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Institut der beim Europäischen Patentamt zugelassenen Vertreter
Institute of Professional Representatives before the European Patent Office
Institut des mandataires agréés près l'Office européen des brevets

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Cover:
On the Street
This picture, photographed by Berrin Kalenderli (European Patent Attorney, TR), was part of the **epi** Artists Exhibition 2015 at the EPO, Munich

Berrin Kalenderli

Born in 1972. Having joined the firm in 1995 and being Head of Trademark Department, Berrin is registered as Trademark and Patent Attorney, European Patent Attorney. Member of **epi**, AIPPI, INTA, Internet Committee of INTA and Intellectual Property Constituency of ICANN. Graduated from the Bosphorus University, she has been working on Intellectual Property connected non-contentious and prosecution matters for over two decades and represents local and international companies in a wide variety of areas, as well as local clientele on international scale for protection of their IP rights in foreign territories. She is fluent in English and German and is an active member of the Executive Board of Deriş. She has interest in photography, participating at INTA art exhibition in the years 2013, 2014 and **epi** Artists Exhibitions in 2015. She also participated in Los Angeles Photo Festival – focus Turkey with her photographs in 2014.

Berrin Kalenderli ist im Jahr 1972 geboren. Die eingetragene türkische Patent- und Markenanwältin und Europäische Patentanwältin (Großvaterregelung) leitet die Markenabteilung der Kanzlei, in die sie 1995 eingetreten ist. Sie ist Mitglied des **epi**, der Internationalen Vereinigung für den Schutz des Geistigen Eigentums AIPPI, der türkischen Landesgruppe des AIPPI, der INTA, des Internet Komitee der INTA und des Wahlausschusses der ICANN. Sie graduierte an der Bosphorus Universität und arbeitet seit mehr als zwei Jahrzehnten an nicht streitigen Erteilungsverfahren auf dem Gebiet des Intellectual Property und vertritt lokale und internationale Mandanten. Darüber hinaus unterstützt sie nationale Mandanten beim Schutz ihrer IP Rechte im Ausland. Sie spricht fließend Englisch und Deutsch und ist aktives Mitglied des Executive Board von Deris. Sie interessiert sich für Photografie, nahm an den INTA Kunstausstellungen der Jahre 2013, 2014 und an der **epi** Artists Exhibition 2015 teil. Ferner nahm sie am Los Angeles Photo Festival mit dem Fokus Türkei im Jahr 2014 teil.

Berrin Kalenderli est née en 1972. Elle est responsable du département Marques du cabinet qu'elle a rejoint en 1995 (Deris). Berrin est mandataire turque en marques et en brevets, ainsi que mandataire européen en brevets. Elle est membre de l'**epi**, de l'AIPPI, de l'INTA, de la commission internet de l'INTA, et de la commission PI de l'ICANN. Diplômée de l'Université du Bosphore, elle travaille depuis plus de 20 ans sur des matières non contentieuses et de procédure en relation avec la PI. Elle représente des sociétés locales et internationales dans un grand nombre de domaines, notamment la clientèle locale pour obtenir une protection de leurs droits de PI à l'échelle internationale. Elle parle anglais et allemand couramment, et est un membre actif du conseil d'administration de Deris. Elle a un intérêt particulier pour la photographie, et a participé à l'exposition artistique de l'INTA en 2013 et 2014, et à celle de l'**epi** en 2015. Elle a également participé au festival de la photo de Los Angeles – consacré à la Turquie – en 2014.

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Editorial

T. Johnson (GB), Editorial Committee

Terry Johnson

Medieval scholars we are told exercised themselves with trying to find an answer to the question "How many angels can dance on the head of a pin?" It seems that no definitive answer was reached in those days though a contemporary view expressed that angels have a special location, but no shape, which tends to the view that infinitely many angels can be located (and dance!) on the head of a pin.

Medieval scholars did not have the benefit of computers, but if they had they might be tempted to think that angels and computers are analogous. For example, it is surmised that each Skylake chip of Intel has between 1.5 to 2 billion transistors 'dancing' to computer programs. And the number is changing by doubling every two years. Our Institute is also changing, whilst, we venture, also aiming to be an angel, at least insofar as setting high standards for our members and IP at large. Our new President as he says likes incremental change so we believe will lead the way, step by step, to set and reach achievable goals internally in the Institute, with the EPO, and throughout the Member States. Exciting times, which while not requiring pin-head dancing will nevertheless require sure-footedness, which we believe will not be found wanting!

Post-script: this will be my last editorial (phew! I hear some readers say!) as I am stepping down from Council and as Chair and member of the Editorial Committee. It has been for me a great joy and privilege to be able to play some small part on behalf of our fine Institute. Needless to say, I could not have made whatever contribution I have achieved without the support and friendship of all my fellow Committee members, including, it goes without saying, Sadia Liebig, and you, the readers. I am sure that the Committee will go from strength to strength, and wish it, and the Institute well. I leave you with the following from the Rubaiyat of Omar Khayyam:

The Moving Finger writes; and, having writ,
Moves on: nor all thy Piety nor Wit
Shall lure it back to cancel half a Line,
Nor all thy Tears wash out a Word of it.
(Translator: E. FitzGerald)

Nächster Redaktionsschluss für **epi** Information	Next deadline for **epi** Information	Prochaine date limite pour **epi** Information
Informieren Sie bitte den Redaktionsausschuss so früh wie möglich über das Thema, das Sie veröffentlichen möchten. Redaktionsschluss für die nächste Ausgabe der **epi** Information ist der **13. November 2017**. Die Dokumente, die veröffentlicht werden sollen, müssen bis zum diesem Datum im Sekretariat eingegangen sein.	Please inform the Editorial Committee as soon as possible about the subject you want to publish. Deadline for the next issue of **epi** Information is **13 November 2017**. Documents for publication should have reached the Secretariat by this date.	Veuillez informer la Commission de rédaction le plus tôt possible du sujet que vous souhaitez publier. La date limite de remise des documents pour le prochain numéro de **epi** Information est le **13 novembre 2017**. Les textes destinés à la publication devront être reçus par le Secrétariat avant cette date.

New Solution for a Professional Liability Insurance

Information from C. Quintelier, Chair of the **epi** WG on Professional Liability Insurance
and P. R. Thomsen, Treasurer of **epi**

Imagine that a European Patent Attorney makes a mistake during his or her work for a client on a patent application that is expected to protect a key groundbreaking invention, e.g. missing a deadline where no further processing according to Art. 121 EPC is possible, and then any attempts to use re-establishment of rights under Art. 122 EPC fail so that the underlying patent application is finally lost.

In such a situation, the client may become rather unhappy with the concerned European Patent Attorney, but at least the applicant would most likely want to claim the financial damage caused by the lack of patent protection . Such damages can easily amount to hundred thousands of EUR, in some cases even millions of EUR, e.g. if the client can show that he likely suffers from the absence of protection for his invention. Such financial claims can be really threatening for the economic situation of the European Patent Attorney and therefore, it is important and good practice for any European Patent Attorney to have a professional liability insurance which would cover for such incidents.

In some EPC member states it is even mandatory to have a professional liability insurance for nationally qualified patent attorneys, who wants to offer their service to their clients. When the **epi** learned that **epi** members in some EPC countries have rather difficulties to find a suitable and/or affordable professional liability insurance, the **epi** Council supported upon a proposal of the **epi** Treasurer to install a Working Group to study the possibility for **epi** to facilitate that all members in all EPC countries have access to a good professional liability insurance that fits the specific needs of our profession.

Now, after around 15 months of work, the Working Group and Treasurer are happy to inform you that with the insurer Lloyds and the broker RMS, who are strong and reliable partners, we made that objective become a reality. **epi** has concluded a framework contract with RMS that enables RMS to offer to **epi** members in all

38 member states a suitable solution for a professional liability insurance issued by Lloyds. The insurance is mainly intended for **epi** members working in free profession, but may also be available to those working in industry, as far as it concerns external work they do which is not for their employer.

Under the framework agreement the individual **epi** member, or the European patent attorney's firm, can conclude such an insurance under standard terms negotiated by **epi** with RMS and Lloyds. The amount of the annual premium to be paid will depend on the selected maximum coverage, the deductible (amount you will have to pay from your pocket in case of a claim), the turnover and the number of **epi** members to be insured. The insurance product, called IPRISK, is covering all typical activities of a European Patent attorney and his/her support staff, including but not limited to drafting, prosecution and opposition work of European, but also national or PCT patent applications in EPC-countries. Upon request, and against an additional premium, there is a possibility to cover also trademark and design work.

If you are interested in such a professional liability insurance or would like to receive a concrete offer please contact RMS directly (RMS Risk Management Service Ltd, Attn. Giuseppe Antonuzzo, Phone: +49 911 5407 688, Email: contact@iprisk.management) or the **epi** secretariat under the email address insurance@patentepi.com. More detailed information about the new product IPRISK can also be found on the **epi** website www.patentepi.com/en/professional-liability-insurance and the RMS website http://www.iprisk.management.

What we know about the status of the Unitary Patent and Unified Patent Court project in mid September 2017

We would like to inform our members on the status and time schedule for the Unitary Patent and the Unified Patent Court system to start working.

For the new system to start, it is necessary that the Unified Patent Court Agreement is ratified by at least 13 countries, amongst them France, UK and Germany. So far, 14 countries, amongst them France, but not yet UK and Germany, have ratified the UPCA.

In his message in June 27, 2017 the Chairman of the Preparatory Committee explained why the start of the new system is currently further delayed (https://www.unified-patent-court.org/news/message-chairman-alexander-ramsay-june-2017): first due to problems with the ratification process in Germany and secondly due to not enough ratifications or declarations of applicability of the Protocol on Provisional Application of certain parts of the UPCA.

Ratification of the UPCA in the UK is progressing and it can be expected that the UK will finalize all ratification steps by the end of 2017. However, the ratification process in Germany has been suspended due to a complaint filed in April 2017 with the German Constitutional Court by an individual lawyer.

The German Constitutional Court has not yet decided whether it will accept/hear the case, but has made the President of Germany aware of the pending case, who then decided for the time being not to pursue the last steps necessary for Germany's ratification of the UPCA. It is generally very difficult to predict when the German Constitutional Court will decide whether to accept the case and, if it accepts the case, when a decision on the merits can be expected.
Recently, the German Constitutional Court invited certain institutions in Germany to submit written comments with a deadline of 31 October 2017. It is therefore unlikely that any decision by the German Constitutional Court on the acceptance of the case will be issued in 2017.

We know that the complaint is based on 4 grounds. The first allegation is that the voting on the UPC legislation in the German Parliament (Bundestag) did not have the allegedly necessary quorum and majority. The German parliament assumed that a simple majority of the members of parliament would be sufficient. The complaint argues that a two thirds majority of all members of Parliament was necessary because the UPC-legislation falls into a certain category of legislation according to the German constitution as it includes a transfer of some sovereign rights to an international body. Should the Constitutional Court find this reason to be successful, and in view of the general election in Germany in late September 2017, Germany would need to start a new ratification process for the UPC agreement from scratch, which could take at least another 5-8 months.

The second allegation of the complaint asserts that the organs and institutional decision-making processes of the UPC do not comply with the requirements of the German constitution regarding observing principles of democracy and constitutional legality. Similarly, a third allegation concerns an alleged lack of independence and democratic legitimacy of the envisaged UPC judges. The fourth allegation of the complaint is that there is an incompatibility of the UPC Agreement with EU law. If the German Constitutional Court has any doubts on that point, despite the decisions already issued by the CJEU on the challenges by Spain and Italy against an earlier version of the UPCA and the UP system, the Constitutional Court would need to refer corresponding questions to the CJEU, which would mean a further delay of at least 15-24 months. In that scenario, the UP/UPC-system could likely only start around 2020.

The Protocol on Provisional Application of the UPC Agreement, which regulates that certain institutional and financial provisions of the UPCA will come into force before the UPC can become operational, also needs to be ratified or declared applicable by at least 13 UPCA member countries, amongst them again France, Germany and UK. So far, that Protocol has only been ratified or declared applicable by 10 countries, amongst them UK and France. Thus, also on that Protocol, two other countries beside Germany, which is expected to ratify that Protocol together with the UPCA itself, are required to act before the provisional phase-in of the UP/UPC system could practically start.

Thus, based on what we know at the moment in mid September 2017, a very optimistic assumption could lead to a starting date of the UP/UPC system within the first half of 2018, whereas a less optimistic scenario would expect the new system to come into force only in 2020 or even later, should any Court decision make it necessary to substantially change the UPC agreement and require a new round of ratifications.

The **epi** will continue to watch the developments and will publish updates once more information is confirmed, in particular on progress of the ratification process of the UPC Agreement that will also make applicable the two EU Regulations on the Unitary Patent.

Election to epi Committees

As you have been informed, the election to the **epi** Committees will be held during the Council Meeting of the **epi** in Warsaw on 18 November 2017.

If you are interested to work in one or more of the **epi** Committees, you can apply as a candidate for the Committee(s) by completing the questionnaire, which is available on the **epi** website as follows:
http://epi.patentepi.com/election.xhtml

Please note that the election to the Disciplinary Committee and for the Internal Auditors has already been held during the last Council Meeting in Munich as stipulated in our Founding Regulations. Kindly note that there will be no elections to the Electoral Committee and the Nominations Committee.

In order to give an overview of the different Committees of the **epi**, please find the following information and composition of the Committees here:

By-Laws Committee

The By-Laws Committee assists the President, the Board and the Council in all matters having regard to the interpretation of the various regulations of the **epi**, the most important of them being the Founding Regulation and the By-Laws. On request of the Board or Council the Committee proposes in the three official languages amendments of existing By-Laws, or drafts new ones.

The By-Laws Committee is responsible for the organisation of the Collection of Decisions (CoD) and for editorial changes and translation revisions.

The By-Laws Committee consists of five members, of which one shall have German, one English, and one French, respectively, as their mother tongue. This Committee shall have up to four substitute members, of which, one shall have German, one English, and one French, respectively as their mother tongue, necessarily substituting the full member having the same mother tongue.

epi-Finances Committee

The **epi**-Finances Committee advises on the preparation of the budget and makes proposals for the financial planning and financial management of the Institute. The Committee is empowered to consider financial management of the Institute and investigates every aspect of the financial affairs of the Institute, particularly for the purpose of ensuring a balanced financial situation.

The Committee shall have a maximum of ten full members.

