epi® Information

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

ISSN 1434-8853

September 2019 3 | 19

Election to Council 2020

Cover:
Sun and clouds on the sea
Oil painting
This picture painted by
Marinella Valle
(European Patent Attorney, IT)
was part of the **epi** Artists
Exhibition 2018 at the EPO, Munich

Marinella Valle

Geboren und aufgewachsen in Mailand, absolvierte Marinella nach einer klassischen Ausbildung ein Studium der pharmazeutischen Chemie und Technologie an der Universität Mailand und promovierte in pharmazeutischer Chemie an derselben Universität. Im Anschluss an ihre Doktorarbeit folgte ein Masterstudiengang in Geistigem Eigentum am Politecnico Mailand. Heute ist sie italienische und europäische Patentanwältin und arbeitet als Patentanwältin in Mailand. Marinellas Leidenschaft für Kunst, Literatur und fremde Sprachen, die sich während ihres Studiums entwickelt hat, ist ungebrochen und vor einigen Jahren hat sie begonnen zu malen - insbesondere mit Wasserfarben und Ölgemälde.

Born and raised in Milan, after classical education Marinella graduated in Pharmaceutical Chemistry and Technology at the University of Milan and received a PhD in Pharmaceutical Chemistry from the same University. After completing the PhD, Marinella left her coat behind and completed a master's course in intellectual property at the Politecnico of Milan; she is now an Italian and European patent attorney and works as in-house patent counsel in Milan. Marinella's passion for art, literature and foreign languages, developed during her classical studies, never died and some years ago, she started painting, mainly water paintings and oil paintings.

Née et élevée à Milan, Marinella a obtenu, après des études classiques, un diplôme de l'université de Milan en Chimie et Technologie pharmaceutique, puis une thèse en Chimie pharmaceutique dans la même université. Après sa thèse, Marinella a obtenu un master en propriété intellectuelle à l'école polytechnique de Milan. Elle est aujourd'hui conseil en brevet italien et mandataire en brevets européens et travaille dans l'industrie à Milan. Sa passion pour les arts, la littérature et les langues étrangères, développée durant ses études classiques, ne s'est jamais éteinte, et elle a commencé à peindre il y a quelques années, principalement des aquarelles et des peintures à l'huile.

Table of Contents

Introduction

Patent practice

Case Law

CONTRIBUTIONS FROM epi MEMBERS AND OTHER CONTRIBUTIONS

Educational events

Committee reports

General Information

Editorial

Ha(a)rmless?

M. Névant (FR), Editorial Committee

Marc Névant

In its last meeting the Administrative Council of the EPOrg unanimously approved the revised Rules of procedure of the Boards of Appeal. A report on the main changes of the new Rules (compared to the existing ones) is available in issue 1/2019 of **epi** Information. An updated report can be found in the present issue. The revised Rules will enter into force on 1 January 2020, and are aimed – so we are told – "at increasing (i) efficiency, by reducing the number of issues to be treated, (ii) predictability for the parties and (iii) harmonisation".

Hmmm… Not so long ago we were given the opportunity to attend oral proceedings in Haar, Getting there, on a grim and rainy day, was certainly an experience (we doubt if any member of the Administrative Council has ever arrived there by S-bahn!). As to the case the Board of Appeal had to deal with, all possible grounds for revocation had been raised in the first instance, and a number of requests were up for discussion. The Board did not deem it appropriate to discuss whether the requests were admissible (some had been late filed) but instead focused on one specific request and one specific ground for opposition. Oral proceedings concluded within two hours. This case might prefigure what will happen when the revised Rules apply: fewer issues will be treated, hence probably improving efficiency (at least from the standpoint of the Boards of Appeal). In the mid- to long term, a Board of Appeal might even be able to hold two (or more) oral proceedings on the same day! It remains to be seen, though, whether predictability and harmonization will actually result from the implementation of the new Rules. What is certainly predictable is that the number of requests filed in opposition proceedings will dramatically increase since patent proprietors will not want to leave any stone unturned. The net result is that part of the workload will shift from the Boards of Appeal to the Opposition Divisions. Given the huge difference between the opposition fee and the appeal fee, increasing the workload of the Opposition Divisions may not be so financially sustainable after all.

Going back to Haar (which, you will have noted, is not exactly our cup of tea), the Enlarged Board of Appeal has, in its wisdom, decided in case G 2/19 that holding oral proceedings in Haar does not violate Articles 113(1) and 116(1) EPC. As I write these lines the reasons for the decision of the EBA are not yet available so we can only but assume that the decision of the Administrative Council to move the Boards of Appeal from Munich to Haar was found to be compliant with Article 6(2) EPC which states that "the European Patent Office shall be located in Munich. It shall have a branch at the Hague". By the same token, we assume that holding oral proceedings in Rijswijk or Berlin is also EPC-compliant.

On these thoughts we hope that our readers are enjoying a relaxing summer and wish a nice holiday to those who are about to take a break.

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 **14. Oktober 2019**. 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 **14 October 2019**. 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 **14 octobre 2019**. Les textes destinés à la publication devront être reçus par le Secrétariat avant cette date.

Election to Council 2020

Members of the Institute are invited to stand for election to the epi Council. Being a Council member means formally representing and championing the interests of the members of your constituency as well as bringing your passions and interests to the fore. You can actively shape the work and services of the Institute and have the opportunity to elect the Board of epi, being also eligible to become one of its members. It also allows you to be part of the body that is leading the epi task forces that address issues relevant to the Profession and your own constituency.

The responsibilities of a Council member are described in the By-Laws, and include attending the Council meetings, one in Spring and one in Autumn.

At the beginning of next year, the Council of the Institute is due to be elected for its new term. You can declare from 1st October 2019 – 1st November 2019 according to the Rules for Election to Council that you are ready to stand for election or for re-election to the Council. Your nomination can be done online through the **epi** website. The instructions how to log-in on the **epi** website can be found here:
https://patentepi.org/en/login

Alternatively, if the online nomination is impossible for you, you can use the nomination paper form that will be sent to you by 1st October 2019.

The usual case is that you stand for election in your own constituency, corresponding to your address registered at the EPO. Your constituency is the State party to the EPC in which you have your place of business or employment. Depending on the number of **epi** members in each constituency, 2, 4, or 6 council members are elected to represent the constituency, and the same number of substitute council members.

The election shall be by remote e-voting. You shall receive on 15th January 2020 at the latest, a web address for a secure website, and a personal password from our independent voting service provider.

If remote e-voting is impossible for you, the **epi** Secretariat will send you a ballot paper by post. You can request a ballot paper at the **epi** Secretariat. Your request in written form (e.g. by mail, fax or e-mail) must be received by the Secretariat at the latest on 1st November 2019.

The first meeting of the newly elected Council will take place in Glasgow on 11-12 May 2020.

If you have any questions, please contact the **epi** Secretariat as follows: Tel +49 89 242052 0
or email: info@patentepi.org

Introduction of web-based "Work Share" platform

Dr. B. Kunič Tešović (SI), Vice-President **epi**

On 20 September 2019 **epi** is introducing a new platform, so-called 'WORK SHARE' platform, with the purpose to enable enhanced cooperation between the **epi** members. The introduction of the platform was approved by the **epi** Council in April 2018.

The general purpose of the platform is to facilitate the interactive cooperation between European Patent Attorneys who are interested in exchange of work. The **epi** members will be able to offer the exchange of work in the form of an announcement which will be published in the platform after login to the **epi** website. **epi** provides this service on a non-profit basis and acts merely as an intermediate without taking any responsibility. The use of the platform does not impact the **epi** Code of Conduct which remains unchanged.

The idea of the platform came from several **epi** members who looked for more work sharing possibilities. Such possibilities may relate to various situations, from lacking capacity in different technical or scientific fields to attorney work-related coaching or mentoring that can be provided to colleagues who have recently passed the EQE or to absorb additional work when needed. It is not intended, however, that the platform would be used for tutoring/EQE (-papers) or training purpose.

The platform will be available on the **epi** website in the member restricted area by clicking the "Work Share" button. The relevant guidelines on its use will be accessible in this website section. More details will be published on the **epi** website in September. We would like to invite everyone to use this new feature and hope that this benefit for **epi** members will be appreciated!

How the Inventor Assistance Program (IAP) is helping under-resourced inventors in developing countries

G. Ragonesi, Associate Legal Officer Legislative and Policy Advice Section Patent Law Division, WIPO

The spark of invention can transform us with motivation and the right support. Mr. Ivan Rizo Tello already had the drive to succeed. WIPO's Inventor Assistance Program set him up with a patent attorney enabling him to secure protection for his innovation.

For Ivan, a young engineer, the idea struck in a parking lot outside of his hometown Cali, Colombia. He recently acquired a new car, which served as both a source of freedom and pride. Ivan wanted to keep it safe from the elements and theft. That need inspired him to invent a portable, solar car cover which conforms to the contours of the car. This technology is now the heart of the company, Reinventing, that Ivan and his wife created from scratch. Ivan always knew that his talent and life purposes relied in his ingenuity. That's why the couple decided to live off their creativity, and this invention gave them the strength to pursue their dreams.

Ivan wanted to further develop his innovation so Reinventing could bring it to the market. He needed something that would help him attract investors and potential business partners, and quickly realized that securing a patent was critical.

Unfortunately, patent protection is a struggle for under-resourced inventors like Ivan considering the costs of the official fees and professional advice. Many inventors in developing countries try to navigate the patent system by themselves but with limited success. Drafting a high-quality patent application is a complex task. It can take years to hone the skills to craft strategic patent applications to best position an invention for success.

Luckily for Ivan, the Inventor Assistance Program (IAP) helped him secure the services of a volunteer patent attorney. A World Intellectual Property Organization (WIPO)'s initiative, the IAP aims to level the playing field for inventors who have great ideas but struggle to secure patents due to a lack of funds. The program matches under-resourced inventors in developing countries with patent experts willing to support them free of charge.

Volunteers provide assistance before the inventor's local patent office and, in some selected jurisdictions, for the national phase of an international application filed through the Patent Cooperation Treaty (PCT). Europe and United States of America are among those jurisdictions. The IAP is implemented in five countries: Colombia, Ecuador, Morocco, Philippines and South Africa, and can count on more than 100 patent professionals around the world. The Institute of Professional Representatives before the European Patent Office (**epi**) sponsors the program to ensure inventors have access to quality European professionals to support filings at the EPO and in European countries.

Mr. Rizo Tello is one of the 44 inventors who have already received assistance in the framework of this program. With that help, he is one of the first of five inventors to secure a patent. The IAP was critical for Mr. Rizo to obtain this important asset for his business. Mr. Rizo Tello, was recently awarded with a WIPO medal for his invention.[1] Now backed by a patent, Ivan is seeking out investors and partners to further develop his family business. "We found support only with the IAP. We had few resources and needed to protect our invention," he said.

IAP Volunteer Ms. Luz Helena Adarve, Partner, Cardenas & Cardenas –Dentons, guided him throughout the patent application process. She described this opportunity as "a very rewarding experience that reminds us that behind all patent applications, beyond talent and ingenuity, there are constant, resilient people with a desire to contribute to society." She added, that the IAP "allows the ingenuity of developing countries like Colombia to reach out the entire world."

The IAP is proving to be a great opportunity for developing countries to help individual inventors secure patent protection while enhancing the capacity of the local patent profession. It relies on volunteers like **epi** members to fuel the program. Through the program, you will both help inventors and connect with a broader professional network around the world.

To become an IAP volunteer visit the program's website at https://www.wipo.int/iap

1 https://www.wipo.int/iap/en/news/2019/news_0005.html

Patent practice

Get Your Act Together
The New Rules of Procedure of the Boards of Appeal are coming

M. Thesen (DE), European Patent Attorney

The revised Rules of Procedure of the Boards of Appeal (RPBoA) were adopted by the Boards of Appeal Committee on 4 April 2019 and were unanimously approved by the Administrative Council on 26 and 27 June 2019 and have been published in OJ 2019, A63.

The aims of the revision of the RPBoA are to increase efficiency by reducing the number of issues to be treated; predictability for the parties; and harmonisation. In addition, important elements of case management have been introduced so as to allow the Boards of Appeal to organise their work and use their resources more efficiently.[1] The target is to contribute to the goal of deciding 90% of all new appeals within 30 months, which is still a long way to go from the current 62 months.

Some procedural changes, such as the possibility to request an acceleration of the appeal proceedings (Art. 10(3) to (6) RPBoA) or to combine connected cases (Art. 10 (2) RPBoA), will likely improve the flexibility.

The main impact on the practice will result from the undoubtedly stricter treatment of amendments of the case, wherein everything beyond the strict review of the decision under appeal is considered an amendment. This would include new requests and new documents as well as new arguments. The parties shall clearly specify, and

1 https://tinyurl.com/CaseLawAppeals

provide justification for, their amendments. For amendments filed with the grounds of appeal or the first reply, it is enough to provide reasons why the amendment overcomes the objections raised (Art. 12 (4), 2nd par RPBoA). Stricter rules apply for subsequent requests, facts, objections or evidence which had not been admitted; or which should have been submitted; or were no longer maintained in the 1st instance proceedings (Art. 12 (6) RPBoA). These shall not be admitted unless the "*circumstances of the appeal case justify their admittance*", even where filed with the grounds of appeal.

In any case, the Boards of Appeal have a discretionary power to not admit amendments, even at early stages of the procedure.

For amendments filed after the filing of the grounds of appeal or the reply, the parties must further provide reasons for submitting the amendment(s) at this stage of the proceedings (Art. 13 (1) RPBA). Finally, amendments filed after the deadline for written submissions or after receipt of the summons "*shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified by cogent reasons by the party concerned.*"

The new RBPA will apply to cases pending on, or filed after, 01 January 2020, although the stricter rules in Art. 12(4) and (6) and Art. 13 RPBA will not be applicable to amendments filed no later than 31 December 2019.

The practitioner is well advised to review their pending cases and submit amendments, if any, before 31 December 2019. Though the new RBPoA are, by and large, a codification of the stricter side of the case-law of the EPO Boards of Appeal, it must be expected that the risk that new matter will be precluded will sharply increase.

Noting the stricter requirements in Art 12(6) RPBoA, the practitioner should be extra vigilant before abandoning any objection or request, or before submitting new requests or documents at a very late stage of the 1st instance proceedings. Not filing the request or document might result in a finding that it "should have been submitted", whereas filing the request or document might entail a decision not to admit it. In both cases, the new matter will be deemed inadmissible for a possible appeal.

The author doubts that the increase in formalism and additional discussions on whether the reasons or justification for filing amendments late are sufficient, or what circumstances of the appeal case justify their admittance, will lead to a streamlined procedure. It has been shown that this is likely not to be the case[2]. A reasonable and flexible application of Art. 114(2) EPC should be sufficient for the purpose of policing procedural abuses and tactical delays (which was the original purpose of Art. 12(4) of the (current) RPBoA)[3]. Undue limitations of the subject-matter of the proceedings beyond what is necessary for the latter purpose will inevitably be detrimental to the quality of the decision. Some of the previously stricter provisions in the original draft have been attenuated by allowing certain amendments under *exceptional circumstances* of the appeal case as a result of users' observations. , The overall impression is that the stricter framework will hamstring not only the parties but also the Boards of Appeal and is likely to be fodder for the complainants in their challenges to the constitutionality pending at the Bundesverfassungsgericht[4].

Michael Thesen

1 Anetsberger/Wegner/Ann et al. **epi** Information 2015, 63
2 Teschemacher, Mitteilungen der deutschen Patentanwälte, Heft 7-8 2017, 319 - 32
3 Vissel, GRUR Int. 2019, 25

Updates on EPC Practice

M. Nollen (BE), European Patent Attorney

Following overview is an update based on information in the Official Journal (OJ EPO), editions 3/2019, 4/2019, 5/2019 and 6/2019. The information is given for the sake of attention. Readers should rely on the information in the OJ EPO. The published updates relate to financial matters, to international collaboration and to other matters

I Updates on Financial Matters

1.1 Notice relating to refunds

The EPO has announced a new refund procedure that was entered into force on 1 April 2019. It herein distinguishes between refund to a deposit account, and refund to a bank account. Refund by means of a cheque was discontinued.

