

Institut der beim Europäischen
Patentamt zugelassenen Vertreter

Institute of Professional Representatives
before the European Patent Office

Institut des mandataires agréés près
l'Office européen des brevets

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Editorial

T. Johnson (GB)

By the time our readers receive this issue 2011 will be well underway. However, we on the Editorial Committee take this opportunity of wishing all our readers a happy, healthy and prosperous 2011, and hope that you all had a good holiday season.

Without wishing to look back, 2010 was momentous in that Benoit Battistelli took over as President of the EPO, and has slipped effortlessly into the role. Two new EPO Vice-Presidents, Willy Minnoye and Raimund Lutz were appointed, both formally taking office on 1 January 2011. We wish them all well. 2010 also saw the publication of reports of several interviews we had with luminaries of the patent world, and we thank them all for their time, trouble and patience in making valuable contributions to our Journal, and particularly to those from the EPO, who enhanced our understanding of the Office and its inner workings. We continue this trend into 2011 with our interview with Hans-Christian Haugg, Director, EPO Legal Division in this issue.

2011 may prove significant in that further progress could be made towards a European Union Patent. We shall see. However, the initiative of President Battistelli in inaugurating a machine translation programme could

smooth the way forward. Also, the European Commission has proposed „enhanced co-operation“ whereby some Member States can co-operate on the grant of a unitary patent, though the European Parliament has to approve the proposal.

2011 will also be a year of change for the *epi* in that a new Council will take office at the Dublin council meeting in May. Indeed, the results of the Council elections are published in this issue.

Our members will also be interested in the fourteenth edition of the EPC now published at: <http://www.epo.org/law-practice/legal-texts/epc.html>.

So, a lot of issues for us all to get our teeth into in 2011. The Editorial Committee certainly could not hope to do so without the help and support of the Secretariat to whom we owe a great debt of thanks for past endeavours and, we trust, future support!

They say that New Year's resolutions are made to be broken. We on the Committee nevertheless plan not to break our Resolution to provide you, dear members and readers, with a Journal during 2011 which you find of relevance, and above all, of interest. No doubt you will let us know if you find our Resolution being broken!

Nächster Redaktionsschluss für epi Information

Informieren Sie bitte den Redaktionssausschuss so früh wie möglich über das Thema, das Sie veröffentlichen möchten. Redaktionsschluss für die nächste Ausgabe der epi Information ist der **9. Mai 2011**. Die Dokumente, die veröffentlicht werden sollen, müssen bis zum diesem Datum im Sekretariat eingegangen sein.

Next deadline for epi Information

Please inform the Editorial Committee as soon as possible about the subject you want to publish. Deadline for the next issue of epi Information is **9th May, 2011**. Documents for publication should have reached the Secretariat by this date.

Prochaine date limite pour epi Information

Veillez informer la Commission de rédaction le plus tôt possible du sujet que vous souhaitez publier. La date limite de remise des documents pour le prochain numéro de epi Information est le **9 mai 2011**. Les textes destinés à la publication devront être reçus par le Secrétariat avant cette date.

Interview with Hans-Christian Haugg Director, Legal Division, EPO Munich, 22 November 2010

K. Finnilä, T. Johnson (Reporter)

Kim Finnilä and your reporter had the pleasure of meeting Hans-Christian Haugg to discuss the role of the Legal Division of the EPO within the framework of European patent law. A set of guideline questions/topics were submitted to Mr Haugg in advance of our meeting and are set out at the end of this report.



The Legal Division of the EPO is established under Article 15(e) EPC, its role being set out in Article 20 EPC, which defines the Legal Division as being responsible for decisions relating to entries in the Register of European Patents and issues relating to the List of professional representatives. Articles 133 and 134 EPC outline the general principles concerning representation. In his decision on the responsibilities of the Legal Division, the President of the EPO has furthermore conclusively listed all matters to be dealt with by the Legal Division.

A lawyer by education, Mr Haugg has worked at the EPO for more than 15 years. He had experience in the Patent Law Department, and was a member of the task force when the Diplomatic Conference for the revision of the EPC was prepared. He also served as legal expert in the Secretariat of the Administrative Council for 5 years before moving back to the Legal Division in the year 2004, where he has been Director since his appointment to that post in 2010.

One of his first activities in this capacity was to restructure the organisation of his department to improve workflow and quality of working results. For this purpose he set up two units, one being concerned with representation and the other dealing with entries in the European Patent Register. Mr Haugg explained that the new structural format aims to allow for flexibility in reacting to workload needs and ensures more efficiency in terms of working methods. These positive effects are of a particular advantage especially in times of special peaks of workload which occur regularly e.g. when registrations of successful candidates of the European Qualifying Examination have to be performed or when a lot of applications or patents are affected by the decision to stay or interrupt proceedings. Each unit is composed of so called Legal Administrative Employees, highly specialised experts in their fields, who handle all adminis-

trative aspects of a case, and legally qualified members (lawyers) responsible for the decision-making process, including oral proceedings. Mr Haugg kindly provided an organigram showing the new structure of the Legal Division which appears at the end of this report. Following this, Mr Haugg then described the activities of the two units which were mainly covered by topics 1-4 of the agenda.

Unit 1 is responsible for all matters relating to representation. As of the day of the meeting there were 10, 104 *epi* members on the List of professional representatives. The Legal Division examines the requirements for being entered on the List of professional representatives as well as follows up all respective data. Those are the data which are published, and which serve as the official contact data of any professional representative. The same unit also registers legal practitioners entitled to represent before the EPO, of whom there are just less than 1500. Before legal practitioners may act as representatives in proceedings before the EPO, they must prove to the Legal Division that they are entitled to act in patent matters before their national industrial property office and that they are members of the national bar association. In addition to these representatives, there are about 300 patent law firms, which are registered as „associations of representatives“ within the meaning of Rule 152(11) EPC. According to the established practice of the EPO only professional representatives are actually entitled to become a member of an association.

Mr Haugg drew to our attention to the fact that his Division is also responsible for the registration procedure of professional representatives coming from newly acceded Contracting States. This comprises often giving seminars relating to the so-called „grandfather clause“, the rights and duties of European patent attorneys and their disciplinary obligations, in particular set by the provisions under the Professional Code of Conduct.

In addition to the data of those being entitled to act as representatives before the EPO the Legal Division also administers, to a certain extent, the instruments on which representation is legally based – (general) authorisations or powers of attorney. There are about 56 000 of such general powers of attorney in existence – although not all of them are currently in use. Nevertheless, they have to be dealt with, mainly by updating and archiving.

Unit 2 is concerned with all matters affecting an application/patent as an object of property. Against this background, there is a wide-ranging variety of tasks, including the verification of the correctness of assignments, licenses

and security rights. In cases of entitlement disputes initiated before national courts, the Legal Division stays proceedings to preserve the status quo for the benefit of the lawful owner. Another tool to prevent an applicant from loss of rights is the interruption of proceedings before the EPO. This is reverted to in cases where the applicant can no longer take legally valid actions, e.g. because of bankruptcy. During 2009, Mr Haugg informed us, that due to the recent economic crisis the number of bankruptcy cases has increased by more than 600%. (*Our readers should be aware of the possibility of using this „interruption“ procedure, which could be a boon to certain of their clients.*) In both cases of stay and interruption of proceedings the Legal Division, in principle, decides ex officio. If the opinion of the Legal Division is challenged by one of the involved parties, oral proceedings or the issue of an appealable decision may be requested.

Mr Haugg has inaugurated a project to review processes and procedures with the aim of reducing bureaucracy in practice for both sides, i. e. the EPO as well as the parties involved, and to increase the transparency of working methods. This can be achieved by modernising forms and harmonising work, on occasions in close cooperation with epi, e.g. by the setting up of a data exchange system between epi and the EPO to avoid duplication of work in relation to the List of professional representatives. This can also be reinforced by the fact that members of the Legal Division now participate in a working group liaising with other departments in relation to the different publications of the EPO in order to provide concise and complete information to users of the patent system.

Regarding the question of a distinction between „legal“ and „administrative“ issues Mr Haugg's directorate is primarily concerned with legal matters but this consequently gives rise to administrative matters. However, the term „Patent Administration“ is currently not used for the official title of the department, as this dates back to the time when the Community Patent was under discussion. Mr. Haugg pointed out that the Legal Division fully shares the idea of the implementation of a EU Patent system and confirmed that, should the EU Patent enter into force one day, the Legal Division of the EPO would be prepared to take over responsibility for the administration of the EU Patent if so decided. Concerning representation before the EU Patent Court Mr Haugg said that he believed that the regime of representation before the EU Patent Court is still an open question. The Court will have its independent system and its own Registrar(s), but the EPO's list of representatives could be a useful tool for the Court, and thus the Legal Division of the EPO could be well-placed to assist it in this legal matter.

Turning to topic 6, as the Legal Division naturally also handles so-called Euro-PCT applications the daily work of the Division, inter alia, is affected by provisions under the PCT and PLT and their impact on practice according to EPC regulations. Taking into consideration that there are some different legal approaches regarding representation, transfer of rights, licences, etc. established by these legal instruments close cooperation with the IB of WIPO is required to ensure consistent and transparent

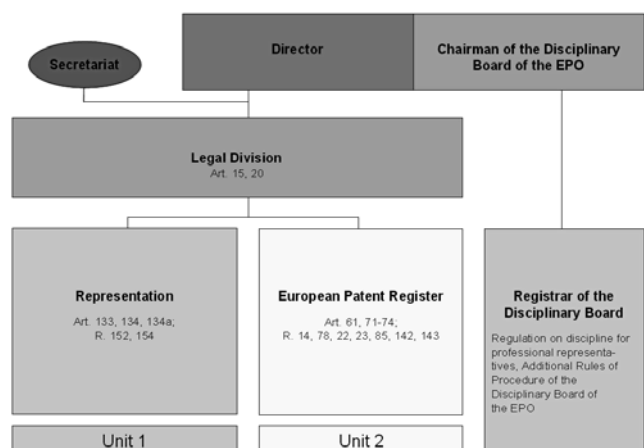
application of law. By liaising with WIPO the Division acts, for example, to find appropriate practical solutions in cases where these different legal standards affect each other, e.g. on the situation of stay and interruption of proceedings in cases where loss of rights may arise at the moment when entry into the regional phase is performed. The work of the Legal Division at times also involves questions relating to EU law, e.g. on the freedom of provisions of services when a European patent attorney wishes to establish a place of business in a EU Member State other than his home country.

Finally, concerning topic 7, Mr Haugg gave his view that co-operation between the Legal Division and the epi is extremely important for the EPO, particularly regarding the List of professional representatives. Indeed, considering its wide-ranging network of contacts at the operational level, cooperation between the Legal Division and the epi could be intensified, e.g. by support for designing the relevant documents as well as by organising information tools in the newly acceding states.

Coming back to the organigram, it should be noted that the Disciplinary Board of the EPO is not a special unit of the Legal Division. However Mr Haugg is Chairman of the Board and the Registrar of this body belongs to his department. The Legal Division actually has 12 staff members.

Finally, Mr Haugg invited epi to communicate its concerns and needs to the Legal Division and to that effect suggested that regular meetings with the epi on both managerial and working levels would benefit the EPO and users of the system.

Accordingly, on behalf of the epi, Mr Haugg was thanked for his generous provision of time both in preparation for and during the interview, which we found to be both extremely informative and interesting and believe will be equally so for our members.



Topics:

1. What would you consider to be the „Term of Reference“ of your post?
2. Your title is Director, Legal Division/Administration. Can you tell us how much is „legal“ and how much is „administrative“?

3. Leading on from question 2, can you say how these two aspects of your job interrelate?
4. These areas covered by your post are important to the IP system in Europe. Can you say how these areas relate directly or indirectly to the epi, the patent profession in general, and applicants?
5. Will your Division be responsible for any aspects relating to the prosecution and grant of the EU patent and the EEUPC, should they come into existence?
6. Does your Division have interrelation to other organisations such as WIPO and the USPTO? In other words, is there an international; aspect to the work of your Division?
7. Leading on from question 4, how can the epi assist, if at all, in your Division's work?

Ergebnisse der Wahl zum sechszehnten Rat

Hinweis

Mitglieder des Instituts, die gegen das Wahlergebnis Einwände erheben möchten, müssen ihre schriftlichen Einwände bis spätestens **29. März 2011** beim Sekretariat des Instituts einreichen. Dies kann per Telefax geschehen. Später eingehende Einwände werden nicht berücksichtigt.

Ich danke den Mitgliedern des Wahlausschusses, den Herren H.H. Breiter, M.A. Müller und A. Vilhjálmsón für ihren Einsatz.

Results of the election to the sixteenth Council

Notice

Members of the Institute wishing to object against the election results must submit their written objection to reach the Secretariat of the Institute by **29 March 2011** at the latest. Telefax will be accepted. Any objections reaching the Institute after this date will not be taken into consideration.

I thank the members of the Election Committee, Messrs. H.H. Breiter, M.A. Müller and A. Vilhjálmsón for their commitment.

Résultats de l'élection au seizième Conseil

Note

Les membres de l'Institut désirant contester les résultats de l'élection doivent faire parvenir leurs objections par écrit au Secrétariat de l'Institut avant le **29 mars 2011** au plus tard. Les télécopies sont acceptées. Toute objection parvenant à l'Institut après cette date ne sera plus prise en considération.

Je remercie les membres de la Commission Electorale, MM. H. Breiter, M.A. Müller et A. Vilhjálmsón pour leur engagement.

