

COUNCIL

DRAFT MINUTES

LUXEMBOURG

66th MEETING

23 MAY 2009

- Annex 1: Agenda
Annex 2: List of Papers
Annex 3: List of Decisions and Actions
Annex 4: List of Participants
Annex 5: List of Abbreviations

1. Opening of the meeting

The meeting was opened by the President, Mr. FINNILÄ, who welcomed the Council members and a newly appointed Council member from Malta, Mr. MARLIN.

2. Appointment of scrutineers

Ms. FLOREA (RO) and Mr. LAGET (FR) were appointed scrutineers.

3. Adoption of the Revised Draft Agenda

The revised draft agenda **epi** 137/08 Rev.1 was adopted.

4. Approval of the Minutes, List of Decisions/Actions of the 65th Council Meeting

It was agreed that decision 8 of the minutes relating to the motion by Mr. LEYDER was to be taken in the afternoon.

The Minutes, list of decisions and actions (**epi** 137/08 Rev.1, **epi** 2/09, **epi** 3/09) of the 65th Council meeting in Vilnius were adopted.

5. Matters arising from the Minutes of the last Council Meeting

With reference to decision 5c of the minutes of the 65th Council meeting, President FINNILÄ reported that the Chairman of the Litigation Committee had been asked to review the position paper on the draft Agreement on the European Union Patent Court according to the decisions taken at that meeting.

It was noticed later on that the requested amendment under decision 5c, namely that the obligation to grant an injunction will not be demanded, had not been made. Said error most likely occurred due to multiple solicitations of the Chairman of the Litigation Committee when taking the notes of the decision and, at the 79th Board meeting, the Board decided that a letter correctly reporting Decision 5c of the 65th Council Meeting will be sent to the addressees of the previous letter containing the erroneous statement. The letter will be prepared by the President.

6. Treasurer's report

The Treasurer, Mr. QUINTELIER, presented his report (**epi** 11/09). He stated that Council expenses were within budget and that Committee expenses were over budget. The Committee chairs were invited to make endeavours for achieving a more efficient working and keep the costs under control. Mr. HAMMER JENSEN objected that many committees had significantly increased in size and that every member state had a right to be represented.

Mr. QUINTELIER said that the committees are not the right place for educating members. Mr. LYNDON-STANFORD deemed the expenses of the EPPC justified and reported that his attempt to start a discussion of the Litigation Committee through the extranet had not been a success. He added that even if not all attendees of the Litigation Committee or of the EPPC meetings participate directly in the discussions, they take back the information to their constituencies. If the number of committee members were to be reduced, how should it be handled between the countries?

Mr. ROSENICH stressed that it would not be possible to reduce the number of Disciplinary Committee members since more members are needed due to an increase in the number of cases. President FINNILÄ said that considering an average of two meetings per year per committee, committee meetings make 25% of the **epi** budget. The issue was discussed by the Board at its last meeting and will be on the agenda of the next Board meeting in September. Committees should try to reduce costs. If they have to be subsidized, the membership fee will have to be raised.

7. Report of **epi** Finances Committee

The Chairman of the **epi** Finances Committee, Mr. PAWLOY, presented his report (**epi** 27/09) stating that the **epi** Finances Committee is in favour of holding Council meetings on one day. Extra costs for a relocation of the **epi** Secretariat have been provided for.

The report was noted.

8. Report of Internal Auditors

As none of the internal auditors could be present at the Council meeting, the report was presented by the Secretary General. The internal Auditors had a meeting on 5 March 2009. This meeting was also attended by the Treasurer, Mr. QUINTELIER, Mr. ZÉRAFA from the Secretariat, and Mr. FORSTPOINTNER, external auditor from the office ZITZELSBERGER. The Auditors reviewed the audited accounts for 2008 which were found satisfactory.

Council noted the report.

9. Decision on release of members of the Board, particularly the Treasurer from liability

Decision 1 A clear majority released the members of the Board, in particular the Treasurer, from liability for the year 2008.