1.1.1 Procedure for refund to deposit accounts

The procedure introduces the use of "refund instructions". This is a document which indicates to which deposit account any refund is to be made. In the absence of such refund instructions, the EPO will use the deposit account of the representative. Refund instructions are preferably sent to the EPO in electronically processable format (XML). Currently, the use hereof is still facultative, but it will become obligatory in the near future.

One option enabled herewith is that a different deposit account for refund (i.e. of a third party) may be specified than the deposit account of the representative. One may think of the deposit account of the applicant rather than that of the representative. It is reminded and recommended that the refund instructions need amendment upon change of representative or a transfer of rights. When filing a revised refund instruction together with a request for such change or transfer, the revised refund instruction will only be used after the EPO has processed the change of representative or transfer of rights. Special attention is needed for a PCT application: the change of representative needs to be communicated to the PCT, but the revised refund instruction is to be sent to the EPO. In case of withdrawal of a representative, any refund instructions given shall be deleted.

Maarten Nollen

The EPO will continue to send a Communication ('refund advice') providing the details of the refund.

1.1.2 Refund to a bank account

If there are neither refund instructions, nor the deposit account of a representative can be used, the EPO will provide a refund to a bank account. The applicant should indicate the details of the bank account.

Thereto, the EPO will send an additional communication containing a refund code. To claim the refund, the party will then need to go to https://epo.org/fee-payment-service/en/login and register with an email address and password. The party can then login and enter the application number, the code and the details of a bank account. Please note that associating multiple email addresses with one account will not be possible.

1.2 Amendment of Automatic Debiting

By decision of the President of 22 May 2019, the Annex A.1 (AAD) and A.2 to the Arrangements for Deposit Accounts (ADA) have been amended. It specifically relates to point 6.2 of the AAD and point II(m) and (n) of Annex A.2.

The background of the amendment is a change to the preliminary examination under the PCT. This change allows that preliminary examination may start **earlier** than upon expiration of the time limit (Rule 54bis 1(a) PCT: typically 22 months after priority). As a consequence, the AAD is now changed so that the handling fee (Rule 57 PCT) and the fee for preliminary examination (Rule 58 PCT, Rule 158(2) EPC) will be paid when the demand is filed, rather than upon expiration of the time limit.

1.3 Changes to the Fee Schedule

The EPO Fee schedule was amended per 1/4/2019. The fees for registration of transfers, licenses etc, under R22(2) and R23 EPC is now 100 euro. The search fee for a PCT-type search is 1205 euro for first filings and 1890 euro for all other cases. The fee for late furnishing of a sequence listing under Rule 13 ter PCT is 230 euro.

II International cooperation and document availabiltity

2.1 Extended Participation of EPO in WIPO's Digital Access System (DAS)

As reported earlier, the WIPO has launched a system for automatic exchange of priority documents between patent offices. The patent office can therein fulfil two roles: as depositing office and as accessing office. The EPO has decided to extend its participation to be active as depositing office for PCT applications. Hence, its participation is:

- as depositing and accessing office for European patent applications
- as accessing office for international applications entering into the European phase before the EPO as designated office (OJ EPO 2018, A78); and
- as depositing office for international applications (PCT) when acting in its capacity as receiving Office (RO/EP).

In order to enable applicants to make use of the DAS system, the EPO as depositing office will generate a DAS access code. For (EP- and PCT-) applications filed via Online Filing, CMS, the applicant will receive the DAS access code in a notification added to the acknowledgement of receipt. For EP and PCT applications filed otherwise (on paper, filed via Web-Form Filing or via national offices), a separate notification will be sent for the DAS access code. This DAS access code is to be mentioned on the filing form of the subsequent application.

If an applicant uses the DAS access code, the priority document will be included in the file. The fee for preparing the priority document (by the EPO) will no longer be due, if the applicant indicates the DAS access code correctly on the filing form of the subsequent application claiming priority.

2.2 Copy of search results of foreign priority documents (Switzerland)

As of 1 August 2019, there is no longer need to provide search results of priority applications from Switzerland to the EPO, as the EPO will do it by itself. This is thus an exemption under Rule 141(2) EPC). This applies to all cases for which no invitation under Rule 70b(1) was sent on that day.

The same already applied to several other countries and to priority applications searched by the EPO (such as for Belgium and the Netherlands). The list of other countries is now: Austria (AT), Switzerland (CH), Denmark (DK), Spain (ES), Japan (JP), Korea (KR), United Kingdom (UK), and United States (US).

2.3 PPH programme with Australia

The EPO has extended its collaboration on PPH-programmes with Australia and has therein also specified how one may use a positive opinion or granted patent from the Australian Patent Office at the EPO.

The EPO sets thereto a set of rules. It starts by specifying the applications for which PPH could be requested, namely those wherein all claims must sufficiently correspond to the patentable/allowable claims filed with IP-office of Australia. Furthermore, a PPH request may only be submitted for applications for which substantive examination has not yet started.

Then several documents are to be provided with the PPH-request, including the use of a specific form, a declaration that there is sufficient correspondence and any matters on the contents (prosecution history, cited documents etc), as far as not available to the EPO, or alternatively a list with all cited documents.

If there would be any deficiency, the applicant gets one opportunity for correction. If the request is accepted, the application will be examined in accelerated manner, as under the PACE-programme. The notice does not state how and whether the EPO will take account of the positive patentability opinion from abroad.

III Other updates

3.1 Notification by registered letter

Art 126(1) EPC was amended by the Administrative Council on 28 March 2019 into: *All notifications by postal services shall be by registered letter*". The amendment will enter into force on 1 November 2019. The amendment resides therein that the use of advices of delivery will be discontinued. It is observed that the EPO will start with the IT-implementation prior to 1 November, so that certain changes may become visible prior to 1 November 2019.

The EPO will send by registered letter:

(1) Decisions incurring period for appeal or a petition for review;
(2) Summonses, and
(3) Notifications from the Boards of Appeal (decisions, summons, communications drawing attention to formal deficiencies or noting a loss of right, etc).

An "acknowledgment of receipt" will be included with the notification by registered letter, as in current practice. The receiving party is requested to send this back to the EPO immediately upon receipt.
Notices and Communications for which no time limit is reckoned, or which do not require notification under the EPC or by order of the EPO President, will continue to be sent by ordinary mail.

3.2 Staying of proceedings in G1/19 and G3/19

The President of the EPO decided to stay proceedings in relevant cases following the referrals in G1/19 and G3/19 to the Enlarged Board. The decisions were made in April and became effective immediately. The stay will only apply to cases, of which the outcome of the proceedings depends entirely on how the Enlarged Board answers the points of law referred to it. It is the Examining or Opposition Division that will decide on the stay of proceedings.
For Referral G 1/19 ("Patentability of computer-implemented simulations") the relevant cases are those in which the inventive step of computer-implemented simulations is at stake. More particularly, the relevant question at stake will be whether or not a computer-implemented simulation of a technical system or process can be considered to produce a technical effect which goes beyond the simulation's implementation on a computer.
For Referral G3/19 ("Essentially biological process"), the relevant cases are those in which the claimed subject-matter encompasses a plant or animal exclusively obtained by means of an essentially biological process. Patent applications or patents claiming other plant-related inventions will not be affected.

3.3 New Rules of Procedure for the Boards of Appeal

The new Rules of Procedure for the Boards of Appeal have been published and will come into force on 1 January 2020. The contents hereof are discussed elsewhere. According to the Transitional Provisions, the new stricter articles 12 and 13 (setting the framework for the appeal and particularly on the submission of documents and requests) will gradually come into force. More precisely the old version of art 12(4) will continue to apply to any grounds of appeal filed before 2020 and any reply thereto. The old version of art 13 will apply, where the summons to oral proceedings have been notified before 2020.

Case Law

Breeding Issues:
Fruits of Crossing the Administrative Council

Part II of the article published in **epi** Information 2/2019

H. Sendrowski (DE), German and European Patent Attorney

What means are available to the President and the Administrative Council in case they take umbrage at a potential development of case law? This question has arisen in unprecedented urgency in view of decision T 1063/08 which has evoked bitter reactions of all "EU trilog" institutions – EU Council, Parliament and Commission, and, in turn, of the corresponding EPC Member States. In the first part of this article, the President's right to refer questions to the EBA in the light of the aforementioned circumstances has been commented on. In the present second (and last) part, alternative approaches are discussed.

1. Presidential comments in individual appeal proceedings

Decision T 1063/08 is not the only case at the EPO in which patentability hinges on the applicability of R. 28 (2) EPC. Further appeals are pending in which this rule had been invoked by the examining division for refusing the grant of a patent. Instead of, or in addition to, referring questions himself to the EBA the President may ask the Board of Appeal for an invitation according to Art. 18 RPBA. Such invitation would allow him to comment on questions of general interest which arise in the course of an individual appeal proceedings. This approach, however, comes with difficulties of its own: The right of the President to be invited to individual appeal proceedings is codified only in the RPBA. It is thus subject to the general reservation of Art. 23 RPBA. The position offered to the President by Art. 18 RPBA has no basis in the EPC. In decision J 14/90 the Board argued that the right of the President "supplements Art. 114 (1) and 117 (1) (b) EPC". This view is hardly convincing: The President is only allowed to provide his comments to questions of general interest. The "general interest" mentioned in Art. 18 RPBA cannot com-

prise a hypothetical "general interest" to have a specific patent granted or revoked. The grant or revocation of a European patent must not be made dependent from the applause of the general public or of vocal interest groups; the EPO carries out the grant of European Patents according to the law for the grant of patents established by the Convention only (Art. 1, 4 EPC). Thus, an invitation according to Art. 18 RPBA is not another opportunity for the executive to promote or prevent the grant of a specific patent. When commenting on questions of general interest the President is thus prevented from presenting observations concerning the patentability of the invention based on facts and evidence specific for the case in question. Unlike a third party according to Art. 115 EPC the President is not allowed to comment on the correct interpretation of the prior art or introduce new facts and evidence (unless they elucidate a comment to a question of general interest). Inviting the President to comment is thus not a fact finding exercise. Instead, the Board allows a third party, ad personam, to present opinions, to attend oral proceedings and even to comment on the spot. Care must be taken to avoid any impression that the President tries to instruct the Boards or that the Boards would be willing to receive any such guidance in their decision process.

In view of these constraints it is advisable that the President, before exerting his right to an invitation according to Art. 18 RPBA, obtains consent of the parties to his involvement in a specific appeal proceedings. Even considering that the parties have no effective means at their disposition to prevent the President from submitting comments, proceedings will run smoother if the parties do not take issue with these comments or question their appropriateness in the light of the EPC. In a situation like the present, where the EPO finds itself in the centre of a political storm, appellants are even likely to welcome an accession of the President in order to demonstrate that all political objections have indeed been heard by the Board.

For the sake of completeness it is observed that an invitation according to Art. 18 RPBA does not make the President a "party to the proceedings" within the meaning of Article 107 EPC. He has no right to submit requests (J 14/90 sec. 1.2). The President thus cannot use the invitation to request or force a referral to the EBA under the provisions of Art. 112 (1) (a) EPC. However, he may support a party's request for a referral by providing an independent argumentation. Also it appears that the Present may have done himself and the Administrative Council a disservice by filing a referral. It is to be feared that the Board of Appeal will suspend all pending proceedings relating to the questions referred by the President as long as the admissibility of the referral has not been decided. During such factual stay of proceedings parties cannot by themselves request a referral of the President's questions under Art. 112 (1) (a) EPC. Thus, the referral ties the hands of the only persons who could, without the limitations applicable to the President, request that the questions be decided by the EBA.

2. Referral to the ECJ

The most straightforward way of resolving the question underlying the disputed decision has unfortunately been ruled out by the EBA: A referral to the European Court of Justice (G 2/06 Headnote 1). Nevertheless, it is the solution advocated for herein.

The EBA argued that the powers of the Boards of Appeal are limited by the EPC. In the absence of any provision for a referral by any instance of the EPO, such referral is prima facie impossible. The Boards of Appeal are not courts or tribunals of an EU member state but of an international organization whose contracting states are not all members of the EU, thus Art. 267 TEU cannot apply. As the members of the Boards shall not be bound by any instructions in their decisions (Art 23 (3) EPC), any verdict of the ECJ could not be binding anyway. Furthermore, it is unclear if the ECJ would entertain a referral in the current situation, since it would be unclear who would be entitled to make submissions to the ECJ on any questions submitted. And the Boards of Appeal, while being recognized as courts or tribunals, are hardly comparable to highest national courts of EU Member States; some or possibly even all the members of a Board of Appeal might not even be nationals of an EU state. The EBA also ruled out any consequences arising from the location of the Boards (G 2/06 sec. 3 – 10).

The EBA's reasoning is overly formalistic and beyond the point. The question to be answered is not if there is an explicit legal norm in the EPC allowing the Boards to submit questions to the ECJ. Instead, the EBA should have assessed if the Boards are under an obligation to do so.

It is fundamental to remember that the EPC is the result of a *transfer* of power. It was not created by an act of God, nor was it created by a direct expression of the free will of the people. The EPC does not, sui generis, bring legislative, juridical or executive powers into existence. Any power wielded by an organ of the EPC is derived from and limited by the powers of the Member States: "no servant is greater than his master" (Joh 13:16). Thus, the EPC cannot remove any obligation of the Member States or grant unfettered sovereign autonomy to the organs created by the Convention. Where Member States have renounced sovereignty in certain areas they cannot re-usurp these rights merely by creating an international organisation which suddenly wields a power that its creators do not have. Otherwise, states could frustrate any constitutional limitation. For example, states could team up with those not bound by the European Convention for the Protection of Human Rights and Fundamental Freedoms to create an Organization for Inhumane Criminal Investigation and Punishment, which is patently absurd. The provisions of the EPC are thus not to be interpreted in isolation but in the context of the Member

States; the object and purpose of any provision of the treaty cannot be one that the Member States themselves cannot legitimately pursue (cf. Art. 31 Vienna Convention).

The European Patent Organisation is a legal entity of international public law (Art. 5 (1) EPC). The Organisation is not per se exempt from legal action; immunity of the Organisation is defined exclusively by the Protocol on Privileges and Immunities (Art. 8 EPC). According to Art. 3 PPI the Organisation shall have immunity from jurisdiction and execution, but only in so far as is "strictly necessary for its administrative [!] and technical operation, as set out in the Convention" (Art. 3 (4) PPI). In so far as the Office claims that the Boards of Appeal perform juridical instead of administrative activities, the EPO is prima facie not immune from legal action. However, this is not a decisive issue: The question whether or not Boards of Appeal are obliged to refer questions to the ECJ is different from the question of whether the Organisation can be held accountable for any damages resulting from decisions of the Boards. The first one addresses issues of procedure, the second question addresses liability (nota bene not of the Boards but of the Organisation as a legal person). It is not logical to conclude that, because the Organisation can or cannot be held liable to damages, the Boards have to act some way or another.

