Aucun électeur ne peut valablement marquer sur son bulletin de vote plus de candidats que le nombre total des représentants titulaires et suppléants, pris dans leur ensemble, pour lequel il est autorisé à voter. Au-delà du nombre autorisé, les noms des candidats sont biffés de bas en haut par la Commission Electorale.

Règle 11: Bulletin nuls

11.1

Sont considérés comme nuls et sans valeur les bulletins de vote qui ne permettent pas de déterminer clairement l'intention de l'électeur, ou ceux qui ne sont pas accompagnés de la déclaration, dûment remplie, signée et datée, ou d'une photocopie de celle-ci portant une signature originale, ainsi que ceux qui ne correspondent pas à la déclaration.

11.2

Si un candidat se voit attribuer plusieurs fois la marque d'un électeur sur un bulletin de vote, celle-ci ne sera prise en compte qu'une seule fois. Les noms additionnels de personnes non-candidates et les remarques seront bariés par la Commission Electorale sans préjudice de la validité du bulletin de vote.

Règle 12: Membres du Conseil élus**12.1**

Le nombre des voix recueilli par les candidats détermine leur ordre d'élection qui détermine si ceux-ci sont élus au Conseil en tant que représentant titulaire ou en tant que suppléant. Si un nombre égal de voix a été recueilli par deux ou plus de candidats, ces derniers sont départagés par tirage au sort organisé par la Commission Electorale.

12.2

Si un candidat recueille, dans deux ou plus de deux circonscriptions à collège unique et/ou groupes de circonscriptions à double collège, un nombre de voix suffisant pour être élu dans chacun de ces circonscriptions ou groupes, en tant que représentant titulaire et/ou suppléant, l'Institut devra l'en informer dès que possible. Le candidat devra alors indiquer à bref délai au Secrétariat de l'Institut dans quelle circonscription ou quel groupe il choisit de devenir représentant titulaire ou, le cas échéant, suppléant, faute de quoi la question sera tranchée par tirage au sort organisé par la Commission Electorale.

Règle 13: Résultat de l'élection

Au plus tard le 15 mars de l'année électorale, l'Institut communiquera par écrit le résultat de l'élection à tous les membres, en indiquant le nombre de voix recueillies par chaque candidat et, le cas échéant, le résultat des tirages au sort qui auront été effectués.

Règle 14: Contestation du résultat**14.1**

Les membres de l'Institut désirant contester le résultat d'une élection devront soumettre par écrit une requête au Secrétariat de l'Institut, accompagnée d'un mémoire exposant leurs objections, de manière qu'ils lui parviennent au plus tard le 29 mars de l'année électorale lorsqu'une élection ordinaire est concernée, et, dans le cas d'une élection complémentaire, à une date qui sera fixée par le Bureau du Conseil. Si la requête en contestation parvient au secrétariat de l'Institut après cette date, ou si elle n'est pas accompagnée d'un mémoire exposant les objections soulevées, celle-ci ne sera pas prise en considération.

14.2

Dès la réception de la requête en contestation, le Président du Conseil devra désigner dans les plus brefs délais une Commission des Contestations de l'élection constituée de trois membres de l'Institut qui n'ont pas été candidats dans l'élection contestée, ni membre de la Commission Electorale.

14.3

L'exercice de la Commission des Contestations de l'élection se poursuit jusqu'au complet achèvement de son devoir. Les dispositions des Articles 6.2 et 18.2 du Règlement Intérieur sont applicables à la Commission des Contestations de l'élection. La Commission des Contestations de l'élection devra traiter les contestations conformément à ses attributions fixées par le Conseil.

14.4

Si la nature des objections impose une élection complémentaire ou une nouvelle élection, les Règles régissant ces élections seront, autant que possible, les mêmes que celles qui régissent l'élection ordinaire au Conseil, sous réserve de l'application de Règles spécifiques fixées par le Bureau du Conseil.

Règle 15: Délais**15.1**

Le secrétariat de l'Institut pose un cachet d'arrivée portant la date de réception sur tout document relatif aux élections qui arrive au secrétariat de l'Institut.

15.2

Tout document arrivant au secrétariat de l'Institut au-delà des dates prescrites par les présentes Règles ne sera pas pris en considération, à l'exception de ceux visés aux Règles 16.3, 16.4 et 16.5 ci-après.

15.3

Si le dernier jour d'un délai qui doit être observé par un électeur ou un candidat tombe sur un jour de fermeture du secrétariat de l'Institut, alors le délai est prorogé jusqu'au jour ouvrable suivant du Secrétariat de l'Institut.

15.4

Si un électeur peut prouver de façon convaincante à la Commission Electorale ou la Commission des Contestations de l'élection respectivement qu'il a effectué l'envoi d'un document quelconque prescrit par les présentes Règles par courrier postal à l'adresse du Secrétariat de l'Institut dans les meilleures conditions normales possibles, au moins huit jours avant la date limite de réception de ce document, ce dernier sera considéré à sa réception par le Secrétariat de l'Institut comme ayant été reçu dans le délai fixé si, lors de sa réception, aucune autre circonstance ne s'y oppose.

15.5

Si la Commission Electorale ou la Commission des Contestations de l'élection respectivement estime que des circonstances indépendantes de la volonté d'un électeur ou d'un candidat ont empêché ce dernier de respecter l'une quelconques des exigences des présentes Règles à une date fixée, celle-ci peut décider que le respect de cette exigence à une autre date devra être accepté.

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Name:

Important Information from the Online Communications Committee regarding online filing of European patent applications

Experience collected since earlier this year with the *epoline* online filing system shows that, for technical reasons, we cannot yet be confident with the system and therefore cannot presently recommend its use,

mainly because of conversion problems from word processor documents into PDF documents, and printing problems on the side of the EPO

and because of transmission problems caused by system availability at the EPO or on the Internet or on local systems

and because of the lack of technical assistance provided by the EPO

and for a number of other reasons.

Updated information from the Online Communications Committee (OCC) will be published on the *epi* website immediately after regaining confidence.

D. Speiser
Chairman of the
Online Communications Committee

France has signed the Protocol to Art. 65 EPC at the end of June 2001.

Please visit our website for further news !

www.patentepi.com

Redaktionsschluss für
epi Information
4/2001

Redaktionsschluss für die nächste Ausgabe der epi Information ist der **8. November 2001**. Die Dokumente, die veröffentlicht werden sollen, müssen bis zu diesem Datum im Sekretariat eingegangen sein.

Deadline for epi
Information 4/2001

Our deadline for the next issue of epi Information is **8 November 2001**. Documents for publication should have reached the Secretariat by this date.

Date limite pour epi
Information 4/2001

La date limite de remise des documents pour le prochain numéro de epi Information est le **8 novembre 2001**. Les textes destinés à la publication devront être reçus par le Secrétariat avant cette date.



CEIPI

Advance Information

Seminar Milan, 3 December 2001

A one day seminar will be held on Monday 3 December 2001 in Milan
(9.30 a.m. to 5 p.m)

Topic: Some basic facts about Oral Proceedings at the EPO

A mock Oral Proceedings in Opposition will be held to give the participants an opportunity to see how to prepare such an event and what can actually happen.

Daniel X. Thomas, Director in DG 2, EPO will chair this seminar. He will act as chairman of the Opposition Division as well as moderator in the discussions.

This seminar will also give experienced members of the profession a possibility of a direct exchange of views with a member of the EPO.

Invitations and enrolment forms will be sent to members from Italy and Switzerland, who will be given priority. Please make a note in your diary!

Registration fee: DEM 450, incl. morning coffee, lunch and afternoon coffee

epi Booklet „Patents in Europe“

We would like to inform our readership that a new edition of the *epi* booklet „Patents in Europe“ is available in German.

The booklet can be ordered from the *epi* Secretariat.

epi Excess Liability Insurance 2001/2002

On 1 October 2001 the *epi* Excess Liability Insurance scheme has gone into its thirteenth year of existence. It aims to give better insurance coverage at a reasonable price to *epi* members.

The indemnity of basic professional liability insurance schemes is often limited to DM 2 million. Therefore, the *epi* Excess Liability Insurance scheme indemnifies losses as far as they exceed DM 2million/equivalent. Its limit of indemnity is a further 3 million per loss so that – together with basic insurance – a total loss of DM 5 million/equivalent is covered.

There is a collective indemnity limit to 30 million p.a. for all participating *epi* members which according to insurance calculations will hardly be reached. The premium for the *epi* Excess Liability Insurance scheme for the insurance year 2001/2002 amounts to DM 750,- plus insurance tax.

Persons wishing to join the *epi* insurance policy should directly contact the broker, Funk GmbH, for all policy matters, application forms etc., and payments. Please make your payments to the broker's account mentioned hereafter, free of bank charges, indicating the following reference „*epi* insurance 01 0047425000“ (this is the *epi* client number with the broker) as well as your name.

epi invites each member to carefully consider joining the *epi* Excess Liability Insurance scheme since clients' claims may easily reach the sum of DM 5 million. They may ruin your economic and professional situation if no adequate insurance cover is provided for. The *epi* Excess Liability Insurance scheme improves your insurance cover at a reasonable price and provides insurance cover for you as an *epi* member in all nineteen EPC contractual countries regardless of where you exercise your profession.

For further information on the *epi* Excess Liability Insurance please contact:

Funk International GmbH
Postfach 30 17 60
D-20306 Hamburg
Phone: +49 40 3 59 14-4 57
Fax: +49 40 3 59 14-5 59
Att: Mr. Heitmann

Bank connection of Funk International GmbH:
Account No. 9 131 310 00
Bank Code 200 800 00
Dresdner Bank AG, Hamburg, Germany

Comments on R. Jehan's article „Economical with Law – Is there a Case for Removing Computer Programs from the List of non-Inventions?“

M. Harman (GB)

I refer to Robert Jehan's article „Economical with the Law – Is there a Case for Removing Computer Programs from the List of non-Inventions?“ in the latest *epi* Information (1/2001, pages 26-31). This seems to be substantially the same as his article in CIPA (CIPA Journal, February 2001, pages 78-84). Your readers may be interested to learn that that prompted three items in CIPA in response.