Committee on EPO Finances

The Committee's terms of reference are to keep under review the information available, from the EPO or otherwise, concerning all aspects of the financial affairs and forward planning of the EPO having relevance for the levels of official fees charged to the applicant. The concern of the Committee is not just the absolute level of fees, but also assessing whether the users of the EPO get value for money. This involves looking to the Annual Report and other documents relating to the EPO's costs, staffing, financial obligations, performance, and levels of demand.

The committee shall have a maximum of four full members, and up to four substitute members.

European Patent Practice Committee

The European Patent Practice Committee (EPPC) considers and discusses all questions pertaining to, or connected with, practice under the European Patent Convention, the Community Unitary Patent Regulation and the Patent Cooperation Treaty (PCT) including any revision thereof, except questions concerning inventions in the field of biotechnology, online communications, documentation and patent information, the litigation of EP and Community applications and patents, and the setting of EPO fees. The EPPC drafts **epi** position papers for ratification by Council and then submits them to relevant bodies.

This Committee shall include one full member, for each member state, and additional full members belonging to four technological groups as follows:

- Pharmaceuticals (10 members);
- Information and Communication Technologies (12 members);
- Mechanics: (10 members);
- Chemistry (8 members).

Professional Education Committee

PEC advises the **epi** Board on professional education and qualification. Its members are professional representatives, with at least one from each EPC member country, and it meets regularly.

The PEC also liaises with the Examination Board/Examination Committees on behalf of **epi**. It organises and oversees educational activities, including **epi**Tutorials. It administrates the **epi** Students, who are trainees preparing for the European Qualifying Examination (EQE). PEC maintains continuous dialogue between itself, tutors and students.

PEC has set up a number of working groups to concentrate on key areas of its responsibility.

At the moment, PEC is particularly considering EQE pass rates and Continuing Professional Education for professional representatives. It has set up working groups to look at both topics.

Professional Conduct Committee

The Professional Conduct Committee shall deal with the formulation of recommandations in compliance with the Founding Regulation.

For this Committee the maximum number of members which may be elected from each member state is one full member and one substitute member.

Litigation Committee

The Litigation Committee considers and discusses all questions, including inter-state agreements, related to the litigation of European and EP patents and patent applications, as well as representation in Court by European Patent Attorneys and the proposal to separate the Boards of Appeal from the European Patent Office.

The Committee shall consist of a maximum of one full member and one substitute member for each contracting state.

Committee on Biotechnological Inventions

The Committee on Biotechnological Inventions shall consider and discuss all questions pertaining to, or connected with, inventions in the field of biotecchnology, including the Budapest Treaty.

For this Committee, only one full member may be elected for each member state.

Harmonisation Committee

The Harmonisation Committee deals with all questions concerning the worldwide harmonisation of Patent Law. In particular, the Committee advises the delegates named by the President of the Council for meetings of the Standing Committee on the law of Patents, convened by WIPO, or for other related meetings convened by WIPO, and reports to the Council about these meetings.

The Harmonisation Committee shall have a maximum of seven full members and a maximum of seven substitute members.

Online Communications Committee

The Online Communications Committee collaborates with the European Patent Office in its projects for introducing online communication. The Committee draws on experience and knowledge of the systems set up by the national Patent Offices of the USA and Japan. In addition, the Committee monitors the activities of National Patent Offices in the Member States and other official institutions in the area of online communications in connection with intellectual property and observes the efforts of these institutions regarding harmonisation of online communications. The Committee deals with all questions relating to these projects referred to it by members of the **epi**. The Committee members are selected for having practical experience of online systems for the benefit of the members of **epi**, and of the European Patent Office and its users.

The Committee shall have a maximum of eleven full members.

Editorial Committee

The task of the Editorial Committee in publishing „**epi** Information" shall be to ensure that the publisher of the journal will receive all texts to be published. In addition, the tasks if the Editorial Committee in maintaining the **epi** website shall be to ensure that all texts to be published are placed and removed from the website as appropriate.

The Editorial Committee shall consist of at least four and at most eight members. Of these, one shall have German, one English, and one French, respectively, as their mother tongue. At least one member should have knowledge of Internet website design.

epi Studentship Admissions Committee

The purpose of this Committee is to determine whether each person applying to become an **epi** student has the necessary qualifications to meet the requirements set out in the Rules governing **epi** studentship.

The Committee shall consist of six members elected by Council. Please note that the Committee consists of 7 members elected temporarily for the transition phase until the C83

Further information and the current composition of the committees can be found on the ***epi*** *website as follows:*
http://patentepi.com/en/epi-bodies/epi-committees
For further questions please contact the
epi *Secretariat info@patentepi.com*

epi Artists Exhibition 2018

The **epi** Artists Exhibition of **epi** Artists has become a tradition in the cultural life of the **epi** and of the EPO. Opened for the first time in 1991, it was followed by further shows in 1994, 1996, 1998, 2000, 2003, 2006, 2009, 2012 and 2015. The interesting works on display have ranged from paintings to graphical and fine art works, such as ceramics, sophisticated watches and jewellery, and artistic textile creations. The exhibitions which were opened by the Presidents of the **epi** and of the EPO met with great interest. We hope that the forthcoming exhibition will be just as successful. It is planned to take place from

11 June to 22 June 2018
at
European Patent Office
PschorrHöfe building
Bayerstrasse 34, Munich.

A prerequisite for the exhibition is a large participation of artists from various countries. Therefore, all creative spirits among the **epi** membership are invited to participate. Please disseminate the information!

Please note that all contributions to the **epi** Artist Exhibition have to respect religions and beliefs, political views and take into consideration that children might be visiting the exhibition.

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Next Board and Council Meetings

Board Meetings

98th Board Meeting on November 17, 2017 in Warsaw (PL)
99th Board Meeting on April 13, 2018 in Malta (MT)

Council Meetings

83rd Council Meeting on November 18, 2017 in Warsaw (PL)
84th Council Meeting on April 14, 2018 in Malta (MT)

Report of the By-Laws Committee (BLC)

P. Moutard (FR), Chair

1. BLC meetings and the topics discussed during these meetings

Three BLC meetings took place on 22 February, 31 March and 6 July, 2017. Depending on the topics, the Treasurer of the **epi** and members of the Reporting Group (RG) were invited to discuss several proposals during the first and the second meetings. Phone conferences were also held with the Chair of PCC, resp. with the Chair of the Disciplinary Committee during the second meeting, resp. the third meeting.

Following topics were discussed:

- amendments to R.154 EPC and to internal regulations of the **epi** regarding the payment of the membership fee;
- a new proposal (from the Secretary of the **epi**-Finances Committee) concerning the double signature;
- the proposal relating to Internet voting for Council to take decisions outside Council Meetings;
- amendments proposed for the Code of Conduct;
- Proposals from the Reporting Group concerning "liaison members", the definition of the rights and duties of the Council Members (Art. 58.1 By-Laws (BL)), the Terms of Reference of the Committees and the Art.18 of the BL.
- Amendment of **epi** 4.2.4 (Resolution regarding non-attendance at oral proceedings)
- Rules of exclusion to avoid possible conflicts of interest of Board members participating to some committees.

We make here below a short presentation of the state of these different topics.

2. Rule 154 EPC and amendments to epi internal regulations

The **epi** internal regulations (**epi** 3.1.1, 4.2.1, 4.3.2 - 4.3.4, 5.1.1 - 5.1.5 and 5.2.2) were revised last year but a new amendment to Rule 154 EPC was recently proposed (due to internal changes in the Legal Division of the EPO) which required a further check of all these regulations.

The discussions, which took place together with the Treasurer, were based on the versions of these regulations that had been previously prepared by the Legal Advisor and circulated among all members of the BLC.

It was also proposed to amend the duties of the Treasurer according to Art.16.4 BL to include the request to the EPO for a deletion from the list of professional representatives in case of non-payment of the annual subscription.

A whole set of rules was thus ready for adoption – and was adopted - by the Council of the **epi** (at C 82) and, for some of them, by the Administrative Council of the EPO.

3. New proposal concerning the double signature

The discussions in view of a regulation for a double signature started again with the proposal of the Secretary of the **epi**-Finances Committee, Mr Tim POWELL. Said proposal included 2 parts: one for contracts and one for payments.

Several other proposals were discussed during the BLC meeting of February 22.

The conclusion of the discussions was a proposal based on a double internal check that does not alter the competences given by the BL (see in particular Art.15 and 16, resp. for the Secretary General and the Treasurer); in other words the proposed regulation will not be included in the BL but, if approved by Council, will be part of the Collection of Decisions.

Further, the proposal does not include any provision concerning payment orders, because, according to the Treasurer, the practice of the bookkeeping was already including a double check (The Treasurer will provide a short description of the procedure in the bookkeeping).

4. Internet voting

No vote on the "Internet voting" proposal was taken during the C 81 (Berlin) in order to give the Council representatives more time to study it and make comments.

In relation to this topic several comments were posted on the **epi** Forum in December and January.

The RG and the BLC were of the opinion that, in view of these comments, no amendment of the proposal presented in Berlin was needed.

To make the "Internet voting" consistent, it was further proposed to include in the BL a new duty for the substitutes (Art. 4.2 BL) to vote during any Internet voting.

All proposed rules were adopted by the Council of the **epi** (at C 82).

As already mentioned, it will probably be necessary to elaborate further regulations and amendments of the BL to solve the problems that will be met by the Internet voting procedure, but these problems cannot be foreseen now.

5. Amendments proposed for the Code of Conduct (CoC)

The Professional Conduct Committee (PCC) revised the **epi** CoC.

The BLC discussed the proposal of the PCC and proposed several amendments.

In particular, it is preferable not to amend Article 2.b ("Advertisements"), which the Legal Advisor has confirmed, because the wording of this article had been adopted a long time ago further to a litigation between the **epi** and the European commission.

Further, the amendments proposed for the CoC include references to the activities before the UPC. The BLC has expressed doubts as to the possibility for the **epi** to sanction the **epi** members not complying with any rule or Code of Conduct of the UPC. The CoC of the **epi** must remain within the terms of the Disciplinary Regulation (see Art. 9(2) of the Founding Regulation) which is adopted by the Administrative Council of the EPO. The Code of Conduct before the UPC will be adopted by a different body, namely the Administrative Committee of the UPC (R. 291 (2) of the UPC Rule of Procedure). Further discussions on this topic should be conducted with the Administrative Council of the EPO and with the Preparatory Committee of the UPC (or the UPC Administrative Committee) before considering the introduction of any reference to the UPC in the **epi** CoC because it is **essential** for the **epi** members to know which body is competent (or not) to sanction them for their future activities before the UPC.

6. Further proposals from the RG: Liaison members, rights and duties of the Council Members, Article 18 of the By-Laws, Terms of Reference of committees.

6.1. Liaison members.

This idea of this proposal is to have a contact person of each constituency that liaises between the constituency and the Board or the committees; for example, this contact person could collect the opinion of his/her own constituency in order to get a preliminary view for the Board. The BLC revised the wording of the proposal and agreed with the RG on a final text. This regulation was adopted by the Council of the **epi** (C 82) and will be included in the Collection of Decisions.

6.2. Rights and duties of the Council Members

This proposal concerned an amendment of article 58.1 of the By-Laws by including a reference to the interests of the **epi** but also of the constituency of each Council Member. However each Council Member remains independent and will still cast his/her vote according to his/her own conscience.

The **epi** Council has approved this proposal (C82).

6.3. Article 18 BL

This proposal concerned an amendment of article 18 of the By-Laws which is complex and needs to be reworded at least for clarity's sake.

Furthermore definitions of the duties of the Chair of any committee (but not the Disciplinary Committee) and of the committee members were introduced.

One problem was to identify which parts of this article are applicable to the Disciplinary Committee and which parts are not. This problem was solved during a phone conference with the Chair of the Disciplinary Committee.

The wording of this article was discussed during the 82nd Council meeting, and will be further amended in order to be presented to the **epi** Council Meeting in Warsaw (C83).

6.4. Terms of Reference (ToR) of the Committees

The ToR of several committees were amended further to various proposals by the RG which were adopted by the Council during the 82nd Council Meeting.

Accordingly the BLC is currently adapting the ToR of these committees.

7. Amendment of epi 4.2.4 (Resolution regarding non-attendance at oral proceedings)

This resolution is amended so as to encompass all oral proceedings, including before any EPO first instance.

This resolution was adopted by the **epi** Council at the C82 meeting and will be included in the Collection of Decisions.

8. Rules of exclusion to avoid possible conflicts of interest of Board Members participating to some committees.

There are ongoing discussions to establish rules in order to avoid possible conflicts of interest of Board Members participating to some committees.

Report of the 5th meeting of EPO PAOC (Pure and Applied Organic Chemistry) directors with epi (EPPC) members, Munich, 16th May 2017

Ruurd Jorritsma (NL), Chair of EPPC PAOC Subcommittee

The annual EPO-**epi** meetings serve to discuss new developments and problems in the communication between representatives and first instance divisions of EPO in the fields of pure and applied organic chemistry, which include pharma and medical uses. Most or all of the PAOC directors participate in the meeting. **epi** is represented by the 12-membered PAOC group, which is a subcommittee of EPPC.

A report of the 4th meeting was present in **epi** information 1/2017 and at the same time **epi** members were invited to come up with any issues that would deserve a discussion with the EPO directors at the fifth meeting, which was held in Munich on 16th May 2017. This invitation did not result in any questions. The PAOC group itself collected some 15 topics for discussion with the EPO directors. These are summarised below.

Topics discussed at the 5th annual PAOC meeting

A. Substantive matters

1. Mechanical sub-assembly for use in connection with surgery

The question concerns application of Art. 53(c) EPC dealing with exclusion from patentability of "methods for treatment of the human or animal body by surgery …". Is a method of operation of a mechanical sub-assembly, which itself is not invasive, for cooperation with a skin incision, excluded from patentability under Art 53(c)? If yes, why?

(Directors): It will depend on the wording of the claim. If the skin incision is part of it, then subject-matter may be excluded. If the sub-assembly is in fact a computer program or imaging, the rules for C-I-I may (also) apply. It is difficult to do examination of specific case in this discussion. Specifically, if a method claim devoted to operation of a mechanical sub-assembly for cooperation with a skin incision device necessitates surgery intervention into the body, it goes under Art. 53(c) EPC, wherein extent of intervention (serious/delicate) and need or not for assistance of professional staff has no importance.