P.G. Maué

Generalsekretär/Secretary General/Secrétaire Général

Erläuterung · Legend · Légende

- | | | |
|-------------------------------------|--|--|
| * stood as substitute only | * haben erklärt, ihre Wahl nur als stellvertretendes Mitglied anzunehmen | * éligible comme suppléant uniquement |
| ** tie vote position decided by lot | ** Losentscheid bei gleicher Stimmenzahl | ** classement par tirage au sort à égalité de voix |

AL – ALBANIA

Sent ballots: 11 Participation: 63,6 %

Unitary	KOLA-TAJFAJ Flutura	1	<i>Substitute members</i>
Received ballots: 7	NIKA Vladimir	3	1. DODBIBA Eno**
Valid ballots: 6	RULI Alban	1	2. KOLA-TAJFAJ Flutura**
Void ballots: 1	Allotment of seats		
	<i>Full members</i>		
ARSENI MEÇAJ Aleksandra	2		
DEGA Fatos	1		
DODBIBA Eno	2		
	1. NIKA Vladimir	3	
	2. ARSENI MEÇAJ Aleksandra**	2	

AT – ÖSTERREICH

Ausgeteilte Stimmzettel: 120 Wahlbeteiligung: 52,5 %

Anderweitig Tätige	2. SCHRITTWIESER Waltraud	10	VINAZZER Edith	12
Eingegangene Stimmzettel: 20	<i>Stellvertretende Mitglieder</i>		Sitzverteilung	
Gültige Stimmzettel: 19	1. BRUNNBAUER Gerhard*	13	<i>Ordentliche Mitglieder</i>	
Ungültige Stimmzettel: 1	2. HARRINGER Thomas*	12	1. FORSTHUBER Martin	34
	Freiberufler		2. HARRER-REDL Dagmar	24
BRUNNBAUER Gerhard*	Eingegangene Stimmzettel: 43		<i>Stellvertretende Mitglieder</i>	
HARRINGER Thomas*	Gültige Stimmzettel: 42		1. BARGER Werner*	29
KRAUSE Peter	Ungültige Stimmzettel: 1		2. ISRAILOFF Peter	23
SCHRITTWIESER Waltraud	BARGER Werner*	29		
SCHWEINZER Friedrich	FORSTHUBER Martin	34		
	HARRER-REDL Dagmar	24		
Sitzverteilung	ISRAILOFF Peter	23		
<i>Ordentliche Mitglieder</i>				
1. SCHWEINZER Friedrich	14			

BE – BELGIQUE

Bulletins envoyés: 172 Participation: 64,5 %

Autre titre	<i>Membres suppléants</i>	Répartition des sièges	
Bulletins reçus: 65	1. VOORTMANS Gilbert J.L.	27	
Bulletins valables: 58	2. JANTSCHY Jasmin*	20	
Bulletins nuls: 7	Profession libérale	<i>Membres titulaires</i>	
	Bulletins reçus: 46	1. QUINTELIER Claude	22
DE CORTE Filip Alois Julia	Bulletins valables: 37	2. VAN MALDEREN Joëlle	21
JANTSCHY Jasmin*	Bulletins nuls: 9	<i>Membres suppléants</i>	
LEYDER Francis	DE CLERCQ Ann G.Y.	1. DE CLERCQ Ann G.Y.	16
VOORTMANS Gilbert J.L.	KRAFT Henricus Johannes***	2. LEHERTE Georges*	15
	LEHERTE Georges*	<i>*** candidature withdrawn 23.02.2011</i>	
Répartition des sièges	LUYS Marie-José A.H.*		
<i>Membres titulaires</i>	QUINTELIER Claude		
1. LEYDER Francis	VAN MALDEREN Joëlle		
2. DE CORTE Filip Alois Julia	35		

BG – BULGARIA

Sent ballots: 72 Participation: 48,6 %

Unitary			
Received ballots: 35			
Valid ballots: 34			
Void ballots: 1			
ANDREEVA Natasha Petkova	23	KOSSEV Lubomir Iliev	4
CHILIKOV Alexy Atanasov	4	KOSSEVA Radislava Andreeva	23
DARAKTSCHIEW Todor		KOSTADINOVA Rossitsa	
Dotschew	6	Kirilova	1
GANCHEVA Yordanka Hristova	2	MARINOV Marian Kalchev	0
GENOVA Svetlana Ivanova	11	NEYKOV Neyko Hristov	17
GEORGIEVA-TABAKOVA		PAKIDANSKA Ivanka	
Milena Lubenova	8	Slavcheva	18
ILARIONOV Pavko Jordanov	11	PENDICHEV Vesel Angelov	19
IVANOV Ivan Nikolov	6	SHENTOVA Violeta Varbanova	21
KOLCHEVA Petja Stanimirova	2	SIMOV Slavcho Malinov	12
		STEFANOVA Stanislava	
		Hristova	24
		STOYANOV Todor Nikolov	11
		VINAROVA Emilia Zdravkova	9

Allotment of seats

Full members

1. STEFANOVA Stanislava Hristova	24
2. ANDREEVA Natasha Petkova	23
3. KOSSEVA Radislava Andreeva	23
4. SHENTOVA Violeta Varbanova	21

Substitute members

1. PENDICHEV Vesel Angelov	19
2. PAKIDANSKA Ivanka Slavcheva	18
3. NEYKOV Neyko Hristov	17
4. SIMOV Slavcho Malinov	12

CH – SCHWEIZ

Ausgeteilte Stimmzettel/ Bulletins envoyés: 430

Wahlbeteiligung/Participation: 47,2 %

Anderweitig Tätige/Autre titre			
Eingegangene Stimmzettel/ Bulletins reçus: 117			
Gültige Stimmzettel/ Bulletins valables: 116			
Ungültige Stimmzettel/ Bulletins nuls: 1			
BERNER Thomas	25	Sitzverteilung/ Répartition des sièges	
BERNHARDT Wolfgang*	49	<i>Ordentliche Mitglieder/ Membres titulaires</i>	
BLÖCHLE Hans	37	1. THOMSEN Peter René	67
DALE Gavin Christopher	13	2. KLEY Hansjörg	42
DE LUCA Giampiero	15	<i>Stellvertretende Mitglieder/ Membres suppléants</i>	
FAVRE Nicolas	27	1. MAUÉ Paul Georg*	76
KLEY Hansjörg	42	2. BERNHARDT Wolfgang*	49
MAUÉ Paul Georg*	76	Freiberufler/ Profession libérale	
THOMSEN Peter René	67	Eingegangene Stimmzettel/ Bulletins reçus: 86	
		Gültige Stimmzettel/ Bulletins valables: 84	
		Ungültige Stimmzettel/ Bulletins nuls: 2	
		Sitzverteilung/ Répartition des sièges	
		<i>Ordentliche Mitglieder/ Membres titulaires</i>	
		1. LIEBETANZ Michael	66
		2. BRAUN André jr.	64
		<i>Stellvertretende Mitglieder/ Membres suppléants</i>	
		1. BRUNNER Pirmin*	56
		2. REUTELER Raymond Werner*	51

CY – CYPRUS

Sent ballots: 12

Participation: 66,7 %

Unitary			
Received ballots: 8			
Valid ballots: 8			
Void ballots: 0			
		CHRYSOSTOMIDES Eleni	3
		MARKIDES Hermione A.	3
		THEODOULOU Christos A.	4
		Allotment of seats	
		<i>Full members</i>	
		1. THEODOULOU Christos A.	4
		2. CHRYSOSTOMIDES Eleni**	3
		<i>Substitute member</i>	
		1. MARKIDES Hermione A.**	3

CZ – CZECH REPUBLIC

Sent ballots: 105 Participation: 46,7 %

Unitary			
Received ballots: 49	HAK Roman*	26	2. GUTTMANN Michael 38
Valid ballots: 48	HALAXOVA Eva	23	3. ZAK Vitezslav 33
Void ballots: 1	HOLASOVA Hana	24	4. HOLASOVA Hana 24
	KANIA Frantisek	39	<i>Substitute members</i>
	MALUSEK Jiri	20	1. HAINZ Miloslav* 26
	ZAK Vitezslav	33	2. HAK Roman* 26
BUCEK Roman 19			3. HALAXOVA Eva 23
DANEK Vilém 5	Allotment of seats		4. MALUSEK Jiri 20
FISCHER Michael* 15	<i>Full members</i>		
GUTTMANN Michal 38	1. KANIA Frantisek 39		
HAINZ Miloslav* 26			

DE – DEUTSCHLAND

Ausgeteilte Stimmzettel: 3358 Wahlbeteiligung: 36,2 %

Anderweitig Tätige	<i>Stellvertretende Mitglieder</i>		
Eingegangene Stimmzettel: 387	1. VÖLGER Silke Beatrix 176		METZGER Martin Robert 43
Gültige Stimmzettel: 384	2. HEINZELMANN Ingo 156		RAUH Hannelore 134
Ungültige Stimmzettel: 3	3. SZYMANOWSKI Carsten 98		RAYKOWSKI Marcus 27
			RUPP Christian 149
GELLNER Bernd* 71	Freiberufler		SACHS Rudolf Erhardt 30
GRÜNBERGER Christian Thomas* 48	Eingegangene Stimmzettel: 827		SCHMELCHER Thilo 48
HEINZELMANN Ingo 156	Gültige Stimmzettel: 811		SCHORR Frank Jürgen 52
MOHSLER Gabriele 191	Ungültige Stimmzettel: 16		SPRINGORUM Harald 83
RICHLY Erik* 51	AUFHAUSER Christoph 105		STRAUBE Urs Norman 31
SAUER Henning* 63	BANSE Klaus-Dieter 94		VÄISÄNEN Olli Jaakko 68
STEILING Lothar 245	BOCKHORN Josef 162		VOGELANG-WENKE Heike 266
SZYMANOWSKI Carsten 98	FELGEL-FARNHOLZ		WINTER Konrad Theodor 101
TÜNGLER Eberhard 86	Wolf-Dieter 121		
VÖLGER Silke Beatrix 176	GERSTEIN Hans Joachim 115		Sitzverteilung
ZACHARIAS Frank L. 200	GODEMEYER Thomas 94		<i>Ordentliche Mitglieder</i>
	JANSSEN Bernd Christian 98		1. LEISSLER-GERSTL Gabriele 388
	KLEMM Rolf 64		2. MAIKOWSKI Michael 350
	KUNST Manuel Nikolaus		3. VOGELANG-WENKE Heike 266
	Johannes 32		
	LEISSLER-GERSTL Gabriele 388		<i>Stellvertretende Mitglieder</i>
	MAIKOWSKI Michael 350		1. BOCKHORN Josef 162
	MENGES Christian Alexander 77		2. RUPP Christian 149
			3. RAUH Hannelore 134
Sitzverteilung			
<i>Ordentliche Mitglieder</i>			
1. STEILING Lothar 245			
2. ZACHARIAS Frank L. 200			
3. MOHSLER Gabriele 191			

DK – DENMARK

Sent ballots: 186 Participation: 54,8 %

Other capacity	Allotment of seats		<i>Substitute members</i>
Received ballots: 36	<i>Full members</i>		1. PEDERSEN Soeren Skovgaard 7
Valid ballots: 31	1. JENSEN Bo Hammer 18		Private practice
Void ballots: 5	2. ABILDGREN Michael Padkjaer 17		Received ballots: 66
ABILDGREN Michael Padkjaer 17			Valid ballots: 61
JENSEN Bo Hammer 18			Void ballots: 5
PEDERSEN Soeren Skovgaard 7			

HEGNER Anette	12	Allotment of seats	<i>Substitute members</i>		
HØIBERG Susanne	18				
INDAHL Peter Jensen	22	<i>Full members</i>	1. INDAHL Peter Jensen	22	
KOEFOED Peter	23	1. SCHOUBOE Anne	25	2. HØIBERG Susanne	18
SCHOUBOE Anne	25	2. KOEFOED Peter	23		
WADSKOV-HANSEN Steen					
Lyders Lerche	8				

EE – ESTONIA

Sent ballots: 29 Participation: 72,4 %

Unitary		OSTRAT Jaak	19	2. OSTRAT Jaak	19
Received ballots: 21		PIKKOR Riho*	12	3. NELSAS Tõnu	17
Valid ballots: 21		SARAP Margus	21	4. KOPPEL Mart Enn**	14
Void ballots: 0		TOOME Jürgen	8	<i>Substitute members</i>	
		URGAS Enn	14	1. URGAS Enn**	14
KAHU Sirje	12	Allotment of seats	<i>Full members</i>	2. KAHU Sirje	12
KOITEL Raivo	8			3. PIKKOR Riho*	12
KOPPEL Mart Enn	14	1. SARAP Margus	21	4. TOOME Jürgen**	8
NELSAS Tõnu	17				

ES – SPAIN

Sent ballots: 169 Participation: 42,6 %

Unitary		IGARTUA Ismael*	29	3. ELOSEGUI DE LA	
Received ballots: 72		MOHAMMADIAN Dario	6	PENA Inigo	30
Valid ballots: 67		MORGADES Y MANONELLES		4. SAEZ GRANERO	
Void ballots: 5		Juan Antonio*	24	Francisco Javier	29
		PI Rafael***	15	<i>Substitute members</i>	
ARIAS SANZ Juan	21	SAEZ GRANERO Francisco		1. CURELL AGUILÁ Marcelino*	35
ARMIJO NAVARRO-REVERTER		Javier	29	2. IGARTUA Ismael*	29
Enrique	34	STIEBE Lars Magnus	22	3. BARLOCCI Anna	24
BARLOCCI Anna	24	SUGRANES MOLINÉ Pedro	20	4. MORGADES Y MANONELLES	
BERNARDO NORIEGA		VILALTA JUVANTENY Luis	11	Juan Antonio*	24
Francisco	21	Allotment of seats	<i>Full members</i>	*** Candidate did not wish to stand for election; deletion of erroneous nomination lost on transmission	
CURELL AGUILÁ Marcelino*	35			1. ARMIJO NAVARRO-REVERTER Enrique	34
DURÁN MOYA Luis-Alfonso	31	2. DURÁN MOYA Luis-Alfonso	31		
DURVILLE Guillaume	14				
ELOSEGUI DE LA PENNA Inigo	30				
GALLARDO Antonio M.	9				
GIL-VEGA Victor	19				

FI – FINLAND

Sent ballots: 157 Participation: 31,2 %

Other practice		Allotment of seats		Private practice	
Received ballots: 18		<i>Full members</i>		Received ballots: 31	
Valid ballots: 17		1. FINNILÄ Kim Larseman	14	Valid ballots: 27	
Void ballots: 1		2. WECKMAN Arja Marjatta	12	Void ballots: 4	
		<i>Substitute members</i>			
FINNILÄ Kim Larseman	14	1. VALKONEN Pekka Juhani*	9	ETUAHO Kirsikka Elina	22
VALKONEN Pekka Juhani*	9			HONKASALO Marjut	
WECKMAN Arja Marjatta	12			Terhi Anneli	38

KÄRKKÄINEN Veli-Matti*	19	Allotment of seats	2. ETUAHO Kirsikka Elina	22
WESTERHOLM Carl Christian	13		<i>Full members</i>	<i>Substitute members</i>
		1. HONKASALO Marjut Terhi Anneli	38	1. KÄRKKÄINEN Veli-Matti* 19 2. WESTERHOLM Christian 13

FR – FRANCE

Bulletins envoyés: 882 Participation: 41,2 %

Autre titre		2. CONAN Philippe Claude	83	MOUTARD Pascal	144
Bulletins reçus: 142		3. ROUGEMONT Bernard	79	NUSS Laurent	183
Bulletins valables: 122		<i>Membres suppléants</i>		Répartition des sièges	
Bulletins nuls: 20		1. GENDRAUD Pierre	74	<i>Membres titulaires</i>	
BAUVIR Jacques	89	2. LE VAGUERÈSE Sylvain	72	1. NUSS Laurent	183
CONAN Philippe Claude	83	3. DUPONT Henri	62	2. CASALONGA Axel	175
DUPONT Henri	62	Profession libérale		3. CALLON DE LAMARCK Jean-Robert	170
GENDRAUD Pierre	74	Bulletins reçus: 221		<i>Membres suppléants</i>	
HURWIC Aleksander Wiktor	58	Bulletins valables: 213		1. LAGET Jean-Loup*	150
LE VAGUERÈSE Sylvain	72	Bulletins nuls: 8		2. MOUTARD Pascal	144
ROUGEMONT Bernard	79	CALLON DE LAMARCK Jean-Robert	170		
Répartition des sièges		CASALONGA Axel	175		
<i>Membres titulaires</i>		LAGET Jean-Loup*	150		
1. BAUVIR Jacques	89				

GB – GREAT BRITAIN

Sent ballots: 1910 Participation: 22,0 %

Unitary		JOHNSON Terence Leslie	194	4. LYNDON-STANFORD Edward	213
Received ballots: 420		LYNDON-STANFORD Edward	213	5. JOHNSON Terence Leslie	194
Valid ballots: 412		MERCER Christopher Paul	288	6. GOWSHALL Jonathan Vallance	190
Void ballots: 8		POWELL Timothy John	224	<i>Substitute members</i>	
BOFF James Charles	174	WRIGHT Simon Mark	261	1. BOFF James Charles	174
BROWN John David	164	Allotment of seats		2. BROWN John David	164
EDER Ephry	134	<i>Full members</i>		3. GRAY John James	164
GOWSHALL Jonathan Vallance	190	1. MERCER Christopher Paul	288	4. HEPWORTH John Malcolm	138
GRAY John James	164	2. WRIGHT Simon Mark	261	5. EDER Ephry	134
HEPWORTH John Malcolm	138	3. POWELL Timothy John	224		