1 A letter (CIPA Journal, March 2001, pages 168–170) from Dr John Collins of Marks & Clerk; he felt compelled to correct several points. The main points he made are as follows:

Programs and software. Jehan's distinction between computer programs and software is at best an oversimplification based on a misunderstanding. Jehan considers source and object code, but he does not adequately consider interpreted languages such as Basic, JavaScript, and HTML. Further, users are rarely

given source code, only object code in executable form. Also, in general any form of code can exist on any form of permanent carrier (magnetic disc, CD ROM, and even paper using OCR characters which can be read and executed directly by a computer) or transient medium (electrical, optical, microwave, etc, such as downloading over the Internet).

Contributory infringement. It is important not to be forced to rely on this. The EPO has recognized the need for claims covering a record medium with the program/software on it. Regarding claims of the form Jehan proposes, to apparatus and performing the function, it is doubtful whether these will define all the essential elements, which include the hardware.

Technical effect. This is not a new test; it has been used by the EPO for many years. It is no more difficult to define „technical“ than „invention“, which is also undefined by the EPC.

Business methods. Jehan asserts that these are not patentable even if there is a technical effect. But there are several granted EP patents in this field, including the *Sohei* case (T768/92).

General. There is no need to change the EPC; the EPO has been granting program and business related patents from the start. But proper directions for the practice are needed, and education is essential for awareness of the availability of patents in these areas.

- 2 A letter in response (CIPA Journal, April 2001, page 227) from Mr Jehan. He invited people to contact him to clarify matters if they had difficulty with the technical or legal points. He again stressed the distinction between software and programs. And on the „technical effect“ aspect, he pointed out that using this test to determine whether an invention is in an excluded category is very different from using it as a general requirement for patentability.

- 3 An article „Economical with the Articles (or, should programs be patentable?)“, by myself (CIPA Journal, April 2001, pages 193-197). I do not think it proper to take up your pages with a full-length repetition of an article which has already appeared elsewhere, but I may perhaps summarize it and expand slightly on its final parts.

Reduced flexibility. Contrary to Jehan's argument, neither the removal of the EPC exclusions nor the addition of the TRIPS wording „all fields of technology“ will form a positive constraint or result in the EPC becoming dated. (In fact, it is the present exclusion which has become dated.)

„Non-inventions“. Some inventions are inherently outside the scope of the patent system; others are excluded for policy (political) reasons. Most of the Article 52(2) exclusions are inherently outside the system; the status of „presentations of information“ is unclear; it is only „programs for computers“ which are clearly political exclusions. (But note Article 52(4), which defines a different type of class of exclusion.)

Technical effect. I agree that the statutory basis for this requirement (and for the „problem and solution“ approach, which Jehan also mentions) is questionable. But these matters have no essential connection with the patentability of programs.

Source code. Jehan uses this term for object code as well as source code.

Computer languages. The primary area of concern is not languages as such but computer programs. (Incidentally, a computer language is not excluded by Article 52(2).)

Software and programs. Like Dr Collins, I am not convinced by Jehan's attempt to identify programs as

abstract and software as physical. A program is software (and *vice versa*), and has both abstract and physical attributes.

Politics. I agree with Jehan that this is a political matter. The late Laurence Perry noted that IBM had a commanding position in hardware patents in the 50s and 60s, so in developing their 1968 law, the French decided that they would not risk the same happening with software. That exclusion was copied into the EPC. It proved totally incompatible with the technical realities, and it has taken decades to achieve a workable interpretation.

Large parts of European industry currently believe that software-related inventions are inherently unpatentable, and so do not consider the possibility of trying to obtain patent protection for inventions which may be of great importance. Meanwhile, US industry believes such inventions to be patentable, and will often try to obtain EP as well as US patents. So US companies will build up dominant patent holdings not only in the US but in Europe as well. Thus the political exclusion is turning out to have the reverse effect to that intended.

Jehan argues that some more effective way of excluding programs from the system should be developed. But that will involve further decades of total confusion as people try to reconcile the technical realities with the political aspirations. I believe we should amend the EPC by removing the exclusion.

Public perception – the patent system. At present, there is an apparent contradiction between the EPC and the practice of the EPO. To the public at large, that surely appears absurd; it brings the patent system into disrepute. I certainly agree with Jehan that something should be done.

Public perception – patentability of software. As noted above, large parts of European industry currently believe that software-related inventions are inherently unpatentable. We can try to educate that industry, explaining that when the EPC says that programs are unpatentable, it doesn't actually mean that, because this and that case have interpreted it in this and that way, and so on. Some will listen, some of those will believe us, and over the decades, European industry will gradually come to try to patent inventions in this field. Alternatively, we can amend the EPC, which will send a clear message.

Part of our job as a profession is to enable our clients and potential clients to make informed decisions. And in this situation, promoting the deletion of Article 52(2) relating to programs is the best way of promoting knowledge of the true situation.

Patenting Business Methods and Software – Australia chooses to follow the US lead

C. J. Bird¹ (GB)

Following on from the recent observations in the pages of this journal, and the broader controversy in Europe surrounding 'software patents', I thought the readers would be interested in developments in this area taking place on the other side of the world. Of particular interest, the Australian Federal Court has recently delivered its judgement in respect of a patent embodying both a business strategy and a computer algorithm, namely *Welcome Real-Time SA v Catuity Inc* [2001] FCA 445, and this article examines the background and reasoning to the judgement, as well as the implications from a global perspective.

First, some background.

The patent law in Australia is closely aligned with UK patent law as it stood before the 1977 Act and the harmonisation with the EPC. The present legislation, The Patents Act 1990, provides no statutory exclusions for types of invention deemed suitable subject matter for patents, other than „human beings, and the biological processes for their generation“. Instead, a body of case law developed in the UK and Australian courts has provided judicially created doctrines for defining the boundary of patentable subject matter. This is, in part, due to the deliberate legislative choice to include in the Act a definition of 'invention' referring back to Jacobean law (section 6 of the Statute of Monopolies, 1623). In practice, this leads to an extremely broad regime of patentability, and sensibly, enables the accommodation of new technologies as they develop.

Perhaps the most useful of these doctrines was developed in the *NRDC Case*², where the Australian High Court held that, in order to be held proper subject matter for patents, inventions require „a mode or manner of achieving an end result which is an artificially created state of affairs of utility in the field of economic endeavour“. This test has been applied many times by the Australian courts, recently, for example, to clarify the patentability of methods of medical treatment³.

Algorithms, Schemes and Business Methods

That a mathematical algorithm cannot be the subject of a patent stems from the idea that abstract ideas are not in themselves patentable. Few would argue with the

contention that, until there is an application of that idea to produce a new and useful end, an algorithm is not an artificially created state of affairs in the field of economic endeavour.

The doctrine of *NRDC* has not hitherto been applied to schemes of doing business, and there appears to have been a general feeling that business schemes cannot result in a material product of sufficient substance. However, patents have for some time been accepted by the Australian Patent Office for methods and systems broadly directed to 'mere schemes', including business schemes.

How the test in *NRDC* has been applied in the area of computer-facilitated innovations provides some very useful illumination.

1 International Business Machines Corporation's Application [1991] 33 FCR 218

This invention concerned the use of a mathematical formula in a computer program to improve the graphical representation of a curve image. The main claim under consideration was directed to a method for producing a visual representation of a curve image from a set of control points, and recited a series of processing steps to apply to the input control points to provide computed output values for display. Applying the integers of the *NRDC* test:

- (a) ‚Mode or manner‘ – the application of the specific algorithmic steps in a computer;
- (b) ‚end result ... an artificially created state of affairs‘ – the production of an improved curve image;
- (c) ‚in the field of economic endeavour‘ – the commercially useful effect in computer graphics applications.

2 *CCOM Pty Ltd v Jiejing Pty Ltd* [1993] 27 IPR 577

This invention concerned computer word processing, the main claim under consideration directed to apparatus for assembling text in ideographic characters, primarily for the storage and retrieval of Chinese characters.

- (a) ‚Mode or manner‘ – the storage of data as to Chinese characters analysed by stroke-type categories‘;
- (b) ‚end result ... an artificially created state of affairs‘ – the retrieval of graphical representations of desired characters, for assembly of text;
- (c) ‚in the field of economic endeavour‘ – the use of word processing to assemble text in Chinese language characters.

¹ Christopher Bird is a European and Australian Patent Attorney with the firm Allens Arthur Robinson Patent and Trade Marks Attorneys in Melbourne, Australia. The views expressed in this article are personal to the author.

² *National Research Development Corporation v Commissioner of Patents* [1959] 102 CLR 252.

³ *Bristol-Myers Squibb Co v F H Faulding & Co Ltd* [2000] FCA 316.

3 Welcome Real-Time SA v Catuity Inc [2001] FCA 445.

For the general interest of readers, further detail of this case is given below. The main claim in question concerned a method of processing information during a purchase or payment operation by a customer using a chip-card interacting at the point of sale with software running on the trader's machine. The claim included the step of performing 'specified algorithmic processing' and, depending on the result of that processing, writing information to at least one of the memories of the card chip and selectively printing a coupon (eg a loyalty reward coupon). Again, the Federal Court judge applied the *NRDC* test.

- (a) 'Mode or manner' – the judge made clear that he did not see the patent as directed to a business method or scheme, rather to a method and device for use *in* a business;
- (b) 'end result ... an artificially created state of affairs' – interestingly, although he made clear that his judgement was not based on the presence or lack of a 'physically observable effect', the judge did state that such effect was in any case to be found in the subject matter of the invention, and gave the example of the writing of data to a file, an 'effect' likely to be found in the vast majority of business method inventions;
- (c) 'in the field of economic endeavour' – retail trading, enabling a plurality of traders to compete more effectively for business.

