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goodwill for driving the patent
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Cover:

Icon #2 Marsha Hunt

(Munich 2013)

This picture painted by

Mr. Hans-Rainer Jaenichen

(European Patent Attorney, DE)

was part of the **epi** Artists

Exhibition 2015 at the EPO, Munich



Dr. Hans-Rainer Jaenichen

Dr. Hans-Rainer Jaenichen is a molecular biologist, German Patent Attorney and Professional Representative before the European Patent Office. Since 1990 he is partner in the law firm Vossius & Partner. In the course of his work as a Patent Attorney he presented several lectures and publications concerning issues related to the industrial property rights. Furthermore he has published the book "From Clones to Claims" about the jurisdiction of the Boards of Appeal of the EPO in the field of genetical and pharmaceutical inventions. Since his youth he has made pencil drawings, oil paintings, posters, photos and then later digital movies and slideshows of several subjects. As of 2013 he started to paint again oil paintings, which are a reminiscence of his posters in the 70's, which are painted with tempera colours on cardboard and which are showing pop and rockstar idols. The cover picture of the journal is called "Icon #2, Marsha Hunt" and is one of the first new pictures which have been painted since 2013. The row of these works will be continued.

Dr. Hans-Rainer Jaenichen ist Molekularbiologe sowie deutscher Patentanwalt und zugelassener Vertreter beim EPA. Seit 1990 ist er Partner in der Kanzlei Vossius & Partner. Im Rahmen seiner Tätigkeit als Patentanwalt hat er zahlreiche Vorträge und Veröffentlichungen zu Themen des gewerblichen Rechtsschutzes gestaltet und das Buch „From Clones to Claims“ über die Rechtsprechung der Beschwerdekammern des EPA im Bereich der gentechnologischen und pharmazeutischen Erfindungen verfasst. Er hat seit seiner Jugend Bleistiftzeichnungen, Ölbilder, Plakate, Fotos und später digitale Filme und Diashows zu vielseitigen Themen angefertigt. Ab 2013 hat er wieder begonnen Ölbilder zu malen, die eine Reminiszenz sind an seine in den 70er Jahren auf Karton mit Temperafarben gemalten Plakate, die Pop- und Rockstar-Idole zeigten und zeigen. Das Foto auf der Titelseite der Ausgabe dieser Zeitschrift hat den Titel „Icon #2, Marsha Hunt“ und ist eines der ersten neuen Bilder, die ab 2013 entstanden sind. Die Reihe dieser Arbeiten wird fortgesetzt.

Dr. Hans-Rainer Jaenichen est biologiste moléculaire, avocat des brevets allemand et mandataire agréé près l'OEB. Depuis 1990, il est partenaire du cabinet d'avocats Vossius & Partner. Dans le cadre de son activité en tant qu'avocat des brevets, il a tenu de nombreuses conférences et contribué à de nombreuses publications sur la propriété industrielle. Il a également fait paraître le livre « From Clones to Claims » sur la jurisprudence des chambres de recours de l'OEB dans le domaine des inventions biotechnologiques et pharmaceutiques. Dès son enfance, il a produit des dessins au crayon à papier, des peintures à l'huile, des affiches, des photos et, plus tard, des films numériques et des diaporamas sur des sujets divers. À partir de 2013, il a recommencé à peindre des toiles à l'huile, qui sont une reminiscence à ses posters réalisées dans les années 70 sur carton avec de la peinture à la tempera, et qui représentent des Rockstars et des popstars. La photo représentée sur la couverture du numéro de ce journal est intitulée « Icon #2, Marsha Hunt » et est une des premières peintures produites à partir de 2013. Cette série de travaux sera poursuivie.

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Editorial

T. Johnson (GB), Editorial Committee



Terry Johnson

We had a thought about Plato's *Republic* and his discussion of the dialogue of Socrates, in which Socrates asserts that a democracy can become 'over-ripe' as it develops and matures. Plato, as we understand him, is generally in favour of the democratic ideal insofar as it leads to multiple freedoms and equality for the population it

serves. But such a system has flaws which Plato lists in eloquent detail. Those flaws are essentially political in consequence, which we shall not elaborate here.

Suffice it to say that our Institute is set up on democratic lines. We are sure that our readers are grateful that that is the case. Moreover, and satisfyingly, our **epi** democracy cannot become 'over-ripe' as it is not open-ended. It currently has a term of three years, after which there is an election of a new Council and Officers, this Council in turn electing new Committees. This year being an election year, and with due deference to the previous Council, we look forward to the democratically elected new Council, officers, and Committees bringing a fresh impetus to the Institute, in their full knowledge that they have but a three-year term, and so cannot overreach the democratic process owing to the time constraint.

We are sure that Plato would approve!

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 19. Mai 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 19th May 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 19 mai 2017 . Les textes destinés à la publication devront être reçus par le Secrétariat avant cette date.

Ergebnisse der Wahl zum 18. Rat

Hinweis

Mitglieder des Instituts, die gegen das Wahlergebnis Einwände erheben möchten, müssen ihre schriftlichen Einwände rechtsgültig unterzeichnet bis spätestens 29. März 2017 beim Sekretariat des Instituts einreichen. Später eingehende Einwände werden nicht berücksichtigt.

Ich danke den Mitgliedern des Wahlausschusses, den Herren M.A. Müller, P. Barrett, und A.Vilhjálmsson sowie Frau V. Pröll (**epi** Sekretariat) für ihren Einsatz.

Results of the Election to the 18th Council

Notice

Members of the Institute wishing to object against the election results must submit their written objection duly signed to reach the Secretariat of the Institute by 29 March 2017 at the latest. Any objections reaching the Institute after this date will not be taken into consideration.

I thank the members of the Electoral Committee, Messrs. M.A. Müller, P. Barrett, A.Vilhjálmsson and Ms V. Pröll from the **epi** Secretariat for their commitment.

Résultats de l'élection au 18 Conseil

Note

Les membres de l'Institut désirant contester les résultats de l'élection doivent faire parvenir leurs objections écrites dûment signées au Secrétariat de l'Institut avant le 29 mars 2017 au plus tard. Toute objection parvenant à l'Institut après cette date ne sera plus prise en considération.

Je remercie les membres de la Commission Electorale, MM. M.A. Müller, P. Barrett, et A.Vilhjálmsson et Mme. V. Pröll (**epi** Secrétariat) pour leur engagement.

João Pereira da Cruz

Generalsekretär / Secretary General / Secrétaire Général

Erläuterung

- * als stellvertretendes Mitglied zur Wahl
- ** Losentscheid bei gleicher Stimmenzahl
- + nominiert im wieder eröffneten Nominationsverfahren

Legend

- * stood as substitute only
- ** tie vote position decided by lot
- + nominated in reopened nomination procedure

Légende

- * éligible comme suppléant uniquement
- ** classement par tirage au sort à égalité de voix
- + nommé dans la procédure de nomination re-ouverte

AL - Albania

Sent ballots: 16

Participation: 50 %

Received ballots: 8

Candidates

DODBIBA Eno **	2	SHOMO Vjollca	3
NIKA Vladimir	4		
PANIDHA Ela **	2		

Allotment of seats

Full Member

NIKA Vladimir	4
SHOMO Vjollca	3

Substitute

DODBIBA Eno **	2
PANIDHA Ela **	2

AT - Austria

Sent ballots: 145

Participation: 36 %

Received ballots: 52

Other Capacity

Received valid ballots: 19

Candidates

HAAS Franz *	12	SCHWEINZER Friedrich	17
HEDENETZ Alexander Gernot	13		
SCHRITTWIESER Waltraud *	13		

Allotment of seats

Full Member

SCHWEINZER Friedrich	17
HEDENETZ Alexander Gernot	13

Substitute

SCHRITTWIESER Waltraud *	13
HAAS Franz *	12

Private Practice

Received valid ballots: 33

Candidates

FORSTHUBER Martin	21	WEINZINGER Philipp	19
HARRER-REDL Dagmar	22		
ISRAIOFF Peter	10		

Allotment of seats

Full Member

HARRER-REDL Dagmar	22
FORSTHUBER Martin	21

Substitute

WEINZINGER Philipp	19
ISRAIOFF Peter	10

BE - Belgium

Sent ballots: 230

Participation: 53 %

Received ballots: 123

Candidates

CLERIX André	55	QUINTELIER Claude **	42
DAELEMANS Frank F.R. *	37	VAN DEN BOECK Wim	32
DE CLERCQ Ann G. Y.	52	VAN MALDEREN Joëlle	50
LEYDER Francis	59	VANDERSTEEN Pieter **	42
MACKETT Margaret	26		
NOLLEN Maarten Dirk-Johan	25		

Allotment of seats			
Full Member		Substitute	
LEYDER Francis	59	QUINTELIER Claude **	42
CLERIX André	55	VANDERSTEEN Pieter **	42
DE CLERCQ Ann G. Y.	52	DAELEMANS Frank F.R. *	37
VAN MALDEREN Joëlle	50	VAN DEN BOECK Wim	32

BG - Bulgaria

Sent ballots: 58		Participation: 29 %		Received ballots: 17	
Candidates					
ANDREEVA Natasha Petkova	9	KOSSEVA Radislava Andreeva	10		
BENATOV Samuil Gabriel	13	PAKIDANSKA Ivanka Slavcheva	12		
CHILIKOV Alexy Atanasov	2	SHENTOVA Violeta Varbanova	6		
DARAKTSCHIEW Todor Dotschew	1	STOYANOV Todor Nikolov	5		
GEORGIEVA-TABAKOVA Milena Lubenova	13	VINAROVA Emilia Zdravkova	4		
IVANOV Ivan Nikolov	2				
Allotment of seats					
Full Member		Substitute			
BENATOV Samuil Gabriel	13	ANDREEVA Natasha Petkova	9		
GEORGIEVA-TABAKOVA Milena Lubenova	13	SHENTOVA Violeta Varbanova	6		
PAKIDANSKA Ivanka Slavcheva	12	STOYANOV Todor Nikolov	5		
KOSSEVA Radislava Andreeva	10	VINAROVA Emilia Zdravkova	4		

HR - Croatia

Sent ballots: 25		Participation: 40 %		Received ballots: 10	
Candidates					
BOSKOVIC Davor		5	VUKINA Sanja		8
DLACIC Albina		8	VUKMIR Mladen * /**		6
HADZIJA Tomislav **		6			
KORPER ZEMVA Dina		3			
Allotment of seats					
Full Member			Substitute		
DLACIC Albina		8	VUKMIR Mladen * /**		6
VUKINA Sanja		8	HADZIJA Tomislav **		6

CY - Cyprus

Sent ballots: 11		Participation: 91 %		Received ballots: 10	
Candidates					
DEMETRIADES Achilleas L.		4	THEODOULOU Christos A.		5
MARKIDES Hermione Al.		5			
Allotment of seats					
Full Member			Substitute		
MARKIDES Hermione Al.		5	DEMETRIADES Achilleas L.		4
THEODOULOU Christos A.		5			

CZ - Czech Republic

Sent ballots: 93

Participation: 27 %

Received ballots: 25

Candidates

ANDERA Jiri * /**	21	MALUSEK Jiri	20
FISCHER Michael	6	ZAK Vitezslav	16
GUTTMANN Michal	22	ZEMANOVÁ Veronika * /**	21
HAK Roman * /+	18		
HOLASOVA Hana	21		

Allotment of seats

Full Member

GUTTMANN Michal	22
HOLASOVA Hana	21
MALUSEK Jiri	20
ZAK Vitezslav	16

Substitute

ZEMANOVÁ Veronika * /**	21
ANDERA Jiri * /**	21
FISCHER Michael	6
HAK Roman * /+	18

DK - Denmark

Sent ballots: 257

Participation: 33 %

Received ballots: 84

Other Capacity

Received valid ballots: 24

Candidates

KANVED Nicolai	21
PEDERSEN Soeren Skovgaard	16

Allotment of seats

Full Member

KANVED Nicolai	21
PEDERSEN Soeren Skovgaard	16

Substitute

Private Practice

Received valid ballots: 60

Candidates

CHRISTIANSEN Ejvind *	16	STRUVE Casper	24
HEGNER Anette	20		
KOEFOED Peter	48		

Allotment of seats

Full Member

KOEFOED Peter	48
STRUVE Casper	24

Substitute

HEGNER Anette	20
CHRISTIANSEN Ejvind *	16

EE - Estonia

Sent ballots: 26

Participation: 54 %

Received ballots: 14

Candidates

KAHU Sirje	13	OSTRAT Jaak *	12
KOITEL Raivo	6	SARAP Margus *	8
KOPPEL Mart Enn	10	TOOME Jürgen	13
NELSAS Tõnu	12		

Allotment of seats			
Full Member		Substitute	
KAHU Sirje	13	OSTRAT Jaak *	12
TOOME Jürgen	13	SARAP Margus *	8
NELSAS Tõnu	12	KOITEL Raivo	6
KOPPEL Mart Enn	10		

FI - Finland

Sent ballots: 183		Participation: 40 %		Received ballots: 73	
Candidates					
AALTO Juha-Matti **	22	KÄRKKÄINEN Veli-Matti *		24	
ERKKILÄ Anniina *	39	KONKONEN Tomi-Matti Juhani		25	
ETUAHO Kirsikka Elina *	27	SAHLIN Jonna Elisabeth		26	
HÄYRINEN Ville Tapani **	22	TIMONEN Tuomo Markus Antero		11	
HONKASALO Terhi Marjut Anneli		43			
Allotment of seats					
Full Member			Substitute		
HONKASALO Terhi Marjut Anneli		43	ERKKILÄ Anniina *		39
SAHLIN Jonna Elisabeth		26	ETUAHO Kirsikka Elina *		27
KONKONEN Tomi-Matti Juhani		25	KÄRKKÄINEN Veli-Matti *		24
HÄYRINEN Ville Tapani **		22	AALTO Juha-Matti **		22

FR - France

Sent ballots: 1105		Participation: 23 %		Received ballots: 255	
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Of which invalid: 1

