

# The EPO as a driving force behind positive developments in the patent system

The European Patent Office plays a key role in reforms of the European patent system and is a central pillar of both European and global innovation

By **Benoît Battistelli**, European Patent Office

On signing the European Patent Convention (EPC) at the Munich Diplomatic Conference over 30 years ago, the signatory states laid the foundations for the world's most successful regional patent system. After years of political standstill, development of the European patent system has gained new momentum. The EU member states' recent decision to use enhanced cooperation to introduce unitary patent protection in Europe has now brought that system a crucial step closer to completion. The move has also boosted efforts at international level to harmonise the patent systems of the largest economic regions. Other major systems, such as that of the United States, are also undergoing a process of reform and closer alignment of the various systems now seems a feasible possibility.

The European Patent Office (EPO) plays a key role in all of these processes. Although the EPO is not an EU institution and has no place at the negotiating table, the EU member states want it to be responsible for granting and administering the unitary patent. European businesses especially profit from this new approach and can expect considerable reductions in costs and red tape from a unitary patent.

## From regional office to global player

The facts speak volumes: from a core of seven founding states in 1977, the European

Patent Organisation has grown to comprise 38 contracting states and three associate states. Together, they cover a territory with a population of almost 600 million, which outnumbers that of the United States, Japan and Korea combined. At the same time, the EPO, with a staff of almost 7,000 located in Munich, The Hague, Berlin, Vienna and Brussels, has grown to become the second-largest European institution.

This growth reflects the success and economic importance of the European patent: the record number of 235,000 European patent applications filed in 2010 was almost eight times higher than the originally predicted maximum of 30,000, and the figure is still growing. Applicants from European countries file roughly 40% of patent applications. The EPO has witnessed considerable growth in filings by Chinese, Korean and Japanese firms over the past two years. These firms file many of their applications as Euro-Patent Cooperation Treaty (PCT) filings, thereby capitalising on the EPO's central role as a PCT authority. It acts as an international searching authority in more than 40% of all international procedures, making it a nerve centre of the global patent system. Similarly, many European companies use the international procedure before the EPO to file their applications for patent protection in other continents, mainly America and Asia. The EPO is thus a central pillar of not only European, but also global innovation. The European economy benefits enormously from this, as it means that European patents and patent applications play a key role in both innovation transfer within Europe and the export of European innovation to other regions.

## Patent quality, efficiency, transparency

The success of the European patent boils

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down, in essence, to three things. First of all, the EPO grants procedures, which rigorously aim for high patent quality and provide legal certainty for innovation on the technology market. The EPO's quality policy manifests itself in a restrictive patenting practice and a strong presumption of validity for European patents. The outstanding quality of European patents has been repeatedly acknowledged by independent experts. The EPO's eminent status among the PCT authorities, despite growing competition from other offices, is a clear sign of the confidence that globally operating companies have in its competence, the quality it issues and the pace at which it delivers its search report.

Second, due to the efficiency and transparency of the European procedure, information on the patentability of an invention is available from an early stage: the applicant and the general public can find out whether an invention is likely to be patented as early as six months after filing. Few other offices with an international remit can provide information so quickly and reliably at such an early procedural stage.

Finally, the harmonising nature of the European patent system proves useful in integrating new member states into the European innovation process and is conducive to the prompt dissemination of new technologies. That is why associate status is so attractive to neighbouring countries as is shown by the validation agreement with Morocco, and why more and more aspiring regions, such as the Association of Southeast Asian Nations, see the European patent system as a suitable model for developing their own IP systems.

**Priorities**

Given this success, the EPO must now set clear priorities with a view to enhancing

further the stimulus that European patents provide for the competitiveness of European industry. Patents are instruments of economic competition: any improvement of the patent system must be designed to optimise its economic benefit to businesses. Broadly speaking, the priorities for the European patent system must be set in three areas.

First, it is necessary to enhance the patenting procedure through reforms designed to ensure that it continues to provide European industry with a high-quality service at the lowest possible cost. This requires optimisation of the EPO's procedural operations, including the technical tools deployed.