10. -11. Election of Board members

Decision 2 Mr Dana Stewart MARLIN was elected unanimously as the Board member for Malta.

12. Election of Committee members

Decision 3 The following **epi** members were unanimously elected as Committee members:
Biotechnological Inventions: Mr Alexander BJØRNÅ (NO)(full member)
Professional Conduct: Mr Gunnar ØSTENSEN (NO)(substitute member)
European Patent Practice: Mr Luigi SANSONE (MT)and Mr Dana MARLIN (MT)
(both full members)
Litigation: Mr Dana MARLIN (MT) (full member) and Mr Luigi SANSONE (MT)
(substitute member)

Mr. CASALONGA pointed out that the election of additional members to the committees was in contradiction with the previous discussion about the costs of Committees. President FINNILÄ replied that for the time being the rules have to be observed. It will be rational to come up with proposals and decisions for the 67th Council meeting in connection with the budget 2010.

13. Presidium

a) President's activities and actions 2008-2009 (**epi** 26/09)

President FINNILÄ presented his report of activities (**epi** 26/09) covering the time period between 1st December 2008 and the present Council meeting. He reported on the EU Council Patent working group and the meeting with the European Commission on 13 February 2009 where Article 28 of the current draft on Representation and the EU Litigation Certificate were discussed. He attended a conference on "IP Rights Protection in Europe" in Prague on 22 May 2009 where he made a presentation of the **epi** to the EU Member States.

Referring to situations where points of view between national delegations and **epi** are conflicting, President FINNILÄ asked Council members to refrain on personal views when speaking in the name of **epi**. The Board will prepare a letter on representation issues which will enable Council members to approach their national delegations. Mr. LYNDON-STANFORD felt that there should be a strong majority for an **epi**'s view.

b) Secretary General's report

The Secretary General, Mr. MAUÉ presented his report (**epi** 29/09).

There are no Council Members yet from the Former Yugoslav Republic of Macedonia (MK).

Important meeting dates to be taken into account for organizing the Board and Council meetings in 2010 should be communicated to the Secretary General by end of May 2009.

Council raised the question whether Council meetings should be maintained on Saturdays and insisted on being consulted on this issue. An informal vote was taken: There were 58 votes in favour of holding the meeting on a Saturday, 33 in favour of another weekday, and 10 abstentions. In order to give also the absentees a possibility to voice their view, a consultation via the Extranet will take place.

The report was noted.

14. Discussion on differed examination; possible options

Two presentations by Mr. KOCH, Principal Director *ad interim*, International Legal Affairs and Patent Law, EPO were scheduled for the meeting. The first presentation was on Deferred Examination of European patent applications. There exists a proposal from the delegations of DE, DK and NL to the AC. A paper has yet to appear from the AC for discussion by interested parties. Further news from the AC is awaited.

It had been decided at the beginning of the meeting that the presentation by Mr. KOCH would not lead to any decision by Council. Following a discussion after the presentation, and in order to give Mr. LEYDER some guidance in view of the forthcoming meeting of SACEPO Working Party Rules on 5th June, 2009, Council agreed upon taking a straw poll. It showed that a short majority of Council members was against some kind of deferred examination (40 against, 38 in favour, 13 abstentions).

15. Discussion on fee reform and sustainable financing of the European patent system

The second presentation by Mr. KOCH was on fee reform. Again, the AC will, Council was informed, produce a fees' paper for discussion. It seems that the current view in the AC is that delegations of Member States are against any overall increase in fees, as well as a change of the distribution key, but the fee structure could be re-examined. The **epi**'s EPO Finance Committee will continue to monitor this topic.

16. Present educational projects and discussion on proposals for future projects

The Director of Education, Mr. HANNEMAN presented the current educational projects and programmes, including **epi** tutorials and Mock EQEs, the "Train the Trainers" seminar as well as CPE seminars. He also introduced to Council the various working groups entrusted with the task inter alia of producing a number of training tools for the preparation of candidates for the EQE.

Mr. HANNEMAN said that **epi** tutorials are intended for **epi** students and added that **epi** students are charged only half rate for their admission in seminars.