In all three of the above cases, then, the subject matter was deemed to be inherently patentable. Distilling the common features of the decisions, it is clear that, as long as a means for implementing an algorithm or scheme is identified in the claim (generally, terms such as 'a computer-based system ...' would appear to provide sufficiently concrete means), and that this can act to process a defined input into a useful output, the subject matter of the claim passes the patentability threshold test. The Australian Patent Examiners' Manual goes even further than this, and provides that a mathematical algorithm is inherently patentable so long as it 'has been implemented' in some manner, and goes on to give an example of mere use of an equation or formula using variables which describe physical entities in the real world, irrespective of how that use is realised.

At this point, it is worth noting the differences between the treatment of the question of inventive step between Australia, on the one hand, and Europe and the US, on the other. Under Australian law, it is extremely difficult to consider two or more prior art publications together. Convincing expert evidence is needed (rather than merely well-reasoned submissions from the patent attorney) to succeed in either an opposition or a revocation action based on the ground of obviousness. In areas of new technology and poorly documented prior art, this means that it can be very difficult to argue that novel subject matter that passes the threshold test for inherent patentability is not inventive. This situation may well change in the near future, as the Australian parlia-

ment is at currently considering reforming this aspect of the Patents Act.

The Welcome Real-Time v Catuity Case

The two parties to the litigation are major competitors in the rapidly developing global market for smart card loyalty applications. As financial institutions worldwide are beginning to appreciate the limitations of magnetic strip cards and the possibilities in 'smart' credit cards, or 'chip cards', the commercial incentives to establish a leading position in this area are powerful.

French company Welcome Real-Time SA is the proprietor of Australian patent 712925, concerning an invention for a process and device for the operation of smart cards in connection with traders' loyalty programs. Loyalty programs have been in existence for many years, and most readers will have personal experience of schemes such as frequent flyer programs and storecard loyalty incentives. Welcome came up with a system whereby a smart card could be used by a customer to hold many different loyalty programs simultaneously, and allow for instant rewards to be granted at the point of sale. Welcome's novel approach was to arrange the file structure on the chip so that when a customer first used the card at a merchant who operated a complying loyalty program, that merchant's program would be instantly downloaded onto the chip and points could subsequently be allocated depending upon preset criteria. Then, when the customer's points total (recorded on the chip) reach a prescribed level for that loyalty program, an immediate benefit or reward can be given. A trader who is a member of the smart card scheme is able to promote goods or services by offering real-time and other rewards based on a stored record of prior transactions, in accordance, for example, with the value or number of purchases. In its action for infringement, the applicant claimed that the respondents, Catuity Inc. *et al*, had infringed the patent by the operation of their 'CiT/Transcard' system, from August 1996.

In finding valid and infringed a patent to a method of processing information, for use in a smart card based customer loyalty scheme, the judge gave a clear indication that Australian courts endorse an approach akin to that adopted by the US Federal Court in cases such as the well known *State Street*⁴, by which new business methods are considered subject to the same legal requirements for patentability as any other process or method.

Summary and Implications

As referred to above, Australia's very broad regime of inherent patentability enables the ready accommodation of new technologies as they develop. However, some commentators have pointed to the very low level of this threshold test as potentially risky for the patent industry,

⁴ *State Street Bank & Trust Co v Signature Financial Group Inc* [Fed. Cir. 1998] 149 F 3d 1368

as it may ultimately provoke a backlash by other constituencies (especially the general public and smaller industries) against the entire patent system.

It is a fact that a new method of doing business, whether in terms of how a company operates internally or how it carries out business with third parties, can be extremely important in providing a very valuable business advantage over competitors. Indeed, in a highly competitive and innovative business society, the entrepreneurial contribution may provide the key selling point distinguishing a particular company's product or service from those of the other players. It is also a fact that there are no other intellectual property rights able to adequately protect the sort of subject matter in question. If that 'invention' is indeed novel and not obvious over the prior art, should the 'inventor' be denied a patent because her contribution falls into a non technical field? The United States provides a fairly resounding 'No' to this question, whilst Europe gives a definitive 'Yes'. Now Australia has shown its colours, identifying closely, it would seem, with the US position. Indeed, the *Welcome Real-Time* judgement sends a very clear and positive message in support of patent protection for new business methods in Australia, especially those utilising new applications in information technology, and the practical result is that innovative businesses with new ideas of this

kind are upgrading their patent activity in this part of the world.

As an aside, in the case of the subject matter at issue in the *Welcome Real-Time* case, in view of the particular and technical nature of the interrelationship between the new loyalty scheme and the way of designating and processing memory allocation space during the operation of the scheme, I believe that the validity question would probably be decided in the same way if considered under the EPC. But this accordance is very unlikely to occur in cases where the technical contribution is less readily definable.

The diverging positions between different patent jurisdictions is far from ideal, and it is clear that the differences are more than something that can be dealt with merely by adopting clever drafting tricks. Whilst the general thrust of the international effort seeks to harmonise aspects of patent law around the world, this is an area which appears to be polarising patent jurisdictions, whilst giving rise to significant disquiet from other stakeholders, most notably from businesses and consumers. Without a common approach to this problem, perhaps by way of developing a *sui generis* right directed to protection for schemes and business methods, the disharmony seems likely to deepen.

WELCOME

W. Holzer (AT)
epi President

In a few months time the European Patent Organisation, a forerunner of European integration, will grow by one third. Ten new member countries are expected to accede to the European Patent Convention on July 1, 2002. This in turn means a similar enlargement of the *epi*, which expects an increase in membership of up to 2000 members.

The *epi* welcomes its new members. Although the sudden jump in membership numbers will exert some strain on the *epi* Secretariat and the other bodies of our institute, including the committees, no major problems are to be expected. The *epi* has already for some time started intensive contacts with the accession countries'

patent offices as well as the national professional representatives and associations. It is moreover participating in numerous local preparatory seminar activities. The *epi* Secretariat is furnished with sufficiently large premises, the necessary computer and Internet facilities for communication with *epi* members and will also receive additional staff.

In order to obtain an overall view about the developments in the new member countries we have asked their professional representatives to provide us with profiles of their constituencies. The different contributions received will enhance our knowledge. On behalf of the *epi* I would like to thank all of our contributors.

New countries and *epi* membership

P. Kelly (IE)
epi Treasurer

The number of countries represented within the *epi* is set to increase significantly next year if, as planned, the Czech Republic, Poland, Hungary, Slovakia, Slovenia, Estonia, Romania, Bulgaria, Latvia and Lithuania accede to the EPC. The *epi* will greatly benefit from this new Eastern European dimension, not simply in terms of numbers of new members, but more importantly in terms of additional expertise and a greater diversity of views in our debates in formulating opinions and new policies in many areas in the field of intellectual property.

The *epi* Board are currently investigating with the National Organisations of the new countries, the potential number of new members which the *epi* might reasonably expect to receive in the next two years. The current indications are that our membership will initially increase by in excess of seventeen hundred (1700) members, an increase of approximately 27%. A drop off in numbers is likely over the following three years to a net 1000 new members or 17% of the current membership. While these figures are compiled based on very approximate numbers, they clearly indicate a significant membership increase from Eastern Europe.

The membership increase has, under the existing Institute By-Laws, a carry over effect in both the size of the *epi* Board and the size of the *epi* Council. The current Board has a membership of twenty three (23) members which will increase to thirty three (33) members, while the *epi* Council will expand by approximately another forty-two (42) members. It is also to be expected that the size of the different *epi* Committees will increase even though Council currently has a policy of restricting Committee sizes to reflect both the need for efficient working of committees and the need to control costs.

The initial impact at the *epi* of the accession of ten new countries in the next year or so will obviously fall on the *epi* secretariat. It is clear that the additional workload will require some revision of existing management structures and the employment of additional staff. It is not envisaged that such changes as are shown to be necessary will cause any major problems and no disruption to services to existing members will arise.

When the process of accession of the new countries is complete the *epi* will represent some 7500 new members from twenty nine (29) countries.

Industrial Property Representatives in Bulgaria

E. Benatov¹ (BG)

It was eleven years ago when the Republic of Bulgaria changed its economic orientation from a state-planned economy into a market economy. A process of harmonization and modernization was launched in the sphere of legislation. In 1993 a new Patent Law was adopted, where in Art.3 (1) and (2) the profession INDUSTRIAL PROPERTY REPRESENTATIVE (_PR) was defined for the first time:

„Art.3.(1) The applicant, the patent owner or any person entitled under this Law to act in proceedings before the Patent Office may do so either in person or through a local industrial property representative. The Council of Ministers shall issue rules governing the admittance of such representatives and shall lay down the requirements that must be satisfied.

(2) Applicants with their permanent residence or headquarters abroad shall be required to act in proceed-

ings before the Patent Office through industrial property representatives in accordance with the preceding paragraph.“

The same law cancelled the powers of the Bulgarian Chamber of Commerce, which until then was the only institution acting to represent the interests of foreign applicants.

The requirements and rules for admittance to the IPR profession are determined by a special Regulation act by The Council of Ministers. The candidate for an IPR must have at least a two-year length of service in the field of INDUSTRIAL PROPERTY, to have a Master of Arts degree in the field of Engineering, Law or Applied Sciences and not to be in labour relations as an employee.

The Bulgarian Patent Office (BPO) annually conducts examinations for admittance of candidates – two anonymous written examinations: in the field of patents for inventions and utility models; in the field of trademarks,

¹ Dr. Emil Benatov, President of the Union of Patent Specialists in Bulgaria

geographic indications and industrial design. Only the successful candidates are allowed to sit for two further oral examinations in the same areas. Only those who have successfully passed the written and oral examinations in a given field are entered in the State IPR Register for this field. That is, in Bulgaria there are IPRs for the field of patents for inventions and utility models only, for the field of trademarks, geographic indications and industrial design only, and IPRs who have passed the examinations for both fields. In view of the fact that the Topology of Integrated Circuits Law was passed in 1999 these objects have not been classified to any of the above two fields yet, and in practice, each IPR can represent such applicants (so far there are only two applications for topologies of integrated circuits in Bulgaria).

The Regulation Act for admission of IPRs stipulates certain privileges for admittance of members from the first examination commission as well as for lawyers and state examiners from the BPO who have a ten-year length of service, at the minimum. Such people are entered into the State Register without sitting for any examinations.