2. Surgical/non-surgical methods

It is important for applicants to know how borderline cases are examined where G1/07 does not give a clear answer whether a method is to be objected to under Art 53(c) as relating to surgery (i: substantial physical intervention on the body; ii. which requires professional medical expertise to be carried out; and iii. which entails a substantial health risk even when carried out with the required professional care and expertise). Guidelines (G-II 4.2.1.1) are not of much help, either. Such borderline cases seem to call for assessment by a medical expert, rather than EPO examiners.

(Directors): Internal discussion of G1/07 in 2010 resulted in an Internal Harmonisation Note including a list of examples which the directorate (PAOC/Biotech) would consider to be surgical, borderline or non-surgical. The list was drawn up with external experts and is updated. It is exclusively used by examiners. Only a small part of the guidance is reflected in the Guidelines for examination. The question was discussed why (parts of) the list is not in the publicly available Guidelines, because the guidance is very useful for applicants as well (time-saving, predictability, etc.). While the directors seemed to understand the need for applicants to have access to the internal criteria as used by examiners, EPO is reluctant to publish more, because of the sacrosanct nature of the Guidelines and sufficient room should be left for case-by-case judgement. It was discussed that "Examination Matters" or dedicated workshops may be the right forum to arrange more guidance for users on where the borderline for surgical methods is set by EPO.

3. Therapeutic/non-therapeutic methods

How are cosmetic and dermatologic uses to be distinguished, where e.g. active components (not only herbal extracts) of cosmetics have an impact on the condition of skin or hair in the way medicaments have? How about unity?

(Directors): The field is evolving and there are some 50 examiners dealing with cosmetics. It depends on the effect whether cosmetic or therapeutic or both uses can be claimed. And on the prior art whether there is unity. When the cosmetic use and the therapeutic use have a common working mechanism, both can be claimed in a single application, though with different claim format. The wording of the claims is very important to differentiate the uses. There is hardly any new case law, because of the cooperative setting between examiners and applicants. The borderline mirrors the borderline between medical and food applications. Some borderline examples, such as sun-

screens, sweeteners were discussed without reaching clear conclusions. It was emphasized that every case is very much context-dependent. Three possible wordings of independent claims were hypothetically mentioned: 1) A new composition comprising X; 2) A (new) composition for therapeutic use comprising X; 3) Non-therapeutic use of a (new) composition comprising X.

4. Medical use claim format before EPO as ISA/IPEA

EPO examiners dealing with international phase applications often object to Swiss-type or method claims in medical use cases, as not meeting the "required" format (EPC 2000). However there is no such required format under the PCT and a change of format can be detrimental for the efficiency of procedures in other jurisdictions.

(Directors): A warning about the methods not being allowable in the EPO is correct, but the directors agree that the PCT Guidelines, despite A9.08 (Methods need not be searched, but substances for use therein do) do not provide a basis for requiring a change in claim format, since there is no mention of Swiss-type claims not being acceptable or searchable. They will check the current practice.

(**epi**): The current version of the "Euro-PCT Guide": PCT procedure at the EPO (10th edition, updated until 1 January 2017) appears to contain a mistake. In fact, on the topic of excluded subject-matter (point 219) the Guide refers to its own annex IV, which in turn refers to point A9.07, option [2] of the ISPE guidelines, but in the current version of the ISPE guidelines (December 15, 2016) point A9.07 addresses schemes, rules or methods of doing business (and, incidentally, does not present two options, so that an option [2] is missing) rather than methods of treatment or 2nd medical use claims (be they in the form of Swiss-type claims or EPC2000-compliant).

epi will endeavour to send the above information to the directors so that in the next edition of the Euro-PCT Guide the above mistake may be corrected.

As regards the warning about Swiss-type claims or method of treatment claims not being in the "required" (EPC2000-compliant) format, the directors are looking for examples of EPO-ISA Written Opinions in which that warning is worded in terms that are not limited to the EPO practice, so that EPO may take steps to amend the standard language of that warning.

5. Plausibility threshold for pharma cases

There is a concern about a gradually rising plausibility threshold of medical effects, and whether it will be possible to use internal, unpublished data contemporaneous with the filing date to establish plausibility (T488/16).

(Directors): Referring to the specific case, the directors wait for the reasons for the decision by the Board in question. The decision will not necessarily imply a change in practice. Generally speaking, if the evidence is needed for plausibility, it should be incorporated in the application. The general consensus among the directors was that, if the application itself does not already make the invention sufficiently plausible, then unpublished data cannot be used to remedy that defect even if the data are contemporaneous with the filing date of the application.

6. Art. 123(2) allowability of combination of dependent claims

Some examiners are very strict in not allowing any combination of dependent claims except where they have a dependency to all preceding claims. In some cases this may be reasonable, in particular when the dependent claims refer to different embodiments. But these objections are made also in cases wherein e.g. claim 1 refers to a composition comprising a wax, a fat and an oil, claim 2 defines the wax as bees wax, claim 3 (referring to claim 1) defines the oil as olive oil, and the main claim is limited to claims 2 and 3.

(Directors): This is indeed a frequent reflex of examiners. With some variation, most of the directors would consider the example as incorrect (it should be allowable). Preferred embodiments may be combined. The notion of (selection from) lists (whether long or "of a certain length") is not always helpful. Stopgap formulations by applicants, such as "*wherever embodiments or preferences are mentioned in the description, it is contemplated by the inventors that these can be combined*" would be ignored by examiners. What is essential is whether there is a new teaching. It was said that the EPO is now moving from a "literal" approach to a "conceptual" approach, e.g. when considering combinations of claims, which is not always noted by users yet. The question was appreciated by the directors, because they see things moving and will have their internal discussions.

7. Art. 123(2) allowability of combination of ranges

Where the description defines a parameter as (…) more preferably 14 % to 18 %, at least 15 % of the total (…), why would a limitation to 15-18% not meet Art 123(2)? OD in case argued that 15% "may be understood to represent a minimum requirement to be fulfilled in order to arrive at a composition as envisaged by the opposed patent, irrespective of any upper limit, thus corresponding to an alternative general range. But isn't it up to the skilled person (gold standard), perhaps even to a skilled person willing to understand?

(Directors): Much the same principles and considerations as in the preceding topic. It was stressed that when assessing admissibility of combining of ranges, it is important to

correlate specific ranges with specific properties. If correlated specific properties are different, than associated specific ranges then ranges cannot be combined. These days, EPO considers itself rather liberal as to ranges. An amendment of the exemplified case would be allowed, with some reservation for specific circumstances.

8. Toxic priorities

G1/15 has terminated poisonous divisionals (Art. 54.3). Do OD's (and ED's) also apply G1/15 so as to a priori deny novelty attacks based on priority documents?

(Directors): Stayed cases are now unstayed. The practice will be that A54(3) novelty attacks based on divisionals or on priority applications will be denied a priori using the conceptual approach dictated by G1/15, implying that the part enjoying priority right and the part being novel, because not enjoying priority right, are always fully complementary (in line by the way, with the **epi** amicus brief). Whereas the "conceptual approach" now replaces the "literal approach", there is no change in current test for "Is it the same invention".

B. Opposition proceedings

1. Conduct at oral proceedings

For the purpose of enhancing quality and efficiency of oral proceedings and without imparting the right to be heard, it could help if chairs take some more grip on the parties by indicating what they do and do not need to hear, and by keeping parties from unnecessary repetitions and elaborations. Also summons could be clearer as to what will be important to be discussed during oral proceedings and what not.

(Directors): It is difficult for chairs to improve this. Many attorneys do not listen and just go on arguing their way. The problem is with the right to be heard. Usually, a chair cannot comment on an attorney's contribution until the attorney has spoken. EPO will continue to work on training the chairs to be more confident. Chairs should give more guidance by summarising the case at the start of the hearing and point at the issues where they still need some input. This may also result in a party being reassured that his point as presented before (in writing) has been taken and does not need to be repeated, and that he can focus on the points that have not been taken yet.

2. Setting different dates in preparation of oral proceedings

Summons to oral proceedings in inter partes cases set three different dates: 1) the date for oral proceedings, 2) the date for written submissions and 3) the date for informing about language. Why not combine 2) and 3)?

(Directors): The dates are set under different rules and procedures for formalities and therefore cannot be adjusted without changing the rules and procedures, which is quite far-reaching. EPO will nevertheless look at it and see whether any harmonisation can be achieved.

3. Late filed documents and requests: fairness to the other party

Late filing of documents is generally unfair on patentees more than on opponents. A patentee may have an answer to a new document but may not have time to formulate the answer at the oral proceedings. It is not always possible to deal with the new documents by filing Auxiliary Requests - drafting on the fly during oral proceedings is not easy. New documents can also be a problem for opponents: if the patentee files a new document alleging that it shows data proving inventive step, it may be difficult for the opponent to show that the data are flawed or not persuasive. It seems therefore to be a good idea to discuss again the criteria for allowing new documents and requests into the proceedings at a late stage.

(Directors): Test results, auxiliary requests etc. are really a problem when filed at a late stage. More robustness in handling such late filings is needed. Test results (which may take a long time to be prepared) may have to be distinguished from other documents which can instead be filed upfront (i.e. with the opposition briefs for the opponents, with the observations to the oppositions for the patentee). The EPO directors also rely on the principle that any late filed document which is not more relevant than what has been filed upfront, should not be admitted into the proceedings.

4. Time limits in shortened opposition proceedings

While the recent time reduction is appreciated, the time between a response to a notice of opposition and summons may become too short, such as two weeks or so, and this can be a problem e.g. in the event of auxiliary requests.

(Directors): EPO agrees that the parties may have a problem, but this is the consequence of the accelerated system. This is the way we go, not waiting until all parties have taken their additional responses. The opportunity to comment on the comments was expressly removed.

C. Procedural matters

1. National prior rights affecting European patents with Unitary effect

Is there any preparation for top-up searches in view of the UP/UPC entering into force at the end of this year

so as to reveal potentially damaging national prior rights (Art. 3. EU Reg 1257/2012)?

Yes, EPO will carry out top-up searches for national prior rights, using automatic translation where necessary. No arrangements have been made yet as to how the searches will be done. To the extent that national patent publications are full prior art, and thus relevant in the present system, these are included in standard searches already.

2. Introduction of statements in the R71.3 text by examiners

Some examiners introduce statements about allegedly "closest" prior art into the description when issuing an allowance. Statistics show that this happens quite frequently, in about 1% of all applications, though varying from one technical field to another. This is not only questionable under Art. 123(2), but may also be detrimental for the patent later on.

(Directors): EPO agrees that this is undesired. The PAOC examiners are not known to do this, and they will be instructed that it should not be done. Users should send EPO a message if they do not want amendments, because examiners sometimes think that applicants appreciate proposed amendments by examiners. (**epi**): proposed amendments are fine, but not at the R71.3 stage. Amendments are preferably (**epi**) discussed in telephone consultations, and the result should always be confirmed in minutes to be sent afterwards. **epi** has forwarded statistics about "closest prior art" initiatives by examiners.

3. Preliminary Opinions

Examining Divisions and especially Opposition Divisions should have a much higher awareness of the impact of preliminary opinions on national litigation, particularly when those opinions are being rushed out to meet the new tighter timelines. As an example a preliminary opinion which could be read as a mature opinion on novelty or inventive step runs the risk of being understood by a court as a high-rank decision-like statement which can hardly be modified even with arguments and evidence not available to the division issuing it.

Point taken that it would be wiser to state e.g. "novelty may need to be discussed in view of D1" rather than "the claim may lack novelty over D1".

4. Third Party Observations

Despite all general reassurances to the contrary, TPO's are often dealt with seriously only if they have clear novelty implications. Violations of the EPC raised by third parties before grant that cannot be addressed after grant, in particular clarity and breadth of claims, should especially be taken seriously.

In the directors' opinion, TPO's are being taken seriously in all aspects. They agree that there should be an argued case about the objections. The objections are taken into account in the recommendation for grant ("votum"); however, these are not accessible to the public. In **epi**'s view, this should in one way or the other be visible to the (third) parties, perhaps already when passing the TPO to the applicant. EPO will look into how to show to the public that the TPO's objections have been taken into account. Mr. Mercer will send examples of cases where there is no trace of the examiner taking the issues of (serious) TPO's.

D. Topics presented by EPO

1. Amendments (1)

Would it help if the examiner indicated more precisely what needs to be excised from the description or at least indicated as falling outside the scope of the invention (for ex. among the examples)?

epi: Yes, it would, and preferably at a stage preceding allowance, so that the applicant can choose the most appropriate formulation. Most representatives nowadays are not in favour of deleting any examples, since in one way or the other they may become relevant later on. By simple annotation, it can be clarified that the examples as such are no longer covered by the accepted claims, while parts thereof may still be needed for support or sufficiency of disclosure.

2. Amendments (2)

What do you think of the proposal of not modifying passages in the description related to a "Method of treatment" (typically US applications) as it is obvious that a method of treatment cannot be claimed and thus not serve as a basis of such an amendment?

Issue was discussed under topic A.4 above. It was agreed that there is no need to modify the references to "method of treatment" and that these can be understood as providing basis for "use in treatment".

Conclusion

The meeting was, as usual, very constructive and open. While the EPO directors are naturally somewhat reluctant to express opinions on specific cases, they show a willingness to explain their motivations and practices and to at least try to understand the problems that representatives sometimes experience at the interface between the office and the users. Both sides appear to be increasingly open in looking for practical solutions.
To be continued again.

Report of the Harmonisation Committee (HC)

John Brown (GB), Chair

This report completed on 25th August 2017 covers the period since the previous report dated 20th February 2017.

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

26th Session of the SCP

epi was represented by John Brown, Chairman of **epi** Harmonisation Committee, and Francis Leyder, **epi** President, at the 26th meeting of the Standing Committee on the Law of Patents (SCP/26), held from 3rd to 6th July 2017 at WIPO in Geneva. **epi** pressed in favour of international harmonisation of privilege. SCP/26 decided that discussions on the main topics would continue, these being Exceptions and Limitations to Patent Rights, Quality of Patents, Patents and Health, Confidentiality of Communications between Clients and their Patent Advisors and Transfer of Technology. As usual, all meetings papers are available on the WIPO website:
http://www.wipo.int/meetings/es/details.jsp?meeting_id=42299

As stated in the Summary of the Chair (document SCP/26/7), various seminars and sharing sessions will be organised. The next session of SCP has tentatively been planned for 11th to 14th December 2017. In this regard, mention should be made to the fact that those who decide to run for membership of the **epi** Harmonisation Committee at the elections to be held at the **epi** Council Meeting in November should be ready to represent **epi** whenever needed, and in particular at an SCP meeting.