GR – GREECE

Sent ballots: 26 Participation: 61,5 %

Unitary		TSIMIKALIS Athanasios	6	2. BAKATSELOU Vassiliki	9
Received ballots: 16		VOSEMBERG-VRETOS Ileana	4	3. YAZITZOGLOU Evagelia S.	7
Valid ballots: 14		YAZITZOGLOU Evagelia S.	7	4. TSIMIKALIS Athanasios	6
Void ballots: 2		Allotment of seats		<i>Substitute members</i>	
BAKATSELOU Vassiliki	9	<i>Full members</i>		1. KILIMIRIS Tassos-Anastase*	5
KILIMIRIS Tassos-Anastase*	5	1. PAPACONSTANTINOU Helen	13	2. VOSEMBERG-VRETOS Ileana	4
PAPACONSTANTINOU Helen	13			3. ROUKOUNAS Dimitrios	2
ROUKOUNAS Dimitrios	2				

HR – CROATIA

Sent ballots: 27 Participation: 48,1 %

Unitary			
Received ballots: 13	KORPER ZEMVA Dina	6	2. VUKINA Sanja
Valid ballots: 13	SUCIC Tatjana	6	3. BOSKOVIC Davor**
Void ballots: 0	TURKALJ Gordana*	7	4. KORPER ZEMVA Dina**
	VUKINA Sanja	7	
	VUKMIR Mladen	6	<i>Substitute members</i>
BIJELIC Aleksandar	Allotment of seats		1. TURKALJ Gordana*
BOSKOVIC Davor	<i>Full members</i>		2. SUCIC Tatjana**
DRAGUN Tihomir	1. HADZIJA Tomislav	8	3. VUKMIR Mladen**
HADZIJA Tomislav			4. KOPCIC Nikola**
KOPCIC Nikola		5	

HU – HUNGARY

Sent ballots: 96 Participation: 41,7 %

Unitary			
Received ballots: 40	KOVARI Zoltan	9	Allotment of seats
Valid ballots: 39	LENGYEL Zsolt	20	<i>Full members</i>
Void ballots: 1	MACHYTKA-FRANK Daisy	11	1. TÖRÖK Ferenc
	MARKÓ József	10	2. SZENTPÉTERI Adam
	PETHŐ Arpad	27	3. PETHŐ Arpad
GÖDÖLLE Istvan	SZENTPÉTERI Adam	32	4. KÖTELES Zoltan
KERESZTY Marcell	SZENTPÉTERI Zsolt	22	
KÖTELES Zoltan	TEPFENHÁRT Dóra Andrea	15	<i>Substitute members</i>
	TÖRÖK Ferenc	35	1. SZENTPÉTERI Zsolt
			2. KERESZTY Marcell
			3. LENGYEL Zsolt
			4. TEPFENHÁRT Dóra Andrea

IE – IRELAND

Sent ballots: 58 Participation: 39,7 %

Unitary			
Received ballots: 23	MURNAGHAN Stephen	11	2. CASEY Lindsay Joseph
Valid ballots: 23	O'NEILL Brian*	14	3. MURNAGHAN Stephen
Void ballots: 0	POWER Bridget Claire	6	4. MCCARTHY Denis Alexis
	SYRISOVA Ekaterina*	7	<i>Substitute members</i>
BOYCE Conor	Allotment of seats		1. O'NEILL Brian*
CASEY Lindsay Joseph	<i>Full members</i>		2. HARTE Seán Paul
HARTE Seán Paul	1. BOYCE Conor	15	3. SYRISOVA Ekaterina*
MCCARTHY Denis Alexis			4. POWER Bridget Claire

IS – ICELAND

Sent ballots: 22 Participation: 45,5 %

Unitary			
Received ballots: 10	JONSSON Thorlakur	9	<i>Substitute members</i>
Valid ballots: 10	SIGURDARDOTTIR Ragnheidur	3	1. HARDARSON Gunnar Örn*
Void ballots: 0	Allotment of seats		2. SIGURDARDOTTIR Ragnheidur
	<i>Full members</i>		
FRIDRIKSSON Einar Karl	1. FRIDRIKSSON Einar Karl	10	
HARDARSON Gunnar Örn*	2. JONSSON Thorlakur	9	

IT – ITALY

Sent ballots: 405 Participation: 69,6 %

Other practice

Received ballots: 35
Valid ballots: 24
Void ballots: 11

COLUCCI Giuseppe	14
GIBERTI Stefano	7
GUERCI Alessandro	16
MACCHETTA Francesco	16
MURACA Bruno	6
SACCO Marco	7

Allotment of seats

Full members

1. GUERCI Alessandro	16
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2. MACCHETTA Francesco	16
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Substitute members

1. COLUCCI Giuseppe	14
2. GIBERTI Stefano**	7

Private practice

Received ballots: 247
Valid ballots: 222
Void ballots: 25

CAPASSO Olga	43
DALL'OLIO Christian	3
DE GREGORI Antonella	52
FERRONI Filippo	14

GERLI Paolo	57
IANNONE Carlo Luigi	30
MARIETTI Andrea	38
MODIANO Micaela Nadia	154
MONTANARI Davide	4
RAMBELLI Paolo	76
SANTI Filippo	46

Allotment of seats

Full members

1. MODIANO Micaela Nadia	154
2. RAMBELLI Paolo	76

Substitute members

1. GERLI Paolo	57
2. DE GREGORI Antonella	52

LI – LIECHTENSTEIN

Ausgeteilte Stimmzettel: 17 Wahlbeteiligung: 64,7 %

Einheitlich

Eingegangene Stimmzettel: 11
Gültige Stimmzettel: 11
Ungültige Stimmzettel: 0

BOGENSBERGER Burkhard	7
GYAJA Christoph Benjamin*	8
HARMANN Bernd-Günther	7

KAMINSKI Susanne*	7
KITZMANTEL Peter	5

Sitzverteilung

Ordentliche Mitglieder

1. BOGENSBERGER Burkhard	7
2. HARMANN Bernd-Günther	7

Stellvertretende Mitglieder

1. GYAJA Christoph Benjamin*	8
2. KAMINSKI Susanne*	7

LT – LITHUANIA

Sent ballots: 30 Participation: 70,0 %

Unitary

Received ballots: 21
Valid ballots: 20
Void ballots: 1

BANAITIENE Vitalija	12
DRAUGELIENE Virgina Adolfin	12
GERASIMOVIC Jelena	5
GERASIMOVIC Liudmila	8
JASON Marius Jakulis	8

KLIMAITIENE Otilija	10
KUCINSKAS Leonas Antanas	6
MICKEVICIENE Nijole Viktorija	3
PAKENIENE Ausra	9
PETNIUNAITE Jurga	6
PRANEVICIUS Gediminas	4
PRANSKEVICIENE Malvina Milda	3
SIDLAUSKIENE Aurelija	11
SRUOGIENE Gene Ona	6
VIESUNAITE Vilija	8
ZABOLIENE Reda	13

Allotment of seats

Full members

1. ZABOLIENE Reda	13
2. BANAITIENE Vitalija	12
3. DRAUGELIENE Virgina Adolfin	12
4. SIDLAUSKIENE Aurelija	11

Substitute members

1. KLIMAITIENE Otilija	10
2. PAKENIENE Ausra	9
3. GERASIMOVIC Liudmila**	8
4. VIESUNAITE Vilija**	8

LU – LUXEMBOURG

Bulletins envoyés: 17 Participation: 82,4 %

Autre titre	<i>Membre suppléant</i>		
Bulletins reçus: 1	Aucun		
Bulletins valables: 1			
Bulletins nuls: 0			
KUTSCH Bernd	1		
Répartition des sièges			
<i>Membre titulaire</i>			
1. KUTSCH Bernd	1		
		BEISSEL Jean	10
		LAMPE Sigmar*	10
		MELLET Valérie Martine	3
		Répartition des sièges	
		<i>Membre titulaire</i>	
		1. BEISSEL Jean	10
		<i>Membre suppléant</i>	
		1. LAMPE Sigmar*	10

LV – LATVIA

Sent ballots: 21 Participation: 71,4 %

Unitary			
Received ballots: 15	FORTUNA Jevgenijs	14	
Valid ballots: 15	LAVRINOVICS Edvards*	12	
Void ballots: 0	OSMANS Voldemars	6	
	SERGEJEVA Valentina	2	
	SMIRNOV Alexander	10	
	ZVIRGZDS Arnolds*	9	
			Allotment of seats
			<i>Full members</i>
			1. FORTUNA Jevgenijs
			14
			2. SMIRNOV Alexander
			10
			<i>Substitute members</i>
			1. LAVRINOVICS Edvards*
			12
			2. ZVIRGZDS Arnolds*
			9

MC – MONACO

Bulletins envoyés: 3 Participation: 66,7 %

Circonscription à collège unique			
Bulletins reçus: 2	SCHUFFENECKER Thierry	0	
Bulletins valables: 2			
Bulletins nuls: 0			
SCHMALZ Günther	2		
			<i>Membres suppléants</i>
			Aucun
			Répartition des sièges
			<i>Membres titulaires</i>
		1. SCHMALZ Günther	2

MK – FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Sent ballots: 58 Participation: 31,0 %

Unitary			
Received ballots: 18	DIMITROV Georgi	2	
Valid ballots: 18	PEPELJUGOSKI Valentin	17	
Void ballots: 0	VESKOVSKA Blagica	1	
			Allotment of seats
			<i>Full members</i>
			1. PEPELJUGOSKI Valentin
			17
			2. DIMITROV Georgi
			2
			3. VESKOVSKA Blagica
			1

MT – MALTA

Sent ballots: 7 Participation: 28,6 %

Unitary			
Received ballots: 2	Zierer Otto	1	
Valid ballots: 2			
Void ballots: 0			
Sansone Luigi	1		
			Allotment of seats
			<i>Full members</i>
		1. Sansone Luigi	1
			<i>Substitute members</i>
			None
			2. Zierer Otto
			1

NL – NETHERLANDS

Sent ballots: 426 Participation: 61,7 %

Unitary			
Received ballots:	263	JORRITSMA Ruurd*	76
Valid ballots:	216	KRAAK Hajo	87
Void ballots:	47	PETERS John Antoine	32
		SMILDE-WESTMAAS	52
AALBERS Arnt Reinier	61	Mariëtte Johanna	74
BARTELDs Erik*	37	TANGENA Antonius Gerardus	74
CLARKSON Paul Magnus	33	<i>Substitute members</i>	
DU PONT Jeroen	57	1. JORRITSMA Ruurd*	76
HATZMANN Martin*	52	2. DU PONT Jeroen	57
HOGENBIRK Marijke	90	3. HATZMANN Martin*	52
		4. SMILDE-WESTMAAS	52
		Mariëtte Johanna	52
		Allotment of seats	
		<i>Full members</i>	
		1. HOGENBIRK Marijke	90

NO – NORWAY

Sent ballots: 111 Participation: 50,5 %

Unitary			
Received ballots: 56	56	ØSTENSEN Gunnar Lunder*	10
Valid ballots: 55	55	REKDAL Kristine	37
Void ballots: 1	1	RØHMEN Eirik	19
		SIMONSEN Kari Helen	25
ANDERSON Elin Synnøve*	14	THORESEN Liv Heidi	17
BERG André*	17	THRANE Dag	21
BERG Per Geir	31	Allotment of seats	
HOFSETH Svein	20	<i>Full members</i>	
MIDTTUN Gisle Johan	8	1. REKDAL Kristine	37
		2. BERG Per Geir	31
		3. SIMONSEN Kari Helen	25
		4. THRANE Dag	21
		<i>Substitute members</i>	
		1. HOFSETH Svein	20
		2. RØHMEN Eirik	19
		3. BERG André*	17
		4. THORESEN Liv Heidi	17

PL – POLAND

Sent ballots: 358 Participation: 38,0 %

Unitary			
Received ballots:	136	KICIAK Krzysztof Boleslaw	22
Valid ballots:	120	KORBELA Anna	54
Void ballots:	16	KRAJEWSKA Krystyna	15
		KREKORA Magdalena	32
BESLER Marek	57	LAMPART Jerzy	19
BARTULA-TOCH Marta	11	LEWICKA Katarzyna Dorota	38
BOROWSKA-KRYSKA Urszula	16	MALCHEREK Piotr	34
BURY Lech Marek	28	MALEWSKA Ewa	36
CHLEBICKA Lidia	31	PAWLOWSKI Adam	25
HAWRYLAK Jolanta	30	ROGOZINSKA Alicja	28
HUDY Ludwik	43	SIELEWIESIUK Jakub	16
KACPERSKI Andrzej	39	SITKOWSKA Jadwiga	22
		SLOMINSKA-DZIUBEK Anna	52
		Allotment of seats	
		<i>Full members</i>	
		1. BESLER Marek	57
		2. KORBELA Anna	54
		3. SLOMINSKA-DZIUBEK Anna	52
		4. HUDY Ludwik	43
		<i>Substitute members</i>	
		1. KACPERSKI Andrzej	39
		2. LEWICKA Katarzyna Dorota	38
		3. MALEWSKA Ewa	36
		4. MALCHEREK Piotr	34

PT – PORTUGAL

Sent ballots: 43 Participation: 41,9 %

Unitary			
Received ballots: 18	18	ALVES MOREIRA Pedro	15
Valid ballots: 17	17	BESSA MONTEIRO César	14
Void ballots: 1	1	Manuel de*	14
		CARVALHO FRANCO Isabel*	14
		CRUZ Nuno Carlos*	13
		DIAS MACHADO Antonio J.*	15
		FERREIRA MAGNO Fernando	17
		Antonio	17

PEREIRA DA CRUZ Joao	14	2. ALVES MOREIRA Pedro	15	2. BESSA MONTEIRO César	
SAMPAIO José Eduardo de	13	3. PEREIRA DA CRUZ Joao	14	Manuel de*	14
Allotment of seats		4. SAMPAIO José Eduardo de	13	3. CARVALHO FRANCO	
<i>Full members</i>		<i>Substitute members</i>		Isabel*	14
1. FERREIRA MAGNO		1. DIAS MACHADO		4. CRUZ Nuno Carlos*	13
Fernando Antonio	17	António J.*	15		

RO – ROMANIA

Sent ballots: 67 Participation: 53,7 %

Unitary		GHITA Constantin	7	TEODORESCU Mihaela	15
Received ballots: 36		ISOC Dorin	0	TULUCA F. Doina	12
Valid ballots: 35		IVANCA Maria Elisaveta	1	VASILESCU Raluca	9
Void ballots: 1		MARINESCU Ruxandra	3	VELCEA Marian	2
		MOHONEA Liliana	3	VELICU Anca	4
ANDRONACHE Paul	1	NASTASE Cristian	7	Allotment of seats	
APOSTOL Salomia	0	NICOLAESCU Daniella Olga	15	<i>Full members</i>	
BUCSA Gheorghe	11	OPREA Marilena	3	1. NICOLAESCU Daniella Olga	15
CIUDA-BERIVOE Anca	0	OPROIU Margareta	10	2. TEODORESCU Mihaela	15
CONSTANTIN Adrian George	4	PAVEL Sorin Eduard	3	3. ENESCU Lucian	13
COESCU Camelia	3	PETREA Dana-Maria	6	4. TULUCA F. Doina	12
ENE Silvia	5	POP Calin Radu	6	<i>Substitute members</i>	
ENESCU Lucian	13	POP Virginia-Daisy	0	1. BUCSA Gheorghe	11
ENESCU Miruna	7	POPA Cristina	7	2. FIERASCU Cosmina-Catrinel	11
FAIGHENOV Marioara	2	POPESCU Angela	1	3. FLOREA Ileana Maria	11
FIERASCU Cosmina-Catrinel	11	PUSCASU Dan	11	4. PUSCASU Dan	11
FLOREA Ileana Maria	11	SOVA Dan Eugen	2		
GAVRIL Niculina	2	STANCIU Adelina	1		

