

Patents in Europe 2008

A happy anniversary for the European patent system
European Patent Office

In association with



A supplement to *Intellectual Asset Management* magazine
www.iam-magazine.com

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This text first appeared in the IAM magazine supplement 'Patents in Europe 2008' April 2008

A happy anniversary for the European patent system

The European Patent Convention was 30 years old in 2007. It was a time to reflect on a series of significant achievements and to assess the challenges that lie ahead

By **Alison Brimelow**, President of the European Patent Office

In 2007 we celebrated the 30th anniversary of the signing of the European Patent Convention (EPC). This historic agreement saw the creation of the European Patent Office (EPO) – a one-stop shop through which those seeking patent protection in Europe can submit a single application that, if it successfully navigates the examination process, can be converted into national patent rights in as many European Patent Organisation member states as the applicant so wishes.

Since it opened for business in 1980, I think it is fair to say that the EPO has been an outstanding success story – despite the fact that we are now dealing with many more patent applications than any of those responsible for establishing the office could ever have dreamed possible. It is sobering to consider that in the early years of its existence, the EPO was dealing with around 10,000 applications a year. In 2007 alone, we received well over 210,000 applications.

In attempting to identify the reasons for the success of the European patent system, one of the first things that comes to mind is the economic value of patents. This is closely followed by a lengthy list of the benefits which the system has brought to hundreds of thousands of patent proprietors in particular, and to society in general, since its inception.

These much-praised advantages are the result of translating a bold vision into reality and refining it in many stages, so that in the course of three decades it has matured into a system that is the envy of many. Though it remains incomplete in significant respects,

in terms of its practical value I would say it is near-perfect.

Vision

It owes its success to the creative genius and drive of its pioneers. With their vision, perseverance and wisdom, they breathed life into the EPO and guided it through its early stages. All today's users of the office have a special debt of gratitude to the founding fathers and their colleagues, and above all to Professor Kurt Haertel and Bob van Benthem. We also owe thanks to all the members of the Administrative Council, to the heads of its technical committees and to the chairmen who have directed its fates over the years. Praise and gratitude are likewise due to all the office's previous presidents, as well as to its vice-presidents: between them, they have developed policies that have helped to fashion the EPO into one of the world's leading IP institutions.

All these individuals have set the stage for the work of the office and its staff. Our examiners and lawyers, with their expertise, ability and their hard work, have made the European patent a highly desirable piece of property; a true premium product. As a result, European patents today are held in high esteem for their quality and legal validity. Their status as a benchmark is undoubtedly the greatest success that the European patent system has achieved in its first 30 years of existence.

Indeed, the European patent system is now clearly a model for many other regions, something that has resulted in increased reliance on the EPO's expertise: the office supports or runs nearly every major international cooperation project in the patents sector. Thus, it has grown into one of the most significant forces in the



Alison Brimelow
President of the EPO

Alison Brimelow took office as President of the European Patent Office on 1st July 2007. Before that, she had pursued a varied career in the civil service, including experience of intellectual property at national, European and international levels.

In March 1999 Alison Brimelow was appointed Chief Executive and Comptroller General of the UK Patent Office, a position she held until December 2003.

From 1999 to 2003 she headed the UK delegation on the Administrative Council of the European Patent Organisation.

In 2005, she was appointed Commander of the Order of the British Empire (CBE).

development of the global patent system and its name is now synonymous with quality. This is something else that we should not forget in considering the achievements of the last 30 years.

International cooperation had a particularly marked impact on the European integration process at the time when the new EU member states had to be brought into the European patent system. A key component in that process was the EU's RIPP project, which was organised by the EPO. But the office's strengths have also been instrumental in the success of cooperation with other regions, especially Asia under the ECAP projects and the EU-China IPR Cooperation Programme. Our partners' reliance on us will continue to be a key factor in cooperation projects and the global expansion of the patent system.

Controversy

However, the office's position as a European authority outside the Community legal order has not always won it universal respect and approval. Relations with EU institutions had tentative beginnings and it is only in recent years that they have gained momentum.

There have been occasions when this has proved a problem or even a handicap for the office, especially in the political debate surrounding the patentability of biotechnological and computer-implemented inventions. These are fields in which the EPO has frequently been accused of lacking democratic legitimacy and accountability, and recent demonstrations against biotech patents show that they continue to be highly controversial.

Yet despite this, I am confident that opening up towards the EU institutions, in particular the Parliament and the Commission, will strengthen the EPO's position as a key player in European innovation. Intensified dialogue with patent system critics has also appreciably accelerated this process.

Onwards

The EPC's entry into force in 1977 was intended to give birth to a "good and fair" patent system. That was the lofty vision of its founding fathers. Putting that vision into practice was and still is the foundation of our patent system's success.

Today we are on such a threshold again, as the EPO sets out on a new stage in its development with the practical implementation of the EPC 2000. It is almost exactly seven years since Roland Grossebacher informed the member states' delegations and the general public of the successful conclusion of the second Munich Diplomatic Conference. The revision of the EPC cleared the way for further expansion of the European patent system and strengthened its capacity for reform.

A significant step towards expansion of the patent system was taken this October with France's ratification of the London Agreement on Translations. France's accession to the Agreement means that it will come into force on 1st May. This would surely not have happened so soon without the tireless commitment and political acumen of my predecessor Alain Pompidou, and for that we all owe him a considerable debt of gratitude and appreciation. Let us

now hope that two other key projects – the European Patent Court and the Community patent – draw inspiration from this success.

Capacity for reform will be crucial to the future of our system, as the principle of a “good and fair” patent system alone can no longer meet the demands of a globalised world economy. The “Scenarios for the Future” study has alerted us to determining factors that are partly outside the patent system itself, but nevertheless influence its growth potential. Along with issues such as the impact of the global market economy, developments within Europe or new technologies, they are the parameters which will govern the EPO's development. What we now have to do is make the entire patent system fit for the future, not just its European branch.

The office realises what challenges this task entails. It will mean far-reaching changes and in places a complete break with past practice. We all know what the issues are – workload, cooperation with member states, the EPO's finances; and those are just the most important. But there is even more at stake. We need to find answers to the question of whether patents have any part at all to play in future economic life and, if so, what this part should be. In view of the increasingly public debate over innovation, these are matters that we cannot afford to ignore.

Change

These are the very issues that the EPO's strategic renewal programme that is now underway takes as its starting point. How do we have to change the way we work? How can we make ourselves more efficient? What should our future workplace look like? In that

respect, our strategic domains are addressing key findings of the Scenarios study; but we also need to scrutinise economic aspects, such as approaches to financing the European patent application and grant procedure.

These reflections are also intended to show that the change process is designed to reinforce the one unshakeable value that is the bedrock of our system: the quality of the European patent. The work of our examiners has made the European patent a premium product and we need to act to ensure that this is a permanent state of affairs. But the key to this is not entirely in our own hands. The globalised economy increasingly welcomes work sharing and that also applies to patents, which have long been part of a worldwide system.

International work-sharing initiatives were discussed and set in motion at the Trilateral Conference held in Washington DC in late October 2007. If they can be successfully implemented with the involvement of the patent system's global players, authorities and users alike, we will have taken a further step towards ensuring the future of the system. After all, IP institutions and their clients are both equally affected by the internationalisation of the patent system and its consequences.

We are all convinced that our patent law is “fair and good”, but our frame of reference is changing. So if we want our system to continue enjoying success and respect, we have a very big task on our hands. Yet I am equally convinced that the EPO, with its highly qualified staff, will master these challenges too, as long as we manage to establish the right conditions.