Table of Contents

President's Letter

In this edition you will find the results of the election to our new Council. Half of our members voted. I am grateful to them for demonstrating their active involvement in the affairs of *epi.*

The new Council will meet for the first time in Florence on 10 and 11 May 1999. Following a decision of the Council in Vienna in November 1996 which was endorsed by the Administrative Council in March 1997, the term of Council has been extended from two to three years and the size of Council has been reduced with effect as from 1999. The new Council will have 74 members instead of 93.

As it looks now, the size of the Council will again increase considerably in the years to come. At its meeting on 29 January 1999, the Administrative Council took the historical decision to invite eight countries, Bulgaria, the Czech Republic, Estonia, Hungary, Poland, Slovakia, Slovenia and Romania – to accede to the European Patent Convention with effect as from 1 July 2002.

Thus, at the end of the term of the new Council the Institute will be faced with a significant enlargement in members which will undoubtedly impact on its administration Board, Council and Committee size and on finance. Apart from many other issues which are currently under debate, the Board and Council will have to work extremely hard to ensure a relatively problem free transition. No doubt this will be an extra challenge!

On another matter, the *epi* has received several letters from members who complained about recent publications of changes of practice of the European Patent Office on the EPO website with almost immediate effect. I wrote a letter to Mr. Kober in which I explained the concern and offered assistance in divulging important communications from the Office to the members of our Institute. As a result thereof, you will find in this issue a copy of a Notice from the EPO, dated 12 February 1999, concerning publication of official notices on the Internet, which will be published in the Official Journal 3/1999.

Arthur V. Huygens

Ergebnisse der Wahl zum zwölften Rat

Hinweis

Mitglieder des Instituts, die gegen das Wahlergebnis Einwände erheben möchten, müssen ihre schriftlichen Einwände bis spätestens **29. März 1999** beim Sekretariat des Instituts einreichen. Dies kann per Telefax geschehen. Später eingehende Einwände werden nicht berücksichtigt.

Ich danke den Mitgliedern des Wahlausschusses, den Herren H. Breiter, A. Parkes and J.J.H. Van kan für ihren Einsatz.

Februar 1999
Generalsekretär
R. Zellentin

Results of the election to the twelfth Council

Notice

Members of the Institute wishing to object against the election results must submit their written objection to reach the Secretariat of the Institute by **29 March 1999** at the latest. Telefax will be accepted. Any objections reaching the Institute after this date will not be taken into consideration.

I thank the members of the Election Committee, Messrs. H. Breiter, A. Parkes and J.J.H. Van kan for their commitment.

February 1999
Secretary General
R. Zellentin

Résultats de l'élection au douzième Conseil

Note

Les membres de l'Institut désirant contester les résultats de l'élection doivent faire parvenir leurs objections par écrit au Secrétariat de l'Institut avant le **29 mars 1999** au plus tard. Les télécopies sont acceptées. Toute objection parvenant à l'Institut après cette date ne sera plus prise en considération.

Je remercie les membres de la Commission Electorale, MM. H. Breiter, A. Parkes and J.J.H. Van kan pour leur engagement.

Février 1999
Secrétaire Général
R. Zellentin

Erläuterung · Legend · Légende

* haben erklärt, ihre Wahl nur als stellvertretendes Mitglied anzunehmen	* stood as substitute only	* éligible comme suppléant uniquement
** Losentscheid bei gleicher Stimmenzahl	** tie vote position decided by lot	** classement par tirage au sort à égalité de voix
*** alphabetische Reihenfolge bei gleicher Stimmenzahl	*** alphabetical order, equal number of votes	*** classement par ordre alphabétique à égalité de voix

Abgegebene Stimmzettel: 3.020
Gültige Stimmzettel: 2959
Ungültige Stimmzettel: 61

Received ballots: 3,020
Valid ballots: 2,959
Void ballots: 61

Bulletins reçus: 3.020
Bulletins valables: 2.959
Bulletins nuls: 61

AT – ÖSTERREICH

Anderweitig Tätige

Abgegebene Stimmzettel:	14
Gültige Stimmzettel:	14
Ungültige Stimmzettel:	0
KRAUSE Peter	5
KUNZ Ekkehard	14
SCHWEINZER Friedrich	7
WIDTMANN Georg	8

Sitzverteilung

Ordentliche Mitglieder

1. KUNZ Ekkehard	14
2. WIDTMANN Georg	8

Stellvertretende Mitglieder

1. SCHWEINZER Friedrich	7
2. KRAUSE Peter	5

Freiberufler

Abgegebene Stimmzettel: 38
Gültige Stimmzettel: 35
Ungültige Stimmzettel: 3

BARGER Werner	18
GIBLER Ferdinand	22
HOLZER Walter	28
ISRAILOFF Peter	10
WEINZINGER Arnulf *	25

Sitzverteilung

Ordentliche Mitglieder

1. HOLZER Walter	28
2. GIBLER Ferdinand	22

Stellvertretende Mitglieder

1. WEINZINGER Arnulf *	25
2. BARGER Werner	18

BE - BELGIQUE

Autre titre

Bulletins reçus:	36
Bulletins valables:	35
Bulletins nuls:	1
JACQUES Philippe	19
LEYDER Francis	14
RAMON Charles Lucien	20
VAN OSTAEYEN Marc *	11
WANTE Dirk *	9

Répartition des sièges

Membres titulaires

1. RAMON Charles Lucien	20
2. JACQUES Philippe	19

Membres suppléants

1. LEYDER Francis	14
2. VAN OSTAEYEN Marc *	11

Profession libérale

Bulletins reçus: 29
Bulletins valables: 29
Bulletins nuls: 0

DUYCK Frans	9
LEHERTE Georges	7
OVERATH Philippe	10
QUINTELIER Claude	16
VAN MALDEREN Joelle	8

Répartition des sièges

Membres titulaires

1. QUINTELIER Claude	16
2. OVERATH Philippe	10

Membres suppléants

1. DUYCK Frans	9
2. VAN MALDEREN Joelle	8

CH - SCHWEIZ

Anderweitig Tätige/Autre titre

Abgegebene Stimmzettel/ Bulletins reçus:	70
Gültige Stimmzettel/ Bulletins valables:	69
Ungültige Stimmzettel/ Bulletins nuls:	1
HEUSCH Christian	16
KLEIN Ernest	51
MAUÉ Paul Georg *	40
RÉVY VON BELVÁRD Peter	9
ROUECHE Armand	44
WAVRE Claude-Alain	41

Sitzverteilung/ Répartition des sièges

Ordentliche Mitglieder/ Membres titulaires

1. KLEIN Ernest	51
2. ROUECHE Armand	44

Stellvertretende Mitglieder/ Membres suppléants

1. WAVRE Claude-Alain	41
2. MAUÉ Paul Georg *	40

Freiberufler/ Profession libérale

Abgegebene Stimmzettel/ Bulletins reçus:	93
Gültige Stimmzettel/ Bulletins valables:	91
Ungültige Stimmzettel/ Bulletins nuls:	2
BRAUN André	80
EDER Carl E. *	66
FELDMANN Clarence Paul	49
SEEHOF Michel	83

Sitzverteilung/ Répartition des sièges

Ordentliche Mitglieder/ Membres titulaires

1. SEEHOF Michel	83
2. BRAUN André	80

Stellvertretende Mitglieder/ Membres suppléants

1. EDER Carl E. *	66
2. FELDMANN Clarence Paul	49

CY - CYPRUS

Unitary

Received ballots:	2
Valid ballots:	2
Void ballots:	0
POETIS Phytos	1
THEODOULOU Christos	1

Allotment of seats

Full members

1. POETIS Phytos ***	1
2. THEODOULOU Christos ***	1

Substitute members

none

DE - DEUTSCHLAND

Anderweitig Tätige

Abgegebene Stimmzettel:	313
Gültige Stimmzettel:	308
Ungültige Stimmzettel:	5
BAUM Wolfgang *	185
DIRSCHERL Josef *	143
EINSELE Rolf	257
FELDMANN Bernhard	237
HIRSCH Uwe	129
STEILING Lothar *	116
TEUFEL Fritz	236

Sitzverteilung

Ordentliche Mitglieder

1. EINSELE Rolf	257
2. FELDMANN Bernhard	237
3. TEUFEL Fritz	236

Stellvertretende Mitglieder

1. BAUM Wolfgang *	185
2. DIRSCHERL Josef *	143
3. HIRSCH Uwe	129

Freiberufler

Abgegebene Stimmzettel:	734
Gültige Stimmzettel:	721
Ungültige Stimmzettel:	13
BOCKHORNI Josef	72
COHAUSZ Helge	194
GODEMEYER Thomas	38
GOLDBACH Klara	135
GREIBER Dieter K.	25
HOFSTETTER Alfons	51
KEIL Rainer	377
KIERDORF Theodor	39
KOEPE Gerd	134
KURIG Thomas	45
KUTZENBERGER Helga	101
LAUFHÜTTE Dieter	204
LIESEGANG Eva	191
MAIKOWSKI Michael	235
MÜLLER Frithjof E.	97
NEIDL-STIPPLER Cornelia	122
OPPERMANN Frank	57
PFAU Anton	47
PIETRUK Claus Peter	17
PRECHTEL Jörg	52
RECKTENWALD Albert	8
REINHARDT Markus	52
SCHLEE Alexander	57
SCHMIDT Steffen	66
SPEISER Dieter	345
ZELLENTIN Rüdiger	366

Sitzverteilung

Ordentliche Mitglieder

1. KEIL Rainer	377
2. ZELLENTIN Rüdiger	366
3. SPEISER Dieter	345

Stellvertretende Mitglieder

1. MAIKOWSKI Michael	235
2. LAUFHÜTTE Dieter	204
3. COHAUSZ Helge	194

DK - DENMARK

Other practice

Received ballots:	18
Valid ballots:	16
Void ballots:	2
JENSEN Bo Hammer	12
KRISTENSEN Per Rydahl	9
NISSEN Georg *	11
STANLEY-MADSEN Ib	12

Allotment of seats

Full members

1. JENSEN Bo Hammer ***	12
2. STANLEY-MADSEN Ib ***	12

Substitute members

1. NISSEN Georg *	11
2. KRISTENSEN Per Rydahl	9

Private practice

Received ballots:	54
Valid ballots:	52
Void ballots:	2
BROCK-NANNESTAD George *	4
CHRISTIANSEN Ejvind	26
GREGERSEN Niels Henrik	8
HOEIBERG Susanne	15
NIELSEN Leif	7
NOERGAARD Ulrik *	23
ROERBOEL Leif	22
VINGTOFT Knud Erik	28

Allotment of seats

Full members

1. VINGTOFT Knud Erik	28
2. CHRISTIANSEN Ejvind	26

Substitute members

1. NOERGAARD Ulrik *	23
2. ROERBOEL Leif	22

ES - SPAIN

Unitary

Received ballots:	65
Valid ballots:	65
Void ballots:	0
ARMIJO Enrique	61
CURELL SUNOL Marcelino	57
DURAN MOYA Luis-Alfonso	49
ELOSEGUI DE LA PENA Inigo *	53
ELZABURU MARQUEZ Alberto *	53
GIL-VEGA Victor	56
PONTI SALES Adelaida *	50
SUGRANES MOLINE Pedro *	53

Allotment of seats

Full members

1. ARMIJO Enrique	61
2. CURELL SUNOL Marcelino	57
3. GIL-VEGA Victor	56
4. DURAN MOYA Luis-Alfonso	49

Substitute members

1. ELOSEGUI DE LA PENA Inigo */***	53
2. ELZABURU MARQUEZ Alberto */***	53
3. SUGRANES MOLINE Pedro */***	53
4. PONTI SALES Adelaida *	50

FI - FINLAND

Other practice

Received ballots:	42
Valid ballots:	39
Void ballots:	3
FINNILÄ Kim	12
FRIMAN Esko	25
KILPINEN Aarre	9
KOSKI Harri	15
LAHTI Heikki	0
LEHTINEN Ossi *	10
SALOMÄKI Juha	31
SARAJUURI Mika	6
VALKONEN Pekka	17

Allotment of seats

Full members

1. SALOMÄKI Juha	31
2. FRIMAN Esko	25

Substitute members

1. VALKONEN Pekka	17
2. KOSKI Harri	15

Private practice

Received ballots:	73
Valid ballots:	67
Void ballots:	6
BRAX Matti	45
HELINO Timo	7
HJELT Pia *	27
LAX Monica	52
SUNDMAN Christoffer	33

Allotment of seats

Full members

1. LAX Monica	52
2. BRAX Matti	45

Substitute members

1. SUNDMAN Christoffer	33
2. HJELT Pia *	27

FR - FRANCE

Autre titre

Bulletins reçus:	119
Bulletins valables:	117
Bulletins nuls:	2
BAUVIR Jacques	88
DESOLNEUX Jean-Paul	85
DUPONT Henri	95
GENDRAUD Pierre	90
LE PENNEC Magali	88
LE VAGUERESE Sylvain	99
MÜLLER René	44

Répartition des sièges

Membres titulaires

1. LE VAGUERESE Sylvain	99
2. DUPONT Henri	95
3. GENDRAUD Pierre	90

Membres suppléants

1. BAUVIR Jacques ***	88
2. LE PENNEC Magali ***	88
3. DESOLNEUX Jean-Paul	85

Profession libérale

Bulletins reçus:	200
Bulletins valables:	195
Bulletins nuls:	5
ALMOND-MARTIN Carol	55
BECKER Philippe	59
CASALONGA Axel	148
LAGET Jean-Loup	123
MARTIN Jean-Jacques	127
NUSS Laurent	140
PORTAL Gérard	80
SCHUFFENECKER Thierry	45
VERDIER Louis	37
VIDON Patrice	59
VUILLERMOZ Bruno	55

