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Editorial

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

At the time of writing, the processes surrounding the Community Patent Regulation have entered a new phase of high activity. Following years of promises followed by an equal number of years of apparently insurmountable obstacles, it seems that we are back in the promises phase. The political wrangling surrounding the Community Patent appears to have been overcome, and we are now on to the, possibly more difficult, practicalities of the regulation.

A meeting was held on 19 May 2003 to discuss the final version of the Community Regulation but, at the time of writing, no such final version had appeared. Even if the Community does agree a final form of Community Patent Regulation, however, further obstacles still remain in the path of the regulation.

The lesser of these obstacles is, of course, the requirement that all EU countries will have to change their law in order to bring the regulation into force. This is merely a temporal problem, there being no question that enforcement of the regulation will take place in due course. The bigger problem is, of course, whether the EPC can be amended in the foreseeable future to incorporate the Community Patent. The Community Patent cannot go ahead until the EPC has been appropriately amended, and so this would seem to be a major stumbling block.

The matter is, of course, further complicated by the increasing addition, to the European Patent Organisation, of non-EU Countries. The EU has recognised this and is pushing for a diplomatic conference to be called as soon as possible. Of course, calling a diplomatic conference is not easy, and certainly cannot be done quickly. Therefore, it remains to be seen whether such a diplomatic conference will be called in time for the EU to be able to cause amendment of the EPC to bring the Community Patent into being, or if enough non-EU countries will have joined for it to be not in the overall interest of the European Patent Organisation to amend the EPC so as to introduce the Community Patent. By the time this editorial been published, it is likely that matters will be a little clearer. Not much, but a little.

As always with such political matters, there are multiple layers of uncertainty surrounding the process, and such layers have been increased in number by the continuing uncertainty as to the next President of the European Patent Office. Following the stalemate in discussions earlier this year, at the time of writing it is still not known who will take over as President of the European Patent Office at the end of 2003. This will, hopefully, be cleared by the Administrative Council in their June meeting, which looks to be an extremely busy and intensive event!

Nächster Redaktions- schluss für epi Information

Redaktionsschluss für die nächste Ausgabe der epi Information ist der **14. August 2003**. Die Dokumente, die veröffentlicht werden sollen, müssen bis zum diesem Datum im Sekretariat eingegangen sein.

Next deadline for epi Information

Our deadline for the next issue of epi Information is **14 August 2003**. Documents for publication should have reached the Secretariat by this date.

Prochaine date limite pour epi Information

La date limite de remise des documents pour le prochain numéro de epi Information est le **14 août 2003**. Les textes destinés à la publication devront être reçus par le Secrétariat avant cette date.

Bericht über die 54. Ratssitzung in Gent 5. – 6. Mai 2003

Die Sitzung wurde vom Präsidenten, Herrn Holzer, eröffnet, der die Vertreter von 23 Ländern im Rat und die Beobachter der Länder, die bald zum Institut gehören werden, willkommen hieß.

Die Stimmenzähler wurden ernannt. Die überarbeitete Tagesordnung wurde mit einem zusätzlichen Punkt 21 „Wahl eines neuen Vorstandsmitglieds für Ungarn und Wahl eines neuen EPPC-Mitglieds für Belgien“ angenommen, und das Protokoll der 53. Ratssitzung wurde ohne Änderungen angenommen. Der Präsident berichtete über die einzelnen Punkte der Angelegenheiten, die sich aus dem Protokoll der letzten Ratssitzung ergaben, gefolgt von einem kurzen Überblick über die Empfehlungen, die der Vorstand seit der letzten Ratssitzung gegeben hat.

Dann gab der Präsident seinen Bericht, der anderswo in dieser Ausgabe der *epi* Information veröffentlicht ist. Auf den Bericht des Präsidenten folgten die Berichte des Generalsekretärs und des Schatzmeisters an den Rat.

Die internen Rechnungsprüfer legten ihren Bericht vor. Der Bericht des Schatzmeisters mit dem Haushalt 2002 wurde angenommen und der Schatzmeister und die übrigen Vorstandsmitglieder wurden entlastet.

Punkt 12 der Tagesordnung wurde auf den nächsten Tag verschoben, um ihn zusammen mit einer Präsentation von Vertretern des Europäischen Patentamts über die Bewältigung der Arbeitsbelastung im EPA zu behandeln.

Dann wurden die Berichte der Ausschüsse entgegen- genommen, beginnend mit dem Bericht des Disziplinar- rates. Im Zusammenhang mit diesem Bericht tauchte die Frage auf, ob das *epi* den Bereich seiner Zuständigkeit in disziplinarischen Angelegenheiten auf alle Tätigkeiten seiner Mitglieder im IP-Bereich ausweiten oder sie auf die Tätigkeiten der Mitglieder als Europäische Patentvertre- ter beschränken solle. Diese Frage rief eine lebhafte Diskussion mit Für und Wider auf beiden Seiten hervor. Schließlich schlug der Präsident vor, dass der Disziplinar-



rat die verschiedenen nationalen Vorschriften in den Mitgliedsstaaten ermitteln, untersuchen und bewerten und dem Rat einen Bericht zur weiteren Diskussion vorlegen soll. Herr Duran schlug vor, vor dem Einführen irgendwelcher neuen Regelungen, die sich aus einem solchen Bericht ergeben könnten, rechtlichen Rat einzuholen. Der Rat stimmte zu.

Es folgte der Bericht des Ausschusses für berufliche Weiterbildung. Zunächst wurde ein Bericht der Arbeitsgruppe Statistik vorgelegt, in dem festgestellt wurde, dass die die Prüfungsergebnisse hauptsächlich beeinflussenden Faktoren die Muttersprache des Kandidaten sowie der Umstand ist, ob der Kandidat eine nationale Prüfung abgelegt hat oder nicht. So scheinen die Hauptprobleme für die Kandidaten die sprachlichen Anforderungen und das Ausbildungsniveau zu sein. Um geeignete Vorschläge zur Verbesserung oder Änderung der Europäischen Eignungsprüfung zu machen, schlug der Ausschuss vor, einen oder mehrere Fachleute auf dem Gebiet der Aus- und Weiterbildung einzubeziehen, um die Europäische Eignungsprüfung durch nationale Fragebögen zu überprüfen. Der Rat stimmte ab und war sich darüber einig, die derzeitigen Untersuchungen fortzusetzen und auch eine Überprüfung durch Fachleute von außen anzufordern.

Dann wurden dem Rat die Berichte der Schriftleitung, des EPA-Finanzausschusses, des OCC und des epi-Finanzausschusses vorgelegt. Eine Zusammenfassung dieser Berichte ist an anderer Stelle in dieser Ausgabe der epi Information veröffentlicht.

Anschließend besprach der Rat ein vom EPPC vorgelegtes vorläufiges Positionspapier zum Gemeinschaftspatent. Der Rat diskutierte darüber, ob das epi zur neuen Gemeinschaftspatentregelung ein Positionspapier schicken sollte. Der Rat beschloss, dass der EPPC das vorläufige Positionspapier überarbeiten und den Ratsmitgliedern einen Entwurf zur Diskussion vorlegen soll. Dann schloss der Präsident die Sitzung für diesen Tag.

Der zweite Tag begann mit einer Präsentation von Vertretern des EPA zur „Bewältigung der Arbeitsbelastung“ im EPA. Den interessanten Ausführungen schloss

sich eine lebhafte Diskussion der Ratsmitglieder mit den Vertretern des EPA an.

Dann fuhr der EPPC mit seinem Bericht fort und der Diskussion des vorläufigen Positionspapiers zur Gemeinschaftspatentregelung fort, das Gegenstand intensiver und mitunter heftiger Debatten war. Insbesondere wurde die Frage der Verfahrenssprache bei Verhandlungen vor Gericht erörtert, wie auch die Revision des EPÜ und die Frage des Schutzes der Bezeichnung des Europäischen Patentvertreters in den Vorschriften zur Errichtung des Instituts.

Die Arbeitsgruppe Streitregelung war als nächstes Inhalt einer Präsentation vom Vize-Präsidenten Macchetta, woran sich eine Darlegung über den künftigen CEIPI/epi-Kurs über Patentrechtsstreitigkeiten in Europa anschloss. Dieser Kurs wird für epi Mitglieder offen sein, unabhängig davon, ob sie die Europäische Eignungsprüfung abgelegt haben oder nicht.

Dann wurde der Schutz von computerbezogenen Erfindungen und Gebrauchsmustererfindungen besprochen und ein epi Positionspapier zu dieser wichtigen Angelegenheit vorgelegt. Der Rat ist der Meinung, dass Gesetzgebung und praktische Umsetzung der Linie folgen sollte, die durch die Beschwerdekammern mit dem gut etablierten Fallrecht definiert wird.

Schließlich kam der Rat zur Frage des Beitritts neuer Länder, wobei Rumänien der Europäischen Patentorganisation am 1.3.2003 beigetreten ist, Polen, Island, Litauen und Lettland in Kürze beitreten werden. Die beitretenden Länder haben alle das EPÜ Jahr 2000 ratifiziert.

Die Termine für die nächsten Ratssitzungen wurden bestätigt, die 55. Ratssitzung wird am 20. und 21. Oktober 2003 in Cannes stattfinden.

Der Rat wählte dann das Vorstandsmitglied für Ungarn, Herrn Szentpéteri, und einige neue Ausschussmitglieder.

Nach einem herzlichen Dank an die belgischen Delegierten für die überaus erfolgreiche Organisation der 54. Ratssitzung schloss der Präsident die Sitzung um 13.30 h.

Entwurf der Ratsbeschlüsse, 54. Ratssitzung Gent, 5. – 6. Mai 2003

1. Der Haushalt für 2002 wurde genehmigt und der Schatzmeister entlastet.
2. Der Vorstand wurde entlastet.
3. Der Rat genehmigte den Haushalt für 2003.
4. Der Rat stimmte mit 62 Stimmen dafür, 2 Stimmen dagegen und 7 Enthaltungen über die Ausgabe von bis zu 40.000 EUR für die Vervollständigung der Arbeit zur Modernisierung und Rationalisierung der Europäischen Eignungsprüfung ab.
5. Der Rat genehmigte einstimmig die Zuständigkeit der Schriftleitung unter folgendem Zusatz zu Punkt 4: „Jedes Manuskript, das von Institutsmitgliedern oder von Außenstehenden eingereicht wird, untersteht für die Veröffentlichung der Beurteilung der Schriftleitung, *unter Wahrung des Ansehens des Instituts.*“
6. Der Rat beschloss einstimmig, dass der Finanzausschuss aus maximal 10 Mitgliedern ohne Vertreter

- bestehen soll, aber mit so vielen außerordentlichen Mitgliedern wie interessiert sind.
7. Der Rat beschloss mit 57 Stimmen dafür, 9 Stimmen dagegen und 11 Enthaltungen, ein Positionspapier zum Gemeinschaftspatent zu erstellen.
 8. Der Rat beschloss mit 51 Stimmen dafür, 4 Stimmen dagegen und 8 Enthaltungen, das obige *epi* Positionspapier zum Gemeinschaftspatent abzuschicken.
 9. Herr A. SZENTPÉTERI wurde zum Vorstandsmitglied für Ungarn ernannt.
 10. Herr P. JACQUES wurde als Ersatz für den zurückgetretenen Herrn E. DUFRASNE zum EPPC Mitglied für Belgien ernannt.
 11. Herr T. POWELL wurde als Ersatz für den zurückgetretenen Herrn C. MERCER zum Mitglied des Finanzausschusses ernannt.
 12. Herr T. DEBLED wurde zum Mitglied des Disziplinausschusses für Belgien ernannt, da Herr LEHERTE (BE) Vorsitzender dieses Ausschusses geworden ist.