In the debate that followed, recommendations and proposals were made such as:

- not duplicate what the European Academy of the EPO or other bodies are doing;
- widen the topics, for example portfolio management, cross-licensing, mock hearings, procedural aspects, litigation, claim drafting;
- increase the collaboration with CEIPI (Mr. GURRY will be appointed new President at the next CEIPI Council meeting in June 2009);
- Organize a pool of persons specialized in issues.

Mr. HANNEMAN then turned to continuous professional education. A mandatory educational system exists already in DE, UK, NL. The question was raised whether an obligation for education and training should be put on all countries. There were differing views in Council on this issue.

The proposal that PQC members organize at least one **epi**-seminar in their own country within their three-year term was not felt valuable for countries like DE or UK but also CY. It was suggested that the collaboration with national associations should be intensified.

Concerning the information on educational events, it was recommended to put the information on the **epi** website and to e-mail the relevant groups of persons.

A paper on continuous education to be prepared for the next Council meeting was regarded useful by the Council.

Action: Henk HANNEMAN

17. Papers for decision

a) By-Laws Committee Report

The report **epi** 24/09 was considered.

- Annex 1: The amended wording of Art. 3.2 of the Rules for Election of Council was not approved. It should be reviewed by the By-Laws Committee and presented to Council at its next meeting.

- Annex 2: The entering of the text of **epi** 51/08 (64C Report of By-Laws Committee) into the Collection of decisions was approved.

- Annex 3: The amended terms of reference of the Committee for European Patent Practice were not approved as the French version needs to be improved. They will be presented again to Council at the next meeting.

Decision 4 The amended wording of Art. 3.2 of the Rules for Election of Council and of the Terms of Reference of the EPPC were not approved; the By-Laws Committee is asked to prepare improved versions for the next Council meeting.

b) By-Laws motion (**epi** 25/09)

Following the motions presented by Mr. LEYDER at the 65th Council meeting, the By-Laws committee recommended to adopt amended Article 15.3 of the By-Laws.

Decision 5 The amended version of Art. 15.3 of the By-Laws was not approved; the By-Laws Committee is asked to prepare an improved version for the next Council meeting.

c) Relaunch of the website

Mr. HOLZER presented for the Editorial Committee the request for a relaunch of the website (**epi** 30/09) and drew Council's attention to the fact that the work had to be done in one stage. A cost estimate had been provided by the company Datenwerk. Council approved by a clear majority. The costs should not exceed 14.000 EUR.

Decision 6 A large majority approved the proposed offer by the Datenwerk company for a relaunch of the **epi** website whereby the cost must not exceed 14kEUR.

18. Papers for opinion: None

19. Any other business: None

20. Review of decisions, actions to be taken of present meeting

Secretary General MAUÉ enumerated the various decisions taken at the present Council meeting. No further comments were received. This list of decisions will be circulated by e-mail to Council members.

21. Closing of the meeting

President FINNILÄ closed the meeting at 6 pm, thanking all participants for their active participation.

Paul Georg Maué
Secretary General

COUNCIL	AGENDA (as adopted)	Annex 1
LUXEMBOURG	66th MEETING	23 MAY 2009
		Duration
1.	Opening of the 66 th Council meeting	0900
2.	Appointment of scrutineers	
3.	Adoption of the provisional agenda (epi 23/09)	
4.	Approval of the minutes, decisions and actions of the 65 th Council meeting (epi 137/08 Rev.1 ; epi 1/09 ; epi 2/09)	
5.	Matters arising from the minutes, decisions and actions of the 65 th Council meeting	
6.	Treasurer's report and annual accounts 2008 (epi 11/09 ; epi 12/09)	0920
7.	Report of epi Finances Committee (epi 27/09)	
8.	Report of Internal Auditors	
9.	Decision on release of members of the Board, particularly the Treasurer from liability	
10.	Appointment of Council members	0940
11.	Election of Board members	
12.	Election of committee members	
13.	Presidium	1000
	a) President's activities and actions 2008-2009 (epi 26/09)	
	b) Secretary General's report (epi 29/09)	
		<i>coffee</i> 1030
14.	Discussion on deferred examination; possible options	1100
15.	Discussion on fee reform and sustainable financing of the European patent system	1230
		<i>lunch</i> 1300
-	point 15 continues	1400
16.	Present educational projects and discussion on proposals for future projects	1430
17.	Papers for decision	1530
	a) By-Laws Committee report (epi 24/09)	
	b) By-Laws motion (epi 25/09)	
	c) Relaunch of the website (epi 30/09)	
18.	Papers for opinion	
		<i>coffee</i> 1615
19.	Any other business	1645
20.	Review of decisions, actions to be taken, etc. of present meeting	1700
21.	Closing of meeting	1715
Attachments:	- Reports from committees, past events, meetings, etc. - List of reports distributed through extranet	