Répartition des sièges

Membres titulaires

1. CASALONGA Axel	148
2. NUSS Laurent	140
3. MARTIN Jean-Jacques	127

Membres suppléants

1. LAGET Jean-Loup	123
2. PORTAL Gérard	80
3. VIDON Patrice **	59

GB - GREAT BRITAIN

Unitary

Received ballots:	550
Valid ballots:	544
Void ballots:	6
ATKINSON Jonathan David	113
BOFF James C.	208
BROWN John D.	175
BURT Roger	235
DENERLEY Paul M.	234
GOWSHALL Jonathan V.	217
JOHNSON Terence L.	249
LYNDON-STANFORD Edward	288
MERCER Christopher P.	317
MUIR Ian Robertson	177
NEUKOM John U.	197
ORCHARD Oliver John	183
POWELL Timothy	266
STRINGER David	150
WOOD Timothy	111
WRIGHT Simon	192

Allotment of seats

Full members

1. MERCER Christopher P.	317
2. LYNDON -STANFORD Edward	288
3. POWELL Timothy	266
4. JOHNSON Terence L.	249
5. BURT Roger	235
6. DENERLEY Paul M.	234

Substitute members

1. GOWSHALL Jonathan V.	217
2. BOFF James Charles	208
3. NEUKOM John Ulysses *	197
4. WRIGHT Simon	192
5. ORCHARD Oliver John	183
6. MUIR Ian Robertson	177

GR - GREECE

Unitary

Received ballots:	21
Valid ballots:	19
Void ballots:	2
BAKATSELOU Vassiliki	5
DACORONIA Eugenia	1
KILIMIRIS Tassos-Anastase	7
MARGELLOS Theophilos	7
OEKONOMIDIS Dimitris	7
PAPACONSTANTINOU Helen	9
PATRINOS-KILIMIRIS Anna *	4

Allotment of seats

Full members

1. PAPACONSTANTINOU Helen	9
2. KILIMIRIS Tassos-Anastase ***	7
3. MARGELLOS Theophilos ***	7
4. OEKONOMIDIS Dimitris ***	7

Substitute members

1. BAKATSELOU Vassiliki	5
2. PATRINOS-KILIMIRIS Anna *	4
3. DACORONIA Eugenia	1

IE - IRELAND

Unitary

Received ballots:	21
Valid ballots:	21
Void ballots:	0
CASEY Lindsay	19
GATES Marie Christina *	19
KELLY Peter	19
McCARTHY Denis	19
McKEOWN Yvonne *	19
SHORTT Peter B.	20

Allotment of seats

Full members

1. SHORTT Peter	20
2. CASEY Lindsay ***	19
3. KELLY Peter ***	19
4. McCARTHY Denis A. ***	19

Substitute members

1. GATES Marie C. Esther */***	19
2. McKEOWN Yvonne */***	19

IT - ITALY

Other practice

Received ballots:	21
Valid ballots:	21
Void ballots:	0
BROCCHETTI Diego	3
DE CARLI Elda	9
DINI Roberto	8
GUERCI Allessandro	5
MACCHETTA Francesco	16
MURACA Bruno	7
PANOSSIAN Stefano	2
PASQUALETTI Adriano	10
PIERACCIOLI Daniele	6

Allotment of seats

Full members

1. MACCHETTA Francesco	16
2. PASQUALETTI Adriano	10

Substitute members

1. DE CARLI Elda	9
2. DINI Roberto	8

Private practice

Received ballots:	148
Valid ballots:	147
Void ballots:	1
CIONI Carlo	16
DA RIVA Ermanno	4
DRAGOTTI Gianfranco *	70
FARAGGIANA Vittorio	87
LOTTI Giorgio	48
MODIANO Guido	93
PEDERZINI Paolo *	18
SPANDONARI Carlo	64
STAUB Gabriella *	51

Allotment of seats

Full members

1. MODIANO Guido	93
2. FARAGGIANA Vittorio	87

Substitute members

1. DRAGOTTI Gianfranco *	70
2. SPANDONARI Carlo	64

LI - LIECHTENSTEIN

Einheitlich

Abgegebene Stimmzettel:	8
Gültige Stimmzettel:	8
Ungültige Stimmzettel:	0
BÜCHEL Kurt *	7
KAMINSKI Susanne	8
ROSENICH Paul *	5
WILDI Roland	6

Sitzverteilung

Ordentliche Mitglieder

1. KAMINSKI Susanne 8
2. WILDI Roland 6

Stellvertretende Mitglieder

1. BÜCHEL Kurt * 7
2. ROSENICH Paul * 5

LU - LUXEMBOURG

Autre titre

Bulletins reçus:	1
Bulletins valables:	1
Bulletins nuls:	0
D'HAEMER Jan *	1
LEITZ Paul	1

Répartition des sièges

Membre titulaire

1. LEITZ Paul 1

Membre suppléant

1. D'HAEMER Jan * 1

Profession libérale

Bulletins reçus:	11
Bulletins valables:	11
Bulletins nuls:	0
KIHN Pierre	3
SCHMITT Armand	3
WAXWEILER Jean *	8
WEYLAND J.J. Pierre	8

Répartition des sièges

Membre titulaire

1. WEYLAND J.J. Pierre 8

Membre suppléant

1. WAXWEILER Jean * 8

MC - MONACO

Circonscription à collège unique

Bulletins reçus:	2
Bulletins valables:	2
Bulletins nuls:	0
COLLINS Geoffrey	1
SCHUFFENECKER Thierry	2

Membres titulaires

1. SCHUFFENECKER Thierry 2
2. COLLINS Geoffrey 1

Membre suppléant

aucun

NL - NETHERLANDS

Unitary

Received ballots:	180
Valid ballots:	174
Void ballots:	6
DIETZ Frans Anton	84
FERGUSON Alexander *	52
HANNEMAN Henri W.A.M.	131
HOOGSTRATEN Willem C.R.	78
HUYGENS Arthur V.	130
IEMENSCHOT Johannes	27
JORRITSMA Ruurd *	74
KRIJGSMAN Willem *	55
MULDER Cornelis Willem Reinier *	54
PRINS Hendrik Willem	42
SMIT Frederik J.	85
STEENBEEK Leonardus *	57

Allotment of seats

Full members

1. HANNEMAN Henri 131
2. HUYGENS Arthur V. 130
3. SMIT Frederik Jan 85
4. DIETZ Frans Anton 84

Substitute members

1. HOOGSTRATEN Willem C.R. 78
2. JORRITSMA Ruurd * 74
3. STEENBEEK Leonardus * 57
4. KRIJGSMAN Willem * 55

PT - PORTUGAL

Unitary

Received ballots:	34
Valid ballots:	34
Void ballots:	0
ARANTES E OLIVEIRA Joao de	28
ARNAUT José Luis *	27
CARVALHO FRANCO Isabel *	27
FERREIRA MAGNO Fernando A.*	25
MOREIRA Rato Gonçalo	30
PEREIRA DA CRUZ Joao	28
PEREIRA DA CRUZ Nuno *	29
PISSARRA DIAS MACHADO A.	25

Allotment of seats

Full members

1. MOREIRA RATO Gonçalo 30
2. ARANTES E OLIVEIRA J. *** 28
3. PEREIRA DA CRUZ Joao *** 28
4. PISSARRA DIAS MACHADO A. 25

Substitute members

1. PEREIRA DA CRUZ Nuno * 29
2. ARNAUT José Luis */*** 27
3. CARVALHO FRANCO I. */*** 27
4. FERREIRA MAGNO F. A.* 25

SE - SWEDEN

Other practice

Received ballots:	51
Valid ballots:	50
Void ballots:	1
HEDENSTRÖM John	13
HOLMBORN Erland	33
LINDEROTH Margareta	29
NORIN Klas	31
SCHÖLD Zaid	34

Allotment of seats

Full members

1. SCHÖLD Zaid	34
2. HOLMBORN Erland	33

Substitute members

1. NORIN Klas	31
2. LINDEROTH Margareta	29

Private practice

Received ballots:	72
Valid ballots:	72
Void ballots:	0
GULLIKSSON Jonas	23
HANSSON Sven Arnold	47
JANSON Ronny	56
LETTSTRÖM Richard	45
PERKLEV Karin Cecilia	40

Allotment of seats

Full members

1. JANSON Ronny	56
2. HANSSON Sven Arnold	47

Substitute members

1. LETTSTRÖM Richard	45
2. PERKLEV Karin Cecilia	40

Some observations on the technical content of existing and future families of UK. EPO and Derwent Abstracts

R. Camp (GB)

Much has been written about the possible introduction of an „enhanced abstract" for European patent applications.

This article is not primarily concerned with abstracts which are yet to be. Rather it is concerned with abstracts which are currently available, and seeks to dispel some of the widespread misconceptions which I have found to exist on both sides of the patent profession regarding the content of patent abstracts.

The examples referred to are based on my personal experiences at the „coal face" as a writer of Derwent abstracts of German-language patents [1], a writer of abridgments of UK patent applications filed under the UK 1949 Patents Act [2], and as a user of patent abstracts and abridgments to conduct searches for prior art [3].

I cannot stress it strongly enough that these are my personal views based on my experiences in dealing with (mostly) electrical and (some) mechanical subject matter. I have no experience of chemical drafting or of the preparation of Derwent's chemical abstracts, which I understand have a different format and content from non-chemical abstracts.

What is an abstract?

EPC ABSTRACTS

Rule 33 EPC sets out the (prima facie mandatory) requirements for abstracts filed under the EPC.

Rule 33(2) EPC reads as follows: (emphasis added)

„The abstract *shall* contain a concise summary of the disclosure as contained in the description, the claims, and the drawings;

the summary *shall* indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention and the principal use or uses of the invention.

The abstract *shall*, where appropriate, contain the chemical formula which, among those contained in the application, best characterises the invention.

It *shall not* contain statements on the alleged merits or value of the invention or on its speculative application."

Rule 33(5) EPC says:

„The abstract *shall* be so drafted that it constitutes an efficient instrument *for purposes of searching* in the particular technical field particularly by making it possible to assess whether there is a need for consulting the European patent application itself."

Rule 33(2) EPC then attempts to get the quart (1136 ml) into the pint (568 ml) pot as follows:

„The abstract *shall preferably* not contain more than one hundred and fifty words."

Now I have come across the odd patent application where the requirements of Rule 33(3) and (5) EPC could be encompassed within a mere 150 words, but such cases are rare in the technical fields in which I have worked.

It seems to work best for short specifications relating to a readily-identifiable improvement over a known thing, especially where the description is written in the „Germanic" style, i.e. is addressed to a person who, being fully conversant with the prior art, only needs to be told about the improvements.

It is usually wholly inadequate for the type of application originating from the US which contains a number of embodiments, all described in great detail, and which to European eyes, relate to a number of different inventions.

Why is the R.33 EPC abstract limited to 150 words?

The EPO follows German Patent Office practice in that it does not itself publish the abstract as part of the notification of publication in its official journal, nor does it issue classified collections of abstracts for use by searchers. [4] It appears that, when the EPC was being drafted, the only role envisaged for the abstract was to allow a searcher manually searching through a classified collection of documents containing similar technical matter (and who therefore already had the document in front of him), to ascertain whether or not he had to open the document. [5] Thus the abstract had to be limited to a size which would fit on the front page of the „A" publication. [6] To this extent an inadequate abstract is not too much of a problem, as in case of doubt the searcher only has to open the document and read it.

1 On a freelance basis in my spare time. I started in the mid-1970's while working as a professional electronics engineer, and stopped some 9 years ago. I found it an excellent way of getting paid for practising foreign language skills and extending technical knowledge.

2 As a Patent Examiner with the UK Patent Office.

3 While a Patent Examiner and as a trainee Patent Attorney.

4 Classified collections of R 33 EPC abstracts are however published by *Wila Verlag* as *Auszüge aus den Europäischen Patentanmeldungen* (EPZ). Those R.33 EPC abstracts which are in english are also available via the PATOSEP on-line search database, which is derived from EPZ.

5 Classified collections of patents were at one time (and I believe still may be) available for public consultation at patent libraries in Austria (Vienna?), Munich, and Washington: CIPA, February 1980 p.241. The only publicly-available UK collection of classified GB patents was disposed of some years ago.

6 No abstract appears on the front page of „B" publications, as these are not included in search files.

Of course, patent abstracts of various types were available long before the EPC came into existence.

UK Abridgments 1617-1978

Although not the first, [7] what were arguably the best series of patent abstracts were the so-called *Abridgments* produced by the UK Patent Office.

I do not propose to discuss the history of the origin, evolution, and eventual demise of Abridgments in detail, as this information can be found elsewhere. [8] Suffice it to say that they were introduced in the late 1870's by the then head of the UK Patent Office, Mr Bennet-Woodcroft.