Report of the 54th Council Meeting in Ghent 5 – 6 May 2003

The meeting was opened by the President, Mr. Holzer, who welcomed the representatives of 23 countries in the Council and the observers of the further countries that would soon be joining the Institute.

The scrutineers were appointed. The revised draft agenda was adopted with an additional Item 21 „Election of a new Board member for Hungary and election of a new EPPC member for Belgium,“ and the minutes of the fifty-third Council Meeting were approved without amendment. With regard to matters arising from the minutes of the previous Council Meeting, there was a report from the President on the individual issues, followed by a brief review of the recommendations made by the Board since the last Council meeting.

The President then presented his report, which is published elsewhere in this edition of *epi* information. Subsequent to the President's Report, the Reports of the Secretary General and the Treasurer were also provided to the Council.

The Internal Auditors provided their report. The Treasurer's Report, including the 2002 accounts was approved, and the Treasurer and the other Board Members discharged.

Point 12 of the Agenda was shifted to the next day to be taken together with a presentation of representatives of the European Patent Office concerning the mastering of the workload in the EPO.

The reports of the Committees were then considered, commencing with the report of the Disciplinary Committee. In the context of this report the question was raised whether the *epi* should extend their scope of disciplinary competence to all IP activities of its members or whether it should restrict it to only activities undertaken by members as European Patent Attorneys. This question gave rise to a lively discussion with pros and cons raised on both sides of the debate. Finally the President proposed that the Disciplinary Committee shall determine, investigate and evaluate the different national regulations in the member states and present a report to the Council for further discussion. Mr. Duran

suggested requesting a legal opinion before the implementing of any new regulation that might arise from such a report. The Council agreed.

The Professional Qualifications Committee then reported. First a report from the Working Group on statistics was presented, concluding that the main factors influencing the examination results are the mother language of a candidate and whether the candidate had taken a national examination or not. Thus the main problems facing the candidates seem to be the language requirements and the training levels. To make appropriate proposals for improvement or amendment of the EQE the Committee proposed engaging one or more professionals in the field of education to review the EQE, by means of a questionnaire on national level. The Council voted and agreed to continue with the current investigations and also to request a review by external experts.

The reports of the Editorial Board, the EPO Finances Committee, the OCC and *epi* Finances Committee were then submitted to the Council. A summary of many of these reports may be found elsewhere in this edition of *epi* information.

The Council subsequently considered a preliminary position paper on the Community Patent Regulation, which was presented by the EPPC. The Council discussed whether the *epi* should send a position paper regarding the new Community Patent Regulation. The Council decided that the EPPC shall revise the preliminary position paper and provide the Council members with the draft paper for discussion. The President then closed the day's proceedings.

The second day started with a presentation by representatives of the EPO relating to the „mastering of the workload“ in the EPO. Their interesting comments were followed by a lively discussion between Council Members and representatives of EPO.

The EPPC then continued to present its report and the discussion of the preliminary position paper on the Community Patent Regulation which proved to be the

subject of an intense and sometimes passionate debate. The question of language of proceedings before court proceedings was particularly debated, as was the revision of the EPC and the question of the protection of the title of the European patent attorney in the regulation of the establishment of the Institute.

The working party on litigation was next the subject of a presentation by Vice-President Macchetta, which was then followed by a presentation on the future CEIP/*epi* course on Patent Litigation in Europe. This course will be made available to *epi* members, whether or not they have passed the EQE.

The meeting moved on to the protection of computer-related inventions and business model inventions and an *epi* position paper on this important matter was presented. The opinion of Council is that the law and

practice should follow the line defined by the Board of Appeals in the well established case law.

Finally the attention of Council turned to the question of accession of new countries, with the Romania having entered the European Patent Organisation on 1. 3. 2003. Poland, Iceland, Lithuania and Latvia are due to join shortly. The accessing countries have all ratified the EPC 2000.

The dates of the next Council meetings were confirmed, with the 55th Council meeting due to take place in Cannes on 20-21st October 2003.

The Council then elected M. Szentpéteri as Board member for Hungary, and some new members for Committees.

After having warmly thanked the Belgium delegates for the very successful organisation of the 54th council meeting, the President closed the meeting at 13:30.

Draft List of Decisions, 54th Council Meeting Ghent, 5 – 6 May 2003

1. The 2002 accounts were approved, and the Treasurer was discharged from liability.
2. The Board was discharged from liability.
3. Council approved the Budget for the year 2003.
4. Council decided on an expenditure of up to 40.0000 EUR to enable the completion of the survey into the modernising and streamlining the EQE, with 62 votes in favour, 2 against and 7 abstentions.
5. Council unanimously approved the Terms of Reference of the Editorial Board with an addition to item 4, which reads: „Any item submitted by members of the Institute or from outside shall be subject to selection for publication by the Editorial Board, *safeguarding the reputation of the Institute.*“
6. Council unanimously decided that the Finance Committee should consist of 10 members at the most, with no substitute members, but as many associate members as are interested.
7. Council decided on producing a position paper on the Community Patent, with 57 votes in favour, 9 against and 11 abstentions.
8. Council decided sending the *epi* position paper on the Community patent along the lines agreed upon, with 51 votes in favour, 4 against and 8 abstentions.
9. Mr. A. SZENTPÉTERI was appointed Board Member for Hungary.
10. Mr. P. JACQUES was appointed EPPC Member for Belgium to replace Mr. E. DUFRASNE who had resigned.
11. Mr. T. POWELL was appointed Member of the Finance Committee to replace Mr. C. MERCER who had resigned.
12. Mr. T. DEBLED was appointed Member of the Disciplinary Committee for Belgium since Mr. LEHERTE (BE) was acting as Chairman of this Committee.

Compte rendu de la 54^{ème} réunion du Conseil Gand, 5 – 6 Mai 2003

La session de la 54^{ème} réunion du Conseil est ouverte par le Président Holzer qui souhaite la bienvenue aux représentants des 23 pays du Conseil ainsi qu'aux observateurs d'autres pays qui deviendront bientôt membres de l'Institut.

Les scrutateurs sont désignés. L'ordre du jour révisé est adopté avec deux points supplémentaires: „Election d'un membre du Bureau pour la Hongrie“ et „Election d'un nouveau membre de l'EPPC pour la Belgique“. Le compte rendu de la 53^{ème} réunion du Conseil à Stratford-upon-Avon est adopté sans modifications. Le rap-

port du Président sur les différentes questions relevant de la réunion du Conseil précédente est suivi d'un bref compte rendu des recommandations faites par le Bureau depuis la dernière réunion du Conseil.

Ensuite le Président présente son rapport, lequel est publié dans ce numéro de epi Information. Suivent ensuite les rapports respectifs du Secrétaire Général et du Trésorier.

La présentation du rapport des Commissaires aux comptes internes est suivie de celui du Trésorier et de l'approbation des comptes pour l'exercice 2002. Quitus est ensuite donné au Trésorier et aux autres membres du Bureau.

Le point 12 de l'ordre du jour est reporté au lendemain afin d'être discuté à l'issue d'une présentation par des représentants de l'OEB sur le thème „Maîtrise de la charge de travail“ à l'OEB.

Les Commissions présentent ensuite leur rapport. La Commission de discipline soulève la question de savoir si l'*epi* devrait élargir l'étendue de ses compétences en matière de discipline à toutes les activités de ses membres dans le domaine de la Propriété Intellectuelle, ou si ses compétences devraient être réduites aux activités des membres de l'*epi* en leur seule qualité de mandataires agréés auprès de l'OEB. Cette question donne lieu à une discussion animée avec des avis pour et contre, prenant en compte les deux aspects du débat. Le Président conclut en proposant que la Commission de Discipline définisse, examine et évalue les règlements nationaux dans les divers pays membres, et présente ensuite un rapport au Conseil afin de poursuivre la discussion. M. Duran suggère de prendre un avis juridique avant qu'un nouveau règlement ne soit adopté. Le Conseil approuve.

La Commission de Qualification Professionnelle présente ensuite son rapport. Les résultats du groupe de travail sur les statistiques indiquent que les résultats de l'examen européen de qualification (EEQ) dépendent principalement de deux facteurs, à savoir le fait que le candidat présente l'examen dans sa langue maternelle et le fait de savoir s'il a déjà passé un examen à un niveau national. Les problèmes principaux auxquels les candidats se trouvent confrontés sont donc la connaissance des langues et le niveau de formation préalable. Afin de pouvoir proposer des changements et des améliorations appropriées, la Commission propose d'engager un ou deux spécialistes dans le domaine de l'éducation qui examineront l'EEQ au moyen d'un questionnaire à un niveau national. Le Conseil vote et approuve de continuer l'étude en cours et de faire appel à cet effet à des experts externes.

Suivent ensuite les rapports du Comité de Rédaction, de la Commission des Finances de l'OEB ainsi que celui des Finances de l'*epi*. Un résumé d'une grande partie de

ces rapports est publié dans ce numéro de epi Information.

Puis le Conseil examine une prise de position préliminaire de l'*epi* sur le Brevet Communautaire, qui est présentée par l'EPPC. Le Conseil discute de l'opportunité d'adopter une prise de position sur la Réglementation du Brevet Communautaire et décide que la prise de position préliminaire devrait être revue par l'EPPC et présentée au Conseil pour discussion. Le Président clôt la séance pour la journée.

La seconde journée de réunion commence par une présentation portant sur la question „Maîtrise de la charge de travail“ à l'OEB, présentée par des membres de l'OEB. Cette intéressante présentation fait l'objet d'une discussion animée entre les membres du Conseil et les représentants de l'OEB.

A la suite de cette présentation, l'EPPC poursuit son rapport et la discussion porte à nouveau sur la question d'une prise de position sur le Brevet Communautaire, laquelle question donne lieu à un débat animé, voire passionné. La langue de procédure dans les procédures devant les tribunaux, la révision de la CBE, de même que la protection du titre „European patent attorney“ dans le règlement de création de l'Institut font l'objet d'une vive discussion.

Le Vice-Président MACCHETTA présente ensuite les résultats du Groupe de Travail „Contentieux“ au Conseil. Puis suit une brève présentation du prochain cours CEIPI/*epi* sur les procédures judiciaires en Europe. Ce cours est accessible à tous les membres de l'*epi*, qu'ils soient titulaires de l'EEQ ou non.

