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## **Interview with Dr Ulrich Schatz** (Munich, 14.11.2007)

### ***(1) What, in your view, were the most important values and ideas underlying the EPO's foundation and helping to ensure its success?***

**Dr Schatz:** The question assumes a causal connection between values and principles prevailing when the EPO was set up, and its subsequent success. Such values and principles did of course exist, and they still do. In particular, a feeling of responsibility and decency which requires anyone given the opportunity to work for a fine cause under virtually ideal conditions to give his very best.

In my experience, that is exactly what the vast majority of staff have done, spurred on in the early years by the pioneering spirit of the build-up phase. And there is no doubt in my mind that their efforts are also behind the EPO's reputation for high-quality services. But the EPO is not alone in this; other patent offices have good reputations too.

However, the EPO's impressive success is due to its position as central European patent authority: it alone grants patents effective Europe-wide. Basically, then, the EPO's success is down to the system itself.

### ***(2) Do the same basic principles still apply today, or does the system – and the EPO – need to change?***

**Dr Schatz:** The EPO's tasks as central patent-granting authority for Europe remain unchanged, so there is no need to move away from the system's underlying principles.

Cause for concern however is the inexorable filings growth which even after ten years still shows no sign of abating. There is no cure-all for this plague. Interested parties' suggestions of outsourcing search and examination work to national offices not only run counter to the whole point of the central European patent grant procedure; they would also, as the Office has long since shown, merely add to its burden. A system of mutual recognition of patents granted nationally by present and

future PCT authorities – as advocated for over ten years now by WIPO, under American and Japanese pressure – would be even more disastrous: the EPO would vanish from the face of the earth, and with it Europe's own control over a significant aspect of the European market's conditions of competition in the field of innovation. That would be a catastrophe!

So the EPO must look at every possible way of coping with filings growth itself. First steps have already been taken: revision of the EPC, Office-wide introduction of BEST and the extended search report. But that is not enough. Possibilities for further rationalisation – such as introducing deferred examination – should also be examined in consultation with users.

### ***(3) What should the relationship between the EU and the EPO look like?***

**Dr Schatz:** Strictly speaking, the relationship is between the European Community (EC) and the European Patent Organisation, not the EU (the EC's political umbrella, without its own legal personality) and the Office as the executive branch of the Organisation. The Organisation is not an EC body; it interacts with it as an independent institution under international law, represented by the President of the Office (Article 5(3) EPC) rather than, say, the Administrative Council of the Organisation or its chairman. The European Commission is the EPO President's primary point of contact.

From my experience over the last forty years, I can only warn against diluting that clear position, e.g. by making the EPO a subordinate EC agency. The Organisation would then forfeit its budgetary independence, which has so far ensured both Office and staff virtually ideal conditions in technical, accommodation and manpower terms. This would also put paid to any prospect of achieving a comprehensive and efficient European patent system including the post-grant phase – as has been conclusively shown this past year by the EC's renewed failure to create a Community patent.

The member states' levels of interest in the European patent system differ widely – as filing figures show – so, as with the EPO, itself further progress can be achieved only at intergovernmental level. A further demonstration of this is the entry into force of EPC 2000 (recently) and the London Agreement (shortly), and a European patent jurisdiction cannot come about any other way. On this issue – and all others of common interest – the EPO and the European Commission should reach an agreement.

### ***(4) What do think about the idea of a European Patent Network (EPN)?***

**Dr Schatz:** This is about co-operation between the EPO and national offices. The EPO has a duty to co-operate with its contracting states, and has been working hard at just that for the last thirty years, at considerable cost in terms of staff and money. On the whole, therefore, the new plans are welcome. But with the programme yet to be implemented, I would comment only in epigrammatic form on its four main points:

#### 4.1. Using searches on national first filings

A great idea, as long as the final outcome of the search remains the responsibility of the EPO examiner. European industry rightly insists on that.

#### 4.2. Services for users

Letting Austria and Denmark do special and standard searches? *Tant pis* for users!

#### 4.3. Technical co-operation with interested national offices?

Business as usual!

#### 4.4. Board 28 discussions about mastering the EPO's workload?

Mastering the workload is the Office's own responsibility, with the President answerable to the Administrative Council for its success. Should the Board 28, however, still be trying to use the workload issue as a pretext for stirring up the hoary old outsourcing debate again, then I say:

- outsourcing will not help, and you know it
- industry hates it and
- it's illegal.

The Central Executive Committee