Other Capacity

Received valid ballots: 106					
Candidates					
BAUVIR Jacques	92	ROUGEMONT Bernard *	73		
CONAN Philippe Claude *	75	TARAVELLA Brigitte	83		
GENDRAUD Pierre	71				
LE VAGUERÈSE Sylvain Jacques	62				
Allotment of seats					
Full Member			Substitute		
BAUVIR Jacques	92		CONAN Philippe Claude *	75	
TARAVELLA Brigitte	83		ROUGEMONT Bernard *	73	
GENDRAUD Pierre	71		LE VAGUERÈSE Sylvain Jacques	62	

Private Practice

Received valid ballots: 148					
Candidates					
CASALONGA Axel	113	NEVANT Marc	105		
DELORME Nicolas *	72	NUSS Laurent	114		
LEBKIRI Alexandre	88	PRUGNEAU Philippe *	42		
MOUTARD Pascal Jean	69				
Allotment of seats					
Full Member			Substitute		
NUSS Laurent	114		LEBKIRI Alexandre	88	
CASALONGA Axel	113		DELORME Nicolas *	72	
NEVANT Marc	105		MOUTARD Pascal Jean	69	

DE - Germany

Sent ballots: 4290

Participation: 22 %

Received ballots: 927

Of which invalid: 1

Other Capacity

Received valid ballots: 338

Candidates

KREMER Véronique Marie Joséphine	216	WEINGARTEN Ulrich **	190
MARX Thomas	208	WINTER Andreas	273
TÜNGLER Eberhard	200		
WACHTLING Bernd **	190		

Allotment of seats

Full Member

WINTER Andreas	273
KREMER Véronique Marie Joséphine	216
MARX Thomas	208

Substitute

TÜNGLER Eberhard	200
WACHTLING Bernd **	190
WEINGARTEN Ulrich **	190

Private Practice

Received valid ballots: 588

Candidates

BANSE Klaus-Dieter	84	NOACK Andreas	47
BOCKHORN Josef	154	POTT Thomas	55
BRÖCHER Dirk Joachim	46	RAUNECKER Klaus Peter	46
GONG Jinping	42	RICHLY Erik *	29
HARTIG Michael	89	SCHÖBER Christoph D.	65
JANSSEN Bernd Christian	45	SCHÜLLER Michael	61
KELLER Günter	117	SPRINGORUM Harald	99
KEULERTZ Robin	49	SUN Yiming	53
KILGER Christian	55	UNGERER Olaf	102
LEISSLER-GERSTL Gabriele	335	VOGELSANG-WENKE Heike	338
MAIKOWSKI Michael	249		

Allotment of seats

Full Member

VOGELSANG-WENKE Heike	338
LEISSLER-GERSTL Gabriele	335
MAIKOWSKI Michael	249

Substitute

BOCKHORN Josef	154
KELLER Günter	117
UNGERER Olaf	102

GR - Greece

Sent ballots: 24

Participation: 46 %

Received ballots: 11

Candidates

BAKATSELOU Vassiliki **	3	TSIMIKALIS Athanasios	4
LIOMBIS Alexandros	1	YAZITZOGLU Evagelia S.	8
SAMUELIDES Emmanuel * / **	3		

Allotment of seats

Full Member

YAZITZOGLU Evagelia S.	8
TSIMIKALIS Athanasios	4

Substitute

SAMUELIDES Emmanuel * / **	3
BAKATSELOU Vassiliki **	3

HU - Hungary

Sent ballots: 70

Participation: 27 %

Received ballots: 19

Candidates

BANDY Tamasné *	2	MACHYTKA-FRANK Daisy	4
BIRO Irén Erzsébet	0	MAK Andras	8
BODIZS Arpad *	3	PETHO Arpad	19
KENYERES Mihaly *	1	SZENTPÉTERI Zsolt	15
KERESZTY Marcell *	13	TÖRÖK Ferenc	18
KÖTELES Zoltan *	11		
LENGYEL Zsolt	15		

Allotment of seats

Full Member

PETHO Arpad	19
TÖRÖK Ferenc	18
LENGYEL Zsolt	15
SZENTPÉTERI Zsolt	15

Substitute

KERESZTY Marcell *	13
KÖTELES Zoltan *	11
MAK Andras	8
MACHYTKA-FRANK Daisy	4

IS - Iceland

Sent ballots: 22

Participation: 32 %

Received ballots: 7

Candidates

DAVIDSSON Snaebjorn H. *	6	INGVARSSON Sigurdur **	3
FRIDRIKSSON Einar Karl **	3	JONSSON Thorlakur	2
HARDARSON Gunnar Örn	4		

Allotment of seats

Full Member

HARDARSON Gunnar Örn	4
INGVARSSON Sigurdur **	3

Substitute

DAVIDSSON Snaebjorn H. *	6
FRIDRIKSSON Einar Karl **	3

IE - Ireland

Sent ballots: 76

Participation: 47 %

Received ballots: 36

Candidates

BOYCE Conor	28	KELLY Donal Morgan *	24
CASEY Lindsay Joseph	24	MCCARTHY Denis Alexis	30
GAFFNEY Naoise Eoin *	21	ROCHE Dermot	16
GILLESPIE Richard	15	SYRTSOVA Ekaterina *	22
HARTE Seán Paul	26		

Allotment of seats

Full Member

MCCARTHY Denis Alexis	30
BOYCE Conor	28
HARTE Seán Paul	26
CASEY Lindsay Joseph	24

Substitute

KELLY Donal Morgan *	24
SYRTSOVA Ekaterina *	22
GAFFNEY Naoise Eoin *	21
ROCHE Dermot	16

IT - Italy

Sent ballots: 526

Participation: 57 %

Received ballots: 301

Other Capacity

Received valid ballots: 35

Candidates

BARACCO Stefano	19	MACCHETTA Francesco	24
COLUCCI Giuseppe	22	PIO Federico	20
GUERCI Alessandro	22		
LEGANZA Alessandro *	20		

Allotment of seats

Full Member		Substitute	
MACCHETTA Francesco	24	LEGANZA Alessandro *	20
COLUCCI Giuseppe	22	PIO Federico	20
GUERCI Alessandro	22	BARACCO Stefano	19

Private Practice

Received valid ballots: 266

Candidates

CHECCACCI Giorgio	126	MODIANO Micaela Nadia	137
CONTADIN Giorgio	14	PES Matteo	37
DE GREGORI Antonella	60	RAMBELLI Paolo	120
FREYRIA FAVA Cristina	25	SANTI Filippo	73
GERLI Paolo	76	TAGLIAFICO Giulia	44
GERMINARIO Claudio	31	TRILLAT Anne-Cecile	26
GISLON Gabriele	46		

Allotment of seats

Full Member		Substitute	
MODIANO Micaela Nadia	137	GERLI Paolo	76
CHECCACCI Giorgio	126	SANTI Filippo	73
RAMBELLI Paolo	120	DE GREGORI Antonella	60

LV - Latvia

Sent ballots: 18

Participation: 67 %

Received ballots: 12

Candidates

FORTUNA Jevgenijs	10	SMIRNOV Alexander	4
LAVRINOVICS Edvards *	8		
OSMANS Voldemars	10		

Allotment of seats

Full Member		Substitute	
FORTUNA Jevgenijs	10	LAVRINOVICS Edvards *	8
OSMANS Voldemars	10	SMIRNOV Alexander	4

LI - Liechtenstein

Sent ballots: 21

Participation: 57 %

Received ballots: 12

Candidates

ALLWARDT Anke	12	PISCHETSRIEDER Tobias M. * /**	12
GYAJA Christoph Benjamin * /**	12		
HARMANN Bernd-Günther	11		

Allotment of seats

Full Member

ALLWARDT Anke	12
HARMANN Bernd-Günther	11

Substitute

PISCHETSRIEDER Tobias M. * /**	12
GYAJA Christoph Benjamin * /**	12

LT - Lithuania

Sent ballots: 25

Participation: 60 %

Received ballots: 15

Candidates

DRAUGELIENE Virgina Adolfina *	8	PETNIUNAITE Jurga **	7
GERASIMOVIC Liudmila **	7	SIDLAUSKIENE Aurelija	4
KLIMAITIENE Otilija	9	VIESUNAITE Vilija	6
PAKENIENE Ausra	4		

Allotment of seats

Full Member

KLIMAITIENE Otilija	9
PETNIUNAITE Jurga **	7

Substitute

DRAUGELIENE Virgina Adolfina *	8
GERASIMOVIC Liudmila **	7

LU - Luxembourg

Sent ballots: 21

Participation: 67 %

Received ballots: 14

Other Capacity

Received valid ballots: 4

Candidates

KUTSCH Bernd	4
LAMPE Sigmar *	4

Allotment of seats

Full Member

KUTSCH Bernd	4
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Substitute

LAMPE Sigmar *	4
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Private Practice

Received valid ballots: 10

Candidates

BEISSEL Jean	4	MELLET Valérie Martine *	5
BRUCK Mathis	6		

Allotment of seats

Full Member

BRUCK Mathis	6
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Substitute

MELLET Valérie Martine *	5
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MK - Macedonia

Sent ballots: 26

Participation: 58 %

Received ballots: 15

Candidates

DAMJANSKI Vanco **	5	KJOESKA Marija **	5
FILIPOV Gjorgji **	5	KOSTOVSKA-STOJKOVSKA Zivka **	2
ILIEVSKI Bogoljub **	5	PEKEVSKA Anna **	2
JOANIDIS Aleksandar	2	PEPELJUGOSKI Valentin	7
JOANIDIS Jovan	6	VUKADINOVIC PEKEVSKA Margarita	2
JOANIDIS Biljana *	2		

Allotment of seats

Full Member

PEPELJUGOSKI Valentin	7
JOANIDIS Jovan	6
ILIEVSKI Bogoljub **	5
KJOESKA Marija **	5

Substitute

FILIPOV Gjorgji **	5
DAMJANSKI Vanco **	5
PEKEVSKA Anna **	2
KOSTOVSKA-STOJKOVSKA Zivka **	2

MT - Malta

Sent ballots: 6

Participation: 50 %

Received ballots: 3

Candidates

GERBINO Angelo *	1
SANSONE Luigi	3

Allotment of seats

Full Member

SANSONE Luigi	3
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Substitute

GERBINO Angelo *	1
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MC - Monaco

Sent ballots: 5

Participation: 60 %

Received ballots: 3

Of which invalid: 1

Candidates

AMIRA Sami	1	THACH Tum *	2
HAUTIER Nicolas	2		
SCHMALZ Günther	2		

Allotment of seats

Full Member

HAUTIER Nicolas	2
SCHMALZ Günther	2

Substitute

THACH Tum *	2
AMIRA Sami	1

NL - Netherlands

Sent ballots: 503

Participation: 37 %

Received ballots: 188

Candidates

AALBERS Arnt Reinier	72	KRAAK Hajo	76
AMIRSEHHI Ramin	30	LAND Addick Adrianus Gosling *	39
BLOKLAND Arie	79	MULDER Cornelis A.M.	96
CLARKSON Paul Magnus	58	SCHOENMAKER Maarten	78
DU PONT Jeroen *	52	TANGENA Antonius Gerardus	105
HOGENBIRK Marijke	113	VAN WEZENBEEK Lambertus A.C.M. *	65
KETELAARS Maarten F.J.M.	74		

Allotment of seats

Full Member

HOGENBIRK Marijke	113
TANGENA Antonius Gerardus	105
MULDER Cornelis A.M.	96
BLOKLAND Arie	79
SCHOENMAKER Maarten	78
KRAAK Hajo	76

Substitute

KETELAARS Maarten F.J.M.	74
AALBERS Arnt Reinier	72
VAN WEZENBEEK Lambertus A.C.M. *	65
CLARKSON Paul Magnus	58
DU PONT Jeroen *	52
LAND Addick Adrianus Gosling *	39

NO - Norway

Sent ballots: 102

Participation: 21 %

Received ballots: 21

Candidates

BERG André	11	TAFJORD Harald	6
BERG Per Geir *	10	THORVALDSEN Knut	5
MIDTTUN Gisle Johan +	4	THRANE Dag	15
REKDAL Kristine	14		

Allotment of seats

Full Member

THRANE Dag	15
REKDAL Kristine	14
BERG André	11
TAFJORD Harald	6

Substitute

BERG Per Geir *	10
THORVALDSEN Knut	5
MIDTTUN Gisle Johan +	4

PL - Poland

Sent ballots: 301

Participation: 23 %

Received ballots: 70

Candidates

AUGUSTYNIAK Magdalena Anna	32	LEWICKA Katarzyna Dorota **	25
BURY Marek **	25	LUKASZYK Szymon **	23
GODLEWSKI Piotr	20	MALCHEREK Piotr	26
KAWCZYNSKA Marta Joanna	30	MALEWSKA Ewa **	23
KORBELA Anna	15	ROGOZINSKA Alicja **	25
KREKORA Magdalena	16		

Allotment of seats

Full Member

AUGUSTYNIAK Magdalena Anna	32
KAWCZYNSKA Marta Joanna	30
MALCHEREK Piotr	26
LEWICKA Katarzyna Dorota **	25

Substitute

BURY Marek **	25
ROGOZINSKA Alicja **	25
MALEWSKA Ewa **	23
LUKASZYK Szymon **	23

PT - Portugal

Sent ballots: 41

Participation: 49 %

Received ballots: 20

Candidates

ALVES MOREIRA Pedro	18	DIAS MACHADO Antonio J. *	17
CARVALHO FRANCO Isabel	18	FERREIRA MAGNO Fernando Antonio	17
CORTE-REAL CRUZ António * /**	18	PEREIRA DA CRUZ Joao	18
CRUZ Nuno * /**	18	SILVESTRE DE ALMEIDA FERREIRA Luís	2
DE SAMPAIO José Eduardo * /**	18	Humberto	

Allotment of seats

Full Member

ALVES MOREIRA Pedro	18
CARVALHO FRANCO Isabel	18
PEREIRA DA CRUZ Joao	18
FERREIRA MAGNO Fernando Antonio	17

Substitute

CRUZ Nuno * /**	18
DE SAMPAIO José Eduardo * /**	18
CORTE-REAL CRUZ António * /**	18
DIAS MACHADO Antonio J. *	17

RO - Romania

Sent ballots: 51

Participation: 43 %

Received ballots: 22

Candidates

BONCEA Oana-Laura	10	STRENC Alexandru Cristian	6
FIERASCU Cosmina-Catrinel	16	TEODORESCU Mihaela	14
NICOLAESCU Daniella Olga	9	TULUCA F. Doina	4
PETREA Dana-Maria **	7	VASILESCU Raluca **	7
PUSCASU Dan	2		
STANCIU Adelina **	4		