Bennet-Woodcroft had arranged for all UK patents between 1617 and 1866 to be printed. Bennet-Woodcroft's philosophy was that applicants should do their own novelty searches [9], and to facilitate this, the then field of technology was divided into about 100 classes. A staff of abstracting clerks (the predecessors of the examining staff [10]) were appointed to decide which class or classes were appropriate to the disclosure, and write appropriate abridgments for each class, each abridgment dealing only with matter pertinent to that class. The abridgments were published in bound volumes that included comprehensive subject-matter indexes. Each volume deals with a particular class and is prefaced by an essay which summarises the development of the relevant technology from its inception. These essays are not restricted to patented inventions, and in appropriate classes mention what was known in ancient times. There were no illustrations. [11]

Once the back-log had been dealt with, subsequent series of classified abridgments of newly-accepted patents were published as weekly pamphlets, and from time to time bound volumes of abstracts spanning a period of time or run of serial numbers, were published. Illustrated classified abridgments were introduced in the late 1880's.[12]

In their final form, each volume included a copy of the relevant sections of the then-current UK classification key, and extremely comprehensive indexes that allowed the searcher to find all specifications having a particular indexing mark. There was no limit on the length of the abridgment, which could be as short or as long as the disclosure warranted. I have seen abridgments of less than 10 words, and others of more than 2000 words. Nor were rigid rules laid down as to the format of abridgments: like much of the former UK practice, this was left entirely to the examiner's discretion. Thus the abridgment of a lengthy patent having numerous embodiments might be divided into headed sections, each dealing with a particular technical aspect, whereas the abridgment of a divisional patent might merely consist of a statement along the lines of „*The disclosure is identical with that of patent no. XXXXXXX, but the claims are directed to feature XYZ.*".

Another (possibly unique) feature concerns applications filed prior to 1950 under international convention. The files of such applications were laid open to public inspection 18 (earlier, 12) months after the foreign priority date, and the abridgment reflected the file contents as laid open. [13] Hence the abridgment may refer to, and illustrate, matter which was subsequently deleted during examination, and which therefore does not appear in the printed patent itself. Any deleted matter is identified as such.

In view of the suggestion that EPO examiners might write „enhanced abstracts" it may be appropriate to recount my own experiences of writing UK abridgments in the mid-1970's. Combined search and examination was then the rule, and the examiner also indexed and classified the disclosure of the application using the UK key and the IPC. Following a preliminary review to ensure that the application was appropriate to his technical field the examiner would read the specification through thoroughly, UK classification key and IPC in hand, and index and classify all relevant technical features. Anything potentially relevant to another examination group would be referred to them as well. He would then write individual abridgments for each abridgment group in which the application had been classified.

As a trainee I initially viewed having to write abridgments a chore. With experience I came to appreciate that writing a summary of the technical disclosure of the description in my own words was an excellent way of ensuring that I had truly understood how the embodiments worked. This served to highlight any inconsistencies in the description and discrepancies between what was described and what was claimed, and put me in a good position to carry out a search and write the examination report. The UK classification key was then still largely based on the so-called „deep indexing" philosophy in which a large number of indexing terms were provided to bring out relevant technical features. [14] As the description had to be minutely scrutinised to index the disclosure, and to conduct the examination which would follow the search, the marginal effort involved in writing the abridgment was minimal.

As an aside, the EPO's separate search and examination does not appear to be conducive to the writing of

7 Belgium began publishing printed volumes of abstracts of issued patents in 1854. The early abstracts are very short and generally relate to what is claimed. However, they are classified by technical subject matter and comprehensively indexed. I recently used them to track down an obscure invention dating from the turn of the century. France also began issuing similar publications at about this time.

8 „Abridgments of British Patents – The End of an Era", Paul Turner, World Patent Information 2 (1990) no 2.

9 The statutory obligation of the UK Patent Office to provide information allowing applicants to perform their own novelty searches, introduced by Bennet-Woodcroft, was removed by the 1949 Patents Act.

10 Examination for novelty was not introduced until 1884.

11 In line with the enlightened spirit of the age, hundreds of sets of abridgments, and dozens of complete sets of the printed patents themselves, were presented free of charge to libraries and educational establishments, both in the UK and abroad.

12 Initially written by outside abstractors, entirely by Patent Office examiners by 1894.

13 The files themselves were destroyed many years ago.

14 Search files then used large (approx. A3) filing cards to which the printed specification was attached. The drawings and abridgment were pasted on the card, and the presence of particular indexing marks, each denoting a particular technical disclosure, was indicated by clipping the search card with coloured clips in appropriate positions. Pigeonhole indexing provided a separate copy of the document for each technical field disclosed. Pigeonhole indexing is the quicker (and cheaper) way of classifying documents, but the slower (and more expensive) deep indexing provides superior information retrieval.

enhanced abstracts by examiners, at least, not if the intention is to publish the „Enhanced Abstract" simultaneously with the application. My understanding is that EPO search examiners concentrate on the claims and are not expected to scrutinise the description in detail. [15] Nor is the R.33 abstract supplied by the applicant given more than a superficial review. [16] While having to write an „enhanced abstract" would arguably give the search examiner a better insight into what he was looking for, it would require significantly more time and effort, leading to longer delays in issuing search reports than at present. Conversely, while substantive examination does involve a detailed scrutiny of the description, it takes place well after publication of the application, and in any event not all applications are examined. Using outside abstractors is not without its difficulties if publication simultaneously with the application is required, but could be a solution if the „enhanced abstract" is published somewhat later than the application. [17]

Returning to UK Abridgments, examiner-written abridgments ceased with the passing of the UK 1977 Patents Act, which aligned UK patent law with the EPC. For applications filed under the new act, the abstract supplied by the applicant was used [18], and the examiner's contribution was generally confined to revising the abstract provided by the applicant. Deep indexing was progressively replaced by pigeon hole indexing, and the old classified abridgments were replaced by classified collections of reproductions of front pages of patent applications. Occupying as they do about four times the space as, and giving much less information than, the abridgments which they replaced, they were inconvenient to use and not popular with searchers. [19] Unsuccessful representations were made to the UK Patent Office for comprehensive indexing and examiner-written abridgments to continue under the 1977 Patents Act.

Fortunately for searchers, the demise of the abridgment was to some extent compensated for by the introduction of the series of abstracts produced by Derwent Publications (now Derwent Information Limited), which are commonly referred to by users as „Derwent Abstracts".

Derwent Abstracts

This series of patent abstracts was originally produced for the purpose of informing subscribers of the existence of new *inventions,* and the emphasis has always been on drawing attention to what is claimed, not what is disclosed. My experience is that few people are aware of this fact, and assume that the content of a Derwent abstract broadly corresponds with the old UK abridgment or the R.33 EPC abstract. Where non-chemical abstracts are concerned, it does not.

Derwent have produced a variety of different abstracts over the years, and radical changes have taken place in 1999. The following relates to the type of Derwent abstract with which most people will have met via on-line searches, namely the so-called „Alert". This is the original type of abstract, which continued to be produced until the end of 1998. There are no plans to rewrite existing abstracts in the new format, so „Alerts" will remain a major source of search material in the immediate future. An „Alert" is generally an abstract of the earliest publication of a family of related patent applications.

The format of a non-chemical „Alert" is as follows.

The abstract proper is headed by a two-part title. The format of the two-part title has changed somewhat over the years, and in its final (and most common) state consists of two parts separated by a hyphen. The first part (about 8 words) sets out the general field of the invention, and the second part (about 16 words) gives the essence of the invention. *This title is a very important and much under-rated feature, as the first part of the title is often the only place where any reference is made to matter that is disclosed but not claimed.*

The abstract itself is limited in size to about 1000 characters (this includes spaces). [20]

The first paragraph relates to features of the main claim (generally claim 1). However, where the main claim uses a general term, the abstract will (in theory, although not always in practice) use a specific term corresponding to the embodiment. For example if claim 1 says „fastening means" and the embodiment shows a nut and bolt, then the first paragraph would refer to „fastener, eg a nut and bolt" (or simply „nut and bolt": practice has changed somewhat over the years), not „fastening means". The description might well mention other fasteners such as rivets, but this would not necessarily appear in the abstract due to space limitations.

The second paragraph generally relates to features of the dependent claims, but may provide further elaboration of claim 1. In general there will not be sufficient room to cover all the dependent claims, so only the first few dependent claims will be mentioned. Only if there is sufficient space left after all the dependent claims have been covered will there be any mention of unclaimed matter. [21]

The abstract ends with a brief summary of uses and/or advantages of the invention.

It will be appreciated that the use in the abstract of particular words from the description rather than the general word of the claims means that the fact that the

15 *Guidelines*, B IV 1.1

16 *Guidelines*, B IV 1.4

17 When I sought permission from my then full-time employers before freelancing for Derwent in my spare time, it was readily granted when I explained that I would only be handling documents that had *already been published*. Conversely, dealing with a third party's *unpublished* documents whose contents I would have been obliged to keep confidential would have led to conflict of interest between my employers and the authors of the unpublished documents.

18 The relevant UK rule corresponds more or less exactly with R 33 EPC.

19 CIPA 1979 pp287-291; 381-389; 404-406.

20 Derwent Abstracts were (and at the time of writing, still are) published in classified sets of printed booklets, and the bibliographic data, a drawing and the title and abstract occupy half a quarto page. The relatively high cost of computer memory in the early days of the on-line databases must have been another reason for the 1000 character size limit. To make best use of the limited space, various standardised abbreviations are used, e.g. appts. = apparatus.

21 Unlike non-chemical abstracts, Derwent *chemical* abstracts do specifically *include* non-claimed matter, which is indexed using their own so-called „EPI Manual Codes" system. This is a very useful comprehensive adjunct to national patent office classification systems and the IPC: formerly only available to subscribers, it was made available to non-subscribers from January 1999.

abstract uses a narrow word does not necessarily mean that the patent claims are correspondingly limited. It may be that the narrow word corresponds to the embodiment but the claims cover a much wider field.

Consider an invention that I have just made up for the purposes of this article. Any resemblance to any real inventions is wholly unintentional! For my purposes it is unnecessary to provide a full description of the embodiment. Suffice it to say that the description discloses mains power cables fitted with moulded-on integral fused plugs. The cable is designed to allow data and control signals to be conveyed via the mains to mains-powered equipment via the cable. The cable and plug are both screened. The plug pins are partly sheathed to prevent accidental shock during insertion and removal. The conductors of the cable and the sheath are arranged so as to provide a particular characteristic impedance to the data signals. The fuse has a capacitive by-pass to allow passage of data signals to continue even after the fuse has blown. Alternatively, a by-pass capacitor may be integrated into the plug itself, allowing the use of a conventional fuse. Details of the insulation material are disclosed. The screen may consist of a plastics material loaded with electrically-conductive particles to make it electrically conductive. Various plug types are described.

Consider four patent applications relating to the above. All applications have the same description and drawings. Only the claims and statements of invention are different.

The claims of the first are directed to the cable, the second to the plug, the third to the fuse, the fourth to the chemical composition of the moulding material.

Representative „Alerts" for these are given in the appendix, but for convenience I will repeat the two-part titles here as follows:

MAINS SIGNALLING POWER CORD WITH MOULDED FUSED PLUG – CORD HAS INTEGRAL EARTHED SHIELD AND DEFINED CHARACTERISTIC IMPEDANCE TO REDUCE RFI

MAINS SIGNALLING POWER CORD WITH MOULDED FUSED PLUG – PLUG HAS PARTIALLY INSULATED PINS AND SHIELDED CASING FOR RFI REDUCTION

MAINS SIGNALLING POWER CORD WITH MOULDED FUSED PLUG – FUSE HAS CAPACITIVE BYPASS FOR PASSAGE OF DATA SIGNALS WHEN FUSE BLOWS

MAINS SIGNALLING POWER CORD WITH MOULDED FUSED PLUG – THERMOPLASTIC MOULDING RESIN HAS CARBON BLACK AND POWDERED COPPER FILLER

It will be seen that the first parts of the two-part titles are the same for all applications, and that the second parts and the abstracts themselves, are different, reflecting in each case the content of the claims. *It will also be seen that the only place where any reference is made to non-claimed matter is the first part of the two-part title, and that there is a large amount of matter, potentially of interest to a novelty searcher, which is not mentioned at all in the body of the abstract itself for the reason that it is not claimed.*

While the above example is fictitious, the scenario it represents can certainly happen in real life, typically when an initial application discloses a number of different inventions, not all of which are claimed. If individual divisional applications are filed for the various inventions, each will be abstracted in its turn on publication (generally some time after the parent) and the information is then retrievable: however, applicants do not always file divisionals, and any unclaimed matter can then only be retrieved if it has been included in the two-part title. It should be noted that the feature of the by-pass capacitor integrated in the plug does not appear in any of the abstracts. This could be either because it was not claimed at all, or else was claimed, but being the subject of one of the later appendant claims, had to be omitted due to lack of space.

I had better stress that I do not wish to imply that the absence of unclaimed matter is in any way a fault or defect of the Alert. Alerts were simply never intended to be used for novelty searches but to draw attention to what was claimed as a new invention, and in my view complemented, rather than competed with, the old UK abridgments. As what is claimed should (in theory, if not always in practice) be supported by the description, Alerts can certainly be used for novelty searching purposes: however, they should not be relied on to retrieve all the technical matter contained in a patent application, as they were not designed for this purpose.

I mentioned earlier that the format of Derwent abstracts changed in 1999. Full details should have been released by the time this appears in print, and the following is based on advance information kindly supplied by Derwent Information Limited.