SE – SWEDEN

Sent ballots: 312 Participation: 32,4 %

Other capacity		2. YDRESKOG Margareta	20	STEIN Jan Anders Lennart	7
Received ballots: 41		<i>Substitute member</i>		Allotment of seats	
Valid ballots: 38		1. SKEPPSTEDT Anita Birgitta	18	<i>Full members</i>	
Void ballots: 3		Private practice		1. EKSTRÖM Nils	39
SJÖGREN PAULSSON Stina	29	Received ballots: 60		2. ESTREEN Lars J.F.	29
SKEPPSTEDT Anita Birgitta	18	Valid ballots: 56		<i>Substitute members</i>	
YDRESKOG Margareta	20	Void ballots: 4		1. KARLSTRÖM Lennart	21
Allotment of seats		EKSTRÖM Nils	39	2. STEIN Jan Anders Lennart	7
<i>Full members</i>		ESTREEN Lars	29		
1. SJÖGREN PAULSSON Stina	29	KARLSTRÖM Lennart	21		

SI – SLOVENIA

Sent ballots: 31 Participation: 54,8 %

Unitary		BORSTAR Dusan	12	MACEK Gregor	13
Received ballots: 17		FLAK Antonija	5	OSOLNIK Renata*	12
Valid ballots: 15		GOLMAJER ZIMA Marjanca	14	REDENSEK Vladimira*	12
Void ballots: 2		KRALJIC Janez	12	VOJIR Andrej*	8
		KUNIC TESOVIC Barbara	12		

Allotment of seats	3. KRALJIC Janez**	12	2. OSOLNIK Renata*	12
<i>Full members</i>	4. KUNIC TESOVIĆ** Barbara	12	3. REDENSEK Vladimira*	12
1. GOLMAJER ZIMA Marjanca	<i>Substitute members</i>		4. VOJIR Andrej*	8
2. MACEK Gregor	1. BORSTAR Dusan**	12		

SK – SLOVAK REPUBLIC

Sent ballots: 38 Participation: 47,4 %

Unitary	MESKOVA Viera*	12	3. NEUSCHL Vladimir	14
Received ballots: 18	NEUSCHL Vladimir	14	4. ZOVICOVA Viera	14
Valid ballots: 17	ZOVICOVA Viera	14	<i>Substitute members</i>	
Void ballots: 1	Allotment of seats		1. BAD'UROVÁ Katarina	13
BAD'UROVÁ Katarina	<i>Full members</i>		2. MESKOVA Viera*	12
CECHVALOVA Dagmar	1. CECHVALOVA Dagmar	17		
MAJLINGOVA Marta	2. MAJLINGOVA Marta	14		

SM – SAN MARINO

Sent ballots: 61 Participation: 16,4 %

Unitary	MARTINI Riccardo	5	Allotment of seats	
Received ballots: 10	TIBURZI Andrea	6	<i>Full members</i>	
Valid ballots: 9			1. TIBURZI Andrea	6
Void ballots: 1			2. MARTINI Riccardo	5

TR – TURKEY

Sent ballots: 103 Participation: 48,5 %

Unitary	ILDES ERDEM Ayse	10	Allotment of seats	
Received ballots: 50	KALENDERLI Berrin	15	<i>Full members</i>	
Valid ballots: 43	KÖKSALDI A. Sertaç Murat	21	1. ARKAN Selda Mine	30
Void ballots: 7	MUTLU Onur	8	2. CAYLI Hülya	28
ARKAN Selda Mine	ÖZSUNAY Murat	3	3. DÜNDAR Kazim	28
BARKALE Mehmet Mesut	SEVINÇ Erkan	11	4. DÜNDAR Tülin	22
CAYLI Hülya	SEYITHANOGLU M. Teoman	3	<i>Substitute members</i>	
DÜNDAR Kazim	ÜNAL ERSÖNMEZ Ayse	12	1. KÖKSALDI A. Sertaç Murat	21
DÜNDAR Tülin	YAVUZCAN Alev	16	2. YAVUZCAN Alev	16
ERKEKLI Ferit	YILDIZ Ertan	6	3. KALENDERLI Berrin	15
	YURTSEVEN M. Tuna	11	4. ÜNAL ERSÖNMEZ Ayse	12

Report of the Disciplinary Committee

Paul Rosenich (LI), Chairman

In 2009, the EPO filed, as employer of an examiner, a complaint against a European Patent Attorney whose conduct towards said examiner was considered to be inappropriate and susceptible of infringing the dignity of the profession. Further the President of the EPO, in exercising her right according to Art. 12 of the Regulation on Discipline for Professional Representatives, filed a separate comment in which she expressed her serious concerns about this case and confirmed and even reinforced the view of the complaint.

The *epi* Member concerned had – as representative of an applicant – submitted a written response to an office action to an application in the field of electricity in which he had cited the formal bibliographic data of a scientific article from a completely different field (sexuality) as new prior art document D6. He provided formal written support of his arguments concerning a very specific type of known technology related to the subject-matter of the application. Although the representative neither disclosed nor discussed the title, keywords and content of the article nor submitted a copy of it to the EPO the examiner felt obliged to search for the article in the internet and to study it. Since the content of the article was clearly related to a very specific side aspect of a well-known analogy having its origin in the field of sexuality and generally not being used in the field of electricity and since the document D6 clearly had no

relevance for the claimed invention the examiner felt insulted by its content due to its sexual connotation.

After a thorough investigation of the facts in the public file of the EPO, after having conducted interviews with the examiner, the complainant and the defendant and after having studied a written response of the representative to the complaint wherein he also expressed his apologies according to which he never had intended to insult the examiner when citing document D6, the Disciplinary Chamber concerned considered this complaint as obviously not being substantiated and dismissed it.

As far as facts and circumstances had been presented to the Chamber for this case the *epi* member had exercised his profession consciously and in a manner appropriate to its dignity. In particular, the chamber could not find any evidence that the way why and how document D6 was introduced by the representative constituted a failure to comply with the Rules of Professional Conduct.

Nevertheless it is obvious that the EPO and the Boards of Appeal do consider also disciplinary questions. In T 69/07 the Board confirmed the views that actions of a representative were reprehensible. The Board noted that in accordance with Art. 6 of the Code of Conduct of members of the *epi* the members are required to act courteously in their dealings with the EPO (see also T 1079/07).

Report of the EPO Finances Committee

J.C. Boff (GB), Chairman

Meetings

A meeting of the working group on fee reform and sustainable financing of the EPO took place 13th September 2010

The Budget and Finance Committee took place 5th – 6th October.

Filing statistics and planning

At end July 2010 filing figures were above last year, but below the Office's plan. Due to the rule changes, over 10,000 divisional applications are reported as filed dur-

ing September up to and including the transitional deadline of 1st October. The divisional filing numbers represent about 1/6th of the planned direct European filing numbers for 2010. As the EPO plans made no assessment of the number of divisional filings that would be made, this represents a major distortion to their future plans.

Some seem to have the view that following the „surge“ of divisional applications there will be a drop in divisional filing numbers during 2011 below the long term average. There appears to be no logical basis for this view, and every basis for assuming that there will be an increase in the rate of filing divisional applications.

EPO financial situation

The estimated year end income figure for the EPO [CA/120/10] shows a slight positive operating result, however the financial result is negative so there is estimated to be a negative result overall for 2010.

From answers given at the Budget and Finance Committee meeting, it appears that *some* account of the divisional filings up to 1st October was taken in deriving this year end prediction. However there will be lot of accumulated renewal fees dues from the „transitional“ divisional applications, and these fees will arrive with the EPO during 2010 and early 2011. This income from accumulated renewal fees and indeed filing and search

fees, might be big enough to make the year's outcome positive, even in IFRS terms.

The President of the EPO has ordered an independent study on the budgetary and financial strategy of the EPO. The results will be presented to the March 2011 Administrative Council.

Fees

There are no reported proposals for fee changes in the near future. Planning is for a 5% increase with no structural changes in 2012 based on the two-year cycle that has been adopted by the EPO.

Report of the European Patent Practice Committee (EPPC)

F. Leyder (BE), Chairman

This report covers the most important items since my previous report, dated 15.08.2010 (epi Information 3/2010, page 80-81).

DG3: Boards and Enlarged Board of Appeal

1. G1/10 (corrections of decisions)

The EPPC has prepared an *amicus curiae* brief that has been approved by Council and filed.

2. G2/10 (disclaiming an embodiment)

The EPPC has discussed the referral on the occasion of its last meeting (25-26.10.2010); it is intended to prepare an *amicus curiae* brief.

3. MSBA

A delegation comprising the President and members from the EPPC, from the Biotech committee and from the Harmonisation Committee has attended the MSBA (Meeting of SACEPO with the Boards of Appeal) on 12.11.2010.

The topics discussed included scheduling of oral proceedings, provisional opinions, filing of coloured documents, use of laptops during oral proceedings, use of animated documents during oral proceedings, admissibility of auxiliary requests, the possibility of a partial refund of the appeal fee when an appeal is withdrawn, and the status of a non-petitioner party in the first stage.

Liaison sub-committee

4. Partnership for Quality (PfQ)

A meeting was held on 16.12.2010. The following topics were discussed: the ‚raison d'être‘ of the PfQ meetings; user's involvement in changing EPO practice; pendency times and the setting of priorities by the EPO; differences in practice between EPO sites; the Manual of Best Practice; the Trilateral and the IP5; the Catalogue of Differing Practice; TOSC; and collaborative metrics. The possibility of publishing an article on User Satisfaction Survey in the epi Information was evoked.

PCT & Trilateral sub-committee

5. PCT Assembly

epi was not represented, as usual, because the Assembly essentially approves what attracted consensus in the PCT Workgroup meeting (at which *epi* was represented, and about which I previously reported).

All meeting papers, including the report, are available on the WIPO website: http://www.wipo.int/meetings/en/details.jsp?meeting_id=19683 where a link to the pages relating to the meetings of the PCT and PLT Assemblies can be found.

EPC sub-committee

8. CPL39 and AC125

The main item to be discussed at the meeting of the 39th Committee on Patent Law (CPL 39) on 27.10.2010 was the amendment of three rules, namely R. 36, R. 71 (with the creation of a new R. 71b) and R. 161. The EPO had finally

produced papers essentially meeting the users' comments. They were unanimously approved with some minor amendments, and several delegations expressed their satisfaction with the revived cooperation with the users.

The Administrative Council has approved the amendments, and the decisions have since been published.

11. SACEPO/WPR4: further amendments of the Implementing Regulations

In my last report, I mentioned that *epi* members were welcome to address to the EPPC their suggestions as to further amendments of the Implementing Regulations.

Coincidentally, at the end of CPL39, the EPO had announced its intention to draw up a full list with possible changes to IR, for discussion with users at a SACEPO/WPR meeting.

A list of rules was indeed drawn up by the EPPC and sent to Council for opinion. It was supplemented with some late-identified proposals and sent to the EPO as a non-paper, for discussion in the SACEPO/WPR4 meeting.

The meeting was held on 08.12.2010. The main part of the discussion was devoted to general topics, such as the amount of publicity that should surround the legislative process. The proposals for amendments of the Implementing Regulations were essentially not discussed, because the EPO wished to hold internal discussions first.

Community Patent sub-committee

13. Update on the EU Patent

On 03.11.2010, the Belgian Presidency organised in cooperation with the European Commission a conference „The EU Patent Ten Years On: Time is running out“. The programme is available on the internet (<http://economie.fgov.be>); the organisers promised that the docu-

mentation would be uploaded, but it was not yet uploaded at the time of writing this report. *epi* was not represented.

On 11.11.2010, at the extraordinary Competitiveness Council meeting convened to discuss the issue of EU patent languages, it was concluded that unanimous agreement on the basis of the Commission's proposal, even with the Presidency's compromises, was not possible.

This paved the way for enhanced cooperation (Art. 20 of the Treaty on European Union).

In December, a total of 12 Member States wrote letters to the Commission, asking them to make a proposal for a Council Decision authorising enhanced cooperation in the area of the creation of a unitary patent protection. On 14.12.2010, the Commission issued the proposal (COM(2010)790).

Guidelines sub-committee

14. Guidelines for examination at the EPO

It is now clear that the EPO will not live up to its promise to update the Guidelines every year.

The latest list of proposed amendments drafted by the sub-committee was approved by the EPPC. The President has declined to send them to the EPO.

Miscellaneous

15. Fee Reform and Sustainable Financing of the European Patent System (CA 160/09)

The working group comprising EPPC members, that was set up to further comment on paper CA 160/09, met on 13.09.2010. Its work was suspended when it learned that the President of the EPO had ordered an audit.

Membership of the EPPC 2011–2014

F. Leyder (BE), Chairman 2008–2011

The EPPC is the largest committee of the *epi*, but also the one with the broadest remit: it has to consider and discuss all questions pertaining to, or connected with, practice under (1) the EPC, (2) the PCT, and (3) the future EU Patent Regulation, including any revision thereof.

There are many exceptions, namely all questions in the fields of other committees: Biotech, OCC, PDC, LitCom, and EPO Finances. These exceptions actually mean that the EPPC has to liaise with the relevant committees, in order to ensure coherence of the messages originating from *epi*. This can be done in various ways, such as through members belonging to both the EPPC and

another committee, or through liaison members having associate status in the other committee (and vice-versa).

The EPPC is presently organised with six permanent sub-committees (EPC, Guidelines, EPO-*epi* Liaison, PCT & Trilateral, EPA-Client Privilege, Community Patent), each chaired by one of four EPPC vice-chairs or by the EPPC chairman. Additionally, *ad hoc* working groups are set up when the need arises, e.g. for preparing an *amicus curiae* brief for the Enlarged Board of Appeal or for preparing a position paper.

Like all other *epi* committees, the EPPC also has a secretary, whose main duties are to prepare the agenda

of the meetings, ensure that all relevant documents are timely circulated, and prepare reports of the full meetings.

The EPPC meets about twice a year, presently over two days (one afternoon and one full day, ending at 4pm, to enable most members to spend only one night on site); working groups have been organised on the first day whenever this was possible. Sub-committees and ad hoc working groups occasionally meet outside the EPPC meetings.

The EPPC advises in the above area the delegates nominated by the President. These delegates are traditionally selected amongst the members of the EPPC. The meetings where *epi* traditionally sends observers are:

- Committee on Patent Law: meets 2-4 times yearly; one or two *epi* delegates, usually selected from the labeled members of the EPPC;
- SACEPO/WPR (Working Party on Rules): meets irregularly; three *epi* delegates, nominated for three years by the President of the EPO upon proposal of our President, with free substitution possible;
- SACEPO/WPG (Working Party on Guidelines): meets up to once yearly; three *epi* delegates, nominated for three years by the President of the EPO upon proposal of our President, with free substitution possible;
- Partnership for Quality (PfQ): meets about twice yearly; about three *epi* delegates, usually selected from the EPO-*epi* Liaison sub-committee of the EPPC;
- PCT Work Group: one week yearly meeting in WIPO; one *epi* delegate, usually selected from the PCT sub-committee of the EPPC;
- VP1 meeting: yearly meeting with the VP1; the EPPC usually provides the delegates accompanying our President;
- Meeting with the Boards of Appeal: the EPPC provides delegates experienced in appeal matters to accompany our President and Vice-Presidents;
- EUROTAB: this is a yearly roving meeting of national patent offices; the EPPC traditionally provides two *epi* delegates;

not to mention the meetings for which the EPPC is occasionally invited to propose *epi* delegates.