Each new IPR swears an oath.

There are four basic groups out of which most of the Bulgarian IPRs come from:

- former employees of the Patent & TM Department at the Bulgarian Chamber of Commerce;
- former state examiners of the Patent Office;
- former patent specialists in the area of industry;
- acting lawyers.

The high-quality professional training which most of the newly accepted IPRs have enabled them to quickly get into the new for Bulgaria profession, which on its part quickly managed to establish itself and gained a wide public significance and reputation. This is also obvious from the fact that the services that the Bulgarian IPRs perform are used not only by foreign clients, but also by most of the Bulgarian applicants who are not obliged by the law to do this.

As from 1 January 2001 there are over 160 IPRs recorded in the Bulgarian State IPR Register. Only 30 out of them work actively and together they cover 50% of the market.

Unfortunately, the Bulgarian legislation has totally assigned the IPR creation and control over their activity to the care of the BPO. The BPO handles fairly well only the conduction of examinations and the recordal into the IPR Register. The lack of a law for an IPR Chamber hinders the effective administration of ethical norms, the organization of qualification and the relations with analogous chambers and international organizations from abroad. Due to the above reasons the adoption of a law for establishment of an IPR Chamber is a top priority for the guild and for some non-governmental organizations having Bulgarian IPR members.

Bulgaria will become a full member of the EPO from 01.07.2002. According to the „grandfather rule“ about 90 Bulgarian IPRs will become European patent attorneys. We truly hope that by joining the big European family of colleagues and the *epi* we will be able to discover new opportunities for contribution and mutual cooperation.

The Czech Patent Attorneys at the historical view

F. Čupr¹ (CZ)

The profession of patent attorney has the long-standing tradition within the Czech Republic. Its formation is linked to assertion of The Imperial Order on Protection Industrial Design and Models for Industrial Products that was issued in 1858 and was effective for the whole Austria-Hungary the part of which was also present Czech Republic. The profession received its solid regulative framework by The Regulation of the Ministry of Trade and Internal Affairs No. 161 of 15 September 1898, on representation parties in the patent matters by patent attorneys and entitled authorized private technicians working on the basis of free-lance licence. The new state Czechoslovakia that came into the existence accepted this standard and issued it as The Government

Decree No. 6 of 22 December 1925 with only small changes. Taking into consideration that Czechoslovakia ratified The Paris Convention for the Protection of Industrial Property just about one year after its foundation (5 October 1919), that the country also accepted and in many details amended then significantly progressive Austrian-Czech Law on Protection of Inventions, and furthermore, that since 1859 the effective Law, on the Protection of the Trademarks effected three times amended and by government provisions specified and last but not least that in February 1919 The Patent Office was founded, it can be said that Czechoslovakia met all the expectations for providing of the protection of the industrial property since the start of its independent existence.

¹ František Čupr, Chairman of the Czech Chamber of Patent Attorneys

Period 1919 – 1938

The right to represent parties before the Patent Office was awarded to the attorneys at law, the authorized civil technician who notified to that effect the Patent Office through the political district authority and took a vow, and the patent attorneys whose task was the most difficult. The persons who desired to be established as a patent attorney had to fulfil the usual legal conditions: be of lawful age, hold the citizenship, to meet the condition of legal correctness, to have undertaken at least two-year training with a patent attorney and have reasonable technical qualification certified by the degree issued by technical or agricultural or mining university. Should the candidate fulfil the legal requirements after payment of the examination fee they could request to be awarded the permission to sit an examination. The examination consisted of two parts – written and verbal. The number of the candidates being examined was limited to four. The written part of the exam was organized in a seclusion way, it was held under the official supervision in the Bureau of the Patent Office and lasted for six hours. The verbal part lasted for two hours, was held before a deponent registrar, it was not open to public but the members of the Patent Office could attend. The Commission of Examiners conducted by its chairman and appointed by the President of the Patent Office, consisted of three members who could be also external advisors. At least one of them had to be a lawyer and the other a technician with work experience at the Patent Office. The candidate applying to be established as a patent attorney had to demonstrate at the exam detailed knowledge of Czechoslovak legal regulations concerning Protection of Inventions, knowledge of international treaties in the relevant field and adequate knowledge of foreign laws. The Commission assessed not only the knowledge of legal provisions but also the ability to use it with appropriate discernment, sagacity and performance. The Commission based its decision on the successful of the exam on majority. The Chairman voted as the last and he could ask subsidiary questions. The Commission awarded the candidate with the certificate about the result of the exam with the level of the result. The unsuccessful candidate were able to repeat the exam most one time and not sooner than in three months.

Having successful passed the exam candidate took legal oath before the President of the Patent Office, paid charge for registration and was recorded in the public register of the patent attorneys. Recording and also clearances from the register were reported in Official Patent Bulletin and in Official Journal of the Czechoslovak Republic.

Patent attorneys were allowed to represent parties in all matters concerning protection of the inventions with the exception of patent litigation and non-technical matters. The representation by persons who were not enrolled in the register or even offers to the parties to be represented by such persons were prosecuted.

There was a contractual liberty for determination of the fee for patent attorneys unless the Patent Office determined a tariff for certain services. Patent attorney was also bound to keep books of records of all commands and requirements addressed to him so clearly so the person acting as his substitute or successor could observe them without difficulties and so that the Patent Office could inspect them if required.

Registered patent attorney was allowed to employ assistants and candidates but he was responsible for their erudition. Should those employees or the measures taken by them represent a reason for complain of the Patent Office, after exhortation with no effect the Office could exclude them from the contact with it either for some time or for indefinite period.

Disciplinary authority were exercised by the Disciplinary Committee that consisted of the President of the Patent Office, his vice-president and six members appointed by the Ministry of Trade, two of which had to be patent attorneys. The Senate of six members who were nominated by the President of the Patent Office from the members of the Committee decided matters of the delinquencies whereas the President of the Patent Office and his vice-president were compulsory members. Disciplinary Senate dealt with transgressions only. Should there a suspicion of crime arise then the President of the Office announced such matter to the public prosecutor and punitive defendant was temporarily suspended.

The proceedings in the Disciplinary Senate resembled to the action in court. The examiner, the defendant, his pleader, witnesses and in case of need technical experts participated. The majority of voices decided on the punishment. Rebuke or penalty represented the less commuting punishment the stricter punishment was represented by suspension of activity for one year or deletion from the register.

Entitlement to act as a patent attorney was expired due to death, or on the basis of decision by the Disciplinary Senate or Court, loss of citizenship or due to sentence for offence from greed of gain.

Period 1939 – 1951

Even though the above-mentioned legal rules were valid formally till year 1952 they actually ceased to be applied at beginning of World War Two and at the time of occupation of the Czechoslovakia. Several different laws on industrial rights were effective at the territory of present state in 1939 and situation became untransparent. The condition culminated in 1940 when the Patent Office in Prague was banned from receiving the applications of the inventions. Only the Patent Office in Berlin was entitled to do so. Many of the Czech technicians and inventors deposited their engineering solutions to safes with hope for „better times“. There was no interest in services of patent attorneys in those conditions. In addition, most of them left for abroad on the ground of the racial discrimination.

Expected recovery of the profession of the patent attorneys in the post-war period failed to reach the

pre-war situation. Even if some of the patent attorneys opened their offices again they did not experience big prosperity. After the initial boom that was caused by the safe-stored inventions the influence of the nationalization at first affecting the big and then also the small companies became apparent. After the communist putsch in 1948 the government authorities adopted the ideas of communist party. According to which the industrial property was unnecessary capitalistic trash that had no place in the society where all productive instruments belonged to all people. The increased publicity campaign led to application of the concept of inclusive national protection of the industrial property in the Soviet Union manners.

Period 1952 – 1989

After the agenda of trademark had been incorporated to the Patent Office, the Office was abolished in 1952 and the Office for Inventions and Rationalization Proposals within State Planning Office was established. The entitlement of the patent attorneys was also abolished (Art. 22 Law No. 7 of 1952 on temporary measures for patents) and the newly established Office for Inventions set up liquidators for them. The patent attorneys searched for the opportunity to exercise their profession in national enterprises as officers for inventions and rationalization proposals. Their activities there were totally different nature except for the conceptual framework of invention applications. This legal system was by the means of subsequent amendment and legal regulations (in 1957 and 1972) directed in such way as to more and more resemble the Soviet model of the inclusive protection and to retreat from the principles of the protection of industrial property which were significant in countries with developed market economy. Following the applicable socialistic legal provisions the technical creativity was subordinate to state and was incorporated in centrally planned operation. The state was the proprietor of the inventions. The author of the invention was by legal and economic tools urged to offer and transmit his invention to the state. Till the authorial certificate (attribution for non-exclusive patent) was vested to the invention the national enterprise was entitled to use the solution as rationalization proposal to be obligated to extend this use in all enterprises that could utilize this solution and transfer production documentation to them only at the cost of copies. Author was entitled to author's remuneration that was not stipulated in the period of the supreme socialism but it was determined by way of the corporate benefit. Should the invention application be successful in the official examination for world novelty (it was provided at the same standard as in the other countries, with strict examination) and should the authorial certificate for invention be vested, the author of the invention was entitled to additional charge of remuneration from all enterprises using his invention. The additional charge resulted from the difference between the set remuneration for use of the rationalization proposal and use of the invention. In case the

enterprise became interested in protection of the invention in the countries with free trade economy during procedure on grant of the authorial certificate for invention it was necessary to start difficult committee proceedings. One government committee examined economic discretion, another one attended to the application for unblocking of the foreign exchange currency (domestic exchange was not freely exchangeable). Should the committees agree, the extension of the protection proceeded in the standard way. When the foreign subject wanted to protect its invention in the Czechoslovakia the procedure of the acquiring of the protection was almost the same as in the states with free trade economy. The foreign subject in contrast to the local one received an exclusive patent for its invention and it was represented in the procedure by one of two determined state legal aid bureaus, which employed also the technician with knowledge of patent law.