Les questions traitées ensuite concernent la protection des inventions dans le domaine des programmes d'ordinateurs et des inventions dans le domaine de la conduite des affaires, et une prise de position de l'*epi* est présentée sur ce sujet important. L'opinion du Conseil est que la loi et la pratique doivent suivre les lignes définies par les Chambres de recours suivant une jurisprudence à présent bien établie.

Puis est évoquée l'accession de nouveaux pays. La Roumanie est devenue membre de l'Organisation européenne le 1er mars 2003. La Pologne, l'Islande, la Lituanie et la Lettonie suivront dans un avenir proche. Les pays qui sont devenus états membres de l'OEB ont ratifié la CBE 2000.

Les dates des prochaines réunions du Conseil sont confirmées. La prochaine réunion du Conseil se tiendra à Cannes les 20-21 octobre 2003.

Le Conseil procède à l'élection d'un membre du Bureau pour la Hongrie, M. Szentpéteri, et de quelques nouveaux membres de commissions.

Le Président remercie chaleureusement la délégation belge pour l'excellente organisation de la 54ème réunion du Conseil. Le Président clôt la séance à 13.30 heures.

Projet de liste des décisions, 54^{ème} réunion du Conseil Gand, 5-6 mai 2003

1. Les comptes pour l'exercice 2002 sont approuvés et quitus est donné au Trésorier.
2. Le Bureau reçoit le quitus.
3. Le Conseil approuve le budget pour l'année 2003.
4. Le Conseil décide de dégager une enveloppe de 40 000 EUR pour continuer et mener à terme l'étude en cours dont l'objectif est de moderniser et de rationaliser l'Examen Européen de Qualification, par 62 votes en faveur, 2 contre, et 7 abstentions.
5. Le Conseil approuve à l'unanimité les attributions du Comité de Rédaction, avec un ajout au point 4: „Tout document soumis par un membre de l'Institut ou par un tiers fait l'objet d'une sélection par le Comité de rédaction en vue de sa publication, *en préservant la réputation de l'Institut.*”
6. Le Conseil décide de fixer l'effectif de la Commission des Finances à 10 membres au maximum, sans suppléants, mais sans limiter le nombre des membres associés.
7. Le Conseil décide de produire une prise de position sur le Brevet Communautaire, par 57 votes en faveur, 9 contre, et 11 abstentions.
8. Le Conseil décide par 51 votes en faveur, 4 contre, et 8 abstentions d'envoyer la prise de position de l'*epi* sur le Brevet Communautaire, compte tenu des modifications décidées par le Conseil.
9. M. A. SZENTPÉTERI est nommé membre du Bureau pour la Hongrie.
10. M. P. JACQUES est nommé membre de l'EPPC pour la Belgique en remplacement de M. E. DUFRASNE qui a démissionné.
11. M. T. POWELL est nommé membre de la Commission des Finances en remplacement de M. C. MERCER qui a démissionné.
12. M. T. DEBLED (BE) est nommé membre de la Commission de Discipline puisque M. LEHERTE (BE) a été élu Président de cette commission.

President's Report (covering October 2002 to April 2003)

W. Holzer (AT)

The President reported on two seminars organised by the EPO on the accession of Bulgaria and Romania to the EPC in November 2002. In both seminars which took place over several days in the capitals of the two countries members from the EPO and *epi* acted as lecturers. The President presented the *epi* in one of the opening speeches. Also in November the President was invited by the EPO to moderate an on-stage debate in the framework of the International Symposium of the Trilateral Meeting in Vienna.

Board members Mr. Terry Johnson and Mr. Laurent Nuss represented the *epi* at the annual ASEAN and at an INPI conference, respectively.

On November 21, 22 an International Forum organised by the European International Academy in cooperation with the *epi* and the Max Planck Institute took place in the EPO in Munich on the „Protection of computer-related and business model inventions”. The Forum proved to be highly successful both in terms of attendance and presentations. There were more than 400 registrants from 50 countries. The Academy produced a CD-ROM and a paper brochure of the presen-

tations, which in an updated version are now available from the International Academy.

Still in November 2002 the Secretary General, Mr. Baum and the President were invited in Munich by the VPP, to a discussion with the Presidents and Vice-Presidents of the VPP and the Patentanwaltskammer, respectively, on topics of mutual interest, such as representation before the courts.

In December 2002 the Working Party on Litigation was attended by Vice-President Macchetta and the President as observers. The December Administrative Council meeting of the EPO in Munich in December 2002 was also attended by Vice-President Macchetta and the President. The main topics of discussion were inter alia the EPO President's activities report, the setting up of the Board of the Administrative Council, the status report of the Working Party on Litigation (EPLA), the Implementing Regulations to the EPC (see http://www.european-patent-office.org/epo/ca/e/ca_002_14.htm), the adoption of the amendments to the Rules of Procedure of the Enlarged Boards of Appeal and last but not least Mastering the EPO Workload.

In January 2003, the 30th anniversary of the Finnish Corporate Patent Agents in Industry to which the President was invited, also provided the opportunity to meet with ministry representatives, together with the Finnish Board member Mr. Kim Finnilä, to discuss the situation of the local profession as concerns training/law/examination etc. At the anniversary symposium also a round-table on training was organised.

At the opening seminar of the Hungarian Patent Office in Budapest, which also took place in January 2003, the President presented a paper on „The European Patent System and the European patent attorneys after the enlargement of the European Patent Convention“.

In February the users Seminar took place in the EPO Munich on „Mastering the Workload“. This meeting included a number of workshops, and was followed by an extraordinary SACEPO meeting on the project of the extended search report. „Mastering the Workload“ will again be discussed in the SACEPO meeting in June (annex 6).

On March 13 the President opened together with the president of the European Patent Office, Mr. Kober, the *epi* artists' exhibition in the EPO. On March 15, the Board meeting took place in Vienna, attended by all Board members.

At the March Administrative Council meeting in Munich, which was attended by Vice-President Macchetta and the President, the political decision on the Community patent was discussed and the preparations for the election of the new president of the EPO taken. The discussion of the new Board of the Administrative Council after a number of interventions was deferred to the June Administrative Council meeting. The election of the new president was also deferred as none of the candidates obtained the required majority of votes.

Also in March, the officers of *epi* and the chairman of the PQC had a meeting with the EPO presidency. The topics discussed inter alia were Mastering the Workload and follow up activities, change of the examination procedure, the Community Patent, training of European patent attorneys, online filing, information given to applicants by EPO, Revision of Disciplinary Regulations. The meeting took place in a very open-minded and informative atmosphere.

Vice-President Mercer and the President participated in the AIPLA/FICPI Symposium in Nice on the PCT-Reform, where the President presented a paper on „Quality of examination“. An invitation to the spring meeting of the VPP in the beginning of May will be taken care of on behalf of the *epi* by Secretary General Baum.

Secretary General's Report (Summary) covering November 2002 – April 2003

W. Baum (DE)

1. The secretariat was involved in the organizing of the „International Forum on the protection of Computer-related & Business model inventions“ Nov. 21, 22 2002 for which *epi* made a financial contribution.
2. The secretariat could settle a simplified agreement with Carl Heymanns-Verlag about the printing of *epi* Information. Compared with the contract in force, we could reach an overall cost-reduction of about 5 000 € per year.
3. The Secretary General attended a meeting of EPO-Management and Members of the Board on 31.03.2003.
On request of the Secretary General one topic of the agenda was the short coming in the exchange of data with the *epi* with respect to the list of representatives. From EPI-side it was communicated that there has been a lot of trouble because of the late or incorrect transferring of data about the EPI-members. The EPO agreed to improve the situation by weekly update information to the *epi*-secretariat. Furthermore the EPO indicated that there are good chances that revision activities of the relevant software will be finished in 2004; Then the secretariat might have the chance to get an online access to the interesting data of the EPI-members.
4. Domain names „European Patent Attorney“ and „epi“
As announced with the last report we made a registration with Deutsche Telecom for the following domain names: „european-patent-attorney.net
european-patent-attorney.org
european-patent-attorney.info
epi-online.org and
epi-online.info.“
A direct link from the said domain names to our internet home page is installed.
5. Future Council meetings will take place as follows:
17th – 18th May 2004 in Copenhagen,
25th – 26th October 2004 in Lisbon,
9th – 10th May 2005 in Austria or Hungary.

Treasurer's Report

P. Kelly (IE)

The audit of the accounts to December 31, 2002 has been completed. The accounts to December 31, 2002 show a surplus of income over expenditure of € 22045. This has been achieved by virtue of a higher than budget income of € 42850 coupled with a saving on expenditure on budget of € 60316. The net position on subscription income was an increase over budget of € 27634 while income from investments also showed an increase over budget of € 8790.

On the expenditure side, Council should note that while the cost of Council Meetings was over budget, the aggregate costs for meetings, including Council, Board and Committee Meetings was marginally under budget. The cost of administering the Secretariat was € 25106 under budget.

In relation to our investments and cash holdings at the end of our financial year, the total was € 1,702,157. This reflects cover for the year end liabilities and the reserves at 1.5 times annual expenditure. Expenditure this year exceeded 1 million Euro for the first time.

epi Balance Statement on 31st December 2002

Assets

	€	previous year (thousand) €
A. Fixed assets		
I. Tangible assets		
Office machines and equipment	-51	—
II. Financial assets		
Securities portfolio	<u>1.416.683,40</u>	<u>1.071</u>
B. Receivables		
I. Others current assets	<u>118.092,49</u>	<u>57</u>
II. Bank & Cash (incl. money deposits)	<u>285.473,92</u>	<u>578</u>
	<u><u>1.820.250,32</u></u>	<u><u>1.706</u></u>