Allotment of seats

Full Member

FIERASCU Cosmina-Catrinel	16
TEODORESCU Mihaela	14
BONCEA Oana-Laura	10
NICOLAESCU Daniella Olga	9

Substitute

PETREA Dana-Maria **	7
VASILESCU Raluca **	7
STRENC Alexandru Cristian	6
STANCIU Adelina **	4

SM - San Marino

Sent ballots: 18

Participation: 89 %

Received ballots: 16

Candidates

AGAZZANI Giampaolo	12	PRIMICERI Maria Vittoria	4
MAROSCIA Antonio	12	TIBURZI Andrea	5
MASCIOPINTO Gian Giuseppe	2		
PETRAZ Davide Luigi *	12		

Allotment of seats

Full Member

AGAZZANI Giampaolo	12
MAROSCIA Antonio	12

Substitute

PETRAZ Davide Luigi *	12
TIBURZI Andrea	5

RS - Serbia

Sent ballots: 49

Participation: 39 %

Received ballots: 19

Candidates

BOGDANOVIC Dejan	12	PLAVSA Uros	7
BRKIC Zeljka	4	TRAVICA Katarina	7
JANKOVIC Mara *	3	ZATEZALO Mihajlo	6
MARKICEVIC PIJEVIC Marija	0		
PETOSEVIC Slobodan	5		

Allotment of seats

Full Member

BOGDANOVIC Dejan	12
PLAVSA Uros	7
TRAVICA Katarina	7
ZATEZALO Mihajlo	6

Substitute

PETOSEVIC Slobodan	5
BRKIC Zeljka	4
JANKOVIC Mara *	3

SK - Slovakia

Sent ballots: 31

Participation: 29 %

Received ballots: 9

Candidates

BAD'UROVÁ Katarina	9	NEUSCHL Vladimir	8
CECHVALOVA Dagmar +	7	ZOVICOVA Viera	2
MAJLINGOVA Marta	8		
MESKOVA Viera	3		

Allotment of seats

Full Member

BAD'UROVÁ Katarina	9
MAJLINGOVA Marta	8
NEUSCHL Vladimir	8
MESKOVA Viera	3

Substitute

ZOVICOVA Viera	2
CECHVALOVA Dagmar +	7

SI - Slovenia

Sent ballots: 29

Participation: 66 %

Received ballots: 19

Candidates

BENCINA Mojca	3	MACEK Gregor	18
FLAK Antonija *	15	MARN Jure	2
GOLMAJER ZIMA Marjanca	18	OSOLNIK Renata	18
IVANCIC Bojan *	17	ROS Zlata *	13
KUNIC TESOVIC Barbara	19		

Allotment of seats

Full Member

KUNIC TESOVIC Barbara	19
GOLMAJER ZIMA Marjanca	18
MACEK Gregor	18
OSOLNIK Renata	18

Substitute

IVANCIC Bojan *	17
FLAK Antonija *	15
ROS Zlata *	13
BENCINA Mojca	3

ES - Spain

Sent ballots: 205

Participation: 40 %

Received ballots: 81

Candidates			
ARIAS SANZ Juan	37	JORDÁ PETERSEN Santiago	41
BERNARDO NORIEGA Francisco **	40	MOHAMMADIAN Dario	14
ELOSEGUI DE LA PENA Inigo *	14	SÁEZ GRANERO Francisco Javier	45
GALLARDO Antonio M. *	10	SANZ-BERMELL MARTINEZ Alejandro	12
HERNANDEZ LEHMANN Aurelio	21	STIEBE Lars Magnus	28
IGARTUA Ismael	47	VILALTA JUVANTENY Luis **	40
ILLESCAS Manuel	18		
Allotment of seats			
Full Member		Substitute	
IGARTUA Ismael	47	VILALTA JUVANTENY Luis **	40
SÁEZ GRANERO Francisco Javier	45	ARIAS SANZ Juan	37
JORDÁ PETERSEN Santiago	41	STIEBE Lars Magnus	28
BERNARDO NORIEGA Francisco **	40	HERNANDEZ LEHMANN Aurelio	21

SE - Sweden

Sent ballots: 414

Participation: 26 %

Received ballots: 106

Candidates			
BJERNDÉLL Per Ingvar **	45	MARTINSSON Peter **	45
EKSTRÖM Nils +	53	SJÖGREN PAULSSON Stina	65
ESTREEN Lars J.F.	52	WESTMAN Maria Elisabeth Mimmi *	48
HASSELGREN Erik Joakim +	38	YDRESKOG Margareta	51
LÖWENADLER Jenny * /+	44		
Allotment of seats			
Full Member		Substitute	
SJÖGREN PAULSSON Stina	65	WESTMAN Maria Elisabeth Mimmi *	48
ESTREEN Lars J.F.	52	MARTINSSON Peter **	45
YDRESKOG Margareta	51	EKSTRÖM Nils +	53
BJERNDÉLL Per Ingvar **	45	LÖWENADLER Jenny * /+	44

CH - Switzerland

Sent ballots: 548

Participation: 34 %

Received ballots: 188

Of which invalid: 1

Other Capacity

Received valid ballots: 95			
Candidates			
COGNAT Eric Jean Marie **	43	MAUÉ Paul Georg	72
DE LUCA Giampiero **	43	THOMSEN Peter René	76
DE WEERD Petrus G.W.	33		
KLEY Hansjörg	58		
Allotment of seats			
Full Member		Substitute	
THOMSEN Peter René	76	DE LUCA Giampiero **	43
MAUÉ Paul Georg	72	COGNAT Eric Jean Marie **	43
KLEY Hansjörg	58	DE WEERD Petrus G.W.	33

Private Practice

Received valid ballots: 92			
Candidates			
BLANCHARD Eugène Gilles	27	LIEBETANZ Michael	74
KAPIC Tarik	50	REUTELER Raymond Werner	57
KÖRNER Thomas Ottmar	30	RUDER Susanna Louise	46
LATSCHA Silvan	63		
Allotment of seats			
Full Member		Substitute	
LIEBETANZ Michael	74	KAPIC Tarik	50
LATSCHA Silvan	63	RUDER Susanna Louise	46
REUTELER Raymond Werner	57	KÖRNER Thomas Ottmar	30

TR - Turkey

Sent ballots: 88		Participation: 31 %		Received ballots: 27	
Candidates					
ARKAN Selda Mine		15	MUTLU Aydin		15
ATALAY Baris		19	SEVINÇ Erkan **		14
CAYLI Hülya		12	YAVUZCAN Alev * /**		11
DERIS M.N. Aydin **		11	YURTSEVEN M. Tuna		7
KÖKSALDI A. Sertaç Murat **		14			
Allotment of seats					
Full Member			Substitute		
ATALAY Baris		19	SEVINÇ Erkan **		14
ARKAN Selda Mine		15	CAYLI Hülya		12
MUTLU Aydin		15	YAVUZCAN Alev * /**		11
KÖKSALDI A. Sertaç Murat **		14	DERIS M.N. Aydin **		11

GB - United Kingdom

Sent ballots: 2203		Participation: 12 %		Received ballots: 269	
Candidates					
ASQUITH Julian Peter		143	JACKSON John Timothy		131
BLAKE Stephen James		146	MERCER Christopher Paul		207
BOFF James Charles		159	RADKOV Stoyan Atanassov		122
BROWN John D.		140	WHITLOCK Holly Elizabeth Ann		158
DUNLOP Hugh Christopher		160	WRIGHT Simon Mark		182
DUNN Paul Edward		129			
GRAY John James		138			
Allotment of seats					
Full Member			Substitute		
MERCER Christopher Paul		207	ASQUITH Julian Peter		143
WRIGHT Simon Mark		182	BROWN John D.		140
DUNLOP Hugh Christopher		160	GRAY John James		138
BOFF James Charles		159	JACKSON John Timothy		131
WHITLOCK Holly Elizabeth Ann		158	DUNN Paul Edward		129
BLAKE Stephen James		146	RADKOV Stoyan Atanassov		122

Inventor Assistance Program (IAP) – Meeting between WIPO and the **epi** in Munich

S. Liebig, **epi** Secretariat

On February 24, 2017, a meeting between Mr. Marco Aleman, Director, Patent Law Division, World Intellectual Property Organization (WIPO), Mr. Tony Tangena, President of the **epi** and Mr. Peter Thomsen, Treasurer of the **epi**, was held in **epi**'s Secretariat in Munich.

The purpose of such an encounter was to discuss **epi**'s role as a supporter of the Inventor Assistance Program (IAP). The IAP, a WIPO initiative in cooperation with the World Economic Forum (WEF), is the first global program of its kind. The Program aims at matching under-resourced inventors in developing countries with patent attorneys who are willing to assist them, free of charge, in the patent-granting procedure before their national patent office. Patent protection is a powerful legal tool that gives a patent owner the control over who uses his/her invention. Patents can be very valuable but all too often however, inventors and small businesses in the developing world fail to seek and obtain patents as they lack the resources, or specialists' knowledge, that are needed to navigate the system.

As mentioned in issue 4/2016 of the **epi** Information, the **epi** is proud to become a supporter of the IAP program. During their first meeting in Munich Mr. Aleman, Mr. Tangena, Mr. Thomsen and Ms. Sadia Liebig, **epi** Secretariat, the designated person in charge of the IAP within the **epi** Secretariat, discussed further details with regards to the cooperation between **epi** and WIPO, in the framework of this project.

Mr. Aleman reported in great detail on the development of the IAP, and provided interesting feedback regarding its implementation in the present participating countries (Colombia, the Philippines and Morocco). WIPO hopes that more developing countries will apply to the IAP program during the year and that it would be extended accordingly.

Mr. Thomsen gave a short introduction on the **epi**. Emphasis was put on the fact that the **epi**, with more than 11,700 European patent attorneys constituting its members, provides an ideal target group to recruit volunteers that would be willing to assist selected inventors in developing countries to patent their inventions in Europe. Following the announcement in the **epi** Information and on the **epi** website, both parties agreed that further steps should be taken to promote the program in the European region.

epi's members should be aware that providing their services in the framework of the IAP will only require their professional skills and practical support, and will not imply any additional costs. The participating patent attorney works in close collaboration with the inventor/patent applicant, and it is worth mentioning that the latter will bear all of the costs inherent to the filing and prosecuting of the patent application. The patent attorney will benefit from the pro bono work by increasing his/her professional experience and by growing his/her network by making contact with persons who may, down the road, become paying clients as their businesses grow.



During the meeting, organisational matters, such as the possibility of registering via the **epi** website and the transmission of information to WIPO, were discussed. It was agreed that **epi** would provide WIPO with further information on future developments and on the progress of the IAP.

Meanwhile, should you be interested in participating in the IAP program as a European patent attorney, please contact the **epi** Secretariat on the following e-mail addresses:

Sadia.Liebig@patentepi.com or Treasurer@patentepi.com

Further information on the program can also be found on the following WIPO webpage:

<http://www.wipo.int/iap/en/>

Report of the European Patent Practice Committee (EPPC)

F. Leyder (BE), Chair

This report completed on 28 February 2017 covers the period since my previous report dated 2 November 2016 published in **epi** Information 4/2016.

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

The EPPC is presently organised with seven permanent Sub-Committees (EPC, Guidelines, MSBA, PCT, Trilateral & IP5, Quality and Unitary Patent). Additionally, *ad hoc* Working Groups are set up when the need arises. Two thematic Groups have also been set up.

1. European patent with unitary effect in the participating Member States

The entry into force of the unitary patent system requires ratification or accession of 13 States to the UPC Agreement, including Germany, France and the UK. As mentioned earlier, the outcome of the “Brexit” referendum had created some uncertainty about the ratification by the UK, but these disappeared when the UK confirmed. The latest plans provide for entry into force of the unitary patent system on 1 December 2017.

The next (21st) meeting of the Select Committee would take place at the latest in March 2017 or earlier, depending on the development of the question of the entry into force of the unitary patent system at the political level, within the framework of the European Union. It has now been postponed and will take place in Munich on 27 June 2017.

The series of UP/UPC seminars initiated by **epi** will resume in May, with seminars in Copenhagen, Basel and Barcelona. The forms and the plugin for online filing will hopefully be available by then¹.

2. PAOC thematic group

epi delegates of the Pure and Applied Organic Chemistry (PAOC) thematic group of the EPPC met with EPO representatives (mainly Directors in that field) on 22 June 2016. The report has now been finalised and will be published in **epi** Information 1/2017.

The next meeting will be held on 16 May 2017. The group welcomes suggestions as to topics for discussion.

3. Meetings of the EPPC

The EPPC met on 17 November 2016.

The highlight of the meeting was a presentation by Ms. Heli Pihlajamaa, Director Patent Law, who also answered the questions of the participants.

The committee also agreed to set up a new sub-committee to deal with quality, matching a new SACEPO/Working Party on Quality (WPQ). Bogoljub Ilievski, who has been appointed as the **epi** delegate to the WPQ, will lead the sub-committee.

The next meeting has been scheduled on the fringe of the Council meeting, starting in the afternoon of 25 April 2017.

4. G1/16 (disclaimers)

At its last meeting, the EPPC decided to set up a dedicated working group for preparing an *amicus curiae* brief. Once filed, the brief will be available in the file:

<https://register.epo.org/application?number=EP08003327>

5. SACEPO/WPQ

The new SACEPO/Working Party on Quality was created by a decision of the President of the EPO “to provide another channel to gather feedback on quality at the EPO based on the experiences of major user groups”. A short report of the first meeting, held on 17 January 2017 was published on the EPO website:

<http://www.epo.org/news-issues/news/2017/20170124.html>

6. ICT thematic group

epi delegates of the Information and Communication Technologies (ICT) thematic group of the EPPC met again with EPO representatives on 25 January 2017, to discuss some aspects of the passages in F-IV and G-VII relating to eligibility of computer implemented inventions (CII). A paper prepared by the ICT thematic group will be published in **epi** Information 1/2017, discussing Example 3, G-VII 5.4.2.3, which has been adapted from T102/08 (see page 33).

