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Editorial

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

The European Patent Office, in the last few years, appears to have been moving somewhat away from the concerns of its end users and towards a political agenda of their own making. The „Mastering of the Workload“ document embodies this shift in attitude of the European Patent Office. Applicants and representatives have noticed a change in emphasis of the European Patent Office away from the „applicant-friendly“ attitude of the early days towards a more autocratic style, in which the European Patent Office advises those who pay its fees that it is in charge and they will do, to a greater or lesser extent, what it says. This has been accompanied by a desire to issue Patents quickly, even in cases where the applicant is somewhat reluctant to accept such rapid issuance. The last few years have also seen an expansion in the size of the work force of the EPO, paralleled by an apparent decrease in the quality of the work done.

All in all, it appears that, over the last few years, the outside perception of the European Patent Office has been increasingly negative. There does, however, appear to be hope ahead. Recently Professor Alain Pompidou, the new EPO President, gave the key note speech to the CIPA congress in London. A copy of the speech can be found at the CIPA website.

Whilst Professor Pompidou re-emphasised the commitment of the Office to overcoming the backlogs and granting a high quantity of patents each year, he

acknowledged, in his speech, that it was equally as important to applicants that the quality of the patent produced be sufficient to make it a useful business tool. This acknowledgement of the need for quality is encouraging.

As we all know, an experienced Examiner, who understands the law without being too easily persuadable, can work well with a representative to reach resolution on a patent application, leading to the grant (if appropriate) of a patent which is reasonable in scope and with a strong presumption of validity. However, a lack of quality in Examination and Search, due to the lack of experience of the Examiners entrusted with the task, and sometimes a rather formalistic attitude, or view that the applicant might try to fool the European Patent Office, can lead to overly-restricted patents, or refusal of patents on innovative ideas.

It is hoped that this trend can be reversed by the new hierarchy at the European Patent Office, taking us back to a situation in which the European Patent Office cooperates with the applicants to produce patents which, in the interest of all parties, are still valid but give reasonable business protection for the applicants. If so, the European Patent Office will be well on its way to regaining the reputation for excellence that it seems to have been losing over the past few years.

Redaktionsschluss für epi Information 1/2005

Wegen der Veröffentlichung der Wahlergebnisse wurde der Redaktionsschluss für die nächste Ausgabe der epi Information auf den **4. Februar 2005** vorverlegt. Die Dokumente, die veröffentlicht werden sollen, müssen bis zum diesem Datum im Sekretariat eingegangen sein.

Deadline for epi Information 1/2005

Because of the necessary publication of the election results the deadline for the next issue of epi Information has been brought forward to **4 February 2005**. Documents for publication should have reached the Secretariat by this date.

Date limite pour epi Information 1/2005

En raison de la publication des résultats d'élection, la date limite de remise des documents pour le prochain numéro de epi Information est le **4 février 2005**. Les textes destinés à la publication devront être reçus par le Secrétariat avant cette date.

Bericht über die 57. Ratssitzung, Lissabon 25.-26. Oktober 2004

Die Sitzung wurde eröffnet von Präsident Holzer, der die Vertreter der Mitgliedsstaaten im Rat und vor allem die neuen Ratsmitglieder aus Estland und Slowenien begrüßte, die zum ersten Mal als ordentliche Ratsmitglieder an einer Ratssitzung teilnahmen, sowie den Beobachter aus Litauen, das in Kürze dem Institut beitreten wird.

Präsident Holzer würdigte das verstorbene *epi*-Mitglied Herrn Marc van Ostaeyen aus Belgien. Der Rat hielt eine Schweigeminute.

Die Stimmenzähler wurden ernannt. Der überarbeitete Entwurf der Tagesordnung wurde mit einigen Änderungen angenommen und das Protokoll und die Beschluss- und Maßnahmenliste der 56. Ratssitzung wurden mit einigen Änderungen des Wortlauts in der deutschen Fassung angenommen. Betreffend die Angelegenheiten, die sich aus dem Protokoll der vorhergehenden Ratssitzung ergaben lag ein Bericht des Präsidenten zu den einzelnen Angelegenheiten vor, dem eine kurze Zusammenfassung der Beschlüsse und Maßnahmen des Vorstands seit der letzten Ratssitzung folgte.

Dann legte der Präsident seinen Tätigkeitsbericht vor, der an anderer Stelle in dieser Ausgabe der *epi*-information veröffentlicht ist. Nach dem Präsidentenbericht wurden dem Rat auch die Berichte des Generalsekretärs und des Schatzmeisters vorgelegt.

Der Präsident des *epi*-Finanzausschusses legte seinen Bericht vor und sagte, dass der Finanzausschuss den Haushalt für 2005 angenommen hat. Er nahm auch den Vorschlag des Schatzmeisters an, den Beitrag für 2005 nicht zu erhöhen. Der Rat nahm den Haushalt für 2005 an.

Der Generalsekretär, Herr Baum, berichtete kurz über die Vorbereitungen und den gegenwärtigen Stand der Wahlen für den neuen Rat.

Der nächste Punkt betraf den Bericht und die Diskussion über Entwicklungen im europäischen/internationalen Patentsystem.

Unter anderem wurde die Gründung einer Patentakademie innerhalb der Europäischen Patentorganisation besprochen.

Dann wurden die Berichte der Ausschüsse vorgelegt, beginnend mit dem Bericht des Disziplinarrats.

Anschließend legte der Ausschuss für berufliche Weiterbildung (PQC) seinen Bericht vor, beginnend mit einer Präsentation zur Modernisierung der Tutorien. Der Rat nahm den Vorschlag, ab 2005 die Tutorensitzung auf zwei Tage auszudehnen, an. Auf die Präsentation folgte eine kurze Diskussion über die Modernisierung der Europäischen Eignungsprüfung, und der Rat war sich einig, dass der PQC eine Liste von Empfehlungen erstellen soll, die der Präsident an das EPA senden wird.

Dann wurde die Frage des Beitritts neuer Länder besprochen sowie der Beitritt Islands zum 1. November 2004 und Litauens zum 1. Dezember 2004. Damit wird die Europäische Patentorganisation vom 1. Dezember 2004 an 30 Mitgliedsstaaten umfassen. Von Lettland kam kein Bescheid. Malta wird der EPO voraussichtlich nächstes Jahr beitreten. Norwegen könnte jederzeit beitreten.

Der Generalsekretär erinnerte an die Termine für die nächsten Ratssitzungen. Die 58. Ratssitzung wird am 9. und 10. Mai 2005 in Budapest stattfinden, die folgende am 17. und 18. Oktober 2005 in Bukarest. Die Ratssitzung im Frühjahr 2006 wird am 15. und 16. Mai 2006 in Salzburg stattfinden. Die türkische Delegation machte den Vorschlag, den Rat für seine Sitzung im Herbst 2006 in der Türkei willkommen zu heißen.

Dann nahm der Rat die Ernennung der folgenden Ratsmitglieder als Vorstandsmitglieder an: Herr Heinu Koitel für Estland, Herr Andrej Vojir für Slowenien und Frau Elzbieta Wilamowska-Maracewicz für Polen.

Der Präsident dankte den portugiesischen Delegierten herzlich für die erfolgreiche Organisation der 57. Ratssitzung und schloss die Sitzung um 12.30 h.

Entwurf der Beschlussliste, 57. Ratssitzung Lissabon, 25.-26. Oktober 2004

1. In vier weiteren Räumen des Sekretariats wird eine Klimaanlage installiert.
2. Der Haushalt 2005 wurde angenommen.
3. Der Beitrag für das Jahr 2005 bleibt bei 150 Euro bei Zahlung vor dem 1. Mai und bei 175 Euro bei Zahlung am oder nach dem 1. Mai.
4. Im Zusammenhang mit der organisatorischen Unabhängigkeit der Beschwerdekammern sollen Richter nicht auf Lebenszeit ernannt werden.
5. Der Disziplinarausschuss soll sich mit der Zukunft der Disziplinarbeschwerdekammer im Hinblick auf die Autonomie der Beschwerdekammern beschäftigen.
6. Ab 2005 wird die jährliche Sitzung der Tutoren auf zwei Tage ausgedehnt.
7. Der Prüfungsausschuss und die Europäische Patentakademie sollen weiterhin zwei getrennte Organisationen sein.

8. Die Empfehlungen, die vom Ausschuss für berufliche Weiterbildung (PQC) gemacht und vom Rat auf der Ratssitzung in Kopenhagen angenommen wurden, sollen nochmals dem EPA mitgeteilt werden.
9. Der Ausschuss für Europäische Patentpraxis (EPPC) wird mit den Änderungen in den *epi*-Vorschriften betraut, die auf die Änderungen in den Regeln des EPÜ folgen werden. Es soll ein Ad-hoc-Ausschuss gegründet werden.
10. Bei den Harmonisierungsverhandlungen soll der universelle „prior art effect“ einer PCT-Anmeldung unterstützt werden, jedoch nur im Hinblick auf die internationale Harmonisierung und nur solange nicht-englischsprachige PCT-Anmeldungen in den USA den „prior art effect“ haben.
11. Für den Haushalt- und Finanzausschuss des EPA wird Beobachterstatus beantragt werden.
12. Mit dem Ende der Amtszeit des Rates wird der Ausschuss für Onlinekommunikation (OCC) aufgelöst werden. Zwei Personen werden als Ad-hoc-Ausschuss ernannt, die, falls nötig, zwischen dem *epi* und dem EPA vermitteln sollen.

Report of the 57th Council Meeting, Lisbon 25-26 October 2004

The meeting was opened by the President, Mr. Holzer, who welcomed the representatives of the member states in the Council, especially the new Council members from Estonia and Slovenia, who were attending a Council meeting as full Council members for the first time, as well as the observer of Lithuania, which would be joining the Institute soon.

President Holzer gave a few words in tribute to the deceased *epi* member Marc van Ostaeyen from Belgium. The Council observed a minute of silence.

The scrutineers were appointed. The revised draft agenda was adopted with some modifications, and the minutes and list of decisions and actions of the fifty-sixth Council Meeting were approved with minor editorial amendments in the German version. With regard to matters arising from the minutes of the previous Council Meeting, there was a report from the President on the individual issues, followed by a brief review of the decisions and measures taken by the Board since the last Council meeting.

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

The President of the *epi* Finance Committee presented his report and stated that the finance Committee had approved the 2005 budget and the Treasurer's proposal not to increase the subscription fee for 2005. Council approved the budget for 2005.

Secretary General, Mr. Baum, gave a short report on the preparations and present state of the election for the new Council.

The next point concerned a report and discussion of developments in the European/international patent systems. Inter alia the establishment of a patent academy within the European Patent Organisation was discussed.

The reports of the Committees were then taken, commencing with the report of the Disciplinary Committee.

The Professional Qualification Committee then reported, starting with a presentation on the modernising of the tutorials. Council approved the proposal to extend the tutors' meeting to two days as from 2005. The presentation was followed by a short discussion of modernization of the EQE and Council agreed that a list of recommendations made by the PQC will be sent to the EPO by the President.

The question of accession of new countries to the EPC was then raised, confirming the accession of Iceland as from 1 November 2004 and Lithuania as from 1 December 2004. The European Patent Organisation will thus comprise 30 member states as from 1 December 2004. Nothing has been heard from Latvia. Malta is expected to join the EPO next year. Norway might accede any time.

Secretary General, Mr. Baum, presented the dates of the next Council meetings. The 58th Council meeting will take place in Budapest on 9-10 May 2005, the following one in Bucharest on 17-18 October 2005. The 2006 spring Council meeting will be held in Salzburg on 15-16 May 2006. The Turkish delegation had proposed to welcome the Council in Turkey for its autumn meeting in 2006.

The Council then approved the appointment of the following Council members as Board members: Mr. Heinu Koitel for Estonia, Mr. Andrej Vojir for Slovenia, and Mrs. Elzbieta Wilamowska-Maracewicz for Poland.

After having warmly thanked the Portuguese delegates for the very successful organisation of the 57th Council meeting, the President closed the meeting at 12:30 on 26 October 2004.

Draft List of Decisions, 57th Council Meeting, Lisbon 25-26 October 2004

1. Air conditioning shall be installed in 4 additional rooms of the Secretariat.
2. The budget 2005 was approved.
3. The subscription fee for 2005 is maintained at 150 EUR if paid before May 1st, and at 175 EUR if paid on or after May 1st.
4. In the context of an organisational autonomy of the Boards of Appeal, judges should not be appointed for lifetime.
5. The Disciplinary Committee shall assess the future of the Disciplinary Board of Appeal in the context of an autonomy of the Boards of Appeal.
6. As from 2005, the yearly Tutors' meeting is extended to two days.
7. The Examination Board and the European Patent Academy should remain two separate bodies.
8. The recommendations made by the PQC and approved by Council at the Copenhagen Council Meeting shall again be communicated to the EPO.
9. The EPPC shall be entrusted with the changes in the *epi* Regulations, which will follow the changes in the EPC Rules. An *ad hoc* Committee should be set up.
10. In the harmonisation negotiations the universal prior art effect of a PCT application, but only in the context of international harmonisation and as long as non-English PCT applications will have an effect in the USA, shall be supported.
11. Observer status on the EPO Budget and Finance Committee shall be requested.
12. At the end of the Council period, the OCC shall not be continued. Two persons shall be appointed as an *ad hoc* Committee to liaise between the *epi* and the EPO, as necessary.

Compte rendu de la 57^{ème} réunion du Conseil, Lisbonne 25-26 octobre 2004

Le Président Holzer ouvre la session de la 57^{ème} réunion du Conseil et souhaite la bienvenue aux membres du Conseil. Il s'adresse particulièrement aux nouveaux membres d'Estonie et de Slovaquie qui assistent pour la première fois en tant que membres titulaires à une réunion du Conseil, de même qu'au représentant de Lituanie, assistant à la réunion en qualité d'observateur, la Lituanie devant faire partie très prochainement des Etats membres de l'Organisation européenne des brevets.

Ensuite le Président Holzer rend hommage au confrère belge, M. Marc Van Ostaeyen, décédé récemment. Le Conseil observe une minute de silence.

A la suite de la désignation des scrutateurs, l'ordre du jour révisé est adopté avec des amendements mineurs. Le compte rendu et la liste des décisions et actions de la 56^{ème} réunion du Conseil sont approuvés avec des amendements mineurs dans la version allemande. Le rapport du Président sur les différentes questions relevant de la réunion précédente est suivi d'un bref compte rendu des recommandations faites par le Bureau depuis la dernière réunion du Conseil.

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

Le Président de la Commission des Finances présente son rapport et déclare que la Commission des Finances a approuvé le budget 2005 ainsi que la proposition faite

par le Trésorier de ne pas augmenter le montant de la cotisation pour l'année 2005. Le budget 2005 est approuvé.

Puis le Secrétaire Général Baum fait un bref compte rendu des préparations relatives à l'élection du nouveau Conseil.

Le point suivant de l'ordre du jour traite des développements concernant les systèmes de brevets au plan européen et international. La mise en place d'une académie des brevets au sein de l'Organisation européenne des brevets est, entre autres, discutée.

La commission de discipline et les autres commissions présentent ensuite leur rapport.

Suit ensuite le rapport de la Commission de Qualification Professionnelle, lequel commence par la présentation de propositions visant à une modernisation du tutorat. Le Conseil approuve la suggestion d'étendre à deux jours la réunion annuelle des tuteurs, à compter de 2005. La présentation du rapport est suivie d'une brève discussion sur les mesures à prendre pour moderniser l'examen européen de qualification, et le Conseil approuve qu'une liste de recommandations préparée par le PQC soit envoyée par le Président à l'OEB.

La question de l'accession des nouveaux pays à la CBE est ensuite évoquée. Le 1^{er} novembre et le 1^{er} décembre 2004 l'Islande et la Lituanie deviendront respectivement états membres de l'Organisation européenne des brevets qui comprendra ainsi 30 états membres à partir du 1^{er} décembre 2004. Malte devrait suivre dans un avenir

proche. On reste sans information au sujet de la Lettonie. La Norvège pourrait devenir état membre très prochainement.

Le Secrétaire Général rappelle les dates des prochaines réunions du Conseil. La 58^{ème} réunion du Conseil se tiendra à Budapest les 9 et 10 mai 2005. La réunion suivante aura lieu à Bucarest les 17 et 18 octobre 2005. La réunion de printemps 2006 se tiendra à Salzbourg les 15 et 16 mai 2006. Le Conseil est invité à tenir sa réunion à l'automne 2006 en Turquie.

Ensuite, le Conseil approuve la nomination des membres du Conseil suivants comme membres du Bureau : M. Heinu Koitel pour l'Estonie, M. Andrej Vojir pour la Slovénie et Mme Elzbieta Wilamowska-Maracewicz pour la Pologne.

Après avoir remercié chaleureusement la délégation portugaise pour l'organisation très réussie de la 57^{ème} réunion du Conseil, le président clôt la séance le 26 octobre 2004 à 12.30 heures.

Projet de liste de décisions, 57^{ème} réunion du Conseil Lisbonne, 25-26 octobre 2004

1. L'installation d'une climatisation dans quatre autres pièces du Secrétariat est approuvée.
2. Le Budget 2005 est adopté.
3. Pour l'année 2005, le montant de la cotisation est maintenu à 150 EUR si le paiement est effectué avant le 1^{er} mai et à 175 EUR dans le cas d'un paiement effectué au-delà de cette date.
4. Dans le contexte de l'autonomie organisationnelle des chambres de recours, les juges ne devront pas être nommés pour une durée indéterminée.
5. En vue d'une autonomie des chambres de recours, la Commission de Discipline est chargée d'évaluer l'avenir de la Chambre de recours en matière de discipline.
6. À partir de 2005, la réunion annuelle des tuteurs comportera deux journées.
7. Le Jury d'examen et l'Académie de l'Organisation européenne des brevets devront rester deux entités séparées.
8. Une liste de recommandations faites par la Commission de Qualification Professionnelle et approuvée à la réunion du Conseil à Copenhague sera de nouveau communiquée à l'OEB.
9. L'EPPC est chargé d'étudier les modifications s'avérant nécessaires dans le Règlement de l'*epi*, suite aux changements apportés aux Règles de la CBE. Un comité ad hoc sera mis en place.
10. En ce qui concerne les négociations au sujet de l'harmonisation, l'effet d'antériorité international d'une demande PCT sera défendu, mais seulement dans le contexte de l'harmonisation internationale et tant que les demandes PCT rédigées dans une autre langue que l'anglais auront effet aux Etats-Unis.
11. Une requête sera présentée visant à l'obtention du statut d'observateur à la Commission des Finances et du Budget de l'OEB.
12. A la fin de la période du Conseil, la Commission pour les Communications en ligne ne sera pas reconduite dans ses fonctions. Deux personnes seront nommées comme comité ad hoc pour assurer les contacts entre l'*epi* et l'OEB, quand cela s'avèrera nécessaire.