This legal situation lasted for forty years at the territory of the present Czech Republic. The term of „patent attorney“ did not exist. Factory or department officers for inventions and rationalizations proposals who were usually included in the unit of technical progress publicized innovatory motion, e.g. the competition of the workers for more consequent observance of five-year plans. They organized and kept records on numbers of filed rationalization proposals and inventions on the ground of which the directors of factories and productive guilds were evaluated. They calculated the corporate benefit gained from every exploiting rationalization proposal and invention. They registered and attended to the applications of rationalization proposals. They assessed their factory novelty and applicability and prepared the ground of the decisions. Those of the officers who were originally patent attorneys or who completed their postgraduate education majoring in industrial property usually practiced as patent attorneys: they formulated invention applications, conducted search for novelty, represented their companies in annulment procedures and acted as authorized experts. The postgraduate education was organized mostly as distance education at Faculties of Laws or at Ministries. The most known and currently still exists one is the Institute for Industrial-Law education within then the federal Office for Inventions and Rationalization Proposals. Officers for inventions and rationalization proposals engaged in this way became the bearers of the professional tradition of the patent attorneys and they saw through its rehabilitation in appropriate stage of political and economic development.

Let me now introduce a brief account of the matter of „setting of corporate benefit“ to draw the nature of the activity of the factory officers. In the non-trade economy it was practically impossible to expect profit. For that reason most of the remunerations were assessed on the ground of the expenses saved by the product through the use of invention. But what could be done with an invention which concerned the technological part of the hydroelectric power and due to the producer of the technological part as well as the general investor had to

cover higher expenses, but on the other hand it steamed off the needless flow of water from which the more electricity was produced but which nobody needed? Even if no extra electricity was made the possibility to make it was there and because the invention was used the author was therefore entitled to get the remuneration, so this remuneration was calculated on the basis of hypothetical amount of the electricity made in addition (that has never been produced). The author received substantial remuneration and The Order of Red Star on top and he gained the status of an outstanding inventor. There is a tale, related to the matter of the stipulation of corporate benefit, which says that when a new type of machine gun was invented, the costs of which were higher in comparison to the then-used type, but which, on the other hand, had a higher frequency the corporate benefit was stipulated on the basis of the benefit gained by the society represented by the number of potential enemies of socialism that could be liquidated.

Period 1990 – 2001

The political and economic changes in 1989 invoked also a turn in the development of the profession of the patent attorneys. I purposely use the term „a turn“ and not „a change“. By the Law No. 237 of 1991, on Patent Attorneys, which is still valid the profession was recovered. It could be said that we have gone back more than fifty years, that is why I have used the term „turn“, and we have taken up the interrupted tradition of the free profession again. The supporters of self-administration regard the quoted Law in comparison with the Law of validity in the era of pre-war Czechoslovakia as a progress, whereas the supporters of strong state as the

residue of medieval guilds. While the administration of the profession was wholly in the hands of the state according to old Law according to present Law it is in the hands of self-administration. The situation resembles with the situation of legal attorneys. The Chamber of Patent Attorneys with its headquarters in Brno was established. It has recently commemorated its ten-years anniversary of foundation. It associates 195 patent attorneys the most of whom practise their profession independently as a free profession. The number of those, who practice their profession in a dependent relationship as employees in companies, has been declining. To be registered all the patent attorneys had to pass professional examination before the Industrial Property Office and to certify that they had at least five-years experience in matters concerning industrial property, that they executed applications of inventions, industrial designs, trademarks, worked out searches, conceived licence contracts during this experience so that they practiced professional activities and that they did not only focus on organisation of the above-mentioned socialistic competition in innovatory motion. We can say that the professional standard of Czech patent attorneys is fully comparable to professional standard of patent attorneys in contracting states of EPC.

The Chamber of Patent Attorneys following the challenge of Industrial Property Office is at present preparing the Draft of the Amendment of the Law on Patent Attorneys. Doing this work we lack Harmonization Directive issued by either European Union or European Patent Institute that could not only facilitate this amendment but also contribute to assertion of some disputable parts of the Law in the Parliament.

The Estonian Act on Patent Attorneys put into force

J. G. Ostrat¹ (EE)

The Estonian Act on Patent Attorneys was adopted by the Estonian Parliament on 21 February 2001 and put into force on 20 April 2001.

It should be of interest, that Estonia is the first of the countries of the former Soviet Union where the full complex of problems connected with the professional activities of Patent Attorneys as the representatives of a free profession, has been legally regulated on the level of the highest legislative document.

While drafting the Act, the working group I had the opportunity to lead, has abandoned the classical conti-

mental approach to the profession in question, basing on the principles of a closed professional society, according to which new members of the profession can be nominated only with the acceptance of the „guild“. It has been the belief of the authors of the draft that contemporary conception of patent attorneys as „those rendering services to the owners of industrial property“ shall base on a more modern and competition-encouraging position and namely: firstly, any person meeting the requirement of the Act on Patent Attorneys and passing the respective examination, shall obtain the rights and obligations of the profession; secondly, the decision of conferring to a person the qualification (profession) of a patent attorney shall not be made by

¹ Jaak G. Ostrat, Phd., Chairman of the Estonian Association of Patent Attorneys

their professional society but by an independent governmental institution.

Pursuant to the Act, only a person who has been entered into the State Register of Patent Attorneys may act as a patent attorney. For being entered, the candidate must meet the requirements provided by the Act and must pass the examination in writing.

Article 15 of the Act stipulates that for arranging the examination of the candidates and granting them the profession, a patent attorneys professional qualification committee will be set up by the Minister of Economy. The committee shall include at least six members, whereas two of them shall be the representatives of the Patent Office and two – the registered patent attorneys. Thus, firstly, the balance of interests between the profession and the representative of the state should be granted, secondly, neither the Patent Office nor the representatives of the profession have the possibility to realise their subjective approach (not likely but not excluded) to the candidates for the profession.

Thus the „birth“ of the Patent Attorneys entitled to represent foreign clients before the Patent Office is under control and supervision of both the state and the profession which in our opinion should be the requisite guarantee for the necessary professional qualification of patent attorneys.

The above regulation repeats in general (i.e. only the registered patent attorneys are entitled to represent foreign clients before the Patent Office) the one valid from 1992, (at that time legalized only on the level of a Governmental Decree), i.e. since 1992 all the Estonian patent attorneys have been examined as to their professional knowledge. Therefore, the Act includes a provision which similarly to the respective provision of the EPC could be called as a „grandfather clause“ – the so-called „old“ attorneys will be re-registered in the register established on the basis of the Act in the same areas of activities in which they had the right to act prior to the enforcement of the Act.

The professional requirements to a candidate for the profession are stipulated by Article 14 of the Act. Pursuant of this Article the profession of a patent attorney may be granted to a person who:

- 1) has an active legal capacity;
- 2) is a citizen of Estonia or a member state of the European Union and whose permanent residence is in Estonia;
- 3) has university education;
- 4) has a command of spoken and written Estonian;
- 5) has been employed, prior to applying for the profession of a patent attorney, by a patent attorney or by a company of a patent attorney for at least the four previous years in the area (areas) in which he or she applies for the profession;
- 6) has a command of two foreign languages to the extent necessary for the professional activity of a patent attorney, at least one of which is the official working language of the European Patent Office;

7) has not been punished pursuant to criminal procedure for intentionally committed criminal offence. It is our belief that the above requirements are rather stern and will ensure the necessary level of the services provided by the Estonian attorneys.

The Act legalizes the so-called client-attorney privilege (Articles 6 and 7 of the Act) which should be one of the effective legal means for guaranteeing confidentiality of the relations between an attorney and a client. Even in the case if the state supervision is exercised over a patent attorney, the data connected with a particular case and made available for the supervisor, will remain undisclosed for public due to the obligation of the supervisor to keep the information received from the attorney confidential.

The Act excludes the comparative advertisement in the direct sense of this expression (Article 12). Although the comparative advertisement is in general not prohibited by the European Union, it is our deepest belief that the profession of patent attorneys, being to some extent „conservative“, shall not be subject to this kind of advertisement. In other words, the advertisement in the area of rendering industrial property services shall be more sedate than in regular commerce.

Articles 10 and 11 of the Act stipulating the conditions of proprietary and professional liability, should be also of interest. Of course, the subject provisions are still too „fresh“ for our insurance practice and their implementation will take some time. The minimum insurance amount is one million Estonian Kroons. For easy reference, 1,000,000 Estonian Kroons (our national currency) is equal about to 63,940.00 EUR.

The Act does not regulate the exclusive right of a patent attorney to represent the clients before the Patent Office. Pursuant to Section 4 of Article 2 of the Act, the situations mentioned are subject to being regulated by law, i.e. by other Acts of the respective branches of our industrial property legislation.

As to the general approach of our industrial property legislation to the problem above, then it is unambiguously clear and namely:

- i) the citizens of any country having permanent residence in Estonia as well as the companies registered in Estonia, are not obliged to use the services of patent attorneys for executing actions before the Patent Office;
- ii) the citizens not having permanent residence in Estonia as well as the companies registered in foreign countries, have the right to directly initiate the filing procedures before the Patent Office (provided, of course, that they are capable of filling out the necessary documents in Estonian and to execute the necessary financial actions in time) but for continuing the prosecution in the matter they will have to authorize an Estonian patent attorney.

The full text of the Act is available on the web-page of the Patent and Trademark Agency LASVET at the address www.lasvet.ee.

The Patent Profession in Hungary before the Accession: The Facts and Challenge

Á. Szentpéteri, Jr.¹ (H)

The first Hungarian Patent Act, one of the most modern regulation at its time, entered into force in 1895. This Act, of course, also comprised regulations relating to representation, and thus the first Patent Attorneys graduated already in 1896, in the year of the Hungarian Millennium, still under the era of the Austrian-Hungarian Empire. Since then, Hungarian Patent Attorneys have been practising in private offices, either as single or as society, employees of industrial enterprises or, after nationalisation following the second World War, also in state-owned firm.