7. PCT Working Group

The PCT will take place in Geneva, from 8 to 12 May 2017. The draft agenda is already available on the WIPO website (“Future development of the PCT System”,

¹ At the 83rd meeting of the Technical and Operational Support Committee (TOSC) that took place on 3 November 2016, i.e. before the UK indicated that it would ratify the Agreement on a UPC, the EPO indicated that it would provide the forms and the plugin as soon as they would have a more concrete schedule for entry into force, well in advance, to include additional changes to the system

"Proposed changes to the PCT procedural and legal framework", "Other matters"), and the working papers are being uploaded at the same location:

http://www.wipo.int/meetings/en/details.jsp?meeting_id=42289

8. SACEPO/WPR 15

The summary of conclusions of the 15th meeting of the SACEPO/Working Party on Rules held on 15 November 2016 is attached. Thanks must go to the numerous colleagues who commented on the working documents, mainly on the website forum. In particular, the vast majority of comments included arguments against delaying entry in the European phase from 31 to 34 months with a corresponding reduction of the period for replying to the Rules 161/162 communication.

9. Meeting with the Vice-President DG1

On 1 March 2017, an **epi** delegation has met the Vice-President DG1 (Operations).

10. SACEPO/WPR 16

The 16th meeting of the SACEPO/Working Party on Rules will be held on 22 March 2017. The agenda includes the following items related to the EPPC (for which the working papers have not yet been received):

2. XML [this item will be dealt with in cooperation with OCC]
3. Information about Fraudulent invoices
4. Application of Rule 134 EPC
7. Assessment of unity of invention

11. CPL 48

The 48th meeting of the Committee on Patent Law will take place on 27-28 April 2017. The agenda had not yet been received at the time of finalising this report.

Guidelines

The EPPC urges the readers of this journal to address to its Guidelines Sub-Committee at eppc@patentepi.com any comments regarding the Guidelines for Examination in the European Patent Office <https://www.epo.org/law-practice/legal-texts/guidelines.html> or suggestions to improve them.

The same applies to the Guidelines for Search and Examination at the EPO as PCT authority <https://www.epo.org/law-practice/legal-texts/guidelines-pct.html>.

SACEPO WORKING PARTY ON RULES

Summary of conclusions of the 15th meeting held on 16 November 2016

I. Opening and adoption of the agenda

[SACEPO/WPR 7/16]

The Office welcomed the participants. The provisional agenda was adopted by the participants with the addition of a topic on the last day of validity of a European patent under "Any other business".

II. Corrective actions – clarification of Rules 51 and 162 EPC

[SACEPO/WPR 8/16]

Document SACEPO/WPR 8/16 was presented by the Office.

As to the proposed amendments to Rule 51(2) EPC, SACEPO members showed appreciation for the proposed change which was considered to increase clarity and therefore bring advantages for both applicants and third parties. The necessity to eliminate any legal uncertainty regarding the filing of divisional applications was in particular pointed out. A SACEPO member was concerned that the change could lead to a lack of internal consistency due to the fact that the lapse date was determined in different ways within the procedure. He in particular referred to the post-grant procedure, since for unitary patents the date of lapse for the non-payment of the renewal fees would correspond to the end of the regular period. Another SACEPO member invited the Office to raise this point with the participating states. The Office replied that the proposed amendments to Rule 51 EPC simply consist in a clarification of the current practice and stated that there is no legal impediment to the provision of different regimes in the pre- and post-grant procedure; both regimes are in line with the Paris Convention. SACEPO members suggested that the wording be clarified in the English text by replacing "on the due date" with "by the due date" in Rule 51(2) EPC. The EPO will consider the proposal further and if necessary reflect the change in the French and German translation.

SACEPO members showed understanding for the goal of the proposal aimed at re-establishing the long-standing practice of the EPO under Rule 162 EPC, i.e. to compute the number of claims fees due on the basis of the total number of claims on file at the end of the 6-month period under Rule 161 EPC. In reply to a SACEPO member who argued that the new system could lead to abuses, the Office explained that examiners do not start the search or the examination until the end of the six months. This means that they are always informed for which claims fees have been paid. The Office further clarified that the waiver has effect only subject to the payment of all claims fees due.

Some SACEPO members invited the Office to reconsider the proposed text of the Rule with the aim to further improve the clarity of its wording. In particular, a SACEPO member suggested that the second sentence contained in paragraph (2) of the proposed Rule 162 EPC be inserted in a new paragraph to make clear that the two sentences are not connected. Another SACEPO member argued that in the second sentence of Rule 162(2) EPC also the additional claim fees should be mentioned (i.e. "the claims fees or any additional claim fees"). The Office informed that it would consider these proposals.

Finally, a SACEPO member asked for clarification as to what would happen in case an applicant limits the claims during the further processing period; the Office clarified that the use of further processing into the period of Rule 161, for instance if an applicant decides at a late stage that he wants to file further claims, will be reflected in the claims fees due.

III. Fee payment methods

[SACEPO/WPR 9/16]

The Office presented document SACEPO/WPR 9/16.

SACEPO members expressed dissatisfaction with the EPO's decision to move to the "online only" management of deposit accounts for several reasons. Moving to the electronic management of deposit accounts put parties in a difficult situation where there is a technical breakdown at the users' end or in case the EPO online services are not available. Suitable alternative measures have therefore to be offered to users and clear instructions on the procedure to be followed in emergency situations have to be provided. The use of the fax as an emergency solution in case of technical breakdown at the users' side is considered to be the best solution even if it would not help in case of network fax machines. Credit cards payments are also considered as a suitable emergency measure: users should be allowed to call and simply provide their credit card details in those situations. The Office clarified that this measure, which only concerns the payments via deposit account, is meant to increase transparency. It further explained that the EPC contains specific provisions addressing the cases of technical breakdowns; similar safety net will also be foreseen in the arrangements for deposit accounts. A SACEPO member suggested that when a disruption of the system is announced, a reference to Rule 134(1) EPC be included in the warning published by the Office.

Concerns were raised in respect of applications which must be filed with the national patent offices for state security and national defence reasons since applications are mostly filed in paper together with the debit order for paying the fees due on filing. Under the new regime applicants will have to pay the fees separately. According to SACEPO members, this will increase the risk of errors. Also not all national Offices provide for a possibility to use the EPO's online filing tool. In that context the compliance of this

measure with Rule 2 EPC was questioned. The Office replied that most national Offices already offer the possibility to file online also the debit order; cooperation in this respect with countries which do not offer such possibility will be considered. The Office further clarified that the payment of fees is not considered an integral part of the procedure and therefore the debit order is not a "document" under Rule 2 EPC (for the interpretation in this sense see legal advice 6/91).

SACEPO members argued that the EPO's user-friendliness for making payments has decreased over the recent years due to the abolition of the administrative fee and the closure of the national bank accounts. They mentioned that not all contracting states are members of SEPA and that experience shows that SEPA transfers can take longer than one day. They felt an amendment of Art. 7(3) RFees as necessary to reflect the rapidity of the bank transfers. The Office replied that SEPA transfers last maximum one day. Finally, the Office stated that only Turkey is not a SEPA member but that it has accepted nevertheless the SEPA regulations and that therefore there are no disadvantages for Turkish users.

The Office concluded by saying that it would give to the points raised further consideration.

IV. Entry into the European phase

[SACEPO/WPR 10/16]

Document SACEPO/WPR 10/16 was presented by the Office.

The comments to the proposal to extend the time limit for entry into the European phase to 34-months and to shorten the time limit under Rule 161 EPC by 3 months differed amongst SACEPO members.

The majority of the SACEPO members were not in favour of the proposed extension of the time limit for entry into the European phase, especially in light of the shortening of the Rule 161 period which, according to them, would result in a very limited time at the disposal of the attorneys.

It was in particular argued by some SACEPO members that, such extension would increase the complexity of the system since it would not be a harmonised change adopted by all offices but it would only be valid before the EPO; applicants would therefore no longer take a global decision on the future of the patent but would work on the possible amendments of the application twice incurring greater costs.

A SACEPO member stated that such change of the established framework would entail huge efforts for the re-education of the users of the system and would moreover have the following side effects:

1) agents, normally asked by applicants to prepare an invoice for all national phase entries, would have to pay the foreign

agents without having the possibility to invoice the clients before 34 months;

2) in-house patent departments of European applicants would have to work on the same application more than once;

3) foreign applicants, who decide to enter the national/regional phase themselves, generally wait until the first EPO's communication is issued before instructing the European patent attorney; if the Rule 161 EPC period is reduced to 3 months, European representatives will not have sufficient time to work on a case, to the detriment of the quality of the reply to the written opinion and with the result that more objections will be submitted at a later stage of the procedure.

The same SACEPO member further noted that he did not share the Office's view that this extra time could allow the applicant to improve the documents for entry into the European phase on the basis of the comments provided by foreign agents or offices for the other national phase entries (paragraph IV, point 9 of the EPO document); the extra time of three months provided would indeed not be sufficient. Moreover, applications are prepared to meet specific national requirements and therefore cannot be used for all national/regional procedures.

According to him, moreover, the amendments under Articles 28 and 40 PCT may be filed on entry irrespective of the issuance of Rule 161 invitation. Rule 161 thus does not implement the right under Articles 28 and 40 PCT but on the contrary offers applicants the opportunity to file amendments under Article 123(1) EPC.

The same SACEPO member showed disagreement with the statement in paragraph III point 6, according to which more time is needed by the applicant to take the results of the international preliminary examination into account when preparing the amendments for the European phase, since the major part of the applicants do not make use of the Chapter II procedure.

Moreover, it was noted that, according to Rule 95.1 PCT (as in force as from 1.07.2017), designated and elected Offices are requested to inform the IB of national/regional phase entries: this would also be delayed if the time limit for entry is postponed.

Another SACEPO member indicated that the industry would welcome the three extra months for the decision to enter the European phase, since it would allow shifting the high costs of entry by three months. Applicants would in any event still have the possibility to enter before the deadline if preferred. However, he noted that European representatives would in practice – probably – still get the files only shortly before expiry of the extended time limit under Rule 159 EPC and would, therefore, often have three months less than today to prepare the amendments. Therefore, according to him, the proposal would be appreciated by applicants but may have negative consequences for attorneys.

Two SACEPO members noted that the proposal would have consequences for third parties. They would 3 months later than today be informed 1) whether an application would enter the European phase and become relevant prior art and 2) what an application is about since – under the proposal – also the publication in an EPO language of any Euro-PCT application not published in an EPO language by the IB, would be delayed by 3 months.

The Office acknowledged that SACEPO members were not in favour of an extension of the time limit for entry but clarified that the proposal was aimed at providing more flexibility to applicants. As to third parties, the Office stated that their position was carefully considered and that it was concluded that a delay of three months would not be too detrimental for them.

The Office moreover clarified that Rule 161 EPC implements Articles 28 and 40 PCT and that the time limit under Rule 161 EPC was extended from one month to six months to address the concern of the users concerning the introduction of the obligatory reply to the WO-ISA; before that moment users had never expressed any dissatisfaction with the deadline of one month. In this respect, a SACEPO member suggested that the 6-month time limit be used as regular office time limit (not a fixed office time limit) or 4 months in case the EPO acted as ISA in the international phase.

As to the translation into an EPO-language, the Office replied that the delay of three months would not create problems in practice since the translation would already be available in many cases from the entry into other national phases.

In reply to a concern of a SACEPO member, the EPO noted that only in rare cases the prior art from an international application which has not entered the European phase is relevant. It further explained that Rule 165 EPC was introduced as a protection for European users to ensure that international applications that had not been published would not have an effect on the grant of the applications pending at the EPO. A SACEPO member however argued that in practice this could be problematic in certain technical fields (i.a. polymer chemistry).

There was broad consensus that it would be helpful for the users if the 3rd year renewal fee could be paid upon entry into the European phase at expiry of the regular time limit for entry. SACEPO members suggested that Art. 51(1) EPC be amended to address this issue. A SACEPO member stated that another option would be to amend R. 159 EPC but that, according to him, such amendment would not achieve the purpose.

He moreover added that the Office could allow applicants to pay on entry subject to the condition that the amount to be paid on that date is not lower than the one which would be due according to the current wording of Art. 51(1) EPC.

Positive feedback was given on the proposal to have a new checkbox in Form 1200 by which users may indicate the wish to start earlier the processing of the application in the European phase ("early entry"). A SACEPO member showed appreciation for the proposed checkbox but stressed that applicants would still be faced with the problem of having to pay the 3rd renewal fee later; he finally argued that according to him a long list of actions to be performed if due would not simplify the system for applicants not routinely using this procedure. In addition a SACEPO member stressed the importance that fees can also be automatically debited in the case of early entry. The Office informed SACEPO members that the work on this has already started.

The Office summarised the feedback and concluded that the prolongation of the time limit for entry into the European phase was not sufficiently supported. It further announced that it would initiate the work on the 3rd renewal fee.

V. Update on Early Certainty

[SACEPO/WPR 11/16]

With regard to telephone interviews as first action, SACEPO members welcomed the proposal in general and thanked the Office for taking their comments on board. They invited the Office to inform agents of the upcoming telephone interview with a short notice in advance by phone or email. A SACEPO member insisted on the importance of ensuring that a complete report of the telephone interview is issued by the examiner. Another SACEPO member stated that the use of this instrument has to be limited to cases where small issues have to be clarified or examiners decide to make proposals. Finally, a SACEPO member noticed that applicants are reluctant to pay for the work related to telephone interviews since they are not announced in official communications. The Office acknowledged that it would be good practice to inform the agents of the telephone interview in advance. It moreover stated that the instructions concerning the telephone minutes are clear and that those individual cases where the instructions are not complied with should be reported and addressed (some examples would be provided by epi). More in general, however, the Office would make sure that the instructions on how a telephone interview has to be conducted are clear enough.

SACEPO members were in favour of the proposal concerning the positive statements and suggestions, which would have as a positive consequence a reduction in the number of auxiliary requests and communications issued. However, examiners should not take offence if their suggestion is not followed by the applicant. The Office replied that this would be mentioned in the e-learning material.

The opinions of SACEPO members on summons as first action were diverging. A SACEPO member argued that the proposal would result in increased costs and that the Office should at least ensure that sufficient VICO facilities are available with no time constraints especially for complex cases.