All EU states are Member States of the EPC. By being EU states, they are bound to EU law as a whole and thereby are obliged to create a patent system conforming to the Biotech Directive (Art. 1 (1) of the Directive). They are not allowed to create an "Ersatz" patent system applicable to the field of biotechnology in conflict with the Biotech Directive. In particular, the Biotech Directive was enacted with a regard to the fact that until then the EPC ("Munich Convention") did not a priori exclude the patentability of biological matter (recital 15 of the Directive). When the Directive entered into force, all EU member states were required not only to bring their national patent laws in accordance with the Directive, they were in turn obliged to bring the EPC into corresponding conformity (see also an opinion given in OJ 1999, 573-576). Failure to do so would have brought, on the territory of the EU States, patents into force (Art. 2 (2) EPC) which these states were forbidden to grant. Assuming that the EU States were under no obligation to amend the EPC in accordance with the Biotech Directive presupposes that the States would have been willing to act disloyally to the Union (Art. 4 (3) TEU, see also ECJ Opinion 2/13, paragraphs 168 and 173). This entails that all EU states are only allowed to agree to a patent system providing full and effective juridical review. Or, to quote the ECJ: "The EU States are obliged, by reason, inter alia, of the principle of sincere cooperation, set out in the first subparagraph of Article 4(3) TEU, to ensure, in their respective territories [!], the application of and respect for European Union law" (see ECJ Opinion 1/09, paragraph 68). Not all EPC Member States are EU States. But, as described above, obligations of the EU states do not disappear merely by association with other states. The status as non-EU-state does not prevent those states from agreeing to a proposal for an amendment of the EPC required by EU States. Also, there is no known objection by a non-EU state against bringing the EPC into alignment with the Biotech Directive.

Thus, it can be concluded that the objective will of the EU States must have been to install provisions in the EPC which conform to the Biotech Directive, and that non-EU States agreed to the amendment.

The EPC Member States chose not to merely introduce a reference to the Directive into the EPC. Instead, the EPC contains explicit provisions regarding the patenting of subject matter falling under the Biotech Directive (inter alia Art. 53 (b) EPC and contentious R. 28 (2) EPC), thereby preserving the EPC as a self-contained body of law. It is also questionable if a reference to the Directive would have been allowable. This would have given a carte blanche to the EU in case the Directive ever were to be amended. Non-EU Member States of the EPC are under no obligation to automatically accept a de facto amendment of the EPC by powers beyond their control. Thus, a formal agreement of those states to EPC amendments caused by a revision of the Biotech Directive is required. However, this does not remove from EU states the obligation to press for an EPC in accordance with the provisions of the Directive.

In summary, the provisions of the EPC must be applied in harmony with the Biotech Directive. If it were possible to interpret the EPC contrary to the Biotech Directive on matters where the Directive applies, then the function of the Directive could be severely undermined. For any practical definition, in the field of biotechnology the distinction between the EU legal order and the international legal order created, inter alia, by the EU national states is blurred or even non-existent.

It now remains to analyse whose task it is to interpret the Biotech Directive in so far as European patents are concerned.

According to Art. 1 (1) EPC the Convention establishes a law common to the contracting states for the grant of European patents. The EPO carries out the task of granting such patents (Art. 4 (3) EPC). To this purpose different organs within the EPO are established, among them are the Boards of Appeal (Art. 15 (f) EPC). It is the sole responsibility of the Boards to act within the procedures laid down in the EPC; national courts have no say (at least before conversion according to Art. 135 EPC). The Boards are the only instance entitled to

and entrusted with a review of decisions of other EPO organs on individual European patents (Art. 106 EPC; see *Pignatelli/Beckedorf/Kinkeldey* in *Benkard*, EPÜ, 3rd edition, p. 180). Where the Boards have competence to decide, national courts have not. Thus, the only body with competence to decide on the interpretation of the Biotech Directive, during the granting and opposition stages of European patents, is the Boards of Appeal.

This exclusive competence does not make the Boards independent of legal cooperation. In their decisions on individual appeal cases, the Boards must accept decrees by at least one other department of the EPO, i.e. the EBA. Formally, the EBA is not a part of the Boards of Appeal of the EPO (Art. 15 (f), (g) EPC), yet the Boards are bound to the ratio of decisions of the EBA rendered according to Art. 112 (1) (a) EPC. Thus, obtaining a binding decision on points of law by a body outside of the Boards of Appeal is not alien to the EPC. It is therefore not convincing to put all decisions on points of law on a level with inappropriate instructions in the sense of Art. 23 (3) EPC. This Article does not limit the Boards' competence to decide how to form an opinion on the interpretation of the law, it merely forbids replacing this competence by an act of obedience to powers outside of the juridical system. In essence, the EPC does not forbid a referral to the ECJ, it merely is silent on this matter. The Boards are called to make sense of this silence and to fill in, using established juridical techniques of interpretation, any gaps in legislature.

The Boards of Appeal are thus intended to function as court common to all EU Member States. It is of no concern that the Boards of Appeal form separate judicial bodies (for example a legal Board or several technical Boards). In summary their purpose is to ensure that the law common to the EPC Member States, including all EU States, are applied uniformly. In so far as the Biotech Directive is concerned, the law applied by the Boards is intimately linked to EU secondary law.

Having established that the jurisdiction of the Boards extends to matters covered by the Biotech Directive, it is shown next that the Boards, like courts and tribunals of the EU states, are required to refer questions to the ECJ according to Art. 267 TFEU.

One of the main obligations of EU states is to ensure effective judicial protection for individual parties in the fields covered by EU law (ECJ, C-64/16, paragraph 34). To this end they are required to establish a system of legal remedies and procedures ensuring effective judicial review: "The very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law. It follows that every [EU] Member State must ensure that the bodies which, as 'courts or tribunals' within the meaning of EU law, come within its judicial system in the fields covered by that law, meet the requirements of effective judicial protection" (ECJ, C-64/16, paragraphs 36, 37). "Courts and tribunals" are primarily the courts and tribunals established by national law. The Boards of Appeal, however, are not courts or tribunals "of" an EU state. The Boards are established by means of an international agreement as part of an international organisation distinct from the EU states and from the EU itself, they are not part of the judicial system of one or more EU states.

The ECJ has repeatedly emphasised that there is no good reason why a court common to a number of EU states should not be able to submit questions to the Court of Justice, in the same way as courts or tribunals of any of those states. The Boards of Appeal fulfil the necessary criteria for a court or tribunal according to ECJ standards, because they are established by law, they are permanent, their jurisdiction is compulsory, they decide in inter partes procedures, generally apply rules of law and claim to be independent (see ECJ C-196/09, paragraph 37 and the case-law cited therein). By deciding in patent appeal cases, the Boards do not intend to perform functions of administrative but of judicial nature (ECJ C-192/98, sec. 22). However, the ECJ demanded that courts or tribunals must have "links with the judicial systems of the [EU] Member States" in order to refer questions under Art. 267 TFEU. In this respect, mere functional links with the EU are insufficient (ECJ C-196/09, sec. 41-43).

As described above, it is a task of the Boards to ensure that legal rules common to the EU states are applied uniformly (ECJ C-284/16, sec. 48). These legal rules themselves are intimately linked with EU secondary law, i.e. the Biotech Directive; in so far the EPC provisions must be interpreted by taking recourse to the Directive (R. 26 (1) EPC). In a situation where the distinction between the EU legal order and national legal orders are "less marked", the ECJ has recently even assumed full competence to annul a national court decision in criminal proceedings (joint ECJ cases C-202/18 and C-238/18, sec. 69). While the ECJ cautioned that its right for annulment resulted from "exceptional circumstances", the ratio decendi can be generalised: The "exceptional circumstances" invoked by the ECJ were that the statute of the ESCB and of the ECB contained an explicit provision for appeal to the ECJ. However, this can hardly be decisive, because in other cases (for example ECJ C-196/09) the ECJ did not see any close link, despite the fact that the provisions in question contained an explicit obligation to refer cases to the ECJ. The key aspect rather is that more is at stake than the mere application of "general principles of EU law" (ECJ C-196/09, paragraph 43). As described above, in a situation where the Boards of Appeal were forced to decide on patent matters overlapping with the ambit of

the Biotech Directive without having the possibility of recourse to the ECJ, there is a high risk of establishing, in the territory of EU states, divergent interpretations of EU law. The divergence does not only pertain to matters within the EPO; grant and revocation of a European patent immediately changes rights and obligations of the proprietor and the general public. Thus, it is important in the interest of legal certainty that the application of patent law does not depend on the organisation entrusted to provide a ruling; a lasting divergence between decisions of EPO Boards and national courts on patentability of identical applications would facilitate unjustified "forum shopping". It is also important to remember that the EPO decides far more cases on plant biotechnology than the EU member states. Applicants and their competitors cannot be told to wait for a national court referral to the ECJ.

It must therefore be concluded that the EPO Boards of Appeal have, as final juridical instance in patent application and opposition proceedings, the competence and duty to refer questions to the ECJ in cases falling within the scope of the Biotech Directive. Notably, in such cases the ECJ would not rule on the application of the EPC but would provide an interpretation of the Directive; this interpretation would in turn have to be applied for the interpretation of the EPC by the Boards.

As a control: The ECJ has already decided that the EU states cannot defer jurisdiction to a court created by an international agreement which would deprive national courts of their task to implement European Union law and, thereby, of the power provided for in Article 267 TFEU (ECJ Opinion 1/09, sec. 80): "by conferring on an international court which is outside the institutional and judicial framework of the European Union an exclusive jurisdiction to hear a significant number of actions brought by individuals in the field of the Community patent and to interpret and apply EU law in that field, would deprive courts of Member States of their powers in relation to the interpretation and application of European Union law and the [ECJ] of its powers to reply, by preliminary ruling, to questions referred by those courts and, consequently, would alter the essential character of the powers which the Treaties confer on the institutions of the European Union and on the Member States and which are indispensable to the preservation of the very nature of European Union law" (ECJ Opinion 1/09, sec. 89). So either the Boards themselves are an adequate substitute for national courts – which entails a power and obligation to refer questions to the ECJ -, or the EPC must not have an overlap with EU law. The latter could only be achieved by preventing the grant of any European patents in the field of biotechnology. Judging by the number of cases treated by the EPO, such broad patentability exemption is not desirable to practitioners.

3. Amendment of the Convention

"When judiciary-driven legal development meets its limits, it is time for the legislator to take over" (G 3/08 sec. 7.2.7). However, all means available to the legislator are not suitable for resolving the present conflict:

If the Administrative Council invokes its competence according to Art. 33 (1) (b) EPC to amend Art. 53 (2) EPC, such an amendment would still be open to annulment by the Boards of Appeal: as the Boards are bound by the law their first obligation is to decide on the authoritative text of the EPC. They would have to decide if they are to apply the EPC in its present form or in the form after an amendment. Thus, the application of an amended EPC is subject to an approval by the Board. And it is not apparent that the Board in question is inclined to agree that there is a consensus of EU legislation relating to patents (provided that the ECJ still would not have interpreted the Biotech Directive). Furthermore, such an amendment would be in suspension for one year (Art. 35 (3) EPC), which is hardly compatible with the aim of finding "a solution in the short term following the decision T 1063/18", one of the main reasons for the present referral G 3/19.

Likewise, a revision according to Art. 172 EPC would not clarify the situation, because it still could not remove the lack of an ECJ ruling required for interpretation of the "Biotech Articles" of the EPC. In fact, a revision would likely aggravate the situation if the new EPC deepens the rift between the Boards of Appeal and the ECJ in the correct application and uniform interpretation of EU law, and in the protection of individual rights conferred by that legal order (ECJ Opinion 1/09, sec. 84).

And, finally, neither type of EPC reform could affect the cases currently pending at the EPO due to the prohibition of retroactivity: it is only for the Boards to decide how the law should always have been understood. The Administrative Council or even a full Diplomatic Conference have no power to change, by invoking a right to "authentic interpretation", substantive patentability criteria and thus to take away from an applicant what was (according to decision T 1063/18) legitimately patentable at the filing day. While such rights of authentic interpretation is known in Austria (see also J 16/96, sec. 2.1), it is not common to all EPC Member States (Art. 125 EPC) and has even been repeatedly denied by the FCC in Germany (BVerfG 1 BvR 2530/05, sec. 73); it would, in fact, border on expropriation.

In summary, a decision by the ECJ on the meaning of the contentious provisions of the Biotech Directive is indispensable. After such decision the EPC could be safely amended, if an amendment turned out to be required at all.

Who bears the burden to show that an objective technical problem has been credibly solved?

S. Kutik (IT), J. Renken (DE), German and European Patent Attorneys

Under the EPO's problem solution approach, the subject matter defined in a patent claim satisfies the requirements of inventive step (Art. 56 EPC) when an objective technical problem vis-à-vis the closest prior art is credibly solved in a non-obvious manner. Debates whether an application contains enough data to show that the problem has been credibly solved over the entire claim scope are particularly prevalent in the life sciences. In such cases, concepts such as the "burden of proof" and "benefit of the doubt" are important. Who needs to prove "what", and "when" are, therefore, the topics of the present article.

Introduction

It is common practice at the European Patent Office (EPO) to apply the problem solution approach when determining whether the subject matter of a patent claim, starting from the closest prior art, involves an inventive step. According to this approach, it must first be "credible" (e.g. **T 939/92**, OJ 1996, 309) that the claimed invention solves a proposed technical problem over the prior art; and second, the claimed solution to that problem must be non-obvious over the prior art.

Whether or not a technical problem has been credibly solved can become a point of debate both in examination proceedings and in post-grant oppositions. Such a debate is a frequent occurrence particularly in the life sciences. One reason is that clinical trials involve the mandatory publication of the details of a trial at an early stage of clinical development (Kallenbach and Vallazza, **epi** Information 04/2017, p. 36-43). This commonly results in the filing of applications before the first clinical trials begin. By filing so early, the Applicant ensures that the publication of the details of the clinical trial will not anticipate the patent application. However, at such an early stage of development, there may not be enough evidence to render a therapeutic effect plausible.

As to the quality of the evidence required, "absolute proof" that the effect is achieved is not required. The effect merely has to be rendered plausible (**T 716/08**). However, because the "EPC requires no experimental proof for patentability" (**T 578/06**), in some cases the question whether it is "credible" or "plausible" that a technical problem has been solved will need to be answered in the absence of data. But, whose burden is it to show whether an effect is, or is not, plausible?

The equivalent test under Art 83 EPC

In contrast to the assessment of inventive step, the question of burden of proof is regularly addressed in the assessment of sufficiency of disclosure. For sufficiency of disclosure, the default position is that the burden to demonstrate a lack of sufficiency lies with the Opponent or Examiner who must substantiate any doubts with verifiable facts (**T 19/90**, **T 694/92**). However, in cases where a patent does not give any information on how a feature of the invention can be put into practice, the Opponent can discharge his burden by arguing that even common general knowledge would not enable the skilled person to put this feature into practice. In such a case, the burden of proof is shifted to the Patent Proprietor who then must show that common general knowledge would indeed enable the skilled person to carry out the invention (T 63/06).

Both the assessment of inventive step and the assessment of sufficiency of disclosure shall avoid the grant of purely speculative patent applications. In other words, the purpose is to avoid the grant of a monopoly to an Applicant who has left the technical field unexplored (**T 1188/00**; **T 1329/04**, **T 1164/11**).

Moreover, whether the presence of a technical effect is assessed under inventive step or sufficiency of disclosure is merely a question of claim drafting. If an effect is recited in the claim, this is an issue falling under Art. 83 EPC. If not, it is one falling under Art. 56 EPC (**G 1/03**).

Thus, it could be justified to apply the established rules regarding the burden of proof in disputes concerning sufficiency of disclosure to disputes concerning the solution of the technical problem under Art. 56. But are these rules applied at the EPO? And, is it always justifiable to apply the same rules?

Benefit of the doubt vs. substantiated doubts

By default, a technical problem set out in a patent, i.e. the original technical problem proposed by the Applicant, is considered to be credibly solved by a claimed invention "if there exist no reasons to assume the contrary" (**T 1797/09**); and "the benefit of doubt is given to the Patent Proprietor" (**T 1797/09**). This benefit is not limited to granted patents, but has been found to also be applicable to pending patent applications undergoing examination (**T 578/06**). Thus, in summary, when doubts remain whether the proposed technical problem has been solved, the Applicant or Patentee may be given the benefit of the doubt.

