



Institut der beim Europäischen Patentamt zugelassenen Vertreter
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Ausschuss für Europäische Patentpraxis
European Patent Practice Committee
Commission pour la Pratique du Brevet Européen

Minutes (taken by epi ICT committee)
epi-ICT Committee & EPO Directors

30 October 2018
09h00-15h00
PH1724

epi participants

1. Terhi Marjut Anneli Honkasalo
2. Andrea Perronace
3. Michael Fleuchaus - Chair ICT subgroup
4. Marek Bury
5. Emmanuel Samuelides
6. Conor Boyce
7. Matteo Pes
8. Tarik Kapić
9. Till Burkert
10. Peter Bittner
11. Julian Peter Asquith
12. Christopher Paul Mercer - Chair EPPC
13. Samuel Denis
14. Ausra Pakeniene
15. Sonja Cooper

EPO's participants

16. Grant Philpott - Chief Operating Officer Information & Communications Technology (ICT)
17. Elvanda Mece – Administrator International & European Cooperation
18. John Beatty - Director Patent Procedures Management
19. Piotr Wierzejewski - Quality Management Specialist
20. Doris Thums - Head of Department Patent Law
21. Pia Björk - Director European Patent Academy
22. Francesco Zaccà - Principal Director Operations Information & Communications Technology (ICT)
23. Luc De Vos - Director Information & Communications Technology (ICT)
24. Gerry Van Dooren - Director Information & Communications Technology (ICT)
25. Koen Lievens - Director Information & Communications Technology (ICT)
26. Yannis Skulikaris - Director Information & Communications Technology (ICT)
27. Christian Platzer - Director Information & Communications Technology (ICT)
28. André Werner - Director Information & Communications Technology (ICT)
29. Argyrios Bailas - Director Information & Communications Technology (ICT)
30. Jacques Spettel - Director Information & Communications Technology (ICT)
31. Yasemin Türkeli - Examiner Information & Communications Technology (ICT)
32. Markus Volkmer - Examiner Information & Communications Technology (ICT)
33. Gareth Lord - Director Mobility & Mechatronics (M&M)
34. Eve-Marie Mayer-Martin - Director Health, Biotechnologies and Chemistry (HBC)

[Agenda topics, and wording from the Agenda for the meeting, are generally shown below using underlining.]

Grant Philpott opened the meeting, noting that this was the 6th such annual meeting, and mentioning that feedback was welcomed by the EPO at any time during the year.

Report by Pia Bjork (European Patent Academy)

Before the following agenda items were discussed, Pia Bjork gave a report, which included discussion of the recent AI event held at the EPO in Munich, and a forthcoming Blockchain event (on 04/12/18 at The Hague).

Pia also indicated that next year the EPO may hold a similar event on 3D printing.

1 Feedback and discussion on the CII guidelines (version October 2018, in force November 2018)

Yasemin Turkeli (Examiner) gave the following presentation.

1.1 Presentation/overview of main changes of 2018 release of CII guidelines (EPO, Yasemin Türkeli, 1 h)



G_II.3.3_3.7 changes
for epi meeting (2).pd

It was mentioned that no further major revision of the Guidelines is expected in the next 2 to 3 years.

The guidelines have been revised to incorporate case law.

Many topics were covered in the presentation, and a few are noted below.

It was noted that in relation to a mathematical method the necessary technical effect can arise either 1) through a technical application of the method, or 2) through a technical implementation of the method (for example where the method improves the performance of a computing device). This is the so-called 2-D approach.

It was noted that circumventing a technical problem does not provide the necessary technical effect.

It was noted that a method may still constitute a mental act (as such) if the steps, even if complex, can be done mentally, and no computing means is specified.

1.2 Guidelines November 2018 (G-II 3.3, paras. 2 and 4): Technical data and technical means: In the Vicom decision, the Board clarified that technicality of the data, together with digital processing, do contribute to technical character. This should be reflected in the Guidelines (epi)

Yasemin Turkeli noted that the use of technical data *alone* is not sufficient to make an invention technical, and noted the Vicom decision required both technical input data and technical output data, processed by technical means (e.g. a computer).

The use of technical data may be enough to show that the method is not a mathematical method as such, but the method could still constitute a mental act unless the claim also indicates that the method is computer implemented.

1.3 Briefing on AI examining practice – Discussion, introduction by Koen Lievens (EPO)



Math methods and AI
and EPO practice for A

It was noted that a neural network, in itself, is an (abstract) algorithm, and therefore not technical. The method must therefore be computer implemented to be technical.