According to another SACEPO member, two office actions are necessary before the oral proceedings. SACEPO members agreed that an advance telephone contact before the summons would be useful. Instructions on the summons should be inserted in the guidelines in order to avoid any lack of clarity. The Office replied that this instrument is not intended to be widely used, but rather when it is the only way out of a deadlock situation where no essential progress has been made to overcome the objections raised in the written opinion accompanying the search report and the Examining Division identifies no patentable subject matter in the application. The Office concluded that further consideration will be given to the suggestions provided.

SACEPO members showed appreciation for the proposal on the preliminary opinion accompanying the partial search results.

As to the proposal on the further harmonisation in the treatment of auxiliary requests, SACEPO members welcomed the decision of the Office not to limit the number of the auxiliary requests.

With regard to the streamlined opposition procedure, SACEPO members stated that it was too early to assess the effect of the change. However, a SACEPO member made reference to a specific case where a preliminary opinion was sent by the examiner a few weeks before the oral proceeding and asked the Office whether this was due to the change of procedure. The Office asked him to provide the number of the mentioned file.

A SACEPO member finally referred to previous discussions on early certainty and asked whether there was any follow-up with regard to the proposal of the Office to insert a box in the written opinion similar to the one present for PCT files and to the proposal to indicate the basis of the amendments for Euro-PCT applications according to Rule 137(4) EPC. With regard to the first question the Office replied that it would work on this; with regard to the second one, it explained that the proposal was put aside and that further options are currently considered by the Office.

VI. Report on the results of the user survey on the pilot on search strategies [oral report]

The Office reported on the results of the user survey carried out in the framework of the SACEPO PDI and SACEPO WPR.

SACEPO members expressed both in writing and orally during the meeting appreciation for the service provided by the Office, which meets users' expectations and needs.

The Office informed SACEPO members that following the positive feedback derived from the consultations as well as the support received from users in several meetings and seminars in 2016, the Office had decided to extend the current pilot programme by one year (until the end of 2017).

VII. Recent developments in the PCT framework

(i.a. CS&E) [oral report]

The Office reported in particular on the CS&E pilot, informing SACEPO members that the mandate was adopted by IP5 Heads (CS&E Cooperation Framework) and the preparatory phase of the pilot was launched on 2 June 2016. The following milestone would be the launch of the operational phase tentatively by mid-2017 on the basis of the work produced by the CS&E Pilot Group (IP5 representatives & WIPO).

The Office moreover informed SACEPO members of the possibility to file subsequently filed documents via ePCT as of 1.11.2016, and of the success of the PCT-Direct service offered by the Office, largely used by users (220 PCT-Direct requests submitted in average per month) and considered valuable by the other ISAs (for instance IL decided to offer the same service).

General information on recent Rule changes were also provided by the Office (revised Rules 9, 48 and 94 PCT in force since 1 July 2016; revised Rule 92 PCT in force since 1 July 2016; revised Rule 82quater PCT in force since 1 July 2016; revised Rule 45bis in force as of 1 July 2017). Finally, SACEPO members were updated on the new Rule 23bis PCT, which would enter into force on 1 July 2017, according to which any earlier search results and classification results available at the RO will have to be forwarded to the competent ISA.

SACEPO members thanked the Office for the report. As to the CS&E, a SACEPO member commented that, in light of the high costs, such system would be useful only in PCT Direct cases and not for the first search. He further added that the system would be attractive only if fee reductions are provided in the national phases before the designated Offices involved. As to the first comment, the Office stated that the matter had not been discussed and informed SACEPO member that some Authorities were in favour of replacing the supplementary international search service with the CS&E. The EPO did however not share this view. As to the second suggestion, the Office replied that the idea is indeed to introduce some financial incentives in the national/regional phases.

As a general remark, a SACEPO member argued that no examination fee should be requested in the European phase if examination was carried by the EPO in the international phase with positive results (at present reduction of 50% is granted). He therefore invited the Office to reconsider this issue also in light of the fact that the USPTO does not charge any fee in these cases. The Office replied that it was looking at this matter.

Finally a SACEPO member invited the Office to provide in future a written document to facilitate the understanding of the changes presented.

VIII. Update on procedural patent law harmonisation issues

The Office updated SACEPO members on recent developments in the area of procedural patent harmonisation and in particular unity of invention (a PowerPoint presentation was provided).

epi enquired whether its participation was foreseen. The Office informed SACEPO members that discussions on the participation of associations in the framework of the IP5 were ongoing, but that there was yet no common line as to how representation within Industry IP5 should evolve.

IX. Update on substantive patent law harmonisation issues

The Office provided an update on substantive patent law harmonisation issues (a presentation was provided to SACEPO members).

epi asked the Office whether its participation in the Symposium was foreseen. The Office replied that the participation of European associations was under discussion and that the user associations were trying to get China on board as observer (no formal invitation had however been sent).

A SACEPO member requested clarification as to the added value of the Symposium to be held in 2017 in comparison to the ones which took place in the past. He moreover added that the lack of progress was not necessarily a negative element since he felt that some limits had been crossed. He showed in particular dissatisfaction with the solution of having a full year grace period without declaration and with prior user rights limited to the country of the prior use. The Office replied that, unlike in the past, users were in the driver's seat and that the Symposium was not going to be an information session but a discussion among experts working on a way forward. The Industry Trilateral was working on reaching a consensus on a package of norms, and after a setback earlier this year, there were encouraging signs that progress was being made.

X. Any other business

epi invited the Office to further consider the issue of the last day of validity of a European patent which was discussed in the Committee on Patent Law held in May 2016. It also mentioned two documents published in CIPA Journal in this regard. The Office referred to the conclusions of the Chair of the PLC but took note of the invitation.

The Office finally informed the SACEPO members that a suitable period for the 16th SACEPO WPR could be the end of March 2017.

Report of the Harmonisation Committee (HC)

F. Leyder (BE), Secretary

This report completed on 20th February 2017 covers the period since my previous report dated 2nd November 2016.

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

25th Session of the SCP

The 25th session of the Standing Committee on the Law of Patents (SCP) of WIPO was held in Geneva from the 12th to the 16th of December 2016. **epi** has been represented by the undersigned then by John Brown.

The meeting papers are or will be available on the WIPO website:

http://www.wipo.int/meetings/es/details.jsp?meeting_id=42299

26th Session of the SCP

The 26th session of the SCP will be held in Geneva; it has been postponed by one week and will now take place from the 3rd to the 6th of July 2017. **epi** will be represented by John Brown then by the undersigned.

The meeting papers are or will be available on the WIPO website:

http://www.wipo.int/meetings/es/details.jsp?meeting_id=42299

Discussions on Substantive Patent Law Harmonisation in Group B+

The meetings of Group B+ do not involve observers, however some (old) documents have been made available on the EPO website during the period reviewed (during which the webpage has also been refreshed):

<http://www.epo.org/news-issues/issues/harmonisation/group-b-plus.html>

The newly posted documents were:

2015: Promoting Transparent Use of the Grace Period (Sept.2015) and Treatment of Conflicting Applications (Sept.2015)

2016: B+ Workstream on Prior User Rights: Further Work on the Scope of Prior User Rights

International substantive patent law harmonisation was on the agenda of meetings of the SACEPO/Working Party on Rules (16th November 2016) and of the Committee on Patent Law (21st November 2016), in both cases for information.

Group B+ Users' Symposium

As mentioned in my previous report, the Group B+ Plenary meeting took place on 4th October 2016. An agreed statement has been published, mentioning:

[...] Group B+ reaffirmed the importance of continued engagement with all interested stakeholders. As a next step towards finalising the consultation document, the Group agreed to hold a user symposium to allow a wider range of users to contribute to the development of proposals.

In the "save the date" message sent to **epi**, the EPO stated that the purpose was in particular to allow Industry Groups from Group B+ delegations not represented in the Industry Trilateral, i.e. from Australia, Canada, Korea and New-Zealand, the opportunity to be informed of the harmonisation process within the Industry Trilateral and its results so far. It was thought that these national Industry Groups, some of which operate under systems quite different from the Industry Trilateral participants, might also perhaps contribute to the process, inter alia by bringing fresh views which might be beneficial to the exercise.

The Users' Symposium, entitled "Cornerstones for patent law harmonisation: a B+ Sub-Group / Industry Symposium" will be held on 20th June 2017, at the EPO in Munich. **epi** would be cordially invited to designate two participants to attend on its behalf.

Report of the Litigation Committee (Litcom)

A. Casalunga (FR), Chair



Axel Casalunga

The Brexit

1. We are faced with the result of the British referendum which decided that UK should leave the European Union.

In order to effectively leave the EU, UK has to trigger Article 50 of TEU.

According to Ms. Theresa May, British prime Minister, this Article would be triggered by the end of March 2017. After that date, a time period of two years should be used by the UK and the European Union to negotiate the practical and legal implications of such a leave.

This time period ends in March 2019 i.e. shortly before the next elections to the EU Parliament which are scheduled for June 2019. It can therefore be expected that the deadline of June 2019 will be met and that any extension will be short.

What are the consequences of the Brexit for the UPC Agreement?

2. Since the UPC Agreement (UPCA) as it now stands, cannot enter into force as long as UK has not ratified, the Agreement is presently on standby.

3. The UK representative at the last Competitive Committee announced that UK would ratify the UPCA soon, i.e. before leaving the EU.

4. UK has recently ratified the Protocol on Privileges and Immunities, thereby confirming the will of UK to allow entry into force of the UPCA.

The entry into force of the UPC Agreement could therefore still be expected before the end of 2017, after ratification by the UK and Germany (France has already ratified).

5. The local division in London as well as the London section of the Central Division could be opened as soon as the UPCA enters into force. British judges could be nominated to act in the various divisions of the First Instance Court as well as in the Court of Appeal.

6. However, as soon as UK will leave the European Union, UK would cease to be a Contracting Member State of the UPC unless appropriate steps would have been taken before the effective leave.

What are the hurdles for the UK to participate to the UPCA after leaving the EU?

7. The obstacles to a participation of UK after leave, i.e. after having ceased to be a Member State of the European Union, are mainly those dealt with by Opinion 1/09 of the CJEU.

That opinion considered that the draft Agreement on a European and Community Patents Court 7928/09 of March 2009 was not compatible with the EU treaties. In this draft Agreement, the European Community (now European Union) was a party, thus opening a possibility for an opinion of the CJEU.

8. The CJEU was particularly concerned with the fact that the proposed jurisdiction would have been competent for the future Community patent (now Unitary patent).

9. Since the proposed Agreement related to a jurisdiction having competence not only for European patents but also for Community patents, the Court insisted in its opinion on the fact that it is essential to guarantee a direct cooperation between the CJEU and the national jurisdictions in view of a uniform interpretation of the Union law. Since the proposed jurisdiction replaced the national jurisdictions, this direct cooperation between the proposed jurisdiction and the CJEU would not be guaranteed.

10. In addition, according to the opinion of the CJEU, the liability of a Member State of the European Union should always remain in case of a violation of Union law by a national jurisdiction and therefore also by the proposed jurisdiction.

11. In its opinion, the CJEU also noted that the Benelux court was in a different situation since it is a jurisdiction which is common to several Member States of the European Union and therefore within the jurisdictional system of the European Union.

12. In its conclusion, the CJEU indicated that the proposed jurisdiction was not compatible with the EU treaties since it had an exclusive competence for actions relating to the Community Patent while being outside of the jurisdictional system of the European Union.

13. The present UPCA has been amended so as to take into account this opinion. In particular, only EU Member States are admitted as signatory States and Article 21 of the present UPCA concerning the requests for preliminary rulings before the CJEU has replaced Article 48 of the draft Agreement 7928/09 of March 2009.

What could be done to eliminate such hurdles?

14. According to the definitions of Article 2 UPCA, “Member States” used throughout the Agreement, means “Member States of the European Union”. For example, Article 84 UPC clearly mentions that the UPCA is open for signature to “Member States” which means “Member States of the European Union”. If, however, UK ratifies the UPCA before leaving the EU, as it now seems to be the case, Article 84 should not be an obstacle since the condition will have been fulfilled on the date of ratification of the Agreement.

15. Concerning the liability of the Contracting Member States, the UK should positively recognize its remaining liability.

16. The UK should also positively recognize the possibility of preliminary rulings by the CJEU and the full application

of Union law by the UPC. This may be difficult since Ms. May clearly indicated in her speech and repeated in the Bill authorizing the UK government to trigger article 50, that the UK will not recognize anymore the jurisdiction of the ECJ.

Actions of the LitCom

17. The Litigation Committee is monitoring the situation resulting from the Brexit and will propose specific actions if it appears appropriate.

18. The LitCom is presently studying the UPC ITCMS (IT Court Management System) and will issue a position paper on the legal implications of the ITCMS in liaison with the OCC.

19. The LitCom is also studying the Draft Rules on mediation and arbitration and will issue a position paper on this question.

Minutes of the Meeting of the Committee on Biotechnological Inventions

S. Wright (GB), Secretary

Held on 22 November 2016 in Munich.

1. Minutes

The minutes of the last meeting in 2015 were approved. The meeting in 2016 did not take place immediately before our annual meeting of EPO Directors since the EPO meeting will take place later, perhaps next spring and probably with a slightly different format. The date has not yet been fixed, but it is likely to be in Munich. SMW is to contact the EPO in order to obtain dates on which the EPO Directors are meeting (probably in Munich).

2. Patentability of Plants

Apparently Austrian law has now also changed, to be similar to the law in France, Germany and Holland whereby plants, that are products of essentially biological processes, are unpatentable. Mr Wright reported on the CPL meeting that was held at the EPO on 21 November 2016. The issue of plant patentability had first been raised at the previous CPL meeting, and following that the EU Commission, under the Dutch Presidency, organised a meeting in Brussels in May. Only a few weeks ago there was an announcement from the EU Commission sug-

gesting that the Biotech Directive should be interpreted to exclude plant products. At the CPL meeting on 21 November the EU (even as observers) gave a short presentation. Most of the national delegates encouraged the EPO to consider changing the law, perhaps by amendment of the implementing regulations. The EPO promised to review the matter, and come up with proposals in the spring of next year.