Liabilities

	€	previous year (thousand) €
A. Net assets		
as of 01.01.2002	1.545.922,86	1.399
results for the year	<u>22.045,13</u>	<u>147</u>
as of 31.12.2002	1.567.967,99	1.546
B. Debts		
I. Provisions	38.300,00	30
II. Liabilities		
Bank loans	-, -	13
1. Deliveries and services	17.922,88	4
2. Others	<u>196.059,45</u>	<u>113</u>
	<u>213.982,33</u>	<u>130</u>
	<u><u>1.820.250,32</u></u>	<u><u>1.706</u></u>

epi Expenses and Income 2002						
	Budget 2001	Actual 2001	Budget 2002	Actual 2002	Shortfall in receipts Surplus of expenditure 2002	Surplus of receipts Shortfall in expenditure 2002
	€	€	€	€	€	€
I. Receipts/Income						
1. from Members						
a. Subscriptions	951.002,90	961.228,74	937.500, -	1.032.700, -	- , -	95.200, - ,
b. Abandonment of unpaid subscriptions	./. 20.451,68	./. 33.710,79	./. 21.000, -	./. 88.566,04	67.566,04	- , -
2. Interests	61.355,03	77.555,69	56.000, -	53.673,75	2.326,25	- , -
3. CPE-Seminars	- , -	27.046,33	31.000, -	33.754,02	- , -	2.754,02
4. Others	20.451,68	39.255, -	33.000, -	47.787, -	- , -	14.787,49
	<u>1.012.357,93</u>	<u>1.071.374,97</u>	<u>1.036.500, -</u>	<u>1.079.349,22</u>	./. 69.892,29	<u>112.741,51</u>
II. Expenses						
1. Meetings						
Council	204.516,75	206.358,01	205.000, -	239.660,37	34.660,37	- , -
Board	35.790,43	35.716,29	43.000, -	38.241,23	- , -	4.758,77
Committees	144.695,60	112.511,14	146.000, -	112.731,43	- , -	33.268,57
Delegates & Others	56.242,11	35.403,19	43.500, -	33.534,72	- , -	9.965,28
2. Special performances						
epi Information	57.264,69	51.810,92	62.000, -	55.412,95	- , -	6.587,05
By-Laws & non-foreseeable	12.271,01	815,50	2.500, -	- , -	- , -	2.500, -
ECC-Letter	1.022,58	2.827,92	- , -	- , -	- , -	- , -
Promotional activities (incl. epi-Brochure)	16.872,63	6.785,46	49.000, -	68.391,52	19.391,52	- , -
CPE-Seminars	2.556,46	12.189,03	33.000, -	7.664,25	- , -	25.335,75
Examination Committee Dinner	7.669,38	2.443,76	7.000, -	1.359,80	- , -	5.640,20
3. President (+ Vice President)	30.677,51	25.034,90	31.000, -	25.125,07	- , -	5.874,93
4. Treasurer and Treasury						
Treasurer and Deputy	6.646,79	4.387,11	6.700, -	7.043,35	343,35	- , -
Bookkeeping / Audit	12.782,30	11.523,34	12.700, -	15.843,65	3.143,65	- , -
Bank charges	8.180,67	8.767,81	8.100, -	8.019,54	- , -	80,46
5. Secretariat						
Expenditure on personnel	265.871,78	254.305,32	284.500, -	272.778,24	- , -	11.721,76
Expenditure on materials						
Rent	81.295,41	73.533,74	81.300, -	82.615,35	1.315,35	- , -
Phone, Fax, e-mail	7.158,09	5.565,82	7.700, -	8.539,72	839,72	- , -
Postage	30.677,51	23.973,18	33.000, -	26.464,46	- , -	6.535,54
Copy, print	15.338,76	14.981,32	20.000, -	10.380,21	- , -	9.619,79
Office supplies/Representation	15.338,76	10.574,80	10.000, -	12.067,26	2.067,26	- , -
Maintenance/Repair	3.067,75	7.190,15	3.000, -	6.725,18	3.725,18	- , -
Insurances	511,29	872,98	520, -	933, -	413, -	- , -
Secretary General and Deputy	2.556,46	3.149,38	2.600, -	1.352,04	- , -	1.247,96
Travel personnel	1.022,58	494,48	1.000, -	746,56	- , -	253,44
Training	1.533,88	255,65	1.000, -	410,80	- , -	589,20
Acquisitions						
Office machines incl. Soft-/Hardware	10.225,84	7.055,68	21.000, -	20.002,74	- , -	997,26
Office equipment	6.135,50	802,73	2.500, -	- , -	- , -	2.500, -
6. Extraordinary expenses	- , -	3.060, -	- , -	1.260,65	1.260,65	- , -
	<u>1.037.922,52</u>	<u>924.389,61</u>	<u>1.117.620, -</u>	<u>1.057.340,89</u>	<u>67.160,05</u>	<u>127.475,96</u>
III. Surplus of receipts/ expenses	<u>./. 25.564,59</u>	<u>146.985,36</u>	<u>./. 81.120, -</u>	<u>22.045,13</u>	<u>Surplus:</u>	<u>103.165,13</u>

Report of the Committee on Biotechnological Inventions

A. De Clercq (BE)

Chairman

Meeting November 12, 2002

The Committee met on the 12th of November 2002 at the *epi* Secretariat and elected:

Chairperson	Ann de Clercq (BE)
Deputy Chairman	Chris Mercer (GB)
Secretary/Liaison	Simon Wright (GB)

At this meeting the Committee discussed new Rules 23b-j, which are to replace, Rules 23b-e, 27a, 28 and 28a and is preparing its comments for EPPC regarding the changes to Rule 23.

It was further regretted that in the Appeal of the Decision of the Opposition Division dated June 20, 2001 in the ICOS case, published in the Official Journal of June 2002, the patentee unfortunately did not file the grounds, and the appeal consequently dismissed. The members of the Committee are requested to report on any similar cases suitable for appeal. It was also discussed that the EPO seems to be applying the Rules on the information they will accept on function of genes very strongly. Some EPO Examiners also seem to be requesting the exclusion of foetal cells/embryonic cells.

These and other important points (such as unity of invention, insertion of „isolated“ for DNA sequences or proteins, predicted function (Art. 83 EPC), incomplete searches and handling of oral proceedings) were discussed and were found to be ideal for a further discussion with Directors of DG2 (see below).

The implementation situation of the EU Biotech Directive was discussed for the different countries. The countries which have implemented as of today are Denmark, Spain, Finland, Greece, Ireland, and UK. In the other countries specific problems exist in implementing the Directive.

On the request of EPPC the Committee has also discussed the EPO practice on diagnostic methods. The viewpoint is that the proposed Guidelines are unclear and that we want this question to be referred to the

Enlarged Board of Appeal. The Committee is preparing a reply to EPPC.

The Committee is further preparing a paper on sufficiency for the meeting with the Boards of Appeal which has been postponed until June 2003.

Further the Committee discussed at its meeting the public debate in different countries about biotechnology patents and the issues about biodiversity and traditional knowledge.

A further meeting of the Committee for 2003 still has to be planned.

Meeting with DG2 Biotech Directors in Munich at the EPO

The following points were discussed in a very constructive meeting with DG2 biotech Directors on the 24th of March 2003:

1. ICOS case
2. Embryonic stem cells
3. Insertion of „isolated“ for DNA sequences or proteins
4. Predicted function – Art. 83
5. Unity of invention (and creeping examination at the Search Stage)
6. Incomplete searches
7. Summons applicants to Oral Proceedings at an earlier stage during examination.

Present:

- for DG2: Mrs. Yeats, Mrs. Lonati, Mr. Gugerell, Mr. Hermann, Mr. Isert
- for *epi* Biotech Committee: Chris Mercer (GB), Simon Wright (GB), Bo Hammer Jensen (DK), Günther Keller (DE), Lars Höglund (SE) and Ann De Clercq (BE)

It was further agreed that this type of meeting could be repeated on a yearly basis.

Corrigendum

An error occurred in Mr. Atkinson's article „Mr. Plougmann's Penguins“, published in the issue 1/2003. Mr. Ole Plougmann passed away on November 8, 2001, not 2002 as erroneously indicated.

Report of the Disciplinary Committee

G. Leherte (BE)

Chairman

Chairman report to the Council (5th of May 2003)

The disciplinary committee had a meeting in Brussels on the 28th of November 2002 and elected

Mr. G. LEHERTE as chairman

Mr. G. KELLER as secretary

Mr. J. DE VRIES as deputy chairman

Mr. V. GIL-VEGA as deputy secretary.

Proposals to re-actualise the functioning of the committee were discussed.

Mr. G. Leherte and Mr. S. Ottevangers (past chairman) met on the 19th February 2003 in Scheveningen for handover of files and experience.

No disciplinary cases are outstanding from the previous year(s); four disciplinary chambers were designated to consider new complaints registered in 2003.

The chairman and the secretary met at the *epi*-secretariat on the 28th of March; Mrs. Della Bella was re-appointed Registrar of the Disciplinary Committee; the mutual roles of the registrar, the secretary and the chairman were briefly discussed; pending matters were reviewed and co-ordinates of committee members were updated;

Further to an action decided at the Council meeting in Stratford-upon-Avon, the chairman of the committee

had a meeting with Mrs. Dybdahl on the 28th of March, in order to consider the possibility of a revision of the Disciplinary Rules to give the Disciplinary Committee the power to delete members from the list.

Following this initiative, the president of *epi* and Mrs. Dybdahl agreed to install a working group consisting of the chairman of the Disciplinary Committee and Mrs. Dybdahl (with additional, possibly external support as necessary), to carry out a complete revision of the Disciplinary Rules.

A meeting of the Disciplinary Committee is being organised for early June 2003 in Munich (at the *epi*-secretariat), mainly to discuss the „scope of competence“ of the committee :

- should the role of the *epi* Disciplinary Committee be limited to tasks in respect of EP-patents or broadened to any IP task *specifically entrusted to an epi member*?
- should the question whether or not other legal or „institutional“ routes for complaints exist in specific member countries, play a role in this context?

Input from the *epi*-members to the members of the Disciplinary Committee would be appreciated.

Report of the European Patent Practice Committee (EPPC)

A. Casalonga (FR)

Chairman

The EPPC met on 12 November 2002 in Munich and studied the following items.

I. 33rd SACEPO meeting of 27-28 June 2002 in Munich

During this meeting, the status of the Community Patent was examined as well as the new draft for EPLP prepared by the EPO. Also discussed were the EC Directive on patentability of computer-implemented inventions and the proposed draft for the new Rules of procedure of the Boards of Appeal.

II. 19th Committee on Patent Law meeting of 15-18 October 2002 in Munich

This meeting was principally devoted to the study of the draft Implementing Regulations for the EPC 2000.

Also discussed were the Rules of Procedure for the Boards of Appeal and the Enlarged Board of Appeal.

III. Questions 151/152: Backlog search reports/backlog in examination

The EPPC discussed the paper prepared by the EPO on „Mastering the Workload“.

A draft position paper was prepared and communicated to the *epi* Board for dissemination.

IV. EPLP draft No. 4

The EPPC having already prepared a paper on the EPLP, which was approved by the *epi* Council, it was only

suggested to further amend this paper by including the possibility for the EU Community to join the EPC so that the EPLP Courts would have jurisdiction on future Community patents.

This amendment was made and sent to the *epi* Board for dissemination.

Annex 1

November 2002

epi position paper on the proposed directive on patentability of computer-implemented inventions (Abstract)

The *epi* is of the opinion that the conditions for protection of computer-implemented inventions by patent should follow the jurisprudence of the Boards of Appeal of the EPO initially defined in the VICOM decision and more recently confirmed and precised in decisions T935/97 (IBM) and T769/92 (Sohei).

According to the latest position taken by the EPO, the technical character of an invention is established by demonstrating a technical effect which needs not to be novel or non-obvious. This technical effect must be beyond the normal interaction between a program and the computer hardware (and is thus also called a further technical effect).

The requirement for inventive step is satisfied if the claim as a whole is found non-obvious when all features of the claim are considered, including the non-technical features that contribute to the technical effect.

The technical effect requires in most cases the knowledge of the art and can best be assessed during the analysis of the inventive step (this is now reflected in the new EPO Guidelines).

According to another approach which seems to be reflected in the proposed Directive, the technical character of the invention is established by demonstrating a technical contribution which is new and non-obvious. The technical contribution is to be assessed with regard to the claim as a whole, with technical and non-technical features. In this understanding the technical contribution is synonymous to the invention, namely the combination of all features that the invention contributes to the state of the (technical) art to make a better machine.