Group B+ Users' Symposium

epi was represented by Francis Leyder, **epi** President, and Chris Mercer, **epi** Past President, at a symposium entitled "Cornerstones for patent law harmonisation: a B+ Sub-Group / Industry Symposium" held on 20th June 2017 at the European Patent Office where proposals from the Industry Trilateral were discussed.

The meeting papers are available on the EPO website:
http://www.epo.org/news-issues/issues/harmonisation/group-b-plus.html

A report of the Symposium should be available in September. **epi** are planning to submit written comments on the Industry Trilateral proposals in the near future.

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Continuing Professional Education (CPE)

In the second half of the 2017 the following seminars will take place:

Opposition and Appeal

26 September 2017	Dublin (IE)	**epi** roadshow supported by the EPO

Unitary Patent and Unified Patent Court

12 September 2017	Stockholm (SE)	**epi** roadshow supported by the EPO
12 October 2017	Bern (CH)	**epi** roadshow supported by the EPO
16 November 2017	Eindhoven (NL)	**epi** roadshow supported by the EPO

Opposition and Appeal

This seminar series comprising in total four parts (Pre-Drafting, Drafting, Prosecution and Opposition).

November 2017	Prague (cZ)	"Prosecution" and "Opposition" **epi** roadshow supported by the EPO

epi preparation courses for the EQE pre-examination and main examination 2018

Flexible epi Tutorial

Get your **individual feedback** on papers A/B/C/D whenever you need it during your preparation for the EQE

- Sign in for a tutorial whenever you want
- Decide which paper you want to prepare
- Arrange individually with your tutor:
  - the due date when transfer your prepared paper to your tutor
  - the date when to discuss the result of your individual paper with your Tutor
- Discuss the result of your paper with your Tutor
  - in small Groups (on request) or
  - in a one to one session

Tutorial fee for each paper (Pre-exam, A, B, C or D) contains that the selected paper can be written at a maximum of three different years: fee for **epi** students EUR 180 per selected paper and for non-**epi** students EUR 360 per selected paper.

Flexible epi Tutorial

The mock EQE(s) allow participants to attempt an EQE exam under exam conditions. The participants sit the various papers (Pre-Examination, A, B, C and D) in the same order as during the real exam and are given exactly the same time to sit the paper(s).
We would like to give EQE candidates the possibility to be more flexible in their preparation for the EQE. For this reason, **epi** offers the Mock EQE in three different cities at different times, see time schedule:

Munich:

Day		Paper	Local Times
Mon	**23 October 2017**	Pre-Examination	13:00 - 17:00
Tue	**24 October 2017**	D	9:30 - 15:00
Wed	**25 October 2017**	A	9:00 - 13:00
		B	14:30 - 18:00
Thu	**26 October 2017**	C	9:30 - 15:00

Brussels:

Day		Paper	Local Times
Mon	**13 November 2017**	Pre-Examination	13:00 - 17:00
Tue	**14 November 2017**	D	9:30 - 15:00
Wed	**15 November 2017**	A	9:00 - 13:00
		B	14:30 - 18:00
Thu	**16 November 2017**	C	9:30 - 15:00

Helsinki:

Day		Paper	Local Times
Mon	**27 November 2017**	Pre-Examination	14:00 - 18:00
Tues	**28 November 2017**	D	10:30 - 16:00
Wed	**29 November 2017**	A	10:00 - 14:00
		B	15:30 - 19:00
Thu	**30 November 2017**	C	10:30 - 16:00

The feedback will be given in small groups or one to one session(s) depending on the number of participants.
The mock EQE fee is EUR 520 per paper*

*Registered **epi** students benefit of a 50% reduction.

All courses are provided in the three EPO official languages: English, French and German.

Further information about the **epi** preparation courses are available here:
http://patentepi.com/en/education-and-training/qualifying-as-a-european-patent-attorney/preparing-for-the-eqe.html

Results of the 2017 European Qualifying Examination

Statistics on the results of the 2017 EQE

Number of candidates per country and passes pursuant to Article 14 (1) of the Regulation on the European qualifying examination (REE)

Place of residence	Total number of candidates	Pass
AL	0	0
AT	21	10
BE	30	12
BG	4	2
CH	57	17
CY	0	0
CZ	5	1
DE	662	228
DK	32	10
EE	1	0
ES	59	14
FI	35	5
FR	173	71
GB	204	128
GR	4	0
HR	2	1
HU	8	2
IE	2	2
IS	1	1
IT	80	10
LI	1	0
LT	3	0

Place of residence	Total number of candidates	Pass
LU	2	1
LV	1	1
MC	0	0
MK	0	0
MT	0	0
NL	128	40
NO	7	4
PL	18	6
PT	6	1
RO	4	1
RS	2	2
SE	83	19
SI	6	3
SK	3	0
SM	0	0
TR	17	0
IL	1	0
JP	1	1
SG	1	0
US	1	1
Grand Total :	1665	595

Information source: http://www.epo.org/learning-events/eqe/statistics.html

Candidates are free to choose which paper(s) they wish to sit. Candidates who have only sat a sub-set of papers cannot fulfill the conditions of Article 14(1) REE (ie have obtained the minimum grades for all four papers) and thus cannot be included in this table.

Example: A candidate has only sat papers A and B and passed both papers. Nonetheless the conditions of Article 14(1) REE are not yet fullfilled and this candidate is not included in this table.

This table includes all candidates who fulfill the conditions of Article 14(1) REE.

New Location for the Boards of Appeal

As of October 2017 the Boards of Appeal of the European Patent Office will move to a new location. Current planning (subject to potential revision) is that the Boards of Appeal will start operations at their new building on 2 October 2017.
As soon as the date of the move has been confirmed, parties whose oral proceedings take place in the new building will be informed by registered letter. During the transitional period some oral proceedings may continue to take place in the Isar building, thereafter only in exceptional situations.

The information is available on the webpage:
www.epo.org/move

List of Professional Representatives

by their place of business or employment in the Contracting states as at 31.08.2017

Contr. State	Number Total	% of Total Repr.
AL	14	0,11%
AT	155	1,27%
BE	240	1,97%
BG	55	0,45%
CH	562	4,61%
CY	11	0,09%
CZ	89	0,73%
DE	4431	36,32%
DK	265	2,17%
EE	25	0,20%
ES	218	1,79%
FI	180	1,48%
FR	1152	9,44%
GB	2303	18,88%
GR	24	0,20%
HR	24	0,20%
HU	71	0,58%
IE	77	0,63%
IS	22	0,18%
IT	530	4,34%

Contr. State	Number Total	% of Total Repr.
LI	20	0,16%
LT	25	0,20%
LU	21	0,17%
LV	19	0,16%
MC	5	0,04%
MK	24	0,20%
MT	6	0,05%
NL	518	4,25%
NO	100	0,82%
PL	294	2,41%
PT	41	0,34%
RO	47	0,39%
RS	47	0,39%
SE	424	3,48%
SI	30	0,25%
SK	30	0,25%
SM	16	0,13%
TR	85	0,70%
Total :	12200	100,00%

Contact Data of Legal and Unitary Patent Division

Update of the European Patent Attorneys Database

Please send any change of contact details using EPO Form 52301 (Request for changes in the list of professional representatives: http://www.epo.org/applying/online-services/representatives.html) to the European Patent Office so that the list of professional representatives can be kept up to date. The list of professional representatives, kept by the EPO, is also the list used by **epi**. Therefore, to make sure that **epi** mailings as well as e-mail correspondence reach you at the correct address, please inform the EPO Directorate 5.2.3 of any change in your contact details.

Kindly note the following contact data of the Legal and Unitary Patent Division of the EPO (Dir. 5.2.3):

European Patent Office
Dir. 5.2.3
Legal and Unitary Patent Division
80298 Munich
Germany

Tel.: +49 (0)89 2399-5231
Fax: +49 (0)89 2399-5148
legaldivision@epo.org
www.epo.org

Thank you for your cooperation.

Improved opposition statistics in the EPO annual reports

Cees Mulder (NL)

Cees Mulder

Since the entry into force of the EPC 2000 in December 2007, approximately 1,345,000 patent applications were received by the EPO (Direct European applications and international applications entering the regional phase). In the same period, the EPO granted almost 600,000 patents (see Figure 1) which is approximately 44% of the number of patent applications filed at the EPO.

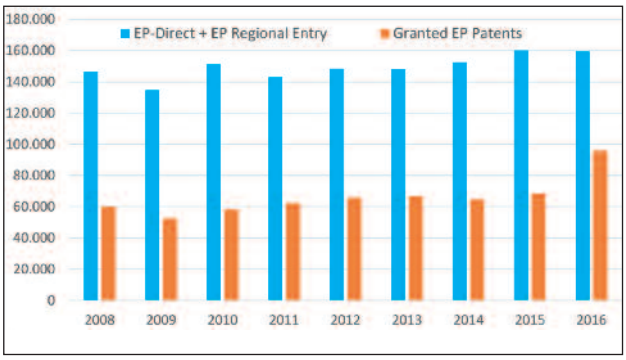


Figure 1: Number of annually filed European patent applications and granted European patents

On average, about 4% of the granted European patents is opposed. Figure 2 shows the number of notices of opposition filed annually in the period 2008-2016. In this period, on average about 2,900 oppositions are started every year. Some of these oppositions are inadmissible. Others are withdrawn because, for instance, the proprietor and the opponent have come to a license agreement.

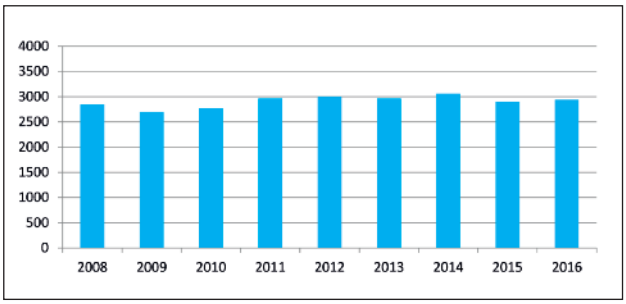


Figure 2: Number of opposed European patents

In opposition proceedings, the Opposition Divisions can take three decisions: the patent is revoked, the opposition is rejected or the patent is maintained in amended form (Article 101(2) and (3) EPC).

Hence, the average number of decisions taken in opposition proceedings should be around or less than 3,000 per year. Of course, this number is influenced by the throughput time of opposition proceedings.

In the period from 2008-2014, the statistical reports of the EPO showed that on average 2,170 decisions were taken in opposition proceedings per year. This statistical information can be found in the separate annual reports, but the EPO also publishes so-called five-year reviews.

The Annual Report of 2015 showed a sudden increase in the number of decisions in opposition proceedings. The number of decisions taken by Opposition Divisions in 2014 was 3,157. In addition, the number of decisions for the previous years in the corresponding five-year report was also adapted retroactively. For each of the preceding years (2011-2014) around 1,000 decisions were taken in addition to the ones reported in the earlier Annual Reports.

This sudden increase in output may have been due to an one-year error. However, the statistics of 2016 (and the corresponding figures in the five-year report) showed the same higher number of decisions.

Figure 3 shows the number of decisions taken annually by the Opposition Divisions in proceedings in the period from 2008 to 2016. The number of decisions in opposition proceedings in the older Annual Reports (2008-2014; 'old' statistics) are depicted in blue. The number of decisions in the more recent Annual Reports (2011-2016; 'new' statistics) are given in red. As can be seen in Figure 3, there is an overlap in the statistical results. For the years 2011-2014, both the 'old' and the 'new' statistics have been reported.

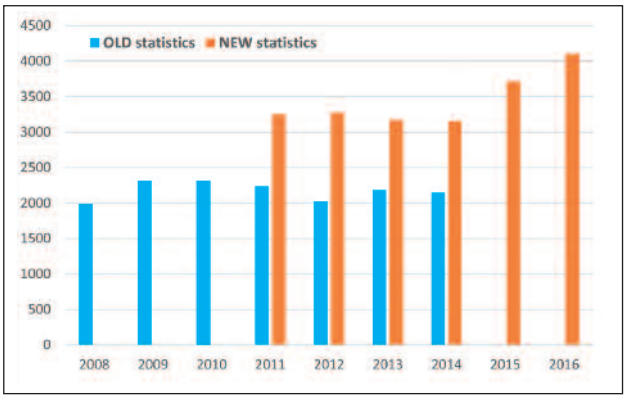


Figure 3: Annual number of decisions in opposition proceedings

It is interesting to observe that the decisions in the years where both statistics are available show different trends. For instance, there is an increase in the number decisions from 2012 to 2013 in the 'old' statistics, whereas the 'new' statistics show a decrease in the number of decisions in the same period.

Surprisingly, more decisions are taken in opposition proceedings under the 'new' statistical regime as compared to the 'old' regime. In particular, the number of decisions taken in the period 2011-2016 is every year higher than the number of oppositions filed in the same year. In particular, 17,819 oppositions were filed in the period 2011-2016, whereas in the same period 20,659 decisions were taken by the Opposition Divisions, i.e. almost 14% more decisions than cases started.

A higher number of decisions may happen in a certain year if there are extra efforts in dealing with opposition cases, for instance because of a backlog.

No explanation about the retroactive change of the statistical method was given in the Annual Report where this happened first (2016 Annual Report).

When asked, EPO Customers Services in its reply letter gave no specific explanation why the number of decisions is suddenly and retroactively higher. In particular, the letter stated:

> *"In 2015 we changed the parameters selected for representing the outcome of our internal procedures with the aim to offer a better insight into the EPO performance as it affects users. This change accounts for the apparent discrepancies you noticed."*

No information was given on what 'parameters' were altered.

After the issuance of the 2017 Annual Report, another query was started to find out the change in the opposition statistics. The EPO now responded with a good explanation of the new statistics.

The opposition statistics reported in the annual reports up to the year 2014 displayed the number of opposition decisions that had taken legal effect in the respective reporting year. This means that e.g. in the 2015 Annual Report, all opposition decisions taking legal effect in 2014, were summed up.