In addition, the plans to introduce a unitary patent will mean that the EPO has a new task to perform. Harmonisation of the post-grant phase and patent litigation in Europe is a much longed-for step and should entail a significant reduction in costs and red tape, above all for small and medium-sized enterprises.

Finally, global innovation calls for harmonisation of the various patent systems as an effective support for the global economy. Although it is politically more difficult to take this step (given the various states' sovereign rights), technical cooperation projects already allow for extensive procedural alignment and so help to avoid unnecessary duplication of work. The appropriate platform for this is the IP5 cooperation between the EPO and the patent offices of the United States, Japan, China and Korea, which together handle 80% of the world's patent applications. Thanks to its widely recognised expertise in the area of international cooperation projects, the EPO plays a leading role in this process.

**Enhancing European procedure**

The EPO recently began to take the first



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Benoît Battistelli took up his duties as president of the European Patent Office (EPO) on 1st July 2010 following his election in March of that year. Prior to joining the EPO, he was director general of the French National Institute for Industrial Property, a post to which he was appointed in May 2004. Mr Battistelli also served as chairman of the Supervisory Board of the European Patent Academy from July 2005 to July 2008, and was elected chairman of the Administrative Council of the European Patent Organisation in March 2009, after serving as vice chairman of the council from December 2006 onwards.

steps towards significant procedural reform by implementing the Raising the Bar Initiative. No fewer than 15 EPC rules had to be amended, which required that the EPO engage in close consultation with its users. The reforms made clear, once again, that the stability and predictability of the European patent system are extremely important factors underlying its benefit to the economy. Consultation with user groups is therefore a fundamental element of this stability and the process must be improved and consolidated. I consider it one of my chief responsibilities to engage regularly in open and constructive talks with user groups. This also helps the EPO to strike a better balance between conflicting interests. It will not always be possible to do equal justice to all interests, but consultation is an important step towards developing the legal framework and EPO practice in accordance with users' needs.

That is why the EPO plans, as its next reform, to take measures that will encourage third parties to exercise their right, under Article 115 of the EPC, to present observations during proceedings. This is based on the fact that virtually all applicants will inevitably also find themselves in the position of a third party directly affected by the grant of a patent. The idea behind the measures is to enhance the European patent system's positive impact on innovation by making improvements to quality on the basis of such observations.

#### **Increasing operational efficiency**

Another important area on which the EPO must concentrate is the operational and cost efficiency of the European patent system. The EPO has always sought to set the pace in the development of electronic tools which make it possible to offer applicants fast, high-quality search and examination procedures at a reasonable cost. The success of its EPOQUE suite of search applications proves that this was the right strategy: more than 40 patent offices, including the Chinese State Intellectual Property Office, now use it as their standard patent-search tool.

The EPO's considerable ongoing investment in the development and optimisation of EPOQUE has produced a benchmark tool which unquestionably sets global standards. It is important that the EPO continues this strategy because, in the face of a worldwide increase in filings, it is predominantly through electronic tools that significant efficiency gains will be realised. A recent analysis of the EPO's IT infrastructure clearly showed that the EPO

must make improvements if it is to remain at the vanguard and achieve the desired efficiency gains. The EPO's policy here is to develop the best possible IT tools and share them with other patent offices – first of all within but also outside Europe – so as to improve the efficiency of the system as a whole, including that of the EPO procedures, at the lowest possible cost for users. The infrastructure reforms will, of course, be accompanied by procedural improvements and the EPO is currently working on these too.

In the years to come, the EPO's financial policy will likewise be geared towards strengthening its operational capacity in its core business. Its chief aim is to ensure that innovative businesses are not burdened with unnecessary costs, while at the same time safeguarding its own financial independence.

#### **Unitary patent protection**

An efficient IT structure and the resulting enhancement of the EPO's operational potential will bear fruit when it comes to granting and administering the planned European patent. The decision of 25 EU member states to introduce this patent after years of stalemate amounts to a political breakthrough. The European Council's adoption of the European Commission's draft regulations sees one of the longest-ever European integration projects enter the home straight. It is an important step in finally ensuring that innovative European businesses can compete with their Asian and US rivals under the same IP conditions.