COUNCIL

PAPERS

LUXEMBOURG

66th MEETING

23 MAY 2009

137/08	Draft Minutes 65 th Council Meeting, Munich, 24-25 November 2008
001/09	Projet de Compte-rendu de la 65 ^{ème} réunion du Conseil, Munich, 24-25 November 2008
002/09	Protokollentwurf der 65. Ratssitzung, München, 24.-25. November 2008
024/09	By-Laws Committee report for decision
025/09	Motion by the By-Laws Committee
026/09	President's activities and actions 2008-2009
027/09	epi Finance Committee Report
028/09	Disciplinary Committee Report
029/09	Secretary General's report
030/09	Editorial Committee report
031/09	OCC report for information
032/09	Litigation Committee report for information
033/09	Report of Professional Conduct Committee

COUNCIL DECISIONS AND ACTIONS

LUXEMBOURG 66th MEETING

23 MAY 2009

Decision 1, re Ag 9: A clear majority released the members of the Board, in particular the Treasurer, from liability for the year 2008.

Decision 2, re Ag 11: Mr Dana Stewart MARLIN was elected unanimously as the Board member for Malta.

Decision 3, re Ag 12: The following **epi** members were unanimously elected as Committee members:
Biotechnological Inventions: Mr Alexander BJØRNÅ (full member)
Professional Conduct: Mr Gunnar ØSTENSEN (substitute member)
European Patent Practice: Mr Luigi SANSONE and Mr Dana MARLIN (both full members)
Litigation: Mr Dana MARLIN (full member) and Mr Luigi SANSONE (substitute member)

Decision 4, re Ag 17a: The entering of the text of **epi** 51/08 (64C Report of By-Laws Committee) into the Collection of decisions was approved. The amended wording of Art. 3.2 of the Rules for Election of Council and of the Terms of Reference of the EPPC were not approved; the By-Laws Committee is asked to prepare improved versions for the next Council meeting.

Action: By-Laws Committee

Decision 5, re Ag 17b: The amended version of Art. 15.3 of the By-Laws was not approved; the By-Laws Committee is asked to prepare an improved version for the next Council meeting.

Action: By-Laws Committee

Decision 6, re Ag 17c: A large majority approved the proposed offer by the Datenwerk company for a re-launch of the **epi** website whereby the cost must not exceed 14kEUR.

In addition, Council voted on three matters in order to indicate the view of Council:

- a) A paper on continuous education to be prepared for the next Council meeting was regarded useful by the Council.

Action: Henk HANNEMAN

- b) Council meetings on a Saturday are favoured over having them on another weekday. In order to give also the absentees a possibility to voice their view, a consultation via the Extranet will take place.

Action: Secretary General

- c) A short majority of Council members was against some kind of deferred examination.