Presidents' Report (covering June to October 2004)

The President reported that in June upon an invitation of the European Patent Office he participated in a meeting in the Ministry of Commerce and the Icelandic Patent Office and in a Round Table discussion with representatives of the Icelandic authorities and interested circles. Still in June he attended the usual Board meeting of the CEIPI.

The Administrative Council meeting in June was covered by Vice Presidents Mercer, Macchetta and the President. The most important decisions taken by the Council were the establishment of a European Patent

Academy (unanimous approval) after a number of overnight changes and the amendment of Article 5 of the Regulation on the establishment of an institute of professional representatives before the European Patent Office (unanimous approval). Further items of discussion were the Autonomy of the Boards of Appeal, the future of the SPC (the trilateral proposal and a possible suspension for some time), the postponement of any Diplomatic Conference 2004, the future of the EPLA, the accession of Malta and the observer status for the Republic of Croatia, and the strategy debate of cooper-

ation of the Office with NPOs, especially as regards the PCT (a special Administrative Council meeting will take place in November on this issue). During the Administrative Council meeting a farewell ceremony for President Kober took place at the Nymphenburg Castle. The representatives of the four observer organisations contributed with speeches.

The June SACEPO meeting was preceded by an MSBA meeting. The SACEPO meeting was the last meeting presided by President Kober and the first meeting in which the new President Pompidou took part. One of the controversial items was the amendment of the time limits under Rule 51(4) EPC. A paper has been drafted for the next Administrative Council recently (and will be discussed in the EPPC Report).

In August the President met with the new President of the EPO Professor Pompidou to informally discuss the broad outlines of the future policy of the EPO. The immediate actions were three different User Hearings, the first in Prague focussing on high-tech SMEs, the second in Munich for general users and the third in The Hague for the business community. President Pompidou has invited the *epi* and UNICE to co-chair the Hearings.

The officers of the Board of the *epi* were invited by President Pompidou to an informal discussion of several topics and a dinner in October. In September /October the President moreover represented the *epi* and lectured at Symposia organised by the EPO and the Estonian Patent Office in Tallinn as well as the EPO and the Slovenian Patent Office/Chamber of Commerce in Ljubljana.

Board member Terry Johnson represented the *epi* at the Commemorative Ceremony and International Symposium in commemoration of the 100th Anniversary of the Japan Institute of Invention and Innovation and at the FICPI ExCo meeting in Venice.

The President accepted invitations to represent the *epi* at an international Symposium on „Nanotechnology and Patents“, which took place at the EPO in The Hague in November, organised by the European International Academy in cooperation with VDI-TZ, *epi* and L.E.S., the inaugural meeting of a New Training Centre in Strasbourg and an International IP conference in Brussels.

Treasurer's Report

P. Kelly (IE)

The management accounts to June 30, 2004 show that the financial performance to date for 2004 is on budget. Membership subscription income is ahead of budget by € 40,000, while other income sources are on target. On the expenditure side, the costs in general are under budget and only audit costs, *epi* information and *epi* homepage costs are likely to exceed budget. In summary, the projected budget deficit of € 15,216 now looks more positive.

At June 30, 2004, the financial investments stand at € 1,561,457 while cash holdings stand at € 1.407.928.

In relation to the budget 2005, the main income source is member subscriptions at € 1,200,000 (8000 @ € 150). Other income sources are maintained at current levels – while the subscription write-off is set for budgetary purposes at 8.5 % of subscription income – namely € 102,000. I am providing for an overall 5.7 % increase in income.

On the expenditure side, I have provided a 5.5 % increase in budgeted meeting costs to take account of an increase in numbers attending meetings and to take account of the increase in reimbursement levels approved by Council in Copenhagen. Treasury costs are significantly increased to account for potential credit card commission costs (bank charges) and increased audit costs. Secretariat costs are increased by 8.4 % overall, based on higher membership numbers to be serviced and a once-off cost of € 20,000 for air conditioning of four rooms. Incidental expenses are marginally reduced by 1.6 % overall, but increases in *epi* information and *epi* homepage costs are provided for in 2005.

The budget 2005 projects a small surplus of € 5790. Accordingly, no increase in membership subscriptions at € 150 and € 175 is recommended for 2005.

Report of the Disciplinary Committee

G. Leherste (BE)
Chairman

1) Revision of disciplinary rules

The ad hoc working group has come to a point where a final draft of the revised disciplinary regulation is to be presented to the EPO higher instances to obtain a preliminary „fiat“, where after the proposal can be presented to the Council, hopefully at the Council meeting of 9-10 May in Budapest.

Some new aspects of the proposed revision involve that

the 1st instance of the new disciplinary procedures is intended to be called:

the Disciplinary Board for professional representatives;
this Disciplinary Board is now intended to be composed of

three members from epi + six alternate/substitute members from epi

and 2 legally qualified members from EPO ;

it is *not* intended anymore that the Disciplinary Board (or its „executive committee“) be *involved in mediation* in addition to taking decisions;

it is now rather envisaged to organise a team of qualified *mediators* within the *Disciplinary Committee* to assist the Disciplinary Board when appropriate;

In essence, under the revised regulations, *all complaints* would be handled *and* decided in first instance by the Disciplinary Board, whereas the Disciplinary Committee would not be involved in handling complaints anymore.

The proposed *optional* mediation tasks, to be assigned to the Disciplinary Committee, would only involve a limited team of competent, trained mediators.

As a consequence, the revised disciplinary regulations will certainly require a redefinition of the responsibilities and objectives of the Disciplinary Committee, which

might shift towards advice duties, harmonisation duties and communication duties to the *epi* Council and to the national constituencies of *epi*.

In view of the 2005 Council elections which will involve changes in the composition of the Disciplinary Committee after the Council meeting of 9-10 May, and elections for the chairman, deputy chairman, secretary and deputy secretary of the Committee, it is intended to start discussions about new terms of reference for the Disciplinary Committee in June 2005.

Against this background the current chairman of the Disciplinary Committee strongly recommends that *when selecting the persons to be proposed to the Council for designation as a member of the Disciplinary Committee, at the May 2005 Council meeting, the national delegations take into consideration the actual competence and dedication, of those persons, for the expected discussions and responsibilities within the new Disciplinary Committee (rather than considering such designation as a „honorary title“).*

The Council is asked to take explicitly note of this recommendation.

2) Report on current matters:

Since the Council Meeting of May 2004, six new Disciplinary Cases (CD 1/04 – CD 6/04) were registered by the Secretariat and are now being instructed by Disciplinary Chambers which were still designated under the current disciplinary regulations.

Case CD 6/03, initiated in 2003, is still pending; an extension of the time limit for consideration of the matter has been requested from the Chairman of the Disciplinary Board.

Report of the EPO Finances Committee

J. Boff (GB)
Chairman

The EPO Finances Committee presented a report concerning proposed fee increases, EPO productivity, and costs.

The fee increases have not been settled, and so the EPO Finances Committee are urgently undertaking

further investigations into the policy issues behind the level of fees.

The EPO Finances Committee are also concerned at a perceived loss in productivity within the EPO, and will be investigating this issue also.

Report of the European Patent Practice Committee (EPPC)

A. Casalonga (FR)
Chairman

A. Information

I. 47th PDG Impact Meeting of 1-2 April 2004 in London.

The following main issues may be noted:

- The text of applications can now be viewed in entirety but it is still not possible to print except after downloading page by page
- Some information is missing for certain countries eg entry into National Phase (SE) and SPC data (FI).
- IPC reform in 2006 will improve searching

II. Joint Meeting OCC/EPPC on chemical structure in electronic data (EPPC Question 170).

The feeling of the joint committee is that the proposals would lead to a heavy burden on applicants and the fear is that it could become compulsory. The cost could be as much as 800 Euros for preparing electronically coded formulae for a medium length specification. Apparently the EPO wouldn't accept simple Markush claims e.g. C 1-6 alkyl.

The question of possible discrepancies between the paper document and the electronic file was also mentioned.

III. 24th Committee on Patent Law Meeting of 27-28 June 2004 in Munich.

The following main points may be noted:

On the new organisation of Boards of Appeal:

It seems clear that European Patent Attorneys could continue to represent clients at the new European Patent Courts (successor to the Boards of Appeal). The first possibility for a Diplomatic Conference to implement this change was said to be spring 2005.

The *epi* representative stated that the Disciplinary Board of Appeal should migrate into the new EPO Court system: Mr Messerli was not so sure. It was observed that most of the work of the Disciplinary Board concerns European Qualifying Examination results.

IV. 13th EUROTAB Meeting of 13-14 May 2004 in Budapest (See Annex 1)

A short report is contained in Annex 1.

The following points may be noted.

„Reach Through“ Claims: There was a common understanding that these should not be allowed. The Swedish Patent Office had commented that 'second medical indication reach through claims', for example „the use of ACE inhibitors in the treatment of anxiety...“ could be allowable. The French Patent Office reported that they had rejected a reach through claim.

Definition of the Skilled Person:

The German Patent Office was quite critical of the UK Patent office position on this topic. A UK Court of Appeal Judge had recently characterised the skilled person as a „nerd“; the Germans thought that the skilled person was more advanced than that and would understand material that was implicitly contained in documents.

B. Substantive Matters

I. Question 120: PCT Revision – Prior Art effect of PCT Applications:

This was already discussed in November 2003 and now needed to be harmonised with the Harmonisation Committee who had come to a different view.

The EPPC discussed again the question and made the following conclusions:

- The EPPC agreed that clarity and certainty were important
- It was not attractive to have to study the Patent Office registers worldwide to monitor National Phase entries
- Applicants should not have to worry about identical claims from applicants who filed later than them. The earlier applicant should not be blocked by later work.
- PCT states that the effect of a PCT application is the same as a national application
- For a PCT to have a prior art effect in the USA, it has to be in English
- EPO can't decide unilaterally; this is a SPLT issue and the USA has to relinquish the Hilmer doctrine
- Patents are inherently territorial but this principle is already weakened by all EPO states being designated in the EPO
- If there isn't a universal effect, the first applicant has to proceed in every country in which he does not wish to be blocked
- Under SPLT, there is trend towards patentability being the same worldwide. The prior art effect of the PCT should not depend on subsequent decisions.
- Article 54(3) is an exception to the general rule that only publications are prior art. This exception should be construed narrowly to give minimal effect.

A vote was taken and the majority of the EPPC was finally ready to accept the universal prior art effect of a PCT application but only in the context of international harmonisation and as long as non-English PCT applications will have an effect in the USA (abandonment of the Hilmer doctrine).

II. Question 160: Community Patent Regulation

The EPPC felt that the Regulation was now waiting for a new political move.

In the mean time however it may be advisable for the *epi* to present a position paper on the Court organisation.

The following points could be discussed:

- We could continue to push for technical Judges. Alternatively, we could stress that the Assistant Rapporteur should be the Rapporteur.
- We could accept limited discovery along the lines of the EU Enforcement Directive.
- The scope of *saisie-contrefaçon* should be made commensurate with the provisions stated in the EPLA.
- On the language of the procedure, more precise provisions should be introduced, particularly in the case of a plurality of defendants, to avoid the present apparent possibility of 'defendant shopping' wherein the plaintiff could choose a particular defendant from a range of infringers (manufacturer, importer, distributor) in order to obtain a favourable language of proceedings;

The EPPC intends to prepare a draft for such a position paper in the next future.

III. Question 166: Diagnostic methods (G1/04)

An amicus curiae brief has been prepared by the EPPC in cooperation with the Biotech Committee. (see Annex 2)

After discussion, it was decided not to insist on the question of interpretation of lack of industrial applicability, in order to possibly arrive at a decision which would also be relevant when the EPC 2000 will come into force.

This brief was sent to the Enlarged Board of Appeal.

IV. SACEPO 36th Meeting of 24-25 June 2004 in Munich

Since the last EPPC meeting, the chairman of the EPPC together with the President of the *epi* represented the *epi* at this SACEPO meeting. The main points were the following.

Reducing the time period for answering to the communication under Rule 51(4) and 51(6): The EPO proposed to limit the time period for answering the 51(4) communication to 3 months without any possibility of extensions (as compared to the 4 months plus two months extension presently in force). The EPO also proposed to limit the time period for answering the 51(6) communication to 2 months without any possibility of extension. Finally the EPO proposed an important increase of the fee for further processing in order to deter applicants to use this possibility for obtaining an extension of time.

A strong opposition was expressed by all SACEPO Members.

EESR:

The EPO indicated their intention to increase the search fee as soon as the EESR comes into force (probably beginning 2005)

V. CPL 26th meeting of 15-16 September 2004 in Munich

The chairman of the EPPC represented the *epi* at this CPL meeting. The main points were the following.

The EPO proposed to introduce the Extended European Search report (EESR) through a new Rule 44a. This would be linked with an increase of the search fee from 690 € to 960 €. There was some opposition of a number of national delegations which would have preferred to link the discussion on that point to the PCT Reform.

On the reduction of time limit for answering the communication under Rule 51(4), the EPO had taken into account the remarks made at the SACEPO meeting of June 2004. The new proposal presented was much more satisfactory.

The time limit for answering a communication under Rule 51(4) EPC would remain 4 months but without the 2 months extension possibility.

Rule 51(6) EPC would remain unamended.

But the fee for further processing as well as for *restitutio* would be increased both to 350 €.

The majority of delegations agreed generally with the proposal for the time limit. Concerning the fees, there was however a consensus against the proposal and in favour of the introduction of two different levels for both fees.

Concerning Harmonisation of patent law it could be advisable for the *epi* to take position on a possible „enlarged novelty“ concept for „secret prior art“ documents.

Annex 1

13th European Round-Table on Patent Practice (EUROTAB)

„Reach through“ claims (RTCs) in biotechnology EUROTAB 3/2003

UK Patent Office

The UK practice differs from that of other countries and the EPO in that product-by-process claim (PPPC) is always allowed if the process used to produce the product is novel and inventive. Correspondingly, such PPPCs give protection to the product produced directly by said process.

RTCs lack novelty if a prior art compound possesses the activity assayed for. However, in practice it is not possible for an examiner to determine whether a known compound has said activity unless that activity is disclosed in association with the compound. Therefore, lack of novelty or inventive step cannot usually be used as an argument against the allowability of RTCs in UK.

RTCs have been granted quite liberally in the past in UK but the situation has now changed and insufficient disclosure and lack of support is increasingly used as basis to prevent the grant of RTCs. The UKPO may also consider that RTCs are unclear as one would not know by reading the claims whether one infringes the claims or not.

EPO

One should not mix up RTCs with broad claims. There may be broad claims that are inventive and have enough support in the specification to be patentable. However, RTCs are unallowable, because the claimed compounds have not been made.

There is a relevant Board of Appeal case pending, however, it takes 1.5 to 3 years until there is a decision.

Mr. Gugerell drew the attention to the so called „two step method claims“ which are not allowable.

„A method comprising:

- (a) contacting polypeptide X with a compound to be screened and determining whether the compound affects the activity of said polypeptide;*
- (b) and then formulating any active compound into a pharmaceutical composition“*

This type of claim is an attempt to gain protection for the composition according to Art. 64(2). Decision G2/88 makes it clear that Art. 64(2) applies only to processes for the production of a product.

German Patent Office

Germany's comments were in line with the comments of the EPO stressing that product-by-process protection should not be granted to claims involving a screening method as the process in question (Arbeitsverfahren) does not lead to a tangible product. They also pointed out that screening method patents may have a huge economical interest to the patent proprietor, however, one should not allow patents to inventions that are not completed/have not yet been made.

The German delegate also questioned the allowability of claims directed to undisclosed homologs of a specified (disclosed and patentable) gene sequence (the so called concealed RTCs). According to the German delegates, such claims should be rejected. The other delegates objected to this suggestion. These types of claims have been traditionally allowed and should continue to be allowed provided that all other requirements of patentability (including sufficiency, for example stringency requirements for the hybridization conditions of nucleic acids) are fulfilled. Similarly, claims to all antibodies against a specified antigen should continue to be allowable.

French Patent Office

The delegation of France gave a detailed presentation on the procedure according to which RTCs are handled with in the French Patent Office. Since 97 almost 100 reach through cases have been considered and in all of them the office has refused to grant RTCs. Furthermore, in case the claims directed to the screening method are unduly broad, the office requests the applicant to narrow them down.

The Swedish Patent Office

The delegate of Sweden wanted to send a positive message to epi and requested, whether EPO would at least be willing to grant the so called second medical indication RTCs. Mr. Gugerell reminded that one should not mix up broad claims with RTCs and explained that

the decisive issue is not the type of claims but whether the compound to be claimed has actually been made. Broad claims may still be allowed by EPO although the practice has become stricter than it used to be. If no compounds have been made then the claim is a RTC and should not be allowed.

Uncertainty issue. It was pointed out by different delegates, especially UK, EPO, that they do not intend to search claims that lack clarity (obscure).

Definition of the „person skilled in the art“ EUROTAB 2/2003

The German Patent Office vs. others

The person skilled in the art should be defined in the same way independently whether the question is about novelty, inventive step, enablement or scope of the protection. As there is no definition in the legislation, everything is based on case law.

The German case law uses the expression „average skilled person“ meaning a person having training and experience in the relevant field and being able to observe the developments in the neighbouring field (theoretical, general and professional knowledge are needed). A person skilled in the art may be also a group of specialists working together particularly in biotechnology. During revocation the skilled person is defined broadly.

It was pointed out by some delegates that the German practice differs from that of other countries and also from the one suggested in the SPLT draft. The German delegates explained that the average skilled person is not a hypothetical person but a real person. It seemed to them that the person skilled in the art knows more according to the UK practice than according to the German system. It was pointed out that also in the UK practice the person skilled in the art must NOT have any exceptional skills. According to the UK practice the person skilled in the art has read everything but does not possess any inventive capability. There was a vivid discussion on the differences but in the end some one concluded that the difference between the two practices is only a nuance.

The Austrian delegate pointed out that they have a broader test on novelty than photographic novelty test used by the EPO. The EPO pointed out that the EPO does not apply photographic test either. The Austrian delegate explained that if a particular feature is technically relevant (equivalent, for example nail vs. screw) then it is „read into“ the prior art document in Austria. The idea of reading equivalents in the prior art document was rejected by the EPO.

Use of expert witnessed in court proceedings, the time factor

One of the most difficult issues in defining the person skilled in the art is the time factor. How can one define the level of knowledge more than 10 years ago? It was pointed out by several delegates that the examiners are

forced to use their own experience and judgement, because they have not enough time to spend for studying the textbooks of the relevant time period. It was admitted that the examiners may become too subjective and „knowledgeable“ due to their every day work.

The differences in using outside experts during the court proceedings were discussed in length. In Germany, the patent examiners are called to the First Instance court to explain the court what the person skilled in the art would know. In the Second Instance, outside experts are used.

In UK outside experts must always be used and the procedure is oral. It was pointed out that relying on expert witnesses in oral proceedings increases uncertainty because of the lack of written proof. Furthermore, the expert witnesses may have the same problem as the examiners i.e. they know too much. It was explained by the UK delegates that the expert is only used to teach court and is not considered to be the person skilled in the art in the sense of patent law.

According to the Dutch practice the person skilled in the art is a fictive one and can be defined only by the court.