Under the draft regulations, the EPO is to be responsible not only for granting the unitary patent, but also for its central administration. The fact that EU member states have entrusted the EPO with these tasks is a major vote of confidence in its competence and the quality of its work. Its activity to date has been a crucial factor in developing an eminent technology portfolio in Europe. The unitary effect of the new patent will serve to promote innovation further. The unitary patent will also give businesses more options in devising an appropriate IP strategy, as it will co-exist alongside national patents and the traditional European patent.

The EU unitary patent will succeed only if it offers businesses the relief they seek from current administrative and financial burdens. The EU member states must therefore be congratulated on having chosen to maintain the EPO's tried and tested language regime and, in the interests of

economy, to dispense with any need to translate the granted patent into all the official EU languages. The absence of such translation requirements and the central administration of the patents will save applicants around 70% of the cost of a comparable European patent valid in 25 states. Nevertheless, the EPO takes misgivings as to potential language barriers seriously, and has therefore concluded a non-exclusive agreement with Google on a machine translation service for patents. The new tool should enable users searching for information in the EPO's public databases to quickly obtain a fit-for-purpose translation of published patents into the language of any EPO member state. To that end, the EPO is making the existing collections of professional translations of European patents into the various official languages of its member states available to Google for upload, so as to ensure that the machine translations are of good quality. The agreement also covers Chinese, Japanese, Korean and Russian patents. This global information tool will undoubtedly increase the benefit the economy derives from the patent system. The service should be fully operational in all the languages mentioned by 2014.

The second element of the unitary patent system is a specialist unified European patent court. The establishment of this court is another important step in increasing legal certainty and lowering the costs associated with European patents. After the European Court of Justice rejected the European Commission's first specific proposal on such a court, the commission has developed a revised version of the proposal for consideration by the European Council.

### **International harmonisation**

The positive developments in Europe have given fresh impetus to efforts to harmonise the patent systems of the largest economic regions. The EPO's international outlook has long made it a global player in the patent field, but its central role in the planned unitary patent scheme will also strengthen its position in relations with the other major regions. The first meeting of the heads of the IP5 in 2006 laid the foundations for close cooperation between these institutions. The aim of this cooperation is to reduce unnecessary duplication of work in the global patent system, while guaranteeing the quality and sustainability of patents as key instruments

of the global economy. This shared vision has given rise to 10 technical foundation projects aimed at harmonising procedures for processing patent applications at the five major offices. This is needed in view of the growing interdependence of technology markets and the ever-greater influence that this has on businesses' global IP strategies, leading them to file parallel patent applications for the same invention in various countries. The priorities here are procedural economy and quality assurance. Given the rapidly growing demand for patents, immediate action is required to ensure that the patent system continues to play an important part in disseminating new technologies. Businesses must find comparable conditions in all markets if their innovation strategies are to succeed. In this respect, the EPO can draw on its considerable technical expertise and its experience as a forerunner in cooperation while, at the same time, safeguarding European interests. The first important step was an agreement with the US Patent and Trademark Office on establishing a Cooperative Patent Classification, building on the EPO's own European Patent Classification system. This will serve as a basis for harmonising the IP5 offices' working methods. The agreement is a promising start to creating a joint classification system, especially now that Japan is also considering adopting the Cooperative Patent Classification.

The IP5 cooperation is a long-term project designed to establish the legal and technical infrastructure needed for a sustainable global patent system. Close cooperation, based on trust, with the IP5 partner offices and the World Intellectual Property Organisation is crucial to achieving this aim. That is why the further development of the PCT, which is the preferred international filing route for innovative businesses, can be considered pioneering. In this connection too, the EPO sees itself as the advocate of Europe's interests.

The recent developments in the European and international IP systems have clearly added to the EPO's profile as a global player in the patent field. The EPO will make every effort to play its part in the development of a sustainable and efficient patent system which responds to the needs of the economy both in Europe and beyond. In that regard, its true potential and capacity as a facilitator for innovation have yet to be seen. **iam**