It would be fatal in this concept – but easily done – to misunderstand the technical contribution only as the new (or additional) element that is added to the known computer. Any non-technical feature could then be just ignored. However, in many cases, the added feature is per se non-technical (e.g. mathematics but also programs in the view of the opponents), but creates technical effects through the synergy with the hardware and the application of technical considerations.

The *epi* feels that the proposed Directive should therefore be amended to avoid any contradiction with the position of the EPO which has now been accepted in some countries. In fact care should be taken not to make any confusion between:

12. technical effect and technical contribution;
13. invention and inventive step.

Question 160 – Community Patent Regulation

The Commission Working document on the planned Community Patent Jurisdiction dated 30 August 2002 (COM (2002) 480 final) was studied and discussed.

A draft position paper was prepared. Following the decision taken by the Council of Ministers in March 2003, the draft paper was further amended for presentation to the *epi* Council.

V. Question 162 – Computer-implemented inventions

The proposal of the EU Commission for a Directive on the patentability of computer-implemented inventions dated 20 February 2002 (COM (2002) 92 final) was studied and discussed.

It was felt that the proposed Directive made some confusion between technical effect and technical contribution as well as between invention and inventive step and was not exactly in line with the jurisprudence of the Boards of Appeal of the EPO.

A draft position paper was prepared and sent to the *epi* Board for dissemination (Abstract in Annex 1).

VI. Revised Rules of the Boards of Appeal

The proposal made by the EPO (CA/PL 11/02) was discussed.

A draft position paper has been prepared and sent to the *epi* Board for communication to the EPO.

Report of the Harmonisation Committee

F. Leyder (BE)

Chairman

1. As Council knows, the Harmonisation Committee follows the work of the Standing Committee on the Law of Patents in the framework of WIPO.
2. The 9th session starts on 12 May 2003, and *epi* will be represented by John Brown and Klas Norin, as previously.
3. The Harmonisation Committee has been invited to meet on 29-30 April in Munich, to review the draft Substantive Patent Law Treaty (SPLT) and to instruct the *epi* delegates. A report on the meeting of the Standing Committee will follow in due course.
4. Further to an invitation by EPPC, for which we are grateful, the Harmonization Committee will represent *epi* at a meeting of the Committee on Patent Law on 29-30 April, the main points on the agenda being related to the position to adopt with regard to the draft SPLT. Our delegates will be John Brown and Francis Leyder. A report of the meeting will follow in due course.
5. The Council is invited to note the contents of paragraphs 1 to 4 above.
6. All documents relating to the Standing Committee on the Law of Patents are available on the WIPO internet site via the link <http://www.OMPI.int/scp/en/>

Report of the Online Communications Committee (OCC) Covering the time period between October 2002 and April 2003

D.K. Speiser (DE)

Chairman

The Online Communications Committee met once in the time interval covered by this report and additionally exchanged views from time to time by e-mail. At the occasion of this meeting three members of the *epi* were elected as associated members of the Online Communications Committee; they are Jean-Robert Callon de Lamarck (FR), Stefano Colombo (IT) and Peter Hanna (IE).

Version 1.11 of the *epoline* online filing software (OLF) is available since last November. This version allows PCT applications to be filed online with the EPO as receiving office and with an incentive of €134 deducted from the filing fee. The new version extends the functionality of the previous version (1.10) which made it possible to file EP and Euro-PCT applications online.

Members of the Committee using the software are satisfied with it although the user interface still needs to be improved.

Potential users of the system who are desirous to commence using the software are waiting since last year for input from the EPO regarding the software interface between the OLF software and the patent management system used in their offices. Such interface was available at the time of filing the very first European patent

application online but was not yet implemented in the last version of the online filing software. In the absence of such interface all data related to the filing of European applications such as applicant's name, names of inventors, priority data etc. as well as data returned by the EPO upon receipt of an application such as the filing date and the serial number must be typed manually twice in the office of the representative. Rather than being able to take some advantage of online filing the procedure presently still is cumbersome for representatives. The EPO is very aware of this problem but it is unlikely that the missing interface will be made available with the forthcoming roll out of version 2.0 of the OLF software in mid 2003.

A very helpful step forward was made by the EPO recently with the aim of improving communication between the users of the system and the EPO. In the past users communicated with various members of the *epoline* help desk of the EPO. This sometimes resulted in losses of information. Recently, a group of so called Key Account Managers was formed of a number of experienced formalities officers each of whom being responsible for a specified number of users so that each user

now has a single person of contact in the epoline team. OCC members reported excellent results of the new system.

Further improvements in the online services are in the pipeline and will become available shortly. In particular it is intended to open the possibility for online filing of other documents than the documents submitted on the filing day. It is intended to shortly open a secure access to the so called „secure file inspection“ which means that representatives will be able to inspect the official files of their clients or of their company in the time interval up to the publication of the application.

Many of our members will be interested to learn that the cooperation of the EPO with national patent offices in Europe and with the US PTO are under way with the aim to introduce the epoline online filing software for online filing of national applications in those countries. These approaches are consistent with the wishes of the users as expressed by various professional organisations in quite a number of Resolutions on the harmonisation of online filing. Also, consistent with such Resolutions are intentions of the European and German patent offices to provide so called plug ins for their respective software which would allow the users of the German software to file national German applications as well as European applications or, alternatively, to allow users of the epoline software to use that software not only for filing EP applications but also for filing of national German applications.

Harmonisation is an issue in a still further area and the background being that the World Intellectual Property Organization WIPO with the participation of the member states of the PCT prepared the legal framework for the electronic filing and processing of international applications under the PCT. Part of this framework is Annex F of Part 7 of the Administrative Instructions for the online filing of PCT applications. Annex F deals with the necessary technical standards. One of its proposals is to seek alternatives for replacing the PDF-format as presently used by the OLF software of the EPO. As a replacement format WIPO favours the XML format.

The EPO recently started tests with an á-version of a program called PatXML. This program helps users to write patent applications using the Microsoft Word software. Behind the scenes PatXML converts the Word data to XML which one day will be used for online filing.

The OCC is convinced that the XML-format of documents for online filing will replace some time in the future the presently requested PDF-format because the XML-format unlike the PDF-format allows extensive electronic processing of the documents not only within the EPO but also within patent departments and patent attorneys offices.

However, it is expected that much time and many dummy filings will be needed by a substantial number of patent practitioners until enough confidence will have been built up to match the confidence in the present system which uses the PDF-format of documents.

The existing confidence in the existing PDF-system is based on a number of facts and of the experience with

numerous dummy filings and more than 4000 real applications filed in the EPO since the end of 2000:

- No conversion errors occur when converting a complete print out of an application by *scanning* the paper documents into the PDF-format.
- When using the recommended Amyuni software to directly convert a word processor document into the PDF-format problems from missing fonts are of no concern since the Amyuni software unlike Adobe Acrobat embeds all fonts automatically so that respective conversion errors are avoided.
- Safety is improved if the author of the patent application prints the Amyuni PDF file and does the proof-reading of description and claims on this printed PDF file, rather than on a printed Word file or on the screen of the PC.
- It is a good practice to do the conversion from Word to PDF of the application documents on the PC which was used to create the word file; in this way it can be made sure that the Amyuni software is capable of including all the font tables.
- To minimize the risk of errors it is highly recommended to always include the pre-conversion files in the patent application filed electronically at the EPO because this will give the applicant a sound basis for corrections under Rule 88 EPC.
- Priority documents ordered from the EPO for applications that had been filed electronically should be checked because it was observed that a drawing sent to the office in portrait format was printed out by the office for the priority document in landscape format thereby omitting part of the information contained in the drawing.

The Committee is of the opinion that when observing the above points online filing of patent applications is at least as safe as paper filing where typos and the omission of lines from the printed text of word documents from time to time can cause severe problems. On the other hand, it will obviously take much time of testing before the use of XML documents can be recommended.

Some two years ago the Council of the epi had requested this Committee to look into the distribution of conference documents for the participants of Council and Board meetings. The Committee responded by proposing a new system of document numbering with the numbers being related to the points of the respective agenda so that when printing out said documents they are in the correct sequence avoiding the time consuming sorting of documents which members had found cumbersome for many years. Further, the Committee suggested to distribute the Council documents by e-mail in the PDF format. In this way documents may be generated using a large variety of word processing equipment without the readers having to purchase different word processing programs. The documents in PDF-format can be viewed and printed out using the „Acrobat Reader“ program which is available free of charge. Still further, the Committee proposed to accumulate all conference documents for any particular meeting in a so called accumulated file. Such accumulated file has the benefit

of allowing the printout of Council documents from a single file. In combination with the Committee's proposal of the new numbering the system now has the benefit of allowing a printout of a single file with all the many conference documents automatically being in the correct sequence. Also, the accumulated file can be provided with bookmarks making it very easy to prepare and attend Council and Board meetings without the use of any paper document just by viewing the accumulated file on a lap top. Some of the Board members and Council members started to work with a lap top and the accumulated file and found it convenient not to have to rely on paper anymore.

Since the preparation of the accumulated file and the preparation of bookmarks does take some time the Committee finally proposed that the accumulated and bookmarked file be prepared by the epi secretariat and is made available to the participants of the respective meetings via the epi web site. This last proposal has just been implemented and the participants of the 54th Council meeting in Ghent have received from the sec-

retariat a letter providing them with an access name and a password which allowed them to download from the epi web site on and after 30 April 2003 a fully bookmarked accumulated file in the PDF-format with all conference documents distributed until 29 April 2003.

Consequently, from now on the preparation of the conference documents will be very simple for those wanting to rely on paper and will be further reduced to the download for those members who are prepared to use a lap top during the meetings.

In conjunction with the use of the accumulated file the OCC proposed to display the accumulated file during the meetings using a beamer. This proposal has also been accepted by our secretariat although it appears that in this context some additional experience will have to be made.

The Committee is of the opinion that they by now have provided all the input requested by Council and that it will be up to Council to use the proposed system until such time that further improvements might become desirable.

Report of the Professional Qualifications Committee (PQC)

T. Onn (SE)

Chairman

1. Students of the epi

Today we have 332 students from 14 countries. 21 of the students have registered this year.

2. epi Tutorials

Last year's appeal for more tutors was successful and this year we can revert to a summer and an autumn Tutorial.

In the summer term papers A and B for EQE 2001 and 2002 will be offered. Last date for enrolment to the summer term is 6 June 2003.

The autumn term comprises papers C and D of EQE 2001 and 2002. The last date for enrolment is 10 October 2003.

An invitation to the Tutorials has been published in epi Information 1/2003 and on the epi homepage.

3. Tutor's meeting

The annual tutor's meeting was held on 20 November 2002. Chairmen/secretaries from Examination committees I, II and III had accepted our invitation and so had 14 epi tutors. Representatives from CEIPI were also present.

The meeting started with the presentation of the EQE statistics for 2002. The 2002 results were very encouraging especially for papers C and D. The hope was expressed that this should not result in more difficult papers in 2003.

The tutors had in good time before the meeting received the papers of 2002 together with the Examiner's report. Thus the tutors were well prepared for the discussions and asked specific questions about what was expected for each paper. This resulted in a most efficient meeting.