Much more space has been made available, allowing more information to be provided both in the title and the abstract per se. The emphasis remains on abstracting features relating to the *claimed invention*. The title is in one-part form. The abstract itself is modular, consisting of a number of discrete headed fields. Some are mandatory for all technologies, others optional according to the technology. The use of distinct fields allows what is claimed to be distinguished from what is described in an embodiment of the invention. Independent claims are individually identified, and it will now be possible to ascertain whether a main claim is drafted broadly or narrowly. Some fields are not size-limited, making it possible for all relevant material to be included. Where the disclosure relating to an invention spans different technologies, these are specifically identified under individual headings.

As far as I am aware, the format and content of the EPO's „enhanced abstract" has not yet been decided: however, I would assume that, as with the old UK abridgments, the emphasis will be on what is disclosed rather than what is claimed.

While the new „Derwent" abstracts contain more information than the old „Alerts", they are still directed to what is claimed rather than what is disclosed. They would therefore appear to complement, rather than compete with, the EPO's proposed „enhanced abstract".

Appendix

1. Claims directed to details of the cable

MAINS SIGNALLING POWER CORD WITH MOULDED FUSED PLUG – CORD HAS INTEGRAL EARTHED SHIELD AND DEFINED CHARACTERISTIC IMPEDANCE TO REDUCE RFI

A mains power cord has a continuous outer screen which functions both as an earth conductor and the screen of a coaxial transmission line whose centre conductor consists of the live and neutral conductors which are commoned for radio frequency signals. The live and neutral conductor insulation thickness is dimensioned to produce a defined characteristic impedance in conjunction with the screen.

A discrete central mains earth conductor may be provided,

galvanically isolated from the screen. The central earth and the screen may be used for RF signal transmission. The screen may comprise an extruded plastics layer loaded with copper dust and/or carbon black.

USES/ADVANTAGES: Allows signals and power to be conveyed via a common lead with minimal RFI.

2. Claims directed to details of the plug.

MAINS SIGNALLING POWER CORD WITH MOULDED FUSED PLUG – PLUG HAS PARTIALLY INSULATED PINS AND SHIELDED CASING FOR RFI REDUCTION

The outer layer of the plug casing consists of a plastic loaded with electrically-conductive particles to provide electromagnetic screening. The insulating sheath that partly covers the plug pins to prevent shock to the user is extended through this layer into the plug body to prevent mains shorting via the screen.

The screen may be connected to mains earth. The screen may be covered by an outer insulating layer. The conductive particles may comprise copper or carbon black. The plastic may be polyethylene or polycarbonate. The plug may have three pins for a single-phase earthed supply, or 4 pins for a 3-phase supply. For non-earthed supplies a discrete external binding post may be provided.

Advantages: Provides complete screening when used in conjunction with a screened mains cable.

3. Claims directed to details of the fuse.

MAINS SIGNALLING POWER CORD WITH MOULDED FUSED PLUG – FUSE HAS CAPACITIVE BYPASS FOR PASSAGE OF DATA SIGNALS WHEN FUSE BLOWS

A cartridge fuse has an integral capacitor arranged in parallel with its fusible element to allow passage of RF signals when the fuse has blown.

The fuse may have metal end caps whose adjacent ends are interdigitated to provide the capacitor plates. The central outer portion of the fuse body may be coated with an insulating resin for increased insulation breakdown resistance. The fusible element may be surrounded with arc-extinguishing pulverised silicon dioxide.

USES: In appts. utilising mains-borne signalling.

ADVANTAGES: Signalling communications are not interrupted when fuse blows.

4. Claims directed to details of the chemical composition of moulding materials.

MAINS SIGNALLING POWER CORD WITH MOULDED FUSED PLUG – THERMOPLASTIC MOULDING RESIN HAS CARBON BLACK AND POWDERED COPPER FILLER

A normally non-conductive moulding plastic is rendered electrically-conductive by the addition of between 10 and 25 per cent by volume of finely divided electrically-conductive particles.

The particles may comprise a highly-conductive substance e.g. copper, or a semi-conductive substance e.g. carbon black. The plastic may comprise polyethylene, polypropylene, PTFE, irradiated cross-linked polystyrene or gutta-percha.

USES: to provide an outer electromagnetic screen for flexible electric cables.

It has come to my attention that, in the fifteenth SACEPO/PTI meeting in Vienna on 19th February 1998, one of the items discussed was the provision by national patent offices of patent data via the Internet. It is possible that the UK Abridgments back to 1855 might be made available.

What is not clear is whether all abridgments of a given patent will be available or just the primary abridgment. In the main article I referred to an examiner deciding if the case was appropriate to his technical field and referred to an examiner deciding if the case was appropriate to his technical field and referring to another examination group for indexing. The classification class which was most appropriate to the invention claimed would be treated as the so-called „Primary Heading" (generally a heading for which the examiner was responsible). Other headings in which classification was made were denoted „Supplementary Headings".

In the example used to illustrate Derwent abstracts, say only one applikation was made with claims relating to fuses. Under the 1949 Act the examiner would have had to write four separately in the written abridgment, because cables, plugs, fuses and chemical compounds are dealt with details of the fuse, and if only Primary abridgments available on line, any any matter relating to the cable, plug and chemical composition would not be retrievable.

To get the best out of UK Abridgment you really do need to use the „deep indexing" classification and indexing terms, as not all features which are indexed are identified separately in the written abridgment and therefore cannot be retrieved using key word searches. I understand that consideration is being given to making the classification terms available as well, but I do not know how this will be implemented. UK practice was to reclassify existing search file documents whenever the classification key was changed, and if documents, originally „deep indexed", now only bear the current „pigeon hole" indexing terms, much of the information

which manual searchers of UK Abridgments continue to find so useful will not be available to on-line searchers.

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On the relation between the European Patent Convention, the European Convention on the Protection of Human Rights and Fundamental Freedoms, and the European Union. An integrated approach to European integration.

L.J. Steenbeek (NL)

Introduction

There are a number of European treaties that contribute to European cooperation and integration.

The European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) deals with human rights such as the right to life, prohibition of torture and slavery, right to freedom, fair trial without undue delays, protection of private life, freedom of religion, etc.

The Treaty establishing the European Community (an integral part of the Treaty on European Union) deals with economic freedoms (free movement of goods, persons, services, and capital) and much more. The European Community (EC) has acceded to the TRIPs Agreement (an integral part of the WTO Agreement). Based on the EC Treaty are, among others, the Community trademark regulation, the Supplementary Protection Certificates regulations, and directives harmonizing national law in the fields of trademarks and biotechnology.

The European Patent Convention (EPC) does not need to be elucidated here.

As to relations between these three conventions, on the face of it, it seems that there are no such relations: the EC is not a party to the ECHR and the EPC, while the European Patent Organisation (EPO[1]) is not a party to the EC, the ECHR and the TRIPs Agreement. So, it seems that both the EC and the EPO may disregard human rights, and that the EPO may further disregard the TRIPs Agreement and the EC biotechnology directive. In this article I will show that this does not hold true: even though the EC is not a party to the ECHR, under international law the EC is bound by the ECHR provisions. Moreover, I will show that the EPO must comply with the ECHR, the TRIPs Agreement and the EC Biotechnology Directive, and that the EPO Boards of Appeal are obliged to refer questions on the interpretation of these legal instruments to the Court of Justice of the European Communities.

Relation between the EC and the ECHR

To see why the EC is bound by the ECHR even though the EC is not a party to the ECHR, one must look at general principles of customary international law as codified in the Vienna Convention on the law of treaties. Article 30(4) of that Vienna Convention provides that when the parties to a later treaty *(e.g. the EC Treaty)* do not include all the parties to an earlier one *(e.g. the ECHR)*, as between a State party to both treaties and a State party to only one of the treaties, the treaty *(the ECHR)* to which

1 The abbreviation EPO will be used for both the European Patent Organisation and the European Patent Office.

both States are parties governs their mutual rights and obligations. This means that the EC Member States (all being parties to the ECHR as well) are obliged to observe the ECHR in view of their treaty obligations with regard to all the other ECHR contracting states that are not EC Member states. In 1990, the European Commission on Human Rights summarized the legal situation as follows:

It has to be observed that the ECHR does not prohibit a Member State from transferring powers to international organisations. Nonetheless, the Commission recalls that if a State contracts treaty obligations and subsequently concludes another international agreement which disables it from performing its obligations under the first treaty it will be answerable for any resulting breach of its obligations under the first treaty. The Commission considers that a transfer of powers does not necessarily exclude a State's responsibility under the ECHR with regard to the exercise of the transferred powers. Otherwise the guarantees of the ECHR could wantonly be limited or excluded and thus be deprived of their peremptory character. The object and purpose of the ECHR as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective. Therefore, the transfer of powers to an international organisation is not incompatible with the ECHR provided that within that organisation fundamental rights will receive an equivalent protection.

The Commission notes that the legal system of the European Communities not only secures fundamental rights but also provides for control of their observance. It is true that the constituent treaties of the European Communities did not contain a catalogue of such rights. However, the Parliament, the Council and the Commission of the European Communities have stressed in a joint declaration of 27 April 1977 that they attach prime importance to the protection of fundamental rights, as derived in particular from the Constitutions of the Member States and the ECHR. They pledged that, in the exercise of their powers and in pursuance of the aims of the European Communities, they would respect and continue to respect these human rights. In addition the Court of Justice of the European Communities has developed a case law according to which it is called upon to control Community acts on the basis of fundamental rights, including those enshrined in the ECHR. In accordance with this reasoning the Court of Justice underlined in the present case that the right to a fair hearing is a fundamental principle of Community law. It stated that Community law contained all criteria which are prerequisites not only to examine but, if necessary, to remedy the applicant company's complaint that its right to a fair hearing was violated. [2]

Finally, it must be mentioned that that in the Single European Act, the Maastricht Treaty, and in the Amsterdam Treaty[3], the EU/EC Member States made each time clearer in each time more explicit words, that they considered themselves and the Union/Community bound by the ECHR also in Union/Community matters even though the Union/Community is still not a party to the ECHR. It thus follows that the simple fact that an international organization is not a party to the ECHR, is not enough to conclude that that international organization is not bound by the ECHR.

Relation between the EPO and the ECHR

The same reasons that caused the EC to be bound by the ECHR make that the EPO is also bound by the ECHR: the EPC Contracting States could simply not escape from their ECHR obligations by establishing an international organization (viz. the EPO) that would not be bound by the ECHR in the same manner as they were bound themselves by the ECHR. A practical consequence of this legal situation is that the EPO must ensure that it meets the obligation following from Article 6 ECHR that grant and opposition cases are decided without undue delay.

Relation between the EPO and the EC Treaty

The relation between the EPO and the EC Treaty is best seen from an historical perspective in order to establish the EPC's object and purpose[4]. As is well known[5], the EPC is meant to be the first half of a European patent system for the EC, the other half being formed by the CPC. The reason why there were two Conventions (EPC + CPC) rather than just one integrated one as originally proposed in the 1962 draft, is that other European States wanted to join that EC patent system as far as the grant procedure of European patents was concerned (the EPC part), while what would be the law governing granted European patents would be solely an EC matter laid down in a second Convention (viz. the CPC) to which only the EC Member States would be parties. So, in doing so, the EC Member States wanted to fulfill their obligations under the EC Treaty, especially Article 5 EC Treaty[6], by establishing a common patent system necessary for a proper functioning of the Common Market. In concluding the EPC, it was most definitely not the objective of the EC Member States to deviate in any respect from the EC Treaty. Also, as regards the other EPC Contracting States, they understood that they were joining the EC Member States in a matter of common interest in which the EC Member States were legally prohibited (again by Article 5 EC Treaty) from putting the

2 Decision of the European Commission on Human Rights on application no. 13258/87, M & Co vs.. Federal Republic of Germany, 09.01.90, published in SEW 10 (1991), pp. 682-687 with annotation by P.J.G. Kapteyn.

3 The Amsterdam Treaty is not yet in force.

4 Relevant in view of Article 31(1) Vienna Convention: A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. Moreover, in accordance with Article 32 of the Vienna Convention, recourse may be had to the preparatory work of the EPC and the circumstances of its conclusion as supplementary means of interpretation

5 See, for example, M. van Empel's dissertation „The granting of European patents", 1974.

6 Article 5 EC Treaty: Member States shall take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

EC Treaty on any other place than the first place. So, when the EPC was no longer compatible with EC law by virtue of the EC regulations on supplementary protection certificates, all EPC Contracting States agreed on the necessary adjustments to Article 63 EPC to ensure a continued compliance of the EPC with EC law.

That the EC Member States are not free to conclude treaties that deviate from the EC Treaty is best illustrated by a Commission Opinion[7] of 26 September 1975 on the draft Convention for the European Patent for the common market. In that opinion, the European Commission found that certain provisions of the draft CPC violated the EC Treaty, and bluntly threatened the Member States to initiate EC Treaty infringement proceedings against all Member States should the proposals in regard to which the Commission has expressed an unfavorable view be adopted. Recently, European Commissioner Monti[8] stated that the directive on biotechnological inventions will have to be taken into account by the EPO to ensure coherence and identity of treatment of this kind of inventions throughout Europe, and that it is also obvious that the TRIPs Agreement has had an impact on the patent law of all European countries and should also be fully implemented by the EPO.

Any subsequent practice in the application of the EPC which establishes the agreement of the parties regarding its interpretation, such as the amendment to Article 63 EPC to ensure its continued compliance with EC law, is a primary means of interpretation mentioned in Article 31 of the Vienna Convention. All the above-mentioned interpretation means point into one direction: the EPC is primarily a tool for the 15 EC Member States in order to fulfill their EC obligations in a manner compatible with the EC Treaty, a legal situation that is accepted by the other 4 EPC Contracting States. Thus, the system of law mentioned in Article 1 EPC is a system that is subject to EC law.