COUNCIL

LIST OF PARTICIPANTS

LUXEMBOURG

66th MEETING

23 MAY 2009

1. Full Council members attending the meeting:

Mr. Alves Moreira Pedro (PT)
Ms. Bakatselou Vassiliki (GR)
Mr. Bauvir Jacques (FR)
Mr. Beissel Jean (LU)
Mr. Benatov Emil (BG)
Mr. Berg Per Geir (NO)
Mr. Bernhardt Wolfgang (CH)
Mr. Besler Marek (PL)
Mr. Bogensberger Burkhard (LI)
Mr. Borštar Dušan (SI)
Mr. Bosotti Luciano (IT)
Mr. Callon de Lamarck Jean-Robert (FR)
Mr. Casey Lindsay (IE)
Mr. Casalonga Axel (FR)
Ms. Cayli Hülya (TR)
Ms. Cechvalová Dagmar (SK)
Mr. Colucci Giuseppe (IT)
Mr. Daraktschiew Todor (BG)
Mr. De Corte Philip (BE)
Mr. Denerley Paul (GB)
Mr. Dirscherl Josef (DE)
Mr. Dündar Kazim (TR)
Mr. Duran-Moya Luis-Alfonso (ES)
Mr. Ekström Nils (SE)
Mr. Enescu Lucian (RO)
Mr. Ferreira Magno Fernando (PT)
Mr. Finnilä Kim (FI)
Mr. Forsthuber Martin (AT)
Ms. Georgieva-Tabakova Milena (BG)
Mr. Gil-Vega Victor (ES)
Mr. Gunis Jaroslav (SK)
Mr. Guttman Michal (CZ)
Ms. Halaxová Eva (CZ)
Mr. Markus Hössle (DE)
Mr. Indahl Peter Jensen (DK)
Mr. Jensen Bo Hammer (DK)
Mr. Johnson Terry (GB)
Mr. Jonsson Thorlakur (IS)
Mr. Jorritsma Ruurd (NL)
Mr. Kania František (CZ)
Mr. Kilimiris Tassos (GR)
Ms. Klimaitiene Otilija (LT)
Mr. Köteles Zoltán (HU)
Mr. Kraak Hajo (NL)
Mr. Kraljic Janez (SI)
Mr. Kutsch Bernd (LU)
Ms. Kuzjukevica Lucija (LV)

Mr. Langfingher Klaus-Dieter (DE)
Mr. Lavrinovics Edwards (LV)
Ms. Leißler-Gerstl Gabriele (DE)
Mr. Le Vaguerèse Sylvain (FR)
Mr. Leyder Francis (BE)
Mr. Lyndon-Stanford Edward (GB)
Mr. Macchetta Francesco (IT)
Mr. Maikowski Michael (DE)
Ms. Majlingová Marta (SK)
Ms. Malewska Ewa (PL)
Mr. Marlin Dana (MT)
Mr. Maué Paul Georg (CH)
Mr. Mercer Chris (GB)
Ms. Modiano Micaela (IT)
Mr. Nelsas Tõnu (EE)
Ms. Nicolaescu Daniella (RO)
Mr. Norin Klas (SE)
Mr. Nuss Laurent (FR)
Ms. Oproiu Margareta (RO)
Mr. Ostrat Jaak (EE)
Ms. Papaconstantinou Helen (GR)
Mr. Pereira da Cruz João (PT)
Ms. Petniunaite Jurga (LT)
Mr. Quintelier Claude (BE)
Ms. Rekdal Kristine (NO)
Mr. Sarap Margus (EE)
Mr. Schuffenecker Thierry (MC)
Mr. Schweinzer Friedrich (AT)
Ms. Sjögren Paulsson Stina (SE)
Mr. Sugrañes Moliné Pedro (ES)
Ms. Suominen Kaisa (FI)
Mr. Sutter Kurt (CH)
Mr. Szentpéteri Ádám (HU)
Mr. Tangena Tony (NL)
Ms. Teodorescu Mihaela (RO)
Mr. Theodoulou Christos (CY)
Mr. Thrane Dag (NO)
Mr. Török Ferenc (HU)
Mr. Urgas Enn (EE)
Ms. Weckman Arja (FI)
Ms. Wilamowska-Maracewicz Elzbieta (PL)
Ms. Yanakieva-Zlatareva Maria (BG)
Ms. Yazitzoglou Evagelia (GR)
Ms. Zaboliene Reda (LT)
Mr. Zák Viteslav (CZ)