In **T 602/05** the Board of Appeal found it justifiable to apply the same criteria commonly applied for assessing sufficiency of disclosure as per **T 19/90** for assessing whether the objective technical problem had been solved, i.e., that doubts have to be substantiated by verifiable facts in order to establish that the technical problem has not been solved. Also in **T 1707/06**, the Board required the Opponent to present "convincing evidence that an effect is not obtained"; and in **T 578/06**, the Board found, with regard to the dispute on whether or not the objective technical problem had been solved, that "if an examining division raises an objection, it must appropriately be substantiated". In all those cases, the Applicant or Patentee was given the benefit of the doubt. In the absence of any convincing evidence to the contrary, the technical problem was deemed to have been solved.

Reversal of the burden of proof

Although not frequently cited, **T 1797/09** is of particular interest because it specifically discusses the reversal of the burden of proof when the solution of the technical problem under Art. 56 EPC is under debate. Although the Board of **T 1797/09** generally acknowledged that a technical problem set out in a patent is deemed to be credibly solved in the absence of any reasons to the contrary and, therefore, the Proprietor can be given the benefit of the doubt, the Board also established that "if the Opponent succeeds to cast reasonable doubt on the alleged effect, the burden to prove its allegations is shifted to the Patent Proprietor". It is therefore one of few decisions that explicitly deal with the reversal of the burden of proof, and with the condition required for the reversal.

In that regard, **T 1797/09** appears to mirror **T 63/06**, which concerns the shift of the burden of proof when assessing sufficiency of disclosure.

In fact, in specific scenarios where there are (A) inventions which challenge the common general knowledge in an unsubstantiated manner and/or (B) broad claims, the burden is commonly shifted:

(A) if there is no evidence that the problem has been solved in the application as filed, and the knowledge available in the art renders it, prima facie, unlikely that the claimed invention indeed solves the problem it purports to solve, the Applicant or Patentee is not given the benefit of the doubt. For example, in **T 1329/04** a specific polypeptide was claimed and the application as filed explicitly stated that said polypeptide provided, as a technical effect, a specific biological growth differentiation activity. But data supporting such an effect were not present in the patent application. Further, the claimed polypeptide lacked certain characteristic structural features that were otherwise common to known polypeptides with such growth differentiation activity. Thus, there existed doubts that the proposed technical problem had indeed been solved by the claimed subject matter. Although the claimed polypeptide was shown to indeed solve the originally proposed technical problem by means of post-filing data, the Board found "that there is not enough evidence *in the application* to make at least plausible that a solution was found to the problem which was purportedly solved" (emphasis added). In the Board's view, the solution to the technical problem has to be made at least plausible by the application as filed;

(B) in the life sciences, it is not uncommon for a patent claim to cover, not only the specific entities (e.g. chemical or biological compounds) for which a technical effect is experimentally demonstrated in a patent application, but also a group of often structurally similar compounds for which no experimental validation is present in the patent application as filed.

It is commonly accepted by the Boards of Appeal that, in the field of drug design, even "small structural modifications may cause major differences in biological activity" (**T 939/92**) so that in the absence of additional technical information, any structural modification of a compound is "expected to disturb the pharmaceutical activity of the initial structure" (**T 548/91**). Consequently, in cases where supporting evidence is limited to a few compounds, it is not considered technically plausible that all compounds under a broader product claim credibly solve the same technical problem as the ones tested. In such cases, the Applicant or Patentee is not normally given the benefit of the doubt. In the case discussed in the groundbreaking decision

T 939/92, a group of chemical compounds was claimed of which only some were shown in the patent application to have herbicidal activity. The Board of Appeal considered that it was unreasonable to assume that essentially all the claimed compounds had such activity and thus solved the respective problem over the entire claim scope in the absence of further evidence. The Applicant then bore the burden to show the presence of the alleged technical effect across the entire claim scope. Equally, in opposition proceedings, when the credibility that a technical effect is achieved by substantially all claimed compounds is at issue and in a situation where it is, prima facie, unlikely that this is the case, it is not the Opponent, but the Patentee who has the burden of proving that the effect is indeed achieved over the claim scope (**T 975/14**).

Can the Applicant or Patentee escape from such an objection by limiting the claim to embodiment(s) that do factually solve the problem? The patent underlying decision **T 488/16** claimed a group of compounds that were allegedly protein tyrosine kinases (PTK) inhibitors. The Opponents, referring to **T 939/92**, argued that it was not plausible that all the claimed compounds had the desired inhibitory activity. The Patentee then restricted the claims to a specific compound, dasatinib, for which the desired effect was clearly established by means of post-published evidence. The Board nevertheless held that the Opponents had provided "technically sound and persuasive arguments as to why the alleged effect had not been made plausible" in the application as filed, and thus concluded that the burden to "counter-argue and to rebut these doubts" rests with the Patentee.

In these scenarios, the patent application *per se* does not show the presence of a technical effect or a technical effect over the entire claim scope. Further, there are arguments that the technical effect is (A) not plausible at all; or (B) not plausible over the entire claim scope. In both scenarios, the party raising the objection does not bear the burden to provide evidence. These two scenarios thus resemble the established reversal of the burden of proof under Art. 83 EPC in situations where the patent application itself does not demonstrate how a claim feature can be put into practice and the party raising the objection plausibly argues that common general knowledge would not enable the skilled person to put this feature into practice (see **T 63/06**).

In case of such a shift of the burden of proof, it thus rests with the Patentee to rebut doubts as to the effect. But the Patentee's possibilities to do so are more limited than in the assessment of sufficiency of disclosure: while a Patentee could rely on common general knowledge to defend his case under Art. 83, this would not help him under Art. 56 because common general knowledge – while possibly supporting the plausibility of the effect – would, at the same time, render the effect obvious.

Patentees have, therefore, been relying on post-published evidence. However, both in **T 1329/04** and in **T 488/16**, the Boards held that such post-published evidence may not serve as the sole basis for establishing the presence of the effect. Post-published evidence is considered only if the effect is at least plausible from the application text. Considering that Patentee's possibilities of rebutting doubts are very limited when assessing plausibility of the effect, this approach appears unbalanced. While the Patentee in **T 488/16** requested a referral to the Enlarged Board of Appeal regarding the assessment of the plausibility of a claimed solution to solve a technical problem under Art. 56 EPC and the burden of proof in such scenarios, the request was not granted. From the perspective of legal certainty, practitioners would have welcomed a referral to the Enlarged Board of Appeal (see Exner and Hüttermann, GRUR Int., 2018/2, p. 97-102).

The new closest prior art

Since the technical problem in the analysis of inventive step is defined in an objective manner, the advantage actually achieved (if any) over the particular prior art document which is closest to the claimed invention is decisive (**T 815/16**). If during proceedings before the EPO, a prior art document is cited by an Examiner or Opponent that comes closer than the prior art originally proposed as "closest" in the patent application, case law requires that the effect supporting the inventive step is made credible in comparison to this new closest prior art. The identification of a new "closest prior art" in proceedings before the EPO can put an Applicant or Patentee into a difficult situation, because comparative data regarding the solution of a technical problem in comparison to that newly identified document are, frequently, not present in a patent application as filed.

In such a case, Examiners and Opponents usually argue that, in the absence of comparative data with this new closest prior art, the objective problem should be considered as the provision of a mere alternative to the new closest prior art. Considering the principles of e.g. **T 602/05**, one could, however, take the position that it is the Examiner's or Opponent's burden to provide "verifiable facts" in order to make the non-existence of the alleged effect credible, and that the benefit of the doubt, in absence of verifiable facts, should be given to the Applicant or Patentee.

Reformulation of the technical problem

If a newly identified closest prior art is found to also solve the problem underlying the invention, the objective technical problem needs to be reformulated. This reformulated problem is usually considered to be the provision of an alternative. However, the Patentee normally attempts to refute any allegation that the technical problem is the provision of a mere alternative solution because the skilled person is considered to always be motivated to find technical alternatives to the state of the art (e.g. **T 284/00**) under EPO practice. Thus, an alternative solution is rarely considered inventive.

In order to refute the allegation that the solution is the provision of an alternative, the Patentee will have to make credible that (a) the claimed invention solves *another* problem which is not solved by the closest prior art; and (b) this problem must be derivable from the application as filed (**T 1188/00**). Both conditions must be fulfilled.

In this case, the Patentee bears the burden of proof to demonstrate that this problem has been solved (**T 1188/00**). This is normally achievable when the application as filed contains comparative data which make the solution of the technical problem over the closest prior art plausible (e.g. **T 815/16**). In case the application as filed does not contain data to make credible that a reformulated problem was in fact solved, it has generally been accepted by the Examining and Opposition Divisions that new data could be relied upon to do so. However, it appears that, more recently, the Boards of Appeal sometimes require that the solution to the reformulated problem is already made plausible by the application as filed. For example, in **T 1196/12**, the Board concluded "that the effects relied on by the appellant in its formulation of the problem are not derivable from the application as filed". The Board then referred to **T 1329/04** to justify its decision that post-published evidence cannot be accepted to demonstrate the effect and thus denied the presence of an inventive step. Similarly, in **T 1285/13**, the Board, citing **T1329/04**, held that "the verification of whether or not the claimed solution actually solves the problem, i.e. whether the claimed subject-matter actually provides the desired effect, must be based on the data in the application".

This new trend can put Applicants in an extremely difficult, and sometimes inescapable situation. The Applicant would need to react to newly cited prior art which he may not have been aware of at the drafting stage while also being deprived of the possibility of relying on other advantages over the prior art to establish an inventive step, even if such advantages are, in fact, achieved in comparison with that newly cited document. This appears to be at odds with the general principle according to which the Applicant is given the benefit of the doubt when it comes to providing a solution to the objective technical problem (**T 578/06**; **T 1797/09**; **T 602/05**). Moreover, this trend appears to ignore that **T 1329/04** refers to the plausibility of the problem the application purports to solve, rather than the (possibly reformulated) objective technical problem.

Opinion G1/18: common sense prevails

M. Nevant (FR), European Patent Attorney

About a year ago, the President of the EPO referred the following question to the Enlarged Board of Appeal under Article 112(1) (b) EPC:

> *"When a notice of appeal and/or the payment fee has been filed (respectively, paid) after the two months time limit set forth in Article 108 EPC, is the appeal inadmissible or deemed not to have been filed, and must the fee for appeal be reimbursed?".*

The referral was based on what was thought to be diverging case law, the majority view (as reflected in T 1325/15) being that in such a case the appeal is deemed not to have been filed and the fee for appeal must be reimbursed, the minority view (as reflected in T1897/17) being that the appeal must be rejected as being inadmissible and that the fee for appeal cannot be reimbursed.

The Enlarged Board of Appeal (EBA) has now issued opinion G1/18 concerning this point of law. After slightly reformulating the question posed (the term "payment fee" being replaced with "fee for appeal"), the EBA concurs with the view of the EPO President that there is indeed diverging case law on this matter and concludes that the referral is accordingly admissible. The EBA then summarizes in the Table below the three scenarii which can be contemplated based on the wording of Article 108 EPC, first and second sentences.

		Appeal / notice of appeal	
		Filed in due time	Filed > 2 months
Fee for appeal	Paid in due time		3
	Paid > 2 months	1	2

After reviewing the case law corresponding to each scenario, the doctrine and the "Travaux Préparatoires" of the EPC, the EBA – in line with Articles 31 and 32 of the Vienna Convention on the Law of Treaties - thoroughly considered three different ways of interpreting the provisions of Article 108 EPC: a literal interpretation, a systematic interpretation, and a teleological interpretation.

The EBA came to the same legal conclusion for each scenario, irrespective of the way of interpreting the provisions of Article 108 EPC. The EBA in particular commented as follows (see section VII of the opinion; our translation):

> *"Articles 106, 107 and 108 EPC define the requirements which must be met at the end of the 2-month and 4-month time limits for the appeal (i) deemed to have been filed and (ii) found admissible. According to Article 108 EPC, first and second sentences, appeal proceedings are triggered by a first step, namely filing the appeal, during which the appellant has to file a notice of appeal within two months from notification of the decision; this appeal will be deemed to have been filed only if the fee for appeal is paid. Only if both acts are done in the prescribed two-month time limit is the appeal deemed to have been filed, i.e. the appeal exists. Once the existence of the appeal has been established, the admissibility of the appeal can then be checked in a second step."*

The following answers are thus provided in response to the referral:

1. An appeal is deemed not to have been filed in the following cases:

   a) where the notice of appeal was filed within the two-month time limit prescribed in Article 108 EPC, first sentence, AND the fee for appeal was paid after expiry of that two-month time limit;

   b) where the notice of appeal was filed after expiry of the two-month time limit prescribed in Article 108 EPC, first sentence, AND the fee for appeal was paid after expiry of that two-month time limit;

   c) where the fee for appeal was paid within the two-month time limit prescribed in Article 108 EPC, first sentence, for filing the notice of appeal AND the notice of appeal was filed after expiry of that two-month time limit.

2. In the cases referred to in answers 1a) to 1c), reimbursement of the fee for appeal is to be ordered *ex officio*.

3. Where the fee for appeal was paid within or after the two-month time limit prescribed in Article 108 EPC, first sentence, for filing notice of appeal AND no notice of appeal was filed at all, the fee for appeal is to be reimbursed.

Marc Névant

The EBA has therefore confirmed that an appeal is deemed not to have been filed where the notice of appeal is filed and/or the appeal fee is paid after expiry of the two-month time limit prescribed in Article 108 EPC, first sentence. The appeal fee is to be reimbursed in these cases.

It is also worth noting that the EBA indicates that the opinion in G1/18 is in line with the case law concerning the late payment (or absence of payment) of the opposition fee: in such cases, the opposition is also deemed not to have been filed (see section XI of the opinion).

Educational events

Continuing Professional Education (CPE) seminars 2019

Opposition and Appeal

The "Opposition and Appeal" seminar will provide you with an intensive and practical overview of all relevant legal and practical issues concerning opposition and appeal proceedings before the European Patent Office.
The new Rules of Procedure of the Boards of Appeal entering into force on 1 January 2020 and their implications on the proceedings will also be dealt with in detail at the seminar in Hamburg.

26 November 2019	Hamburg (DE)	**epi** roadshow supported by the EPO

Case Law seminars in 2019

The "Case Law" seminars will provide you with an overview of the most recent key decisions and developments in the EPO's board of appeal case law. This collection of lectures offers a range of subjects, including procedural and substantive topics, and with a mixture of general-interest and more field-specific topics. The seminar also includes the demonstration of a mock EPO Oral Proceedings.
Select a suitable date our of our event calendar on the **epi** website and register for the seminar.

12 September 2019	Stockholm (SE)	**epi** roadshow supported by the EPO
11 October 2019	Istanbul (TR)	**epi** roadshow supported by the EPO
15 November 2019	Milan (IT)	**epi** roadshow supported by the EPO

Seminar series "Life of a patent"

In 2013 **epi** started a series of seminars on the "life of a patent".
The series covers 4 topics which are "Pre-drafting", "Drafting of Applications", "Prosecution" and "Opposition".
The first two topics will be presented in Ljubljana in October and in Lisbon in January 2020.

24-25 October 2019 (Pre-Drafting & Drafting)	Ljubljana (SI)	**epi** roadshow supported by the EPO

In planning: January 2020 Lisbon (PT)

All information and registration is available in the event calendar on the **epi** website.

Course on Patent Litigation in Europe 2019-2020: 17th Edition

The Center for International Intellectual Property Studies (CEIPI) Diploma on Patent Litigation in Europe is a training program crafted for patent professionals willing to deepen and update their knowledge in comparative and regional patent law and patent litigation.

International and European in contents, speakers and participants, the CEIPI diploma provides a hands-on immersion in the systemic aspects of patent litigation and the most recent patent litigation practices.

In the area of intellectual property enforcement, a plurality of programs targeting judges, patent attorneys, attorneys at law, public servants and other qualified professionals in the intellectual property domain. In this case, the training program is addressed to European Patent Attorneys willing to become European Patent Litigators, attorneys at law and other experienced intellectual property professionals willing to gain knowledge and update their experience in European patent litigation.