As around 45% of the opposition cases are appealed with the consequence that the decision of the opposition division is suspended (Article 106 EPC). This means that most of these appealed opposition cases are only finally decided and thus formally take legal effect in later years, even though they were decided upon by the opposition division in previous reporting years. This manner of reporting, albeit being legally and statistically sound, does not give a full picture of the work done by the opposition divisions. In view of this, the EPO decided to change the statistics. As from reporting year 2015, the number of decisions taken by the opposition divisions of the EPO during the reporting year are presented, irrespective of the date on which they take legal effect. For consistency reasons, this new method of reporting the opposition statistics was included in the five-year overview of the statistics section on the EPO website and covered (retroactively) also the earlier years.

The above explains the systematically higher level of opposition decisions reported as from 2015 compared to the preceding years.

In addition, the increasing number of decisions taken in 2015 and 2016 are the result of the successful implementation by the EPO of its Early Certainty program. Even though the Early Certainty from Opposition scheme was only officially implemented in 2016 (Official Journal of the EPO (2016) A42, A43), initial progress in opposition proceedings was already achieved in the framework of the Early Certainty from Search program which prioritised not only search but also opposition actions.

The author would like to express his gratitude to Heli Pihlajamaa for stimulating discussions during the preparation of the article.

European General Court strengthens in T 527/14 once more the position of Patent Attorneys in EEA Countries

Paul Rosenich (LI)

Paul Rosenich

Paul Rosenich being Austrian citizen and living and working for more than 30 years in the Principality of Liechtenstein requested OHIM to enter him on the list of Representatives before OHIM.

OHIM denied this request and Rosenich appealed against this decision at the Boards of Appeal of OHIM. Said Boards of Appeal confirmed the decision of OHIM and Rosenich filed suit against OHIM and against said confirming decision of the Boards of Appeal before the European General Court. The EGC followed in the case **T 527/14** the argumentation of Rosenich namely that the EEA-Agreement is higher ranking and binding law also for the EU and its institutions (here the OHIM/EUIPO). The EEA-Agreement however gives individuals the right to choose their places of business within the territory of the EEA and the place of business/residence must not be used for discrimination in every ones right to work in his/her profession (here as a representative of parties before trade mark offices). Rosenich was not only Liechtenstein-, Swiss- and European Patent Attorney but also allowed to represent before the Austrian Patent Office. Being Austrian Citizen, being allowed to represent before the Austrian Patent Office and having a place of business in the EEA was fulfilling the requirements of being admittable to the list of representatives before the OHIM/EUIPO even if the relevant EU-law did not refer to a place of business in the EEA but instead only to a place of business in an EU Country.

The EUIPO accepted the decision of the EGC and entered Rosenich subsequently on the list of representatives.

Following the suit initiated by Rosenich and based on a subsequent request of the EFTA states, the EU-law was amended in the meantime, so that currently every Patent/Trademark Attorney of an EEA Member state may request to become a representative on the list of representatives before EUIPO.

Paul Rosenich the long standing Chairman of **epi**'s Disciplinary Committee was born and raised in Austria and started his carrier as inhouse Patent engineer in Austrians industries. In 1987 he moved into private practice to the patent attorneys law firm of Dr. Kurt Büchel the then Treasurer of **epi**. Rosenich passed the EQE and became European Patent Attorney and subsequently also Liechtenstein Patent Attorney. By working also in a Swiss Firm he became Swiss Patent Attorney as well. In 1998 Rosenich opened his own IP Law firm in Liechtenstein. 2011 Rosenich requested OHIM to enter him on the list of Representatives before OHIM. Rosenich argued in the first place that his qualification as representative before the Liechtenstein Trade Mark Office together with is Austrian citizenship and Liechtenstein residence fulfill the requirements requested by the EU-law Directive 207/2009. OHIM denied based on the argument that Rosenich did not represent before an EU-Trademark Office and hence his qualification was doubtful. Rosenich proved that he may represent also before the Austrian Patent Office. OHIM denied again based on the fact that Rosenich did not reside in an EU-Country. So Rosenich took an additional place of Business in Germany – based on the EPC Germany had to allow this. Then OHIM argued that the residence was different from the EU-Country where the representation was confirmed (AT). From this course of OHIM affected Rosenich decided to fight for his rights as EU/EEA citizen. His lawyer confirmed his view that the EEA-Agreement overrides certain EU-law provisions restricted to the EU-territory. The request for entrance on the list was finally based on Rosenich's right to represent before the Austrian Patent Office, his Austrian citizenship and on his residence/place of Business in the Principality of Liechtenstein as a Member of the EEA. OHIM finally decided against this request. As a consequence Rosenich – represented by the trademark department of his firm headed by Noémi Rosenich-Markó and by Prof. Dr. Alexander von Mühlendahl – appealed 2012 against this decision at the Boards of Appeal of OHIM. Said Boards of Appeal however confirmed in 2014 the decision of OHIM and as a consequence Rosenich filed in 2014 suit against OHIM and against said confirming decision of the Boards of Appeal before the European General Court.

The EGC considered all arguments from all sides during the written procedure in 2014 and 2015. The EGC invited for oral proceeding 2016 and set a term until which Rosenich should have been entered on the list of representatives based on the new law which was installed in

the meantime and which allowed all EEA-Patent Attorneys to be entered on the list. OHIM found again new arguments against such entry and was not willing to enter Rosenich based on his former request even if it was evident, that under the new law Rosenich would have to be entered on the list anyway. For that reason Rosenich was still not officially entered. As a consequence of not resolving the matter within the set term the EGC had to decide the matter. The 5th Chamber of the Court followed the argumentation of Rosenich namely that the EEA-Agreement is higher ranking and binding law also for the EU and its institutions (here the OHIM/EUIPO). The then binding provision of the Directive 207/2009 requested under Article 93(2) three requirements: a) nationality of an EU-Member State, b) the business seat or a working place in the EU and c) must be allowed to represent before a central IP Office of a Member State of the EU. Rosenich provided proof for a) and c) and referred to the EEA-Agreement when interpreting the requirement b) and presented proof to have his business seat in Liechtenstein (EEA). The EGC agreed to the argument of Rosenich that the EEA-Agreement gives individuals the right to choose their places of business within the territory of the EEA and the place of business/residence must not be used for discrimination in every ones right to work in his/her profession (here as a representative of parties before trade mark offices). Since Rosenich was not only Liechtenstein, Swiss and European Patent Attorney but was also allowed to represent before the Austrian Patent Office, he fulfilled all provisions, if interpreted correctly. Being Austrian Citizen, being allowed to represent before the Austrian Patent Office and having a place of business in the EEA was fulfilling the requirements of being admittable to the list of representatives before the OHIM/EUIPO even if the relevant EU-law 207/2009 did not refer to a place of business in the EEA but instead only to a place of business in an EU Country. This is the consequence of Art. 36 of the EEA-A and other findings.

German and French version of the decisions con be found on the epi website.

The EGC delivered its decision on July 13th 2017 and the EUIPO accepted the decision of the EGC a few days later and entered Rosenich subsequently, officially and finally on the list of representatives.

Following the suit initiated by Mr. Rosenich and based on a subsequent request of the EFTA states, the EU-law was amended in the meantime as far as representation in EU trade mark matters is concerned, so that currently every Patent/Trademark Attorney of an EEA Member state may request to become a representative on the list of representatives entitled to represent in trade mark matters before EUIPO. However, the decision is of interest far beyond the matter of representation before the EUIPO in Trade Mark Matters because it establishes the principle of direct applicability of the freedom to provide services within the EEA which may be invoked by all persons wishing to provide such services, even in the face of contrary legislation.

The decision will also immediately affect the right of EEA professionals to represent clients in design matters before the EUIPO. The Community Design Regulation continues to limit the right to represent to professionals with a place of business in the EU, thus excluding those established only in an EEA country. But now, as a result of the decision, the EUIPO will accept those representatives also in design matters. As a matter of fact the EUIPO confirmed on July 21st 2017 to Islandic representatives that because of the decision their practice in design matters is changed. Furthermore, the right to represent in design matters must now also be recognized for all legal practitioners, regardless of whether they have their place of business in the EU or in one of the three EEA countries.

One would also think that this ruling could possibly affect/confirm the new European Patent Court representation rules and even other similar matters which are not even on the monitor. Insofar it is believed that this **T 527/14** is an important mile stone in the freedom of representation of European Patent Attorneys.

Patentanwaltsausbildung in der Industrie

Thomas Kimpfbeck (DE)

Education of German Patentassessors according to § 158 PAO and education of European Patent Attorneys according to Art. 11 (2) a) ii) REE is different, however, there are similarities and synergy effects. Scope and content of the respective examinations would approach by the first draft of the German Ministry of Justice for the new examination regulation for patent attorneys (PatAnwAPrV).

La formation des "German Patentassessors" selon le § 158 PAO et celle des mandataires en brevets européens selon l'article 11 (2) a) ii) REE est différente, il existe cependant des similarités et des effets de synergie. Le premier projet de réglement de l'examen de qualification des mandataires allemands, preparé par le ministère de la justice allemande, vise à rapprocher la portée et le contenu de ces deux examens.

I. Einleitung

Die Ausbildungen zum Patentassessor gemäß § 158 PAO und zum zugelassenen Vertreter vor dem Europäischen Patentamt gemäß Art. 11 (2) a) ii) VEP in der Industrie, erstere gelegentlich auch *mit langer Weg*[1], *Industrieweg*[2], *Patentsachbearbeiter*[3]-Ausbildung oder *Erleichterte Prüfung*[4] umschrieben, befinden sich im Wandel. Zahlreiche Änderungen geben Anlass zu einer Neubetrachtung[5], insbesondere der aktuelle Referentenentwurf des Bundesministeriums der Justiz und für Verbrauchschutz zur neuen Verordnung über die Ausbildung und Prüfung der Patentanwälte, PatAnwAPrV; die Einführung des Syndikuspatentanwalts in die Patentanwaltsordnung, PAO; die Registrierungspflicht für Bewerber auf die europäische Eignungsprüfung[6] und die Vertretungsbefugnis vor dem bevorstehenden Einheitlichen Patentgericht.

Entgegen des vereinfachenden Aufsatztitels will der Gesetzgeber die Ausnahmeregelung von § 158 PAO keineswegs auf Bewerber aus Industriepatentabteilungen beschränken[7]. Der Begriff Ausbildung ist diesem Zusammenhang ebenfalls vage. Haben § 158 PAO und Art. 11 (2) a) ii) VEP doch gerade die Ausbilderlosigkeit gemein. Industrie-Bewerber können die Prüfungsreife also im Selbststudium erreichen.

Abbildung: Möglicher Ausbildungsablauf. Das Bestehen der europäischen Eignungsprüfung verkürzt die Industrie-Bewerber- Beratungs- bzw. Vertretungstätigkeit von zehn auf acht Jahre, § 158 (1) PAO.

Die Abbildung zeigt einen groben Zeitplan für Industrie-Bewerber. Der Zeitplan unterscheidet sich von Bewerbern gemäß § 7 PAO bzw. Art. 11 (2) a) i) VEP, im Folgenden Kanzlei-Kandidaten genannt, im Wesentlichen durch eine andere Reihenfolge und eine kürzere Ausbildung. Während *Kanzlei-Kandidaten* die Assessorenprüfung nach 34 Monaten absolvieren und im Anschluss die Europäische Eignungsprüfung, absolvieren Industrie-Bewerber dies typischerweise umgekehrt und über einen Zeitraum von acht Jahren. Vorliegender Aufsatz beleuchtet nun der Reihe nach die Prüfungsvoraussetzungen Technische Befähigung, Beratungs- und Vertretungszeit, das für die Assessorenprüfung vorgeschriebene Hagen-Studium und gibt Tipps, wie das Amtsjahr ersetzt werden kann. Anschließend werden beide Prüfungen und das Litigation Certificate diskutiert.

1 Bedingt durch die im Vergleich zur 34 Monate dauernden Ausbildung von § 7 PAO Bewerbern lange Berufsausübung von mindestens acht bzw. zehn Jahren gemäß § 158 (1) PAO. Siehe auch Beschwerdekammerentscheidung D 3/07
2 Bedingt durch die in der Industrie häufig anzutreffende ausbilderlose Ausbildung, § 158 PAO bzw. Art. 11 (2) a) ii) VEP
3 Überschrift des § 158 PAO
4 BT Drs. IV/2045, § 172 PAO. Heute sachlich nicht mehr gerechtfertigte Formulierung.
5 vgl. derzeit in Überarbeitung befindliche Informationsbroschüre des VPP: Patentanwalt Patentassessor Europäischer Patentvertreter Europäischer Markenvertreter. 2013, www.vpp-patent.de/Ausbildung/brosch.pdf
6 ABl. EPA 2017, Zusatzpublikation 2
7 BT Drs. V/276, S. 6

II. Technische Befähigung

Für die Assessorenprüfung müssen Industrie-Bewerber mindestens eine im Inland abgeschlossene technische Ausbildung auf einer Ingenieurschule oder einer gleichwertigen technischen Lehranstalt vorweisen, § 158 (1) PAO. Welche technischen Lehranstalten als gleichwertig anzusehen sind, bestimmt die Präsidentin des DPMA, § 158 (5) PAO. Als Ingenieurschule bzw. gleichwertig gelten insbesondere Fachhochschulen und Berufsakademien[8] nicht jedoch Berufsfachschulen[9]. Diese Hürde ist niedriger als die für Kanzlei-Kandidaten geltende technische Befähigung gemäß § 6 (1) PAO, bei der es vor allem auf den Abschluss einer wissenschaftlichen Hochschule ankommt. Ein Master of Science Abschluss einer Fachhochschule genügt § 6 (1) PAO jedoch nicht[10].

Für die Europäische Eignungsprüfung müssen Industrie-Bewerber mindestens einen Bachelorabschluss in Natur- oder Ingenieurwissenschaften in einem der Vertragsstaaten erworben haben, Art. 11 (1) a) VEP, R. 11 (1) ABVEP. Bachelorabschlüsse einer Universität, technischen Universität, Berufsfachschule, Fachhochschule, Schule für Ingenieurwissenschaften oder einer ähnlichen Ausbildungseinrichtung werden anerkannt, R. 11 (1) ABVEP. Es bestehen weitere Gleichwertigkeits- und Anerkennungsregeln, siehe R. 12 bis 14 ABVEP. Mindestens 80% der für den akademischen Abschluss nötigen Kursstunden müssen natur- und/oder ingenieurwissenschaftliche Fächer sein. Für patentrechtliche Fächer trifft dies beispielsweise nicht zu[11].