Interestingly, nationalisation did not definitely extend to the patent attorney profession and thus, some experts had always been having private patent attorney practice even if most of them found it advisable to have at least a „part-time“ job in the state-owned sector as well. Nevertheless, the free profession has always been existing in Hungary.

Considering the high standard of the early Hungarian Patent attorneys, a large number of whom being still active, the profession has been highly accepted not only in Hungary but on the international level as well, and Hungarian patent attorneys and other IP experts have been in high-ranking and important positions also in international organisations like WIPO and AIPPI.

The background of a strong profession should always be a good education system. Education of new experts and examination has been the common task of the leading persons of the patent profession, including patent attorneys and prominent members of the Hungarian Patent Office. As the Hungarian patent system, based on the former German system has been relatively strong and the Hungarian industry reforms were introduced quite early, foreign applicants found filing applications in Hungary advisable and quite attractive. Though the Hungarian State nationalised not only the industrial enterprises but also trademarks connected therewith, redemption of these trademarks became possible already in the early sixties. All these possibilities made the profession flourishing and privileged and in the early seventies more than 100 patent attorneys existed, all having passed a strong and difficult examination.

After 1975, the Hungarian Patent Office started to organise training courses not the least to teach the new employees of the Office who were strongly needed as Examiners to cope with the fluently increasing number of patent, design, utility model and trademark applications. These two-year courses terminated in an Examination after which, the students meeting the requirements

became Patent Attorneys and were taken up in the Patent Attorney Register. (Unfortunately to the Patent Office, some of the most able Examiners left for the representation side, after some practice.) Of course, not only employees but also other students, employees of patent firms or those working in the IP departments of the industrial sector were welcome in these trainings and thus, supply of the profession was secured.

During the changes in the second half of the eighties, the state-owned representation firm transformed into private form and since then, representation within the profession has been either on a private basis or through the IP departments of enterprises.

The Patent profession became fully regulated by Act No. XXXII of 1995 on the Patent Attorneys which entered into force on January 1, 1996. This Act, having been drafted by a co-operation of bodies of patent attorneys and the Ministry of Justice, also including the Hungarian Patent Office, defines the task of patent attorneys, the conditions of representation and the forms of the activity.

Of course, an exhaustive discussion of all the elements of the Law as mentioned is impossible; however, the most important conditions of the patent attorney activity are as follows:

The Hungarian Patent attorneys shall be and therefore, are members of a *unitary* organisation, the Hungarian Chamber of Patent Attorneys. No patent attorney is entitled to representation without being an *active* member of the Chamber. The word: „active“ is important as those in the National Register of Patent Attorneys may declare to become inactive; in this case, unlike at the European Patent Office, they will not be cancelled from the register, but lose their rights for representation until reactivation.

The National Register is *in charge of the Chamber* (taken over from the Hungarian Patent Office according to the above Law) which has the duty to control any change and advise the Hungarian Patent Office thereon; the Hungarian Patent Office has the right to disregard representatives who do not appear on the latest list submitted.

The *requirements* for entering the National Register are: Hungarian nationality, permanent domicile in Hungary, technical degree from an accepted University with at least five years study or a corresponding decree from a natural scientific University, as well as an appropriate Patent Attorney examination. Patent attorneys from the previous register still handled by the Hungarian Patent Office but working at the Hungarian Patent Office or the competent Courts are excluded from the National Register; however, they have the option to apply without

¹ Ádám Szentpéteri, Jr., President of the Hungarian Chamber of Patent Attorneys

further examination within 3 months from leaving the competent Authorities.

The Patent Attorney must have an appropriate liability insurance as well as an appropriate office address. Lack of these would inactivate the member until rectification.

Before application for a Patent Attorney examination, the person should have a practice of at least 3 years as a Patent Attorney candidate and should also be registered at the Chamber of Patent Attorneys as a Patent Attorney Candidate. The Candidates should have a permanent Patent Attorney mentor and for the Patent Attorney examination, they must also graduate from a two-years training course organised by the Hungarian Patent Office and held by reputable experts from both the Patent Office and the representative side; this graduation is however, compulsory for but may not substitute the Examination.

The Examination consists of a written part which generally comprises drafting an application and/or claims for a patent or utility model or a nullity action, defence letter or infringement draft connected therewith as well as a topic from the trademark field. The oral part relates to national IP laws, procedural law and Civil code, EPC, PCT and US and JP law in a quite broad sense. Considering the unitary feature of the profession, there is no distinction for private practice and industry patent attorneys in the examination conditions.

The Examination Committee consists of seven members from the Patent profession and seven members from other legal organisations (mostly from the Patent Office), with the President of the Hungarian Patent Office as Chairman. In each Examination, the Senate consists of four members and a President, who are occasionally appointed by the President of the Hungarian Patent Office.

After passing the Examination, the Patent Attorney is entitled to apply for admittance in the National Register at the Chamber and thus, to practice as Patent Attorney.

The free Patent Attorney profession may be practised as single person, or in the frame of an Association (Partnership) or a Limited Liability Company. A Patent Attorney may also work as an employee of an enterprise, in this case, however, he is entitled to represent the employer's cases only. It is very important, however, that Hungarian Patent Attorneys are admitted in any affair having any connection with IP not only before the Hungarian Patent Office but before any competent Court, including the Metropolitan Court and the High Court.

Hungary was invited to access and will apply for accession to the European Patent Convention at the earliest convenience. At present, the Hungarian Chamber of Patent Attorneys has 230 members and 19 candidates, from which 16 might still pass the Hungarian Examination before the grace period to apply for registration as European Patent Attorney. At present, the number of active members, not including the candidates, is about 130. It cannot be foreseen, of course, how many Patent Attorneys would really take the opportunity to apply; in my opinion this number will be approximately 200. Compared with the total number of 6100 of the EP Professional Representatives, this is only 3 % which seems to be reasonable.

The Hungarian professional representatives, at least a great part of them, have been active for decades in filing PCT applications and arranging regional and/or national applications in almost every country of the world as well. Accordingly, the profession cannot be regarded as an absolute greenhorn in Europe and looks forward to the challenge in the practice.

The New Law on Patent Attorneys in Poland

A. Adamczak¹ (PL)

The history of the patent attorney profession practised in Poland since over eighty years clearly demonstrates that the profession follows the common rules of conduct accepted in the world, irrespective of the scope of duties in the field of industrial property protection. The same in each country is the range of activity of the patent attorney, who acts as advisor and attorney *ad litem*. Patent attorney's clients are not only individual domestic and foreign creators but domestic and foreign entities as well. Because of the nature of industrial property, the profession is deemed to be a profession of public cre-

dibility. On the other hand, with high qualifications required, with the subject, scope and nature of professional activities, as well as with the personal liability for proper performance of the work undertaken, together with the rules of professional conduct, the patent attorney profession is reckoned among the professions.

On 11 April 2001 a new Law on patent attorneys was passed by the Sejm of the Republic of Poland (published in Journal of Laws No 49, item 509), which is expected to come into force on 22 August 2001, i.e. at the same time as the act of 30 June 2000 – Industrial Property Law (published in Journal of Laws No 49, item 508).

¹ Dr. Alicja Adamczak, President of the Polish Chamber of Patent Attorneys

It is the Industrial Property Law, in which a uniform principle of relative obligatory assistance of a patent attorney was provided for and in which it was settled that in proceedings before the Patent Office in matters relating to the filing and examination of applications and maintenance of the protection of inventions, utility models, industrial designs, trademarks, geographical indications and topographies of integrated circuits, only a patent attorney may act as a representative of a party to a proceeding. At the same time, the principle of absolute obligatory assistance of a patent attorney was maintained, meaning that any persons not having their domicile or seat in the Republic of Poland may act in the above matters only when represented by a patent attorney entered in the patent attorneys register kept by the Patent Office of the Republic of Poland. The same principle is adopted in national legislation of a majority of countries.

In the same Law, the amendments to the Code of Civil Procedure were adopted, according to which a patent attorney is also allowed to act as a professional representative before courts in civil law proceedings in cases involving industrial property matters. Thereby, in the code the former legal status existing under the special law of 9 January 1993 on patent attorneys was eventually sanctioned. Likewise cassation may be lodged by a patent attorney.

A patent agent will be allowed to certify himself a copy of the power of attorney granted to him. A party represented by a patent attorney will be entitled to reimbursement of the costs at the amount due under the provisions governing remuneration for advocates.

The entire scope of patent attorneys' activity is determined in the Law of 11 April 2001 on patent attorneys. In general, the Law regulates the organisation of the patent attorney profession; it determines the principles and conditions of its practising, and the organisation and scope of activity of the patent attorneys' self-administration. The Law regulates in a comprehensive manner the activity in providing assistance in industrial property matters, and determines all the forms of practising the profession. It states that the patent attorney has the duty to assist in industrial property matters.

In the Law the term „industrial property matters”, used both in this Law and in the Industrial Property Law, is explained in principle in the same manner as in the Paris Convention of 1883 for the protection of industrial property. The term is to be understood as: obtaining, maintenance, exercising and enforcement of rights pertaining to subjects of industrial property, in particular to inventions, utility models, industrial designs and topographies of integrated circuits, as well as to trademarks, trade names and geographical indications, and combating of unfair competition in respect of these subjects. The above list of subjects is not exhaustive, consequently the used expression „industrial property matters” will likewise cover, for example, matters involving the protection of new plant varieties.

The legislator clearly emphasised that the patent attorney profession is a profession of public credibility,

which fact motivates the specific regulation of the principles and conditions of practising this profession.

In practising his profession the patent attorney remains independent, since he is only amenable to statutes. When giving opinions or advises, he may not be bound by a service command as to the substance of the opinion or advice given. He is obliged to practise his profession in accordance with the principles of professional conduct and with due diligence. The principles of professional conduct are formulated by the highest body of the self-administration, which is the Nationwide Convention of Patent Attorneys.

In, and in connection with, practising his professional activity the patent attorney enjoys the legal protection vested in advocates. He is obliged to keep the secrecy of any information acquired in the course of practising the profession.

On the conditions laid down in the Law, the patent attorney may practise his profession in patent attorneys' offices or on behalf of his employer or under civil law contracts. The Law subjected the patent attorney to the compulsory civil liability insurance for a damage caused in the course of providing services.