In Austria, the literature (textbooks etc.) is used to define the level of the knowledge of a person skilled in the art at the priority date. The skilled person does not have a given training. For example, for cooking equipment it can be a house wife as well.

It was pointed out by the Hungarian delegates that the same standard should be used in defining the skilled person by all instances (i.e. different courts and the patent offices)

Qualifications of the person skilled in the art: Influence of the field, a Nobel Prize winner or not?

All delegates seemed to share the view that the qualifications of the person skilled in the art depend on the specific case, for example on the field and on the problem to be solved.

The EPO pointed out the skilled person is still conservative in biotechnology, but not as conservative as 20 years ago. However, the EPO stressed that one should avoid generalising specific decisions too much because the outcome of each case also depends on the arguments of the parties.

Novelty implicit vs. explicit

Most of the delegates appeared to share the view that novelty of a claimed feature is destroyed in case a person skilled in the art automatically reads a given feature in the cited prior art document. If the feature has not been disclosed explicitly in said document but only implicitly then some delegates called it by the expression „inherency“.

Group of experts

According to the EPO a group of experts is used to define a person skilled in the art most often in a case wherein there are overlapping technologies for example in bioinformatics (IT + biology) and protein crystallography.

The German delegates warned against using a group of experts as a standard because it may lead to too strict criteria of inventive step. Three heads is always more than one head and usually it is one single person that solves the problem. The EPO pointed out that in real world, in the research, it is usually a group that works together and therefore, it is fair to take a group as a standard. However, one should avoid of using the so called MOSAIC search.

The allowability of disclaimers and Article 123 (2) EPC Info 3/ EUROTAB 13

The EPO gave an overview of the circumstances, which lead to the referrals to the Enlarged Board of Appeal (the Board) and summarised the decisions.

- G 2/88 cannot be invoked against disclaimers
- Allowable disclaimers:
 - To restore novelty a) conflicting application b) accidental anticipation OBS! *New definition for accidental anticipation: the anticipating prior art shall have no relevance to the inventive step.*
 - Non technical reasons. (for example, personal use in contraception = lack of industrial application and „the Edinburgh case“, only nonhuman applications were claimed)
- Non allowable disclaimers:
 - Nonworking embodiments
 - To remedy insufficient disclosure

The subject matter may not be changed when drafting the claims.

Discussion

What about cases that are not listed as allowable? Will they be nonallowable? EPO: YES! There will be plenty of new case law on the issues, which have not been addressed by the present decision.

It was pointed out that the UK PTO does not necessarily follow the disclaimer decision. The same will likely be true in Germany. In general, the UK, EPO and German practices have been very different with regard to disclaimers: In UK there seems to be less emphasis on the formal allowability of the disclaimers than in the EPO, meaning that what is left after adding the disclaimer is more important than the scope of the original claims. The German practice is totally different from the rest of the member countries due to the fact that the concept of novelty (no selection inventions) is different.

Other topics

The member countries are going to develop an electronic system for the management of *Supplementary Protection Certificates* (SPCs) to harmonise the practice

between member countries. The system will not be open to the public.

Priority request from a country, which is not a member of the Paris Convention. Although EPO is a PCT authority it is not possible to obtain priority at the regional stage because EPC has chosen to use its right to refrain from acknowledging priority claims on non-members.

Future topics

Patentability of stem cells (no strong support)

DE Absolute novelty (under discussion in WIPO) for a substance, should the function of the substance be included in the claim

EPO Formal request of priority claims

UK change in the entire format of the future meeting, volunteers to prepare almost real cases for the groups to be discussed, the results would be discussed in a plenary session

Selection inventions

Inviting people from the industry to explain, why they file certain claims (for example very broad ones)

Involving new member countries

It was decided to await suggestions from the national delegates by the end of June

Annex 2

Amicus Brief in G1/04 (Diagnostic methods) on behalf of the epi

The *epi*, highly concerned with the questions presented to the Enlarged Board of Appeal in the case G1/04, herewith presents its position on the interpretation of Art. 52(4) EPC.

1.1. Introduction

It should be emphasized from the outset that according to a generally accepted principle, exclusions from patentability must be interpreted narrowly. This is consequently also true for the diagnostic method provision in Art. 52(4) EPC. Hence, in finding an answer as to the interpretation of the said provision, it is important to reconcile this fundamental principle with the rationale of the exclusion in the EPC.

1.2. Rationale of the exclusionary provision of Art. 52(4) EPC

Art. 52(4) EPC states that „Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1.“

The rationale of Art. 52(4) EPC, as it has been expressed by the Technical Boards of Appeal, has been that medical personnel should not be hindered in performing their medical (health care) activities. It can even be doubted whether this rationale is still of value today. All features of medicine are patentable, except for the

medical treatment and diagnostic methods. It is difficult to understand why all methods of diagnosis on the human body should be excluded from patentability, while the products used therein, and the products used for the treatment are perfectly patentable. The exclusion can only be understood from a perspective where the medical profession was seen as being not a business in the commercial sense of the word. This is no longer true today. Furthermore, a growing level of sophistication and involvement of non-physicians in diagnostic methods leaves no further room for the exclusionary provision.

In this context, one can also refer to the fact that until recently, several WTO member states prohibited product patents for pharmaceuticals. The rationale behind this exclusion had equally to do with the importance of health care for the public good. Today, most countries provide for product protection for pharmaceuticals.

At present, the text of the EPC however includes an exclusion. It seems to be the most reasonable solution in such a case to interpret the exclusionary provision in the narrowest possible manner.

1.3. All steps v one step

Case T 0385/86, the Bruker case, has applied a narrow interpretation of the exclusion in Art. 52(4) EPC. Under this case law, all intermediate steps are perfectly patentable. This means, according to case T 0385/86, that to answer the question whether a method is a diagnostic method for the purposes of Article 52(4), first sentence, it is necessary to ascertain whether the method claimed contains all the steps involved in reaching a medical diagnosis. Methods providing only interim results are thus not diagnostic methods in the meaning of Article 52(4), first sentence, even if they can be utilized in making a diagnosis.

The line of reasoning followed by the Technical Board of Appeal in T 0964/99, the Cygnus case, whereby intermediate steps are considered to be „essential diagnostic measures“ and are thus to be considered as diagnostic methods within the meaning of Art. 52(4) EPC, has the advantage of being a solution which is also straightforward, at first glance, but which is not necessarily the most reasonable solution. According to the Technical Board of Appeal in case T 0964/99, any method performed on the human body which relates to diagnosis or which is of value for the purposes of diagnosis, falls within the exclusionary provision.

A strict application of the Cygnus case could lead to unreasonable decisions. If we assume that a method is claimed which contains a method step which would fall within the category of Art. 52(4) under the Cygnus interpretation, all method steps in the patent application are threatened to be rejected. *Such a solution does not seem to be in conformity with basic rules of equity, proportionality and reasonableness.*

The Bruker decision presents in this respect the better view. But even if one would prefer to join the line of reasoning of the Cygnus decision, such can only be accepted to the extent that *it should be possible to*

reject only claims directed to the specific diagnostic method step in the patent, leaving the other method steps in the patent untouched. A claim directed to a combination of steps including a step within the exclusion category should therefore not be excluded.

Concluding, it can be said that the Bruker case interprets the exclusionary provision of Art. 52(4) very narrowly. Such a narrow interpretation is in conformity with the fundamental principle that exceptions to patentability must be interpreted narrowly.

A strict application of the Cygnus ruling can have illogical and even unreasonable and unfair consequences.

It is therefore a better solution to defend the argument that indeed claims directed to intermediate steps on the human body can be excluded, but such should not lead to the rejection of all the method steps in the patent, in case these intermediate steps are only an element in the patent application. It seems contrary to the principle of proportionality to reject the entire application in such a scenario. To the extent that it would not be possible in practice to put such scenario into practice, it would be better to revert to the Bruker decision as the standard test.

1.4. On the human body

Another important feature of diagnostic methods as excluded from patentability under Art. 52(4) EPC is that they must be performed on the human body. Diagnostic methods which are performed outside the human body are not excluded. This cannot be overemphasised. A considerable number of methods which are used in diagnosis are performed outside the human body, since they are in vitro methods. These methods are not envisaged by this case. It is quite surprising to see how much confusion there is in respect of this important feature. In the context of biotechnology, it has been claimed by at least some circles that screening methods, and other (predictive) diagnostic testing methods should be non-patentable on the basis of falling within the ambit of Art. 52(4) EPC. In view of the fact that these methods are performed in vitro, there is, at least in general, no reason to conclude that they are caught by the exclusionary provision of Art. 52(4) EPC.

In our view, the condition of „on the human body“ should be interpreted strictly, in conformity with the principle that exclusions are to be interpreted narrowly. If the method claimed is not performed on the human body, the exclusion should not be put in action. Cases where during examination it is held that the sampling step (which is not claimed in the patent application), which would fall within the scope of Art. 52(4) EPC, can be implied from the description, and thus turns the in vitro method claimed into an excluded method, are bad practice, and do not deserve further application, for a number of reasons.

First of all, by holding that a sampling step is implied from the description, patent protection would be refused for an in vitro method without a sampling step being claimed. Such rejection is an undue limitation.

Going back to the rationale of Art. 52(4) EPC, that the medical profession should not be hindered in their medical activities, it is difficult to see how a medical practitioner could indeed be hindered in his activities, if the invention concerns in vitro methods, and the sampling step as such is not even claimed. This leads inevitably to the conclusion that the sampling done by the physician could in such a hypothesis never be an infringement, and thus no hindrance to the medical activity.

It can secondly also seriously be questioned whether an in vitro method, which for the sake of argument fulfils all patentability requirements, should be refused patent protection, because the description implies a sampling step, which is not claimed, and which is anything but novel and inventive. Such an interpretation would unduly hinder development of new in vitro diagnostic methods. In many in vitro diagnostic methods, a sample is required to carry out the method. *Allowing exclusion of the in vitro method from patent protection on the basis of a not claimed but implied in vivo method, would in fact extend the exclusionary provision of Art. 52(4) EPC to in vitro methods, and this can never have been the intention of the legislator.*

Case T 0964/99, however, holds that „the taking of a body sample for the purpose of a medical examination belongs to a fundamental diagnostic activity, regardless of the technical means used [...]. For these reasons, the claimed step of sampling a substance relates to diagnosis and constitutes in this context an essential diagnostic measure practised on the living human or animal body.“¹ In other words, one could come to the conclusion after reading this case, that, since sampling is an essential step, any method, which implies a sampling, should be excluded. We have said earlier that we think this is not sound practice and should not be followed. *It is difficult to see how a simple sampling step should be capable of excluding an entire novel, inventive and industrially applicable method from being patentable. Such a solution would be far out of proportion to the rationale of the exclusionary provision of Art. 52(4) EPC, which did not have as a goal to exclude from patentability all methods which are relating in a direct or more distant way to diagnosis.*

But moreover, it is also necessary to put this ruling into perspective, before generalisations are being made as to the scope of the exclusionary provision of Art. 52(4) EPC, as in our view, case T 0964/99 does not lead us to make such a generalisation. In our view, this ruling must be put in perspective, in that the invention claimed in that case related to, amongst others, a very sampling method. In other words, the sampling as such was an essential part of the invention claimed. If that is compared to a method whereby a cell, DNA, or blood is sampled in order e.g. to perform a screening, and where the screening method is the essential part of the invention as claimed, one could conclude that the situation is to be decided differently. The Technical Board of Appeal in case T 0964/99 held that sampling belongs to a fundamental diagnostic

¹ T 0964/99, at 5.2 of the reasons.

activity, in a case where the sampling was essential in the invention.

It would go too far to conclude that an implied sampling step in an invention has the same value to the invention, and therefore, that the invention as a whole should be excluded from patentability.

1.5. The presence of a physician

The distinction which is made between whether a physician is present or not, is another issue which requires clarification in this referral. Once again, the underlying rationale of the exclusionary provision, i.e., that physicians may not be hindered in their activity, can be of assistance to help clarifying this matter.

Starting from that rationale, and the protection of the activities of physicians, there is at first sight an argument in saying that in order to be excluded from patentability, a physician must perform the method. This must also be seen in the context of the fact that only methods „on the human body“ are excluded from patentability, and traditionally, some of these methods have been reserved for the physician.

Taking into account the rationale of the exclusionary provision, it can be argued that not only those acts on the human body performed by a physician are excluded, but also those activities carried out on the human body under his supervision. This fits within the rationale that physicians should not be hindered in their medical activities, which includes logically also activities performed under his supervision. It must be admitted, however, that the term „under his supervision“ is not very clear, and it is difficult to see how during patent examination it can be established whether a specific activity has been or will be carried out under the supervision of a physician.

As such, requiring the presence of a physician would thus be in conformity with the rationale of the exclusionary provision. It must be observed, however, that also this provision is to be read in the context of the limitation that only methods performed on the human

body are excluded. As we have argued earlier, it is necessary to strictly limit the exclusion to methods performed on the human body. In our view, this implies that there is no room for rejecting claims, which contain an implied step.

Secondly, it can also not be accepted that an entire method claim would be rejected which contains a sampling step performed on the human body. To the most, the sampling step can be rejected. The in vitro method should be patentable. This remains unequivocally applicable to activities carried out by a physician or under his supervision.

This means that only those explicit method steps, which are performed on the human body by a physician or under his supervision can be excluded from patentability, leaving the other method steps within the claimed method untouched. All diagnostic methods performed by a physician, or under his supervision, outside the human body, can under no circumstances fall within the scope of Art. 52(4) EPC.

1.6. Conclusion

The Bruker case responds closest to the requirement of legal certainty and the criterion that exceptions to patentability are to be interpreted narrowly. Following the Cygnus decisions would for multiple reasons be contrary to the principle of proportionality, equity and reasonableness.

The only diagnostic methods which should be excluded from patentability, according to a correct interpretation of the provisions of the EPC are those methods where an essential step of the method, leading directly to a diagnostic is performed on the human body by a practitioner or under his direct supervision.

The presence of a physician should be linked, strictly, to method steps performed on the human body. Any other interpretation, which would provide a wider exclusionary scope is against the basic principles mentioned earlier.

Report of the Harmonisation Committee

F. Leyder (BE)
Chairman

1. There has been no meeting of the Standing Committee on the Law of Patents (SCP) in the framework of WIPO since the last Council meeting. However, the future work plan for the SCP was discussed at the WIPO General Assembly (27 September-5 October).

2. There was as little consensus at the WIPO General Assembly as during the last SCP meeting. The press release is available on the WIPO website:

http://www.wipo.int/edocs/prdocs/en/2004/wipo_pr_2004_397.html

and the relevant paragraph reads:

„Member States discussed a proposal by the delegations of Japan and the United States of America relating to a new workplan for the Standing Committee on the Law of Patents (SCP) as regards the draft Substantive Patent Law Treaty (SPLT). The proposal was to give priority at this stage, in the SCP, to four prior-art related issues and to defer discussion of other issues of substantive patent law pending resolution of that initial package of issues. While the proposal was supported by a number of delegations,

it was opposed by a number of others, in particular, on the grounds that a reduced set of provisions would exclude from the discussions certain areas of interest to them (for example, general exceptions, provisions on the transfer of technology and on the protection of public interest issues, such as public health, biodiversity and nutrition). Following the discussion, the General Assembly adopted a statement recognizing that the proposal submitted by the delegations of Japan and the United States of America had found no consensus and stated that the dates of the next session of the SCP should be determined by the Director General following informal consultations that he may undertake."

3. In preparation for the WIPO Assembly, the delegations of Argentina and Brazil made a proposal (later supported by other States) to enhance the development dimension in all of WIPO's work. The discussion is reported as follows in the press release:

"The WIPO General Assembly agreed to further examine a proposal originally presented by a group of developing

countries to enhance the development dimension in all of WIPO's work. Taking into account activities already carried out by WIPO in the area of development, which received the support and appreciation of the developing countries, the General Assembly decided to convene inter-sessional intergovernmental meetings to examine the proposals originally submitted by Brazil and Argentina as well as additional proposals of member states. The meetings will also be open to WIPO accredited intergovernmental and non-governmental organizations (NGOs). A report on these issues will be presented to the General Assembly in 2005 for its consideration. This decision also calls for the organization, in cooperation with other multilateral organizations, of an international seminar on intellectual property and development, open to all stakeholders, including NGOs, civil society and academia."

4. The Harmonisation Committee will follow these meetings.

Report of the Professional Qualification Committee (PQC)

T. Onn (SE)
Chairman

1. Students of the *epi*

The number of students has increased from 282 in 1999 to 397 in 2004. They come from 17 countries and our first student from Poland has been registered. In this year 75 students have registered.

2. *epi* tutorials

This year we have offered the candidates doing the summer tutorials to write papers A and B of 2002 and 2003. As usual they will have their answers commented by a tutor. There are 80 candidates (from 10 countries) who are doing 320 papers and 29 tutors (from 9 countries) will comment the answers. We are also pleased to welcome our first candidate from Bulgaria.

The last date to enrol for the autumn tutorial was 11 October 2004 and 78 candidates (from 9 countries) have enrolled to write papers C and D of 2002 and 2003. They will do 312 papers and to comment the answers we have 25 tutors (from 8 countries).

3. Modernizing the *epi* tutorials

Also the *epi* tutorials need to be modernized and in order to improve the results of the EQE a new concept is proposed. Although a lot of courses for preparation for the EQE, offered by various organizers, are attended by

the candidates, the passing rate remains low. Our earlier reports indicate the need of improved training and we have found that a great number of candidates (first sitters as well as resitters) do not understand why they fail or what to do to be successful. A consequence of this is that they have very vague ideas on how to improve their preparations. All a candidate will be informed of is the marks for his/her answers. A candidate who fails gets no comments why his/her answers does not satisfy the requirements and thus the candidates often find it hard to learn from their mistakes.

The examiners of the Examination Committees cannot and shall not give more detailed comments directly to candidates. Thus there is an information gap between those who prepare and mark the EQE and the candidates. It is *inter alia* this gap that can be filled by the new concept for tutorials. The basic idea of the new concept is to provide more feedback for the candidates.

We therefore propose the following concept for future *epi* tutorials:

- A basic training material is provided which is based on summaries of experienced tutors. This material will be updated each year after the tutors' meeting.
- The tutors' meeting where tutors meet with examiners of the three examination committees and discuss the latest examination papers are used to get more information by better preparation.

- To gather the information needed it could be appropriate to have an extra day for the meeting of tutors for example the day before or after the tutors' meeting.
- All experienced tutors are convinced that it is the personal contact between a candidate and his/her tutor which helps the candidates to improve. The basis for any tutorial is the writing of papers, the commenting on the answers and not least the discussion thereof. Therefore, there should be enough time for meetings.
- It will be helpful to provide files of cases where the problem/solution approach is an issue as tool for learning

Tutors' material in the form of annotated examiner reports will be provided as a basis. The examiners' reports are very helpful, but could be more detailed. This can be accomplished by the tutors present at the tutor's meeting. They should prepare for the meeting by studying the papers of the actual year and the examiners' report so that they can ask detailed questions to the examiners. Thereafter they can summarize the knowledge as „annotated examiners report“.