Set up in the early 2000', the CEIPI Diploma provides a truly European and international perspective on patent adjudication theory and practice, leading to the obtention of a Diploma of the University of Strasbourg. During a period of one year from the entry into force of the Agreement on a Unified Patent Court, the CEIPI Diploma on Patent litigation in Europe will be deemed as appropriate qualification for a European Patent Attorneys to represent parties before the UPC as established in the Rules on Patent Litigation Certificate and Other Appropriate Qualifications pursuant to article 48(2) of the Agreement on a Unified Patent Court.

The content of the CEIPI course corresponds to the draft curriculum for a European Patent Litigator's Certificate (Draft EPLC: Rules on the European Patent Litigation Certificate and other Appropriate Qualifications pursuant to Article 48(2) of the Agreement on a Unified Patent Court). The course covers all basic European laws and conventions relevant in the field of patent litigation. A good knowledge of the European Patent Convention and related matters by participants is a prerequisite.

European Patent Attorneys should acquire a deepened knowledge of patent litigation procedures in Europe and of the forthcoming centralised litigation proceedings before the Unified Patent Court (UPC), as well as of related Rules of Procedure (RoP), in order to be able to advise their clients on the enforcement and defence of European Patents and Patents with Unitary Effect and to represent parties before the UPC upon the entry into force of the European Patent Package.

Further information and the complete program and time schedule of the course can be found here: http://www.ceipi.edu/en/patent-litigation-in-europe-unified-patent-court/course-on-patent-litigation-in-europe-2019-2020-17th-edition-we-still-have-some-places-available

CEIPI
CENTER FOR INTERNATIONAL INTELLECTUAL PROPERTY STUDIES

CEIPI – Centre d'Études Internationales de la Propriété Intellectuelle

epi preparation courses for the European Qualifying Examination (EQE), pre-examination and main examination 2020

All courses are provided in the three EPO official languages:

epi Tutorial

The **epi** Tutorial is an EQE training event that provide candidates with the opportunity to sit the Pre-examination/A/B/C/D papers privately, to send the papers to an experienced **epi** Tutor assigned to them and to have their individual papers reviewed and discussed.

- Sign up for a tutorial whenever you want
- Decide which paper you want to prepare
- Arrange individually with your tutor:
  - the due date when you need to send your prepared paper to your tutor
  - the date when you will discuss the result of your individual paper with your tutor
- Discuss the result of your paper with your tutor
  - via personal meeting
  - via email

New: the epi also provides access for feedback via video/telephone conference as a long-term test

Candidates decide which kind of papers (Pre-examination, A, B, C and/or D) they want to sit. Depending on the result, candidates have the opportunity together with their tutor to decide whether they want to work another volume of the same paper and if necessary even to work a second volume.

Tutorial fee for each paper (Pre-exam, A, B, C or D):

- fee for **epi** students EUR 180 per selected paper
- fee for non-**epi** students EUR 360 per selected paper

The selected paper can be written at a maximum of two different years (for example, you can write Paper A for two different years etc.).

Mock EQE(s)

In preparation for the European Qualifying Examination (EQE), the **epi** offers the possibility to sit mock exams where candidates can write the main examination papers (A, B, C and D) under real examination conditions.

For this reason the **epi**, with the assistance of qualified Professional Education Committee (PEC) members and **epi** Tutors has prepared their own main examination papers. These papers are available in all three official languages.

The mock EQE will take place in three different cities: Brussels, Helsinki and Munich.

The sessions are planned for the following dates:

- Exam: 26.-28.11.2019
- Feedback: 22.-24.01.2020

Further information about the venue and time schedule are available in the Education and Training section on the **epi** website.

Feedback will be provided in small groups or one to one session(s) depending on the number of participants.

The mock EQE fee covers both exam and feedback sessions:

- fee for **epi** students EUR 260 per selected paper
- fee for non-**epi** students EUR 380 per selected paper

For detailed information and registration for the **epi** EQE preparation courses see:
www.patentepi.org/en/education-and-training

Results of the 2019 European Qualifying Examination are available on page 39 of this journal.

Committee Reports

What do you do when online filing breaks down?
Results of online survey

J. Gray (GB), Chair Online Communications Committee

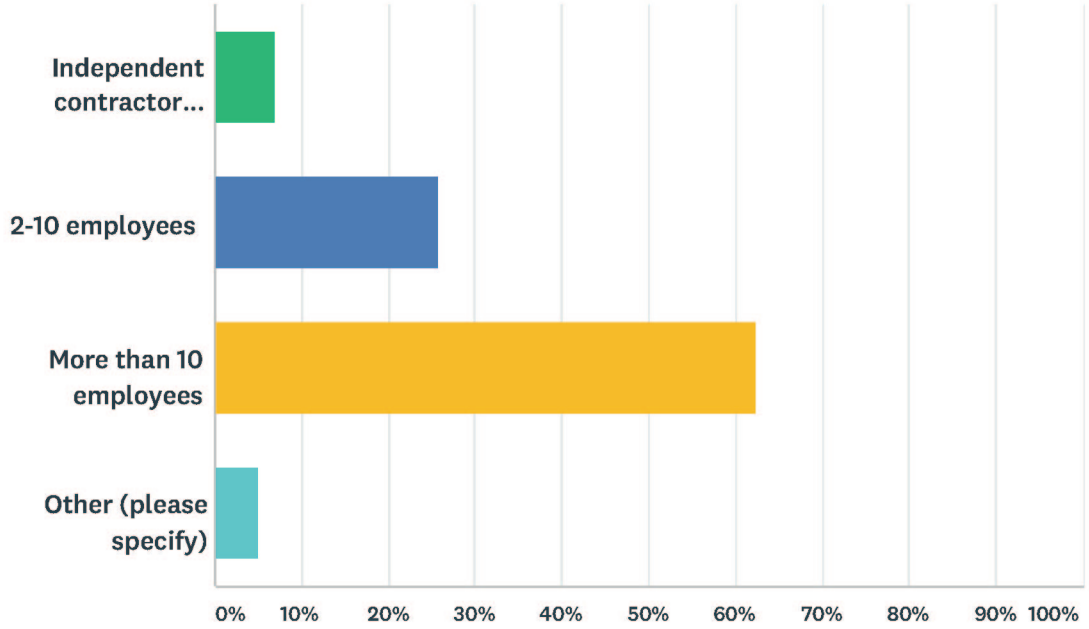
An online survey was conducted on behalf of epi Online Communications Committee (OCC), to gather experiences and wishes of epi members, in situations when online filing does not work as expected. We received a fantastic response from over a thousand attorneys, as well as paralegal/patent administrators. The results are presented in graph form, which will be used by OCC as input for its presentations to EPO on current and future system design. The survey remains open for new responses.

John Gray

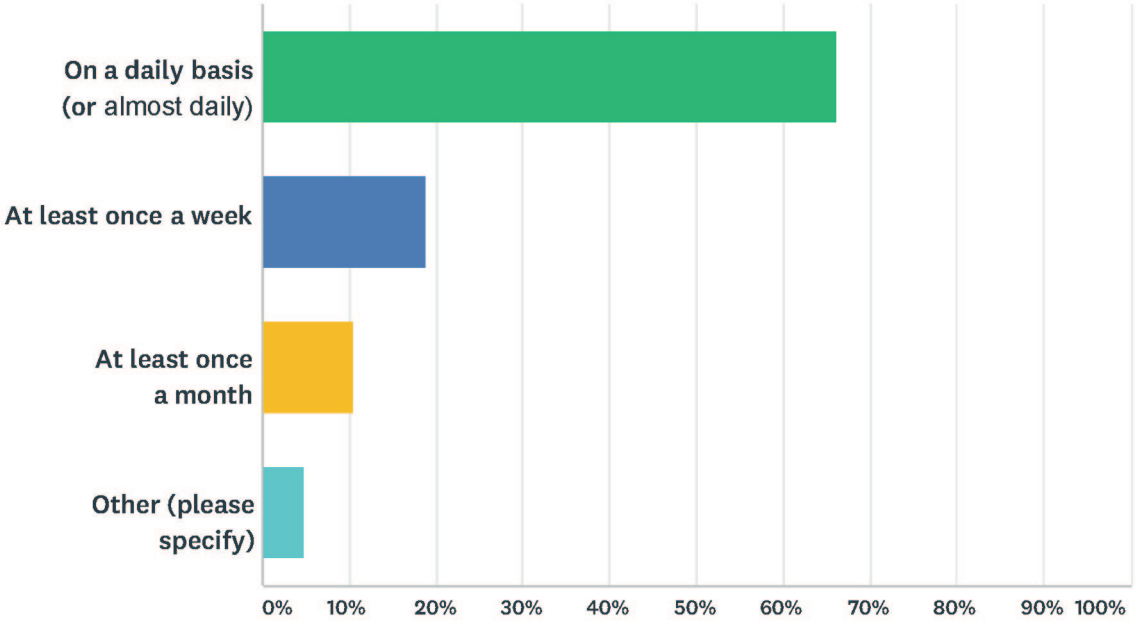
The EPO offers a variety of online filing services – e-OLF, CMS, Web Form Filing. In future these will be replaced by a new system. **Now and in the future: what happens if the system is not working when you need it?**

The Online Communications Committee of **epi** collaborates with the EPO to ensure systems are reliable, and easy to use with legal certainty at each step. Nearly a thousand epi members, and around 80 support staff kindly participated in a short survey to collect preferences and experiences. The main results are presented below, in graphical form.

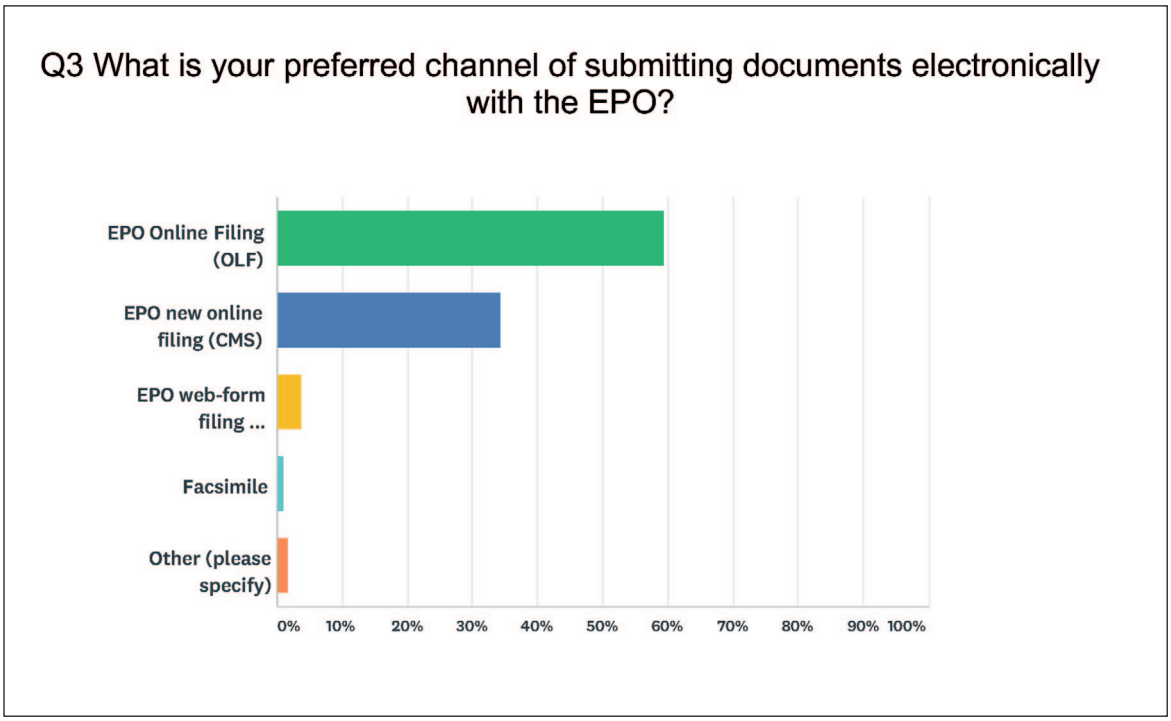
Q1 What is the size of your office?

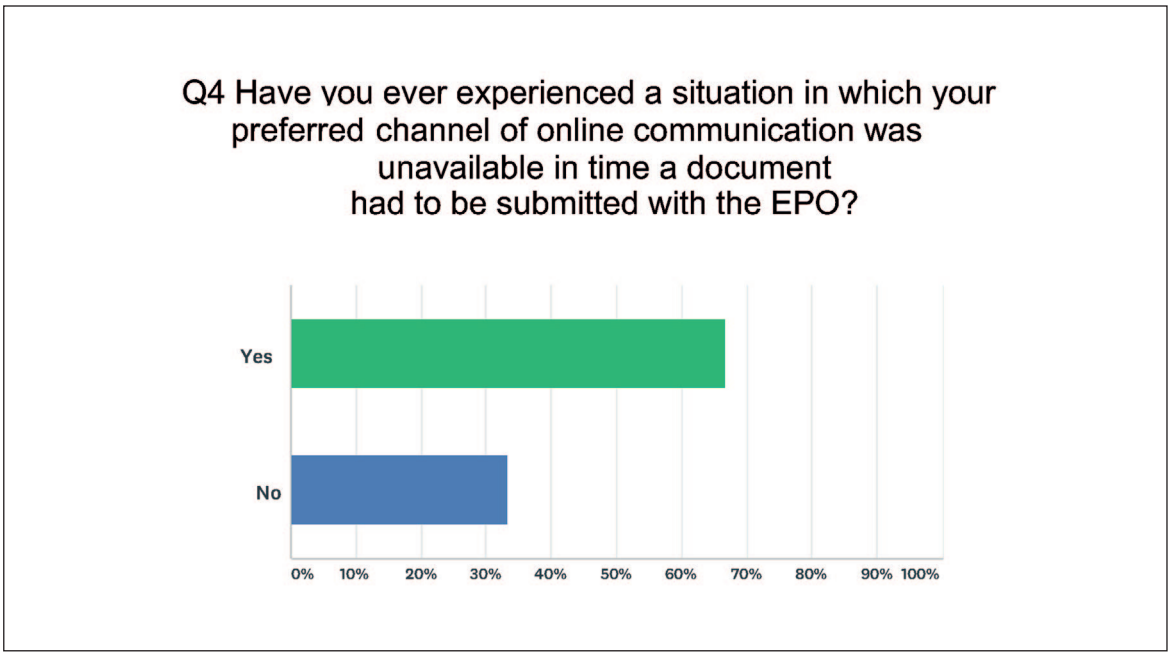


Q2 How often do you (as an office) submit any documents with the EPO?

