



The IP Federation working with the EPO in 2020

The pandemic has not undermined the continued engagement between the IP Federation and the European Patent Office (EPO) this year. Indeed, the frequency of meetings and the depth of dialogue has only increased as colleagues collaborate at short notice with ease through videoconferencing and email.

For an organisation dependent on collaboration with its user community and hosting routine oral hearings on its premises, the disruption to travel this year has required a swift and flexible response by the EPO. We have been involved in guiding that approach from the very start including videoconference calls with the EPO president, António Campinos, and his senior leadership team on a regular basis. Coupled with our participation in EPO Standing Advisory Committee meetings on EPC Rules and EPO Guidelines, our contributions have been regular, consistent and constructive.

The EPO was quick to respond to the pandemic across its operations. EPO staff worked flexibly from home while the Office introduced provisions to assist applicants and parties in proceedings through time extensions and fee deadlines, as well as flexibility on hearings, such as offering video conferences or postponements. The use of videoconferencing in first instance examination oral proceedings became “by default” during the year, with an ongoing trial in respect of *inter partes* opposition proceedings. Experience has been largely positive and the EPO is advocating a permanent transition of the mode of oral proceedings along these lines. This is an area that the IP Federation continues to contribute to.

Similarly, at the EPO Boards of Appeal procedures are adapting to accommodate videoconference proceedings. The Board of Appeal consultation on an amendment to its Rules of Procedure to more explicitly provide for videoconferencing is underway at the time of writing and the IP Federation is involved in our own response as well as inputting to the responses of others.

An early decision was made to cancel the European Qualifying Examination in early 2020 and an electronic variant is planned for 2021. Cancelling professional examinations for which candidates spend a number of years preparing was clearly not an easy decision and the early commitment to a 2021 series is very much welcomed.

The Enlarged Board of Appeal issued its decision in G 3/19 concerning the relationship between the Implementing Regulations and Articles of the EPC. This case dealt specifically with the relationship between Rule 28(2) EPC and Article 53(b) EPC in respect of the patentability of plants or animals exclusively obtained

by means of an essentially biological process. The decision confirmed the applicability of new Rule 28(2) EPC which is to be interpreted as excluding from patentability products obtained by essentially biological processes.

The Enlarged Board also held oral proceedings in case G1/19 relating to the patentability of computer simulations. The oral proceedings were, for the first time, streamed live for public viewing - an arrangement that worked extremely well and truly enhances public access to the judicial decisions of the Enlarged Board.

Convergence of practice between national patent offices is part of the EPO's ambitions under its Strategic Plan 2023. The EPO launched discussions on a convergence of practice at the end of 2019 with the set-up of two Working Groups dedicated respectively to "examination of unity of invention" (WG1) and "designation of inventor" (WG2), both aiming at establishing recommendations on common practices in these two areas to be submitted to the EPO Committee on Patent Law and the Administrative Council. At the end of July, a Status Report with the status of works on the convergence of practice was sent to the Committee on Patent Law for information. Considerable progress has been made and future topics for new working groups in 2021 include re-establishment of rights and the accordancy of a priority date. The IP Federation, through its work with BusinessEurope, continues to contribute to these initiatives.

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