The discussion started with papers A and B in separate groups for chemistry and E/M, respectively. After lunch papers C and D were discussed in plenum.

The committee members gave their view on the solution of the papers and also discussed the marking of the papers. The tutors were pleased to have an open discussion with the Examiners and were given the opportunity to discuss the papers very intensively.

Moreover, some comments of candidates who sat the EQE were reported by Tutors.

4. Continuing Professional Education (CPE)

Due to illness we have not arranged any seminars this spring. The seminars that should have been run this spring have been postponed until the autumn.

We are also planning to start seminars on the amendments of the PCT. The first of these seminars will be arranged by the end of this year.

5. EQE statistics

During the last three years we have conducted a survey among the candidates sitting the EQE. About 3800 questionnaires have been distributed to the candidates and we received about 700 answers. This is close to 20 % of the questionnaires sent out and it is quite a good figure for this type of survey.

After evaluating the answers of these three years it seems that we will gain no additional information by sending out further questionnaires. Thus for the time being we have decided to stop the distribution.

Unfortunately the responses are not statistically significant for the overall population of candidates as the total passing rate of the respondents was higher than that for all sitters.

Combining the answers of our respondents and the official statistics of the EPO reveals a significant difference in passing rate of candidates from countries having their mother tongue in one of the official languages as compared with those having another language as their mother tongue. It is also evident that candidates from countries with a national examination have a higher passing rate than those from countries without any examination.

The main problem of the candidates seems to be the (non-official) language and the training. Only minor advantages are expected by making small changes of the EQE, e.g. more time for the papers, extending the examination over the whole week etc. Perhaps the candidates should be further encouraged to take the EQE modular. This obviously reduces the stress and gives the candidates the possibility to have one year of

additional practice for the legal questions (opinion paper DII) and the opposition.

A useful tool is the „practica intern“ at the EPO for 3 months especially intended for candidates from countries with non-official language.

The *epi*-tutorial should be further improved to allow a good preparation for all candidates. This is even necessary for the candidates of the „big“ countries DE, FR, GB as the passing rate there is still low, even if it is higher than the average.

6. Joint working group epi/EPO/CEIPI

Representatives from *epi* and EPO met early this year and continued the discussions on what can be done to improve the passing rate of Paper C. As has been reported earlier we are looking at the possibility of producing a CD-ROM containing some interesting and educative opposition cases. Our aim is to cover some cases in different fields of technology and in each of the official languages. We therefore ask the council members to help us finding representative cases that will be good for educational purposes.

7. EQE

This year the EQE took place on 26-28 March and 1540 candidates had enrolled.

8. Joint meeting PQC/Examination Board

The annual joint meeting with the Examination Board will take place on 29 April 2003. On the day before PQC will have a regular committee meeting as well as a meeting with some tutors to discuss EQE 2003 and prepare for the joint meeting. An oral presentation of these meetings will be given at the Council meeting.

The Council is invited to take note of the content of this report.

Report from the PQC Working Group on Statistics

G. Leissler-Gerstl (DE), F. Schweinzer (AT)
E. Christiansen (DK), T. Onn (SE)

About 3800 questionnaires were distributed to the candidates of EQEs 2000, 2001 and 2002. We received 206, 245 and 238 answers, which is close to 20 % of the questionnaires sent out and for such a survey quite good.

Unfortunately the responses are not statistically significant for the overall population of candidates as the total passing rate of the respondents was higher than that for all sitters.

Combining the answers of our respondents and the official statistics of the EPO reveals a significant difference in passing rate of candidates from countries having their mother tongue in one of the official languages as compared with those having another language as their mother tongue. It is also evident that candidates from countries with a national examination have a higher passing rate than those from countries without any examination.

A majority of the candidates pass at least after the 4th sitting.

From the answers received from the respondents and the EPO statistics we have compiled the following figures of the EQE 2000, 2001 and 2002 for a further analysis.

Passing rate (year)	2000	2001	2002
Respondents	46.6 %	48.6 %	50.0 %
All sitters	29.2 %	30.3 %	37.4 %

Technical field	Profession			Prof. experience (years)							
	00	01	02	00	01	02					
e/m	137	145	158	i	93	116	114	3	63	94	70
c	69	97	79	p	101	113	100	4	57	70	82
i&p	3	1	3	ex.	8	14	19	5+	85	79	86

The number of candidates from industry and private practice is about the same, however there are approx. 2/3 of the candidates taking the electro/mechanical papers and 1/3 taking the chemical papers.

e/m passed(%)				c passed(%)			
	2000	2001	2002		2000	2001	2002
ex	20	40	40	ex	33	50	11
i	42	38	44	i	58	68	58
p	47	52	61	p	44	53	40

It is to be noted the significant difference between chemists in industry and in private practice with higher passing rates for industry, whereas the reverse is valid for candidates in the electro/mechanical field.

Education				Sex			
	00	01	02		00	01	02
University	195	222	219	female	51	64	58
Other	6	18	13	male	154	179	179

Most of the candidates hold a degree from university (List A qualification). The passing rate for female and male candidates is about the same.

Nationality							
	00	01	02		00	01	02
AT	2	3	5	FR	31	34	29
BE	5	6	3	GB	34	47	34
CH	2	6	9	IE	2	3	3
DE	83	102	91	IT	7	8	12
DK	7	8	14	NL	10	14	14
ES	3	3	1	PT	1	0	3
FI	5	2	3	SE	13	7	15

Language used			
	00	01	02
German	87	111	99
English	88	96	98
French	30	34	34
Other	1	3	6

Due to the high number of candidates from Germany the German language was used quite the same as English. It has to be noted that only a few candidates used the possibility of sitting the exam in their mother tongue. Nearly all candidates with non-official language have used English in the examination.

In addition to the questionnaire we have compiled the following facts from the officially published EPO statistics (grey tables) for first sitters during the years 1996 – 2002:

Candidates	Passing rate %
TOTAL	39
from DE, FR, GB	43
from other countries	27

There is a significant difference between candidates from Germany, France and Great Britain as compared with candidates from the other countries. This is not surprising as the languages of these countries are the official languages of the EPO and in addition to this they have national examinations and a long tradition of training candidates.

The following figures including all EPC countries derive from the same statistics:

Candidates from countries	Passing rate %
with an official language	42
with no official language	25
with a national examination	40
with no national examination	22

The table indicates clearly that of all candidates those with a mother tongue in one of the official languages have a higher passing rate (42 %) than those having another language as their mother tongue (25 %). It is also evident that candidates from countries with a national examination have a higher passing rate (40 %) than those from countries without any examination (22 %).

Is it the influence from the good figures of Germany, France and Great Britain that makes this difference? The answer is that there may be some influence, but a look at the figures of the statistics for the „other countries“ reveals the following:

Candidates from „other countries“	Passing rate %
with an official language	33
with no official language	24
with a national examination	29
with no national examination	22

Also for these countries there is almost the same, significant difference between candidates having the official language as their mother tongue as compared with those who do not have it. When it comes to national examination or not there is a difference also in this group of countries, but the difference is not as significant as when all countries are included.

The distribution of the official statistics for all sitters for the years 1997-2002 per paper and for countries having a number of candidates satisfying the statistical requirements are as follows:

Paper A

Country	No. of sitters	passed	%
AT	53	37	70
BE	71	41	58
CH	72	39	54
DE	1550	975	63
DK	127	56	44
FR	457	276	60
GB	679	443	65
IT	261	129	49
NL	167	93	56
SE	171	88	51

Paper B

Country	No. of sitters	passed	%
AT	53	35	66
BE	79	45	57
CH	67	36	54
DE	1452	972	67
DK	135	56	41
FR	461	289	63
GB	685	466	68
IT	271	140	52
NL	167	102	61
SE	190	96	51

Paper C

Country	No. of sitters	passed	%
AT	66	28	42
BE	79	30	38
CH	85	34	40
DE	2018	778	39
DK	166	43	26
FR	544	202	37
GB	748	390	52
IT	323	76	24
NL	176	76	43
SE	221	51	23

Paper D

Country	No. of sitters	passed	%
AT	60	26	43
BE	79	30	38
CH	87	30	34
DE	1881	807	43
DK	155	40	26
FR	540	198	37
GB	599	391	65
IT	307	77	25
NL	189	80	42
SE	195	52	27

If we transform these figures into the earlier categories (Germany, France, Great Britain and „other countries“ etcetera) we arrive at the following table:

All sitters	Passing rate %			
	Paper A	Paper B	Paper C	Paper D
TOTAL	60	62	38	42
From DE, FR, GB	63	66	41	46
From other countries	53	53	30	31
from countries:				
with an official language	63	66	41	46
with no official language	51	45	28	29
with a national examination	61	65	40	44
with no national examination	51	50	28	27

Not surprisingly we find a reflection of about the same general differences as earlier.

Reverting to the answers to our questionnaire we have the following figures for the years 2000, 2001 and 2002, respectively.

First sitting		00		01		02	
	tot	p	tot	p	tot	p	
yes	80	52	109	62	96	70	
no	96	35	82	44	83	49	
yes modular							
A+B	16	10	37	25	31	24	
C+D	14	9	15	13	27	24	

For the papers sat we have the following figures:

Papers		00			01			02		
	p	f	%	p	f	%	p	f	%	
A	99	28	77.9	138	34	80.2	120	39	75.5	
B	103	22	82.4	142	28	83.5	100	43	69.9	
C	93	69	57.4	124	55	69.3	140	35	80.0	
D	94	46	67.1	111	51	68.5	130	33	79.8	

As mentioned earlier respondents having passed are over-represented as compared with all candidates sitting the EQE. One trend that is recognized is that it has become more and more popular with modular sitting. This is also confirmed in the official statistical material from EPO.

Most of the candidates pass a paper already at the first sitting, which can be seen from the figures below.

Paper A sitting				Paper B sitting			
	00	01	02		00	01	02
1	79 p	119 p	167 p	1	83 p	123 p	164 p
2	15 p	14 p	21 p	2	12 p	14 p	20 p
3	4 p	3 p	4 p	3	8 p	5 p	7 p
4	1 p	1 p	2 p	and	22 f	28 f	44 f
5	-	1 p	1 p				
and	28 f	34 f	40 f				

Paper C sitting				Paper D sitting			
	00	01	02		00	01	02
1	70 p	91 p	118 p	1	76 p	99 p	127 p
2	10 p	17 p	27 p	2	9 p	10 p	22 p
3	9 p	7 p	10 p	3	4 p	2 p	9 p
4	2 p	6 p	5 p	4	4 p	1 p	1 p
5	1 p	2 p	1 p	5	-	-	3 p
6	-	1 p	2 p	6	1 p	-	-
7	-	-	1 p	8	-	-	1 p
10	1 p	-	1 p	and	46 f	51 f	38 f
and	69 f	55 f	38 f				

The figures show that after the 3rd/4th (paper C) sitting the chances to pass are not so good. The above results of paper C, passing at the 10th sitting is probably an exception to the rule.