In the Law it is clearly stated that a patent attorneys' office may be founded and run solely for the purpose of practising the patent attorney profession. It may operate as a one-man office, a non-commercial partnership (undoubtedly understood as the activity under the conditions of a contract of non-commercial partnership concluded under Article 860 of the Civil Code) or ordinary partnership, at least half membership of which are patent attorneys, a partnership office, a limited partnership, in which all general partners are exclusively patent attorneys. Unlike under the statutes on associations of advocates or counsellors in law, the legislator allowed a patent attorneys' office to be run as a limited liability company, however on the condition that a majority of shares are held by patent attorneys.

The right to practise the patent attorney profession arises upon the taking an oath and at the date of entry into the patent attorneys register kept by the Patent Office. The legislator enumerated the conditions, which must be satisfied by a person requesting to be entered in the patent attorneys register, which conditions are at the same time requisite for practising the profession. In the patent attorneys register may be entered anyone holding a university degree taken at a faculty useful in practising the patent attorney profession, in particular at a technical faculty or the faculty of law and having completed the patent attorney's training on the conditions laid down in the Law and passed the qualifying examination before the Examination Board. Among other requirements the following are mentioned: enjoyment of full capacity to enter into legal transactions and civic rights, an unimpeachable character of the person concerned, who with his/her past behaviours also guarantees the proper practising of the patent attorney profession. Additionally, the Polish nationality is required, provided that that requirement does not prejudice the provisions of the international agreements to which the Republic of

Poland is party. Consequently, where the provisions of an international agreement allow persons having a nationality other than the Polish one to request entering in the patent attorneys register, all other statutory requirements have to be satisfied. In addition, the person concerned has to prove his/her command in the Polish language in parlance and writing to the extent as necessary for the proper pursuing of the patent attorney profession.

The patent attorney's training, the purpose of which is to prepare a trainee to pursue the patent attorney profession by himself and in a proper manner, takes three years and is completed with the qualifying examination. Eighteen months after the commencement of the patent attorney's training, the patent attorney guiding

the training (the tutor) may authorise his trainee to substitute him in any actions, except for acting as a representative before the Supreme Court.

The entirety of patent attorneys and patent attorney's trainees forms the Polish Chamber of Patent Attorneys, which represents its members and watches over the proper practising of the patent attorney profession within the limits of public interest and for its protection. Membership in the Polish Chamber of Patent Attorneys is obligatory.

Both the patent attorney and the trainee are liable to disciplinary responsibility for practising the patent attorney profession and performing their duties specified in the Law in a culpable and improper manner, and in particular for acting in defiance of the oath.

Note: The New Law of 11 April 2001 on Patent Attorneys in Poland is available on the *epi* website: www.patentepi.com

The founding of the Romanian Chamber of Patent Attorneys

C. Turcanu¹ (RO)

Romania has had an industrial property protection system for a long time. The first Trademark Law came into force in 1879 and the first Patent Law came into force in 1906; the patent attorneys system appeared during the socialist system, namely in 1953, the industrial property agencies being state societies at that time.

In 2000, in Romania, the Governmental Ordinance no. 66 was promulgated. This concerned the managing and fulfilling of the patent attorney profession and sets the development of the patent attorneys activity in Romania.

This Ordinance has improved the legal limits of the working of patent attorney, limits which have been regulated, since 1991, by the Rule no. 152 of Romanian Patent Law application no. 64/1991.

The above-mentioned Act sets the conditions under which a natural person may become a patent attorney, stipulating the necessary education, experience, training in the industrial property field and behaviour. The requirements are: Romanian citizenship, a Technical or Law University degree, three years seniority in the profession, good foreign languages knowledge, three years experience in the industrial property field as well as no criminal record.

Qualification as a patent attorney is achieved by taking an examination with the Romanian State Office for Invention and Trademarks. Those who pass the examination will be registered into the Romanian National Register of the Patent Attorneys.

In order to able to work as a patent attorney, the qualified patent attorney must be a member of the Romanian Chamber of Patent Attorneys.

The first organization of qualified patent attorneys appeared in 1992, when ANCPİR – the Romanian National Association of Patent Attorneys – was founded.

ANCPİR have been active for years, with good results, representing both patent attorneys in private practice and patent attorneys from industry in specific activities in the field. It has organised the training of patent attorneys regarding the European Patent System, with the EPO support and with the participation of many foreign lecturers. Industrial Property Symposiums, organized with international participation, and meetings named „the Day of the Patent Attorney“ have succeeded in fostering a collective spirit, thus leading to the enhancement of the Romanian patent attorney profession on both the professional and ethical levels.

By the means of the Romanian Patent Attorneys Review, published in two languages, industrial property

¹ Prof. Univ. Dr. Constantin Turcanu, President of the Romanian Chamber of Patent Attorneys

activity in Romania was publicised to other professional associations from abroad, as well to Romanian Commercial societies.

On September 15, 2000 a Session of the Romanian Chamber of Patent Attorneys took place, in accordance with the Governmental Ordinance no. 66/2000. The Chamber had 97 founders, patent attorneys that are qualified and named in the National Register of the patent attorneys.

The chamber has also a number of working Committees, namely: The Admitting Committee, The Legislation Committee, The Professional Committee, The Relation Committee, The Discipline Committee, The Censors Committee. It has set up the Chamber of Statute, the Deontological Code and the Chamber Regulations. The drawing up of the quoted rules was done along the lines of the FICPI and *epi* rules.

The Chamber Conferences set up the requirements for admittance into the Chamber. The requirements, being according the Governmental Ordinance no. 66/2000, have enhanced the exigencies regarding the ethics and the deontology of the profession.

Presently the Chamber has 111 members (from the entire number of over 250 attested patent of attorneys),

84 members practitioners in private practice and 27 members in industry.

The list of the patent attorneys that may practice, under the provision of the Ordinance, is updated monthly by the Chamber and is sent to the Romanian State Office for Invention and Trademarks in order to be published in the Official Bulletin of Industrial Property for each section.

The Chamber Members in private practice are organised into 46 Agencies and Industrial Property Cabinets. Among that, 8 agencies are currently working with foreign partners. Romanian patent attorneys are FICPI, AIPPI, INTA members and also members of other organisations in the field.

The Chamber is a progressive factor in the field of the Romanian Industrial Property Protection. Industrial property applicants now have the possibility of providing observations regarding the activity of the patent attorneys to the Chamber. This will lead to the enhancement of the professional and ethical levels of the Romanian patent attorney profession.

On July 01, 2002 Romania will become a member of the European Patent Convention and the patent attorneys will become *epi* members.

Representation in Industrial Property Matters in Slovenia

V. Redenšek¹ (SI)

Representation before the Slovenian Intellectual Property Office (SIPO) is regulated by the Law on Industrial Property, which came into force in 1992, and the Regulations on Conditions of Performing the Examination and Entering in the Register of Representatives. There are currently 26 professional representatives listed in the list of approved patent attorneys. A few of them were registered patent attorneys already in former Yugoslavia, the majority, however, established their offices after Slovenia became independent and come from the ranks of attorneys at law, patent attorneys from industry and former examiners. According to the Law, as a representative for all fields of industrial property i.e. patents, models & designs and trade & service marks before the SIPO there may act:

1. a patent attorney who is a natural person, and has completed university studies in technology or natural science, and has passed the examination for patent attorney at the Office;
2. an attorney at law employing, on a regular or contractual basis, a person who has completed studies in technology or science;

3. a juristic person employing at least one person having completed university studies and who fulfills the conditions laid down in items (1) and (2) given above.

For the special examination for patent attorney comprising topics from all fields of industrial property, anyone may enrol who has completed university studies in technology or natural science and has an active knowledge of one of the official languages of the EPO (English, German or French). In the register at SIPO of persons who have passed the examination or have the status of patent attorney (already obtained in the former Yugoslavia), approx. 30 persons are currently listed. They mostly work either as professional representatives or are employed in intellectual property departments in industry.

On 7 December 2001 a new Law on Industrial Property will come into force. The new Law defines the representation in a more precise manner and also brings some novel stipulations. One of them is a division of representatives into patent attorneys and attorneys for models and marks. Patent attorneys will be automatically listed in the register of approved patent attorneys who may represent clients in matters of all industrial property rights, but they will also have the possibility to be entered only to a list of approved attorneys for models and marks.

¹ Vladka Redenšek, Patent Attorney at Patentna pisarna

Better is also defined the representation of clients in matters of industrial property before the court. According to the new Law patent attorneys fulfilling conditions for representation in court (i.e. having finished university studies of law, having passed the bar exam and having five years of experience), have the right to be paid for their work in court in accordance with the tariff as

determined by the patent attorneys and confirmed by the ministry of justice.

Patent attorneys are not organized in any exclusive professional association or chamber. There only exists a national group of AIPPI, which also serves as an association where patent attorneys confront their opinions and professional needs.

The Chamber of Patent Attorneys of the Slovak Republic

D. Čechvalová¹ (SK)

Velvet revolution in former Czechoslovakia brought many changes into the life of professionals acting in the field of intellectual property.

The main change was, besides passing new modern acts on protection of industrial rights, re-codification of the patent attorney profession, which was, after several decade lasting vacuum, regulated by Act No. 237/1991 Coll. on Patent Attorneys in 1991. Original authorisation for carrying out this profession, regulated by Government Regulation from year 1926, was nullified in year 1952.

Under the Act on Patent Attorneys, which represents a special trade act in the field of intellectual property relating, via an amendment, to acts on advocacy and commercial lawyers, the Chamber of Patent Attorneys of the Czechoslovak Federative Republic was founded in Brno, which associated professionals of both republic of federation, that was the Czech and Slovak Republics. It happened during the foundation conference on December 10, 1991, when principal documents of the Chamber were adopted and the Directorate was elected, and 147 participating founding members of the Chamber from the both Republics took collectively an oath.