The EPPC thus requires a lot of work, for which the contribution of all members is expected. The committee members elected this year would thus be expected to have a general interest in the work of EPPC and to provide an active and positive contribution. In this regard, *epi* members considering joining the EPPC have the possibility to ask to be admitted as associate members in order to get acquainted with the work of the committee: associate members receive the same documents as the full members, including emails.

Incidentally, the committee members have in my opinion some duty to ensure that they are aware of the opinion of the constituency as will be reflected by the vote of its Council/Board members, this being to ensure that, when a proposal accepted by the EPPC is submitted to a vote in Council/Board, its acceptance would be more or less predictable.

The committee members elected this year for the first time should understand that participation in the work of a sub-committee or *ad hoc* working group is a unique opportunity.

epi delegates nominated for EPPC matters have during this term often been selected amongst the labelled members of the EPPC. The committee members elected this year should understand that they might be asked to take some responsibilities and/or to represent *epi* if the need arises in the future. It is indeed by no means certain that all present labelled members will be re-appointed or show the same availability.

I cannot end this paper without thanking those constituencies that have for this term nominated active members to the EPPC, and in particular the Danish industry constituency that has nominated for the EPPC an *epi* member outside its own members.

Report of the Harmonisation Committee

F. Leyder (BE), Secretary

The Harmonisation Committee deals with all questions concerning the worldwide harmonization of Patent Law, and in particular within the framework of WIPO.

Standing Committee on the Law of Patents (SCP)

The 15th Session of the SCP was held in Geneva from 11th to 15th October 2010. John Brown, committee chairman, represented the *epi*. The SCP/15 working

documents and the „Summary by the Chair“ are available from the WIPO website. (http://www.wipo.int/meetings/en/details.jsp?meeting_id=19684).

The 16th Session of the SCP is planned to be held in Geneva from 16th to 20th May 2011. The SCP/16 working documents will in due time be available from the WIPO website (http://www.wipo.int/meetings/en/details.jsp?meeting_id=22164).

Membership of the Harmonisation Committee 2011–2014

F. Leyder (BE), Chairman 2001–2008, Secretary 2008–2011

The Harmonisation Committee deals with all questions concerning the worldwide harmonisation of Patent Law, and in particular within the framework of WIPO.

The main task of the Committee is to follow the work of the Standing Committee on Patents, whose main goal is to try and achieve a Substantive Patent Law Treaty. After a few years of near-inactivity, work has resumed and appears to have reached cruise altitude.

SCP normally meets twice a year in Geneva, during a week. The session starts mid-morning on the Monday, and normally ends on the Thursday, when the Secretariat prepares the Summary by the Chair, which is submitted for comments on the Friday. Meetings are 10-13 and 15-18, with coffee breaks and frequent interruptions, for negotiating the chairmanship or every time a group of states wishes to meet. *epi* has observer status, meaning that it sits at the back (but comfortably; Swiss electrical plugs require an adaptor) and can ask for the floor after governmental and intergovernmental delegations. It is thus rare to have the opportunity (not to mention the necessity) to have the floor more than once per session.

To the extent SCP meetings have in recent years been restricted to discuss what to discuss, it has not been required to meet for preparing the SCP meetings. As

soon as the SCP will resume discussions on a draft treaty, committee meetings will become necessary again, thus up to two per year (one day each). The most promising subject appears to be privilege, for which WIPO might propose a separate treaty; preparation meetings would be held together with the Privilege sub-committee of EPPC.

Harmonisation is also a frequent topic in meetings of the Committee of Patent Law of the EP Organisation, where *epi* also has observer status. It meets irregularly.

The committee members elected this year would thus be expected to have a general interest in the work of SCP; in this regard, continuity in the membership of the committee would be highly desirable. They should be prepared for up to two meetings per year to discuss draft treaties prepared by WIPO. The *epi* delegates to SCP and CPL are also usually selected from the committee members. Up to now, the committee chairman (who has retired) has been available for most WIPO meetings, and he shared with the committee secretary (who also chairs the EPPC) the representation at CPL meetings. The committee members elected this year should understand that they might be asked to represent *epi* if the need arises in the future.

Report of the Litigation Committee

E. Lyndon-Stanford (GB), Chairman

The European and European Union Patents Court (EEUPC)

1. We are still awaiting the formal opinion of the Court of Justice of the EU, which was expected in October 2010 and could be handed down at any time now. When the formal opinion issues, the Litigation Committee will study it and advise Council and the Board.

The Advocacy Paper, relating to the EEUPC

2. This Paper was referred to in EPI Information 3/13 on page 82. The Paper was sent on 23rd June 2010 to all *epi* Board members and to all national IP associations in the EPC member states. We are reviewing how we can ensure that the contents of the paper are brought to the attention of national governments. In the end, the national governments will decide on the representation rights of European Patent Attorneys in the proposed unified court system.

Privilege for European Patent Attorneys

3. There are difficulties regarding patent attorney privilege, both in relation to the draft EEUPC Agreement and the Rules of Procedure, and in general. We are hoping to suggest to the Commission an amendment to the Enforcement Directive 2004/48/EC to confer privilege on IP attorneys. The Enforcement Directive is being studied by the Commission.

Enforcement

4. As noted above, the Commission is studying the Enforcement Directive 2004/48/EC of 2004.04.29. Apart from the important issue of privilege, the Litigation Committee has not recommended submitting comments.

The Table of Representation

5. The most recent version is published on the *epi* website www.patentepi.com, see „who is who/European Patent Attorneys“. We do not guarantee complete accuracy but it is a useful guide. Please tell us about any mistakes.

Report of the Patent Documentation Committee (PDC)

P. Indahl (DK), Chairman

Patent Classification Systems

The IP5 collaboration between the patent offices of US, JP, CN, KR and EPO defined 10 foundation projects of harmonization between the offices. One of these projects aims at setting up a common patent classification system to be used by the five offices. At present USPTO and JPO use their own classification systems, and the EPO uses ECLA based on IPC.

Great progress has been made. The USPTO has decided to change its classification system of patent documents to a system based on an enhanced ECLA. This is a major step forward. The US classification has some advantages, and the best parts of US classification are to be built into ECLA.

Chinese patent documents

On 7 April 2010 the Chinese Patent Office changed the document kind codes for granted Chinese patents and utility models. The document kind code for granted patents was changed from C to B, and the document kind code for granted Utility Models was changed from Y to U. These changes may cause some problems, because in the years 1985 to 1993 document kind code B was used for Chinese examined patent publications, and document kind code U was used for pre-grant published utility models.

Report of the epi Task Group on Reorganisation

D. Speiser (DE)

At its meeting in Strasbourg on 12 June 2010 Council had installed a task group to consider and discuss a number of proposals submitted by our president with the aim of providing better support for the committees and the board.

In his paper the president had addressed a number of problems such as our secretariat being understaffed, the director of education still not being available, the committee chairs being overburdened with both administrative and professional work needing support by a „qualified person“. To compensate for the extra costs needed for employing more persons the president had suggested to save money by reducing the size of the council and/or the board.

At the occasion of three meetings, the members of the task group have considered various aspects of the president's proposals and had a thorough discussion with him at their last meeting from 29th to 30th October 2010. Considerations and the discussion resulted in the following conclusions and proposals.

Assessment of the Task Group

A. Director of Education

The position of a Director of Education addressed by the president in his paper is being dealt with by the board

and the PQC so that the task Group did not touch this point.

B. Financial and other general aspects

a) Financial aspects

Subject to a differing opinion of the *epi* Finances Committee, hiring a qualified person and increasing the number of secretarial staff would not seem to require saving money by a reorganisation. Moreover, a reasonable increase of the subscription fee would not seem to cause problems within our membership.

b) Other general aspects such as speed, quality, lack of communication, others

- Secretariat is indeed understaffed, thus two more staff members are proposed.
- Committee chairpersons are overburdened with work, thus a proposal for a „qualified person“ was prepared and a job description for such person was drafted.
- A general communication problem between the various bodies of the *epi* at different levels was noted.
- Council meetings appear to be dysfunctional and need to be made more interesting.
- Transition problems were discussed. The task group proposed that following elections and during a

transition period, a continuity with former members of the presidium and committee chairpersons for about 6 months is installed.

- Following the delegation of powers to the board, there is a need for adapting procedural rules (for example dissemination of board papers).
- board should inform Council and council members in a timely fashion about what the board does internally and externally. This seems to be a problem at the moment

C. Size and composition of Council, number of meetings

The group has considered the proposal for changes in the composition and/or size of the Council. The group agrees that reducing the size would save costs. However, subject to a differing opinion of the *epi* Finances Committee and as mentioned above, hiring a qualified person and increasing the number of secretarial staff would not seem to require saving money by a reorganisation. Even, a reasonable increase of the subscription fee would not seem to cause problems within our membership.

Consequently, apart from the cost saving aspect, the group has not seen a problem the solving of which would require reducing the size of the Council.

A problem could be seen in the Composition of the Council, because some States are over-represented and some others under-represented when considering the respective membership numbers.

Another problem could be seen in the question of the number of Council meetings. The president expressed the view that we should continue with two meetings per year. The group concurs with the president's view but feels that the information process to Council should be improved both time-wise and content-wise.

When delegating certain powers to the board, the Council had retained the right to approve or disapprove the activities of the board (Art. 3.5 By-laws). Therefore, the board should inform Council and Council members in a timely fashion about what the board does internally and externally (Art. 10.2 By-laws) so that Council receives enough information to decide whether it wants to indicate its disapproval or approval of the handling of delegated matters.

The group feels that the needed increase in information would improve the attractiveness of Council meetings considerably although this might require going back to one and half days meetings. The group also feels that socializing (not tourism) is an important part of the Council meetings.

D. Size and Composition of Board

As to changes of size and/or composition of the board, the same arguments as above apply *mutatis mutandis*.

The group wants to point out that there seems to be a problem of representation when a board member is prevented from attending a board meeting. Council at its meeting in Berlin on 20 November 2010 shared this view.

E. Committees

The president found it advisable that the former chairperson of a committee stays on until the following chairperson is elected. The group believes that it would be preferable if the former chairperson would stay on for up to six months beyond the election of the new chairperson to allow transfer of know-how. The Council was asked to approve this proposal and did so at its meeting in Berlin on 20 November 2010.

The task group approved the president's proposal to have committee chairpersons attend board meetings, with the understanding that the Chairpersons shall be free to send appropriate substitutes from the respective committees. Article 10.8 of the By-laws provides for this possibility.

This would provide the board with the knowledge of the committees whenever a decision is to be taken where this knowledge is of use. In such cases the president shall invite the respective chairpersons. The chairpersons should also have the possibility to request an invitation from the president; this could be achieved by timely providing the Chairpersons with a copy of the agenda of the meeting of the board.

The group was of the view that this should apply *mutatis mutandis* to the Presidium.

a) Size, composition, duties of the Committees

The issue of size and composition of Committees was not addressed by the president but was taken up by the task group as it is related to the issues raised by the president.

b) The Committees with a small number of members are

Internal Auditors: 2 auditors and 2 substitute auditors
 Electoral Committee: 3 members
 By-Laws Committee: 4 members
 Editorial Committee: 4 members
 EPO Finances Committee: 4 members and 4 substitute members
 Patent Documentation Committee: 4 members and 4 substitute members
 Harmonisation Committee: 7 members
 Online Communications Committee: 9 members
epi Finances Committee: 10 members

c) The Committees with a large number of members are

Disciplinary Committee: one from each country, total of 38
 Professional Conduct Committee: one from each country, total of 38
 Professional Qualification Committee: one from each country, total of 38
 Biotech Committee: one and one substitute member from each country, total of 38+38
 Litigation Committee: one full and one substitute member from each country, total of 38+38
 European Patent Practice Committee: two from each country, total of 76

d) Conclusions

The group felt that for the Disciplinary Committee, 'national' considerations seem to be particularly relevant

and therefore the number of members seems to be appropriate. Thus, the subsequent considerations do not apply to the Disciplinary Committee.

All the small committees manage with a limited number of members, so ‚national‘ considerations do not seem to be an issue. It seems that the number of members was chosen according to the respective anticipated workload.

Potential and frequent deficiencies in the current system in particular for the Committees having one person/country or more are:

- Not enough working members
- Too many silent members
- Too many members not attending meetings
- Too many members not taking part in e-mail discussions or e-voting
- Limitation to one/country or constituency prevents the participation of a potentially highly useful second member from a particular country or constituency.

Practice shows that the workload of a large Committee can be managed by a small number of Committee members, provided all of them are active.

The number of Committee members in excess of said small number was in the past elected for ‚national‘ reasons. It is felt that it could be possible, for at least some Committees, to reduce the number of Committee members without sacrificing the ‚national‘ input and to assemble the required number of active Committee members in the following way.

With the above in mind the task group suggested a number of general rules which in the view of the group

would increase the efficiency of the work in particular of the large committees and at the same time would have a cost saving effect.

1. Persons standing for a full membership in a Committee must be prepared to actively contribute to the work of the Committee.
2. A reduced number of full members would be elected by the Council based on a one page CV and motivation letter that should be presented to the Council in advance.
3. To the extent that substitute members are needed in a particular Committee, paragraph 1 applies *mutatis mutandis*.
4. Each constituency has the right to nominate an associate member by providing the Secretariat with a CV of the nominee.
5. The Committee may elect further associate members, based on respective CVs.
6. The Chairperson of a Committee is entitled to convert up to three associate members into full members in addition to the number of full members allocated to the particular Committee by Council.
7. The Chairperson of a Committee is entitled to invite substitute and/or associate members to attend meetings of Committee, Sub-Committees and Working groups. Their costs will be reimbursed.

The general rules suggested by the task group were intensively discussed in Council at its last meeting in Berlin on 20 November 2010. However, Council decided against a change.

epi tutorials 2011

The *epi* tutorials are EQE training events that provide candidates with an opportunity to sit the A/B/C/D papers privately, to send the papers to an experienced *epi* tutor assigned to them and to have their individual papers reviewed and discussed.

In this year's tutorials the following papers will be considered:

- a) Summer tutorial: 2008, 2009, 2010
- b) Autumn tutorial: 2009, 2010, 2011

Schedule

- a) Summer tutorial:
 - > Submission of registration: as from 1 March 2011

- > Deadline for registration: 1 April 2011
 - > Sending drafts to tutors by 16 May 2011
 - > Feedback from tutors by 1 August 2011
 - b) Autumn tutorial:
 - > Submission of registration: as from 25 June 2011
 - > Deadline for registration: 5 September 2011
 - > Sending drafts to tutors by 10 October 2011
 - > Feedback from tutors by 17 December 2011
- Fees: 180.– € per paper for non *epi* students
90.– € per paper for *epi* students

For further information/enrolment form please visit our website (www.patentepi.com → EQE and Training) or contact the *epi* Secretariat (email: info@patentepi.com).

epi Mock EQEs and Training Seminars 2011

epi will organise a series of Mock EQEs and seminars (for patent attorneys and paralegals) in 2011.

A seminar for paralegals on the topic „EPC2DAY – Impact of the changes by EPC2000“ is scheduled on 8 April 2011 in Helsinki.

For further information, please visit our website (www.patentepi.com) or contact the epi Secretariat (email: info@patentepi.com).

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VESPA /MIPS Prüfungstraining für die Europäische Eignungsprüfung 2012

Informationen sind unter diesem Link verfügbar:

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Notice from the Examination Secretariat

Concerning the European qualifying examination (EQE) 2012, candidates are hereby informed of the examination dates and the relevant closing dates for registration and enrolment. Further details will be published in the Announcement of the European qualifying examination 2012 in OJ EPO 3/2011.

To ensure a smooth enrolment procedure for the EQE 2012, candidates are kindly reminded of the strict application of the published closing dates for enrolment for the EQE.