Training by employer				Days off			
	00	01	02		00	01	02
yes	118	195	186	paid	69	149	129
no	75	45	49	unpaid	75	205	160

In a final table we have summarized the courses attended by the respondents.

Courses attended	00	01	02
CEIPI basic	113	96	83
CEIPI train.	140	144	150
QMW	24	13	16
Forum	18	6	9
epi tutorials	52	31	32
national tut.	41	52	36
mock exam.	15	0	1
O'Reilly	26	34	8
Cronin	18	29	24

We also asked the candidates for comments and here we present some of them.

The answers give us valuable information about the candidates' opinions on how to improve the chances of passing.

Candidates' comments to the examination papers:

- If the exam would take place on Monday, Wednesday and Friday, I would expect an increase in pass
- It is not easy to pass (what is acceptable) but it is fair
- The biggest problem sitting the examination is the time pressure
- I would prefer a more flexible system allowing the candidates to sit the papers in whichever order they prefer and not have to attempt every paper before being allowed to resit
- If a professional has failed on part C there is less useful training to get better on that part, because there is no training in argumentation in CEIPI and so on
- Having all exams in three days may make logistical sense, but is extremely exhausting on candidates
- It is not normal to have no model solution (officially) when receiving the copies with the results to take as a reference for any possible appeal
- Papers C and D are getting more and more chemical
- Why isn't it possible to get a *real* correction of our exams? This would be of extreme help and rather easy to do at least for the law problems in C and D
- Exam commission should not award points for unasked answers neither should they take away points for any such missing answer. In papers A and B chemists have more to read than others and lose valuable time. It's easier and quicker to read figures than text
- Paper D is a nightmare and a race against time.
- The wording of some questions in Paper D was very ambiguous - perhaps badly translated?

- Difficulty of examination is o.k. But it is much too little time To be a good patent agent does not mean to be the fastest writer in world.
- The examination does not reflect the real practice. Paper C should be divided in two fields like papers A and B.
- May be the balance of the papers could be shifted a bit from „haute école“ to „main steam daily work“?
- Paper C – Too many documents to review in time.
- The difficulty of the respective papers seems to vary significantly over the years

Comments on the training:

- CEIPI courses were excellent
- Study the compendia
- Train for a real examination situation
- Take enough time for training
- epi Tutorials most useful
- Internal training by employer very helpful
- No relevant feedback from Examination Committee to candidates
- Help from the firm, e.g. reducing in workload, was vital.
- Some employers do not allow you to prepare the examination during working hours and generally submerge you with an excessive volume of work.
- Not enough formal training –courses/tuition regarding exam technique and languages.
- Studying in a group of people from different companies, meeting on a regular (e.g. 2 week) basis, helped a lot

Recommendations to other candidates:

- Study old papers and do mock examinations
- Take your time to study
- Attend preparation courses/seminars
- Study the compendia
- Prepare with annotations in the blue book, the Guidelines etcetera
- Study together with some colleagues, learning in groups
- Think of the methodology (get organized etcetera)
- Time management for the different papers
- Take the modular sitting
- Take time off before the EQE
- To summarize: take enough time, try to do as many old papers as possible, study the law, prepare your books and attend courses
- start long in advance (min 5 months, 1 year)
- take it not too early

What aspects of the profession do you find interesting:

- The combination of technical and legal matters together with languages
- Variety of technology and work

- Interesting contacts
- Working at the edge of technology
- Strategic questions for business
- International and independent work
- better chances to get a better paid job

New entries in the list of professional representatives

Country	new after EQE 2002	new after EQE 2000–2002	number with EQE	total number (per 31.3.2003)
AT	2	6	41	85
BE	12	16	71	122
CH	9	13	157	316
DE	201	404	1515	2540
DK	14	17	52	133
ES	0	0	4	159
FI	3	5	5	150
FR	67	97	351	658
GB	114	186	928	1574
GR	0	1	1	35
IE	1	3	6	34
IT	11	16	109	306
LI	1	1	5	10
LU	0	0	4	14
NL	19	33	209	298
SE	20	25	94	265

CONCLUSION

After evaluation of the questionnaires of three years it seems that we will get no additional information and have decided to no longer ask for such a questionnaire.

The main problem of the candidates seems to be the (non official) language and the training. Only little advantages are expected in small changes of the EQE, e.g. more time for the papers, stretching it over the whole week etc. Perhaps the candidates should be further encouraged to take the EQE modular. This obviously reduces the stress and gives the candidates the possibility to have one year of additional practice for the legal questions (opinion paper DII) and the opposition.

A useful tool is the „practica intern“ at the EPO for 3 months especially intended for candidates from countries with non-official language.

Further we feel that the *epi*-tutorial should be further improved to allow a good preparation for all candidates. This is even necessary for the candidates of the „big“ countries DE, FR, GB as the passing rate there is still low, even if it is higher than the average.

New CEIPI/epi Course on Patent Litigation in Europe

On the first announcement in epi Information 1/2003 a number of positive reactions have been received which evidence that there is a great interest in the subject matter. We will go ahead with the Course which will start at the end of September 2003.

After the Course has been put on the epi website: www.patentepi.com/english/200/220 an unexpected rush of applications has been received. The Course therefore is overbooked. Colleagues who are still interested will be put on a list for the subsequent university year 2002/2005. We apologize for any inconvenience.

Short Report on the Exhibition of epi Artists 2003

The 6th epi artists' exhibition took place from 13 to 31 March 2003 in the EPO main building, in Munich. The exhibition, opened by the EPO President, Mr. I. Kober, and by the epi President, Mr. W. Holzer, was, as usual, very successful. Mr. Klaus Hoffmann from Munich said a few words on behalf of the participants, J. Anritter (DE), M. Berger (LI), S. Chapman (GB), K. Hoffmann (DE), S. Kurz (DE), D. Monéger (FR), R Patterson (GB), J. Raß (DE), A. Schricker-Laufhütte (DE), J. Spies (DE), G. Taresch (DE) and R. Veith (DE). A large number of guests and

visitors showed considerable interest in the works displayed, which ranged from paintings to graphical and fine art works such as jewellery and glass creations. We take this opportunity to thank those participants who could not be present on that evening but were kind enough to send their works of art and contributed to the success of the exhibition. We are looking forward to the next exhibition in 2006. Any comments and suggestions from our members are welcome!

Two participants in front of their art works: →



epi President W. Holzer



Dr. M. Berger from Liechtenstein



Mrs. G. Taresch from Munich

Regarding „On Data Formats for the 'epoline' System" – some information

P. Brewin*
ePublication *epoline*®, EPO

Introduction

We have read with great interest Mr A. Horns' note on data formats published in *epi information* 1/2003, page 20, and his paper on the *epi* website under the URL <http://www.patentepi.com/english/200/210>. As one might imagine we have been thinking about, discussing and arguing over several of the points he has raised for many years in the EPO and, as his paper implies, there are no easy solutions. As the manager responsible for the technical implementation of EP patent data capture and publications for the last 15 years it has been part of my responsibility to examine and evaluate solutions to many of the points raised in his paper. On behalf of the EPO I should like to comment on certain aspects of his paper and give some information regarding the data standards we are and will be using.

A large part of Mr Horns' paper is dedicated to an analysis of Adobe's Portable Document Format (PDF) and the fact that conversion from other formats is not 100 % error-free (to be fair, Mr Horns does state in his paper that: „Evidently, no software ever written for practical purposes is 100 % error-free.“). It is not the intention of this paper to cover the many issues raised in Mr Horns' paper on the PDF question. For numerous practical reasons the EPO chose the pragmatic solution to ask applicants to file using PDF. At the time, this was the best compromise between ease of use, general availability and accuracy. Nonetheless, the EPO has always stated that we see XML as the preferred solution. Unfortunately, waiting for the market to produce an easy to use word processor that could also create XML documents has turned out to be a wild goose chase. Like commercial fusion generators, it always seems to be a few years away. As can be seen below, this situation is now about to change and in this article we want to look forward to the next stage of development which has been in progress at the EPO for over two years – that is the use of the data markup standard XML (eXtensible Markup Language).

SGML at the EPO

Mr Horns has described, in Section 4 of his paper, the advantages of XML and some of its features and related standards therefore these need not be repeated here. He rightly states that XML derives from SGML (Standard Generalised Markup Language). We have been using SGML to markup EPO patent applications and specifications for 17 years and this continues today and every day

for the near future. This amounts to the markup of some 50,000-60,000 pages per week. The vast majority of these pages are not in revisable text format (PDF, MS Word format or otherwise), they are in paper/facsimile format and, using a contractor, we have to convert everything to SGML text data based on a WIPO standard¹ (mainly written by the EPO). This is, of course, a „back-end“ process but is important to mention for three reasons:

- a) the EPO's involvement in, and commitment to, open data standards for many years;
- b) data conversion, from many different formats, is essential for our databases, Internet, CD-ROMs, etc, and we use one source only (SGML) for all formats, but it would be better if we did not have to do this data conversion at all (a point I will come to later and a critical and important part of Mr Horns' paper);
- c) The data is standardised and structured; therefore meeting one of Mr Horns' points, that is: it is not „cluttered with unnecessary formatting information“. This has had a tremendous spin-off in the way the data is re-used today – data that may have been captured well before the Internet took off.

Of course, there is a price to be paid for all this, Mr Horns is partly mistaken in this respect regarding the EPO, we do perform „expensive Optical Character Recognition („OCR“)“, however, OCR in itself is relatively cheap it is the correction of that OCR (by human beings) which is expensive since we are under strict obligation to „publish as filed“ and OCR of scientific documents such as patents is not straightforward².

The eXtensible Markup Language (XML) and *epoline*®

I should now like to address some specific points in Mr Horns' note and paper.

At the end of his note introducing his paper Mr Horns asks several questions regarding open standards, rather than answering each question I should like to answer his last question, which I hope will answer most points in his other questions:

„Which steps should be made in order to identify and utilise such open standards?“

We believe these steps have been made, and are being made, not only by the EPO but the EPO in partnership

¹ WIPO Standard ST.32 – Recommendation for the markup of patent documents using SGML (Standard Generalized Markup Language).

² Despite increasing numbers of EP filings our publication costs have actually decreased significantly in the last 10 years as we have rationalised our publication contracts and re-used SGML EP A document data for the production of EP B documents; in addition more people are using *esp@cenet* or subscribing to CD-ROMs rather than purchasing paper copies.