The Council is kindly asked to approve the proposed changes of the epi Tutorials and also approve an additional day for the annual tutors' meeting.

4. Tutors' meeting

On 8 November 2004 the annual tutors' meeting will be held at the epi premises in Munich. The tutors of epi have been invited together with the chairmen/secretaries from Examination committees I, II and III and some tutors from CEIPI.

It is our hope that the Examination Secretariat also this year will publish the Examiners' Report of the EQE 2004 in good time before the meeting. This will enable our tutors to study the report and give them a possibility to be well prepared for the meeting.

5. Continuing Professional Education (CPE)

The eighth CPE seminar will be held in Paris on 8 November 2004. The topic will be „Some basic facts about Oral proceedings at the EPO“. Mr. Nuss is organizing the seminar and Mr. Daniel Thomas of DG 2 will chair the programme. It consists of two sessions and in the morning there will be mock oral proceedings in Opposition with Mr. Thomas chairing the session. Four local epi members will take part in this proceedings acting as members of the opposition division and as representatives for the parties. The afternoon session will deal with more general information and advices about the opposition procedure in the EPO. A ninth CPE seminar has been planned to take place in Helsinki in January/February 2005. The topic will be Advanced PCT and the speaker will come from WIPO.

6. EQE

The EQE 2004 took place on 24-26 March.

The passing rate for first sitters was this year almost the same as last year:

(%)	<u>2003</u>	<u>2004</u>
	33.1	33.6

and for all sitters (%) per paper:

	A	B	C	D
2003	55,8	67,1	25	55,4
2004	46	51,5	42,4	38
mean				
value 96-03	60,1	62,9	36,9	42,3

As earlier informed the EQE 2005 will take place on 8-10 March.

7. Working party REE

This WP has now been formalized and had a meeting on 30 September. Next meeting will take place on 11 November. The intention is to follow up the informal WP discussions reported earlier on modernizing and improving the EQE. The aim is to modernize REE and its Implementing provisions and other rules applying to the EQE. Of these the REE is decided by the Administrative Council of the EPO (AC) whereas the others can be decided by the Examination Board. The WP emphasized the importance of the support of epi before proposing any amendments of the REE to the AC.

The following items were proposed to be further discussed in the WP:

- Registration of the candidate at the beginning of the three year training period. This early registration should in the opinion of PQC be combined with the Students of the epi thus strengthening the status of the present studentship.
- The possibility for the candidates to answer in their own mother tongue.
- Limitation of the number of sittings.
- The compensation system.
- A more flexible modular system.
- The possibilities of computerization of the EQE.
- Sanctions for candidates cheating in the EQE.
- Revision of the system of List A and List B qualifications.

In this context PQC refers to the item „Streamlining and modernizing the EQE“ in our report to the Copenhagen Council. Upon request by the PQC Professor Herrmann, a specialist in evaluating academic courses, made a survey on the EQE and the training therefore based on an inquiry he addressed to the epi members. The answers to the questionnaire given by the epi members resulted in a voluminous amount of statistics and a number of recommendations by Professor Herrmann and PQC. The Council meeting in Copenhagen adopted the recommendations, which reads as follows:

- Modernization of the system with List A and List B qualification making it clear from the start whether or not a candidate will be admitted to sit the EQE
- Enrolment for sitting the EQE at the start of a candidate's training period (a contract for the candidate)
- Improving the modular system (a candidate should be able to sit each individual paper at his/her own choice).
- Reduce the time pressure in the examination by a restriction of material introduced
- Reduce the exhaustion by having rest days in between the various papers
- Maintain the possibility of answering in one's own mother tongue
- Prolong the time to make the examination papers for candidates not having an official language as their mother tongue
- Paper C should be at a more even level of difficulty from year to year
- Maintain status quo for paper D
- Computerization of the EQE
- Shorten the time period between the sitting and the presentation of the results.

The Council is kindly asked to decide that epi maintains its position from the Copenhagen meeting, namely that these items are important issues to take into consideration when modernizing the EQE and that epi cannot accept a limited language regime, a limitation in the number of sittings and a banish of the compensation system.

8. The Academy of EPO

We have noted that the Academy *inter alia* shall promote and support the preparation of candidates for the EQE, in co-operation with *epi*. We have also noted that the Academy shall promote and support further vocational training for professional representatives. In this context nothing is mentioned about any co-operation with the *epi*. As *epi*/PQC also organizes seminars for the Continuing Professional Education (CPE) we kindly ask our President and the Board to introduce us to the body/bodies in the Academy that works with the training of candidates for the EQE and the Continuing Professional Education in the hope that we can establish a future co-operation.

9. epi representation at oral proceedings before disciplinary bodies

The President of *epi* is invited to take part in oral proceedings before disciplinary bodies. According to our

by-laws one of the objects of PQC is to nominate some other person to attend, on behalf of the President of the Council, oral proceedings before disciplinary bodies. To our knowledge *epi* has not been represented in any such proceedings, neither by our President or a person nominated by PQC to act on his behalf.

We have been informed that the Disciplinary Board of Appeal in a recent decision has accepted a diploma as a list A diploma wherein only a part of the education covers technical subjects whereas the other part covers various other matters such as economy. Thus candidates having „mixed“ diplomas and less than three years technical education will now be allowed to sit the EQE after three years' experience in the patent field. PQC is of the opinion that this is quite unsatisfactory as the technical knowledge is of great importance, especially for maintaining a high professional standard among our members. If *epi* had been represented at the oral proceedings preceding the decision it might have had some influence on outcome of this case.

The Council is asked to decide that epi should attend, by our President or some other person nominated by the PQC, in oral proceedings before disciplinary bodies in matters that are of interest to the epi.

10. COPS (Certification of patent searchers)

At the Copenhagen Council meeting PQC was asked to look into the curriculum of the training for the COPS project. Therefore the PQC member Marie-José Luys attended the COPS meeting in June.

COPS seems to be a relative small organization of somewhere between 15 and 20 members. The members strive for some kind of certification. There exists a European project for certification named CERTIDoc that has developed certain guidelines on how a certification procedure can be established. It was reported that a training course for patent searchers exists in the Netherlands, one will be started in Germany but in Sweden the patent office has declined to participate.

However, COPS does not have any curriculum and *epi*/PQC was invited to get involved in the certification and contribute to the organization of a certification procedure or be present as an observer. It is evident that COPS leads a languishing life and in the course of this year it will be decided if COPS will continue with its work.

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

RESULTS OF THE EUROPEAN QUALIFYING EXAMINATION 2004

FIRST SITTING – Examination in full and modular sitting

Nationality	Candidates (in total)	PASSED				FAILED			
		Total	%	Examination in full	modular sitting (2modules)	Total	%	Examination in full	modular sitting (2modules)
AT	9	4	44,4	3	1	5	55,6	4	1
BE	7	4	57,1	1	3	3	42,9	3	0
BY	1	0	0,0	0	0	1	100,0	1	0
CA	1	1	100,0	1	0	0	0,0	0	0
CH	10	2	20,0	2	0	8	80,0	8	0
DE	264	87	33,0	75	12	177	67,0	161	16
DK	11	3	27,3	3	0	8	72,7	7	1
ES	11	1	9,1	1	0	10	90,9	5	5
FI	15	3	20,0	2	1	12	80,0	9	3
FR	73	29	39,7	16	13	44	60,3	34	10
GB	120	47	39,2	37	10	73	60,8	67	6
GR	2	0	0,0	0	0	2	100,0	2	0
IE	6	1	16,7	1	0	5	83,3	3	2
IT	30	8	26,7	3	5	22	73,3	7	15
JP	1	1	100,0	1	0	0	0,0	0	0
KE	1	0	0,0	0	0	1	100,0	1	0
LU	3	1	33,3	1	0	2	66,7	0	2
NL	41	17	41,5	10	7	24	58,5	18	6
PT	1	0	0,0	0	0	1	100,0	1	0
SE	31	6	19,4	4	2	25	80,6	16	9
US	2	0	0,0	0	0	2	100,0	2	0
TOTAL	640	215	33,6 %	161	54	425	66,4 %	349	76

RESITTING -Examination in full
Total number of candidates: 39

RESITTING – Examination in part
Total number of candidates: 770

The Patent Profession in the EPC Contracting States

	Who May Practice	National List or Register / Various Associations	Requirements for Entering National Register, Associations or Taking Examination	Practice Required for Entering National Register, Associations or Taking Examination	Examination / *Connection to the EQE
AT	- Patent attorneys on the national register - Examination required for entering register - Lawyers	- Österreichische Patentanwaltskammer; Museumstrasse 3a; A-1070 WIEN (private practice) - RING der Industrie-Patentingenieure Österreichs; c/o Andritz AG, Statteger Strasse 18, A-8045 GRAZ (industry) - Non-unitary profession	- Austrian, EU or EEA nationality - Technical, mathematical or natural scientific degree from an Austrian university or an acknowledged certificate from a foreign university	5 years practice with Austrian patent attorney 2 years deducted from said 5 years for other intellectual property work equivalent to patent attorney work 7.5 years practice in industry equivalent to patent attorney work - For registered civil engineer said 5 years is reduced to 2 years - For technical examiner at the Austrian Patent Office half of the working time is deducted from said 5 years - Technical examiner permanently employed at the Austrian Patent Office for 20 years may enter association/register without further practice or examination	- The examination comprises one written and one oral part - The examination is organised and prepared by the Austrian Patent Office - The examination is examined by a joint commission with members from the Patent Office and the Patent Attorney Association - Training is organised by the Patent Attorney Association - Up to date not upon for industry * Positive EQE taken into account in examination
BE		- Chambre des Conseils en Propriété Industrielle (private practice) - UBCEPI (industry) - Non-unitary profession	University degree or high school degree of longer (more than 3 years) type	3 years of professional activity in industrial property profession under supervision of a qualified Belgian patent attorney	- The examination comprises two written parts and one oral part - The written part comprises: 1) drafting of set of patent claims; 2) advice to client, opposition, infringement, etc. - The oral part relates to national law, EPC, PCT and basics of US and JP law * released from part 1. of the written exam, if qualified European Patent Attorney - The same rules apply for private practice and industry
BG	- Only Industrial Property Representative (IPR) on national register - Only lawyers admitted at the bar may represent before courts, administrative authorities, etc.	- National Register for IPRs kept by the Patent Office - Association of Industrial Property Representatives; 116 James Boucher Ave., 1407 SOFIA, Bulgaria; www.pgipunion.org - Non-unitary profession	- Bulgarian citizenship; permanent residence in the Republic of Bulgaria - A higher technical, natural science or law education diploma officially recognised in Bulgaria - Examination before the Patent Office - State examiners and lawyers with at least 10 years practice at the Patent Office and attorneys-at-law with at least 10 years practice shall acquire the status of representatives by right	2 years practice in the field of industrial property protection	Bulgarian Patent Office provides a two-part examination with written and oral part

	Who May Practice	National List or Register / Various Associations	Requirements for Entering National Register, Associations or Taking Examination	Practice Required for Entering National Register, Associations or Taking Examination	Examination / *Connection to the EQE
CH	- Anybody may practice - N.B.: new patent attorney law under preparation, including examination (expected in 2007)	- Verband der beim Europäischen Patentamt Eingetragenen Freiberuflichen Schweizerischen Patentanwälte (VESPA) – Association des Conseils Suisses en Brevets de Profession Libérale (ACSOEB); Bovard AG; CH-BERN 25 (private practice) - Verband Schweizerischer Patentanwälte (VSP) – Association Suisse des Conseils en Propriété Industrielle (ASCPi); Rue de Genève 122; CH-1226 GENEVE-THONEX (private practice) - Verband der Industriepatentanwälte in der Schweiz (VIPS) – Association des Conseils en Brevets dans l'Industrie Suisse (ACBIS); Novartis International AG; CH-4002 BASEL (industry) - Register of patent attorneys for CH and LI on Internet only comprises authorized European Patent Attorneys - Non-unitary profession			No examination
CY	Only lawyers may practice	- Presently no association - Official registrar: www.mcit.gov.cy/drcor - Unitary profession			No examination
CZ	- Patent attorneys and attorneys-at-law - Legal or natural persons having residence in CZ may represent themselves or be represented by a patent attorney or an attorney-at-law - Patent attorneys having the right to represent before the national office in any other EPC Contracting State	- Chamber of Patent Attorneys, BRNO has register for Patent Attorneys - N.B.: new patent attorney law passed by parliament, ratification under way*	- National and resident of Czech Republic - University education - Professional examination - Oath to the President of the Chamber of Patent Attorneys	3 years practice in industrial property for taking examination (*)	- Czech Industrial Property Office provides two-part examination with written and oral part - The examination board comprises two members nominated by the Chamber of Patent Attorneys and two members nominated by the CZ patent office (*)
DE	- Patent attorney may alone represent before the national office, the federal patent court and in cases of appeal and nullity before the Supreme Federal Court - Lawyers	- Patentanwaltskammer; Tal 29; 80331 MÜNCHEN; www.patentanwalt.de - VPP; Im Böhling 11; 67 157 WACHENHEIM; www.vpp-patent.de	Scientific or technical university degree	10 years in patent department of industry or 3 years of training including 26 months under supervision of patent attorney or patent agent in patent department and additionally 2	The examination comprises two written parts and one oral part

	Who May Practice	National List or Register / Various Associations	Requirements for Entering National Register, Associations or Taking Examination	Practice Required for Entering National Register, Associations or Taking Examination	Examination / *Connection to the EQE
		– Bundesverband der Deutschen Patentanwälte E.V.; Geschäftsstelle Deichmannhaus am Dom; Postfach 10 22 41; 50462 KÖLN; www.bundesverband-patentanwa-elte.de – Non-unitary profession – Bundesrechtsanwaltskammer Littenstraße 9, 10179 Berlin		– months at German Patent Office and 6 months at the German Patent Court	
DK	– Anybody may practice	– De Danske Patentagenters Forening (DDPAF) (private practice) – Dansk Forening for Industriens Patentingeniører (DIP) (industry) – Non-unitary profession	– Scientific or technical university degree	– 5 years practice for entering private practice association – 3 years practice for entering industry association	– The examination for entering the private practice association comprises two parts: 1) claims and replies to communications; 2) infringement and case-law
EE	– Legal or natural persons having residence in Estonia may represent themselves in IPR matters – Foreign clients have to be represented by registered Patent Attorney	– State Register of Patent Attorneys – Estonian Association of Patent Attorneys; c/o Lasvet, P.O.Box 3136, 10505 TALLINN, Estonia – Unitary profession	– Active legal capacity – Citizen of Estonia or of a member state of the European Union – Residence in Estonia – University education – Command of spoken and written Estonian – Command of two foreign languages in relation to professional work; one language has to be one of the official languages of the EPO – No criminal record	– At least four years employment with patent attorney or patent attorney company before applying for profession	– Written examination comprising 1) multiple choice questions on patents; utility models, claim drafting, case analysis, appeal procedure and court cases, and 2) trademarks, industrial designs, and geographical indications
ES		– Colegio Oficial de Agentes de la Propiedad Industrial (COAPI); Calle de la Montera, no 13; ES-28013 MADRID – Asociación de Agentes Españoles Autorizados ante Organizaciones Internacionales de Propiedad Industrial e Intelectual (AGESORPI); Paseo de Gracia, 65 bis; ES-08008 BARCELONA – Unitary profession – Obligatory registration at the Spanish Patent Office	– University degree (more than three years)	– No practice required for taking examination	– The examination is organised and prepared by the Spanish Patent Office – The examination is examined jointly by the Spanish Patent Office and COAPI – No particular training is provided – Same rules apply for private practice and industry
FI	– Anybody may act before the Finnish Patent Office – Professional representation before the Office requires registration on the national register – Patent Attorney title may be used only by those on the register	– National register held by the Finnish Patent Office; www.prh.fi – Suomen Patenttiammiesyhdistys r.y.; P.O.Box 595; FIN-00101 HELSINKI (private practice association); www.spay.fi	– Scientific or technical university degree; exceptions possible – Permanent residence in the EEA	– For national register: 1-2 years patent experience in the private practice – 5-6 years patent experience in the industry – Named as representative on 5 applications during one year	– No examination

	Who May Practice	National List or Register / Various Associations	Requirements for Entering National Register, Associations or Taking Examination	Practice Required for Entering National Register, Associations or Taking Examination	Examination / *Connection to the EQE
		- Patentti-Insinöörin r.y. (Finnish Association for Corporate Patent Agents; industry); www.patentti-insinööri.fi - Non-unitary profession - N.B.: new patent attorney law under preparation, including examination		- Courses in industrial property taken into account - 6 years practice with patent attorney for entering private practice association as ordinary member - No practice formally required for entering industry association	
FR	- Anybody may practice - Except for acts* where the "technical nature" of the act necessitates an industrial property attorney, i. e.: 1) filing and grant procedures of patent applications; 2) filing and registration procedures of trademarks; 3) oppositions against registration of a trademark	- Published list of persons qualified; notice of specialisation (engineer, lawyer and correspondingly patents, trademarks, designs); related to said acts* - Compagnie Nationale des Conseils en Propriété Industrielle (CNCPI); 92 rue d'Amsterdam; FR-75009 PARIS (private practice) - Association des Conseils en Propriété Industrielle (ACPI); 92 rue d'Amsterdam; FR-75009 PARIS (private practice); www.cncpi.fr - Association de Spécialistes en Propriété Industrielle (ASPI); 20 rue Vignon, FR-75009 PARIS (industry) - Non-unitary profession	- University degree and CEIPI diploma or equivalent	- 3 years professional practice	- Two separate examinations; patents and trademarks/designs - The patent examination comprises two written parts and one oral part - * Having passed the EQE it is necessary only to take the 2nd written part and the oral part - The examination is organised by the French Patent Office - The examination is drafted and examined by a jury chaired by a magistrate and comprising a lawyer, a university professor and other persons qualified in industrial property - ASPI and CNCPI organise training sessions
GB	- Anybody may practice, but not use title „Registered Patent Agent“, „Registered Patent Attorney“, „Chartered Patent Agent“ or „Chartered Patent Attorney“ (titles protected by law for those who have passed the *CIPA examination)	- Chartered Institute of Patent Agents (*CIPA); 95 Chancery Lane; LONDON WC2A 1DT; England; www.cipa.org - Unitary profession	- Primarily a GB university or polytechnic degree; exceptions possible	- 2 years supervised by patent attorney or lawyer or 4 years unsupervised practice for entering *CIPA - No previous practice is required for taking the examination	- The examination comprises a six part foundation examination and a four part final examination - *two parts (amendment and drafting papers) of the final examination may be compensated by papers A and B of the EQE - The examination is organised and marked by the Joint Examination Board; this comprises members from *CIPA, ITMA (Institute of Trade Mark Agents), and lawyers under the formal control of the British Patent Office - CIPA arranges comprehensive training and tutoring - No examination
GR	- Only lawyers may practice	- Presently no association - Unitary profession			
HU	- Patent Attorneys on the List of Hungarian Patent Attorneys, which	- Hungarian Chamber of Patent Attorneys; h-1054 BUDAPEST	- Hungarian nationality - Permanent domicile in Hungary	- At least 3 years practice as a patent attorney candidate	- National examination comprises: 1) two written parts: one of the topics should be in the national patent