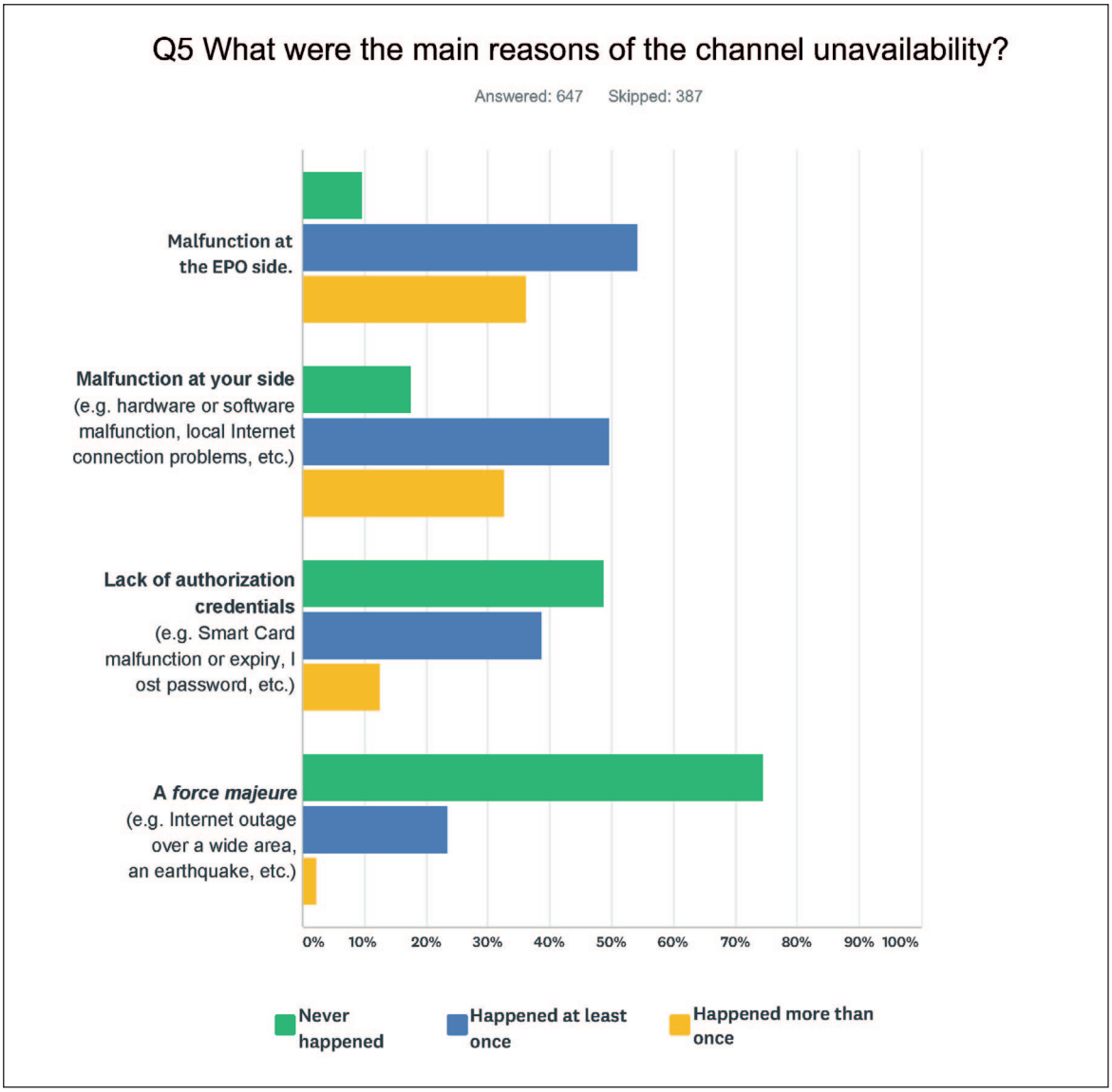


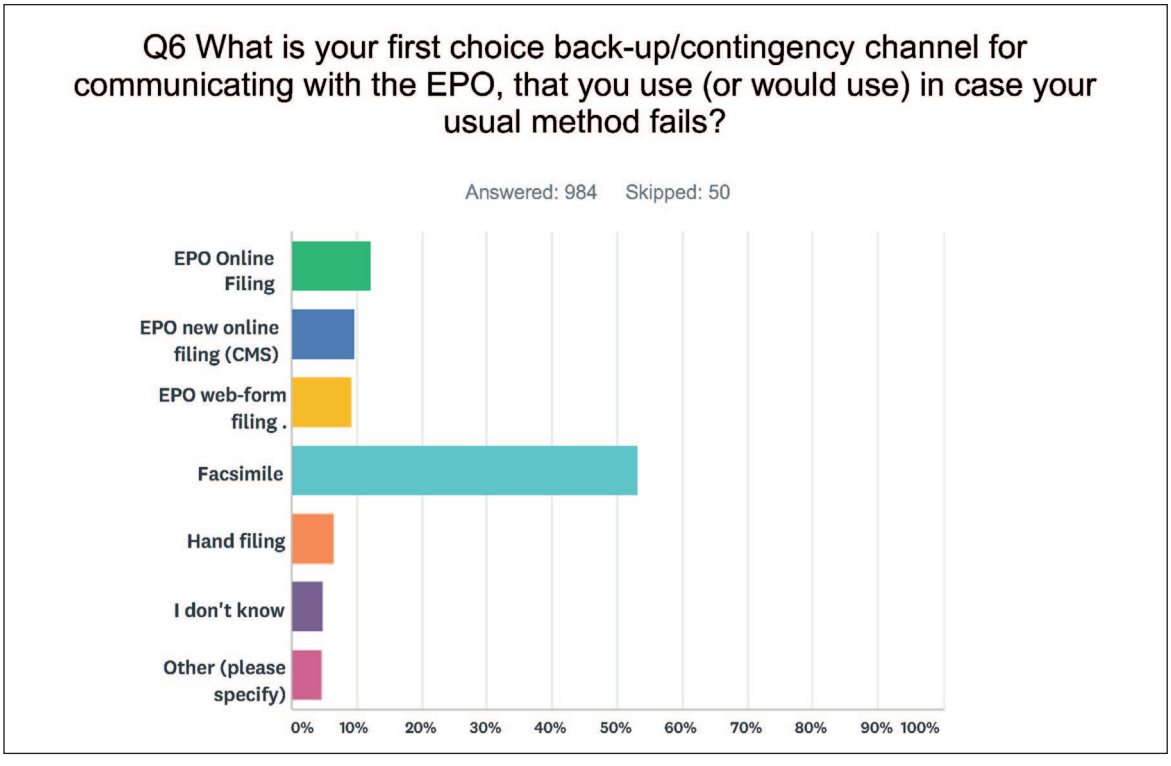
The results speak for themselves. Over 97% of respondents prefer to use the online services in their submissions to the EPO (Q3). However, two thirds have experienced situations in which the preferred channel of online filing was unavailable when needed (Q4). A variety of reasons explain this, including a more or less equal mix of malfunctions at the EPO side and/or malfunctions at the user side, and occasionally *force majeure* (Q5). Over one fifth of users have experienced failure due to lack of authorisation credentials of the right form (smartcard/password issues).



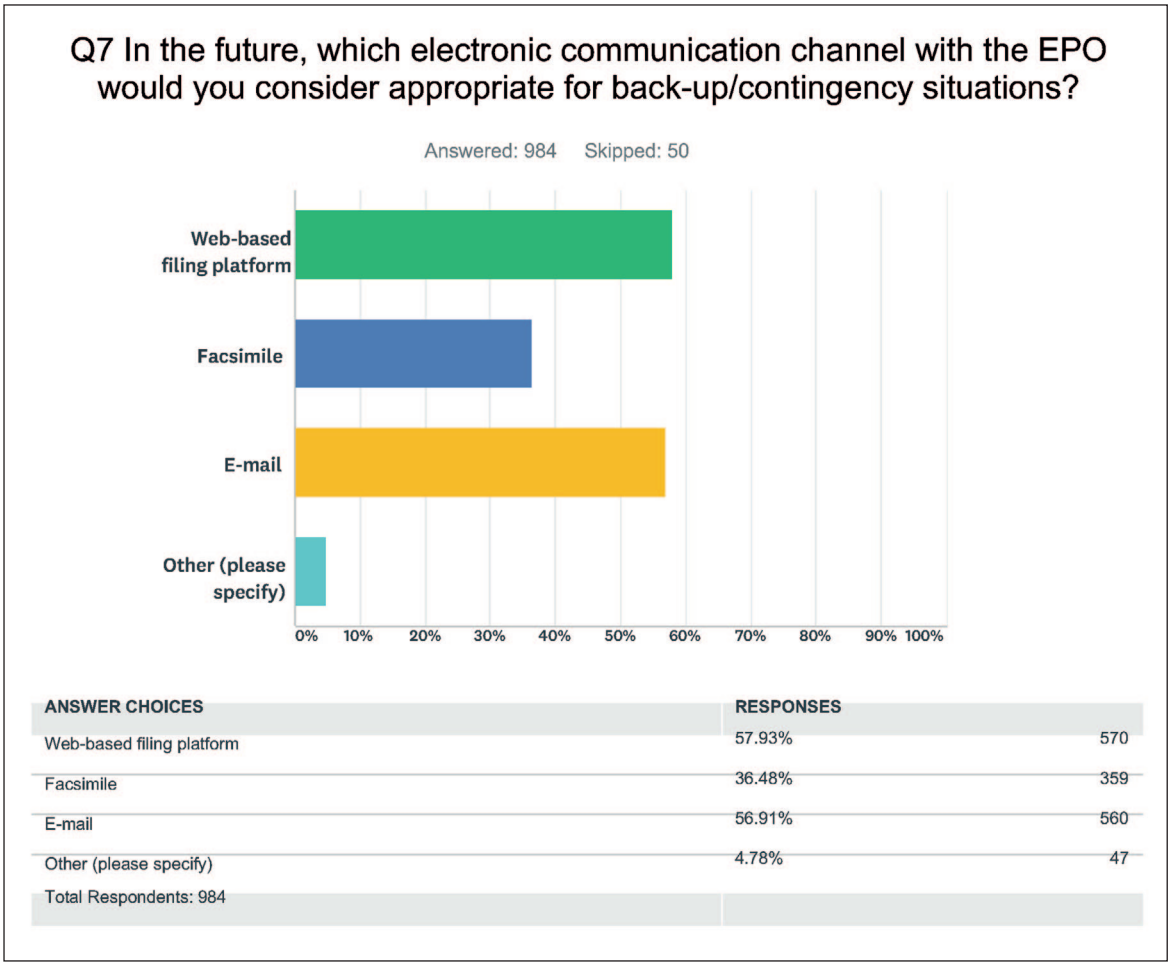


For more than half of users, facsimile is currently the first choice of contingency channel when the usual method fails (Q6). (Even those *preferring* a different channel may find facsimile is the only option, when systems are down.) A minority of respondents are able to use hand filing, while nearly 5% admit they do not know what they would do in that situation.


Q5 What were the main reasons of the channel unavailability?
Answered: 647 Skipped: 387
Malfunction at the EPO side.
Malfunction at your side (e.g. hardware or software malfunction, local Internet connection problems, etc.)
Lack of authorization credentials (e.g. Smart Card malfunction or expiry, l ost password, etc.)
A force majeure (e.g. Internet outage over a wide area, an earthquake, etc.)
0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%
Never happened
Happened at least once
Happened more than once


Q6 What is your first choice back-up/contingency channel for communicating with the EPO, that you use (or would use) in case your usual method fails?
Answered: 984 Skipped: 50
EPO Online Filing
EPO new online filing (CMS)
EPO web-form filing .
Facsimile
Hand filing
I don't know
Other (please specify)
0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

The EPO does not currently offer an online solution with the simplicity and flexibility of facsimile as a backup. However, when thinking of future developments, although over 1/3 would consider facsimile still an appropriate backup, more than half of the respondents would like to see a web-based filing platform and/or an email-based mechanism, or something else (Q7).



ANSWER CHOICES	RESPONSES	
Web-based filing platform	57.93%	570
Facsimile	36.48%	359
E-mail	56.91%	560
Other (please specify)	4.78%	47
Total Respondents: 984		

Major developments in EPO online systems are foreseen, as explained in the recently issued Strategic Plan. Your answers to the survey will be very valuable to your Online Communications Committee and other epi representatives, ensuring that the EPO understands and meets the needs of the user community. Already the International Bureau of WIPO has announced the imminent closure of facts channels, and is trialling a web-based contingency filing service. Please see the news item elsewhere in this edition, and experiment with the contingency filing service, before you need to rely on it.

If you have not already participated, you're welcome to add your response to the survey at
https://www.surveymonkey.de/r/OCC_survey
Responses from the responsible support staff, as well as attorneys, are welcome.

Please do not include confidential information in your responses. If you have any individual experience that you would like to share with the Online Communications Committee, please e-mail occ@patentepi.org.

Report of the Committee on Biotechnological Inventions

A. De Clercq (BE), Chair

1. Patentability of plants and animals – G 3/19

Our committee reported on **T 1063/18** in **epi** Information 1/2019 and 2/2019. This decision concerns the appeal by the applicant against the decision of the Examining Division to refuse European patent application no. 12 756 468.0 (publication no. EP 2 753 168 A1) for the sole reason that the claimed subject-matter was "found to be within the exception to patentability according to Article 53(b) EPC and Rule 28(2)" (here: plants exclusively obtained by means of an essentially biological process).

The Technical Board of Appeal (TBA) 3.3.04, in an enlarged composition consisting of three technically and two legally qualified members, held that Rule 28(2) EPC (see OJ 2017, A56) is in conflict with Article 53(b) EPC as interpreted by the Enlarged Board of Appeal (EBA) in decisions G 2/12 and G 2/13. In these decisions, the EBA had concluded that the exclusion of essentially biological processes for the production of plants in Article 53(b) EPC did not have a negative effect on the allowability of a product claim directed to plants or plant material.

The following points of law have been referred to the EBA by the President of the EPO in G3/19:

1. Having regard to Article 164(2) EPC, can the meaning and scope of Article 53 EPC be clarified in the Implementing Regulations to the EPC without this clarification being a priori limited by the interpretation of said Article given in an earlier decision of the Boards of Appeal or the Enlarged Board of Appeal?

2. If the answer to question 1 is yes, is the exclusion from patentability of plants and animals exclusively obtained by means of an essentially biological process pursuant to Rule 28(2) EPC in conformity with Article 53(b) EPC which neither explicitly excludes nor explicitly allows said subject-matter?

The **epi** Biotech Committee together with EPPC will prepare an amicus brief in name of **epi** for G 3/19. A short presentation was given and a discussion took place at the Council meeting to highlight the issues at stake in this referral. The deadline for submitting amicus briefs is October 1, 2019. An ad-hoc working group consisting of Ann De Clercq, Simon Wright, Chris Mercer and Heike Vogelsang-Wenke will be drafting the amicus brief.

The Biotech Committee will keep on following up this topic and provide its comments.

2. Overview of patentability of plants in the Member States

The Biotech Committee is following further national developments and has prepared an updated overview of the patentability of plants in the member states on basis of reactions of the members in each country and will follow up further. The information given in the referral document for G3/19 is in our opinion not completely accurate and in many countries the national law has not been amended and there are no immediate changes foreseen. An actual overview on national laws on Patentability of Plants can be found on the **epi** website:
https://patentepi.org/r/patentability-of-plants

3. Guidelines for Examination – biotech issues

The Biotech Committee is following up this topic as reported in **epi** Information 2/2019.

4. Upcoming meeting with DG1 Biotech Directors and committee meeting

On 17 October 2019 (am) the Biotech Committee will send a delegation to meet with the DG1 Biotech Directors in Munich. The topics of this meeting are currently being assembled. A liaison person from EPPC will be attending this meeting too.

On 16 October 2019 the Committee will hold its yearly meeting in Munich **epi** Secretariat and will also prepare then for the meeting with the EPO the day after.

Ann De Clercq

5. Next meeting

The Biotech Committee will continue to deal with all questions relating to biotech and related life sciences inventions as well as topics referred to it by EPPC or other channels.

Decommissioning of fax services and new Contingency Upload Service at the International Bureau

O. Boncea (RO) and J. Gray (GB) on behalf of the Online Communications Committee

WIPO intends to discontinue the use by PCT applicants of fax services at the International Bureau. **epi** representatives and others have been working hard to ensure that the fax service is not switched off, until a suitable contingency filing service is in place, and tried and fully tested by users over a period of time.

Although already announced for the end of June, the **decommission of fax was postponed, but only until the end of the year 2019**. In the meantime, users have the possibility to test and/or use in parallel the IB's **new Contingency Upload Service**.

The Contingency Upload Service is an alternative channel for filing documents with the International Bureau (including when IB acts as Receiving Office), designed to be a simple and secure means for the electronic transmission of documents, aimed especially for emergency situations. Documents like new international applications and post-filing documents may be uploaded to a link provided in advance by email, without having to create or sign in to a WIPO account and without the need of an electronic signature.