After a split of the Czechoslovak Federative Republic, that was from January 1st, 1993, not only the independent Offices were established, that were the Industrial Property Office in Prague and the Industrial Property Office in Bratislava, but the Chamber of Patent Attorneys was split and two new professional organisations were formed.

Act No. 237/1991 Coll. was implanted into the legal system of the Slovak Republic via Act No. 90/1993 of March 25, 1993.

On June 5, 1993, the Chamber of Patent Attorneys having the residence in Bratislava was formed.

The Chamber of Patent Attorney of the Slovak Republic is not only autonomous and professional organisation. Simultaneously, it is the body having disciplinary authority and it pays attention not only to adherence to professional quality of work practised by patent attorneys, but it also pays attention to observance of ethical rules of the profession pursuance.

Under provisions of Act No. 237/1993 Coll. in the wording of Act No. 90/1993 Coll., only the person entered into the Registry of Patent Attorneys kept by the Chamber is authorised to pursue the profession.

The Chamber enters into the Registry each person that meets following conditions:

- She/he is a national of the Slovak Republic and has a residence on the territory of the Slovak Republic,
- She/he is legally competent
- She/he is irreproachable
- She/he has requisite tertiary education
- She/he passes professional exam and
- She/he administers an oath to the President

The Slovak Industrial Property Office after consultation with the Chamber determines the content and the organization of the professional exam. The professional exam is usually held once a year and it is opened to the public. Only candidates proving, besides other preconditions stated above, the practice in the branch of intellectual property for at least 5 years may take a professional exam.

Primarily, a direct cooperation in preparation and elaboration of applications concerning individual subjects of industrial property is considered to be a professional practice. The professional exam is exacting and patent attorneys passing the exam are fully competent to represent the clients before the Slovak Industrial Property Office.

The Chamber has drawn up a set of principal documents, wherein the Administrative Rules administering particulars concerning organisation of the Chamber, its bodies and their competencies, and setting members' rights and duties, are a part of them. Further, Disciplinary Rules, Voting Rules, Competition Rules and Rules concerning payment of dues and insurance regarding liability for damages are a part of the principal documents.

Annually, on the basis of several year contractual partnership with insurance company UNION and on the basis of the Rules the Chamber arranges to members a basic statutory liability insurance against possible damages originating from doing their profession, wherein insurance amount and insurance value can be settled individually.

¹ Dagmar Čechvalová, President of the Slovak Chamber of Patent Attorneys

Since the date of foundation, in cooperation with the Industrial Property Office, the Chamber ensures further training via various workshops and trainings holding by many lecturers from different institutions of the European Community, primarily from EPO and the Chamber informs the members on possibilities to attend such events held out of the territory of the Slovak Republic.

Members of the Chamber are involved in observation proceedings to draft laws concerning industrial rights.

Several members of the Chamber are graduates of CEIPI and two members of the Chamber are tutors of CEIPI for the Czech and Slovak Republics.

39 members, being formerly the members of the Czechoslovakian Chamber of Patent Attorneys and having longlasting practice in various research insitutes or in the Industrial Property Office of the Czechoslovak Federative Republic, have founded the Chamber of Patent Attorneys of the Slovak Republic in year 1993. At present, the Chamber has 52 members working over the whole Slovak Republic.

The Slovak Chamber of Patent Attorneys has a web page www.patentattorneys.sk

Disziplinarorgane und Ausschüsse
Disciplinary bodies and Committees · Organes de discipline et Commissions

Disziplinarrat (epi)	Disciplinary Committee (epi)	Commission de discipline (epi)
AT – W. Katschinka AT – P. Révy von Belvard BE – G. Leherte CH – J. J. Troesch DE – W. Baum DE – G. Keller** DK – I. Kyed ES – V. Gil Vega	FI – P. C. Sundman FR – P. Gendraud FR – J.-P. Kedingen GB – J. Orchard GB – T. J. Powell GR – T. Kilimiris IE – G. Kinsella IT – G. Mannucci	IT – B. Muraca (Subst.) LI – P. Rosenich LU – J. Waxweiler NL – S. Ottevangers* NL – L. Ferguson PT – A. J. Pissara Dias Machado SE – P. O. Rosenquist
Disziplinarausschuss (EPA/epi) epi-Mitglieder	Disciplinary Board (EPO/epi) epi Members	Conseil de discipline (OEB/epi) Membres de l'epi
CH – C.-A. Wavre DE – W. Dabringhaus	FR – M. Santarelli	GB – J. Boff
Beschwerdekammer in Disziplinarangelegenheiten (EPA/epi) epi-Mitglieder	Disciplinary Board of Appeal (EPO/epi) epi Members	Chambre de recours en matière disciplinaire (OEB/epi) Membres de l'epi
CH – C. Bertschinger DE – H. Lichti FR – A. Armengaud Aîné	GB – E. Lyndon-Stanford GR – C. Kalonaru	IT – E. Klausner SE – C. Onn
epi-Finzen	epi Finances	Finances de l'epi
AT – P. Pawloy BE – A. Colens CH – T. Ritscher	DE – B. Feldmann* DK – K. Vingtoft FR – H. Dupont GB – J. U. Neukom**	IT – R. Dini LU – J. P. Weyland SE – B. Erixon
Geschäftsordnung	By-Laws	Règlement intérieur
CH – C. E. Eder* DE – L. Steiling	FR – T. Schuffenecker	GB – T. L. Johnson
Standesregeln	Professional Conduct	Conduite professionnelle
AT – E. Kunz AT – E. Piso BE – P. Overath CH – U. Blum DE – W. O. Fröhling DE – H.-H. Wilhelm DK – L. Roerboel ES – C. Polo Flores	FI – L. Nordin FR – J. Bauvir FR – P. Vidon GB – J. D. Brown* GB – J. Gowshall GR – A. Patrinos-Kilimiris IE – P. Hanna	IT – A. Perani LU – J. Bleyer NL – F. Barendregt NL – F. Dietz PT – N. Cruz PT – F. Magno (Subst.) SE – L. Stolt SE – M. Linderoth
Europäische Patentpraxis	European Patent Practice	Pratique du brevet européen
AT – F. Gibler AT – G. Widtmann BE – E. Dufrasne BE – J. van Malderen CH – F. Fischer CH – P. G. Maué CY – C. Theodoulou DE – G. Schmitt-Nilson DE – F. Teufel DK – P. J. Indahl	DK – P. R. Kristensen ES – E. Armijo ES – L. A. Duran FI – E. Grew FI – A. Weckman FR – A. Casalonga* FR – J. Bauvir GB – P. Denerley** GB – I. Muir GR – D. Oekonomidis	GR – M. Zacharatou IE – P. Shortt IT – E. de Carli IT – A. Josif LI – S. Kaminski NL – W. Hoogstraten NL – L. J. Steenbeek PT – J. L. Arnaut PT – N. Cruz SE – S. A. Hansson SE – Z. Schöld

*Chairman/**Secretary

Berufliche Qualifikation Ordentliche Mitglieder		Professional Qualification Full Members	Qualification professionnelle Membres titulaires
AT – F. Schweinzer	ES – J. F. Ibanez Gonzalez	IT – F. Macchetta	
BE – M. J. Luys	FI – K. Finnilä	LI – S. Kaminski**	
CH – E. Klein	FR – L. Nuss	NL – F. Smit	
CY – C. Theodoulou	GB – J. Gowshall	PT – G. Moreira Rato	
DE – G. Leissler-Gerstl	GR – T. Margellos	SE – T. Onn*	
DK – E. Christiansen	IE – L. Casey		
Stellvertreter Substitutes	Suppléants		
AT – P. Kliment	ES – J. A. Morgades	IT – P. Rambelli	
BE – G. Voortmans	FI – K. Roitto	NL – A. Hulsebos	
CH – K. Schwander	FR – M. Le Pennec	PT – I. Carvalho Franco	
DE – L. B. Magin	GB – P. Denerley	SE – M. Linderoth	
DK – A. Secher	IE – D. McCarthy		
Beobachter Observers	Observateurs		
(Examination Board Members)			
CH – M. Seehof	FR – J. D. Combeau	IT – G. Checcacci	
DE – P. Weinhold			
Biotechnologische Erfindungen	Biotechnological Inventions	Inventions en biotechnologie	
AT – A. Schwarz	ES – A. Ponti Sales	GB – C. Mercer**	
BE – A. De Clercq	FI – M. Lax	IE – C. Gates	
CH – W. Mezger	FR – F. Chrétien	IT – G. Staub	
DE – G. Keller	FR – J. Warcoin	NL – H. Prins	
DK – B. Hammer Jensen*	GB – S. Wright	PT – J. E. Dinis de Carvalho	
		SE – L. Höglund	
EPA-Finzen	EPO Finances	Finances OEB	
DE – W. Dabringhaus	FR – H. Dupont	GB – J. Boff*	
ES – I. Elosegui de la Pena			
Harmonisierung	Harmonization	Harmonisation	
BE – F. Leyder*	FR – J. P. Desolneux	GB – J. D. Brown**	
DE – R. Einsele	ES – J. Botella	SE – K. Norin	
Online Communications Committee (OCC)			
BE – M. Van Ostaeyen	ES – J. A. Morgades y Manonelles	FR – P. Vidon	
DE – D. Speiser*	FI – J. Virkkala	GB – R. Burt**	
		NL – F. Dietz	
Standing Advisory Committee before the EPO (SACEPO)			
	epi-Delegierte	epi Delegates	
		Délégués de l'epi	
AT – W. Katschinka	FI – P. Hjelt	LI – R. Wildi	
BE – D. Wante	FR – J. J. Martin	LU – E. Meyers	
CH – A. Braun	GB – C. Mercer	MC – G. Collins	
CY – C. Theodoulou	GR – H. Papaconstantinou	NL – A. Huygens	
DE – R. Keil	IE – A. Parkes	PT – J. L. Arnaut	
DK – K. E. Vingtoft	IT – V. Faraggiana	SE – S. Berglund	
ES – M. Curell Suñol			
Wahlausschuss	Electoral Committee	Commission pour les élections	
CH – H. Breiter*	IE – A. Parkes	NL – J. Van Kan	

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