The examination consisting of four papers – Paper A, Paper B, Paper C and Paper D – will be referred to as „the main examination“.

1. Dates of the pre-examination and the main examination

The pre-examination will be held on *5 March 2012*.

The main examination will be held from *6 to 8 March 2012*.

2. Registration and enrolment

Candidates wishing to register and enrol for the pre-examination or the main examination may submit their application as from 1 April 2011. Those awaiting results from the EQE 2011 may file their application after their results are known.

3. Closing dates

3.1 Pre-examination

Complete applications must be received by the Examination Secretariat no later than *27 June 2011*.

3.2 Main examination

For candidates registering and enrolling for the first time, their complete application must be received by the Examination Secretariat no later than *16 May 2011*.

For candidates previously admitted for the main examination, their complete applications must be received by the Examination Secretariat no later than *12 September 2011*.

Next Council Meetings

70th Council meeting on 23-24 May 2011
in Ireland/Dublin

71st Council Meeting on 5 November 2011
in Germany/Darmstadt

List of Professional Representatives as at 31.12.2010 by their place of business or employment in the Contracting States

No.	Contr. State	Total Repr.	% of Tot.Repr.
1	AL	11	0,11
2	AT	123	1,22
3	BE	173	1,71
4	BG	72	0,71
5	CH	439	4,35
6	CY	12	0,12
7	CZ	104	1,03
8	DE	3386	33,53
9	DK	187	1,85
10	EE	28	0,28
11	ES	170	1,68
12	FI	156	1,55
13	FR	921	9,12
14	GB	1944	19,25
15	GR	26	0,26
16	HR	27	0,27
17	HU	96	0,95
18	IE	60	0,59
19	IS	23	0,23
20	IT	437	4,33

No.	Contr. State	Total Repr.	% of Tot.Repr.
21	LI	17	0,17
22	LT	30	0,30
23	LU	17	0,17
24	LV	21	0,21
25	MC	3	0,03
26	MK	58	0,57
27	MT	7	0,07
28	NL	437	4,33
29	NO	108	1,07
30	PL	359	3,56
31	PT	44	0,44
32	RO	67	0,66
33	RS	2	0,02
34	SE	315	3,12
35	SI	31	0,31
36	SK	39	0,39
37	SM	44	0,44
38	TR	103	1,02
	Total :	10.097	100,00

The Limits of Searched Subject-Matter

M. Thesen (DE)

1. Introduction

The notion of „searched“ or „unsearched“ subject-matter is frequently found in the case-law, official communications and in the EPC. A thorough look at this notion reveals that the meaning thereof is far from being well-defined. The following article seeks to shed light on this problem and the consequences thereof.

The first sentence of new Rule 137(5) EPC corresponds to the old regulation and prohibits the amendment of claims in such a way that the claims relate to „unsearched subject-matter“ *which does not combine with the originally claimed invention or group of inventions to form a single general inventive concept.*“

However, adding unsearched subject-matter was hitherto allowable if it actually *did* combine with the originally claimed invention or group of inventions to form a single general inventive concept. The applicant's freedom to amend the claims was therefore limited by the limits of the general inventive concept rather than by the restriction to searched subject-matter such that a precise definition of the notion of „searched subject-matter“ was not necessary. Using the terminology of mathematics, the searched subject-matter was merely the class representative of the equivalence class of subject-matter being linked by a single general inventive concept.

The concept of a single general inventive concept has been used e.g. for justifying the inclusion of features from the specification into the amended claim even if the search examiner had not explicitly searched for the particular feature which had been included.

This situation has now drastically changed due to the introduction of the 2nd sentence of Rule 137(5) EPC, which prevents amending the claims in such a way that they relate to subject-matter not searched in accordance with Rule 62a or Rule 63 EPC. If one of multiple independent claims is selected as a result of a communication according to Rule 62a EPC or if the applicant files clarifying remarks as a response to the communication under Rule 63 EPC, he is limited to the subject-matter searched by the search division and may not amend the claims beyond these limits. This applies even in the case where the amended claims are linked to the searched subject-matter by a common inventive concept and may not be avoided by not answering to the communication.

2. Practical and Legal Consequences

In the mathematical terminology employed above, the applicant's freedom to amend the claims unavoidably shrinks from being able to choose the entire equivalence class of the subject-matter being linked by a single

general inventive concept to a single class representative thereof upon merely receiving a communication under Rule 62a or Rule 63 EPC. The EPC does not provide any remedy to circumvent this detrimental effect because the 2nd sentence of Rule 137(5) EPC will become applicable no matter what selection was made by the applicant. The applicant has lost a part of his rights and no possibility to appeal the examiner's decision to issue the unfortunate decision, which is a violation of his constitutional rights to property and of legal review.

The first and most important practical consequence of the above is that communications under Rule 62a or Rule 63 EPC should be avoided as well as possible. This is a real pity because the general idea of increasing the efficiency of the procedure by beforehand clarifying the subject-matter to be searched is very good. The intentions are good, they are however, undermined by the severe sanctions of Rule 137(5) EPC. Just as in real life, it is good to ask questions if there are any unclarities but a very bad idea to abate penalties for the answer at the same time because this will surely have a negative impact on the quality of the answers.

3. What do the Guidelines Say?

The following tries to illuminate the inside of the above discussed trap once the applicant has got caught in it by clarifying the notion of searched subject-matter.

First of all, it is to be noted that searched subject-matter in the sense of Rule 137(5) EPC, 2nd sentence is hopefully not what the Search Examiner has actually found because this is prior art per definition and limiting the applicant's freedom to what is known from the prior art is clearly not what this Rule is meant to achieve.

As a consequence, the searched subject-matter might eventually be defined as what the search examiner should have attempted to find when performing the search. For more details on what this might be, we have to take a look into the EPC and into the Guidelines for Examination in the EPO.

According to Art. 92 EPC, the search is carried out on the basis of the claims, with due regard to the description and any drawings and covering also well-known equivalents (Guidelines, B III, 3.2).

On principle, and insofar as possible and reasonable, the search should cover the entire subject-matter to which the claims are directed or to which they might reasonably be expected to be directed after they have been amended (Guidelines, B III, 3.5).

However, there are obviously limits to this general Rule. The examiner should for reasons of economy exercise his judgement, based on his knowledge of the technology in question and of the available information

retrieval systems, to omit sections of the documentation in which the likelihood of finding any documents relevant to the search is negligible (Guidelines, B III, 2.2).

Moreover, reasons of economy dictate that the examiner use his judgement to end his search when the probability of discovering further relevant prior art becomes very low in relation to the effort needed. The search may also be stopped when documents have been found clearly demonstrating lack of novelty in the entire subject-matter of the claimed invention and its elaborations in the description, apart from features which are trivial or common general knowledge in the field under examination, application of which features would not involve inventive step (Guidelines, B IV, 2.6). The latter case appears to be the one with the highest practical relevance.

If the „searched subject matter“ would be defined as what the examiner ought to search when following the guidelines, Rule 137(5) EPC 2nd sentence bars the applicant from amending the claims so as to touch „sections of the documentation in which the likelihood of finding any documents relevant to the search is negligible“ (Guidelines, B III, 2.2), where the „effort needed“ to search is too high or where the examiner has decided not to search „for reasons of economy“ (Guidelines, B IV, 2.6). The latter quotations are only a selection of cases where the scope of the search is left to the examiner's discretion.

In view of the above, it appears that the Guidelines for search are not a suitable starting point for a legal definition of the notion of „searched subject matter“. A limitation of the applicant's possibilities resulting from reasons of procedural economy rather than from the invention itself is a clear violation of the inventor's right to the invention.

4. What to Expect?

Hitherto, the above-mentioned limitations of the search for the sake of procedural economy did not affect the

applicant's or inventor's right to a European Patent (Art. 60 (1) EPC) because the examiner had to conduct an additional search where the claims had been so amended that their scope is no longer covered by the original search (Guidelines C VI 8.2 „Fourthly“). In a sense, the examiner was deprived of the duty to search the entire field covered by a very broad claim because an additional search could be done upon specific request without problems. However, amendments necessitating such an additional search are no longer possible in the cases of Rule 137(5) EPC, 2nd sentence such that not only the applicant's rights but also the possibilities of the search examiner to render the entire procedure more efficient are negatively affected.

It is to be waited for how the Examining Divisions and the Technical Boards of Appeal will interpret this unfortunate new 2nd sentence of Rule 137(5) EPC.

The author hopes that the construction of „searched subject-matter“ will be as wide as required for the „ideal search“ defined in Guidelines, B III, 3.5, i. e. as covering *the entire subject-matter to which the claims are directed to or to which they might reasonably be expected to be directed to after they have been amended* and not as the subject-matter of the original search only. What might this *reasonable expectation* consist of? It appears in any case to be reasonable to expect that the amendments may be directed to any subject-matter sharing a single general inventive concept with the originally claimed subject-matter such that the limitation would be of theoretical nature only.

However, in this case it is not understandable why the formulation of the first sentence of Rule 137(5) EPC has not been identically used for its second sentence. For the time being, any addition of features from the specification of an application where a communication under Rule 62a or Rule 63 EPC was received may potentially result in a objection under Rule 137(5) EPC and in discussions on whether or not the search examiner has searched for or should have searched for this feature or not.

Finally! EPO disentangles novelty and inventive step considerations for selection inventions

T. Bremi (CH)¹

While for „normal“ inventions novelty and inventiveness are two distinct criteria, which are assessed differently, sequentially and essentially independently, for some

selection inventions this was not the case in the past before the EPO. Indeed for a selection of a sub-range of a continuous range (e.g. a temperature range) disclosed in the state of the art, according to established case law novelty was only given, if the selected sub-

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range was a so-called „purposive selection“. This basically meant that a distinct effect had to be documented for that sub-range, in order to show that the selected sub-range was not just an arbitrary selection from the broad continuous range and thus novel. Such a requirement is essentially one which for all other types of inventions is dealt with in the assessment of inventiveness. This particular treatment of selection inventions in case of continuous ranges is particularly difficult to understand as for a selection out of lists of *individualized* elements (however close to each other) no such „purposive selection“ criterion was ever established for the assessment of novelty.

A while ago, a first decision T1233/05 was issued which stated that the criterion of „purposive selection“ for a selection out of a continuous range was not one to be dealt with when assessing novelty, but only when assessing inventiveness. This decision was regarded by many as a welcome and correct, but nevertheless potentially single, decision in view of the vast established case law having established the „purposive selection“ criterion for novelty. This until very recently, when this novel approach was further confirmed in decision T0230/07 of a different Board of Appeal.

Let's hope this is a lasting change which is noticed by as many as possible and this is why the principles and the two new decisions shall be briefly outlined in the following.

Generally speaking a selection invention is an invention which out of a broad continuous range or out of a list disclosed in the state of the art selects a sub-range or a sub-list, which can be a narrower range or one or several individual elements of that list, respectively. To be patentable, this sub-range or sub-list must be new and inventive. Such a selection can be out of a list of individualized elements (elements are disclosed in an individualised concrete form in the prior art) or out of a continuous range disclosed in the state of the art. As already mentioned above, these two possibilities are handled differently by the EPO (see GL C IV 9.8²).

A pre-disclosed list of *individualized* elements can either be one or several lists of individualized elements (e.g. round, square, triangular) or one or several number „ranges“ of however clearly individualized elements (e.g. 4-12 cylinders).

For this situation, where the state of the art discloses one or several lists of *individualized* elements, the criteria applied for the assessment of novelty are rather clear and straightforward. Indeed if a selection is made out of a *single* list of individualized elements, there is no novelty (single selection step, see e.g. T0012/81).

If on the other hand the state of the art discloses two lists of individualized elements (e.g. round or square element, made of metal, plastic or wood), and elements of each list are selected (e.g. round metal element), then

there is novelty (twofold selection), if this combination is not disclosed in the state of the art (T0007/86).

It is important to note the impact this rather narrow view has, not only when dealing with opposed state of the art and particularly under Art. 54(3), but also and in particular in situations where the novelty test is used for determining whether an amendment is supported by the documents as filed (Art. 123(2)) or for determining whether a priority is validly claimed. The more narrow and rigid the view, the simpler to distinguish from state of the art but the more difficult on the other hand to prove support in the documents as filed or in the priority document. An impressive example of this in case of a priority issue is to be found in T0077/97 where the priority document of company RP disclosed $A = [A_1 \text{ or } A_2]$ and $B = [B_1 \text{ or } B_2]$, and where an amendment to $A=A_1$ and $B=B_1$ (selection out of two lists) was found to be supported under Art. 123(2) as this was disclosed in the subsequent application but as being novel with respect to the priority document (the specific selection $A=A_1$ and $B=B_1$ was not disclosed in the priority document) and thus not entitled to priority. As there was an intermediate filing within the priority time interval of competitor BMS disclosing and claiming $A=A_1$ and $B=B_1$ this had the effect that company RP could not get specific protection for this combination $A=A_1$ and $B=B_1$ (see graphical illustration in Fig. 1) due to conflict under Art. 54(3) with the document of BMS.

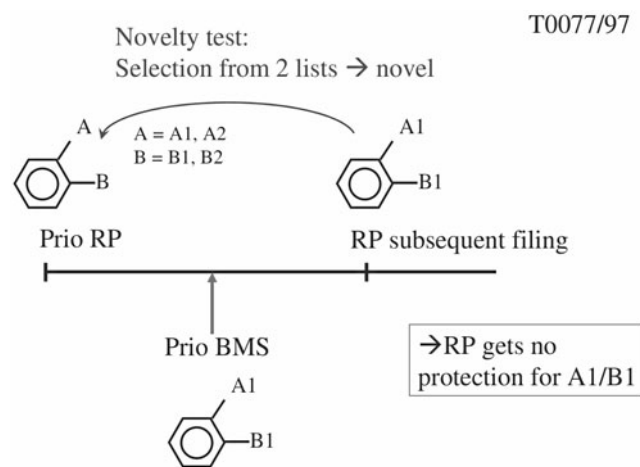


Fig. 1: Simplified schematic representation of the situation in T0077/97

A more recent noteworthy decision T1374/07 carries this remarkably further for the question of support under Art. 123(2). In the documents of the application as filed a list was given „A, B, C, D, E and/or mixtures thereof“. The applicant tried to claim „A mixed with B“ however this was not allowed as, according to the Board, this would be tantamount to selecting twice from one list.

Never ever has there been, when assessing novelty in these cases, a criterion that the selection from the list be purposive. This issue was always dealt with under the assessment of inventiveness. This well in accordance with the standards applied to inventions in all other fields.

² Interestingly the Guidelines seem to avoid the expression *continuous* range and only talk of *broader numerical* range. While in practice these principles are primarily applied to continuous ranges, this could imply that also in case of broad „individualized“ numerical ranges these principles as outlined in C IV 9.8 (ii) could be applicable.

With one rather odd exception, namely in case of a selection out of a *continuous* range. Here case law has established a three criteria test for novelty for these cases: (i) the selected continuous range must be narrow compared to the continuous range disclosed in the state of the art, (ii) the continuous range must be sufficiently far away from the specific examples disclosed in the state of the art, and (iii) the selected continuous range must be a *purposive selection*. T0198/84, the basis decision of this approach, states that for meeting criterion (iii) no particular effect need be there, nevertheless a „different invention“ must be there. In most cases it is however impossible to show a „different invention“ without there being a particular effect.

Often cited decision T0279/89 confirms this approach and further specifies that the selected sub-range must be one which *would not have been considered by the person skilled in the art* to work in when starting off from the broad continuous range in the state of the art.