2. Substitute Members attending as full Council Members:

T. Harringer (AT)
B. Van den Hazel (DK)

3. Council Substitute Members representing a full Council Member:

W. Barger (AT) replacing P. Israiloff
J.D. Brown (GB) replacing T. Powell
T. Dundar (TR) replacing M.T. Yurtseven
P. Gendraud (FR) replacing Ph. Therias
M. Golmajer Zima (SI) replacing B. Kunic
J. Gray (GB) replacing R.J. Burt
S. Høiberg (DK) replacing A. Schouboe
T. Hörmann (SK) replacing V. Neuschl
A. Huygens (NL) replacing M. Hogenbirk
S. Kaminski (LI) replacing B.-G. Harmann
L. Kucinkas (LT) replacing M.J. Jason
T. Langenskiöld (FI) replacing M. Honkasalo
G. Leherte (BE) replacing J. van Malderen
M. Liebetanz (CH) replacing A. Braun
Y. Mc Keown (IE) replacing D. Mc Carthy
G. Midttun (NO) replacing K. Rekdal
B. O'Neill (IE) replacing C. Lane
A. Patrinos-Kilimiris (GR) replacing T. Kilimiris
A. Pethö (HU) replacing M. Lantos
V. Redenšek (SI) replacing G. Maček
F.J. Sáez (ES) replacing E. Armijo
J. Sitkowska (PL) replacing A. Kacperski
R. Wildi (LI) replacing B. Bogensberger
A. Yavuzcan (TR) replacing S. Arkan
F. Zacharias (DE) replacing L. Steiling

4. Invited guests:

C.E. Eder (CH) (Chairman of the By-Laws Committee)
H. Hanneman (NL) (Director of Education)
W. Holzer (AT) (Editorial Committee)
P. Pawloy (AT) (Chair of the epi Finances Committee)
P. Rosenich (LI) (Chairman of the Disciplinary Committee)

5. Council Substitute Members not representing a full Council Member (1), and other **epi** members (2):

I.-M. Florea (RO) (2)
J.-L. Laget (FR) (1)
S. Lampe (LU) (2)

6. **epi** Secretariat:

M. Fromm (DE)
D. Monéger (FR)

COUNCIL

LIST OF ABBREVIATIONS

LUXEMBOURG

66th MEETING

23 MAY 2009

AC	Administrative Council
AIPPI	Association Internationale pour la Protection de la Propriété Intellectuelle
APAA	Asian Patent Attorneys Association
CEIPI	Centre d'Etudes Internationales de la Propriété Industrielle
Business Europe	The Confederation of European Business
COPS	Certification of Patent Searchers
CPE	Continuing Professional Education
CPL	Committee on Patent Law
EESR	Extended European Search Report
EICTA	European Information, Communications and Consumer Electronics Technology Industry Association
eOLF	electronic On Line Filing
EPO	European Patent Office
EPC	European Patent Convention
EPPC	European Patent Practice Committee
EPAcA	European Patent Academy
EPAtt	European Patent Attorney
EPLA	European Patent Litigation Agreement
EQE	European Qualifying Examination
EQS	European Quality System
EU	European Union
EUROTAB	European Round Table on Patent Practice
FICPI	Fédération Internationale des Conseils en Propriété Industrielle
IEEPI	Institut Européen Entreprise et Propriété Intellectuelle
IP	Industrial Property
ISA	International Search Authority
MAC	Management Committee
MoU	Memorandum of Understanding
MSBA	Members of SACEPO and Boards of Appeal
OCC	Online Communications Committee
OHIM	Office for Harmonisation in the Internal Market
PDC	Patent Documentation Committee
PCT	Patent Co-operation Treaty
PQC	Professional Qualification Committee
REE	Regulation on the European Qualifying Examination
SACEPO	Standing Advisory Committee before the European Patent Office
SCP	Standing Committee on the Law of Patents
SPLT	Substantive Patent Law Treaty
UNION	Union of European Practitioners in Industrial Property
WP	Working Party
WIPO	World Intellectual Property Organization
WPL	Working Party on Litigation