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Interview with Alfons Schäfers

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

Alfons Schäfers: As you know, the European Patent Convention (EPC) is closely linked with the establishment of the erstwhile European Economic Community, set up to create a peaceful and stable European order through close intergovernmental co-operation between the countries on opposing sides in the second world war, not least by binding them into "supranational" organisations. That was the spirit which inspired the EPC's "founding father" generation, especially Dr Kurt Haertel, then President of the German Patent Office and a driving force behind the project. Against that historical backdrop – and although subsequently overlaid by more technocratic elements such as the 1970 PCT and the rationalising drive towards co-operation with the EFTA states – European unity remained the primary motivating factor.

That was reflected in the EPC's Protocol on Centralisation, a political construct which basically aimed to create a single central searching, examining and patent-granting authority for Europe, in the form of the European Patent Office. The co-existence of parallel national and European patent systems was accepted, but only as a temporary phenomenon. Efforts by individual EPO member states to stretch the exceptions and reservations laid down in the Protocol, and extend them beyond the specified periods, were met with firm resistance from the majority: the pre-eminent position of the EPO, especially in the context of the worldwide network created by the PCT, was not to be diminished. Consistent application of these principles enabled the EPO to thrive and grow.

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

Alfons Schäfers: I think they still apply, and should be defended. They are especially important now, with the patent system in worldwide crisis, as shown by excessive workloads at leading patent offices such as the USPTO, recent developments at WIPO – where some developing countries are trying to block harmonisation – at the WTO (*World Trade Organization*) and lastly also in the European Union, which has been struggling in vain for over thirty years to bring in a Community patent and where other legislative projects have also failed.

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

Alfons Schäfers: The EPO should become part of the European Union, like the OHIM in Alicante. To keep the EPO outside that framework is quite ridiculous at a time when the EU is expanding to the political and historical boundaries of Europe. The EU institutions – especially the European Parliament, Council and Commission – must be given the wherewithal to exercise firm democratic control and to frame and implement European patent legislation. That is the only way to overcome the European Parliament's growing suspicion of patent law.

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

Alfons Schäfers: I am sceptical about it; it is at odds with my consistent position as a member of the German delegation on various bodies of the European Patent Organisation. Drawing on national patent offices for help with European and international searches, and even – in certain circumstances – substantive examination, could at best be a stopgap if the EPO were deprived of the resources to perform its core tasks. The quality and unitary structure of European search and substantive examination should not be undermined by decentralisation amid endless wrangling about sharing out the core work.

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