III. Beratungs- bzw. Vertretungstätigkeit

Industrie-Bewerber haben ein zehnjähriges, ständiges Dienstverhältnis vorzuweisen, während dem sie ihren Auftraggeber auf dem Gebiet des gewerblichen Rechtsschutzes beraten oder vertreten haben, § 158 (1) PAO. Es gilt ein strenger Maßstab; die Beratungs- bzw. Vertretungstätigkeit muss hauptberuflich, eigenverantwortlich und nach Art und Umfang bedeutend sein[12] und noch ausgeübt werden, § 158 (1) PAO. Nicht dazu zählen beispielsweise Ausbildungszeiten und zwischenzeitliche Versetzungen, um sich bei einem Tochterunternehmen mit Technologie vertraut zu machen[13]. Ein ständiges Dienstverhältnis setzt eine überwiegende Zurverfügungstellung von Arbeitszeit und -kraft voraus[14]; ein Arbeitgeberwechsel[15] und Elternzeit[16] stehen dem nicht entgegen. Ein Patentanwalt oder Patentassessor als Ausbilder, wie bei Kanzlei-Kandidaten vorgeschrieben, ist nicht erforderlich, § 158 PAO.

Aufgrund von Parallelen zwischen Deutschem und Europäischem Patentrecht hat der Gesetzgeber es als gerechtfertigt erachtet, das Erfordernis der zehn Jahre Beratungs- bzw. Vertretungstätigkeit auf acht Jahre zu reduzieren, wenn der Bewerber die europäische Eignungsprüfung bestanden hat[17]. Für die Zulassung zur Assessorenprüfung haben die Industrie-Bewerber unter anderem einen von ihnen erstellten und unterzeichneten Tätigkeitsbericht beizubringen; der Arbeitgeber hat den Tätigkeitsbereich separat, schriftlich zu bestätigen[18]. Der VPP stellt für beides ausführliche Formulare[19] zur Verfügung, die zwar nicht rechtsverbindlich aber gängig und hilfreich sind.

Kanzlei-Kandidaten sind verpflichtet während ihrer praktischen Ausbildung an von der Patentanwaltskammer organisierten Arbeitsgemeinschaften teilzunehmen, die theoretische Kenntnisse vermitteln[20]. Die Arbeitsgemeinschaften können aufgrund einer Absprache zwischen der Patentanwaltskammer und dem VPP auch von Industrie-Bewerbern besucht werden[21].

Für die Europäische Eignungsprüfung genügt Industrie-Bewerbern eine kürzere Beschäftigungszeit von drei Jahren, Art. 11 (2) a) ii) VEP. Als Berechnungsgrundlage dient eine Vollzeitbeschäftigung. Es können auch Teilzeit-Zeiträume von nicht weniger als drei Monaten und mindestens 50% Beschäftigungsgrad berücksichtigt werden, R. 15 (2) ABVEP. Seit 13. März 2017 müssen sich Bewerber, die sich erstmals zur Europäischen Eignungsprüfung anmelden wollen, nach Beginn ihrer Beschäftigungszeit im Sinne des Art. 11 (2) VEP registrieren lassen. Das Europäische Patentamt empfiehlt eine frühzeitige Registrierung. Die Registrierung ist online[22] vorzunehmen. Industrie-Bewerber müssen über eine allgemeine Vertretungsvollmacht für Angestellte verfügen[23]. Ferner müssen Industrie-Bewerber konkret verantwortete europäische Akten nachweisen. Das Europäische Patentamt stellt ein Musterformular[24] zur

8 www.dpma.de/amt/aufgaben/patentanwaltsausbildung/wegfuerpatentsachbearbeiter/voraussetzungen/index.html
9 *BGH* Beschluss vom 11. Juli 1983 – PatAnwZ 1/82, S. 5, 6
10 *BGH* Beschluss vom 29. November 2013 – PatAnwZ 1/12, Rn. 31
11 In mehreren Beschwerdekammerentscheidungen wurde festgestellt, dass das Diplom des Studiengangs Patentingenieurwesen der Fachhochschule Amberg-Weiden die 80%-Regel nicht erfüllte, siehe D 1/12, D 2/12, D 3/12, D 4/12
12 *BGH* Beschluss vom 4. Oktober 1982 – PatAnwZ 2/81, S. 6, 8
13 *BGH* Beschluss vom 4. Oktober 1982 – PatAnwZ 2/81, S. 7
14 BT Drs. IV/2045, S. 63
15 Persönliche Erfahrung des Autors
16 Informationsbroschüre des VPP: Patentanwalt Patentassessor Europäischer Patentvertreter Europäischer Markenvertreter. 2013, S. 19
17 BT Drs. 11/3253, S. 31
18 www.dpma.de/amt/aufgaben/patentanwaltsausbildung/wegfuerpatentsachbearbeiter/formalitaeten/index.html
19 www.vpp-patent.de/04-Ausbildung-Downloads.htm
20 www.patentanwalt.de/de/patentanwaelte/ausbildung/zeitplaene-der-arbeitsgemeinschaften.html
21 Informationsbroschüre des VPP: Patentanwalt Patentassessor Europäischer Patentvertreter Europäischer Markenvertreter. 2013, S. 21
22 www.eqe.org/EQEASy/candidate/auth/login
23 Formular *EPA 1004*
24 documents.epo.org/projects/babylon/eponot.nsf/0/c40b33a43fcb6f2cc1257f80004fbf21/$FILE/Beispiel%20Liste%20ii%20en.pdf
25 in Formular 51017 *Praktikums- oder Arbeitsbescheinigung nach Artikel 11 (2) a) VEP und Regeln 1 und 15 ABVEP*

Verfügung, aus dem hervorgeht, dass, erstens, ein breites Spektrum an nationalen, europäischen und PCT-Fällen erwünscht ist, zweitens, nur vom Bewerber unterschriebene Handlungen akzeptiert werden, drittens, zwar nationale Patentfälle berücksichtigt werden, diese aber Handlungen vor dem Europäischen Patentamt nicht ersetzen können und, viertens, fordert das Europäische Patentamt, dass der überwiegende Teil der Tätigkeiten im Zusammenhang mit europäischen Patentanmeldungen und Patenten stehen muss. Der Arbeitgeber muss die Beschäftigung des Industrie-Bewerbers bestätigen[25]. Erfolgt die Beschäftigung bei unterschiedlichen Arbeitgebern, so ist jeweils ein gesondertes Formular auszufüllen.

IV. Hagen-Studium

Das Studium *Recht für Deutsche Patentanwältinnen und Patentanwälte* an der FernUniversität Hagen, im Folgenden *Hagen-Studium* genannt, wurde 1998 als für die Patentassessorenausbildung obligatorisch eingeführt[26]. In den Vorjahren hatten bereits ca. 90% der Bewerber freiwillig an einen entsprechenden Studiengang der FernUniversität Hagen teilgenommen[27]. Man erachtete das Hagen-Studium gerade für Industrie-Bewerber als wichtig, um breitere Kenntnisse im allgemeinen Recht zu erlangen[28]. Es ist aber sowohl für Industrie-Bewerber als auch für Kanzlei-Kandidaten vorgeschrieben, § 7 (3) PAO. Industrie-Bewerber können es erst nach fünf Jahren Beratungs- oder Vertretungstätigkeit beginnen[29]. Die Studiengebühr für Industrie-Bewerber beträgt 3.200,00 €[30]. Das Hagen-Studium ist als Fernstudium mit einem Umfang von zwei Jahren, zwei Präsenz–phasen a eine Woche, zwei Klausuren sowie einer mündlichen Prüfung konzipiert[31]. Die Studieninhalte sind in § 3 (3) der Prüfungsordnung des Hagen-Studiums festgelegt.

In § 32 (1) des Referentenentwurfs zur neuen PatAnwAPrV wird u.a. ein Bachelor of Laws als zum Hagen-Studium gleichwertig vorgeschlagen. Dies würde u.a. mehr Gestaltungsfreiheit beim Studienbeginn für Industrie-Bewerber mit sich bringen. Es gibt kein Pendant des Hagen-Studiums für die Europäische Eignungsprüfung[32].

V. Amtsjahr-Ersatz

Abweichend von der Ausbildung der Kanzlei-Kandidaten dürfen Industrie-Bewerber die Ausbildung beim Deutschen Patent- und Markenamt und beim Bundespatentgericht, im Folgenden *Amtsjahr* genannt, nicht absolvieren, § 7 (1) PAO[33]. Die Vorschriften über die europäische Eignungsprüfung für zugelassene Vertreter, VEP, kennen grundsätzlich keine verpflichtende Ausbildung beim Europäischen Patentamt oder bei den Beschwerdekammern. Das Amtsjahr vermittelt den Kanzlei-Kandidaten die Praxis des Patentamts und des Patentgerichts sowie die für Prüfung und Beruf erforderliche Theorie. Regelmäßige Klausuren helfen ihnen das Gelernte zu verfestigen und die Assessorenprüfungsreife zu erlangen. All dies müssen sich Industrie-Bewerber autodidaktisch aneignen. Paragraph 16 (2) PatAnwAPO gibt Hinweise für ein das Amtsjahr ersetzendes Curriculum[34]. Geeignete Literatur für das Selbststudium bieten u.a. die Verlage Carl Heymanns und C.H. Beck. Zu folgenden Themen ist jedoch wenig Literatur verfügbar: Sortenschutzgesetz, Unionsmarkenverordnung, Madrider Marken Abkommen und Protokoll, Gemeinschaftsgeschmacksmusterrecht, Haager Muster Abkommen, Patentanwaltsordnung und Insolvenzordnung.

Paragraph 18 (1) Nr. 3 RefE PatAnwAPrV konkretisiert den Inhalt der Ausbildung auf Grundzüge des Rechts der USA und Japan auf dem Gebiet des gewerblichen Rechtsschutzes, d.h. auch Spezifika des Marken- und Designrecht dieser Länder gilt es zu erlernen. Das Fachjournal *Mitteilungen der deutschen Patentanwälte* bietet u.a. regelmäßige Aktualisierungen zu ausländischen IP-Gesetzen. Ergänzend zum Selbststudium bieten verschiedene Kanzleien Kurse[35] an.

Die praktische Ausbildung des Amtsjahrs ist schwieriger zu ersetzen. Möglich und sinnvoll sind dazu Besuche öffentlicher Verhandlungen der Patentstreitkammern an Land- und Oberlandesgerichten sowie des Bundespatentgerichts. Dasselbe gilt für Einspruchsverhandlungen beim Europäischen Patent und für Verhandlungen bei den Beschwerdekammern. Verhandlungstage und zu verhandelnden Fälle lassen sich telefonisch bei den Gerichten erfragen.

26 BT Drs. 13/10764, S. 1
27 BT Drs. 13/10764, S. 2
28 BT Drs. 13/10764, S. 10
29 § 2 (1) (b) Prüfungsordnung für das weiterbildende Studium „Recht für Patentanwältinnen und Patentanwälte" an der FernUniversität in Hagen vom 23. Oktober 2012
30 www.fernuni-hagen.de/kurthaertel/patent/gebuehren.shtml
31 §§ 3 bis 5 Prüfungsordnung für das weiterbildende Studium „Recht für Patentanwältinnen und Patentanwälte" an der FernUniversität in Hagen vom 23. Oktober 2012
32 siehe jedoch freiwilliges Weiterbildungsstudium Examinatorium Europaeum der FernUniversität Hagen, www.fernuni-hagen.de/kurthaertel/europaeum/

33 siehe auch: www.dpma.de/amt/aufgaben/patentanwaltsausbildung/wegfuerpatentsachbearbeiter/voraussetzungen/index.html
34 § 158 (1) PAO nimmt Patentsachbearbeiter jedoch explizit von der in §§ 10 (2), 12 PAO iVm § 16 PatAnwAPO festgelegten Ausbildung für Kanzlei-Kandidaten aus.
35 z.B. Preu-Kurs der Kanzlei Preu Bohlig: https://www.preubohlig.de/de/Preu-Kurs/index.html , IP-Akademie der Kanzlei Bardehle Pagenberg: https://www.bardehle.com/de/ip-akademie.html

VI. Assessorenprüfung

Industrie-Bewerber melden sich zur Assessorenprüfung an, indem sie bei der Präsidentin des DPMA einen formlosen Antrag auf Zulassung stellen, § 158 iVm. § 10 (1) PAO. Paragraph 40 PatAnwAPO regelt welche Unterlagen Industrie-Bewerber dem Antrag beifügen müssen. Die Prüfungsgebühr beträgt 260,00 €[36]. Die Assessorenprüfung ist in Form zweier Aufsichtsarbeiten, einer wissenschaftlichen und einer praktischen, a fünf Stunden sowie einer mündlichen Prüfung über durchschnittlich eine Stunde abzulegen.

Von den jährlich durchschnittlich 180 Assessorenprüflingen sind ca. 30 Industrie-Bewerber gemäß § 158 PAO[37]. Vergleichbare Auswertungen zur Europäischen Eignungsprüfung gibt es nicht; erfahrungsgemäß ist hier der Anteil an Industrie-Bewerbern jedoch noch höher.

Während der Assessorenprüfung sind das Taschenbuch Gewerblicher Rechtsschutz sowie der *Schönfelder* nebst Ergänzungsband als Hilfsmittel zugelassen[38]. Für die Prüfungsvorbereitung werden Kursen angeboten[39]. Für den Prüfungserfolg ist das selbstständige Üben anhand alter Klausuren[40] erfahrungsgemäß jedoch kaum durch Literatur oder Kurse zu ersetzen. Das DPMA hält dazu auf seiner Webseite[41] zahlreiche frühere Prüfungsaufgaben vor.

Nach bestandener Assessorenprüfung steht den Industrie-Bewerbern seit 1. Januar 2017 die Zulassung als Syndikuspatentanwalt[42] offen. Die Privilegien und Vorschriften zum Syndikuspatentanwalt sind in den §§ 41a bis 41d PAO normiert und dürften nicht zuletzt wegen der Befreiung von der Versicherungspflicht in der gesetzlichen Rentenversicherung zugunsten einer Versorgung in den berufsständischen Versorgungswerken[43] die Attraktivität der Assessorenprüfung für Industrie-Bewerber erhöhen.