Further details may be found at this link: https://www.wipo.int/pct/en/faqs/contingency_upload_faq.html.

A demo version is also available for testing purposes only.

Users are highly recommended to try the new service, before they need it in a real emergency. Even if you do not normally use the ePCT system, it is of special interest because EPO has yet to come up with an alternative filing means, for cases where the current EPO electronic filing systems fail, even though they surely would love to decommissioning of fax services as well. The Online Communications Committee (OCC) of **epi** will be collaborating with the EPO as their system evolve, and your feedback regarding the IB's new Contingency Service would be very helpful. You can always contact the OCC at occ@patentepi.org.

(See also the results of the online survey "What do you do when online filing breaks down?" reported page 24 of this journal. New responses are still welcome.)

General Information

epi Board

Präsident / President / Président
BE – LEYDER Francis

Vize-Präsidentinnen / Vice-Presidents / Vice-Présidentes
DE – VOGELSANG-WENKE Heike
SI – KUNIČ TEŠOVIĆ Barbara

Generalsekretär / Secretary General / Secrétaire Général
PT – PEREIRA DA CRUZ João

Stellvertretender Generalsekretär
Deputy Secretary General / Secrétaire Général Adjoint
NL – TANGENA Antonius

Schatzmeister / Treasurer / Trésorier
CH – THOMSEN Peter

Stellvertretender Schatzmeister / Deputy Treasurer
Trésorier Adjoint
IT – RAMBELLI Paolo

Next Board and Council Meetings

Board Meetings
105th Board Meeting on 25 October 2019 in Munich (DE)

Council Meetings
87th Council Meeting on 23 November 2019 in Lisbon (PT)
88th Council meeting on 11 and 12 May 2020 in Glasgow (GB)
89th Council meeting on 14 November 2020 in Ljubljana (SI)

Disziplinarorgane und Ausschüsse
Disciplinary Bodies and Committees · Organes de discipline et Commissions

Disziplinarrat (epi)	Disciplinary Committee (epi)	Commission de Discipline (epi)
AL – NIKA Melina	FR – NEVANT Marc	MK – DAMJANSKI Vanco
AT – POTH Wolfgang°°	GB – GRAY John	MT – SANSONE Luigi A.
BE – DEBLED Thierry	GR – TSIMIKALIS Athanasios	NL – VAN LOOIJENGOED Ferry A.T.
BG – PAKIDANSKA Ivanka Slavcheva	HR – MARSIC Natasa	NO – THRANE Dag
CH – REUTELER Raymond	HU – KOVÁRI Zoltán	PL – ROGOZIŃSKA Alicja
CY – ROUSOUNIDOU Vasiliki	IE – SMYTH Shane	PT – DIAS MACHADO António J.
CZ – FISCHER Michael	IS – HARDARSON Gunnar Örn	RO – FIERASCU Cosmina
DE – FRÖHLING Werner°	IT – MAZZINI Guiseppe	RS – BOGDANOVIC Dejan
DK – FREDERIKSEN Jakob	LI – ROSENICH Paul*	SE – KARLSTRÖM Lennart
EE – KAHU Sirje	LT – GERASIMOVIC Jelena	SI – JAPELJ Bostjan
ES – STIEBE Lars Magnus	LU – KIHN Pierre	SK – ČECHVALOVA Dagmar
FI – WESTERHOLM Christian	LV – SERGEJEVA Valentina	SM – MARTINI Riccardo
	MC – HAUTIER Nicolas	TR – YURTSEVEN Tuna**

Disziplinarausschuss (EPA/epi)	Disciplinary Board (EPO/epi)	Conseil de Discipline (OEB/epi)
epi Mitglieder	epi Members	Membres de l'epi
BE – CAMPABADAL Gemma	DE – MÜLLER Wolfram	IS – VILHJALMSSON Arni
	FR – QUANTIN Bruno	

Beschwerdekammer in Disziplinarangelegenheiten (EPA/epi)	Disciplinary Board of Appeal (EPO/epi)	Chambre de Recours en Matière Disciplinaire (OEB/epi)
epi Mitglieder	epi Members	Membres de l'epi
DE – REBBEREH Cornelia	GB – JOHNSON Terence L.	NL – HOOIVELD Arjen
FR – GENDRAUD Pierre H.	HR – KORPER ŽEMVA Dina	TR – ARKAN Selda
	IT – COLOMBO Stefano	

Ausschuss für Berufliche Bildung	Professional Education Committee	Commission de Formation Professionnelle
Ordentliche Mitglieder	Full Members	Membres titulaires
AL – DODBIBA Eno	FR – COLLIN Jérôme	MK – PEPELJUGOSKI Valentin
AT – ATZMÜLLER Peter	GB – GWILT Julia Louise	MT – PECHAROVÁ Petra
BE – VAN DEN HAZEL Hendrik Bart	GR – LIOUMBIS Alexandros	NL – VAN WEZENBEEK Lambertus A.C.M.
BG – KOSSEVA Radislava Andreeva	HR – PEJCINOVIC Tomislav	NO – BERG Per Geir
CH – KAPIC Tarik	HU – TEPFENHÁRT Dóra Andrea	PL – PAWLOWSKI Adam
CY – THEODOULOU Christos A.	IE – LITTON Rory Francis	PT – CARVALHO FRANCO Isabel
CZ – HARTVICHOVA Katerina	IS – GUDMUNDSDÓTTIR Anna Valborg	RO – TEODORESCU Mihaela
DE – LETZELTER Felix Phillip	IT – RAMBELLI Paolo*	RS – PLAVSA Uros
DK – STAHR Pia	LI – ALLWARDT Anke**	SE – HERBJØRNSEN Rut
EE – SARAP Margus	LT – GERASIMOVIC Liudmila	SI – FLAK Antonija
ES – VILALTA JUVANTENY Luis	LU – LECOMTE Didier	SM – AGAZZANI Giampaolo
FI – KONKONEN Tomi-Matti Juhani	LV – KROMANIS Artis	TR – ATALAY Baris
	MC – THACH Tum	
Stellvertreter	Substitutes	Suppléants
AT – GEHRING Andreas	FR – FERNANDEZ Francis Lionel	LU – ROUSSEAU Cyrille
BE – MACKETT Margaret	GB – WHITLOCK Holly Elizabeth Ann	NL – MULDER Cornelis A.M.
BG – BENATOV Samuil Gabriel	HR – STRNISCAK Tomislav	PL – DARGIEWICZ Joanna
CH – RUDER Susanna Louise	HU – RAVADITS Imre	PT – DE SAMPAIO José Eduardo
DE – POTT Thomas	IE – SKRBA Sinéad	RO – BONCEA Oana-Laura
DK – JENSEN Bo Hammer	IS – INGVARSSON Sigurdur	SE – WESTMAN Maria Elisabeth Mimmi
ES – IGARTUA Ismael	IT – GUERCI Alessandro	SM – PRIMICERI Maria Vittoria
FI – LEHESRANTA Satu Johanna	LI – HOFMANN Markus Günter	TR – AGCA KIZIL Tugce

*Chair/ **Secretary °Vice-Chair / °°Vice-Secretary

Ausschuss für Europäische Patent Praxis	European Patent Practice Committee	Commission pour la Pratique du Brevet Européen
AL – NIKA Vladimir	FI – HONKASALO Terhi Marjut Anneli	MC – HAUTIER Nicolas
AT – VÖGELE Andreas	FR – LE VAGUERÈSE Sylvain Jacques	MK – ILIEVSKI Bogoljub
BE – GILIO Michel	GB – MERCER Christopher Paul*	NL – KETELAARS Maarten F.J.M.
BG – TSVETKOV Atanas Lyubomirov	GR – SAMUELIDES Emmanuel	NO – REKDAL Kristine
CH – WILMING Martin	HR – HADZIJA Tomislav	PL – AUGUSTYNIAK Magdalena Anna
CY – THEODOULOU Christos A.	HU – LENGYEL Zsolt	PT – FERREIRA MAGNO Fernando Antonio
CZ – BUCEK Roman	IE – MCCARTHY Denis Alexis	RO – NICOLAESCU Daniella Olga
DE – KREMER Véronique Marie Joséphine	IS – FRIDRIKSSON Einar Karl**	RS – HERAK Nada
DK – HEGNER Anette	IT – MODIANO Micaela Nadia	SE – BURKERT Till
EE – TOOME Jürgen	LI – GYAJA Christoph Benjamin	SI – BORSTAR Dusan
ES – SÁEZ GRANERO Francisco Javier	LU – OCVIRK Philippe**	SM – TIBURZI Andrea
	LV – FORTUNA Jevgenijs	TR – MUTLU Aydin
Technical Field: Information and Communication Technologies		
CH – KAPIC Tarik	GB – ASQUITH Julian Peter	MC – SCHMALZ Günther
DE – BITTNER Peter	GR – SAMUELIDES Emmanuel	PL – BURY Marek
DE – FLEUCHAUS Michael A.*	IE – BOYCE Conor	SE – BURKERT Till
FI – HONKASALO Terhi Marjut Anneli	IT – PES Matteo	SM – PERRONACE Andrea
Technical Field: Pharmaceuticals		
CH – WILMING Martin	ES – BERNARDO NORIEGA Francisco**	HU – SZENTPÉTERI Zsolt
DE – LEIßLER-GERSTL Gabriele	FR – WERNER Alain	IT – MACCHETTA Francesco
DE – WANNER Bettina	GB – WRIGHT Simon Mark	NL – JORRITSMA Ruurd*
		PL – KAMINSKI Piotr
Technical Field: Chemistry		
CH – COGNIAT Eric Jean Marie	GB – BOFF James Charles*	PL – GIZINSKA-SCHOHE Malgorzata
DE – LEIßLER-GERSTL Gabriele	IT – COLUCCI Giuseppe	SE – CARLSSON Carl Fredrik Munk
DE – WEINGARTEN Ulrich	LU – MELLET Valérie Martine**	
Technical Field: Mechanics		
BE – GILIO Michel	DK – CARLSSON Eva*	IT – PAPA Elisabetta
CH – LIEBETANZ Michael	EE – SARAP Margus	PL – LEWICKA Katarzyna Dorota**
CZ – BUCEK Roman	FI – HEINO Pekka Antero	RO – VASILESCU Raluca
DE – STORK Martina		

Geschäftsordnungsausschuss	By-Laws Committee	Commission du Règlement Intérieur
Ordentliche Mitglieder	**Full Members**	**Membres titulaires**
AT – FORSTHUBER Martin	GB – WRIGHT Simon Mark	MC – SCHMALZ Günther
FR – MOUTARD Pascal Jean*	IT – GERLI Paolo	**Suppléants**
Stellvertreter	**Substitutes**	FR – GENDRAUD Pierre
DE – WINTER Andreas	GB – JOHNSON Terence Leslie	MK – VESKOVSKA Blagica

Ausschuss für epi-Finanzen	epi-Finances Committee	Commission des Finances de l'epi
BE – QUINTELIER Claude	FR – LAGET Jean-Loup	PL – MALEWSKA Ewa
CH – BRAUN André jr.	GB – POWELL Timothy John	RO – TULUCA F. Doina
DE – MAIKOWSKI Michael*	IT – TAGLIAFICO Giulia	
EE – SARAP Margus	LU – BEISSEL Jean	

Ausschuss für EPA-Finanzen	Committee on EPO Finances	Commission des Finances de l'OEB
CH – LIEBETANZ Michael**	IE – CASEY Lindsay Joseph	IT – FATTORI Michele
DE – WINTER Andreas	**Substitutes**	MK – FILIPOV Gjorgij
GB – BOFF James Charles*	DE – SCHOBER Christoph	NL – BARTELDS Erik

*Chair/ **Secretary °Vice-Chair / °°Vice-Secretary

Ausschuss für Standesregeln / Professional Conduct Committee / Commission de Conduite Professionnelle

Ordentliche Mitglieder / Full Members / Membres titulaires

AL	– SHOMO Vjollca	HR	– DLACIC Albina	MK	– KJOSESKA Marija
AT	– PEHAM Alois	HU	– LANTOS Mihaly	NL	– BOTTEMA Johan Jan
BE	– VAN DEN BOECK Wim°	IE	– LUCEY Michael	NO	– THORVALDSEN Knut
BG	– VINAROVA Emilia Zdravkova	IS	– JONSSON Thorlakur	PL	– KREKORA Magdalena
CH	– MAUÉ Paul Georg	IT	– CHECCACCI Giorgio*	PT	– ALVES MOREIRA Pedro
CZ	– LUNZAROVÁ Lucie	LI	– WILDI Roland	RO	– PETREA Dana-Maria
DE	– GEITZ Holger	LT	– PETNIUNAITE Jurga	RS	– PETOSEVIC Slobodan
ES	– HERNANDEZ LEHMANN Aurelio	LU	– KIHN Henri	SE	– SJÖGREN PAULSSON Stina
FI	– SAHLIN Jonna Elisabeth	LV	– SMIRNOV Alexander	SM	– MAROSCIA Antonio
FR	– DELORME Nicolas	MC	– THACH Tum°°	TR	– CAYLI Hülya
GB	– POWELL Timothy John				

Stellvertreter / Substitutes / Suppléants

AT	– FOX Tobias	HU	– SOVARI Miklos	PL	– HUDY Ludwik
BG	– BENATOV Samuil Gabriel	IT	– MARIETTI Andrea	PT	– PEREIRA GARCIA João Luís
CH	– KÖRNER Thomas Ottmar	LI	– KÜNSCH Joachim	RO	– DOBRESCU Teodora Valentina
DE	– WINTER Andreas	LT	– KLIMAITIENE Otilija	SE	– ESTREEN Lars J.F.
ES	– JORDÁ PETERSEN Santiago	LV	– SERGEJEVA Valentina	SM	– MERIGHI Fabio Marcello
FI	– KUPIAINEN Juhani Kalervo	MK	– VESKOVSKA Blagica		
GB	– BLAKE Stephen James				

Ausschuss für Streitregelung / Litigation Committee / Commission Procédure Judiciaire

Ordentliche Mitglieder / Full Members / Membres titulaires

AL	– PANIDHA Ela	FR	– NUSS Laurent	MT	– GERBINO Angelo
AT	– STADLER Michael	GB	– BLAKE Stephen James	NL	– CLARKSON Paul Magnus
BE	– BECK Michaël Andries T.	HR	– VUKINA Sanja	NO	– SIMONSEN Kari Helen
BG	– GEORGIEVA-TABAKOVA Milena Lubenova	HU	– TÖRÖK Ferenc°	PL	– LEWICKA Katarzyna Dorota
		IE	– WALSHE Triona Mary**	PT	– CRUZ Nuno
CH	– THOMSEN Peter René*	IS	– INGVARSSON Sigurdur	RO	– BONCEA Oana-Laura
CY	– THEODOULOU Christos A.	IT	– COLUCCI Giuseppe	RS	– ZATEZALO Mihajlo
CZ	– GUTTMANN Michal	LI	– HARMANN Bernd-Günther	SE	– LI Hao
DE	– PFRANG Tilman	LT	– VIESUNAITE Vilija	SI	– GOLMAJER ZIMA Marjanca
EE	– KOPPEL Mart Enn	LU	– BRUCK Mathis	SK	– NEUSCHL Vladimir
ES	– ARIAS SANZ Juan	LV	– OSMANS Voldemars	SM	– BALDI Stefano
FI	– FINNILÄ Kim Larseman	MC	– SCHMALZ Günther	TR	– DERIS M.N. Aydin
		MK	– JOANIDIS Jovan		