	Who May Practice	National List or Register / Various Associations	Requirements for Entering National Register, Associations or Taking Examination	Practice Required for Entering National Register, Associations or Taking Examination	Examination / *Connection to the EQE
	is handled by the Hungarian Chamber of Patent Attorneys – Patent Attorneys employed in industry may represent own company only – Patent Attorneys also have right of representation before any competent courts	Kálmán Imre-u. 14; www.szabadalmikamara.hu – National List of Patent Attorney kept by said Chamber – Unitary profession	– Technical degree with at least five years study from accepted university, or corresponding degree from a natural scientific university – Patent attorney examination – Oath before the President of the Hungarian Chamber of Patent Attorneys	– Registration as patent attorney candidate on the National List – Graduation from a two-years training course organised by the Hungarian Patent Office	field, the other in other domestic IP territory, and 2) one oral part; national IP law; national procedural law, Civil Code and IP related criminal law; EPC, PCT, US law, International and Community trademark law, copyright and unfair competition law, TRIPs and other international treaties
IE	– Anybody may practice, but not use misleading title	– National Patent Office register for persons entitled to practice – Association of Patent & Trade Mark Agents; c/o F.R. Kelly & Co; 27 Clyde Road; DUBLIN 4; Ireland; www.apatma.ie – Unitary profession	– University degree in science or engineering, exceptions possible	– Examination required for entry on the National Register – No time limit imposed for taking examination	– The examination comprises two parts *CIPA (GB) and Irish legal part – *Ministerial waiver required for compensating CIPA parts with papers of the EQE
IT	– Examination necessary for practicing – Lawyers admitted at bar may practice without examination	– Ordine dei Consulenti in Proprietà Industriale; Via G. Donizetti 1/A; IT-20122 MILANO (private practice and industry); www.ordine-brevetti.it – Collegio Italiano dei Consulenti in Proprietà Industriale; c/o Via S. Agnese, 12; IT-20123 MILANO (private practice) – A.I.C.I.P.I., Associazione Italiana dei Consulenti ed Esperti in Proprietà Industriale di Enti o Imprese; www.aicipi.it (industry) – Unitary profession	– University degree obtained in Italy or abroad and recognised in Italy – Degree issued by a university or high school institute of a EU country with at least three years education in industrial property, after high school	– 2 years training with company, offices or services specialised in industrial property or – 18 months + 6 months in specific industrial property/patent courses – Italian citizens with employment for 5 years as an EPO examiner allows for direct enrolment for the examination – Examination not required for employees of the Ministry of Industry and Commerce who are chief examiners at the National Patent Office	– The examination comprises two written parts: 1) patent drafting and 2) patent law; and 3) one oral part on a) public and private law and civil procedure, b) patent law, c) EU and international law in industrial property, d) comparative law in industrial property, e) English, French or German as foreign language and f.) technical knowledge in chemistry, electricity or mechanics – * Having passed the EQE allows for taking examination without practice
LI	– National examination or EQE required for practising	– Liechtensteiner Patentanwaltsverband (LIPAV); Kappelstrasse 15, FL9492 ESCHEN – Unitary profession	– National of the EEA – * Having passed the EQE	– 2 years practice in private practice patent office or industry department	– * Examination after having passed the EQE
LT	– national patent attorneys and EU patent attorneys – before courts the patent attorney must act together with an attorney-at-law – corresponding requirements for other industrial property matters	– IP attorneys who are allowed to practice are registered on the Lithuanian National Register of Patent Attorneys – Other EU patent attorneys which are admitted to represent before the national patent offices should be registered on the Lithuanian National Register	– Lithuanian nationality or EU nationality – University degree in engineering, natural sciences, law or mathematics – Passing examinations organised by the national patent office – Official fee for registration – Fulfilment of fiscal legislation requirements	– 5 years experience in intellectual property (patent attorney firm, patent office, industry IP department)	– Examination comprises three parts: 1) theoretical part on national and international IP laws, 2) theoretical part on Civil Code and Civil Proceeding Code of the Republic of Lithuania, and 3) practical part on drafting, responding to communications, oppositions, etc.

	Who May Practice	National List or Register / Various Associations	Requirements for Entering National Register, Associations or Taking Examination	Practice Required for Entering National Register, Associations or Taking Examination	Examination / *Connection to the EQE
		– Association of Patent Attorneys in Lithuania; Kaštonų g. 5-7, 01107 VILNIUS, LITHUANIA; www.is.lt/kuc – No compulsory membership for practitioners (patentinis patik			
LU	– LU patent attorneys. EPAs or any EU patent attorney allowed to practice in own country may practice	– National register of patent attorneys – Fédération des Conseils en Propriété Industrielle au Luxembourg; B.P. 1775, L-1017 Luxembourg – Non-unitary profession	– University degree finalising studies of at least 4 years; – 12 months training with registered LU or EU patent attorney; – EQE; and – supplementary national examination – OR – Proof of entitlement to practice before Office of other EU state (in which the profession is regulated); and – National competence test	See column to the left	Practical aspects of the supplementary national examination and the national competence test to be determined by implementing regulations
MC	– FR patent attorneys may practice	– Unitary profession			– No examination
NL	– Persons on national register – Attorneys-at-law – National patent attorneys from EEA State or EPAs having passed an aptitude test (examination/oral parts)	– National register of patent attorneys – Orde van Octrooigemachtigden; P.O.Box 3219; NL-2280 GE RIJSWIJK; www.octrooigemachtigde.nl – Unitary profession	– Master's degree in mathematics, chemistry, physics or engineering – A suitable degree from the Military Academy – Degree from a foreign university equivalent to NL Master's Degree – NL or EEA citizens having passed the national examination and having three years practice may enter national register	– 3 years practice at office of NL patent attorney – Exemption for EEA patent attorneys or EPAs	– The examination is fully in writing and comprises 5 modules: 1) general law (3.5 hours), 2) patent law (3 hours), 3) other IP-law, European law, competition law (3 hours), 4) writing an advice regarding a patent-related problem (8 hours), and 5) writing of a patent application and defending the same (8 hours) – The examination is examined by an examination committee appointed by the Ministry of Economic Affairs and comprising representatives from the Dutch patent Office, the patent profession and the legal profession – Training is provided in the form of a two years course – Examination modules form a part of the course, but are also open to persons not following the course – * Module 5 may be compensated by paper A of the EQE
PL	– Only national patent attorneys entered on the national register may practice before the Patent	– National register kept by Polish Patent Office	– University degree taken at faculty useful for practicing the profession (e.g. technical, law)	– Three years training before taking examination	– Qualifying examination

	Who May Practice	National List or Register / Various Associations	Requirements for Entering National Register, Associations or Taking Examination	Practice Required for Entering National Register, Associations or Taking Examination	Examination / *Connection to the EQE
	Office for persons not having their domicile or -seat in PL – Registered patent attorneys are also allowed to represent before civil courts in industrial property matters		– PL nationality – Oath before Patent Office		
PT	– Any interested party established or resident in PT – Industrial Property Attorneys on the national list – Lawyers duly appointed at the Portuguese Bar Association	– Associação Portuguesa dos Mandatários Europeus de Patentes (AMEP); Rua Vitor Córdon, 14 -1249-103 LISBOA – Associação dos Consultores em Propriedade Industrial; Rua Miguel Lupi, 16 – r/c – 1200 – 725 LISBOA – Unitary profession	– PT or EU nationality – University degree in engineering, law or economics – Office located in PT or in the territory of a EU Member State	– No practice required for taking examination	– The examination comprises one written part and one oral part – The examination is organised, drafted and examined by the National Industrial Property Office
RO	– Patent attorneys who are members of the Romanian Chamber of Patent Attorneys and are registered in the National register of Patent Attorneys – For representation before courts the patent attorney must also be a lawyer – The corresponding requirements apply also to trademark and design matters	– Attorneys on the national register also have to be members of the Romanian Chamber of Patent Attorneys – Camera Consilierilor in Proprietate Industrială din Romania (Romanian Chamber of Patent Attorneys); B-dul Corneliu Coposu nr. 7, Bl. 104, sc. 1, et. 4, ap. 16, Sector 6 – Bucuresti, Romania; office@patent-chamber.ro – Unitary profession	– Romanian nationality and residence and business place in Romania required for passing the examination – Technical, scientific or judicial university degree	– 3 years experience in the basic profession and/or 3 years training within a patent attorney firm – Technical examiner permanently employed at the Romanian Patent and Trademark Office for at least 5 years may enter the Romanian Chamber of Patent Attorneys without further practice or examination	– Examination organised by Romanian Patent and Trademark Office – Examination comprises three written parts: a) one theoretical part on national patent law and proceedings, PCT, EPC and other international treaties, and b) two practical parts comprising filing of a patent application, answering a first official action, claims, specification and appeal drafting
SE	– Anybody may practice	– Svenska Patentombudsforeningen; Box 2286; SE-10316 STOCKHOLM (private practice); www.sprof.se – Svenska Industriens Patentingenjörers Förening; c/o Eka Chemicals, Box 11556, SE-100 61 STOCKHOLM; (industry); www.sipf.se – Patentkonsulters Samfund (Scandinavian Patent Attorney Society); Box 23101; SE 10435 STOCKHOLM (common association for all associations in Scandinavia) – Non-unitary profession	– Resident of Republic of Slovenia – University degree in technology or science – Qualifying examination conducted by Slovenian Intellectual Property Office required for entering national registers	– 5 years practice for entering private practice association – no prior practice for entering industry association	– No examination – The Scandinavian Patent Attorney Society arranges a voluntary examination in two parts: 1) claims drafting and 2) varying legal problems – The corresponding training comprises a period of three years and twelve courses covering the different areas of industrial property (also e.g. EPC, PCT), as well as industrial property law, procedural law, administrative law, commercial law and competition law
SI	– Patent Agents on National Register – Patent Agents also have right of representation before courts and other national authorities – Lawyers	– National Register of representatives kept by Slovenian Intellectual Property Office (www.uil-sipo.si) – Separate register for patent agents and industrial design and trademark agents	– Resident of Republic of Slovenia – University degree in technology or science – Qualifying examination conducted by Slovenian Intellectual Property Office required for entering national registers	– No practice required	a) Slovenian Intellectual Property Office conducts examination with written (patents 2 days other 1 day) and oral parts (3 hours) comprising general and special part: a) general part: fundamentals of IP; competence of administrative

	Who May Practice	National List or Register / Various Associations	Requirements for Entering National Register, Associations or Taking Examination	Practice Required for Entering National Register, Associations or Taking Examination	Examination / *Connection to the EQE
	Legal persons and law firms employing on a regular basis qualified patent agents	- Association of Slovenian Patent Attorneys, c/o Item d.o.o., Resljeva 16, SI-LJUBLJANA, Slovenia - Unitary profession			bodies in infringement of IP; court competence and protection of IP in private law; and administrative procedures and disputes, and b1) special part/patents: national and international patent law; industrial design law; trade and service mark law; and law governing geographical indications, and/or b2) special part/other: industrial design law; trade and service mark law; law governing geographical indications
SK	- Patent attorneys - Lawyers - National exam required for representation before the Slovak Industrial Property Office	- Chamber of Patent Attorneys, Trenčianska 55, 821 09 BRATISLAVA 2, Slovakia; www.patentattorneys.sk - Register of Patent Attorneys kept by the above chamber - Unitary profession	- Legal competence - Tertiary education - Professional examination - Oath to President	3-years practice by patent attorneys or 4-years practice in industrial property department of companies required for taking examination	Professional examination given by Slovak Industrial Property Office comprising written and oral parts
TR	Patent attorneys on the national register	- Register of patent attorneys kept by the Turkish Patent Institute - Patent ve Marka Vekilleri Derneği (PEM), www.pem.org.tr (association, not national) - Unitary profession	- Turkish citizenship with place of residence in Turkey - University degree of 4 years	No practice required for taking examination	The examination comprises one written part relating to national patent law and proceedings, PCT and other international treaties, and unfair competition law

National versions of the title „European patent attorney“

AT	Zugelassener Vertreter vor dem Europäischen Patentamt		gia evropaika diplomata evresitechnias – special representative for European patents)
BE	Europees Octrooigemachtigde, mandataire en brevets européens	HU	Európai Szabadalmi Ügyvivő
BG	Европейски Патентен Представител (Europeyski Patenten Predstavitel)	IE	European patent attorney
CH	European Patent Attorney (not official, but used)	IT	Consulente in Brevetti Europei
CY	Ενρωπαϊός Δικηγόρος Διπλωμάτων Ενεσιτεχνίας (Europeos Dikigoros Diplomatou Evresitechnias) – not official	LI	European patent attorney
CZ	Evropská patentová zástupkyně (fem.), Evropský patentový zástupce (masc.)	LT	patentinis patikėtinis
DE	Zugelassener Vertreter vor dem EPA	LU	mandataire en brevets européens, Zugelassener Vertreter vor dem EPA
DK	Europæisk patentagent (European patent attorney mostly used)	MC	mandataire en brevets européens
EE		NL	Europees Octrooigemachtigde
ES	Agente de Patentes Europeas	PL	
FI	eurooppapatenttiasiamies	PT	Mandatário Europeu de Patentes
FR	mandataire en brevets européens	RO	Consilier European de Brevete
GB	European patent attorney	SE	europapatentombud
GR	Ειδικός Πληρεξούσιος για Ευρωπαϊκά Διπλώματα Ενεσιτεχνίας (idikos plirekssoussios	SI	evropski patentni zastopnik
		SK	Európska patentová zástupkyňa (fem.), Európsky patentový zástupca (masc.) (European patent attorney mostly used)
		TR	Avrupa Patent Vekili

Payment of epi subscription fees 2005

W. Baum
Secretary General

As announced at the 56th Council Meeting in Copenhagen a new possibility to pay the annual subscription fee has been generated. From the beginning of the year 2005 the members of the institute are invited to pay the subscription fee by personal credit card. The relevant contracts with Lufthansa AirPlus Servicekarten GmbH for use of Visa- and Master-cards and with Dresdner Bank have been settled. **Credit card payment is at no charge for the members.**

In order to pay by credit card the individual member of the epi transmits the data of his personal credit card to the Institute either by fax or by mail (not by e-mail!). The Secretariat recommends to copy the first page of the invoice form together with the credit card and to return this copy to the Secretariat. Additionally the member has to fill in the verification number of the credit card (i. e. the last three figures of the number on the rear side of the card). The rest of the transmitting procedure will be handled by the Secretariat.

In order to minimise the workload in processing accurately and efficiently subscription payments it is very important that independently of the transmitting way

(credit card, direct debiting or bank transfer) **each payment can be clearly identified with a specific member.** Obviously unidentifiable payments subsequently cause considerable problems for the Secretariat and in many instances unnecessary protracted correspondence.

It will be appreciated that the additional workload in sorting out these problem payments is very time consuming. Therefore the Secretariat requests your help and asks that all members personally ensure that their subscription payment – whether by credit card, by EPO deposit account (before February 15) or by bank transfer – gives as a basic level of information **your name and membership number.** For example when instructing a bank transfer payment please inform your bank that your name and membership number must be shown on the transfer advice sent to the epi.

If your firm or company is making a single payment to pay the subscriptions of a number of members please ensure that the name and membership number of each epi member covered by this single payment is given on a list accompanying the payment.



*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*

epi • Postfach 26 01 12 • D-80058 München

3 January 2005

RECHNUNG
epi-Beitrag 2005

INVOICE
epi Subscription 2005

FACTURE
Cotisation epi 2005

EUR 150

Postbank München, Account No 703-802, BLZ (Bank Sorting Code) 700 100 80
IBAN No DE77 7001 0080 0000 703802 - BIC-SWIFT: PBNKDEFF

Diese Rechnung wird versandt zur Verwendung bei Ihrer Steuererklärung, auch wenn bereits eine Einzugsermächtigung erteilt ist.

Die Rechnung kann wie folgt bezahlt werden (drei Möglichkeiten):

1. durch persönliche Kreditkarte (nur Visa oder Mastercard)

In diesem Fall kopieren Sie bitte in das nachstehende Feld die Frontseite der Kreditkarte und geben Sie im 3-stelligen kleinen Feld die Kontrollnummer an. Das sind die letzten drei Ziffern im Unterschriftsfeld. Das **epi**-Sekretariat wird nach Eingang dieser kopierten Rechnungsseite alles Notwendige für die Abbuchung von Ihrem Kreditkartenkonto veranlassen.

Although you may already have issued a direct debiting mandate, you will require this invoice for completing your tax declaration.

The invoice can be settled as follows (three possibilities):

1. by credit card (Visa or Mastercard only)

In this case please copy the credit card in the box below and write the verification number in the three small boxes. The verification number is the last three digits on the signature panel. After receipt of a copy of this page the **epi** Secretariat will process the debiting of the credit card account.

Cette facture vous est envoyée pour raison de déclaration fiscale, même si vous avez déjà fait une demande de prélèvement automatique.

La facture peut être réglée de la façon suivante (trois possibilités) :

1. par carte de crédit (uniquement Visa ou Mastercard)

Si vous désirez utiliser cette possibilité, veuillez copier la carte de crédit dans le cadre repris ci-dessous et écrire le numéro de vérification dans les trois petites cases. Le numéro de vérification est formé par les trois derniers chiffres repris sur la bande où la signature est appliquée. Après réception d'une copie de cette page, le secrétariat de l'**epi** traitera le retrait du compte de la carte de crédit.

Secretariat: P. O. Box 26 01 12 • D-80058 München • Im Tal 29 • D-80331 München
Tel.: +49 (89) 24 20 52-0 • Fax: +49 (89) 24 20 52-20
e-mail: info@patentepi.com

2. durch Einzug vom laufenden EPA-Konto

siehe beiliegendes Formular zur Einzugsermächtigung, das bis zum 15. Februar 2005 an das **epi** zurückgeschickt werden muss;

3. durch Banküberweisung in EUR

Euroschecks sowie alle deutschen Schecks werden akzeptiert.

In diesem Fall sind die Bankgebühren zu Ihren Lasten.

Auf dem Überweisungsträger muss angegeben sein für jedes einzelne Mitglied:

- Name
- Mitgliedsnummer (neben dem Namen auf dem Adressaufkleber).

Fehlt der Name und/oder die Mitgliedsnummer, kann der Beitrag nicht ordnungsgemäß verbucht werden!

Bei Zahlungseingang nach dem **30. April 2005** ist der Beitrag **EUR 175**.

Falls Ihr Beitragskonto schon einen Fehlbetrag aufweist, erhalten Sie ein zusätzliches Blatt. Bitte überweisen Sie dann auch den Fehlbetrag.