What does this mean?

1. As regards the ECHR, Article 6 of the EU Treaty provides that the EU respects the fundamental rights as guaranteed by the ECHR and the common constitutional traditions of the Member States as general principles of EC law. So, these fundamental rights are also general principles of the system of law established by the EPC.
2. As regards secondary EC law such as EC directives and EC regulations, the EPC is subject to these EC directives and EC regulations. This means, for example, that the EPC must be applied in a manner consistent with the new EC Biotechnology Directive.
3. International conventions to which the EC has become a party, are part of EC law. So, the EPO must, for example, observe the TRIPs Agreement even though the EPO itself has not joined the WTO Agreement.
4. Whenever a question on the interpretation of EC law needs to be answered by an EPO Board of Appeal or by the Enlarged Board of Appeal, that Board has to apply Article 177 EC Treaty and refer a legal question to the EC Court of Justice.

As to item 4, the EC Court of Justice has recently[9] established that not only national courts are obliged to apply Article 177 EC Treaty; this obligation also applies to courts common to several EC Member States such as the Benelux[10] Court of Justice. It is to be noted that the Benelux itself is not a party to the EC Treaty, a legal situation that the Benelux has in common with the EPO. It thus seems necessary that the Enlarged Board of Appeal refers some legal questions concerning the EC Biotechnology Directive to the EC Court of Justice, as at least one of the legal questions[11] (but maybe all of them) referred to the Enlarged Board of Appeal in T 1054/96 (G 1/98) directly relates to the interpretation of the EC Biotechnology Directive[12] and to the impact of that Directive on the EPC.

Conclusions

The mere fact that an international organization like the EC or the EPO is not a party to an international convention like the ECHR does not mean that that international organization is not bound by that international convention. Especially if all the contracting states of the international organization are bound by the international convention, the international organization is definitely bound by the international convention.

The object and purpose of the EPC is to allow the EC Member States to meet their EC Treaty obligations in a manner allowing other European states to participate in the granting part of the EC patent system. The system of law established by the EPC is thus subject to EC law including the EC Treaty itself, secondary EC legislation like the EC Biotechnology Directive, and international conventions to which the EC has become a party, such as the TRIPs Agreement. Also, the EPO Boards of Appeal and the Enlarged Board of Appeal are obliged to refer questions on the interpretation of EC law to the EC Court of Justice.

7 Official Journal of the European Communities No. L 261 , 09/10/1975 P. 0026 – 0030.

8 Speech by Commissioner Mario Monti, Munich, 7 October 1997, Twenty years of the European Patent Office

9 See the EC Court of Justice's decision C-337/95 in re Dior/Evora of 4 November 1997. The case related to the interpretation of the EC Trademark Directive.

10 The Benelux is a cooperation between Belgium, the Netherlands, and Luxembourg. The Benelux has a single Benelux Trademark Law. Questions on the interpretation of Benelux law are answered by the Benelux Court of Justice in a procedure by and large corresponding to that of Article 177 EC Treaty.

11 Does a claim which relates to plants but wherein specific plant varieties are not individually claimed ipso facto avoid the prohibition on patenting in Article 53(b) EPC even though it embraces plant varieties?

12 Article 4 EC Biotechnology Directive:
1. The following shall not be patentable:
(a) plant and animal varieties,
(b) …
2. Inventions which concern plants or animals shall be patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety.

Recital 29 EC Biotechnology Directive:
Whereas this Directive is without prejudice to the exclusion of plant and animal varieties from patent-ability; whereas on the other hand inventions which concern plants or animals are patentable provided that the application of the invention is not technically confined to a single plant or animal variety;

Brevet et normalisation de l'information technique

T. Schuffenecker (FR)

Bien peu d'informations qui concernent les arts, les métiers et les techniques nous sont parvenues à travers les siècles. L'histoire nous rappelle que nous avons une vision bien incomplète des méthodes utilisées par les métiers de l'Antiquité. Les règles antiques relatives aux produits courants de l'industrie des hommes ne nous sont pas parvenues en grand nombre. Certes des études archéologiques permettent d'examiner et d'analyser les produits du passé, les briques, les dalles et les amphores romaines qui parviennent jusqu'à nous, et de nous révéler certains des premiers procédés de fabrication. Ainsi le procédé d'estampage qui a permis jadis, à partir de moules en bois ou en vannerie, d'obtenir des séries de pièces toutes identiques dans leurs formes fondamentales. Mais la rareté des documents n'a pas permis que soient comprises les méthodes les plus anciennes. Deux raisons expliquent cette carence.

En premier lieu l'analphabétisme: la pratique des métiers s'est longtemps transmise oralement par des maîtres qui ignoraient les lettres et, inversement, les hommes de lettres n'avaient pas la pratique des arts.

En second lieu, le secret entourait déjà la pratique des métiers. En 1459, le statut des tailleurs de pierre de Ratisbonne stipulait en son article 13:

> *«Aucun ouvrier, aucun maître, ni parlier, ni compagnon n'a le droit d'enseigner à quiconque qui ne ferait pas partie de notre métier et qui n'aurait fait le travail du maçon, comment déduire l'élévation du plan»*

Le secret! Voilà l'expression la plus primitive, et souvent encore très actuelle, de l'intérêt pour ces techniques qui deviennent, à l'aube du nouveau millénaire de véritables valeurs économiques. Les premières formes de privilèges et lettres patentes sont apparues à Venise au XVème siècle et à Londres au XVIème siècle mais, dans cette période mercantiliste, la diffusion de la technique était bien négligée. Il fallut attendre plus tard. Le temps de la diffusion universelle du savoir technique par l'écrit ne devait en effet guère commencer qu'avec le siècle des lumières.

L'un des premiers ouvrages de grande envergure traitant sérieusement de technologie est l'encyclopédie de Diderot et d'Alembert, *le dictionnaire raisonné des sciences, des arts et métiers*. Dans le meilleur esprit des Lumières, l'encyclopédie a été conçue comme devant assurer la libre circulation des idées et des secrets de fabrication, comme devant diffuser largement le savoir. Pour la première fois, des gravures, des images de série et de grande diffusion étaient publiées et mises au service d'une pédagogie technologique d'une manière systématique. On divulguait largement, et méthodiquement, tous les procédés techniques de fabrication afin d'obtenir une connaissance plus approfondie des pratiques et des réalités des métiers de l'époque. Les gravures étaient généralement divisées en deux parties, à peu près égales dans le sens de la hauteur. La partie basse donnait des épures géométriques des différentes pièces qui composaient une machine ainsi que l'échelle de leur grandeur. La partie haute était une mise en scène des procédures de fabrications, à leurs stades systématiques. Ainsi on retrouvait dans l'œuvre des encyclopédistes même, les premières transcriptions systématiques des procédés et dispositifs en usage dans les métiers de l'époque.

Aujourd'hui, avec le développement de la société industrielle, on assiste à une quête plus systématique d'une formalisation des techniques industrielles en vue d'une transcription durable de l'information technique. L'institution du brevet répond à cet objectif. Pour reprendre l'expression d'une économiste, le brevet permet, en ralentissant la diffusion du progrès technique, de garantir une plus grande quantité de progrès à diffuser. On ne peut donc qu'être sensibles aux efforts qui sont déployés par les offices nationaux, mais aussi l 'OEB dans leurs programmes visant à rendre plus accessible la considérable somme de techniques industrielles que transcrivent les brevets d'invention. Que cet accès ait lieu directement, par les CDROM ou avec ESPACENET sur Internet, voire indirectement en suscitant les nombreuses études et monographies fondées sur les documents de brevets, et qui permettent d'enrichir la perception de l'état de la technique sur un domaine bien déterminé. On trouve ainsi des monographies dans de multiples domaines: aussi variées que les méthodes de fabrication de moules à partir du sable, le traitement des eaux résiduelles, l'affichage par cristaux liquides ou les technologies biomédicales

Mais au-delà d'une simple diffusion des connaissances, le brevet assure bien davantage qu'une simple transcription de l'information technique. En effet, les techniques industrielles sont devenues des biens présentant une grande valeur au même titre que les produits manufacturés qui s'échangent sur les marchés. Il y a un grand besoin de transcription, de formalisation de ces techniques industrielles pour assurer la fiabilité des échanges marchands. Si dans le passé la normalisation des poids et mesures a rendu plus sûre et moins contestable le commerce du vin et du sel, il y a aujourd'hui un grand besoin de s'entendre sur ce qu'est le concept d'invention, de normaliser la codification des techniques industrielles pour assurer des échanges marchands au sein d'une société qui est fondée sur le savoir. Et le brevet a pris une place déterminante dans ce processus de formalisation de l'information technique. Le brevet est une norme et, à cet égard, par le cadre réglementaire qui l'entoure, il réalise une véritable codification de l'information technique, de la connaissance qui adopte ainsi un format compact et devient aisément transportable. Les asymétries d'information qui sont préjudiciables aux

échanges marchands s'en trouvent réduites. L'information est codifiée et normalisée. Elle est apte à devenir un bien informationnel au sein d'une société fondée sur le savoir.

Il ne faut pas se méprendre sur le terme de normalisation. Ce terme recouvre un concept bien plus large et plus ancien que ce mouvement récent de normalisation que l'on connaît surtout depuis le début du XXème siècle et que l'on désigne par le vocable de normalisation industrielle. La normalisation est une qualité innée chez les hommes et bien des espèces animales. L'araignée tisse sa toile suivant des règles bien précises et l'homme a appris à faire des briques pour construire sa maison. Le langage lui-même, cette norme qui assure une parfaite communication entre les êtres, constitue certainement le fleuron le plus remarquable de cette normalisation instinctive qui sommeille en l'individu.

Nous examinerons successivement la place du brevet dans le phénomène de normalisation de l'information technique ; puis le contenu de cette normalisation.

I. La place du brevet

Le brevet d'invention est devenu un vecteur fondamental de la normalisation de l'information technique. D'une part le brevet présente une puissance de codification unique par rapport à toutes les autres formes connues. D'autre part, les développements les plus récents laissent à penser que l'importance du brevet tend à s'accroître en raison de l'extension de son domaine, de son assiette.

A. La puissance de codification, de normalisation du brevet

Le brevet possède une puissance de codification qui est hors du commun. On estime ainsi que plus de 80% de l'information technique disponible dans le monde se trouve dans les collections de brevets et EspaceNet permet un accès à trente millions de documents sur Internet[1]. Contrairement aux autres sources de publications techniques, les brevets présentent, par leur nature et leur caractère officiel, une aptitude particulière à la transmissibilité et à leur réunion au sein d'une collection de textes codifiés. S'est ainsi formée, avec le développement de l'institution du brevet, une bibliothèque de plusieurs millions de documents qui codifient les techniques dans tous les domaines. C'est hors de proportion avec les six cents planches que comprenait l'Encyclopédie de Diderot. Le brevet affirme ainsi un pouvoir de codification unique, une puissance de normalisation de première envergure qui permet de drainer le spectaculaire développement des techniques industrielles.

Quand on songe à une formalisation de l'information, à une codification de la technique industrielle, on pense assez naturellement à la codification que réalise l'activité de normalisation industrielle faite par des organismes tels que l'Association Française de Normalisation industrielle (A.F.N.O.R). Et on en vient à comparer la première à la seconde.

La norme industrielle et le brevet portent sur le même objet: c'est à dire une technique industrielle. En effet, la *norme industrielle* est un document de référence qui apporte une solution consensuelle à des problèmes techniques qui se posent dans une activité donnée. Quant à *l'invention,* il s'agit, suivant la conception la plus communément reçue aujourd'hui, d'une solution technique qui est apportée à un problème technique. Nous sommes donc en face d'un même objet: une *technique industrielle*, laquelle peut connaître deux faits marquant le cours de son existence. Celui du brevet, et celui de la norme industrielle. Le fait du brevet résulte de la volonté d'un inventeur ou d'un investisseur qui décide, par un acte unilatéral, de placer la technique sous le parapluie d'un monopole. Plus tard, si les milieux professionnels jugent la technique suffisamment éprouvée, cette dernière pourra être consacrée comme une norme industrielle et verra son application généralisée dans un certain nombre de situations, dont les marchés publics. C'est le second fait, celui de la norme industrielle. Ainsi *norme industrielle* et *brevet* ne sont pas antinomiques. Bien au contraire, chacun connaît une technique brevetée, qui a fait l'objet d'une norme. La cassette audio de Philips en est un exemple. Le brevet et la norme industrielles sont ainsi deux événements, deux *accidents* qui viennent quelque peu perturber le cours de l'existence de la technique industrielle. Les deux accidents aboutissent en général à une formalisation par un écrit, à une codification. Dans le cas du brevet, la codification résulte d'un acte *unilatéral* qui émane de l'inventeur lorsque celui-ci décide de prendre un brevet. Dans le cas de la norme, la formalisation est plus *collective* puisque celle-ci découle d'une longue discussion entre les milieux intéressés. Observons toutefois que, même dans le cas de la codification unilatérale par la voie du brevet, une certaine dose de consensualisme n'est pas exclue puisque, devant l'OEB tout au moins, la procédure prévoit une discussion avec une division d'examen représentant l'intérêt général.