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with the JPO, USPTO and WIPO. We have been working on these open standards (based on XML) for over two years. May I reprint the abstract from a joint paper I gave at the XML Europe 2002 Conference:

After close consultation with member States of the Patent Cooperation Treaty (PCT) Union, and taking into account active participation from the European Patent Office (EPO), Japan Patent Office (JPO) and United States Patent and Trademark Office (USPTO), the World Intellectual Property Organization (WIPO) has finalized instructions and standards to implement the electronic filing, processing, and storage of international applications for patents. The standards are intended to allow applicants to file an international patent application (E-PCT application) in electronic form, which is acceptable to those Patent Offices around the world, which have agreed to accept electronic filing. An important part of the standards is a set of XML DTDs to support E-PCT applications – including the authoring of patents using XML. In addition it is intended that national Patent Offices will use the standards as the basis for their own national electronic applications for patents. For complete details see: http://pcteasy.wipo.int/efiling_standards/EF-Page.htm³

The conference paper gives details, of course, of the standards and what they cover and I will not repeat them here. The scope of the standards is wider than Mr Horns' paper because it covers such issues as packaging the data, encryption, etc. However, Mr Horns' paper deals with the tricky part of patent application filing – taking the text of a drafted application and authoring (writing) the documents to be filed with a Patent Office. There is remarkably little literature on the best format and structure to use when 'putting together' a patent application – Mr Horns' paper has opened a most interesting debate! There seems to be very little commonality in the way different authors put an application together. The various word processors used, how drawings and chemical structures are composed or scanned in, what software is used, who 'composes' the final patent, etc⁴?

Can all this be standardised, can we impose it on applicants? Well, the fact is that four major offices in the world (EPO, JPO, USPTO, WIPO) have decided on a standard and do want to 'impose' it on applicants. The EPO, for example, will not accept an XML filing which is not compliant with the PCT standard („Annex F“ for short). We are basing the whole of our online filing strategy on Annex F; that is the complete *epoline*® Online Filing Software (OLF) will conform to Annex F XML document type definitions (DTDs) for all procedures, not just for PCT applications. For example the EP application filing screens (old form 1001) for bibliographic data have already been reworked to conform to the PCT Annex F Request DTD.

3 See: Brewin, Paul and Ankyu, Shiro. Filing and Processing Patent Data Using XML – A World Standard. XML Europe 2002 Conference paper: http://www.idealliance.org/papers/xml02/dx_xml02/papers/03-04-05/03-04-05.html.

4 The EPO is conducting market research into these matters.

Although the result of over two years of work, as more use is made of the system, improvements will be identified. To allow for this, changes and modifications to Annex F can be made and, under the auspices of WIPO, a change management board has been set up. In addition a Trilateral/WIPO XML Work Group meets twice a year to discuss progress, proposed modifications and further work to be done.

PatXML

Although the Annex F work addresses the standards needed to allow XML based patent application filing, the ease of use problem nonetheless remains. With today's word processors, an applicant can quickly and easily author a patent application and print the result for filing either on paper or as a PDF file. It is not technically possible to create a correctly structured XML document using this route. The document needs to be created in a structured fashion from the beginning. Although XML experts can do this using simple text editors, and some no doubt will, this is not a practical route for normal users.

To address this problem, the EPO has a product currently under development which we have called PatXML; this is Word® based XML authoring software (a Word® add-on). Mr Horns has mentioned the USPTO's „authoring tools to help the applicant prepare a patent specification in XML format.“ PatXML is similar and the USPTO have kindly agreed to apply their experiences in testing PatXML. PatXML sets up the application template to the format required by the EPC (margins, page size, etc – Rule 35); but we have also added font restrictions (another important point in Mr Horns paper), in fact, only one, Unicode, font is allowed and font size changes are also eliminated. These, and other, aids should reduce significantly many of the concerns raised in Mr Horns' paper on font types, font conversion and non-standard fonts.

We have always considered that a patent application is „not a layout but a data structure“ (Mr Horns) and for 17 years have treated applications as such reducing problems of „over specified“ documents. We are, of course, striving to prevent at all costs „another error-prone conversion step from word-processor file format to XML“ (Mr Horns)⁵. No XML expertise is expected of the author of the application with PatXML. The output, in XML, is, of course, 100 % PCT Annex F compliant. The JPO, USPTO and WIPO are also working hard towards the same goal. So, in the near future, we will have Annex F compliant patent applications (specifications) authored in, say, the USA filed with the USPTO and, later refilled with the EPO, JPO and WIPO (this scenario is common for tens of thousands of applications) – all with the same, or almost the same, data format/structure which could be published „as is“ in most cases. This scenario, known at the EPO under the tagline 'Draft once – File anywhere',

5 As stated already – no software is 100 % error free, it is possible to crash Word® which must have had millions of dollars spent on it.

would save considerable money, time and effort by all concerned.

The perfect scenario would, of course, be a 'pure' XML file, not converted from any format, and created using an XML editor or the like (Annex F compliant applications could be authored using any text editor such as Notepad for example). This is a solution being pursued by WIPO and we, the EPO, will not ignore their efforts; but, and it is a big but, to quote Mr Horns:

„A transition from a word processing software towards genuine XML editor software would be advantageous although such step surely will cause some headaches with regard to questions like the qualification of secretary staff usually doing the typing work in conjunction with the preparation of patent applications.“

The EPO will pursue the Annex F solution however, whether we like it or not, MS Word® is at the moment the most widely used word processor in the world and the one with which most attorney's offices and secretarial staff are trained and comfortable. PatXML allows authors to create patent applications using their familiar Word® software and yet remain 100 % compatible with Annex F XML.

To check the rendering or formatting of an Annex F XML file it can simply be reloaded into PatXML and then proof-read and printed from there. The XML file (plus any associated image data) will then be the legal filing and can be submitted using the *epoline*® OLF software. Of course, applicants will be free to continue to send the EPO documents in TIFF and PDF format. This flexibility, to allow applicants to choose the best format for their business needs, was something that the EPO has ensured is included in Annex F.

It is worth mentioning that the images included in a patent application are external to the XML file but

referenced from it – a topic not covered in Mr Horns' paper and the possible subject of another paper! It is open to the patent professional „to accept to do proof-reading directly on paper printouts showing the full XML mark-up structure“ (Mr Horns) but this still leaves the image data unreadable and uncheckable without some rendering software⁶.

If other Annex F solutions come on the market and are acceptable to the industry we will welcome them with open arms. We are not ruling out anything. If, say, a patent company has a document management system (based on Word® or other software) and it can output the final application in a 100 % Annex F XML validated format then that will be acceptable to the EPO (we will, of course, validate it on receipt against the master Annex F DTD).

Conclusion – *epoline*® – quo vadis?

I hope the above has clearly explained the EPO's plans for the future as far as patent application filing based on open standards is concerned. They follow almost exactly what Mr Horns' paper proposes and, again, we would like to thank Mr Horns for bringing these matters into the open. There are no easy questions and solutions. A lot also depends on the patent industry to look at the best way forward for modern patent filing⁷.

The EPO will always try to be in the forefront of patent data processing (we were the first patent office in the world to use SGML, the first to accept PCT applications via the Internet and the first to implement Annex F) and, like Mr Horns, we are convinced that the use of XML is the best way forward.

Review of „European and International Patent Applications“ by Klaus-Dieter Rippe and David Gough

B. Hansen (DE)

The present work is the revised English version (Date: mid-2002) of the second edition of a German language reference book on the procedure before the European Patent Office. This book provides extensive explanations concerning the entire grant procedure for European patent applications, the opposition- and appeal procedures that may subsequently follow, as well as the procedure under the Patent Cooperation Treaty. In the latter case, the book not only explains the procedures of the International phase, but it also provides an extensive overview of the entry into the European regional phase that follows. In addition to this general part, the book also contains an additional five chapters discussing in

detail specific issues of procedural law. Among these sections, those dealing with the topics „time limits – loss of rights – further processing – re-establishment of rights“ and „fees – administrative fees – costs – prices“

⁶ In all this debate, by the way, the most common markup language in the world is not mentioned – HTML. We may wonder at the ability of people to author marked up documents in XML but over the last tens years or so thousands of millions of Internet pages have been authored exactly like this – in HTML!

⁷ I do not think it would be an exaggeration to suggest that someone from the seventeenth century would find patents as printed today so remarkably different from documents of the time with their black and white line drawings etc. Should we open the debate on colour drawings and photographs, three-dimensional rotating molecular structures, videos of working engine parts, etc. – all possible with today's document software products?

may prove to be a particularly useful for the interested reader.

Each of the chapters in the general part is introduced by schematic diagrams illustrating the procedures within the European Patent Office. These diagrams, which are generally clear and easy to follow, illustrate the inside knowledge of the authors as they contain information concerning internal procedures, with which the practitioner outside the EPO may not be particularly familiar. This „insider information“ may lead to a deeper and more thorough understanding of the way the European Patent Office works, which could well be useful for the practitioner, for instance when trying to determine which department is competent at a particular stage of the proceedings. Other diagrams contain further useful information such as an overview of the most relevant time limits for European and International patent applications. This information seems to be ideally suited for beginners in the field of European patent law.

The individual chapters are arranged in a clear and logical order and the text of each chapter is well structured into short sub-sections. In addition, the book contains a detailed table of contents, so that the book may be well used as a convenient reference manual in everyday practice.

The texts of the book are well written and easy to understand, even for a newcomer to the field of patent law. They contain numerous references to the respective regulations (e.g. in the EPC or in the PCT), as well as further references to publications of the European Patent Office and to European case law. Moreover, most of the chapters of the present book are supplemented by an annex containing various EPO forms and communications that are discussed in the corresponding texts. Some of the forms already contain the information to be filled-in by the applicant, which could be of particular help for an inexperienced user. It is, on the other hand, arguable whether the reproduction of many of the EPO communications will be of particular use for the reader because, under normal circumstances, the same or similar official communications will already be present in the files of the reader. Another minor inconvenience in this respect is the fact that the text does not always indicate whether an EPO form is reproduced in the corresponding annex. The annex to chapter V contains, for instance, copies of the EPO Forms 2004 (Communication under

Rule 51(4) EPC) and 2006 (Decision to Grant). The corresponding text on page 296 indicates for the latter form that it is found in the „Annex to Chapter V“, but it does not provide such an information for the Form 2004.

The annexes to the later sections relating to specific topics of procedural law appear to be of more interest for the user as these contain, for instance, standard letters (e.g. a request for transfer of a European patent application and a request for further processing), which are likely to be of particular use for newcomers to the field of European patent law and/or people who do not deal with European patent law on a daily basis, such as employees in a legal department of a company. Similarly, the annex to the section on terms appears very useful for the inexperienced practitioner as it contains various model scenarios including questions and answers and also the corresponding model requests. The annex furthermore contains a useful summary of the European case law on this issue, which is well structured by keywords that are listed at the beginning of this annex. Unfortunately, these keywords (or at least a general reference to the annex under the keyword „loss of rights“) do not seem to be found in the general index at the end of the book.

The large format, the clear presentation and structuring of the texts, as well as the easily comprehensible language make it a pleasure to read or to make use of the book as a reference work. It can therefore be recommended without hesitation for patent law firms and patent departments or law departments of companies. Moreover, it could prove to be a good introduction and textbook on European patent law for patent attorney trainees, for instance when preparing for the European qualifying examination. The book appears to be particularly well suited for readers (such as legal departments of companies or private inventors) dealing repeatedly but not constantly with the European Patent Office. For this group the present work would be ideal, providing a rich source of information, especially in combination with the relevant legal texts, EPC and PCT, and, if necessary, the information found on the EPO website.

In summary, it is trusted that the present work will provide a useful basis for understanding the European patent practice and working with the European Patent Office for many readers of varying degrees of expertise.

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