Sollten Sie Ihren Jahresbeitrag nicht bezahlen, nehmen Sie bitte zur Kenntnis, dass **Ihr Name von der Liste der zugelassenen Vertreter gelöscht wird**, gemäß Regel 102(1) der Ausführungsordnung zum EPÜ. Ihr Name kann jedoch gemäß den derzeit gültigen Regeln wieder in die Liste aufgenommen werden, sobald Sie den ausstehenden Beitrag bezahlt haben, gemäß Regel 102(3).

Der Schatzmeister
Peter Kelly

2. by debiting the EPO deposit account

see enclosed direct debit mandate form which must be returned to **epi** by February 15, 2005

3. by bank transfer in EUR

Euro cheques and banker's drafts are also accepted.

All bank charges are payable by the subscriber.

Please note that it is essential that each member state:

- name
- membership number (shown next to the name on the label above).

The lack of the personal name and/or of the membership number may make it impossible to identify correctly the subscription payment!

Subscription payments made after **30 April 2005** must be in the amount of **EUR 175**.

If your subscription account shows a deficit already, a separate sheet is attached. In this case please also transfer the outstanding amount.

Please note that if you fail to pay your annual subscription **your name will be deleted from the list of professional representatives**, cf. Rule 102(1) of the Implementing Regulations of the EPC. However, you may, upon request, be re-entered under the current regulations on the list of professional representatives as soon as your outstanding subscription has been paid, cf. Rule 102(3).

The Treasurer
Peter Kelly

2. par retrait du compte courant OEB

voir autorisation de prélèvement annexée, à retourner à l'**epi** avant le 15 février 2005

3. par virement bancaire en EUR

Les eurochèques et les chèques de banque sont également acceptés.

Les frais bancaires sont à votre charge.

Il est indispensable d'indiquer pour chaque membre sur l'ordre de virement:

- nom
- numéro d'affiliation (inscrit à côté du nom sur l'étiquette).

S'il manque le nom et/ou le numéro d'affiliation, le paiement de la cotisation ne peut être correctement identifié !

La cotisation est de **EUR 175** si le paiement est effectué après le **30 avril 2005**.

Si votre compte cotisation accuse déjà un solde débiteur, vous trouverez une feuille en annexe. Dans ce cas, veuillez aussi virer la somme manquante.

Nous vous rappelons que, si vous n'avez pas acquitté votre cotisation annuelle, **votre nom sera radié de la liste des mandataires agréés**, voir Règle 102(1) du Règlement d'exécution de la CBE. Toutefois, vous pouvez faire une demande de réinscription sur la liste des mandataires agréés selon les règles en vigueur après avoir acquitté votre cotisation impayée, voir Règle 102(3).

Le Trésorier
Peter Kelly

Bitte einreichen an:

Please return to:

Retournez s.v.p.

epi-Sekretariat
Postfach 26 01 12
D-80058 München

Telefax 089 – 242052-20**Einzugsermächtigung****Direct debiting mandate****Autorisation de prélèvement**

Eingangsfrist im
epi-Sekretariat:

Deadline for receipt by the
epi Secretariat:

Date limite de réception au
Secrétariat de l'epi:

15. Februar**15 February****15 février**

Bitte senden Sie diese Einzugsermächtigung oder eine Kopie hiervon **nur an das epi-Sekretariat**, nicht an das EPA.

Please, send this debiting mandate or a copy thereof **to the epi Secretariat only**, not to the EPO.

Veuillez envoyer cette autorisation de prélèvement ou une copie de celle-ci **uniquement au Secrétariat de l'epi**, pas à l'OEB.

Bitte verwenden Sie **nur dieses Formular**, gegebenenfalls mit einem gesonderten Blatt für die Namen mehrerer **epi**-Mitglieder. Wenn die Liste der **epi**-Mitglieder sich seit letztem Jahr geändert hat, schicken Sie bitte eine neue Einzugsermächtigung.

Please use only this form, if necessary with a separate sheet for the names of several **epi** members. If the list of **epi** members has changed since last year please send a new mandate.

N'utilisez que ce formulaire; ajoutez si nécessaire une feuille séparée pour les noms de plusieurs membres de l'**epi**. Si la liste des membres de l'**epi** a été modifiée depuis l'année dernière, envoyez s.v.p. une nouvelle autorisation de prélèvement.

Name/Vorname des epi -Mitglieds: epi member's surname/first name: Nom/prénom du membre de l'epi	
epi -Mitgliedsnummer: epi membership number: Numéro d'affiliation à l'epi:	
Die Einzugsermächtigung gilt für mehrere epi-Mitglieder Falls "ja", bitte ein gesondertes Blatt mit den Namen und Mitgliedsnummern beifügen. This direct debiting mandate applies to more than one epi member If "yes", please list names and membership numbers on a separate sheet.	
L'autorisation de prélèvement s'applique à plusieurs membres de l'epi : Dans l'affirmative, prière de joindre au présent formulaire une feuille séparée portant le nom et le numéro de ces membres.	
Name des Kontoinhabers : Account holder's name: Nom du titulaire du compte :	
Kontonummer beim EPA: EPO account number: Numéro de compte auprès de l'OEB:	
Datum · Date Unterschrift des Kontoinhabers · Account holder's signature Signature du titulaire du compte	

NOT FOR USE AFTER FEBRUARY 15

Einzugsermächtigung

Eingangsfrist im *epi*-Sekretariat:
15. Februar

Das Institut der beim Europäischen Patentamt zugelassenen Vertreter (*epi*) wird hiermit ermächtigt, den *epi*-Jahresbeitrag für das unten angegebene *epi*-Mitglied in der jeweils gültigen Höhe von dem nachstehend genannten und beim Europäischen Patentamt (EPA) geführten laufenden Konto einzuziehen. Die Einzugsermächtigung gilt für den nächstfälligen und künftig fällige Beiträge bis auf schriftlichen Widerruf. Sie gilt ebenso für offene Beiträge vergangener Jahre. Der Einzug erfolgt auf der Grundlage der zwischen dem EPA und dem *epi* getroffenen Verwaltungsvereinbarung vom 5. April 1993 (ABl. EPA 1993, 367) und der Nr. 9 der Vorschriften über das laufende Konto (ABl. EPA 1993, 366).

Der Einzug des Beitrags erfolgt mit Wirkung vom 25. Februar des laufenden Jahres. Alle an das EPA am Abbuchungstag zu entrichtenden Gebühren und Auslagen gehen dem Einzug des *epi*-Beitrags vor. Mehrere Beiträge, die vom selben Konto abgebucht werden sollen, fasst das *epi* zu einem Gesamtbetrag zusammen. Demgemäß erteilt das *epi* dem EPA einen Abbuchungs-

auftrag über den Gesamtbetrag. Reicht das Guthaben nach Begleichung der vorrangigen EPA-Gebühren und Auslagen zur Ausführung des Abbuchungsauftrags des *epi* nicht aus oder trifft die vorliegende Einzugsermächtigung beim *epi* nach dem 15. Februar ein, kann der Abbuchungsauftrag nicht ausgeführt werden. Das *epi*-Mitglied wird über den fehlgeschlagenen Einzugsversuch informiert. Überweist es den Beitrag dann nicht bis spätestens 30. April (Kontoeingang) für das *epi* spesenfrei im normalen Bankverkehr, erfolgt ein Einzugsversuch des erhöhten Jahresbeitrags am 25. Juni. Schlägt auch dieser Versuch fehl, muss der erhöhte Beitrag im normalen Bankverkehr beglichen werden.

Mit Wirkung vom 25. Juni kann der Beitrag auch für *epi*-Mitglieder, die zum vorausgegangenen Abbuchungstag noch keine Einzugsermächtigung vorgelegt hatten, eingezogen werden. Eingangsfrist für die Einzugsermächtigung im *epi* ist hierfür der 15. Juni.

Falls ein gesondertes Blatt mit den Namen mehrerer *epi*-Mitglieder beigelegt wird, braucht es nicht gesondert unterschrieben zu werden.

Direct debiting mandate

Deadline for receipt by the *epi* Secretariat:
15 February

The Institute of Professional Representatives before the European Patent Office (*epi*) is hereby authorised to debit from the deposit account held with the European Patent Office (EPO) as specified below the *epi* annual subscription for the *epi* member named below at the appropriate rate. This direct debiting mandate applies to the forthcoming and all subsequent subscriptions until it is revoked in writing. It also applies to outstanding subscriptions from previous years. Debiting will be on the basis of the Administrative Agreement dated 5 April 1993 between the EPO and the *epi* (OJ EPO 1993, 367) and point 9 of the Arrangements for deposit accounts (OJ EPO 1993, 366).

Subscriptions are debited with effect from 25 February of each year. All fees and costs payable to the EPO on the debiting date have priority over the *epi* subscription. The *epi* will combine several subscriptions to be debited from the same account into one overall sum, for which it will then issue the EPO with a debit order. If, after priority payment of EPO fees and costs, the credit balance is not

sufficient to carry out the *epi* debit order, or if the direct debiting mandate is received by the *epi* after 15 February, the debit order is not carried out. The *epi* member will be informed. Then, if the annual subscription has not been credited to the *epi* account through the standard banking procedure and at no expense to the *epi* by 30 April (reception on *epi* account), an attempt will be made to debit the higher annual subscription on 25 June. Should this attempt also prove unsuccessful, the higher annual subscription must be paid to the *epi* through the standard banking procedure.

Subscriptions of *epi* members who had not issued a direct debiting mandate by the previous debiting date may also be debited with effect from 25 June. The deadline for receipt of the direct debiting mandate by the *epi* is then 15 June.

If a separate sheet with the names of several *epi* members is enclosed, it does not need a separate signature.

Autorisation de prélèvement

Date limite de réception au Secrétariat de l'*epi*:
15 février

L'Institut des mandataires agréés près l'Office européen des brevets (*epi*) est autorisé par la présente à prélever, sur le compte courant ouvert à l'Office européen des brevets (OEB) dont le numéro est mentionné ci-après, le montant en vigueur de la cotisation annuelle du membre de l'*epi* dont le nom figure ci-dessous. La présente autorisation de prélèvement est valable pour la prochaine cotisation venant à échéance ainsi que pour les cotisations suivantes, jusqu'à révocation par écrit. Elle vaut également pour les cotisations des années précédentes non encore acquittées. Le prélèvement est opéré sur la base des dispositions de l'accord administratif en date du 5 avril 1993 entre l'OEB et l'*epi* (JO OEB 1993, 367) ainsi que de celles du point 9 de la décision modifiant la réglementation applicable aux comptes courants (JO OEB 1993, 366).

Le prélèvement de la cotisation prend effet le 25 février de l'année en cours. Le règlement de toutes les taxes et de tous les frais dûs à l'OEB à la date de débit a priorité sur le prélèvement de la cotisation annuelle à l'*epi*. L'*epi* regroupe en un seul montant plusieurs cotisations devant être débitées du même compte. A cette fin, l'*epi* donne à l'OEB un ordre de débit pour le

montant total. Si, après règlement prioritaire des taxes et des frais dûs à l'OEB, la provision du compte ne suffit pas pleinement pour exécuter l'ordre de débit de l'*epi* ou si la présente autorisation parvient à l'*epi* après le 15 février, l'ordre de débit ne peut être exécuté, et le membre en est informé. Si celui-ci ne vire pas le montant de la cotisation le 30 avril au plus tard (date d'inscription au compte de l'*epi*), par une opération bancaire normale et sans frais pour l'*epi*, il sera procédé, le 25 juin, au prélèvement du montant majoré de la cotisation annuelle. Au cas où ce prélèvement non plus ne peut être effectué, le montant majoré de la cotisation doit être acquitté par une opération bancaire normale.

Avec effet au 25 juin, il est également possible de prélever le montant de la cotisation annuelle des membres de l'*epi* n'ayant pas produit d'autorisation de prélèvement à la date de débit précédente. A cette fin, la date limite de réception des autorisations de prélèvement par l'*epi* est le 15 juin.

S'il est joint une feuille séparée portant le nom de plusieurs membres de l'*epi*, il n'est pas nécessaire de la signer.

Regeln für die Zahlung der epi-Mitgliedsbeiträge

Beschluss des *epi* Rates auf seiner Sitzung in Kopenhagen am 11./12. Mai 1992

- 1) Der jährliche *epi* Mitgliedsbeitrag ist innerhalb von zwei Monaten nach Fälligkeit zu zahlen, und zwar vor dem 1. März.
- 2) Für Mitglieder, die bereits zu Anfang eines Jahres in die Liste der zugelassenen Vertreter eingeschrieben sind, ist das Fälligkeitsdatum der 1. Januar.
- 3) Für Mitglieder, die erst im Verlauf eines Jahres in die Liste der zugelassenen Vertreter aufgenommen werden, ist das Fälligkeitsdatum der Tag der Eintragung in die Liste.
- 4) Der jährliche Mitgliedsbeitrag wird erlassen, wenn
 - der schriftliche Antrag des Mitgliedes auf Löschung von der Liste der zugelassenen Vertreter vor dem 1. April beim Europäischen Patentamt eingeht;
 - eine Person nach dem 30. September in die Liste der zugelassenen Vertreter aufgenommen wird.
- 5) In allen anderen Fällen muss der volle jährliche Mitgliedsbeitrag bezahlt werden. Ratenzahlungen, Stundungen oder Beitragsreduzierungen können nicht gewährt werden.
- 6) Zahlt ein Mitglied, das bereits zu Anfang des Jahres auf der Liste der zugelassenen Vertreter stand, seinen Beitrag nicht vor dem 1. Mai (Eingang auf dem *epi* Konto), ist sein Beitrag EUR 175.–. Gleiches gilt für Mitglieder, die erst im Verlauf des Jahres in die Liste der zugelassenen Vertreter aufgenommen worden sind, falls sie ihren Mitgliedsbeitrag nicht innerhalb von vier Monaten nachdem sie durch „*epi*-Information“ oder einen Brief über seine Höhe informiert worden sind, zahlen.
- 7) Soweit die Zahlung mittels Banküberweisungen erfolgt, hat dies in Euros und frei von Bankspesen für *epi* zu geschehen. Dabei sind der Name und die Mitgliedsnummer jedes einzelnen Mitglieds, für das die Zahlung erfolgt, anzugeben.
- 8) Wegen der beachtlichen Bankgebühren und darüber hinaus wegen des zusätzlichen Verwaltungsaufwand werden keine Schecks angenommen.

- 9) Der *epi* Rat beschließt Änderungen des Mitgliedsbeitrages vor Anfang des Folgejahres. Er informiert alle Mitglieder durch „epi-Information“ über den neuen Beitragsbetrag und die Zahlungsmodalitäten. Alle Mitglieder, von denen angenommen werden kann, dass sie die entsprechende „epi-Information“ erhalten haben, müssen Zahlungsvorkehrungen innerhalb der oben genannten Zeitspanne treffen, ohne dass eine zusätzliche Aufforderung

hierzu erfolgt. der Schatzmeister wird jedoch zu Beginn eines Jahres bzw. bei neuen Mitgliedern nach Eintragung in die Liste zusätzlich Rechnungen an alle Mitglieder verschicken. Verspätete Zahler, von denen angenommen werden kann, dass sie die oben genannte „epi-Information“ erhalten haben, können sich aber nicht darauf berufen, diese Rechnung nicht erhalten zu haben.

Rules Governing Payment of the epi Annual Membership Fee

Decision taken by the *epi* Council at its meeting in Copenhagen on 11/12 May 1992

- 1) The *epi* annual membership fee has to be paid within two months after its due date, namely before March 1st.
- 2) The due date for members being on the list of professional representatives at the beginning of the year is 1 January.
- 3) The due date for members entering the list of professional representatives in the course of the year is the moment of entry on this list.
- 4) The annual membership fee is waived if
 - a member's written demand for deletion from the list of professional representatives arrives at the European Patent Office prior to 1 April;
 - a person is registered on the list of professional representatives after 30 September.
- 5) In all other cases the entire annual membership fee has to be paid. No instalments, extensions of the term of payment, or reduction of payment may be granted.
- 6) Members on the list of professional representatives on 1 January who fail to pay their membership fee prior to 1 May (reception on *epi* account) will have to pay a subscription of EUR 175.–. The same applies to members who entered the list during the course of the year if they have not paid the fee within four months after being notified of its amount through „epi Information“ or by letter.
- 7) Payments by money transfers have to be made in Euros and free of bank charges for *epi*. They must indicate the name and registration number of each member for whom the fee is paid.
- 8) Due to the substantial bank charges and furthermore to the additional administrative requirements no personal cheques will be accepted.
- 9) The *epi* Council decides on modifications of the amount of the annual membership fee before the beginning of a year. It informs all members through „epi Information“ of the new amount of the fee and the conditions for payment. All members deemed to have received the respective „epi Information“ will have to make provisions for payment within the above mentioned time-limit without further request. The Treasurer will, however, also send out fee invoices to all members at the beginning of the year or to new members after their registration. Late payers deemed to have received the before mentioned „epi Information“ may not plead not having received this invoice.

Règles relatives au paiement de la cotisation annuelle epi

Décision prise par le Conseil de l'*epi* à la réunion de Copenhagen les 11 et 12 mai 1992

- 1) Le paiement de la cotisation annuelle *epi* est dû dans les deux mois qui suivent la date d'exigibilité, c.à.d. avant le 1^{er} mars.
- 2) La date d'exigibilité pour les personnes inscrites sur la liste des mandataires agréés au début de l'année est le 1^{er} janvier.
- 3) La date d'exigibilité pour les personnes admises sur la liste des mandataires agréés en cours d'année est la date d'admission sur cette liste.
- 4) N'est pas redevable de la cotisation de l'année en cours:
 - un membre qui demande par écrit à l'OEB sa radiation de la liste des mandataires agréés avant le 1^{er} avril;
 - toute personne inscrite sur la liste des mandataires agréés après le 30 septembre.
- 5) La cotisation annuelle doit être payée dans son intégralité dans tous les autres cas. Aucun verse-

- ment partiel, report d'échéance ou réduction du montant ne peut être accepté.
- 6) Toute personne inscrite sur la liste des mandataires agréés au 1er janvier et dont la cotisation n'est pas payée avant le 1er mai (date de réception sur le compte de l'*epi*) doit payer une cotisation de EUR 175.-. Ceci s'applique également à toutes les personnes inscrites sur la liste en cours d'année, dont la cotisation n'est pas réglée dans les quatre mois qui suivent la notification dans „epi Information“ ou par lettre.
 - 7) Les paiements par virement bancaire doivent être faits en Euros, sans frais pour l'*epi*. Le nom et le numéro d'affiliation de la/les personne(s) pour qui la cotisation est destinée doivent être indiqués clairement sur le virement.
 - 8) Les chèques ne sont pas acceptés en raison des frais bancaires importants et du supplément de travail que leur traitement nécessite.
 - 9) Le Conseil de l'*epi* décide des modifications du montant de la cotisation annuelle avant le début de l'année. Tous les membres sont informés par „epi Information“ du nouveau montant de la cotisation et des conditions de paiement. Toute personne qui, en tant que membre, reçoit „epi Information“ devra s'assurer que sa cotisation est payée dans le délai imparti, ci-dessus mentionné, sans autre notification. Le Trésorier enverra toutefois aussi un appel de cotisation à tous les membres au début de l'année, de même qu'aux nouveaux membres après leur inscription. Toute personne recevant en tant que membre „epi Information“, mentionné plus haut, et n'ayant pas payé sa cotisation à temps ne pourra pas alléguer qu'elle n'a pas reçu l'appel de cotisation.

epi-Mitgliedschaft und Jahresbeitrag

1. Internationale Kammerorganisation

Das *epi* ist die Standesorganisation der beim Europäischen Patentamt zugelassenen Vertreter. Es besteht Pflichtmitgliedschaft. Das *epi* erfüllt ähnliche Aufgaben wie nationale Standesorganisationen, z. B. die deutsche Patentanwaltskammer. Seine Mitglieder sind sowohl Freiberufler als auch in der Industrie oder im staatlichen Bereich Tätige. Voraussetzung für die Mitgliedschaft ist u. a. der Erwerb eines natur- oder ingenieurwissenschaftlichen Hochschuldiploms bzw. gleichwertiger natur- oder ingenieurwissenschaftlicher Kenntnisse, eines mindestens dreijährigen patentrechtlichen Praktikums und das erfolgreiche Ablegen der Eignungsprüfung beim Europäischen Patentamt.