Simon Wright

3. Stem Cells

Not much has happened since the publication of the EU expert group report. The cut-off date for patentability was now 5 June 2003, which is the publication date of the relevant ACT PCT case which refers to (how to obtain hESCs from) parthenotes. There has been a Board of Appeal Decision which referred the case back to the Opposition Division to take account of the EPO's change of practice to the 5 June date.

4. Sequence Listings

Anna Hally will talk to David Brophy (who is in her firm), Secretary of the OCC Committee, about the use of BISSAP. We should perhaps also tell the Directors at an appropriate point in time that we prefer the PatentIn software. WIPO is discussing a new standard 26 in 2017, and this will concern xml formats (and may change the rules on when you can use X to denote more than one amino acid).

5. Medical Use Claims

There was a brief discussion of the Warner Lambert litigation in the UK on the meaning of second medical use claims (there is parallel litigation in many European countries, including Spain, Germany, France, Denmark and Sweden).

6. Added Matter

It was reported anecdotally that Boards of Appeal are hopefully going to interpret Article 123 less strictly.

7. Pharmacogenetics

There has been no progress on this matter since the last meeting.

8. Antibodies

One member suggested that the EPO's practice had become a little bit easier, but we think it very much depends on the Examiner. Many Examiners are insisting on the introduction of sequences in the independent claims. This may be a topic for a presentation at the next meeting with the Directors.

9. Purpose Bound Protection

This was mentioned in connection with the EC Expert Group report.

10. Ariosa vs Sequenom

The **epi** filed an amicus brief at the Supreme Court, which unfortunately declined to take the case.

Separately, one member had a US case where the US Examiner added a method of treatment step at the end in order to secure allowance of the case.

11. Non-Unity

This is still causing our members problems, in particular if the objection is an "a posteriori" one. This stance can cause considerable difficulties for Applicants when the subject matter fragments according to the EPO Examiner's assessment of the case. In one particular application there was no disunity on the priority application, but one was raised in the later filed PCT application, so there was an inconsistency. Another member reported fewer problems and wondered whether the EPO is finally listening to attorneys' protestations. This, too, might be a useful topic for a presentation to Directors next year, perhaps with some case studies. We wonder whether the situation is worse in Biotech, especially if there are sequences, as the EPO has a tendency to regard each sequence as being a different invention. Several members reported that they had paid additional search fees and simply got the same art cited. One member suggested that we ought to get a refund of the search fee if there is no new art (although it was mentioned that in order to avoid this the EPO would simply just cite another "A" category document).

12. Guidelines for Examination

We had received a question from Francis Leyder, Chair of the UPC, which is being dealt with.

13. Candidate Associate Members

We have had no new requests, but note that Sisko Knuth-Lehtola has retired and has been replaced by Outi Elina Virtaharju.

14. Other Matters

Mr Wright is to contact Aliko Nichogiannopoulou for dates for the next **epi**-EPO meeting. Mr Wright also explained the changes in the **epi** Board for the next election term, and that Committees will carry on with the existing membership until the Warsaw Council Meeting in Poland, currently scheduled for 18 November, which would then decide the composition of Committees. This is different from the past where Committee Members had normally been elected in the first Council Meeting of the three year term.

The meeting closed at about 2:30pm.

Forthcoming epi Educational Events

UP/UPC Seminars 2017

In 2017 **epi** will resume the series of one day seminars on the Unitary Patent (UP) and the Unitary Patent Court (UPC) that began in 2016.

The seminars will provide knowledge of unitary patent protection and the Unified Patent Court (UPC) to allow **epi** members to work with the new system and to advise clients on strategic choices, for example on whether

to request unitary effect for their European patents, or when and whether to opt out of the UPC.

A number of the seminars will be held jointly with the EPO, with expert speakers from both the **epi** and the EPO.

The fee to attend the one day seminars will be:

380€ for **epi** members, 190€ for **epi** students and 480€ for non-**epi** members/non-**epi** students (for seminars in B-countries there will be a discount of 50%).

Please find here the current schedule:

4	May 2017	Copenhagen (DK)	epi roadshow supported by the EPO
30	May 2017	Barcelona (ES)	epi roadshow
31	May 2017	Basel (CH)	epi roadshow
	June 2017	Manchester (UK)	epi roadshow
	June 2017	Brussels (BE)	epi roadshow
	June 2017	Sofia (BG)	epi roadshow
	September 2017	Stockholm (SE)	epi roadshow supported by the EPO
	September 2017	Istanbul (TR)	epi roadshow
	September 2017	Lyon (FR)	epi roadshow
	September 2017	Vienna (AT)	epi roadshow
	September 2017	Bologna (IT)	epi roadshow supported by the EPO
	September 2017	Lisbon (PT)	epi roadshow supported by the EPO
	October 2017	Bern (CH)	epi roadshow supported by the EPO
	October 2017	Birmingham (UK)	epi roadshow
	October 2017	Bucharest (RO)	epi roadshow
	October 2017	Budapest (HU)	epi roadshow
	November 2017	Warsaw (PL)	epi roadshow
16	November 2017	Eindhoven (NL)	epi roadshow supported by the EPO
	November 2017	Munich (DE)	epi roadshow

CPE Seminars 2017 – Opposition and Appeal

16	May 2017	Rome (IT)	epi roadshow supported by the EPO
26	September 2017	Dublin (IE)	epi roadshow supported by the EPO
21	November 2017	Budapest (HU)	epi roadshow supported by the EPO

Concrete dates and locations will be announced on the **epi** website.

epi Studentship Admissions Committee

H. Mardoian, **epi** Secretariat

The Committee has been created following a decision taken during the 81st Council Meeting held in Berlin on 12th November 2016. It shall consist of six members elected by the Council.

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 the **epi** studentship ("the Rules").

According to the new Rules governing the **epi** studentship ("the Rules"), the **epi** Secretariat is responsible for a pre-

checking of each **epi** Student application and make sure that the applicant fulfil all the requirements. Therefore, the **epi** Secretariat will carry out a review of each application to become an **epi** student and forward it to the Committee.

The Committee will scrutinise each case forwarded by the **epi** Secretariat and will decide whether the candidate meets the requirements of the Rules.

Please note that Ms Hannah Mardoian is the Person in charge within the **epi** Secretariat. For further information she can be contacted by email under hannah.mardoian@patentepi.com

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 523 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.

Next Board and Council Meetings

Board Meetings

Due to the new structure of the Board of the **epi** the dates for the Board Meetings will be determined at a later stage.

Council Meetings

82nd Council meeting on 24/25 April 2017 in Munich (DE)

83rd Council meeting on 18 November 2017 in Warsaw (PL)

Decision T102/08 and the 2016 Guideline

Collective Paper by the CII Thematic Group
(Computer Implemented Inventions) of the EPPC

The 2016 version of the Guidelines for Examination in the EPO entered into force on November 1st, 2016.

This edition includes a comprehensive review of the passages in F-IV and G-VII relating to eligibility of computer implemented inventions (CII). The EPO introduced guidance on clarity and four examples of eligible/non-eligible, patentable/non patentable subject matter in CII, with a complete problem-solution approach reasoning with respect to exemplary prior art.

We deem that, on the whole, the introduced examples are very valuable and we appreciate the efforts of EPO, which takes the thoughtful direction in harmonizing the approach to inventions entailing ICT aspects.

In the following, we are concerned with Example 3, G-VII 5.4.2.3, which has been adapted from T102/08 of Board of Appeal 3.5.04. A brief summary of T102/08 is given in the following paragraphs before explaining how, in our opinion, Examiners should construe the guidance of relevant Example 3 above, avoiding taking it literally in some passages.

Decision T102/08 deals with invention entitled “A system for the transmission of a broadcast media channel to a remote client over a data connection”. The discussion of the decision is about the features involving the determination of a data rate at which the signal of the media channel is to be transmitted. The Board of Appeal clearly determined that there are two **partial** problems solved by the invention, namely:

- (1) how to provide channels to subscribers over limited bandwidth data connection at the highest possible quality of service (i.e. at the maximum possible data rate of the data connection); and
- (2) how to implement a pricing model which allows the customer to choose to pay a lower amount and to receive broadcast media channels with a quality of service lower than the highest possible quality of service,

and that both are solved by obvious means. In the second problem (2), the pricing model is included as a constraint to be met according to Comvik decision T641/00. This is likely the reason why decision T102/08 is cited in the Case Law of BoA 2016 in section I.D.9.22 (partial problems).

We performed a search in the BoA online database and found no other BoA decision citing T102/08. Therefore, T102/08 seems not to have been taken as a reference example of an application of Comvik decision.

The Guidelines 2016 G VII 5.4.2.3 example provides a complete problem-solution approach with the steps outlined in G VII 5.4 for mixed-type (technical/non-technical) inventions. The first step provides for a “prima facie” (sic.!) determination of the features making a technical contribution, while at the beginning of third step (determination of the differing features with respect to the closest prior art) the technicality analysis is deepened before formulating the objective technical problem.

In the example at hand, a feature “available data rate being lower than a maximum data rate for the data connection to the remote client” is found non-technical due to a specific disclosure in the description indicating application of a pricing model. The objective technical problem is therefore formulated as “*how to implement in the system of the closest prior art a pricing model which allows the customer to choose to pay a lower amount to receive broadcast media channels at a quality of service lower than the highest possible quality of service*” (i.e. at a data rate lower than the maximum possible data rate of the data connection).

With respect to the Example 3, for one thing we note that the expression “prima facie” has a well-recognized legal meaning, i.e. a prima facie positive assessment already has a full degree of certainty. For another thing, the fact that section 5.4 provides for a refinement of the assessment, confirms that the legal meaning of “prima facie” was not really meant in both 5.4 and 5.4.2.3.

Therefore, in our opinion, “prima facie” should be construed in this framework as meaning “at first glance”.

Moreover, the above objective technical problem “*how to implement in the system of the closest prior art a pricing model which allows the customer to choose to pay a lower amount to receive broadcast media channels at a quality of service lower than the highest possible quality of service*” contains a clear pointer to the implementation solution, because it contains “quality of service” as a quantitative parameter (“lower than”) which is directly tied to a corresponding technical parameter, i.e. “data rate of the data connection”, as outlined in the description of the invention.

In our opinion, even if T641/00 allows the non-technical aim to be added to the objective technical problem as a constraint to be met, care should be taken as to not use words in the non-technical aim that have a clear technical meaning within the framework of the invention, as in case T102/08. In T641/00, the problem was defined as “how to implement the GSM system in such a way as to allow user-selectable discrimination between calls for different purposes or by different users”, which doesn’t contain any pointer to a technical solution and even doesn’t mention any pricing model although there was a clear one in the invention’s description.

Besides the fact of introducing a pointer, the passage from “data rate of the data connection” to “quality of service” in T102/08 changes the framework for evaluating novelty and inventive step, in that a formerly technical feature disappears which could have contributed to the technical character, and a non-technical feature appears in its place, which is, per se, not only devoid of any technical meaning, but also very general and thus well known (“pricing model” is everywhere in the commerce field). Thus, application of the Guideline example in its present form to other cases would lead to inventions being unfairly prejudiced.

In the case at hand, we can push the reasoning even to the point where there is a clear technical effect in that a lower bandwidth consumption is required. The non-technical aim behind (the customer may pay less when he/she consumes less bandwidth) should not play a role when assessing the technical problem-solution, although it is clear that there is such an aim as a general constraint. The invention may be obvious because the implementation is within the average skill of the skilled person, but such assessment should be based on a correct problem-solution substantiation.

These considerations are confirmed in the comment to the objective technical problem formulation given in the same Example 3. Indeed, the Guidelines state:

“Thus the only technical effect achieved is determining the transmission data rate in accordance with the pricing model. The pricing model itself represents an aim to be achieved in a non-technical field which may be included in the formulation of the objective technical problem as a constraint to be met.”

In accordance with the Comvik decision T641/00, the formulation of the technical problem has to be construed as to not include any statement about the “data rate” but only the implementation of a pricing model allowing to choose between two different pricing options corresponding to different levels of service.

We fully understand that the aim of the EPO was to illustrate that a non-technical aim can be included in the formulation of the technical problem. This is why we propose changing the technical problem in the Example 3 in the next edition of the Guidelines and to interpret the present one, in the meantime, as above indicated.

Further, the reference to T102/08 should be removed. In fact, once a decision is in the Guidelines in a specific section, it is seen as established case law by the Office for cases dealt with in that section. However, in the present case, when looking at the more recent decision T963/09 (Selective auditing/ORACLE), the opposite conclusion about aim to be achieved in a non-technical field and objective technical problem is given – namely that, once there is a technical implementation which solves a technical problem in an inventive way, it does not matter whether there is a non-technical aim behind (point 7 of the decision).

Lastly, a search of other subsequent decisions of the Board 3.5.04 on the same subject-matter (mixture of technical and non-technical features) has revealed only the following ones:

- 1) T1869/08 of 4.10.2012
- 2) T2407/10 of 8.10.2013

which do not refer to T102/08, as above mentioned.

The first decision though repeats the scheme of T102/08 considering the differing features non-technical and integrally including them in the technical problem. Upon examination of the main request claims, we deem that one of them is technical instead (cf. decision, sections 2.8-2.9), so that the technical problem has a pointer to the solution again and is thus also defective.

The second decision takes a milder approach, since it offers two different equivalent formulations of the technical problems (cf. decision, beginning of sec. IX), and one is certainly devoid of any pointer. Moreover, the main claim features are such that the result is the same with both problems (inventive).

Hence, the above confusion in T102/08 between non-technical aim and objective technical problem, with all the ensuing drawbacks, seems to be little propagated although not officially validated by this Board of Appeal.

As a conclusion, Example 3 should be interpreted as providing an example of a two-stage assessment of technicality in a claim, i.e. a “first glance” assessment and a final, well considered assessment, and as providing a formulation of the technical problem which includes a non-technical aim (providing choice according to a pricing model) but which is focused on the relevant implementation, and avoiding any reference to technical features that are associated to pricing model, which have to be assessed in the inventive step assessment. Corresponding reformulation of the Guidelines would be highly welcomed.

This topic has been discussed with the EPO at a meeting of SACEPO/WPG (Standing Advisory Committee to the EPO/Working Party on Guidelines) and we believe that a satisfactory amendment of the Guidelines has been found.