Aren't these exactly the criteria for the assessment of inventiveness? Aren't the above two criteria (i) and (ii) sufficient for handling the novelty assessment in case of a selection out of a continuous range equivalently to a selection out of lists of individual elements? Indeed, it appears the criteria (i) and (ii) are making sure that ridiculously close shave limitations are not possible, so criterion (iii) is not necessary. We have always had problems in understanding why this particular selection situation out of a continuous range should not be treated the same way as inventions of any other kind.

Admittedly there is a noteworthy difference between the selection out of a list of individualized elements and the selection out of a continuous range: In the former case a selection from one single list does in no case confer novelty, while in the latter case selection from one single continuous range may, provided the above mentioned criteria are met, confer novelty. So in spite of the ambiguity of the terms „narrow“ in criterion (i) and „sufficiently far removed“ in criterion (ii), at least these two criteria seem appropriate. But not so the third criterion of „purposive selection“.

Indeed, the consequences of this „purposive selection criterion“ can e.g. be severe in case of a conflicting Art. 54(3) document. Furthermore this intermingling of inventiveness considerations with novelty raises the question whether to show *purposive selection* it would be possible to submit experimental evidence after the filing of the application.

Two recent decisions T1233/05 and T0230/07 do away with the difficult third criterion (iii) in the assessment of novelty, and do so actually without too much reasoning. They simply confirm the evident, namely that

such a third criterion is not to be looked at when assessing novelty but when assessing inventiveness. In reasons 4.4 decision T1233/05 simply states (remarks in angular brackets added):

However, regardless of whether or not that third criterion would be satisfied by the claimed invention vis-à-vis document (1), the claimed numerical range is narrow [criterion (i)] and far removed from the specific disclosure of this document [criterion (ii)] with the consequence that already for those reasons novelty of the claimed subject-matter has to be acknowledged.

Nevertheless, the Board notes that the presence or absence of a particular technical effect within the sub-range, i.e. the so-called third criterion raised by the Appellant, appears to fall back upon considerations which should be taken into account in the assessment of inventive step rather than in that of novelty. Novelty and inventive step are, however, two distinct requirements for the patentability of an invention and different criteria should apply for their assessment.

Thus, such particular effect is neither a prerequisite nor can it as such confer novelty; its existence can merely serve to confirm a finding on novelty already achieved, a sub-range being not rendered novel by virtue of a newly discovered effect occurring within it.

The second and more recent decision T0230/07 essentially confirms this view by referring to this part of T1233/05.

The new view taken in the recent decisions as concerns the assessment of novelty in case of a selection out of a continuous range can only be approved. At last it subordinates this particular type of selection inventions for continuous ranges to a more similar regime as selections out of lists of individual elements, and basically to a more equivalently narrow view novelty regime as any other type of inventions. Interestingly, in the recently treated AIPPI question Q209 in the final resolution it was clearly stated that the assessment of novelty should not include any such thing as checking whether a sub-range is a purposive selection and that novelty and inventive step assessment are clearly to be separated for these inventions as done for any other invention. So the new decisions also correspond to this.

Hopefully therefore, the two recent decisions will be followed by the EPO and by further Boards of Appeal in the future and hopefully a lasting change in the assessment of novelty (and in the application of the novelty test) before the EPO will take place for such selection inventions. If not, this would be something to refer to the Enlarged Board of Appeal in view of the divergent case law of different Boards of Appeal and in view of its conceptual and economical importance.

Keine Erteilung eines Europäischen Patents vor Ablauf von 18 Monaten ab dem Anmeldetag – zu (Un)Recht?

M. Wilming (CH)¹

Worum geht es?

Gemäß Art. 93(2) EPÜ wird die europäische Patentanmeldung gleichzeitig mit der europäischen Patentschrift veröffentlicht, wenn die Entscheidung über die Erteilung des Patents wirksam wird vor Ablauf von 18 Monaten nach dem Anmeldetag (oder, wenn eine Priorität in Anspruch genommen worden ist, nach dem Prioritätstag) oder auf Antrag des Anmelders auch vor Ablauf dieser Frist.

Art. 97(1) EPÜ legt fest, dass die Prüfungsabteilung die Erteilung des europäischen Patents beschließt, wenn sie der Auffassung ist, dass die europäische Patentanmeldung (und die Erfindung, die sie zum Gegenstand hat), den Erfordernissen des EPÜ genügen.

Eine Erteilung vor Ablauf von 18 Monaten ab dem Anmeldetag (oder Prioritätstag) erscheint daher möglich; jedenfalls ist sie vom EPÜ nicht *a priori* ausgeschlossen.

Die Praxis sieht jedoch anders aus.

Zum konkreten Sachverhalt

Die Anmeldung EP 07121436 wurde ohne Beanspruchung einer Priorität am 23. November 2007 eingereicht. Der Recherchenbericht datiert vom 01. April 2008. Am 07. April 2008 wurde Prüfungsantrag gestellt, die in der Stellungnahme zur europäischen Recherche beanstandeten Mängel behoben und unter dem PACE Programm beschleunigte Prüfung beantragt. Die Prüfungsabteilung hat am 01. Juli 2008 die Mitteilung gemäß R. 71(3) EPÜ versandt. Die Übersetzung der Ansprüche in die beiden anderen Amtssprachen sowie die Erteilungsgebühr wurden dem EPA am 29. Juli 2008 übermittelt; ausdrücklich wurde beschleunigte Erteilung beantragt. Die bis dahin noch nicht entrichteten Benennungsgebühren wurden aufgrund eines telefonischen Hinweises des beauftragten Prüfers/Formalprüfers vom 20. Oktober 2008 noch am gleichen Tage entrichtet.

Spätestens am 20. Oktober 2008, also ca. 11 Monate nach dem Anmeldetag, waren alle Erfordernisse des EPÜ erfüllt. Die Publikation des Hinweises auf die Patenterteilung erfolgte auch auf abermalige schriftliche Nachfrage vom 27. Januar 2009 hin nicht.

Erst am 17. März 2009 (mittlerweile ca. 16 Monate nach dem Anmeldetag) wurde der Anmelderin telefonisch mitgeteilt, dass „die vorgesehene Frist für die abschließende Recherche gemäß Art. 54(3) EPÜ [...] noch nicht abgelaufen“ sei; daher könne „die Entschei-

dung auf Erteilung nicht erlassen werden, obwohl die für die Erteilung notwendigen Erfordernisse bereits erfüllt worden sind (s. Richtlinien für die Prüfung im Europäischen Patentamt, C-VI, 8.1, letzter Satz).“ Wegen dieser Problematik gebe es eine „interne Anweisung“ des EPA an die Prüfer, vor Ablauf von 18 Monaten ab dem Anmelde- oder Prioritätstag keine Mitteilungen gemäß R. 71(3) EPÜ zu erlassen.

Auf abermalige Nachfrage der Anmelderin erläuterte die Prüfungsabteilung am 15. Juni 2009 schließlich: „Da die Recherchedokumentation hinsichtlich des Stands der Technik gemäß Art. 54(3) EPÜ jedoch erst 18 Monate nach dem Anmeldetag vollständig ist, kann eine Erteilung vor diesem Zeitpunkt auch nicht stattfinden und es hat eine abschließende Recherche durch die Prüfungsabteilung stattzufinden. Diese Interpretation von Art. 93(2) hat entsprechenden Niederschlag in den Richtlinien für die Prüfung, insbesondere in C-VI, 8.1, gefunden. Anders wäre die Sachlage zu beurteilen, wenn die Recherchedokumentation bereits vor diesem Zeitpunkt vollständig wäre (z. B. bei Einrichtung eines internationalen Anmelderegisters, wie es im Rahmen der WIPO seit Jahren diskutiert wird).“

Die A1 Schrift wurde schließlich erst nach Ablauf von 18 Monaten ab dem Anmeldetag publiziert, nämlich am 08. Juli 2009; der Hinweis über die Erteilung wurde erst am 13. August 2009 bekannt gemacht.

Ein Schreiben vom 18. Juni 2009 an die Rechtsabteilung des EPA, worin angeregt wurde, die Anweisung an die Prüfer in den Richtlinien für die Prüfung, C-VI, 8.1, zu überarbeiten, wurde schließlich am 28. Oktober 2010 beantwortet: „Nach eingehender Befassung mit dem [...] aufgeworfenen Sachverhalt begegnen die in Abschnitt C-VI, 8.1 enthaltenen Anweisungen keinen Bedenken im Hinblick auf ihre Vereinbarkeit mit dem EPÜ.“

Kritik

1. Keine einheitliche Praxis im EPA

Die Praxis der Prüfungsabteilungen des EPA ist offensichtlich in dieser Frage nicht einheitlich, da auch europäische Patente vor Ablauf von 18 Monaten ab dem Anmelde- oder Prioritätstag erteilt werden (als ein Beispiel sei auf EP 1 849 777 B1 verwiesen). Eine einheitliche Rechtsanwendung in diesem formalen Punkt erscheint jedoch unbedingt angezeigt: Nur Anmelder, die von vornherein wissen, dass/ob eine vorzeitige Erteilung beim EPA möglich ist, können ihre Anmeldestrategie zielführend planen (siehe hierzu unten, Ziff. 3 und Fazit).

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2. Die Prüfung nach Art. 54(3) EPÜ kann auch nach Ablauf von 18 Monaten nicht zwingend vollständig durchgeführt werden

Zwar mag es zutreffen, dass die Recherchedokumentation des EPA hinsichtlich PCT-Anmeldungen, die unter Art. 54(3) EPÜ zu berücksichtigen sind, erst nach Ablauf von 18 Monaten ab dem Anmelde- oder Prioritätstag vollständig ist. Damit jedoch eine in einer Amtssprache des EPA eingereichte PCT Anmeldung als älteres Recht einer jüngeren EP Anmeldung unter Art. 54(3) entgegenstehen kann, müsste insbesondere auch die Anmeldegebühr für die europäische Phase gezahlt werden (Art. 153(5) EPÜ iVm R. 159(1)(c), R. 165 EPÜ); die Frist hierfür beträgt 31 Monate ab dem Anmelde- oder Prioritätstag der PCT Anmeldung (R. 159(1) EPÜ). Es ist also offensichtlich zu kurz gegriffen, die Prüfer in den Richtlinien für die Prüfung, C-VI, 8.1, lediglich anzuweisen, die abschließende Recherche „auf alle europäischen Anmeldungen auszudehnen, die bis zu 18 Monate nach Einreichung der betreffenden Anmeldung veröffentlicht worden sind.“ Was nun, wenn in dieser abschließenden Recherche eine einschlägige PCT Anmeldung aufgefunden würde? Für einen solchen Fall müsste konsequenterweise auch noch eine Anweisung an die Prüfer in den Richtlinien enthalten sein, dass erst abgewartet werden müsse, ob diese in die regionale Phase vor dem EPA eintritt – was mit einer abermaligen Verzögerung des Erteilungsverfahrens um weitere 13 Monate durch bloßes Zuwarten einherginge.

3. Die Praxis des DPMA im Vergleich

Auch das deutsche PatG enthält eine Regelung hinsichtlich älterer Rechte, die als Stand der Technik gelten, explizit auch für internationale Anmeldungen mit Benennung von Deutschland (§ 3, Absatz (2), Ziff. 3 PatG). Die Regelung ist inhaltlich analog zu Art. 54(3) EPÜ ausgestaltet. Kommt das DPMA etwa seinem Prüfungsauftrag nicht nach, indem es regelmäßig (wesentlich häufiger noch als das EPA) Patente vor Ablauf von 18 Monaten ab dem Anmeldetag erteilt? Wohl kaum.

Fazit des Autors

Die Erteilung von europäischen Patenten vor Ablauf von 18 Monaten ab dem Anmelde- oder Prioritätstag mag das Risiko in sich bergen, dass ein Stand der Technik gemäss Art. 54(3) EPÜ, der aus einer früheren PCT Anmeldung hervorgeht, im Prüfungsverfahren unberücksichtigt bleibt. Dieses Risiko scheint jedoch durchaus vertretbar. Natürlich soll zwar die Prüfung durch das EPA gewissenhaft erfolgen. Das darf jedoch nicht bedeuten, dass tatenlos zugewartet werden muss, bis die Recherchedokumentation hinsichtlich Art. 54(3) EPÜ Stand der Technik vollständig ist (und ggf. auch noch Klarheit darüber herrscht, ob eine PCT Anmeldung in die regionale Phase beim EPA eintritt oder nicht). Hinsichtlich Art. 54(2) EPÜ Stand der Technik wird die Vollständigkeit der Dokumentation ohnehin trotz ständiger Erweiterung nie gegeben sein. Mit welcher Berechtigung sollte bei älteren Rechten ein strengerer Maßstab angelegt werden? Vielmehr sollte die Prüfung europäischer Patentanmeldungen stets so rasch als möglich erfolgen, und zwar auf Basis der im Zeitpunkt der Prüfung zur Verfügung stehenden Recherchedokumentation. Das ist sowohl im Einklang mit jeglicher Sorgfaltspflicht des EPA (was nicht in der Recherchedokumentation vorhanden ist, kann/braucht auch nicht berücksichtigt zu werden) als auch im Interesse der Anmelder, die ein rasches (und kein künstlich verzögertes) Prüfungsverfahren wünschen.

Jedenfalls sollte die Prüfungspraxis des EPA aber in diesem Punkt eine klare Linie verfolgen anstatt dies einzelfallbasiert dem Ermessen jeder einzelnen Prüfungsabteilung zu überlassen. Wenn klar ist, dass beim EPA eine Patenterteilung vor Ablauf von 18 Monaten nicht (mehr) möglich ist, können Anmelder, denen an einer raschen Patenterteilung gelegen ist, von vornherein ihre Anmeldestrategie entsprechend anpassen. Beispielsweise kann mit der Erstanmeldung auf das DPMA ausgewichen werden, um zumindest in einem wichtigen Markt rasch Patentschutz zu erlangen.

Divisionals – Peering into the Mist

D. Visser (NL) and M. Blaseby (GB)¹

Decision G1/09 of the Enlarged Board of Appeal of the EPO (EB) issued on 27 September 2010. The EB held that a European patent application remains „pending“ after a refusal in first instance proceedings until the deadline

for filing an appeal expires; thus a divisional application may be validly filed during this period.

The decision overturns previous practice of allowing the filing of divisional applications until pronouncement of the decision in oral proceedings and notification of the decision in written proceedings. It removes the need to file a last-minute divisional application in advance of oral

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proceedings as a fallback in case of a negative decision taken during oral proceedings. Moreover, filing an appeal merely to reopen the possibility to file a divisional application is usually no longer necessary. The benefits are however reduced by the requirement that a divisional application must be filed within the 24-month period under Rule 36(1)(a) or (b) EPC. At present the prosecution of only half of the applications is concluded within the 24-month period of Rule 36(1)(a); hence, this period may have expired by the time a decision to refuse is taken.

The decision provides a clear solution for the referred case of refusal. However, if the rationale of the decision is applied to other cases, rather unclear results ensue. After a brief discussion of the decision, the application to several cases will be set out.

1. G1/09 – A summary

The following point of law was referred to the EB:

Is an application which has been refused by a decision of the Examining Decision thereafter still pending within the meaning of Rule 25 EPC 1973 (Rule 36(1) EPC) until the expiry of the time limit for filing a notice of appeal, when no appeal has been filed?

In answering this question, the EB distinguishes between a pending patent application and pending proceedings, which need not coincide in time². For example, during a stay of the proceedings under Rule 13(3) the proceedings are not pending, whereas the application is still pending³.

According to R.36(1) the pendency of the application rather than the pendency of the proceedings is relevant for the right to file a divisional application. For an applicant to be able to file a divisional application, an earlier patent application needs to be pending.

