



The IP Federation working with the EPO in 2021

Over the last 12 months the European Patent Office (EPO) has accelerated its digital transformation consistent with its Strategic Plan 2023. It is fair to say that the EPO is now a primarily digital workspace at every level of the organisation. This increased digitalisation has presented new opportunities for engagement, collaboration and communication without the obstacle of geography. The IP Federation has embraced this opportunity and continues to work closely with the EPO at many levels to bring the user perspective to EPO initiatives as they emerge and develop.

Changes abound at the EPO and continued advocacy for applicants and users remains the IP Federation's priority. The use of videoconferencing facilities for oral proceedings was on the agenda at the EPO this year. The Boards of Appeal issued their decision in G 1/21 in July, in which it ruled that oral proceedings before the Boards of Appeal can, during a period of general emergency impairing the parties' possibilities to attend in-person oral proceedings at the EPO premises, be held by videoconference even without the consent of the parties. The status of mandatory oral proceedings at other procedural stages remains to be clarified. Meanwhile, the EPO announced an extension to the pilot for opposition oral proceedings by videoconference later in the year.

The EPO's ambition to process oppositions within a target period of 15 months put the topic of streamlining opposition proceedings on the agenda. Proposals for a streamlined opposition procedure were drawn up by the European Patent Institute (**epi**) and outlined to the Standing Advisory Committee of the EPO (SACEPO) in 2020. The proposals include strictly limiting the opportunities for written submissions by parties to discrete points in the procedure with fixed time limits (2 months in some cases). Wholesale revision of rules 79, 81 and 116 EPC are proposed, with submissions outside stipulated procedure being deemed *prima facie* inadmissible. The subject is still being considered by the EPO and SACEPO participants.

More procedural changes are imminent with the closure of the EPO's "CMS" online filing system and the introduction of a new "Online Filing 2.0" facility. A new central service for making and facilitating fee changes was announced in July, with the EPO embracing additional options for fee payment by credit card and bank transfer.

Significant case law developments this year include G 1/19 on the patentability of computer implemented simulations. The Enlarged Board concluded that simulations can solve a technical problem and that the well-established COMVIK¹ approach to assessing the technicality criteria for patentability apply. Notably, it is not decisive whether the system or process being simulated is technical. What is relevant is whether the simulation of the system or process contributes to the solution of a technical problem. Industry and the professions are closely examining the decision to understand the implications for simulations and other computer implemented technology such as artificial intelligence.

¹ Decision T 0641/00 (Two identities/COMVIK)

Also issued by the Enlarged Board is the decision in G 4/19 endorsing the EPO's long-established practice for assessing double patenting. The Enlarged Board confirmed that a European patent application can be refused under Articles 97(2) and 125 EPC if it claims the same subject-matter as a European patent which has been granted to the same applicant and does not form part of the state of the art. This is irrespective of whether the application was filed on the same date or earlier, is a divisional application, or claims the same priority date.

The IP Federation engages frequently with the EPO including directly with President Campinos, through SACEPO, and through work with BusinessEurope. Existing relationships are routinely solidified and new relationships forged to ensure the perspective of the industry is appropriately represented.

Scott Roberts, Immediate Past President, IP Federation