Si norme et brevet se rapprochent dans une certaine mesure sur le plan de la formalisation de l'information technique, elles s'opposent sur le plan quantitatif. On sait que le nombre de normes industrielles tend à exploser en raison du développement de la société industrielle et celui du consumérisme. Sans doute existe-t-il aujourd'hui plusieurs dizaines de milliers de normes. Mais il faut reconnaître cependant que ce nombre reste bien modeste par rapport à la somme gigantesque de demandes de brevets qui sont déposées chaque année dans les offices de brevets. L'année prochaine, rien qu'à l'Office européen des brevets, plus de cent mille demandes de brevet sont attendues.

Pourquoi une telle puissance de codification ? La raison principale réside dans l'attrait considérable que présente la perspective de l'établissement d'un monopole, de la constitution d'une propriété sur la technique industrielle. Nombre d'industriels n'acceptent de transcrire leur savoir-faire secret que parce qu'il y a au bout du

1 C'est l'opinion de Madame Meyers, Directeur Principal de l'Information brevets de l'Organisation Européenne des brevets.

chemin un monopole ou du moins la perspective d'un monopole. Et cela va même plus loin, dans la chimie ou la pharmacie par exemple, les industriels n'acceptent d'investir dans de nouvelles techniques que si un monopole potentiel, l'établissement d'une propriété permet de garantir un retour sur investissement. La propriété est bien le lien le plus parfait que peut établir le droit entre une chose, objet d'un droit, et son titulaire et constitue ainsi une puissante motivation à la codification de l'information technique. Pour assurer matériellement cette codification, il s'est développé en Europe une profession de six mille rédacteurs, des scribes et des géomètres chargés d'effectuer les épures géométriques des nouvelles machines comme le firent les premiers encyclopédistes deux siècles auparavant.

B. L'extension de la codification par le brevet

Le brevet occupe une place de choix dans la codification de l'information technique. Pour autant ce dernier n'est envisageable que lorsque la technique industrielle se situe dans le domaine propre du brevet. On touche ici à la question éminemment sensible de la brevetabilité, et notamment les conditions importantes d'invention, de nouveauté et d'activité inventive.

Que peut-on dire à leur égard ?

S'agissant des conditions de nouveauté surtout, et d'activité inventive accessoirement, la voie du brevet n'est ouverte que dans la mesure où la codification, la formalisation de la technique industrielle est envisagée suffisamment tôt, avant toute divulgation de l'invention.

S'agissant à présent de la condition d'invention, on observe que le brevet est susceptible de se développer dans un nombre croissant de situations et d'industries. On songe en premier lieu aux règles de cumul avec la propriété littéraire et artistique, éventuellement prolongée par la loi sur les dessins et modèles. Le cumul, lorsqu'il n'est pas permis, doit se résoudre au bénéfice du brevet d'invention. Le caractère utilitaire donne ainsi une compétence directe au droit des brevets. Dès lors que la technique considérée présente ce caractère utilitaire, la codification par le brevet s'impose et elle s'appliquera d'autant mieux que, suivant les développements jurisprudentiels les plus récents des chambres de recours, l'effet technique sera mieux perçu. Ainsi, en matière de logiciels et de programme d'ordinateurs, on peut espérer, que le brevet devienne plus largement un vecteur essentiel de la codification des procédés informatiques, de TOUS les procédés informatiques.

La généralisation du brevet va sans doute s'accentuer depuis l'Accord sur les Aspects des Droits de Propriété Intellectuelle qui touchent au Commerce ou ADPIC signé le 15 avril 1994. Cet accord a institué des normes minimales de protection et tend à généraliser le brevet dans tous les domaines de la technologie, à quelques exceptions près. Quels que soient les mots employés dans la description, le brevet doit pouvoir s'imposer, doit pouvoir s'affirmer comme un canevas, une norme commune dans la codification de l'information technique[2].

Songeons enfin au potentiel de codification considérable, au pouvoir de formalisation des techniques industrielles qui gisent dans le futur modèle d'utilité communautaire. Apparaîtra peut être un jour un instrument de codification léger, qui viendra compléter l'appareil plus lourd du brevet.

Le brevet, sous sa forme générique, présente donc une vocation à codifier et formaliser les techniques industrielles qui seront conçues demain. Mais quel est donc le contenu de cette normalisation ?

II. Le contenu de la normalisation

Le brevet réalise une codification de la technique industrielle. Il définit un cadre à l'expression de l'information technique. La recherche se fait à présent dans des laboratoires de recherche sophistiqués, et une préoccupation essentielle de leurs dirigeants porte sur l'assurance de prendre le brevet suffisamment en amont du cycle de développement. Le brevet devient ainsi la première codification de l'invention, celle qui intervient sans doute juste après la transcription dans les cahiers de laboratoires.

Le contenu de la normalisation vise à encadrer tant la forme que le fond de l'information technique.

A. La normalisation de la forme

S'agissant de la forme, la normalisation porte ses effets sur la présentation du mémoire descriptif et le formalisme de la demande de brevet. On retrouve à présent ce formalisme dans la plupart des lois nationales, dans la Convention sur le brevet européen, et le traité de coopération en matière de brevet. Ils définissent les prescriptions formelles minimales pour qu'une demande soit acceptée d'une manière uniforme. De nombreux éléments sont ainsi réglementés pour conférer aux brevets une grande homogénéité. L'aptitude à la reproduction directe, la hauteur des caractères, la surface utile des dessins, les marges minimales, l'emploi des hachures etc. Autant de normes qui définissent une présentation qui se veut la plus uniforme possible et qui permet une publication standard.

Apparaît ainsi un canevas général dans lequel doit s'inscrire la demande de brevet qui permet d'envisager le dépôt d'un même texte à la langue près quel que soit le pays considéré.

Ainsi, lorsqu'un américain dépose une demande dite EuroPCT, c'est à dire désignant l'Office européen des brevets, et si ce même office assure le rôle de l'Administration chargée de l'examen préliminaire international, la convergence des normes PCT et CBE fait que, en phase régionale, le demandeur américain sera même dispensé de déposer une copie de sa demande.

Aux prescriptions de forme, on peut ajouter peut être la présentation méthodique normalisée qui est aujourd'hui préconisée dans le PCT, mais également

2 Mme Meyers: le reflexe brevet doit pouvoir devenir, avec l'aide d'EspaceNet, naturel chez les PME.

dans la règle 27 de la CBE. Est défini un canevas général dans lequel doit s'inscrire la description de l'invention. Il est prévu que la description comporte successivement le domaine technique de l'invention, l'indication de l'état de la technique antérieure dans la mesure ou il est connu du demandeur, accompagné le cas échéant de citations pertinentes, un résumé de l'invention permettant de faire comprendre le problème technique et sa solution, et enfin un mode de réalisation particulier de cette invention. Mais on touche déjà aux effets de la normalisation au fond.

B. La normalisation du fond

La normalisation de la présentation de l'information est une première étape, mais qui serait bien insuffisante à elle seule. La communication parfaite de l'invention, de la technique industrielle qu'elle sous-tend, impose que l'on réponde à la question: qu'est ce que l'invention, comment puis-je la décrire, l'isoler par la pensée et prolonger celle-ci par des mots. Les efforts de l'harmonisation internationale ont conduit à une approche méthodique de l'exposé de l'invention. Si au début il fallait pouvoir montrer un prototype de l'invention ou encore des plans à l'échelle métrique, la norme du langage, le vêtement des formules linguistiques semblent à présent suffisants pour décrire et saisir le concept inventif. Et les dessins ne viennent plus que pour éclairer une définition qui empruntera le chemin du verbe. Au début était le verbe, nous enseigne les textes bibliques. L'homme a réutilisé la formule s'agissant de ses propres créations industrielles.

Certaines techniques industrielles font usage de formules. C'est le cas en chimie qui est un domaine dans lequel on n'a pu, pendant longtemps, définir le produit autrement que par son procédé de fabrication. Aujourd'hui la connaissance dans ce secteur est telle que les chimistes estiment appréhender la chose simplement en saisissant le nom, c'est à dire en écrivant la formule chimique. Ces formules sont largement utilisées et comprises dans l'industrie chimique. Mais pour d'autres techniques plus récentes, comme les biotechnologies, les choses ne sont pas allées aussi loin et, dans ce cas, il y a encore des conventions à adopter, par exemple pour l'écriture des séquences de nucléotides, lesquelles ont fait l'objet d'une recommandation par l'Office européen des brevets afin d'accentuer la normalisation dans ce domaine particulier.

La normalisation vise naturellement le fond de l'information technique lorsqu'elle s'intéresse aux différentes qualités du mémoire descriptif: clarté et suffisance de description qui doivent aujourd'hui pouvoir être appréciées suivant un standard commun du droit des brevets qui est l'homme du métier. L'homme du métier, suivant le droit des brevets, est un praticien capable d'exécuter de simples opérations d'exécution sans faire preuve d'activité inventive. Si les appréciations jurisprudentielles du standard peuvent naturellement différer d'un pays à l'autre, il faut néanmoins reconnaître que la référence à ce même type de professionnel conduit quand même à une certaine homogénéité dans la description de la solution technique, que celle-ci émane du Canada, d'Europe ou du Japon.

Le brevet apporte une méthode normalisée de compréhension de l'invention qui est essentiellement perçue comme une solution technique apportée à un problème technique. C'est le sens de la décision «containers» rendue par une Chambre de recours le 21 octobre 1981 et qui pose l'exigence d'un problème technique comme un préalable à la définition de l'invention. Ainsi devront être rédigés les mémoires descriptifs: le problème devra clairement être indiqué, suivi de la manière de le résoudre au moyen de l'invention.

L'information codifiée par la technique du brevet conduit à une réception de plus en plus uniforme du concept même d'invention qui est aujourd'hui perçue de la même manière sous toutes les latitudes. Des méthodes communes se dégagent notamment en ce qui concerne l'appréciation de l'activité inventive, ce qui permet d'envisager un même argumentaire devant divers offices. De la simple présentation de l'information, la normalisation glisse sur le contenu même de l'information technique, sur l'objet du droit de brevet. Quel que soit l'endroit où l'invention est créée, le même objet pourra être perçu par-delà les frontières et les cultures nationales, ouvrant les perspectives de la constitution d'une véritable propriété sur le bien informationnel, efficace et vigoureuse.

Les Encyclopédistes du siècle des Lumières recherchaient la libre circulation des idées et la diffusion universelle du savoir technique. C'était un objectif idéal en harmonie avec ce siècle empreint de liberté et d'individualisme. Ce défi n'est sans doute pas très loin d'être atteint puisque 80% de l'information technique mondiale est proprement codifiée et accessible dans les bases de données brevet pour le bénéfice des générations futures.

Aujourd'hui, à l'aube du nouveau millénaire, la société connaît de nouveaux besoins et affronte de nouveaux défis. La recherche industrielle appelle des investissements toujours plus considérables. Il suffit d'évoquer les chantiers de la recherche génétique et les sommes gigantesques qu'elle engloutit en investissements. Les défis ont changé. Il ne s'agit plus de rechercher une transcription idéale de l'information technique, une diffusion universelle du savoir technique. Il s'agit à présent de permettre la transcription des techniques industrielles, d'en assurer leur codification afin de les transformer en biens juridiques. C'est la condition de la création d'une propriété informationnelle, proprement codifiée et normalisée, pour soutenir une Recherche-développement grande consommatrice d'investissements qui est la condition du progrès économique et social.

Brief Report of the Second Part of the First Session of the Standing Committee on the Law of Patents („SCP"), held from 16th to 20th November, 1998 in Geneva

J.D. Brown (GB)

Your representative attended the above and reports as follows. A detailed discussion took place of many of the provisions of the draft Patent Law Treaty („PLT"), continuing the discussions from the First Part of the First Session of SCP. However, a number of important points were not agreed upon and were, therefore, reserved for the Diplomatic Conference to resolve. In this category were important questions such as to when a representative is required, for example to file an application, to pay a fee r to file a translation. Another matter referred was the question of whether it should be the Office or the applicant that decides the type of evidence required to record a change of name or ownership. The United Kingdom Delegation also promised to submit proposals to the SCP, for consideration as a matter of priority at a future Session of the SCP, regarding the question of access of third parties to priority documents.

It was also tentatively decided that the Articles 9, 10 and 11 be transferred to the regulations, the Treaty only containing an enabling Article. This will, of course, make it much easier to amend the provisions.

There is still much work to be done and, therefore, the SCP decided that the second Session of SCP would be two weeks in duration, in order to complete discussions concerning the substance of the provisions of the draft PLT, tentatively arranged for the 12th to 23rd April, 1999. The agenda for the Second Session would be limited t the consideration of the draft PLT and the issue of fee reductions for applicants from developing countries. It was further agreed that a Preparatory Meeting be held in conjunction with the Second or Third Session of the SCP and the tentative dates for a Diplomatic Conference be considered to be 15th May to 2nd June, 2000. It was suggested that the Third Meeting of the SCP be held in October, 1999, to finalise the documents for the Diplomatic Conference.

The International Bureau of WIPO have provided a draft report for the Second Part of the First Session of the SCP (document SCP/1/11 Prov.) And this is available on the SCP Electronic Forum web site (http://wipo2.wipo.int/scp/).

Meeting with Members of Boards of Appeal on 23 November 1998

J. Boff (GB)

The 7th annual MSBA meeting of members of SACEPO with Mr. P. Messerli, Vice President DG3, and a number of Chairpersons of Boards of Appeal took place in Munich on Monday, 23 November 1998. The *epi* was represented by nine delegates, all with a background in EPPC and/or the Biotech Committee, which underlines that this meeting is still highly appreciated by the participants.