Das *epi* ist also die Kammerorganisation des Europäischen Patentamtes. Es ist eine Körperschaft internationalen öffentlichen Rechts.

2. Mitgliedschaft

Die Pflichtmitgliedschaft, die automatisch mit Eintrag in die Liste der zugelassenen Vertreter beim EPA begründet wird, beruht auf Artikel 5, die Verpflichtung zur Entrichtung des Jahresbeitrages auf Artikel 6 der Vorschriften über die Errichtung des Instituts, vgl. ABl. EPA 2/1978, S. 85 ff.. Die Mitgliedschaft endet ebenso automatisch mit der Streichung aus der EPA-Liste.

Nach einer Streichung aus der Vertreterliste kann jederzeit ein Antrag auf Wiedereintragung in die Liste gestellt werden. Es dürfen jedoch keine gegenteiligen disziplinarischen Maßnahmen vorliegen. Eventuell in früheren Zeiten nicht entrichtete Mitgliedsbeiträge müs-

sen zuvor nachentrichtet werden. Bei einer Wiedereintragung in die Vertreterliste braucht keine Eignungsprüfung abgelegt zu werden.

Beim *epi* gibt es nur Vollmitgliedschaft, keine ruhende Mitgliedschaft. Wer die Jahresgebühren für einige Zeit sparen will, muss sich vor dem 1. April des laufenden Jahres von der Liste der zugelassenen Vertreter beim EPA streichen lassen und gegebenenfalls später einen Antrag auf Wiedereintragung in die Liste stellen. Bitte richten Sie Ihren Antrag auf Streichung/Wiedereintragung an das EPA, Direktion 5.1.1.

3. Jahresbeitrag

Die Verpflichtung zur Entrichtung des *epi*-Jahresbeitrages entsteht mit Eintragung in die Liste der zugelassenen Vertreter.

Verschiedentlich ist der Wunsch nach Aus- oder Herabsetzung dieses Beitrages von z.Zt. EUR 150,- geäußert worden. Diese Frage hat mehrfach den *epi*-Rat und Vorstand beschäftigt. U.a. angesichts der vergleichsweise geringen Höhe des Beitrages wurde eine Aus- oder Herabsetzung abgelehnt. Damit gilt, dass der Mitgliedsbeitrag für das laufende Jahr nur entfällt, wenn

- a) die Streichung von der Vertreterliste vor dem 1. April erfolgt ist;
- b) der Eintrag in die Vertreterliste erst nach dem 30. September vorgenommen wurde.

Der Jahresbeitrag kann nicht gequotelt werden. Er ist in voller Höhe auch bei Eintragung in die Liste während des Kalenderjahres zu entrichten, es sei denn er entfällt ganz, wenn die oben unter a) und b) genannten Voraussetzungen vorliegen.

Bitte beachten Sie, dass der Vorstand und Rat des *epi* bei allen Entscheidungen zu beachten haben, dass es sich bei dem *epi* nicht um eine nationale Einrichtung

handelt, sondern dass 30 Staaten am Patentübereinkommen beteiligt sind.

epi membership and membership subscription

1. Professional Association

epi is the statutory association of Professional Representatives before the European Patent Office, with compulsory membership. Its tasks are comparable to those of national professional associations such as the British Chartered Institute of Patent Agents. Its members come from the free profession as well as the industry and government sectors. Requirements for membership are a university level scientific or technical qualification or an equivalent level of scientific or technical knowledge, a full-time training period of at least three years, and passing the European Qualifying Examination.

epi is an international public law corporation.

2. Membership

All persons entered in the list of Professional Representatives, kept by the European Patent Office (EPO), automatically become a member of the *epi*, Art. 5 of the Regulation on the Establishment of an Institute of Professional Representatives before the European Patent Office, OJ EPO 2/1978, p. 85 et seq. Their obligation to pay the annual subscription to *epi* results from Art. 6, loc. cit. Membership automatically expires as soon as a member is deleted from the list of the EPO.

After having been deleted from the list, a member may at any time file an application for reinstatement. There must, however, be no contradicting disciplinary measures. Outstanding membership subscriptions have to be paid before reinstatement. There is no need to pass the European Qualifying Examination again for being reinstated.

epi has only one membership status, no associate membership or the like. Persons who do not want to

pay their annual subscription for one or more years need a deletion from the list of professional representatives before 1 April of the current year. They may apply for reinstatement later on. Application for reinstatement has to be sent to the EPO, Directorate 5.1.1.

3. Membership subscription

The obligation to pay the annual *epi* membership subscription starts with the registration on the list of Professional Representatives kept by the European Patent Office.

Occasionally, requests have been made for suspension or reduction of the membership subscription, currently amounting to 150 EUR. The *epi* Council and Board have considered this question many times and have decided that the membership subscription may neither be suspended nor reduced. One of the reasons for this decision is the already low amount of the membership subscription. It is waived if

- a) a member's written demand for deletion from the list of professional representatives arrives at the European Patent Office prior to 1 April;
- b) a person is registered on the list of professional representatives after 30 September.

The entire membership subscription, and not only a proportion, has to be paid even if a person is entered on the list in the course of the year, except if the above-mentioned conditions under a) and b) are fulfilled.

Please keep in mind that the *epi* Board and Council have to take into consideration that all decisions they take concern an international organization involving 30 Contracting States to the European Patent Convention and not only one single country.

Affiliation à l'epi et cotisation annuelle

1. Organisation internationale de l'Ordre des mandataires agréés près l'Office européen des brevets

L'*epi* remplit auprès de l'Office européen des brevets les mêmes fonctions que, au niveau national, le Barreau pour les avocats ou l'Ordre pour les médecins, avec cependant la particularité que non seulement les personnes appartenant à la profession libérale mais égale-

ment celles qui exercent dans l'industrie ou dans le secteur public en sont membres.

Peuvent faire partie de l'*epi* les personnes titulaires d'un diplôme scientifique ou technique de niveau universitaire ou bien ayant des connaissances scientifiques ou techniques de niveau équivalent, qui ont accompli un stage d'au moins trois ans dans le domaine du brevet et

réussi l'examen européen de qualification de l'Office européen des brevets.

L'*epi* est donc l'Ordre des mandataires agréés près l'Office européen des brevets. C'est une association de droit public.

2. Affiliation

L'affiliation obligatoire qui est automatiquement suivie de l'inscription sur la Liste des mandataires agréés de l'OEB, repose sur l'Article 5 du Règlement relatif à la création de l'Institut, et l'obligation d'acquitter la cotisation annuelle sur l'Article 6, voir JO OEB 2/1978, p. 85 et suiv. L'affiliation à l'*epi* expire automatiquement avec la radiation de la liste de l'OEB.

Une personne qui s'est fait radier de la Liste des mandataires peut à tout moment se faire réinscrire, à condition qu'aucune mesure disciplinaire à son encontre ne l'interdise. Les cotisations éventuellement impayées doivent être réglées au préalable. Il n'est pas nécessaire de repasser l'examen de qualification pour se faire réinscrire sur la liste des mandataires.

Les membres de l'*epi* sont tous des membres actifs. Il n'est pas possible de suspendre l'affiliation. Si une personne désire ne pas payer de cotisation annuelle pendant quelque temps, elle doit demander sa radiation de la liste des mandataires de l'OEB avant le 1er avril de l'année en cours et refaire une demande d'inscription plus tard. La

demande de radiation/réinscription doit être adressée à l'OEB, direction 5.1.1.

3. Cotisation annuelle

L'inscription sur la liste des mandataires entraîne automatiquement l'obligation d'acquitter la cotisation annuelle.

Une suspension du paiement de la cotisation ou une réduction de son montant, actuellement de 150 EUR, n'est pas possible. Une éventuelle suspension ou réduction de la cotisation a souvent été considérée par le Conseil et le Bureau de l'*epi*. Cette possibilité a été rejetée en raison, entre autres, du montant relativement peu élevé de la cotisation. Une personne est toutefois dispensée d'acquitter la cotisation annuelle si

- a) elle se fait radier de la liste des mandataires avant le 1er avril;
- b) elle se fait réinscrire sur la liste des mandataires après le 30 septembre.

Le montant intégral de la cotisation doit être payé en une seule fois, même si l'inscription a lieu en cours d'année, exception faite des conditions citées ci-dessus aux points a) et b).

Nous vous rappelons que le Bureau et le Conseil de l'*epi* doivent, pour chaque décision, tenir compte du fait que l'*epi* est une organisation internationale constituée non pas d'un seul pays mais de 30 Etats Contractants de la Convention sur le brevet européen.

International Symposium Commemoration of the 100th Anniversary of the Establishment of the Japan Institute of Invention and Innovation (JIII) 25th-26th May, 2004

T. Johnson (GB)

The JIII invited the *epi* through our President, Walter Holzer, to be a guest at their centenary celebration.

Our President requested that I attend in his stead, in the name of our Institute, which I was delighted and honoured to do.

The symposium was a highly prestigious one, with guests from the world of IP internationally, with a panel of keynote speakers, namely, in the order in which they spoke,

1. Tun Dr. Mahathir bin Mohamad, the former Prime Minister of Malaysia;
2. Dr. Ryoji Noyori, President of RIKEN;
3. Jeffrey R. Immelt, CEO of GEC;
4. Dr. Kamil Idris, Director General of WIPO;
5. Mr. Yasuo Imai, Commissioner, Japan Patent Office;
6. Dr. h.c. Joseph Straus, Max Planck Institute;

7. Dr. Tomotsu Nomakuchu, CEO of Mitsubishi Electric Corporation;

8. Fumitake Yoshida, Vice Chairman/President of JIII.
The Patron of the Symposium was His Imperial Highness, the Prince Hitachi. The meeting was chaired by Soichiro Toyoda, Chairman JIII.

As can be imagined, it was an honour to be present to hear such a distinguished panel of speakers, and the audience was not disappointed. All stressed the importance of the IP system globally, and called for a worldwide establishment of an IP culture to foster economic growth and promote the enrichment of society globally.

This in broad summary was the result of the Symposium.

The next day there was presentation of various categories of awards to Japanese Innovation, such as Sony,

Sharp, Hitachi, Matsushita Electric, to name but a few of the „big“ names who were honoured.

The to me amazing part of this ceremony was that the Emperor of Japan was there.

Indeed, not only was the Emperor present, but so was the Empress. His Imperial Highness the Prince Hitachi and the Princess Hitachi; the Prime Minister of Japan, the speaker of the (Japanese) House of Representatives, the President of the House of Councillors and the Chief Justice of the Supreme Court, The Minister of Education, Culture, Sports, Science and Technology and the Minister of Economy Trade and Industry.

I wonder in how many Member States of the EPC would be able to put together such a roster of distinguished guests to honour Innovation?

There was a reception after the presentation ceremony, at which I had the honour of being selected to meet His Highness Prince Hitachi.

The Prince was gracious enough to have several minutes' talk with me, during which I passed on our President's greetings, and emphasised the role the *epi* places in fostering and developing innovation.

It was an honour for the Institute to be invited, and for me to represent the Institute at such a prestigious event.

Le nouveau régime des dommages-intérêts de contrefaçon de titres de propriété intellectuelle selon la Directive européenne du 30 avril 2004

J.-P. Martin (FR)¹

1) Introduction

Le 30 avril 2004 une Directive européenne du Parlement européen et du Conseil, visant au respect des droits de propriété intellectuelle en Europe, a été publiée au Journal officiel de l'Union européenne (L 157, Réf. 2004/48/CE).

Cette Directive reprend, avec quelques amendements essentiellement de forme rédactionnelle – sauf pour son article 13 relatif aux dommages- intérêts de contrefaçon comme on le verra ci-après – le texte adopté le 9 mars 2004 par le Parlement européen après de nombreux amendements apportés à la proposition initiale de Directive en date du 30 janvier 2003.

Ces mesures doivent faire l'objet dans chaque Etat membre, d'une loi nationale de transposition qui doit entrer en vigueur au plus tard le 29 avril 2006. Le chantier de la future loi française de transposition a été ouvert dès le mois de mai 2004.

La présente étude concerne les dispositions introduites par les articles 13 et 14 en matière de dommages-intérêts de contrefaçon et de frais de procédure, plus particulièrement dans l'optique de la contrefaçon de brevets d'invention. En effet comme on le sait, en matière de contrefaçon, les médias et les pouvoirs publics communiquent essentiellement sur la contrefaçon des marques, des modèles et des logiciels, mais extrêmement peu sur la contrefaçon des brevets d'invention. Ce type de contrefaçon, au moins aussi important et dommageable si ce n'est davantage que celle des marques et modèles, est beaucoup moins visible et constitue en quelque sorte la „face cachée“ de la

contrefaçon, ou si l'on préfère, la partie immergée de l'iceberg.

2) Le nouveau mode d'évaluation des dommages-intérêts de contrefaçon selon l'article 13 de la Directive

Ce texte reprend partiellement des dispositions énoncées par l'article 45 de l'ADPIC:

1. Les Etats membres veillent à ce que, à la demande de la partie lésée, les autorités judiciaires compétentes ordonnent au contrevenant qui s'est livré à une activité contrefaisante en le sachant ou en ayant des motifs raisonnables de le savoir de verser au titulaire du droit des dommages-intérêts adaptés au préjudice que celui-ci a réellement subi du fait de l'atteinte.

Lorsqu'elles fixent des dommages-intérêts, les autorités judiciaires:

a) prennent en considération tous les aspects appropriés tels que les conséquences économiques négatives, notamment le manque à gagner, subies par la partie lésée, les bénéfices injustement réalisés par le contrevenant, et dans des cas appropriés, d'autres éléments que des facteurs économiques, comme le préjudice moral causé au titulaire du droit du fait de l'atteinte;

ou

b) à titre d'alternative, elles peuvent aussi décider, dans des cas appropriés, de fixer un montant forfaitaire de dommages-intérêts, sur la base d'éléments tels que, au moins, le montant des redevances ou droits qui auraient été dus si le contrevenant avait demandé l'autorisation d'utiliser le droit de propriété intellectuelle en question.

¹ Jean-Paul Martin, European Patent Attorney, Docteur en droit

2. Dans les cas où le contrevenant s'est livré à une activité contrefaisante sans le savoir ou sans avoir de motifs raisonnables de le savoir, les Etats membres peuvent prévoir que les autorités judiciaires pourront ordonner le recouvrement des bénéfices ou le paiement de dommages-intérêts susceptibles d'être pré-établis ".

3) Commentaires des mesures de l'article 13

a) Dans l'esprit de l'article 41 (1) ADPIC de 1994 qui oblige les législations des Etats membres à mettre en place des mesures et procédures constituant „un moyen de dissuasion “ de la contrefaçon des droits de propriété intellectuelle – et non pas seulement un moyen de simple réparation du préjudice subi – le projet initial du 30 janvier 2003 de la Directive européenne ainsi que le Rapport du 17 septembre 2003 de la Commission juridique du Marché intérieur de Mme Janelly FOURTOU comportaient un article 17 définissant une base de détermination beaucoup plus sévère des dommages-intérêts de la contrefaçon, que celle finalement retenue par l'article 13 de la Directive du 30 avril 2004.

Le régime du projet du 30 janvier 2003 prévoyait ainsi des mesures draconiennes, qui pour être efficaces se voulaient dissuasives car punitives, à l'instar de la jurisprudence américaine:

- Redevance indemnitaire fixée au double du montant de la redevance contractuelle qui aurait été due si le contrefacteur avait demandé une telle licence.
- Dommages-intérêts pouvant inclure en sus du manque à gagner, dans des cas appropriés, tous les bénéfices réalisés par le contrefacteur imputables à la contrefaçon et non pris en compte dans le calcul des dommages-intérêts compensatoires (manque à gagner, préjudice moral et autres facteurs économiques).
- Pour le calcul de ses frais déductibles et des gains imputables à des facteurs autres que l'objet protégé, le contrefacteur est tenu de fournir des preuves; le titulaire des droits contrefaits n'est tenu de présenter des preuves qu'en ce qui concerne le montant des recettes brutes réalisées par le contrefacteur.
 - Ainsi pour les nombreux autres éléments à prendre en considération en vue notamment de la détermination de la masse contrefaisante, de la marge bénéficiaire du titulaire du droit contrefait, brute ou nette selon le cas, à retenir pour être appliquée à la masse contrefaisante etc..., la victime de la contrefaçon n'était plus tenue, implicitement, que de fournir des présomptions raisonnables et non des preuves – ces dernières étant en effet généralement impossibles à établir. Sous l'influence des accords ADPIC de 1994, ce régime se rapprochait donc largement de celui en vigueur aux Etats- Unis d'Amérique, et ainsi était beaucoup plus favorable à la victime de la contrefaçon que le régime appliqué par exemple par la jurisprudence française.

Au cours des discussions en 2003 et 2004 au sein de la Commission juridique du Marché intérieur puis du Parlement européen, ces mesures anti-contrefaçon draconiennes et *a priori* dissuasives ont malheureusement été considérablement affaiblies, pour aboutir à la rédaction du 9 mars 2004 puis à la rédaction finale de l'article 13 du 30 avril 2004. L'article 18 initial relatif aux frais de procédure, devenu l'article 14, a également été amendé, en particulier par la suppression de la mention des „frais d'avocat“ remboursables par le contrefacteur condamné.

b) Le „OU“ entre les alinéas a) et b) et l'expression „à titre d'alternative“ ont été introduits après le 9 mars 2004, alors que le texte de la Directive était – en principe – définitivement figé à cette date après approbation par le Conseil... Cette alternative malencontreuse existait dans la rédaction initiale de l'article 17 du 30 janvier 2003, et avait opportunément disparu dans celle du 9 mars 2004.