Stellvertreter / Substitutes / Suppléants

AT	– MIKOTA Josef	FR	– GENDRAUD Pierre	NL	– VISSER-LUIRINK Gesina
BE	– JAEKEN Annemie	GB	– RADKOV Stoyan Atanassov	PL	– MALCHEREK Piotr
BG	– KOSSEVA Radislava Andreeva	HR	– STRNISCAK Tomislav	PT	– CORTE-REAL CRUZ António
CH	– KÖRNER Thomas Ottmar	IE	– WHITE Jonathan Patrick	RO	– PUSCASU Dan
DE	– TÖPERT Verena Clarita	IT	– DE GREGORI Antonella	SE	– MARTINSSON Peter
DK	– KANVED Nicolai	LI	– HOLZHEU Christian	SI	– HODZAR Damjan
ES	– HERNANDEZ LEHMANN Aurelio	LU	– MELLET Valérie Martine	SM	– PETRAZ Davide Luigi
FI	– ETUAHO Kirsikka Elina	LV	– FORTUNA Jevgenijs	TR	– SEVINÇ Erkan
		MC	– THACH Tum		

Nominierungsausschuss / Nominations Committee / Commission de Proposition

BE	– QUINTELIER Claude*	GB	– MERCER Chris	FR	– NUSS Laurent
CH	– MAUÉ Paul Georg	FR	– LE VAGUERÈSE Sylvain	RO	– TEODORESCU Mihaela

*Chair/ **Secretary °Vice-Chair / °°Vice-Secretary

Ausschuss für Biotechnologische Erfindungen	Committee on Biotechnological Inventions	Commission pour les Inventions en Biotechnologie
AL – SINOJMERI Diana	HR – DRAGUN Tihomir	NO – THORESEN Liv Heidi
AT – PFÖSTL Andreas	HU – PETHO Arpad	PL – KAWCZYNSKA Marta Joanna
BE – DE CLERCQ Ann G. Y.*	IE – HALLY Anna-Louise	PT – TEIXEIRA DE CARVALHO Anabela
CH – SPERRLE Martin	IS – JONSSON Thorlakur	RO – POPA Cristina
CZ – HAK Roman	IT – TRILLAT Anne-Cecile	RS – BRKIC Zeljka
DE – EXNER Torsten	LI – BOGENSBERGER Burkhard	SE – MATTSSON Niklas
DK – SCHOUBOE Anne	LT – GERASIMOVIC Liudmila	SI – BENCINA Mojca
ES – BERNARDO NORIEGA Francisco	LU – SPEICH Stéphane	SM – PRIMICERI Maria Vittoria
FI – VIRTAHARJU Outi Elina	LV – SERGEJEVA Valentina	TR – YALVAÇ Oya
FR – TARAVELLA Brigitte	MK – VESKOVSKA Blagica	
GB – WRIGHT Simon Mark**	NL – SWINKELS Bart Willem	

Harmonisierungsausschuss	Harmonisation Committee	Commission d'Harmonisation
CH – EHNLE Marcus	ES – DURÁN MOYA Luis-Alfonso	IR – ROCHE Dermot
DE – STEILING Lothar	FI – KÄRKKÄINEN Veli-Matti	IT – SANTI Filippo**
DE – WEINGARTEN Ulrich	GB – BROWN John D.*	PL – KREKORA Magdalena
DK – JENSEN Bo Hammer		

Ausschuss für Online-Kommunikation	Online Communications Committee	Commission pour les Communications en Ligne
AT – GASSNER Birgitta	DE – STÖCKLE Florian	IT – BOSOTTI Luciano
BE – BIRON Yannick**	FR – MÉNÈS Catherine	PL – LUKASZYK Szymon
CH – VAVRIN Ronny	GB – GRAY John James*	RO – BONCEA Oana-Laura
DE – SCHEELE Friedrich	IE – BROPHY David Timothy°°	

Wahlausschuss	Electoral Committee	Commission pour les Élections
CH – MÜLLER Markus*	GB – BARRETT Peter	IS – VILHJÁLMSSON Árni

Redaktionsausschuss	Editorial Committee	Commission de Rédaction
BE – NOLLEN Maarten Dirk-Johan*	DE – SCHMID Johannes	IT – LEGANZA Alessandro
DE – THESEN Michael	FR – NEVANT Marc°	MC – AMIRA Sami
DE – HERRMANN Daniel	IE – CASEY Lindsay Joseph	

Interne Rechnungsprüfer	Internal Auditors	Commissaires aux Comptes Internes
Ordentliche Mitglieder	Full Members	Membres titulaires
CH – KLEY Hansjörg	FR – CONAN Philippe	
Stellvertreter	Substitutes	Suppléants
DE – TANNER Andreas	FR – TARAVELLA Brigitte	

Zulassungsausschuss für epi Studenten	epi Studentship Admissions Committee	Commission d'admission des étudiants de l'epi
CH – FAVRE Nicolas	FR – NEVANT Marc	IT – MACCHETTA Francesco
DE – LEIßLER-GERSTL Gabriele	GB – MERCER Christopher Paul	IT – PROVVISIONATO Paolo
DE – KASTEL Stefan		

*Chair/ **Secretary °Vice-Chair / °°Vice-Secretary

Ständiger Beratender Ausschuss beim EPA (SACEPO)	Standing Advisory Committee before the EPO (SACEPO)	Comité consultatif permanent auprès de l'OEB (SACEPO)
epi-Delegierte	epi Delegates	Délégués de l'epi
BE – LEYDER Francis DE – LEISSLER-GERSTL Gabriele DE – VOGELSANG-WENKE Heike	DK – HEGNER Annette FI – HONKASALO Marjut GB – BOFF Jim GB – GRAY John	GB – MERCER Chris RO – TEODORESCU Mihaela SI – KUNIČ TEŠOVIĆ Barbara

SACEPO – Arbeitsgruppe Regeln	SACEPO – Working Party on Rules	SACEPO – Groupe de Travail Règles
DE – WILMING Martin	GB – MERCER Chris	FI – HONKASALO Marjut

SACEPO – Arbeitsgruppe Richtlinien	SACEPO – Working Party on Guidelines	SACEPO – Groupe de Travail Directives
DE – WILMING Martin	DK – HEGNER Anette	GR – SAMUELIDES Manolis

SACEPO – Arbeitsgruppe Qualität	SACEPO – Working Party on Quality	SACEPO – Groupe de Travail Qualité
MK – ILIEVSKI Bogoljub	DE – VOGELSANG-WENKE Heike	

SACEPO – PDI	SACEPO – PDI	SACEPO – PDI
AT – GASSNER Brigitta BE – LEYDER Francis	GB – MERCER Chris	IT – PROVVISIONATO Paolo

SACEPO – EPP	SACEPO – EPP	SACEPO – EPP
BE – BIRON Yannick		

Contact Data of Legal and Unitary Patent Division

Update of the European Patent Attorneys Database

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

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

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

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

Thank you for your cooperation.

Results of the 2019 European Qualifying Examination

Statistics on the results of the 2019 EQE

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

Place of residence	Total number of candidates	Pass
AL	0	0
AT	25	8
BE	42	22
BG	2	0
CH	45	20
CY	0	0
CZ	6	2
DE	724	262
DK	29	5
EE	2	0
ES	53	12
FI	40	13
FR	186	76
GB	237	137
GR	4	2
HR	1	0
HU	5	1
IE	7	0
IS	0	0
IT	92	20
LI	5	2

Place of residence	Total number of candidates	
LT	1	1
LU	5	0
LV	1	0
MC	0	0
MK	0	0
MT	0	0
NL	114	50
NO	9	2
PL	23	5
PT	4	1
RO	3	2
RS	0	0
SE	53	21
SI	3	2
SK	2	1
SM	0	0
TR	22	5
CN	1	
IL	1	
Grand Total :	**1746**	**672**

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

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

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

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

List of Professional Representatives

by their place of business or employment in the Contracting states and their entry according to A134(2) (EQE) or A134(3) (Grandfathers) as at 01.08.2019

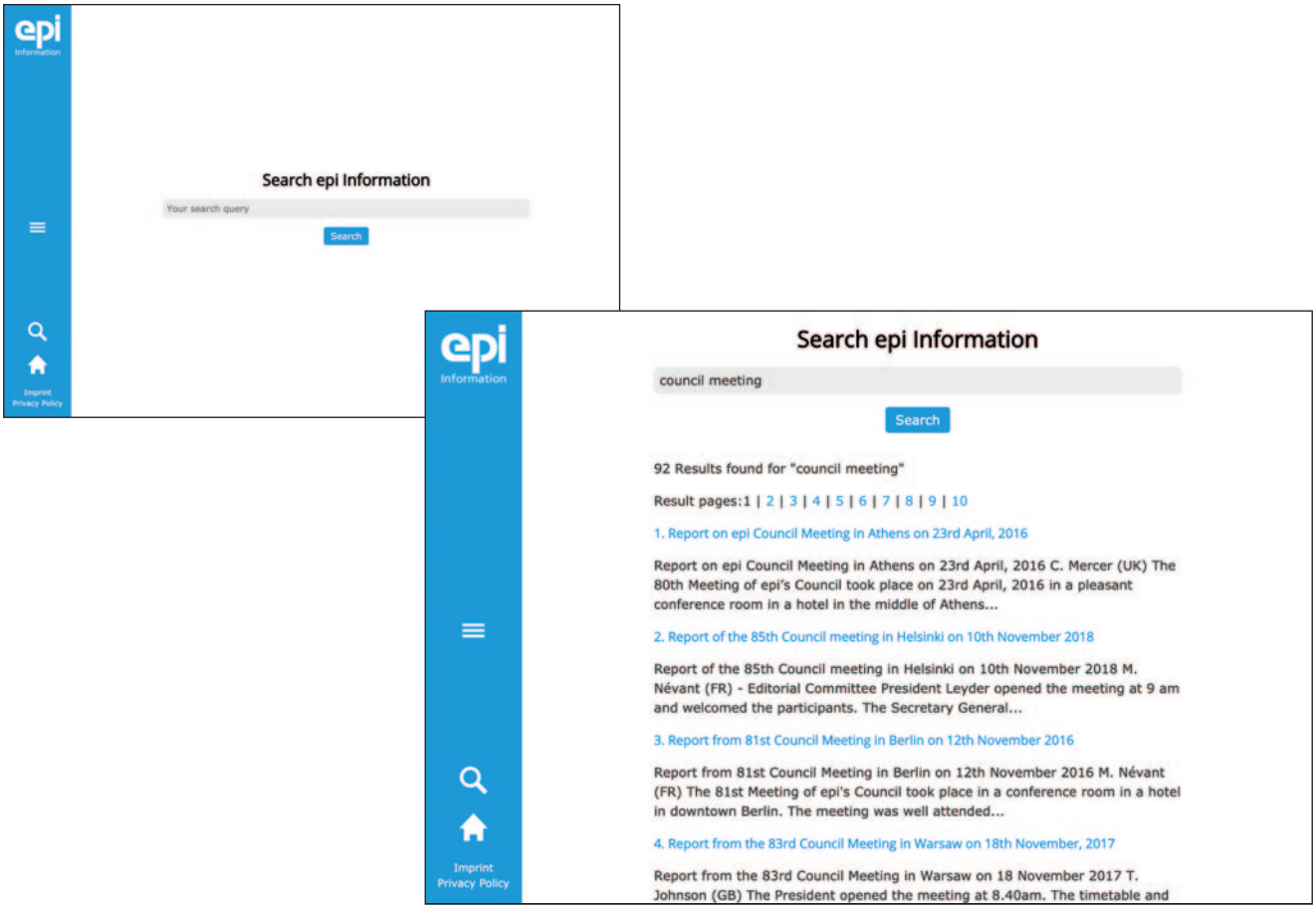
Contr. State	Number Total	% of Total Repr.
AL	13	0,10%
AT	164	1,28%
BE	268	2,10%
BG	53	0,42%
CH	595	4,66%
CY	11	0,09%
CZ	82	0,64%
DE	4679	36,66%
DK	277	2,17%
EE	28	0,22%
ES	232	1,82%
FI	190	1,49%
FR	1207	9,46%
GB	2439	19,11%
GR	24	0,19%
HR	26	0,20%
HU	69	0,54%
IE	79	0,62%
IS	20	0,16%
IT	535	4,19%

Contr. State	Number Total	
LI	20	0,16%
LT	24	0,19%
LU	23	0,18%
LV	17	0,13%
MC	7	0,05%
MK	22	0,17%
MT	6	0,05%
NL	537	4,21%
NO	100	0,78%
PL	273	2,14%
PT	40	0,31%
RO	47	0,37%
RS	43	0,34%
SE	452	3,54%
SI	31	0,24%
SK	30	0,24%
SM	17	0,13%
TR	84	0,66%
Total :	**12764**	**100,00%**

Full text search function for the electronic version of epi Information

Kindly note that a new feature has been implemented on the website for our journal **epi** Information.

A full text search through all editions of the electronic version of **epi** Information is now available for our readers.
https://information.patentepi.org



PATENTBÜRO PAUL ROSENICH AG

Est.1998

PATENTS I TRADEMARKS I DESIGNS I LICENSES

Wir sind seit über 20 Jahren national und international tätig. Wir vertreten in allen Gebieten des gewerblichen Rechtsschutzes und haben Sitze in Liechtenstein und in der Schweiz. Zu unseren Klienten zählen sowohl Industriebetriebe und mittelständische Unternehmen aus der grösseren Region als auch international operierende Grossfirmen. Technisch beschränken wir uns bis jetzt auf Technologien ohne Chemie, Pharmazie und Biotechnologie.

Wir suchen ab sofort oder nach Vereinbarung eine/n:

Patentanwältin/Patentanwalt

mit mehrjähriger Berufserfahrung und Führungsqualität zur Anleitung der IP-Administration und Patentabteilung.

Als Voraussetzung für diese interessante und attraktive Position verfügen Sie über:

- einen Hochschul/Universitäts-Abschluss technischer Fachrichtung, vorzugsweise in Maschinenbau, Elektrotechnik, Elektronik, Computertechnik oder Physik
- eine erfolgreich abgelegte europäische Eignungsprüfung
- Teamfähigkeit und eine geschäftsorientierte Arbeitseinstellung mit lösungsorientiertem Interesse für den ganzheitlichen IP-Schutzbedarf unserer Klienten

Die Position erfordert ein hohes Mass an Genauigkeit, Belastbarkeit, Selbstständigkeit und Kommunikationsfähigkeit, insbesondere auch für den direkten Kontakt mit englischsprachigen Partnern und Klienten. Einwandfreie Beherrschung der deutschen und englischen Sprache sind Voraussetzung. Weitere Sprachkenntnisse, insbesondre in Französisch, wären vorteilhaft.

Wir bieten Ihnen:

- im europäischen Vergleich attraktive Anstellungsbedingungen in leitender Position
- fachspezifische Weiterbildungsmöglichkeiten und gute Sozialleistungen
- abwechslungsreiche, verantwortungsvolle Aufgabenstellungen
- Raum für Eigeninitiative in einem langfristig orientierten Anstellungsverhältnis u/o in einer Partnerschaft
- ein vertrauensvoll zusammenarbeitendes kleines Team mit Wachstumsstreben
- eine vertrauliche Behandlung Ihrer Bewerbung

Wir suchen auch eine/n Patentanwaltsfachangestellte/n zur Verstärkung des Teams.

Haben wir Ihr Interesse geweckt? Dann freuen wir uns auf Ihre schriftliche Bewerbung per Post oder E-Mail an:

Patentbüro Paul Rosenich AG
Vertraulich z.H. Paul Rosenich
Büro- und Gewerbezentrum · Rotenbodenstrasse 12 · 9497 Triesenberg · Liechtenstein
E-Mail: paul@rosenich.com · Skype: pprronotebook

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

Postanschrift / Mailing address / Adresse postale
epi
Bayerstrasse 83
80335 Munich
Germany
Tel: +49 89 24 20 52-0
Fax: +49 89 24 20 52-20
Email: info@patentepi.com
www.patentepi.com

Layout und Satz / Layout and composition / Mise en page et ensemble
SIMIUS New Media GmbH
Am Söldnermoos 17
85399 Hallbergmoos
Tel: +49 (811) 1283 4089
Email: info@simius.de
www.simius.d

European Patent Institute
Bayerstrasse 83
80335 Munich | Germany