Introduction

The proceedings started with a report from Mr. Messerli on the Boards of Appeal activities for the year.

He advised that on current trends there would be approximately 1200 appeals filed during the year 1998. This number is still more than can be settled each year although the number settled will rise with respect to 1997. The backlog of pending cases is likely to exceed 3000. (So far approximately 10,000 Cases have been settled since 1978).

Case Law of The Enlarged Board of Appeal

The Enlarged Board of Appeal has 8 Cases before it:-

- One case concerns good faith between users and the EPO – a decision is to be published shortly.
- Two cases concern „man of straw" action. Oral Proceedings were held in September and a decision is expected soon.
- One case (G1/98) concerns plant patentability.
- One case concerns the final character of Board of Appeal Decisions.
- One case concerns the grace period of Article 55.

Two Cases have been referred to The Enlarged Board of Appeal by the President:

- One case concerns the question of identity of invention for priority purposes (Novelty v. „Snackfoods" approach)
- The other case concerns the effect of non-payment of designation fees (*ex nunc* or *ex tunc* effect?)

A new issue of the „white book" (Case Law of the Boards of Appeal) is due to be published early 1999.

Amendment to EPC

It was reported that Art.109(2) is to be amended in January to extend the term for Interlocutory Revision from one month to three months. The Guidlines for Examination will be amended and a draft put before SACEPO shortly. All cases in the interlocutory revision period will be treated as accelerated prosecution cases.

Accelerated Proceedings before the Boards of Appeal

Mr Messerli mentioned the recently published notice on Accelerated Proceedings in Appeal (OJ 7/1988). This notice states that acceleration is possible and lists particular instances such as, for example:

- where infringement proceeding are being brought or envisaged
- where the decision of a potential licensee hinges upon the outcome of the appeal
- where an opposition which is the subject of accelerated prosecution is appealed

Remittal to First Instance

This was the subject of much discussion. The problem is that remittal to first instance may prolong proceedings unnecessarily.

The users present asked that the Boards of Appeal make more use of the possibility of continuing the proceedings in writing if the case cannot be completely disposed of at Oral Proceedings.

The EPO pointed out that there are occasions where the subject of the Appeal had changed so much during the proceedings that the parties had not had any first instance consideration of the case. A particular problem for the Boards of Appeal was where, for example, the first instance refused an application on the basis of inadequate disclosure or added subject matter without considering the other grounds of novelty and inventive step.

For the users a particular problem was where the patent was remitted to first instance for amendment of the description. In such cases dispute may arise as to an appropriate amendment which will result in an appealable decision so starting the process afresh. The EPO observers mentioned that several queries had been received from national courts concerning the delay on amendment of description where the courts had suspended national proceedings.

The conclusion was that remittal is still a useful, and sometimes necessary, tool in many cases but that amendment of the description is one area where the Boards of Appeal might reasonably continue the process in writing. Some Members of the Board of Appeal stressed that they had limited resources for such matters and that any amended description should be with them quickly if there was to be any chance that they could consider the matter without having to learn the file afresh. The Board's preference was that amendment should be done at the Oral Proceedings and they recommended having sets of amended descriptions available at the Oral Proceedings to match the requests of the patentee. It was pointed out that the later amendments were filed, the more likely was remittal to first instance.

Rule 71a

The users all favour a communication under Rule 11(2) of the Rules of the Boards of Appeal in all cases. The timing of such a communication was discussed, with UNICE favouring a communication just a few months before the Oral Proceedings so that the matter was fresh in the Board's mind1. Some Boards of Appeal do this habitually at the stage of issuing the summons for Oral Proceedings. Others try not to issue a communication unless absolutely necessary.

One concern of the boards was the fear of appearing partial in the proceedings. A further concern was the fear of misleading the „winning" party – given a favourable communication the party that appears to be in the better position may „coast" whereas the party that appears in the poorer position may be spurred into activity and file many further documents.

The users argued that it was possible to give guidance as to the issues that would be addressed without appearing prejudiced or misleading the parties. The users' main concern was reducing the risk of surprises at the Oral Proceedings.

This matter was left with Boards to consider.

Date of closure

There was a suggestion from the users that the boards might impose a „date of closure" on proceedings with different dates for different activities. The suggestion was made that a more court-like procedure could be adopted. The particular problem was mentioned of late filed experiments sometimes giving insufficient time for the other party to respond with their own experiments.

The Boards were of the opinion that most problems arise with late filing of claims which may require fresh searches or arguments by an opponent. The Boards suggested that if there was to be a date of closure this should apply also to amendment to the claims.

Mr. Messerli stated that the matter was „Not ripe for a decision".

Future relationships within Europe

The users raised the question of whether there should be some commonality of membership between any European Patent Infringement Court and the Boards of Appeal. The Boards were reluctant to discuss this until

the Commission had given their opinion on the shape of the Community Regulation on Community Patent.

Forms for Appeal

The Boards of Appeal raised the matter of possible forms for appeal at the last MSBA. Following the concerns of the users these are now „examples", to be published as guidance of what the Boards of Appeal require. A problem that the examples are meant to address is that many appeals filed do not meet the requirements of Rule 64. The Boards of Appeal have asked for comment by end-January on these examples. Issues raised at the meeting were:

- the need to identify clearly in the examples what items are mandatory to validly file an appeal
- the need to clarify the language concerning payment of the appeal fee (most pay the fee when filing the notice of appeal)
- the need to indicate the extent of appeal more clearly
- addition of an Auxiliary Request for Oral Proceedings

Decisions on Internet

The Boards of Appeal announced that decisions will be available on the Internet within the two weeks following the meeting. All decisions despatched since 1/1/97 to date will be available at first. The back file will be added probably by the 2nd quarter of 1999. As a rule decisions will be available 3 weeks after despatch to parties. The search tools available are more limited than in ESPACE-Legal but it will be possible to search on items such as, for example, keyword, IPC, proprietor, and opponent. It will be possible to set up profiles for watching searches. This matter is to be put on the agenda for the next MSBA meeting to discuss in the light of a year's experience.

Next meeting

The next MSBA meeting will be 22nd November 1999.

Article Summary: The Development of Patent Law in Europe: Options and Dangers by Dr. Manfred Schmiemann

T. Schuffenecker (FR)

The author of this Article provides his personal observations and thoughts about the development of Patent laws in Europe in a European approach to a common market for industrial property. After recalling the treaties and international organisations underlying the international context of invention protection, the author evokes the question of University technology transfer, small entity fees and litigation insurance,. The context of these in the European Union is then addressed. Contrary to the United States, the European Union shows the existence of multiple protection systems for a set of territories which must form a common market allowing free circulation of goods in accordance with the Rome treaty. Additionally, even after TRIPS, substantial differences remain between the US and the EU: first to file versus first to invent, and the grace period. The European framework suffers shortcomings that result from the extreme costs of the translations in the different official languages, and the judicial system involved in the enforcement and revocation of the patents. The principle of exhaustion of rights and the legality of parallel imports have been developed to take into account the conflict between the single market implied by the Rome Treaty and the isolated national markets of the different patent systems.

Present developments of the patent systems in the EU have led to a substantial effort from the EPO to reduce the fees and to attempts to cut translation costs. Additionally, Patent information services are being promoted as well as efforts to develop a European Internet patent information network. Industry and patent professionals demand changes including a new attempt to bring out a Community patent. The Commission issued its Green paper and the Luxembourg hearing of 1997 took place. The question of competence of the European Union in the patent fields is addressed and the author perceives a clear positive answer in the case-law of the European Court of Justice. He suggests to learn, from the experience from the trademark regulation, as well as recent developments in software and biological patents. If the Green paper is in favour of some incremental changes to bring about a coupled EPC/CPC, more radical reforms are also addressed and discussed.

The full version of the article discussed above may be obtained through the *epi* Secretariat.

Protecting inventions in chemistry: commentary on chemical case law under the European Patent Convention and the German patent law

R. Pidgeon (GB)

The authors of this book – a retired German patent judge and a German European patent attorney – have written a careful and thorough commentary on the chemical patent law of Germany and the EPO, aimed squarely at patent practitioners, rather than chemist-inventors. As a detailed description of just the EPO case law and practice it is valuable. It could serve as a quick routefinder to relevant cases. Put forward to a trainee chemical patent attorney at the right stage, it would help them to understand EPO practice and how it has evolved. There is occasional commentary, by way of comparison, about other legal jurisdictions, such as the UK, USA or France.

The authors give a particularly thorough description of the fundamental difference between EPO practice and German law and practice, as regards the concept of disclosure. Under the EPO „photographic theory" a disclosure of „C1-4 alkyl bromides", whilst clearly covering all eight compounds, was held to disclose only methyl bromide individually. Under the German „list theory" this definition would normally have been regarded as just a convenient way of listing the eight compounds, all thus regarded as individually disclosed. The authors then discuss the important consequences of this fundamental difference in approach: the German courts may readily revoke patents upheld by the EPO for lack of novelty; EPO law is strict on added subject matter questions, whereas German law is liberal, given that, according to the German „list theory" view the document is regarded as having a more extensive disclosure to start with; and EPO law is similarly stricter in assessing whether an earlier patent application gives priority to a later application. Harmonisation? What's that?!

Then there are good sections discussing inventive step, sufficiency and post-grant issues such as patent interpretation and infringement (and here there is some detailed comparison with other countries such as the UK, USA and France, both on claim interpretation and on litigation procedures). There is a separate discussion of biological inventions which is short, but good, and apparently written to assist chemical practical practitioners who do not also practice in the biological field.

The book is not easy to read through. Ease of reading is not helped by the presence of 2070 footnotes requiring constant review, sometimes to determine whether the authors are discussing German or EPO legal cases. However this is a quibble : overall this is a good book, likely to be useful to practitioners as a reference tool and as an aid for trainees. For this reader it was useful to be reminded of the importance of one's assessment of the disclosure of a specification; and that the narrow view of disclosure taken by the EPO is not the only view, even in Europe.

Bernd Hansen and Fritjoff Hirsch
Germany: Wiley, 1997
Pp 511 £65 (HB) ISBN 3-527-28808-2
Published in English.

Review of the CIPA Guide To The Patents Act 4th Edition including fourth cumulative supplement

G. Schlich (GB)

This latest supplement, the fourth cumulative supplement since the 4th edition of this book appeared in 1995, now brings this most necessary of bookcase residents level with middle-late 1998, including 1998 publications: RPC (no. 13), FSR (August), OJEPO (no. 5), EIPR (July), CIPA (June), IPD (July), and SRIS transcripts up to C\46\98 and O\143\98.

There was no difficulty identifying those sections newly inserted since the last cumulative supplement, as the additions are highlighted in the margins. These are littered throughout the supplement, a distribution in tribute to the thorough and detailed attention paid to their compilation.

Reviewing the supplement when the main work has been established for so long, and when the previous supplement was in its turn reviewed, provides a task where little remains unsaid.

As my specialisation relates to pharmaceuticals and biotechnology, I am particularly interested in such issues as breadth of claim. I noticed mention of the Biotechnology Directive and the decision in MYCOGNE/Modifying Plant Cells (T694/92). This is becoming of increas-

ing importance, as more and more EPO decisions have rejected broad claims under Article 83 EPC for lack of insufficiency where there was doubt that a novel and inventive solution, sufficiently described in itself, was accompanied by teaching ample to enable reproduction of the invention across the whole range of the claim. Similarly, I noticed reference to the decision of the German Supreme Court with regard to exceptions to acts of infringement, holding that clinical trials carried out on a patented drug to ascertain its effect, in medical indication not recited in the patent, were indeed excepted.

Vital points of practice are covered with customary precision in the new supplement, the insertions on the subject of assignments and Stamp Duty being of continuing interest, to single out but two from a handful of topics.