Der Referentenentwurf zur neuen PatAnwAPrV schlägt einige Änderungen vor, die auch Industrie-Bewerber betreffen. So soll der Antrag auf Zulassung zur Assessorenprüfung spätestens sechs Monate vor dem Monatsersten des beantragten Prüfungstermins gestellt werden[44], um dem DPMA eine frühzeitigere Prüfungsplanung zu ermöglich[45]. Die Prüfungsgebühr erhöht sich auf 560,00 €[46]. Die Anzahl der Klausuren wird auf vier verdoppelt, die Prüfungszeit auf a drei Stunden verringert[47]. Dies erhöht die schriftliche Prüfungszeit dennoch um insgesamt zwei Stunden. Inhaltlich sollen die Klausuren eine juristische Prüfung zu technischen Schutzrechten, eine juristische Prüfung zu nichttechnischen Schutzrechten und ein Schreiben aus der Anwaltspraxis, z.B. Anmeldung, Bescheidserwiderung, umfassen[48]. Die mündliche Prüfungszeit soll auf durchschnittlich 45 Minuten verkürzt werden[49]. Die Bewertung der Prüfungsleistung soll in Anlehnung an das 18-Punkte-System der juristischen Staatsprüfung anstatt des bisherigen Sieben-Noten-Systems erfolgen[50].

VII. Europäische Eignungsprüfung

Einmal jährlich finden die Europäische Eignungsprüfung sowie die seit 2012 obligatorische Vorprüfung statt. Industrie-Bewerber müssen für die Vorprüfung bereits alle Nachweise erbringen, die auch für die Europäische Eignungsprüfung, bzw. Hauptprüfung, erforderlich sind, wobei sich die nachzuweisende Beschäftigungszeit, vgl. Abschnitt *III. Beratungs- bzw. Vertretungstätigkeit*, um ein Jahr reduziert, Art. 11 (7) VEP. Die Vorprüfungsgebühr beträgt insgesamt 400,00 €. Die Vorprüfung dauert vier Stunden und prüft rechtliche Fragen und Fragen betreffend die Ausarbeitung von Ansprüchen, R. 10 ABVEP. Die Hauptprüfung setzt das Bestehen der Vorprüfung voraus. Sie besteht aus vier Prüfungsteilen, nämlich A: Ausarbeiten von Ansprüchen und der Einleitung einer europäischen Patentanmeldung innerhalb einer Prüfungsdauer von vier Stunden; B: Ausarbeiten einer Bescheidserwiderung innerhalb einer Prüfungsdauer von dreieinhalb Stunden; C: Ausarbeiten eines Einspruch innerhalb einer Prüfungsdauer von fünfeinhalb Stunden und D: Beantworten rechtlicher Fragen und Ausarbeiten rechtlicher Beurteilungen von spezifischen Sachverhalten innerhalb einer Prüfungsdauer von ebenfalls fünfeinhalb Stunden[51]. Die Hauptprüfungsgebühr beträgt insgesamt 1.000,00 €.

Neben der vorgeschriebenen Beschäftigungszeit ist für die Europäische Eignungsprüfung keine institutionelle

36 www.dpma.de/amt/aufgaben/patentanwaltsausbildung/pruefung/pruefungsgebuehr/index.html
37 Dies ergibt sich aus statistischen Auswertungen mehrerer Jahresberichte des Bundespatentgerichts zur Kandidatenausbildung, aus Angaben im *Gesetzentwurf der CDU/CSU und SPD zur Neuordnung des Rechts der Syndikusanwälte* sowie aus Angaben im Referentenentwurf zur neuen PatAnwAPrV.
38 www.dpma.de/docs/dpma/ausbildung/7/zugelassenehilfsmittel.pdf
39 Vereinigung von Fachleuten des Gewerblichen Rechtsschutzes, VPP, organisiert regelmäßige Prüfungsvorbereitungskurse
40 www.dpma.de/amt/aufgaben/patentanwaltsausbildung/pruefung/pruefungsaufgaben/index.html
41 www.dpma.de/amt/aufgaben/patentanwaltsausbildung/pruefung/pruefungsaufgaben/index.html
42 Fitzner, Uwe, VPP-Rundbrief 1/2017. S. 1 ff.
43 BT Drs. 18/5201, S. 1
44 § 36 (5) RefE PatAnwAPrV
45 RefE PatAnwAPrV, S. 73
46 § 37 (1) S. 1 RefE PatAnwAPrV
47 § 39 (2) RefE PatAnwAPrV
48 § 40 (1) RefE PatAnwAPrV
49 § 39 (3) RefE PatAnwAPrV
50 § 46 (1) RefE PatAnwAPrV; RefE PatAnwAPrV, S. 79 f.
51 documents.epo.org/projects/babylon/eponot.nsf/0/95E40F86D0D13535C125806E004BDE51/$File/Future_exam_dates_2017-2018.pdf

theoretische Ausbildung vorgeschrieben. Industrie-Bewerber müssen sich die Theorie eigenverantwortlich erarbeiten. Als Curriculum für das Selbststudium kann z.B. R. 22 ABVEP dienen, ein ausführlicheres hält das Europäische Patentamt im *Guide for preparation, Chapter III*[52] bereit. Dasselbe Dokument enthält auch zahlreiche Literaturtipps. Für den Prüfungserfolg ist vor allem das Üben alter Prüfungen entscheidend. Das Europäische Patentamt hält dazu eine Vielzahl alter Prüfungsaufgaben im sogenannten *Compendium*[53] vor.

Da die europäische Eignungsprüfung keinen Selbstzweck erfüllt, sondern gerade dazu dient festzustellen, ob ein Bewerber geeignet ist, als zugelassener Vertreter vor dem Europäischen Patentamt aufzutreten, Art. 1 (1) VEP, ist eine theoretische Ausbildung ähnlich dem Amtsjahr sinnvoll. Neben rein prüfungsvorbereitenden Kursen[54] gibt es auch Kurse, die künftigen Vertretern Unterricht in den Rechtsgrundlagen sowie der Praxis des europäischen Patentrechts vermitteln[55].

VIII. Litigation Certificate

Vor dem in Entstehung befindlichen Einheitlichen Patentgericht wird, mit wenigen Ausnahmen, Anwaltszwang herrschen. Die Parteien sollen von einem Rechtsanwalt vertreten werden, Art. 48 (1) EPGÜ. Als gleichwertig gelten Zugelassene Vertreter vor dem Europäischen Patentamt mit erforderlicher Qualifikation, Art. 48 (2) EPGÜ. Für eine Übergangszeit von einem Jahr nach Ratifikation des Einheitspatentpakets besteht eine *Großvaterregelung* für diese erforderliche Qualifikation. Sie gilt für Zugelassene Vertreter, die das Hagen-Studium oder dessen Vorgänger *Kandidatenkurs Fischbachau* erfolgreich absolviert haben, Art. 48 (2), (3) EPGÜ, R. 12(a)(ii) *Draft Rules on the European Patent Litigation Certificate and other appropriate qualifications pursuant to article 48(2) UPCA*, REPLC. Nach Ratifikation des europäischen Patentpakets müssen Zugelassene Vertreter einen Kurs im Umfang von wenigstens 120 Stunden absolvieren, um ein Litigation Certificate zu erwerben. Es stellt die erforderliche Qualifikation gemäß Art. 48(2) EPGÜ dar[56]. Es gibt bereits erste Kursangebote[57].

Für Industrie-Bewerber dürfte die Anerkennung eines Bachelor oder Master of Laws Abschlusses nach R. 11 REPLC als erforderliche Qualifikation iSv. Art. 48 (2) EPGÜ von Interesse sein. Im Hinblick auf § 32 (1) RefE PatAnwAPrV, siehe oben, könnten in Zukunft mit einem solchen Bachelorabschluss auf einen Streich sowohl das Hagen-Studium als auch das Litigation Certificate erledigt werden. Als gleichwertig für die Assessorenprüfung gilt jedoch nur ein universitärer Bachelor of Laws Abschluss[58]. R. 11 REPLC verlangt, dass der Abschluss Unions-Bildungsstandards entspricht. Diese Kriterien erfüllt beispielsweise das Fernstudium *Bachelor of Laws* der FernUniversität Hagen[59].

IX. Zusammenfassung

Die Ausbildungen zum Patentassessor gemäß § 158 PAO und zum zugelassenen Vertreter vor dem Europäischen Patentamt gemäß Art. 11 (2) a) ii) VEP weisen grundsätzliche Unterschiede aber auch Gemeinsamkeiten und Synergieeffekte auf. Für die Europäische Eignungsprüfung gelten liberalere Voraussetzungen bei der technischen Befähigung. Die Anmeldeformalitäten beider Prüfungen haben sich angeglichen. Die Beschäftigungszeit für die Europäische Eignungsprüfung ist jedoch wesentlich kürzer als die Beratungs- und Vertretungstätigkeit für die Assessorenprüfung; die bestandene Europäische Eignungsprüfung verkürzt die Beratungs- bzw. Vertretungstätigkeit für die Assessorenprüfung. Für die Europäische Eignungsprüfung gibt es weder ein Pendant des Hagen-Studiums noch des Amtsjahrs. Umfang und Inhalte beider Prüfungen würden sich durch den Referentenentwurf für die neue PatAnwAPrV annähern. Es wurde ferner das Litigation Certificate für die Vertretung vor dem Einheitlichen Patentgericht diskutiert. Ein Bachelor of Laws Abschluss könnte in Zukunft auf einen Streich sowohl das Hagen-Studium als auch das Litigation Certificate erledigen. Entgegen des Aufsatztitels kann der hier diskutierte Ausbildungsweg aus verschiedenen Gründen auch für Kanzlei-Kandidaten von Interesse sein etwa, weil kein Ausbilder verfügbar ist oder den Kandidaten der wissenschaftliche Hochschulabschluss fehlt.

Die Ausbildungen zum Patentassessor gemäß § 158 PAO und zum zugelassenen Vertreter vor dem Europäischen Patentamt gemäß Art. 11 (2) a) ii) VEP weisen grundsätzliche Unterschiede aber auch Gemeinsamkeiten und Synergieeffekte auf. Umfang und Inhalte der Prüfungen würden sich durch den Referentenentwurf für die neue PatAnwAPrV annähern.

Thomas Kimpfbeck, Dipl.-Ing. (FH), ist bei der Rohde & Schwarz GmbH & Co. KG als Patentassessor und European Patent Attorney tätig. Der Aufsatz repräsentiert die persönliche Meinung des Autors.

52 documents.epo.org/projects/babylon/eponet.nsf/0/AD1DEB5847E771FEC125764E0056D80B/$FILE/eqe_preparation_guide_7th_edition_2017_en.pdf
53 www.epo.org/learning-events/eqe/compendium_de.html
54 EQE-Vorbereitungskurs, https://www.mhpatent.net/
55 z.B. CEIPI Basic training in European Patent Law
56 Kimpfbeck, Thomas: Prozessrecht in Einheitspatentverfahren. 2017, S. 36, 37
57 CEIPI Course on Patent Litigation in Europe beginnend im Oktober 2017
58 RefE PatAnwAPrV, S. 68
59 www.fernuni-hagen.de/rewi/studium/bachelor_of_laws.shtml

Handbuch der Patentverletzung

9. Auflage

Author: Thomas Kühnen
Book review by Andreas Winter (DE)

Mittlerweile liegt die 9. Auflage des von Thomas Kühnen, Vorsitzender Richter am OLG Düsseldorf, dem wohl bedeutendsten deutschen Gericht für Patentverletzungen, herausgegebenen Handbuchs vor. Die ersten vier Auflagen erschienen noch unter dem Titel „Die Durchsetzung von Patenten in der Praxis" von Thomas Kühnen und Eva Geschke mit Erstpublikation im Jahre 2002. Die fünfte Veröffentlichung erschien im Jahre 2011 mit noch heute aktuellem Titel. Seit diesem Buch sind zwischenzeitlich vier Auflagen in sechs Jahren erschienen, bereits daran lässt sich die Bedeutung des Themas und des Werkes ermessen.

Die vorliegende 9. Auflage bringt die Kommentierung auf den aktuellen Stand von Gesetzgebung und Rechtsprechung, wobei Änderungen und Entscheidungen bis September 2016 berücksichtigt wurden. Insbesondere die Bereiche kartellrechtliche Zwangslizenz und äquivalente Patentverletzung wurden erneuert sowie zusätzliche Beispielfälle ergänzt.

Das Werk ist klar gegliedert in 10 Kapitel, denen sich jeweils 3 bis 9 Unterkapitel mit weiteren Untergliederungen anschließen. Das erste Kapitel „Schutzbereichsbestimmung", mit den Inhalten: Rechtsgrundlagen, Grundregeln der Auslegung, zulässigem Auslegungsmaterial, Verständnishorizont und Benutzungsarten, ist nicht nur für jeden Rechts- oder Patentanwalt relevant, sondern auch für die betriebliche Praxis im Rahmen der Klärung der Relevanz von Fremdschutzrechten bei Produktneuentwicklungen oder „freedom to operate" Analysen. Auf zweihundert Seiten werden die Grundlagen der Schutzbereichsbestimmung ausgiebig und mit verschiedenen Beispielfällen umfangreich erläutert. Auch der Bereich mittelbare Patentverletzung sowie Patentschutz für Ersatz- und Verbrauchsteile wird hier behandelt.

Es schließen sich Kapitel zur Sachverhaltsermittlung, Vorprozessualem, Klageverfahren, Verteidigungsmöglichkeiten der Beklagten, Rechtsmittelverfahren, Sonstigen Verfahren, Zwangsvollstreckungsverfahren, Schadenersatz und Sonstigem an. Neben der Schutzbereichsbestimmung als Basis bilden das Klageverfahren, Verteidigungsmöglichkeiten, Sachverhaltsermittlung und die sonstigen Verfahren Schwerpunkte im Werk.

Beim Thema Klageverfahren wird insbesondere das Thema Klageansprüche umfangreich behandelt. Im Bereich Verteidigungsmöglichkeiten liegt der Schwerpunkt bei der materiellen Verteidigung, wobei hier das Thema standardessentielle Patente und FRAND Erklärungen nicht zu kurz kommt. Die Sachverhaltsermittlung geht insbesondere auf den Besichtigungsanspruch und Vorlageverpflichtung zur Sachaufklärung und Beweissicherung ein. Bei den sonstigen Verfahren wird die einstweilige Verfügung tiefergehender behandelt.