The EPC does not define when an application is pending⁴. In view of the substantive character of the right of the applicant to file a divisional application⁵, the EB defines a pending (earlier) European application in the specific context of Rule 36 as „a patent application in a status in which substantive rights deriving therefrom under the EPC are (still) in existence“⁶.

Any substantive right under the EPC deriving from the patent application, other than the right to file a divisional, can be used to ascertain pendency of the application⁷. When at least one such right exists, the application is pending; when no such right is pending, the application is not pending. The EB has chosen to use the substantive right of provisional protection under Article 67 to determine a limit to the pendency⁸. This choice may have been prompted by the mention of „refused“ in

paragraph 4 of this article, relating to the same stage of the application as the referred question.

It concludes in reason 4.2.3 of G1/09:

Article 67(4) EPC rather is a self-contained substantive provision indicating the point in time at which substantive rights conferred by a European patent application and therefore its pending status must end.

Although Article 67(4) relates only to the substantive right of provisional protection, the above sentence uses the plural ‚substantive rights‘. The EB appears to regard Article 67(4) as ending *all* substantive rights deriving from the patent application. This leads naturally to the conclusion that the pending status of the patent application must end.

The provisional protection ends at the point in time when, according to Article 67(4), the application is finally refused. The EB concludes that an application that has been refused, and no appeal filed, is pending until the expiry of the period for filing an appeal⁹. Hence, the last day an applicant can file a divisional application if a refusal is not appealed, is the expiry of the period for filing the appeal.

In an obiter dictum the EB held that in the case of a decision to grant, the pending status of an application ceases on the day before the mention of its grant is published, since from that time substantive rights under the EPC are no longer derived from the patent application but now derive from the granted patent¹⁰.

2. Reconsideration of ‚pending‘

The EB appears to regard Article 67(4) as ending *all* substantive rights deriving from the patent application. However, this is not necessarily so. For example, a first application complying with all formal requirements except the presence of an abstract will be refused under Article 90(5) if not remedied in time¹¹. The final refusal will probably fall within the priority year, i.e. within 12 months from the filing of the application. Article 87(1) EPC gives the applicant the substantive right of claiming priority from this application up to expiry of the priority year¹². The reasoning of the EB in reason 4.2.3 appears to end the priority right at the time the refusal becomes final, i.e. before expiry of the priority year, thereby taking away a right directly granted by the EPC to the applicant in accordance with the Paris Convention.

This undesirable possible consequence of G1/09 using Article 67(4) for defining the end of pendency calls for a different reasoning to reach the conclusion in reason 4.2.3. The basis for such a reasoning is already provided in the decision. The definition of pendency in reason 3.2.4 implies that the existence of any substantive right is sufficient for a pending status of the application. The end of the pending status of an application is thus determined by the end of all substantive rights deriving there-

2 G1/09 r. 3

3 G1/09 r. 3.2.2

4 J2/08

5 G1/09 r. 3.2.3; Paris Convention Article 4G.

6 G1/09 r. 3.2.4

7 The substantive right to file a divisional has been excluded to avoid a circle reasoning.

8 G1/09 r. 4.2.1

9 G1/09 r. 4.2.4

10 G1/09 r. 4.3.2

11 Guidelines A-III, 16.2

12 See also Article 87(3) EPC „whatever the outcome“.

from. Article 67(4) should probably be used only for defining the point in time when the provisional protection ends.

A substantive right relevant for all stages of the grant procedure and on which pendency of the application may be based is the right to a European patent under Article 60(1). This right exists as long as a patent on the application can be obtained. It is in existence from filing of the application till the application is finally refused and the applicant has no means of redress anymore. The EB has endorsed the principle of several EPC contracting states that ,decisions do not become final until the expiry of the respective period for seeking ordinary means of legal redress' in the context of Article 67(4).¹³

The last day on which the applicant can revive the application after a refusal in first instance that is not appealed is the expiry of the two-month period for filing the appeal. If he does not file an appeal, his right to a patent is lost at the end of that day. On the following day no substantive right deriving from the patent application is still in existence, because both the provisional protection and the right to a patent have lapsed. The authors are not aware of any other pending substantive right, provided the final refusal falls after expiry of the priority year. Since no substantive right is in existence anymore, the application is no longer pending. This result is identical to that obtained by the EB¹⁴, however without the undesirable consequence of the above example.

The following sections will explore consequences of applying the reasoning of G1/09 to other cases.

3. Remedies and divisional applications

Whilst the start of pendency of an application is usually clear, the end is often not obvious. Decision G1/09 focuses on the pendency during the appeal period following refusal, but does not give guidance in respect of pendency in the case of remedies other than appeal. This section will focus on possible effects on e.g. further processing and re-establishment.

If an applicant fails to respond in time to an Article 94(3) communication, the application will be deemed withdrawn. At present (24-1-2011), the Guidelines still hold that the application is no longer pending after expiry of the non-observed period and a divisional application cannot be filed after said expiry¹⁵.

The reasoning of decision G1/09 may be applied to ,deemed withdrawal' in two ways. A first application of G1/09 is to use paragraph 4 of Article 67 in the manner apparent from reason 4.2.3 of the decision. Paragraph 4 states that the provisional protection ends when the application ,has been ... deemed to be withdrawn'¹⁶. Following the above interpretation of reason 4.2.3,

second sentence, in which the end of provisional protection defines the end of all substantive rights, it should be concluded that the pending status ends at expiry of the non-observed period. Hence, a divisional can be filed at the latest on the day of expiry of the non-observed period. This result does not however account for the filing of a divisional application in the period for seeking legal redress as endorsed by the EB for appeal after refusal and appears therefore in conflict with the principle of pendency until the expiry of a remedial period.

A second application of G1/09 is to use the principle, endorsed by the EB, that a decision does not become final until expiry of the respective period for seeking ordinary means of redress¹⁷. Although ,deemed withdrawn' is not a decision but a loss of rights occurring by operation of law, application of the principle to the case of ,deemed withdrawn' is reasonable in view of the similarity between ,deemed withdrawn' and ,refusal' after failure to meet a time limit. If the applicable remedy is further processing, the application will be pending until expiry of an unavailed two-month period of Rule 135(1) for requesting further processing and a divisional application can be filed until said expiry. Taking an average response time of about one month for the EPO to send a loss of rights communication after expiry of a non-observed period, a divisional application can be filed up to about three months from expiry of the period. The EPO is presently considering whether the reasoning of G1/09 should be applied to its further processing procedure.

If the applicable remedy is instead re-establishment, the pendency of the application is substantially longer. Since a request for re-establishment must be filed within one year of the unobserved period according to Rule 136(1), the substantive right to the patent will exist during this time and the application should be regarded as pending until expiry of the one-year period. It may last more than a year after filing the request before the EPO takes a decision on the re-establishment. Since such a decision can be appealed if adverse, the application should be regarded as pending at least until expiry of the two-month period for appealing the decision. Hence, a divisional application may be filed up to more than two years after expiry of the failed period.

It should be noted that a non-observed two-month period for requesting further processing is open for re-establishment. It could be argued that any pendency of the application is thereby extended by more than one year.

In the case of a refusal of the application, dealt with in G1/09, a non-availed appeal period is also open to re-establishment, causing the pendency to be extended by more than two years. The decision on re-establishment is again open to appeal. As a further remedy a petition for review of the decision in appeal may be requested under Article 112a. The petition, if based on a criminal act, must be filed within five years from notification of the decision of the board of appeal¹⁸. During

13 G1/09 r. 4.2.2.

14 G1/09 r.4.2.4

15 Guidelines section A-IV, 1.1.1.1

16 The Travaux Préparatoires EPC 1973 and the book „The granting of European Patents" by Van Empel are silent about why Article 67(4) uses „deemed withdrawn" and not „finally deemed withdrawn", corresponding to „finally refused".

17 G1/09 r. 4.2.2

the entire period a substantive right to the patent may be regarded to exist, resulting in a continued pendency of the patent application. It should, however, be noted that the period for filing a divisional application is limited by the two 24-month periods of Rule 36(1).

The application of G1/09 to remedies other than appeal after refusal causes an undesirable uncertainty for third parties. Guidance from the EPO on this issue would be helpful. A reconsideration of using the existence of a substantive right as a basis for pendency of an application might also be reconsidered.

4. Obviously inadmissible appeal

The EB did not answer the question whether a divisional can be filed after an (obviously) inadmissible appeal that has been filed in order to maintain pendency of the application past a deadline¹⁹. A few comments may be in order.

The application must be regarded as pending during an (obviously) inadmissible appeal, because the EPC does not provide otherwise. Hence, an applicant should be able to file a divisional during the appeal proceedings. This is all the more reasonable in view of the similarity between the examination of admissibility of an appeal in Article 110 and the examination as to formal requirements of a patent application in Article 90(3). Both examinations are similar in that they assess compliance with formal requirements and, if complied with, will lead to examination of the substance of the request. Since a patent application is pending during examination as to formal requirements and permits filing of divisional applications, whatever formal deficiencies are present in the application, a patent application should also be pending and permit filing of divisional applications during examination of admissibility of an appeal whether or not the appeal is obviously inadmissible.

As an exception, when appealing a decision to grant, no patent application exists anymore since the date of publication of the mention of the grant, and any substantive rights at this stage are based on a patent that does not allow the filing of divisional applications²⁰. Only when the board reverses the decision to grant does the patent application revive and can divisional applications be filed, provided at least one 24-month period under Rule 36(1) has not expired²¹.

As an aside, it should be noted that the definition of pendency of the EB has a strange consequence for an application filed without payment of fees, for claiming priority therefrom. The priority right under Article 87(1) is a substantive right derived from the application that exists until twelve months after filing²². Since a substantive right is in existence, the application is pending during

the priority period according to the definition given in G1/09 reason 3.2.4. Hence, a divisional application can be filed during the priority period, even after the application is finally deemed withdrawn.

5. Euro-PCT and Divisional Applications

A Euro-PCT application can be used as a basis for a European divisional application, because it is equivalent to a regular European application according to Article 153(2) EPC. However, according to G1/09, the processing prohibition of Article 23(1) PCT is a procedural provision that excludes the filing of a divisional application relating to pending Euro-PCT applications before they are processed by the EPO acting as a designated/elected Office²³. The following two sub-sections discuss two methods to lift the processing prohibition and cause the EPO to start processing.

5. i) Expiry of 31-month period

The processing prohibition will be lifted by the expiration of the 31-month period²⁴. Upon expiry, the EPO will start processing the application and the applicant can use the Euro-PCT application as a basis for filing a divisional application.

Present practice of the EPO stipulates that on entry into the European phase of a Euro-PCT application, certain requirements must be met before a divisional application can be filed on the basis of the Euro-PCT application. The requirements have changed in the past, and range from payment of the filing fee and filing of any translation, as required under Rule 165, to compliance with all requirements of Rule 159(1)(a)-(g)²⁵. Decision G1/09 may clarify the requirements.

When the 31-month period for entry into the European phase expires, processing of a pending Euro-PCT application starts automatically. If not all requirements of Rule 159(1) have been completed on entry, a notice of loss of rights will be issued and the Euro-PCT application will be deemed withdrawn upon expiry of the 31-month period. Currently, a divisional cannot be filed if the requirements of Rule 159(1) EPC have not been met for the Euro-PCT application, since the parent is assumed not to be pending anymore after expiry of the 31-month period.

This practice may conflict with the reasoning of G1/09. As we explained in section 3 above, G1/09 may be interpreted to render an application pending until the end of the further processing period. Since further processing may be used to rectify a loss of rights for failing to comply with the acts of Rule 159(1) EPC, a parent Euro-PCT application may be regarded as pending for

18 Article 112a(4), third sentence

19 G1/09 r. 4.3.3, third paragraph

20 G1/09 r. 4.3.2

21 This agrees with decision J28/03, which held that a divisional filed after a decision to grant is only valid if the appeal reversing the decision is allowed. However, it may conflict with the final character of a first-instance decision ensuing only upon expiry of the appeal period (G1/09, r. 4.2.2, first sentence).

22 The apparent curtailing of the priority period, as a possible consequence of G1/09 as set out in the first paragraph of section 2 of this article, is not considered here.

23 G1/09 r. 3.2.5

24 Article 23(1) PCT

25 See EPO communication of 20 October 2009 for patent application EP07863439.1

approximately three months after expiry of the 31-month period (a notice of loss of rights takes on average one month to issue, plus the two-month further processing period). During this pendency, a divisional may be validly filed.

The advantages would be significant. Under Rule 164(2) EPC, a Euro-PCT application cannot be prosecuted in the European phase on the basis of claims which have not been searched during the International phase. If an applicant is no longer interested in the searched invention and wants to pursue protection for a different, unsearched, invention, current practice requires the parent Euro-PCT application to enter the European phase and comply with Rule 159(1), followed by filing a divisional application for the unsearched invention. In light of G1/09, a divisional may be filed without the additional costs of complying with the requirements of Rule 159(1) for the parent Euro-PCT application.

G1/09 may settle discussions which have been ongoing since 1978 on the requirements imposed on the parent Euro-PCT application when entering into the European phase to allow the filing of a divisional application.

5. ii) Express Request

The processing prohibition can also be lifted by an express request filed by the applicant with the EPO as designated/elected Office under Article 23(2) PCT before expiry of the 31 months. The request removes the procedural exclusion for filing a divisional application. Since the substantive requirement of a pending application is also fulfilled, G1/09 reason 3.2.5 directly implies that a divisional application can be filed on the basis of the pending Euro-PCT application immediately after an express request²⁶. When the divisional is filed before expiry of the 31 months, compliance of the parent Euro-PCT application with Rule 159(1) is not necessary for the validity of the filing. If the acts of Rule 159(1) are not complied with, the parent application will be deemed withdrawn on expiry of the 31-month period, i.e. after filing of the divisional. Whereas in current practice the EPO requires at least part compliance with Rule 159(1) for the Euro-PCT application to file a divisional before expiry of the 31 months, the EB requires

only that the EPO is processing the Euro-PCT application as designated/elected Office as condition for filing a divisional.

An applicant not interested in prosecuting a Euro-PCT application in the European phase and wanting to pursue an unsearched invention in a divisional can now use a procedure similar to his normal procedure for entering the European phase. He files the 1200 form, any translation of the Euro-PCT application and the divisional shortly before expiry of the 31-month period. However, instead of complying with Rule 159(1), he files an express request.

This strategy shares the advantages of section i) above, namely that a divisional may be filed without any action or costs needed in relation to the parent Euro-PCT application.

The strategy may be distinguished from that of section i) above. In section i), a divisional application may be filed on the basis of a parent Euro-PCT application which has already failed to meet the requirements of Rule 159(1) EPC due upon entering the European phase. The ability to file a divisional application on the basis of this parent relies on the application of G1/09 to extend the pendency of the parent beyond expiry of the 31-month period, explained above. However, in the present situation, there is no question as to the parent's pendency; regardless of the reasoning of G1/09 in respect of pendency during a remedial period, the parent is pending in the period up to expiry of the 31-month period. G1/09 instead clarifies that the processing prohibition prevents filing of a divisional based on a Euro-PCT application.

G1/09 may thus provide a cheaper and simple method for European prosecution of an unsearched invention in a divisional based on a Euro-PCT application.

6. Conclusion

The implications of the G1/09 decision for filing divisional applications may be significant, beyond confirming that a divisional application can be validly filed during the period for filing an appeal. We hope the EPO will clarify soon how G1/09 applies to other scenarios, to clear the mist shrouding divisionals.

We gratefully acknowledge stimulating discussions with David Harrison.

²⁶ Any problem that may arise if the Euro-PCT application is not in an official language of the EPO and no translation has been filed before filing of the divisional, should be resolved by amending the Implementing Regulations.

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