In a dynamic field of law such as ours, it will always be essential to keep up to date. Case law maintains a steady evolution of the interpretation of our key statutes; and not just from the UK but also decisions of the EPO Boards of Appeal and courts across Europe. Trickier still to keep an eye on are court practice directives and their effects. These too appear in updated sections. In the latest supplement to the CIPA Guide to the Patents Act, I have observed, a well-founded tradition of excellence has been maintained – it all seems to be here – and „The Black Book" with its latest supplement remains *the* guide to the Patents Act.

epi-Tutorien 1999

Das *epi* bietet 1999 wieder Tutorien zur Vorbereitung auf die europäische Eignungsprüfung (EEP) 2000 an.
Um den Bedürfnissen der Kandidaten besser gerecht zu werden, wird es wieder zwei Termine geben, einen im Sommer und einen im Herbst.
Der Sommertermin (Anmeldung bis spätestens 11. Juni 1999) ist für Kandidaten gedacht, die die EEP im Jahr 2000 zum ersten Mal ablegen wollen (vollständig oder in Modulen). Der Herbsttermin (Anmeldung bis spätestens 25. Oktober 1999) ist dagegen für diejenigen von Interesse, die ein Tutorium für die 1999 nicht bestandenen Prüfungsaufgaben wünschen.
Kandidaten, die sich für den Sommertermin anmelden, wird empfohlen, die Aufgaben von 1998 und 1999 nacheinander zu bearbeiten, um von den Kommentaren zu ihren Antworten auf die Aufgaben von 1998 für die Aufgaben von 1999 zu profitieren.
Die Daten für die Tutorien sind wie folgt:

	Sommertermin	**Herbsttermin**
Angebotene Prüfungsunterlagen:	1998, 1999	nur 1999
Anmeldung bis spätestens:	11.06.1999	25.10.1999
Versand der Prüfungsaufgaben an die Kandidaten bis:	30.06.1999	05.11.1999
Eingang der Antworten auf die Prüfungsaufgaben 1998 bis:	01.09.1999	
Kommentare zu den Prüfungsaufgaben 1998 bis:	08.10.1999	
Eingang der Antworten auf die Prüfungsaufgaben 1999 bis:	08.11.1999	10.12.1999
Kommentare zu den Prüfungsaufgaben 1999 bis:	17.12.1999	14.01.2000
Besprechung:	Februar 2000	

Im Sinne eines reibungslosen Ablaufes der Tutorien werden die Kandidaten gebeten, sich an die angegebenen Fristen zu halten.
Kandidaten für den Sommertermin werden gebeten, sich sobald wie möglich, spätestens jedoch bis zum 11. Juni 1999 durch Rücksendung des nachstehend abgedruckten, ausgefüllten Formulars an das *epi*-Sekretariat (Fax Nr. +49 89 2021548), anzumelden.
Für weitere Auskünfte wenden Sie sich bitte an das *epi*-Sekretariat (Tel. +49 89 201 70 80).

epi tutorials 1999

In 1999 the *epi* will again offer tutorials for candidates wishing to prepare for the European qualifying examination (EQE) in the year 2000.

To try to serve the candidates' needs better, there will again be two tutorial terms, one running in the summer and the other in the autumn.

The summer term (enrolment deadline 11 June 1999) is particularly for those candidates who are going to sit the EQE in the year 2000 for the first time (either in full or in modular form), while the autumn term (enrolment deadline 25 October 1999) is particularly devised for those candidates who wish to have tutorials for those papers which they failed in the 1999 EQE.

Those enrolling in the summer term are encouraged to do the 1998 and the 1999 papers.

The tutorials will run according to the following timetable:

	Summer term	**Autumn term**
Papers offered:	1998, 1999	1999 only
enrolment:	11.06.1999	25.10.1999
Papers sent to the candidates by:	30.06.1999	05.11.1999
1998 papers, scripts in by:	01.09.1999	
1998 papers, comments by:	08.10.1999	
1999 papers, scripts in by:	08.11.1999	10.12.1999
1999 papers, comments by:	17.12.1999	14.01.1999
Meeting:	February 2000	

Candidates are reminded to be ready to stick to the indicated deadlines to allow a smooth progressing of the course. Candidates for the summer term are encouraged to enrol as soon as feasible, and by 11 June 1999 at the latest, by filling in and sending the form printed hereafter to the *epi* Secretariat (Fax No. +49 89 202 15 48). For further information, please contact the *epi* Secretariat (Tel. +49 89 201 70 80).

Tutorat *epi* 1999

En 1999, l'*epi* propose de nouveau un tutorat destiné aux candidats qui souhaitent se présenter à l'examen européen de qualification (EEQ) en l'an 2000.

Afin de mieux répondre aux besoins des candidats, deux sessions de tutorat sont de nouveau organisées, l'une en été, la seconde en automne.

La session d'été (date limite d'inscription 11 juin 1999) s'adresse particulièrement aux candidats qui se présenteront à l'EEQ pour la première fois en l'an 2000 (soit à l'ensemble des épreuves, soit par modules), tandis que la session d'automne (date limite d'inscription 25 octobre 1999) est spécialement conçue pour les candidats qui souhaitent un tutorat concernant les épreuves auxquelles ils ont échoué à l'EEQ de 1999.

Il est recommandé aux candidats qui s'inscriront à la session d'été de traiter les épreuves de 1998 ainsi que celles de 1999 afin de profiter des commentaires relatifs à leurs réponses aux épreuves de 1998 pour améliorer leurs réponses aux épreuves de 1999.

Le tutorat se déroulera selon le calendrier suivant:

	Session d'été	**Session d'automne**
Epreuves proposées:	1998, 1999	1999 seulement
Inscription:	11.06.1998	25.10.1999
Envoi des épreuves aux candidats le:	30.06.1999	05.11.1999
Epreuves 1998, envoi des réponses, le:	01.09.1999	
Epreuves 1998, commentaires retournés le:	08.10.1999	
Epreuves 1999, envoi des réponses le:	08.11.1999	10.12.1999
Epreuves 1999, commentaires retournés le:	17.12.1999	14.01.2000
Réunion:	février 2000	

Il est rappelé aux candidats de respecter les dates indiquées afin d'assurer un déroulement fluide du cours.
Les candidats qui souhaitent participer à la session d'été sont invités à s'inscrire le plus rapidement possible, au plus tard le 11 juin 1999. Ils sont priés de retourner le questionnaire imprimé ci-après, dûment rempli, au Secrétariat de l'*epi* (Fax no. +49 89 202 15 48). Pour tous renseignements, prière de s'adresser au Secrétariat de l'*epi* (Tel. +49 89 201 70 80).

epi Tutorials, Summer 1999

Please return by → **11 June 1999**

to: **epi** Secretariat
Postfach 26 01 12
D-80058 München
Tel: +49 89 201 70 80
Fax: +49 89 202 15 48

Name: .....

Address: .....

.....

Telephone No.: ..... Fax No.: .....

Preferred language: English ☐ German ☐ French ☐

Field of interest: Electricity/Mechanics ☐ Chemistry ☐

- I should like to enrol for:
  - all 1998 and 1999 Papers ☐
  - all 1998 Papers ☐
  - all 1999 Papers ☐
  - the following Papers:

1998	A	B	C	D	1999	A	B	C	D
	☐	☐	☐	☐		☐	☐	☐	☐

- I need a copy of:
  - all the examination Papers relating to the tutorial requested above ☐
  - the following Papers:

1998	A	B	C	D	1999	A	B	C	D
	☐	☐	☐	☐		☐	☐	☐	☐

I am a Student of the **epi** ☐ I am not a Student of the **epi** ☐

Fees	non-**epi** Student	**epi** Students	Fee due
any single paper	120 DM	70 DM	
2 papers (1999)	200 DM	100 DM	
4 papers (1999)	350 DM	200 DM	
2 papers (1998)	150 DM	80 DM	
4 papers (1998)	300 DM	150 DM	
8 papers (1998 and 1999)	600 DM	300 DM	
2+2 papers (1998+1999)	300 DM	150 DM	
		Total:	DM

Previous courses attended on intellectual property: (CEIPI, QMW, previous preparatory courses etc.):

.....

.....

If you have already sat one or both of the following examinations, please indicate its date(s):

- a national examination .....

- the European Qualifying Examination:.....

Years of professional experience: .....

Would you be willing to travel to meet your tutors?

.....

Date of fee payment into the following **epi** account, and its amount:

Postbank München
Account No. 703-802
BLZ (Bank Sorting Code) 700 100 80

.....

(Please note that **epi** tutorial fees **cannot** be debited from accounts held with the European Patent Office)

Date: .....

Signature: .....

Name: .....

Der Ausschuß für berufliche Qualifikation des Instituts der beim europäischen Patentamt zugelassenen Vertreter (*epi*) sucht Tutoren in den drei Amtssprachen für die *epi*-Tutorien zur Vorbereitung auf die europäische Eignungsprüfung in den Fachrichtungen Elektrotechnik/Mechanik und Chemie.

Alle *epi*-Mitglieder, die zur Mitarbeit bereit sind, werden gebeten, sich an das *epi*-Sekretariat zu wenden:

The Professional Qualification Committee of the Institute of Professional Representatives before the European Patent Office (*epi*) is looking for tutors in the three official languages for the *epi* tutorials preparing for the European qualifying examination, in the fields of electricity/mechanics and chemistry.

All *epi* members willing to collaborate are requested to contact the *epi* Secretariat:

La Commission de Qualification Professionnelle de l'Institut des mandataires agréés près l'Office européen des brevets (*epi*) recherche des tuteurs dans les trois langues officielles pour le tutorat de l'*epi* préparant à l'examen de qualification, dans les domaines électricité/mécanique et chimie.
Les membres de l'*epi* intéressés sont invités à se mettre en rapport avec le Secrétariat de l'*epi*:

epi-Secretariat
Erhardtstr. 27 · D-80331 München
Tel: (+49-89) 201 70 80
Fax: (+49-89) 202 15 48

Reduction of EPO fees

R. Bassett (GB)

There has for some time been much discussion of how to reduce EPO fees and thereby reduce the current embarrassing surplus. There is also discussion of how to improve EPO productivity, particularly in terms of reducing the backlog of unsearched applications and the pendency of applications.

Why not combine these two strands of thought? If, say, the EPO does not produce a search report by 18 months from the priority date, then 50% of the search fee could be refunded. If the search report was still not produced, say 21 months from priority, then 100% of the search fee could be refunded. Similarly, in relation to the pendency of applications, provided that there were appropriate safeguards to avoid deliberate abuse by applicants (for example, attention would have to be paid to requests for extension of time and entry into „further processing"), applications entering, say, the fourth year after filing could be exempt from renewal fees and those entering, say, the sixth year could have the initial renewal fees successively returned during each further year before grant.

Of course, perhaps the initial surplus should be reduced first, since otherwise the EPO might be deliberately *increase* these delays in order to whittle away the surplus!

In general, I would propose that any fee reductions should be so structured as to encourage both „good behaviour" on the part of applicants and their representatives and productivity on the part of the EPO. Global, fixed, reductions of fees do neither.

epi booklet „Patents in Europe“

We would like to inform our readership that the *epi* booklet „Patents in Europe“ is now available in seven languages, i.e. in the three official languages German, English and French as well as in Dutch, Spanish and Swedish. The Finnish version is available on the Internet. An Italian version is under preparation.

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

Stellengesuch · Vacancy sought · Demande d'emploi

Molekularbiologe, 33. J., verh., z.Zt. PostDoc in der pharmazeutischen Industrie (CH) im Bereich molekulare Neurobiologie, promoviert (summa con laude, Cambridge/UK) in Immunologie, Biologie-Studium mit Schwerpunkt Zellbiologie und Genetik in Freiburg und Wien (Diplom 1.0), Ausbildung zum biologisch-technischen Assistenten (Mikrobiologie), gute EDV-Kenntnisse in Windows/MacIntosh-Programmen, sehr gutes Englisch, Französisch, sucht zum Herbst/Winter 1999 eine Ausbildungsmöglichkeit zum Europäischen Patentvertreter in einer internationalen tätigen Patentanwaltskanzlei.

Vertrauliche Zuschriften an das *epi*-Sekretariat zuschicken.

Erinnerung · Reminder · Rappel

Der *epi*-Jahresbeitrag für 1999 beträgt DM 300. Er erhöht sich auf DM 350, wenn die Zahlung nach dem 30. April 1999 eingeht.

The *epi* annual subscription for 1999 amounts to DM 300. It is raised to 350 DM if it is received after 30 April 1999.

La cotisation annuelle *epi* pour 1999 est de DM 300. Elle est relevée à DM 350 si le versement n'a pas été effectué avant le 30 avril 1999.

ERRATUM

Report of the Committee on EPO Finances
(at page 139, second column, of 4/1998)

For correcting a typographical error, the figure of 12% (in line 2 of para. 6) should be replaced by 1.5%.

Redaktionsschluß für epi Information 2/1999

Redaktionsschluß für die nächste Ausgabe der **epi** Information ist der **14. Mai 1999** Die Dokumente, die veröffentlicht werden sollen, müssen bis zu diesem Datum im Sekretariat eingegangen sein.

Deadline for epi Information 2/1999

Our deadline for the next issue of **epi** Information is **14 May 1999**. Documents for publication should have reached the Secretariat by this date.

Date limite pour epi Information 2/1999

La date limite de remise des documents pour le prochain numéro de **epi** Information est le **14 mai 1999**. Les textes destinés à la publication devront être reçus par le Secrétariat avant cette date.

Mitteilung des Europäischen Patentamts vom 12. Februar 1999 über die Veröffentlichung amtlicher Mitteilungen im Internet

Um die Öffentlichkeit schnell zu informieren, veröffentlicht das EPA wichtige Texte, die zur Veröffentlichung im Amtsblatt bestimmt sind, vorab auf der Website des EPA (http:// www.european-patent-office.org) unter der Rubrik „Offizielle Mitteilungen". Für die Vorabveröffentlichung sind in erster Linie für die Benutzer des europäischen Patentsystems besonders wichtige Beschlüsse des Verwaltungsrats der EPO oder des Präsidenten des EPA vorgesehen.

Da die Zeitspanne zwischen der Veröffentlichung im Internet und dem Erscheinen des Amtblatts bis zu sechs Wochen betragen kann, wird empfohlen, die Website des EPA regelmäßig zu konsultieren. Updates der EPA Website stehen in einer tabellarischen Übersicht unter folgender Adresse zur Verfügung: „http://www.european-patent-office.org/updates.htm".

Notice from the European Patent Office dated 12 February 1999 concerning publication of official notices on the Internet

With a view to informing the public as quickly as possible, important texts intended for publication in the Official Journal are published first on the EPO website (http://www.european-patent-office.org) under „Official notices". This form of advance publication is used primarily for decisions by the Administrative Council of the European Patent Organisation or the President of the European Patent Office which are considered particularly important for users of the European patent system.

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