1.4 Guidelines November 2018 (G-II 3.3.1, paras. 1 and 2): Standard terminology in Artificial Intelligence must not be rendered irrelevant so as to avoid clarity problems – as seen in areas of CII. The term "AI" – and other listed terms – may encompass non-technical and technical meanings and therefore this must be assessed on a case-by-case basis (epi)

epi submitted that the following passage proposed for the 2019 Guidelines Section 3.3.1 was not deemed helpful – especially in its use of the word “usually”:

When examining whether the claimed subject-matter has technical character as a whole (Art. 52(1), (2) and (3)), expressions like “support vector machine”, “reasoning engine” or “neural network” are looked at carefully, because they usually refer to abstract models devoid of technical character.

It was suggested that this passage should be deleted or revised.

Similarly, it has been proposed to redact the introductory paragraph of section 3.3.1 as follows to make the EPO approach to AI more certain:

Artificial intelligence and machine learning are based on computational models and algorithms for classification, clustering, regression and dimensionality reduction, such as neural networks, genetic algorithms, support vector machines, k-means, kernel regression and discriminant analysis. The guidance provided in G-II, 3.3 generally applies also to such computational models and algorithms.

2 Examination practice: Insufficiently substantiated novelty rejections in ESOP and first OAs, with exemplary reference to decision T 0678/14 (Data-warehouse application programs/SAP). Further examples are also presented; see attached support document (epi)



Support for
insufficiently reasoned

The degree to which subclaims are examined in detail by examiners was discussed.

epi noted the increased extent to which EPO Examiners are flagging potentially allowable subject matter from within dependent claims and even the description. This shift in approach and the effort involved on behalf of Examiners is much appreciated by users.

It was noted that the EPO welcomes feedback, which can be provided via the complaints procedure. All complaints and replies thereto are placed in the public part of the file.

Peter Bittner (**epi**) noted that he had filed a complaint, but felt that this had subsequently created a difficult atmosphere with the examiners.

Complaints deal only with procedural issues, and cannot determine the substantive issues of an application.

Grant Philpott noted that he reads the replies to all complaints. He also mentioned that the current EPO President is looking at creating a measure of the complexity of each file, so that files may, for example, be given different amounts of resources.

It was suggested that it may be helpful to rename the complaints procedure as a feedback procedure. It was noted that the EPO is already looking into this.

However, it is appreciated that the EPO as an ISO organization must have a complaints department.

3 Future improvements (epi)

3.1 Algorithmic improvement of efficiency or speed as a technical problem/solution. In an ever more digital world, algorithms play an increasing role – how can an understanding of the technical nature of algorithmic development be honed?

It was noted that algorithmic improvement can be technical if linked to the functioning of the computer.

However, an examination board may not always find the improvement (for example in processing speed) to be plausible, and in such cases the claim may be refused as being speculative.

Simply making software run fast may not be sufficient to overcome the first hurdle (i.e. patentability). However, where the first hurdle has been overcome, an increase in speed can contribute to the second hurdle (i.e. inventive step).

There was discussion about how to increase the clarity of guideline 3.3.

3.2 Object recognition in images being conceptually similar to semantics analysis in text (e.g. in speech recognition applications). Both should represent technical problems/solutions - where is the difference?

There was not time to discuss this in the meeting, and it was deferred to the next meeting.

4 Revisited (epi)

4.1 Current state of the Examination/Search backlog. Expectation when backlog ceases? Status updates from early certainty

Grant Philpott provided the following median figures:

Search = 4.8 months

Examination = 22.1 months

Opposition = 21.1 months

It is noted that the EPO wishes to achieve a faster median examination time, however, **epi** wished to ensure that this would not be achieved at the cost of quality or overly pressuring Examiners into concluding examination.

4.2 Statistics on outcome of ViCo OP vs. face-to-face OP

It was confirmed in the meeting that a room is always available for the whole day in the case of opposition oral proceedings.

5 ICT communication plan, participation in conferences, recent scoping events, recent AI event (May 30), upcoming blockchain event (October 22) (EPO)

6 Our quality actions in ICT (EPO)

The EPO uses the ISO 9001 system. Every staff member at the EPO receives quality objectives.



The EPO quality department was encouraged to extend its review to encompass A94(3) communications as a way to ensure balanced control of Examiners' approach to assessing compliance with A123(2).

7 AOB

Grant Philpott proposed to again invite this **epi** committee to meet with the EPO next year.

Minutes initial draft:
Julian Asquith

Amendments by:
Marjut Honkasalo
Conor Boys
Peter Bittner
Michael Fleuchaus