Ces adjonctions rendent, de façon inopportune bien que vraisemblablement involontaire, l'alinéa 1 non conforme aux règles appliquées depuis des décennies par la jurisprudence française. Cela ne peut qu'embarasser les tribunaux français si cette rédaction n'est pas modifiée dans la loi de transposition en préparation en France à la date où ces lignes sont écrites (7 juillet 2004).

En effet la disposition b) s'applique au cas où le titre de propriété industrielle (brevet notamment) n'est pas exploité industriellement. Mais elle est également appliquée, en combinaison avec la mesure a), dans les cas – nombreux – où le gain manqué est considéré comme ne constituant qu'une fraction des bénéfices illicites du contrefacteur. Une redevance indemnitaire selon b) est alors appliquée au surplus des bénéfices du contrefacteur.

Pour corriger cette rédaction intempestive, il conviendrait, dans la loi française de transposition, soit de revenir à la rédaction du 9 mars 2004, soit d'ajouter un alinéa c) disposant: „les autorités judiciaires peuvent également combiner les mesures des alinéas a) et b) dans les cas appropriés“.

c) Le paragraphe 1 premier alinéa, presque identique à l'article 45 (1) ADPIC, subordonne le paiement de dommages-intérêts à la connaissance préalable ou à une présomption de connaissance préalable du caractère litigieux de son activité par le présumé contrefacteur.

En vertu de cette disposition un fabricant ou un importateur serait recevable à invoquer le fait qu'il n'aurait pas agi en connaissance de cause du caractère litigieux de son activité pour s'exonérer de dommages-intérêts, donc de sa responsabilité civile.

Cette disposition est contraire à l'article L 615-1 du Code de la propriété intellectuelle, d'après lequel les fabricants et importateurs ne sont pas recevables à invoquer leur bonne foi.

Son application en France n'est pas souhaitable, car elle entraînerait une contrainte supplémentaire pour les titulaires de droits contrefaits. Avant chaque action en contrefaçon contre un fabricant ou un importateur, il faudrait en effet systématiquement prouver que celui-ci

a été informé antérieurement du caractère litigieux de son activité, en pratique par une lettre de mise en garde ou de mise en demeure. Or dans certains cas le titulaire du droit peut préférer agir sans avertissement préalable.

d) Le projet initial de Directive prévoyait la possibilité du „recouvrement, au profit du titulaire (des droits contrefaits) de tous les bénéfices imputables à l’atteinte”.

Cette possibilité de sanction avait un caractère *dissuasif*, conformément à l’amendement 78, article 3 introduit par le Parlement européen (9 mars 2004) qui spécifie que „Les mesures et mesures correctives (*sic*) doivent également être effectives, proportionnées et *dissuasives*...” (rédaction corrigée dans le texte publié le 30 avril 2004).

Elle était conforme à l’obligation de mettre en place un „moyen de dissuasion ” édictée par l’article 41 (1) de l’Accord ADPIC et était aussi prévue par l’article 45 (2) ADPIC. C’est pourquoi nous l’avons préconisée (JP Martin, RDPI, n° 143 janvier 2003 „L’évaluation des dommages- intérêts de contrefaçon de brevet d’invention doit être réformée”).

4) Recouvrement des bénéfices du contrefacteur selon la jurisprudence française avant 1971

Il faut également signaler que cette possibilité de recouvrement au moins partiel des bénéfices du contrefacteur existait dans la jurisprudence française antérieure à 1971.

Un cas typique de cette jurisprudence ancienne est l’arrêt *CARPANO c/ MAUBORGNE* du 22 février 1963 de la Cour d’appel de Paris relatif à la contrefaçon d’un brevet portant sur un moulinet de pêche. Le tribunal de Paris dans sa décision du 25 avril 1961 avait indiqué que „le contrefacteur ne saurait être admis à conserver son bénéfice effectivement réalisé, même si ce bénéfice excédait celui que le breveté eut lui-même réalisé”.

En général les tribunaux tenaient compte des bénéfices réalisés par le contrefacteur, parce qu’ils présumaient que le breveté en aurait réalisé autant, mais cette présomption devait céder à la preuve contraire.

L’arrêt du 22 février 1963 tempérait ces principes en précisant que „tous les bénéfices réalisés par les contrefacteurs ne devaient pas être attribués au breveté, même s’ils sont supérieurs au préjudice; qu’en effet *en l’absence d’un texte spécial en matière de contrefaçon de brevets, il ne saurait être dérogé aux règles de droit commun de la responsabilité contractuelle (article 1382 du code civil)*”: passage souligné par le rédacteur: *a contrario* en présence d’un texte spécial en matière de contrefaçon de brevets (article 41 (1) ADPIC de 1994, article 13 de la Directive européenne du 30 avril 2004) on peut en déduire qu’il est possible de déroger aux règles de droit commun de la responsabilité civile de l’article 1382.

L’arrêt *SEFARA c/ CMB et PHILIPS* du 5 mai 1971 de la Cour d’appel de Paris mit fin à ce régime avantageux pour les brevetés contrefaits (Ann. P.I., 1971 – 23; P.

MATHELY „Le Droit Français des Brevets d’invention” 1974 p. 732).

Il n’en reste pas moins que cette jurisprudence antérieure à 1971 correspond sensiblement au régime de l’article 13 de la Directive, puisque celui-ci mentionne que „les dommages- intérêts tiennent compte des bénéfices injustement réalisés” par le contrefacteur. Elle peut donc dès maintenant permettre aux victimes de contrefaçon de brevet d’argumenter en ce sens devant les tribunaux pour *obtenir au moins une partie des bénéfices illicites du contrefacteur, en sus de leur gain manqué*.

En effet, cette disposition de l’article 13 n’a de sens que si elle permet au demandeur en contrefaçon d’obtenir le recouvrement d’une partie au moins des bénéfices du contrefacteur, outre son manque à gagner, le préjudice moral, commercial...

5) Doublement de la redevance contractuelle pour la redevance indemnitaire

Curieusement, la possibilité de recouvrement des bénéfices réalisés par le contrefacteur est maintenant réservée, par le paragraphe 2 de l’article 13, aux contrefacteurs de bonne foi (revendeurs, distributeurs, utilisateurs non préalablement mis en garde). En bonne logique cela aurait dû être réservé aux fabricants et importateurs, dont la bonne foi ne devrait pas pouvoir être invoquée pour échapper à leur responsabilité !

Le paragraphe b) *supprime le doublement de la redevance contractuelle* prévu pour la redevance indemnitaire par le projet de Directive et par le rapport de la Commission juridique et du Marché intérieur du 19 septembre 2003 de Mme Janelly FOURTOU.

Ce doublement est systématiquement pratiqué aux Etats-Unis et contribue efficacement à rendre les sanctions dissuasives. Cet amendement rend la redevance indemnitaire non dissuasive, son plancher étant même inférieur à celui généralement accordé par la jurisprudence française depuis 1985 et qui n’est en rien dissuasif pour les contrefacteurs (1 à 2 % de plus que la redevance contractuelle théorique).

Il serait hautement souhaitable de rétablir dans la loi française de transposition le doublement de la redevance contractuelle, ou à défaut de spécifier „supérieur au montant... à la place de „au moins...”.

En effet cette mesure ne retrancherait rien à la Directive, qui l’autorise implicitement puisqu’elle impose aux juges du fond un plancher minimal de redevance indemnitaire. Prétendre ainsi que cela est parfois avancé „qu’on ne peut fixer un plancher minimum obligatoire aux magistrats” ne correspond donc pas du tout à la réalité, puisque c’est bien ce que fait la Directive !

Rien ne permet du reste de penser que les magistrats y soient hostiles, car la plupart d’entre eux admettent semble-t-il, au vu de l’ampleur des ravages de la contrefaçon et de la piraterie en Europe, la nécessité de punir beaucoup plus sévèrement (et plus rapidement !) les contrefacteurs, qui ont jusqu’à présent bénéficié de beaucoup trop d’indulgence (cf. les débats des 4èmes

rencontres Internationales des 6 et 7 octobre 2003 de la CNCPi avec la participation de magistrats).

Dès 1993 (J. Paul Martin, Gazette du Palais, 1993 cité supra) nous avons préconisé le doublement systématique de la redevance contractuelle comme indispensable pour conférer à la redevance indemnitaire un caractère plus dissuasif, justifié aussi par les peines et soins du procès engagé par le breveté pour faire valoir ses droits.

Il faut observer que dans la rédaction de l'article 13 b), rien n'interdit aux tribunaux, bien au contraire, d'appliquer un doublement des redevances contractuelles puisque cette rédaction ne fixe qu'un plancher minimal. Ceci serait conforme à la volonté exprimée par la Commission européenne dans l'exposé des motifs du projet initial de Directive, ainsi qu'à l'article 41 des Accords ADPIC.

6) Caractère non dissuasif de la simple réparation du préjudice

Il faut bien comprendre que la simple réparation du préjudice selon l'article 1382 ne constitue pas une mesure dissuasive. Elle permet en effet au contrefacteur de ne payer essentiellement que ce qu'il aurait dû de toute façon payer au titulaire du droit contrefait ce qu'il lui aurait payé s'il avait passé avec celui-ci un accord de licence contractuel.

Or souvent la victime de la contrefaçon renonce à intenter un procès, en raison des frais élevés et aléas de celui-ci, surtout lorsqu'elle est une PME-PMI ou un inventeur indépendant. Et si elle le fait elle n'est jamais sûre de le gagner. Si elle le gagne, ce sera au terme d'un épuisant marathon judiciaire, qui *in fine* laisse au contrefacteur le plus gros de ses bénéfices illicites... De quoi décourager à l'avance plus d'un breveté !

La conclusion s'impose d'elle-même pour ceux qui sont tentés par la contrefaçon: le risque est faible et la contrefaçon payante !

L'exposé extrêmement lucide et pertinent des motifs du projet de Directive montre que cela n'avait pas échappé à la Commission européenne. Malheureusement les amendements du Parlement européen, tous favorables aux intérêts des réseaux de contrefacteurs et pirates, ont quasiment dénaturé ce projet initial en lui ôtant ses fers de lance anti-contrefaçon.

Le seul moyen de rendre les sanctions réellement efficaces est, plutôt que d'intenter des poursuites pénales qui devraient être réservées à certains cas particuliers, de conférer aux sanctions civiles un caractère *punitif, draconien, en abandonnant la règle de l'article 1382*. Ce type de mesure a depuis longtemps démontré son efficacité en Allemagne et aux Etats-Unis notamment.

Les articles 41 et 45 des accords ADPIC et l'article 13 de la Directive européenne du 9 mars 2004 offrent à cet effet une *nouvelle base légale appropriée de substitution*.

En effet, malgré les amendements restrictifs introduits, l'article 13 laisse toute latitude aux juges pour fixer le niveau des dommages-intérêts.

7) Frais de justice

L'article 14 de la Directive dispose:

„Les Etats membres veillent à ce que des frais de justice raisonnables et proportionnés et les autres frais exposés par la partie ayant obtenu gain de cause soient, en règle générale, supportés par la partie qui succombe, à moins que l'équité ne le permette pas.“

Le texte initial mentionnait des „honoraires d'avocat“ s'ajoutant à des „frais de justice“, l'ensemble constituant des „frais liés à l'action“. Les honoraires des avocats sont spécifiquement mentionnés par l'article 45 (2) de l'accord ADPIC. La suppression de leur mention est regrettable.

Pour autant peut-on comprendre que leur remboursement est mis en cause ? Certainement pas, car ces frais et honoraires d'avocats (et de conseils, huissiers...) font nécessairement partie des „autres frais“ cités. En France, comme exposé précédemment, diverses décisions en matière de marques et brevets ont depuis 2000 accordé à la victime de la contrefaçon le remboursement de la totalité de ses frais d'avocat et de conseil.

8) Conclusion

Les dispositions adoptées le 9 mars 2004 aux articles 13 et 14 de la Directive par le Parlement européen et par le Conseil et finalisées le 30 avril 2004 pour l'indemnisation des victimes de contrefaçons, sont décevantes pour les entreprises et inventeurs européens, comparées à celles du projet initial de Directive.

Du moins cette Directive européenne est „révisable et constitue un point de départ“.

Elle est le résultat de „négociations ardues au niveau européen, aboutissant à des compromis successifs entre les institutions, entre les groupes politiques au sein du Parlement européen, entre les Etats membres au Conseil et enfin entre les directions générales de la Commission européenne“ (observations de Mme Janelly FOURTOU Rapporteur de la Commission juridique du Marché intérieur).

Valéry Giscard d'Estaing a défini ce processus européen de „recherche du consensus“: on est d'accord non pas sur la plus forte pente, mais sur la plus faible...

Soutenir comme se l'imaginent certains que l'ensemble de ce texte pourrait être dissuasif pour les contrefacteurs et pirates relève de l'ingénuité. Cependant, cette Directive a le mérite d'exister là où jusqu'à présent il n'y avait rien en droit européen, et elle est améliorable dans le sens d'une plus grande sévérité dans la répression de la contrefaçon et de la piraterie, auxquelles une part trop belle reste réservée.

Mais compte tenu qu'il aura fallu cinq longues années pour aboutir au consensus minimum de la Directive du 30 avril 2004, il est permis de se demander combien d'années seront encore nécessaires pour parvenir à une Directive améliorée, définissant des sanctions plus efficaces. Pendant ce temps pirates et contrefacteurs auront toute latitude pour continuer à exercer et amplifier leurs ravages au sein de l'Union européenne. D'où l'intérêt

des lois de transposition nationales, dans lesquelles les législateurs nationaux ont la faculté d'ajouter des mesures plus sévères au plancher commun de la Directive, et qui doivent entrer en vigueur au plus tard en 2006.

Malgré tout, combinées aux obligations des articles 41 et 45 des accords ADPIC de 1994 (restés jusqu'à présent lettre morte), les mesures et procédures de la Directive du 30 avril 2004 ouvrent de nouvelles possibilités pour rendre plus efficace la lutte anti-contrefaçon en Europe.

En effet l'exposé des motifs (paragraphe 27) et l'article 3 de la Directive prescrivent, conformément à l'article 41 (1) ADPIC, que les mesures anti-contrefaçon doivent être *dissuasives*. Mais en France la règle de la simple réparation du préjudice selon l'article 1382 du Code civil ne présente aucun caractère dissuasif. *Pour qu'une sanction soit dissuasive, donc efficace, il faut qu'elle soit punitive, ce qui n'est pas le cas de la simple réparation du préjudice.*

L'examen précédent de la jurisprudence le prouve. L'expansion continue sinon exponentielle de la contrefaçon et de la piraterie malgré la loi répressive du 5 février 1994, dénoncée de façon récurrente par le Comité National Anti Contrefaçon (CNAC), le confirme.

D'autre part en cas de conflit, les traités et conventions internationaux signés par la France priment sur la loi interne, qui doit s'effacer. De ce fait les articles 41 et 45 des Accords ADPIC, partiellement repris par les articles 13 et 14 de la Directive européenne, s'imposent à la place de la règle de l'indemnisation du seul préjudice sur la base de l'article 1382.

La Directive et les articles 41- 45 ADPIC offrent les bases légales d'un nouveau régime d'indemnisation de la contrefaçon *sui generis*, mieux adapté que l'article 1382.

Les bases de ce nouveau régime devraient être, notamment, selon le projet initial de la Directive: redevance indemnitaire au moins égale au *double* de la redevance contractuelle (au lieu de „au moins la redevance contractuelle...” – ce qui ne devrait pas gêner les magistrats – , possibilité de *recouvrement de la totalité des bénéfices illicites des contrefacteurs*, exigences de *présomptions* raisonnables et non de preuves de la part de la victime de la contrefaçon pour l'évaluation du préjudice, doutes levés au bénéfice de la victime de la contrefaçon et non du contrefacteur pour la détermination du gain manqué et autres éléments...

Il est nécessaire que les entreprises, inventeurs et milieux professionnels intéressés restent particulièrement vigilants au cours de l'élaboration de la loi française de transposition nationale de la Directive.

Enfin *le problème de la réduction des délais* de procédure pour les procès en contrefaçon de brevet, sans laquelle aucune amélioration réelle du système judiciaire français n'est possible, et sur laquelle nous avons depuis 1995 attiré maintes fois l'attention (cf. par exemple, RDPI n°95 janvier 1999 „Brevets d'invention: une nouvelle politique de l'innovation”) *reste entier.*

Sa solution passe, soit par une réforme du Code de procédure civile, soit si cela soulevait trop de difficultés, par l'élaboration de textes spécifiques à la propriété intellectuelle. Dans les deux cas le Code de procédure civile allemand constitue une référence que l'on ne peut ignorer (comme la loi allemande de 1957 sur les inventions de salariés qui a inspiré l'article L 611-7 CPI).

New telephone and fax numbers of the Secretariat

Tel: +49 89 242052-0

Fax: +49 89 242052-20

Please note that the following persons can be contacted directly:

Baum Wolfgang (Secretary General)	+49 89 242052-10
Böhner Christian (Accounting)	+49 89 242052-15
Della Bella Diana (Secretariat)	+49 89 242052-11
Haberl Stefan (Accounting)	+49 89 242052-17
Monéger Dominique (Secretariat)	+49 89 242052-12
Zérafa André (Accounting)	+49 89 242052-16

LIST OF PROFESSIONAL REPRESENTATIVES AS OF 22.11.2004

by their place of business or employment in the Contracting States and their entry according to A134 or A163

No.	Contr. Stat	A134	% A134	A163	% A163	Total Repr.	% of Tot/Repr.
1	AT	52	54,2	44	45,8	96	1,20
2	BE	77	59,2	53	40,8	130	1,63
3	BG		0,0	107	100,0	107	1,34
4	CH	174	51,3	165	48,7	339	4,24
5	CY		0,0	14	100,0	14	0,18
6	CZ		0,0	130	100,0	130	1,63
7	DE	1581	61,1	1008	38,9	2589	32,40
8	DK	58	40,8	84	59,2	142	1,78
9	EE		0,0	32	100,0	32	0,40
10	ES	7	4,4	153	95,6	160	2,00
11	FI	8	5,2	147	94,8	155	1,94
12	FR	365	54,4	306	45,6	671	8,40
13	GB	943	60,5	616	39,5	1559	19,51
14	GR		0,0	33	100,0	33	0,41
15	HU		0,0	155	100,0	155	1,94
16	IE	7	19,4	29	80,6	36	0,45
17	IS		0,0	4	100,0	4	0,05
18	IT	121	37,9	198	62,1	319	3,99
19	LI	5	50,0	5	50,0	10	0,13
20	LU	8	50,0	8	50,0	16	0,20
21	MC		0,0	3	100,0	3	0,04
22	NL	206	68,4	95	31,6	301	3,77
23	PL		0,0	285	100,0	285	3,57
24	PT		0,0	47	100,0	47	0,59
25	RO		0,0	129	100,0	129	1,61
26	SE	99	38,5	158	61,5	257	3,22
27	SI		0,0	33	100,0	33	0,41
28	SK		0,0	51	100,0	51	0,64
29	TR	1	0,5	187	99,5	188	2,35
	Total	3712	46,5	4279	53,5	7991	100,00

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Disciplinary bodies and Committees · Organes de discipline et Commissions

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