Pure and Applied Organic Chemistry (PAOC) Annual meeting of epi (EPPC) delegation with EPO directors

R. Jorritsma (NL), Chair of EPPC PAOC Subcommittee

The annual EPO-**epi** meetings serve to discuss problems and developments 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 PAOC group, which is a subcommittee of EPPC.

The next (5th) meeting will be held on 16th May 2017. **epi** members who have questions, suggestions or experiences related to (first instance) interaction with EPO in these chemical and medical fields that may deserve a discussion with the directors, are emphatically invited to pass on their comments to the **epi** secretariat or to the reporter (jorritsma@nlo.eu) **before 31st March 2017**.

As an illustration of the discussions between the EPO directors and the **epi** delegation, the topics discussed at the 4th meeting of EPO-**epi** PAOC meeting, held in Munich on 22nd June 2016 are summarised below. All of the topics were submitted by **epi**.

Substantive issues

1. A double patenting between parent and divisional

On the question what “*merely partly overlapping*” in Guidelines 5.4 means as a condition for allowing double patents, especially in chemistry, it was concluded that a (any) difference in scope is sufficient for avoiding double patenting objection. For the rest, double patenting is a question of national law only. EPO agreed that the Guidelines are to be adapted in view of the practice.

2. Novelty of selections from broader ranges of Markush Grouping

The issue was the third criterion (“purposive selection”) of the criteria for novelty of selections after T230/07 (Guidelines G.VI.8). According to the directors, the third criterion never comes up with Markush groups (groups of entities), whether individualised or not. For numerical ranges, it depends on the case. This is in line with the Guidelines. The examiners look at what is “individualised” to allow the selection or determine novelty. In A54.3 cases, the third criterion should not play a role at all.

3. Non-therapeutic use

It was agreed that a disclaimer such as “non-therapeutic” to overcome an Article 53(c) objection should

be acceptable and should be the first approach. This may apply for instance when a distinction between purely nutritional or also therapeutic effects becomes relevant. T1635/09, which ruled otherwise, is followed only in very similar cases. EPO prefers to follow T74/93. Application with nutraceuticals is much broader, where regulatory authorities have not delimited a scope. In cosmetics the disclaimer should be used with active ingredients having a physiological function.

4. Experimental support which is not in the priority document

When claiming a second medical use, experimental support in the application as filed is typically required. Whether the invention is the same if the priority document does not have the support, i.e. whether priority right can be acknowledged, is basically a question of plausibility, to be decided case by case. Some industries now wait with filing product claims until they have sufficient data for medical use.

5. Sufficiency vs. inventive step as a basis for support

Whether defective support for a claimed (medical) effect is a matter of insufficiency (T609/02) or of lack of inventive step (T1329/04) depends on the case, e.g. whether there was a specific product. If the effect is in the claim, it would primarily be a matter of sufficiency. If only in the description, then it would typically be inventive step.

6. Clarity examination at first instance after G3/14

On the question whether and how G3/14 has influenced training programs and practice in examination G3/14, the directors responded that there has been no change in practice or training. The decision is clear for EPO. If a feature of a claim of one category is taken to a claim of another category, clarity is to be checked, also in opposition. **epi** stressed the importance of clarity examination before grant.

Opposition proceedings

7. Convergent / divergent requests in opposition proceedings

It was discussed whether convergence of requests as required in appeal proceedings is also to be followed in first instance proceedings. EPO feels that before the R 116 time limit, any request, even diver-

gent, will have to be considered. It is up to the patentee or applicant to give his priorities. At oral proceedings, requests should be funnelling. A late request directed at a dependent claim should typically be acceptable, unless it would be a surprise. Mutual understanding between parties and office is important. EPO is specialising examiners for oppositions.

8. Amendments under R80

An inconsistency in the description only needs to be resolved if it affects the claims. A pre-existing inconsistency cannot be repaired. In a discussion about the need for amending the description at all, arguments in favour seemed to prevail, mainly for quality reasons. EPO takes note, for further study.

9. Examination of all grounds of opposition at first instance so as to minimise remittals later on

For EPO, this would generally be too much effort. If patentee wants it, he can manage his requests or propose a particular order of grounds. Practice is to deal first with the issue that is common to multiple requests. In cases where inventive step is the biggest problem, it should perhaps be the first to deal with, but this is not usually done. The Opposition Division should point at important issues in summons. This requires a strong chair to indicate preferred and efficient order at the beginning of hearing. The comments were said to be useful input for the office.

General Procedural matters

10. Two oral proceedings on the same day for the same attorney of an association.

The question was how to avoid rejection of a request for postponement of one of the two oral proceedings on the basis that a colleague would be equally prepared. What is relevant is who regularly signs letters. If that person requests postponement for one of the two hearings, the request would normally be allowed.

11. PCT direct: noticed by examiner

There have been a few problems in the beginning. If the PCT direct is clearly identified – which it normally is – it should go well.

12. Announcement of cancelled proceedings in examination

Cancelled proceedings should always be communicated. Silence of a party in general means oral proceedings are maintained.

It was concluded from both sides that the meeting was very useful again, and the open and cooperative atmosphere was appreciated. To be continued.

The Long-Awaited European Patent with Unitary Effect and ad hoc Unified Patent Court: United Kingdom shows goodwill for driving the patent package to entry into force, even though roadblocks may still be lying down the way

P. Marollé (FR), French and European Patent Attorney

A long, ever-lasting journey

For many decades, the Council of Europe, then the former European Economic Community and eventually the European Union have worked on putting into place a system of a European patent with unitary effect, and on establishing a unified and specialized patent jurisdiction. It has been a long journey initiated in the fifties, which has been passionately debated within the patent community, fiercely opposed by some of the key players, and often subject to unexpected turnovers. Overall, it has severely tested the patience of many people. The journey has not ended yet, but it was expected to cross the finish line early 2017. Tremendous progresses have been made over the past years and months, with the adoption of a legal toolbox known as the “patent package”, and the preparation work by the Preparatory Committee. However, the results of UK’s referendum last June have thrown a serious pitfall in the way. C’est la vie! claimed many resigned persons. Indeed, the ratification of the Unified Patent Court Agreement – so-called UPC Agreement – was at stake, while it was supposed to be a mere formality. After several months of uncertainty and speculations, the UK government, however, announced last November their indeed intention to ratify the Agreement. There is still, though, a great deal of uncertainty, considering that a “hard Brexit” should prevail. If UK and Germany’s ratifications happen, which appears to be likely in light of the latest developments, this should allow the patent package to enter into force and the Court to start business in a foreseeable future. However, depending on the negotiations to be held between the UK and the Union vis-à-vis the withdrawal agreement and the political will of all parties, it is still questioned whether UK would remain a contracting State of the Court, after its withdrawal from the Union. Hence, this project, which has likely been one of the oldest of the Commission, may eventually come to a happy end... with or without participation of the UK in the long run, as time will tell.

Unsuccessful past initiatives

The very first attempt for unifying the European patent system was led by the Council of Europe as of 1949, with the project of a convention on the creation of a European Patent Office, which was never adopted. However, two

conventions relating to patent formalities and patent classification were signed respectively in 1953¹ and 1954², setting the trend of the harmonisation of standards. A more ambitious convention relating to substantive law including patentability criterion – so-called Strasbourg convention – was also signed in 1963³, but never entered into force. The European Economic Community relayed the Council of Europe to working on unifying patent laws across Europe. A first draft proposal for a European patent convention was elaborated in 1962⁴, which was debated within the Member States. It paved the path for a common procedure for the grant of patents, as enacted by the European patent convention – so-called EPC – adopted in 1973⁵, which was an international treaty creating the European Patent Office. In parallel, the community patent convention relating to revocation and infringement proceedings – so-called Luxembourg convention – was signed in 1975⁶. In the absence of sufficient ratification, further negotiations were held, and led to another agreement signed in 1989⁷. Once again, some of the Member States did not ratify it. These successive *cul-de-sac* were challenging people’s hopes. However, after a decade of stand-by, the Commission revived the project of a community patent by releasing a Green Paper on the subject in 1999⁸. This led to the first draft of an international agreement establishing a European community patents Court, designed to be concluded by the Union,



Patrick Marollé

- 1 European convention relating to the formalities required for patent applications, signed in Paris on 11 December 1953
- 2 European convention on the international classification of patents for inventions, signed in Paris on 19 December 1954
- 3 Council of Europe’s convention on the unification of certain points of substantive law on Patents for Invention, signed in Paris on 27 November 1963.
- 4 *Avant-projet de convention relatif à un droit européen des brevets élaboré par le groupe de travail « brevets »*, drafted in 1962
- 5 European patent convention, adopted in Munich on 5 October 1973
- 6 Convention for the European patent for the common market (community patent convention), signed in Luxembourg on 15 December 1975
- 7 Agreement relating to community patents, signed in Luxembourg on 15 December 1989
- 8 European Commission, communication entitled “Promoting innovation through patents – Green Paper on the Community Patent and the Patent System in Europe”, released on 5 February 1999

the Member States and certain EPC contracting third States. However, the Court of Justice of the European Union declared in 2011⁹ that such agreement was incompatible with the Treaties of the Union.

The patent package

After the negative opinion from the Court of Justice, the Commission made a revised proposal for the creation of a unitary patent and translation arrangements, via the two regulations n° 1257/2012 and n° 1260/2012¹⁰. In the absence of consensus between the Member States, twenty-five out of twenty-eight of them¹¹ were authorized to proceed with the enhanced cooperation for the creation of a unitary patent protection. Spain challenged unsuccessfully this initiative¹². In order to complete the patent package, a separate international agreement¹³ – the UPC Agreement – was signed in 2013 between the participating States. Subsequently, a protocol¹⁴ to the Agreement was signed in 2015 for allowing a provisional application, which is conventionally called the “sunrise period”. It aims at providing a smooth transition, considering that the Court should become fully operational upon entry into force of the Agreement, and for allowing the Administrative Committee to start its work, including the appointment and training of the judges. A Preparatory Committee has been set-up for establishing the Court, and it has focused since then on several areas including the legal framework¹⁵, financial aspects, and human resources. None of the previous projects ever reached such stage of preparation, and the establishment of the Court was expected to be only a matter of time. Indeed, pursuant to article 89 of the Agreement, the *patent package* will enter into force four months after the deposit of the thirteenth instrument of ratification or accession, including the three Member States in which the highest number of European patents had effect in 2012 i.e. France, Germany and UK. These three countries were given therefore a pivotal role in the system. So far, twelve countries have ratified the Agreement, including France and lately Italy. The entry into force of the *patent package* was then expected early 2017, after ratification by both UK and Germany. However, the unexpected result of the British referendum held on 23 June 2016 has suddenly cast doubt on

whether UK would – or even could still – ratify the Agreement for both legal and political reasons. Indeed, some of the amendments brought to the revised patent package appear a posteriori to be of paramount importance.

The specifics of the revised Agreement

The patent package as it currently stands aims at establishing a Court, not being an institution of the Union. However, for ensuring that the Agreement would be compliant with the Treaties of the Union, and would not be outside its judicial system, three principles have been enacted i.e.: the application of the Union law and its primacy over the other sources of law; the requests for preliminary rulings and the binding effect of the decisions of the Court of Justice; the joint liability of the contracting States for damage resulting from an infringement of the Union law by the Court of Appeal¹⁶. In addition, even though the Court has an international competence, it has been designed as a court common to the contracting Member States, which is then solely opened for signature and ratification by Member States of the Union¹⁷. The exclusion of non-Member States, i.e. European patent convention contracting third States including for instance Norway and Switzerland, went a priori far beyond the opinion of the Court of Justice. Indeed, even though its reasoning is opened to interpretation¹⁸, it is apparent that the Court of Justice did not expressly state that the Unified Patent Court may only be lawfully entered into between Member States. In the future, if the Court of Justice had to consider the question of the participation of non-Member States, it may confirm such interpretation, even though this is mere speculation at this stage.

The scenarios post-referendum

The foreseen *Brexit* has immediately casted a shadow on the roadmap. There is no debate that UK could not ratify the Agreement after withdrawal, as UK would not qualify anymore as a contracting Member State pursuant to article 2 of the Agreement. However, such withdrawal would be effective only after the UK has notified the Council pursuant to article 50 of the Lisbon Treaty, and after completion of the negotiations and adoption of a withdrawal agreement pursuant to article 218 of the functioning Treaty of the Union. The entitlement¹⁹ between the government and the parliament for notifying the Council has been debated. In

9 Court of Justice of the European Union, Opinion 1/09 of 8 March 2011

10 Regulation (EU) n° 1257/2012 of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection, signed on 17 December 2012; Council regulation (EU) n° 1260/2012 with regard to the applicable translation arrangements, signed on 17 December 2012;

11 Croatia, Italy and Spain did not participate to the enhanced cooperation, however Italy eventually signed the Agreement

12 Court of Justice of the European Union, Judgments C-274/11 and C-295/11 of 16 April 2013 ; Judgment C-146/13 of 5 April 2015

13 Agreement on a unified patent Court, signed in Brussels on 19 February 2013

14 Protocol to the agreement on a unified patent Court on provisional application, signed on 1st October 2015

15 The *patent package* has been completed with additional legal texts and documents, including the Decision on the scale of recoverable cost ceilings (draft dated 16 June 2016), Rules of procedures (18th draft dated 19 October 2015), Rules on the European patent litigation certificate (revised draft), Proposal for a code of conduct (4th draft dated 22 June 2016), Protocol on privileges and immunities signed on 29 June 2016

16 Articles 20 to 22 of the UPC Agreement

17 Articles 1, 2 and 84 of the Agreement

18 Council of the European Union, annex II to the note n° 10630/11 relative to “Creating a unified patent litigation system – Orientation debate”, released on 26 May 2011 – cf. page 7, first paragraph, “As a result of opinion 1/09 of the CJEU, it appears that the participation of third countries must be excluded”; page 8, first paragraph, “The only possible solution identified is the conclusion of an international agreement between the Member States to set up a unified patent court with jurisdiction for the Member States only”; for opposite opinions, see Pr. Dr. Tilmann’s article and the opinion from Gordon and Pascoe (cf. *infra*).