Ferner hervorzuheben und von besonderer praktischer Bedeutung sind die aufgeführten Checklisten.
Die Neuauflage des bewährten Standardwerks zu materiellen und verfahrensrechtlichen Fragen rund um die Patentverletzung behandelt nicht nur die Grundlagen der Patentverletzung sondern geht in praxisorientierter Weise alle Schritte des Verletzungsverfahrens bzw. deren Abwehr durch. Es gibt einen Einblick in alle Aspekte der Patentverletzung und gibt einen umfassenden Überblick über die aktuelle Rechtsprechung.

Thomas Kühnen
Handbuch der Patentverletzung
9. Auflage, 2017, 1048 S. Hardcover
Carl Heymanns Verlag
ISBN 978-3-452-28573-7

Verfahrenspraxis EPÜ und PCT

Übersichten · Entscheidungspfade · Musterformulierungen

and

EPC time limit calculator

Statutory time limits · time limits set by the EPO

Authors: Leopold Gruner & Arlett Großmann
Book review by T. Kühnen (DE)

Großmann and Gruner enhance the existing EPC literature with two innovative tools - the book „Verfahrenspraxis EPÜ und PCT" and the bilingual (German/ English) EPC time limit calculator for the determination of different time limits of the EPC - which complement each other superbly. The entire package not only serves as a compact resource for exam preparation, but also provides an always quick and reliable overview of the details of the EPC and PCT proceedings to the practitioner. Due to its spiral binding, the book is easy and comfortable to handle.

Verfahrenspraxis EPÜ und PCT

The book is divided into 4 chapters corresponding to parts A, B, C and D of the EQE.

The main part D comprises more than 100 tables, which give the reader a complete outline of the different steps in proceedings before the European Patent Office (EPC, PCT and EURO-PCT). Each page, presented in a horizontal (landscape) format, offers a self-explanatory, easy-to-understand tabular structure. For the individual steps of the proceedings the requirements/ required actions, fees, time limits, possible time limit extensions, legal consequences, and legal remedies are addressed, from filing an application to opposition all the way to appeal. Special cases are clearly separated from the general tables and all information provided is fully referenced (EPC, Guidelines for the Examination in the EPO, Official Journal and Case law). Above each table, Articles, Rules and case law decisions referred to are quoted verbatim, thereby facilitating the reader's quick orientation.

Parts A, B, and C of the book deal with specific issues connected to drafting an application, formulating a response to a communication issued by the EPO and opposition. They provide extensive information, for example on claim categories, the prior art, how to draft a problem solution approach, and grounds for opposition. Each chapter contains extensive formulation proposals, which are not only very useful in the main EQE but are equally a welcome help for a patent attorney's daily work.

Verfahrenspraxis EPÜ und PCT
Übersichten · Entscheidungspfade
Musterformulierungen
2. Auflage 2017, kartoniert, Ringbindung
Carl Heymanns Verlag
ISBN 978-3-452-28886-8.

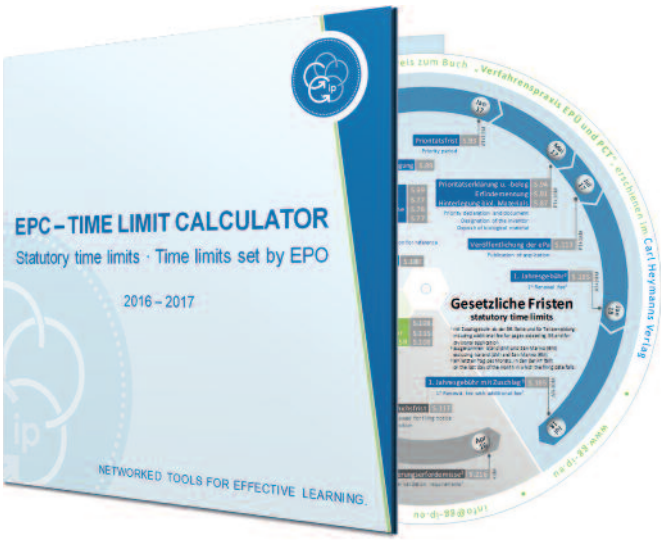
EPC time limit calculator

The EPC time limit calculator is a two-sided turntable – one side is dedicated to the determination of statutory time limits of the EPC, the other to time limits set by the EPO. Currently, time limits starting in one of the calendar years 2016 and 2017 are covered.

The category of statutory time limits of the EPC comprises three kinds of time limits, namely time limits starting on the date of filing of a patent application (such as the time limits for paying the filing fee and search fee or for filing a translation), in addition time limits starting on the date of the mention of the publication of the search report (such as the time limit for paying the examination fee) and finally time limits starting on the date of the mention of the grant of the European patent (like the time limit for filing a notice of opposition). The time limit calculator also allows for the reliable determination of time limits set by the EPO on a daily basis, taking into account the „10 day rule" according to Rule 126 (2) EPC and days on which at least one EPO filing office is not open (Rule 134 (1) EPC).

The time limit calculator enables the user to calculate EPC time limits in a very effective and time saving manner. Especially during the preparation period and the EQE itself, the time limit calculator is a very handy and helpful self-check tool. Afterwards, it facilitates the work of the patent attorney and the paralegals when counselling a client.

The time limit calculator comes with references to the book "Verfahrenspraxis EPÜ und PCT" for all statutory time limits of the EPO, which allows for quick retrieval of more information about the various steps of proceedings before the EPO.



EPC time limit calculator/EPÜ – Fristenscheibe
Statutory time limits · time limits set by the EPO/
Gesetzliche Fristen · Amtsfristen
1st edition 2016/ 2017/ 1. Auflage 2016/2017
Ø 19 cm, varnished, in a brochure/ Ø 19 cm, lackiert, in einer Broschüre
Exclusively via/ Exklusiv über www.gg-ip.eu/shop

Lizenzsätze für technische Erfindungen

5. Auflage

Authors: Hellebrand/Rabe
Book review by Klaus Kohlmann (DE)

Die Verfasser aktualisieren die bekannte Sammlung von Lizenzsätzen und reichern sie mit zahlreichen neuen Beispielen an. Daher gewann das Werk entsprechend an Umfang und damit auch an Aussagekraft. Durch die langjährige Pflege wurde ein umfangreicher Fundus geschaffen, der ein breites Spektrum abdeckt. Somit dürfte sich in der Regel für einen in der Praxis auftretenden Fall, wenigstens eine geeignete Referenz finden lassen. Dabei eignet sich die Sammlung nicht nur für die Ermittlung von Erfindervergütung nach der Lizenzanalogie. Es kann darüber hinaus als Ausgangspunkt für die finanzielle Bewertung von Erfindungen und erfindungsbezogenen Schutzrechten im Rahmen von Lizenzierungen und Verkäufen dienen, insbesondere bei der Festlegung von Transferpreisen im Rahmen von konzerninternen Transaktionen.

Hilfreich für die Suche nach passenden Analogien für den vom Anwender zu bewertenden Fall ist die systematische Zuordnung von Patentlizenzsätzen zu Technologien. Diese orientiert sich nach der internationalen Patentklassifikation. Ein Verzeichnis der Klassen gegliedert nach Sektionen und Untersektionen ist den aufgeführten Lizenzverträgen vorangestellt. Ferner bietet ein umfangreiches Stichwortverzeichnis Unterstützung, so dass der Anwender selbst nicht mit dem System der Patentklassifikation vertraut sein muss. Die Lizenzsätze zu einer über das Verzeichnis oder das Stichwortverzeichnis gefundenen Klasse lassen sich einfach auffinden, da auf jeder Doppelseite links oben die gerade behandelte Klasse angegeben ist.

Zwei grundsätzliche Schwierigkeiten bei der Bewertung von Erfindungen und darauf angemeldeten Schutzrechten bestehen darin, dass es sich hierbei um deutlich individuellere Wirtschaftsgüter handelt, die noch dazu mit objektiven Kriterien schwieriger greifbar sind als beispielsweise Immobilien, für deren Bewertung traditionell ein äußerst umfangreicher Erfahrungsschatz und eine umfassende Datenlage zu den getätigten Transaktionen zur Verfügung stehen. Umso wertvoller sind ergiebige Sammlungen von Lizenzsätzen für technische Erfindungen, die sich nicht lediglich auf die Nennung von angeblich typischen Lizenzsätzen beschränken. Daher ist es wichtig, dass die Bearbeiter mit der Wiedergabe von Auszügen zu den zugehörigen Einigungsvorschlägen und Urteilen zum Teil umfangreiche und aufschlussreiche Hintergrundinformationen liefern. Damit ist es möglich, die ausgewählten Beispiele in den richtigen Kontext zu stellen und somit Ableitungen für den konkreten Fall vorzunehmen. Dies wird gerade der versierte Anwender zu schätzen wissen. Interessant ist, dass die Sammlung um immerhin 11 Beispiele aus der Rechtsprechung angereichert wurde und damit explizit in die Situation Einblick bietet, in der ein Unternehmen in die „Falle" eines existierenden Fremdschutzrechts getappt ist. Sollten von der Rechtsprechung behandelte Fälle in künftigen Auflagen größeren Raum einnehmen, wäre deren Auflistung in einem Index erwägenswert.

Hellebrand/Himmelmann
Lizenzsätze für technische Erfindungen
5. Auflage 2017, Leinen. XIV, 783 S. Hardcover
Carl Heymanns Verlag
ISBN 978-3-452-27444-1

Information from the Disciplinary Committee

The Disciplinary Committee informs all **epi** Members about the installation of the new fixed 11 Chambers.

Please note that the Chair of a Chamber is entitled to change the functions of the Members within the Chairs Chamber as the case may seem useful.

All Members of a Chamber including the Substitute Member (Alternate Member) are independent in reaching their decision, are bound to confidentiality and are fully documented about a case to be dealt with in said Chamber.

The Substitute Member (Alternate Member) may substitute any of the Members, Rapporteurs or Chairs - as the case may be- within those Chambers they are related to.

The Chair of the Disciplinary Committee – when he composes the fixed Chambers – is responsible that every Member of the Disciplinary Committee serves at all available positions over the time.

In case Members of the Disciplinary Committee leave the Disciplinary Committee (e.g. at the end of a period) while a case of the Chamber of said Members is not yet finished, the Chair nominates new available Members to substitute said Chamber to the degree necessary, so that said case can be finished by said Chamber efficiently. This is a change of the past long standing practice.

Chamber	Country	Lastname	Firstname	Chamber Position
Gray	GB	Gray	John	Chair
	RS	Bogdanovic	Dejan	Rapporteur
	IT	Pio	Frederico	Member
	SK	Cechvalova	Dagmar	Substitute Member
Yurtseven	TR	Yurtseven	Tuna	Chair
	DK	Frederiksen	Jakob	Rapporteur
	MT	Sansone	Luigi	Member
	MK	Damjanski	Vanco	Substitute Member
Rousounido	CY	Rousounidou	Vasiliki	Chair
	AL	Nika	Melina	Rapporteur
	IE	Smyth	Shane	Member
	LT	Gerasimovic	Jelena	Substitute Member
Reuteler	CH	Reuteler	Raymond	Chair
	ES	Stiebe	Lars	Rapporteur
	BE	Debled	Thierry	Member
	PT	Dias Machado	Antonio	Substitute Member
Tsimikalis	GR	Tsimikalis	Athanasios	Chair
	HR	Korper Zemva	Dina	Rapporteur
	SM	Martini	Riccardo	Member
	FR	Nevant	Marc	Substitute Member
Westerholm	FI	Westerholm	Christian	Chair
	SE	Karlström	Lennart	Rapporteur
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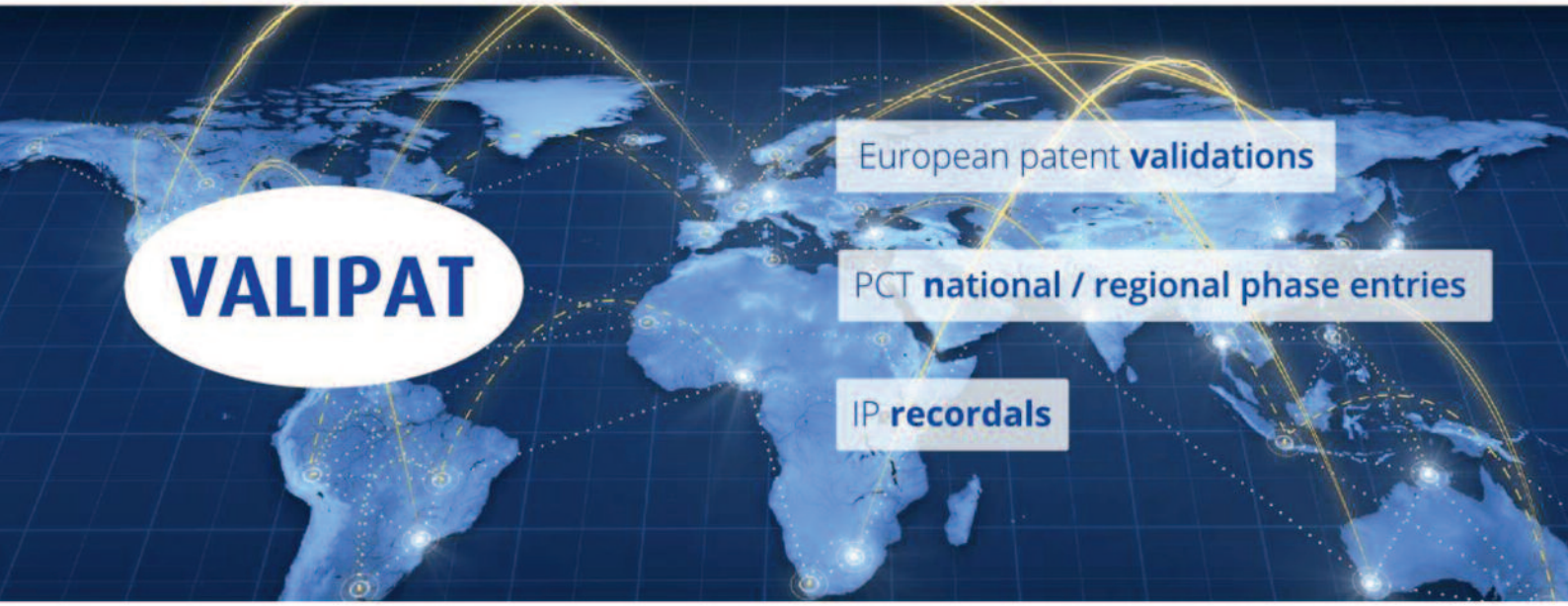

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