19 London High Court of Justice, Judgment “*R (Miller) –v- Secretary of State for Exiting the European Union*”, n° CO/3809/2016 et CO/3281/2016, 3 November 2016

a landmark judgment given on 24 January 2017²⁰, the Supreme Court ruled that the parliament had a word to say. Indeed, a majority of the judges considered that the “change in the law required to implement the referendum’s outcome [should] be made in the only way permitted by the UK constitution, namely by legislation”, and that “an act of parliament [was] required to authorise ministers to give notice to the decision of the UK to withdraw from the European Union”. Hence, UK is not expected to leave the Union at least before 2019. Before such withdrawal, as a full Member State and as a signatory State of the Agreement, UK may still ratify it. Several scenarios appear to be possible, all of them requiring a priori, to a certain extent, an adaptation of the patent package and the adoption of additional legal texts. Indeed, there is no provision relative to the termination of a membership to the Union of a contracting State, and the effects and consequences associated herewith, after ratification of the Agreement and its entry into force. In a first conservative scenario, UK may merely withdraw from the Agreement due to a “fundamental change of circumstances”, pursuant to the related procedure enacted in the Vienna Convention²¹. It may then be substituted by Italy as the third contracting country with highest number of European patents having effect in 2012, only after the corresponding revision of the Agreement, which may be difficult to achieve as requiring a renegotiation. In addition, the attractiveness of the Court would be dramatically altered. In a second non-cooperative scenario, UK may decide to neither ratify nor withdraw from the Agreement. This would considerably delay the establishment of the Court, if any, and may require the other signatory States to rely upon the Vienna convention for excluding UK from the Agreement. In a third compromising scenario, UK may decide to ratify the Agreement on the principle of sincere cooperation pursuant to article 4.3 of the Lisbon Treaty, but withdraw from it concomitantly to the withdrawal from the Union. The greatest advantage would be allowing the entry into force of the Court in the near future, without putting its existence at stake after the withdrawal of the UK. However, again, the attractiveness of the Court would be deeply diminished. Eventually, the fourth scenario, supported by a great majority of the patent community, would be the ratification of the Agreement by the UK, and its continued participation after withdrawal from the Union. This would require, however, a significant adaptation of the patent package, and the adoption of new legal texts.

UK’s goodwill

For more than four months, the UK government remained silent about its intention relative to the ratification of the Agreement. Several observers and actors of the patent community argued about the possibility – and the necessity

– for the UK to take part to the Court. Concerns were expressed that, independently to the legal feasibility, UK may decide not to ratify for political reasons. Indeed, the application and primacy of the Union law, as well as the authority of the Court of Justice on the Unified Patent Court, have been seen as potential insurmountable road-blocks, especially in the event UK would contemplate a “hard *Brexit*”, which is apparently the case. Some pro-*Brexiters* may indeed argue that the ratification of the Agreement would lead to UK devolving further sovereignty to a Court, that may be considered de facto a Union body. In August 2016, the UK Intellectual Property Office announced that the UK remained a signatory State of the Agreement, that they would continue to attend and participate in meetings, and that there would be “no immediate changes”²². While showing UK’s goodwill for not blocking the on-going preparation work, this announcement was laconic enough for being opened to interpretation and speculations. In September 2016, a comprehensive opinion²³ relating to the effect of *Brexit* on the patent package was released. On one hand, this opinion shows the strong support from the UK’s patent profession and stakeholders²⁴ for a continued cooperation of the UK. On the other hand, it confirms that “it would be constitutionally possible for the UK to continue to participate in the UPCA after ‘*Brexit*’”, even though reserves were emitted about the adaptations needed to the patent package, about the fact that the Court of Justice may come to a different conclusion, and about the political will. In October 2016, the UK’s Labour Party sent a letter to the government addressing a list of one hundred and seventy questions about the government’s plan regarding *Brexit*. Two questions ranking one hundred ten and one hundred eleven were relating to the Court. Even though this reform is not on the top-list of the items to be dealt with, these questions show that it is still on the radar of the politicians of both sides, which is a positive sign. As a side remark, it should be noted that it was unfortunate that a reference was made to the “ratification of the EU agreement to establish a Unified patent Court”, as the Agreement is instead an international agreement. It was intended that the UK would render their final decision, which many expected to be negative, at the Competitiveness Council meeting hold in 28 November 2016. Ahead of this meeting, the Council pointed out that several delegations had requested “to speed up the process of ratification of the UPC agreement in the member states that have not done yet with a view to a swift entry into force”²⁵. Despite a general scepticism, several organisations representing the future users of the

20 The UK Supreme Court, Judgment “*R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union*”, [2017] UKSC 5, 24 January 2017

21 Articles 54, 62, 65 to 67 of the convention on the law of treaties concluded in Vienna on 23 May 1969

22 UK Intellectual Property, announcement “IP and Brexit: The facts”, released online on 2 August 2016

23 R. Gordon QC and T. Pascoe, Brick Court Chambers, opinion “Re the effect of ‘Brexit’ on the unitary patent regulation and the unified patent court agreement”, released on 12 September 2016

24 The influential IP Federation, Chartered Institute of Patent Attorneys and the Intellectual Property Lawyers Association have taken the initiative of this opinion

25 Council of the European Union, note n°12612/16 relative to the outcome of the 3485th Council meeting on competitiveness, released on 29 September 2016

Court also lobbied for having the UK ratifying the Agreement²⁶. At the surprise of many, the UK announced that it intended indeed to ratify the Agreement. In a concomitant press release²⁷, then UK Minister of State of Intellectual Property, Baroness Neville Rolfe, stressed out that “the UK will continue with preparations for ratification over the coming months”, in line with the Prime Minister’s general declaration that “for as long as [they] are members of the EU, the UK will continue to play a full and active role”. The patent community has broadly welcomed the UK’s cooperative and pragmatic attitude. It should be underlined, however, that this announcement does not preclude the continued participation of the UK after withdrawal from the Union, as it was explicitly stated that “the decision to proceed with ratification should not be seen as pre-empting the UK’s objectives or position in the forthcoming negotiations with the UE”. Interestingly, this announcement finally stated that “the UPC itself is not an EU institution, it is an international patent court”, and that “the judiciary appointed include UK judges”. This concluding note can be seen as precautionary, for avoiding criticism based on the misunderstanding about the Court being a new Union institution. As many others, the President of the European Patent Office has welcome the UK’s decision to ratify the Agreement²⁸. In the following weeks, further progresses were made, as UK signed on 14 December 2016 the Protocol on privileges and immunities²⁹, which is required to allow the Court to operate in London. In addition, the UK IPO formed a dedicated team. On 11 January 2017, Jo Johnson MP was newly appointed as minister responsible for intellectual property. On the same day, during the session devoted to “managing intellectual property and technology transfer” before the Science and Technology Committee³⁰, the new minister reiterated UK’s intention to ratify the Agreement. At present, it can be expected that the third or fourth scenario would prevail, and that in any case the Court would enter into business in the coming year. However, even though there are good reasons to be optimistic, there are quite a few difficulties down the road to be overcome, especially considering that a “hard Brexit” is expected. On 13 March, the parliament has passed the government’s Brexit bill, and the bill should now be examined by the House of Lord. A notification of the Council should likely happen therefore in the coming weeks.

Possible Roadmaps

Independently to the scenario prevailing, and even though the patent package has still not entered into force, the latter already needs to be amended. Skilful commentators³¹ have attempted to provide some realistic solutions for allowing the continued participation of the UK to the Court after withdrawal. It should be underscored again that it remains a great uncertainty about the UK participation to the Court on the long-term, as Baroness Neville Rolfe’s announcement is silent about it. It is expected that it will be part of the wider Union withdrawal negotiations. Some commentators are even challenging UK’s need or will to ratify the Agreement, considering that these negotiations should follow the path of a “hard Brexit”. Anyhow, the patent community should stay optimistic and believe that the following scenarios would come true. Firstly, the UK and Germany should ratify the Agreement, hence allowing its entry into force on the first day of the fourth month after the last deposit of the instrument of ratification or accession pursuant to its article 89, and the immediate commencement of the “opt-out” sunrise period. Secondly, legal solutions should be found for compensating some of the deleterious effects of the withdrawal from the Union. Indeed, on the very day of the withdrawal, European regulations – including both regulations n° 1257/2012 and 1260/2012 – would cease automatically to be binding to the UK, and to have effects on its territory. A substitution tool would be necessary. A protocol relative to the extension of the unitary effect of the European patent to UK may therefore be established. This protocol would be considered as a special agreement pursuant to article 142 EPC. The regulation n° 1215/2012³² – so-called New Brussels I – would face the same fate, and an alternative solution should be found, likely in a similar way as the Lugano convention³³ between the Union, Norway, Switzerland and Iceland. In addition, the continued participation of the UK may be envisioned in an additional protocol to the Agreement. In such protocol, it may be introduced a new provision enacting that the loss of the quality of Member State of the Union would not prevent that State from remaining a contracting State to the Agreement. This protocol would be considered as a special agreement pursuant to article 149a EPC. The adoption of such protocols should not require negotiation between the contracting States and the obtaining of a consensus between them.

26 UJUB, T. Sueur’s electronic mail addressed particularly to Baroness Neville Rolfe, dated 28 September; MEDEF, M. Guilhaud’s letter addressed to M. P. Leglise-Costa, dated 27 September 2016; EuroChambers & UEAPME, A. Abruzzini & P. Faross’ letter addressed the Council, dated 22 September 2016; BusinessEurope, M.J. Beyrer’s letter addressed to P. Ziga, dated 26 September 2016; A letter from twenty large corporations addressed to K. Peeters, undated

27 UK Intellectual Property Office and Baroness Neville-Rolfe DBE CMG, press release “UK signals green light to Unified Patent Court Agreement”, 28 November 2016

28 EPO, press release “EPO President welcomes UK decision to ratify UPC Agreement”, 29 November 2016

29 European Council, dedicated webpage about the ratification details, including the signatures, of the Protocol on privileges and immunities.

30 Video of the fourth oral evidence session on “managing intellectual property and technology transfer on 11 January 2017, available on institutional website www.parliament.uk

31 R. Gordon QC and T. Pascoe (see supra); Prof. Dr. W. Tilmann, article “A possible way for a non-EU UK to participate in the Unitary Patent and Unified Patent Court?”, The IPKat website, published online on 28 June 2016; DeutscherAnwaltVerein, Position Paper “Despite Brexit the preparatory work on the UPCA should continue as planned, UK will be able to stay in the Agreement after a legal exit”, released in September 2016

32 Regulation (EU) n° 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, adopted on 12 December 2012

33 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007

Indeed, pursuant to article 86, the Administrative Committee is granted with the power to amend the Agreement to bring it into line with an international treaty relating to patents or Union law. Both articles 142 and 149a EPC provide a suitable legal basis. To avoid any disruption, it would be advisable to have both protocols adopted and annexed to the withdrawal agreement between UK and the Union, so that they would be part of the Union law. In addition, they should enter into force on the day of the withdrawal of the UK from the Union, meaning that the UK would be party to these protocols as a contracting non-Member State. With such legal framework, it is not foreseen that the Court of Justice would disapprove it. However, this is mere speculation. Obviously, whatever the solution endorsed for allowing a continued participation of the UK to the Court, the application and the primacy of the Union law and the authority of the Court of Justice should be preserved. At present, it is hardly impossible to predict whether UK would be ready – politically speaking – to be bound to these principles. As an alternative, if the UK does not continue participating to the Court after withdrawal of the Union, an amendment of the Agreement would still be necessary, especially for relocating the London section of the central division. Italy has already shown interest in hosting this section in Milan³⁴.

En route to the UPC

After several decades of aborted projects, and in spite of the UK's plans to withdraw from the Union, the preparation work for the establishment of the Unified Patent Court has started again. The results of the UK's referendum made the patent community fear that it would be the ultimate pitfall leading to the burial of the "unitary patent" for good. However, the announcement made at the Competitiveness Council meeting held on 28 November 2016, and reiterated since by the new minister

responsible for intellectual property, shown that there is hope. Since then, as indicated hereinbefore, the UK has actively engaged into ratifying the Agreement, by signing e.g. the protocol on privileges and immunities, and the UK IPO has set-up a dedicated team. In parallel, Germany has initiated again on December 2016 the ratification process, with the German Federal Ministry of Justice and Consumer Protection submitting to the Federal Council a new draft of the legislation to authorise ratification of the Agreement. Eventually, the Preparatory Committee published mid-January a new agenda – still speculative though – stipulating that the provisional application phase may start as soon as May 2017, with a 3-month sunrise period commencing next September, and then the Court becoming operational by next December. In the past weeks, further promising progresses were made. Without being exhaustive: Italy deposited its instrument of ratification on 10 February, before signing UPC Provisional Application Protocol; UK is progressing further the legislation work, e.g. lately with the publication of an Order relative to the Isle of Man³⁵; and Germany recently passed the draft legislations necessary for ratifying the Agreement, those bills now needing to progress through the next steps including before the *Bundesrat* and the Federal government. Even in Spain, which has been a fierce opponent to the UPC project for years, the opposition socialist party has made a non-legislative motion before the Parliament in favour of Spain signing and ratifying the Agreement, even though it should not lead to any change for the time being. Eventually, on 15 March 2017³⁶, the Preparatory Committee will hold its final meeting. It is expected – hoped – that UK and Germany's will to ratify promptly the Agreement, and that the latest agenda envisioning the kick-off of the system, will be confirmed. Hence, the patent community has now good reasons for being optimistic, and it can be expected that 2017 would be the year when the finish line was reached.

34 Ordine dei Consulenti in Proprietà Industriale, Letter requesting the bid for Milan to replace London as the location of a section of the central division, published on 23 August 2016

35 The Patents (Isle of Man) (Amendment) Order 2017, laid before Parliament on 22 February 2017

36 After submission of this article

Important Information for all epi Committee Members

Dear Committee Members,

As you will certainly be aware, in Berlin the Council approved to postpone the election of the Committee members until the Warsaw meeting in November 2017, when the respective elections will be held.

The exception will of course be the Disciplinary Committee and the Internal Auditors, as stipulated in our Founding Regulation.

Therefore, I would ask all the relevant Committee Chairs to inform the members of their Committees of this extra effort which we are requesting of them by extending their term of office, but which we hope will result in a better governance of our Institute.

Kind regards,

João Pereira da Cruz
Secretary General

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