

Interview with Dr Lothar Steiling

"As Europe grows together and the European Economic Area develops, we must get away from national agendas."

1. Relationship between patent applicants and the EPO

Patents are seen as "recipes for more innovation", essential for protecting intellectual property and an indicator of economic growth

How important are patents for industry?

Dr Steiling: Of course, you have the open-source movement in the computer industry; some of its ideas are spreading to other sectors. But we still believe that the patent system has demonstrated that it promotes technical development. We see that from countries which start off with a weak patent system: as soon as their system becomes internationally recognised, filing figures soar and R&D firms start up. India is a good example. It has only had a modern patent law since 2002. Before then, it was full of counterfeiters and generics manufacturers. But within a very short time they have now become the complete opposite: in one year, the number of patent applications in India rose to 35 000.

What are users' main expectations of the European patent system?

Dr Steiling: We really do appreciate the EPO's openness towards users. We are often canvassed for our views. As for expectations: for a long time, we have been expecting – it's a promise frequently made but so far never kept – higher patentability requirements. We don't want patents granted basically for anything novel. There must be more protection for inventive step; increasingly, not enough attention is paid to that. One symptom of this process is the increase in filings at the EPO – 125% in ten years, or annual growth of more than 10%. There's no real explanation for that; it's not as if lots of new technical fields have emerged. When applicants behave like this, individual IP rights lose any significance. The result is a race for more patents, because in the end you get one for anything.

So you think the bar for granting a patent should be raised?

Dr Steiling: Yes, I do. And this is a global phenomenon. Figures show that R&D spending has increased at an average rate of 4% over the last few years. Filings have grown much faster than that. Proliferating patent thickets hamper small firms and individual inventors, who face a mismatch between their own R&D expenditure and the cost of commissioning external patent specialists. The result is that the patent system fails to achieve its objective of promoting innovation and growth.

We also expect the EPO to provide high quality, i.e. good search and examination. After all, the filing and search fees are quite a big investment. And that of course means also covering prior art in non-European languages such as Chinese, Japanese and Korean. In filing terms, the Chinese, Japanese and Korean patent offices are in the top five worldwide, and many of these applications are prior art but available only in the national language. For example, only 10% of Chinese domestic applications are translated and filed abroad. But for us, all the prior art is extremely important. You can't claim to be the world's best patent office if you don't cover large sections of the prior art. We raised this issue several times with Mr Pompidou, and there has been some response – but we now need to see results.

What weaknesses do you see in current practice?

Dr Steiling: For examiners, granting a patent is easier than writing a substantiated refusal which will withstand a legal challenge. So it is quite understandable, and only human, if examiners take the easier option. Here the Office needs to offer different incentives, and change the system so that more work-intensive refusals are also rewarded.

The EPO clearly prefers grants to refusals, because they help it to cope better with its huge liabilities.

What do you think of the idea that, under the EPC 2000, grant shouldn't take longer than three years?

Dr Steiling: Faster grant should be possible if the applicant wants it. But in many technical fields, applicants say they prefer to wait. Take plant varieties, for example. They don't need quick protection; the application could be left for a while, there's no need to start examining it straight away. The same is true in other technological sectors. I am chairman of the BDI's IP committee, covering all the different technical sectors, and we often hear that wish expressed. But the applicants' interest in leaving their applications alone for a while is at odds with the EPC 2000 objective of grant after three years.

Look at Japan, where they operated a "deferred examination" system giving the applicant seven years to request examination. Germany too, for that matter. They changed it to three years, and are now so overwhelmed with work that they want help from the USPTO and the EPO. But you should race only when necessary, not just for the sake of it. Let's be quite clear: the patent offices' only motive is that early grant means early patent fees.

What about higher filing fees?

Dr Steiling: Filing fees are not really that high compared with the cost of hiring a patent agent. Increasing them would not necessarily mean fewer patents. Patent offices would have more money, but SMEs would clearly suffer. I may be from a big company myself, but as a member of the BDI I also have a responsibility towards SMEs too, and they just don't have the resources. Otherwise we'll end up like the USA, where the company with the deeper pockets can litigate opponents into submission. Which is not really what we need.

2. Setting up a European Patent Network (EPN)

What do you think about this idea?

Dr Steiling: Basically, we're used to the EPO's work, we're happy with its quality and we see no reason at all to depart from EPO standards. We therefore see no need to outsource work to national offices; they're hardly likely to do it better than the EPO. If lack of resources should make giving work to national offices unavoidable, then we as users would still want the EPO to review it to safeguard quality.

When applications are filed in parallel – at national and then European level – a national office may already have done the search, and here of course using the results of that search might save resources. Taking more account of national offices' possibilities for standardisation under the EPO's umbrella would be welcome.

Which brings us to "patent standardisation" ...

Dr Steiling: Today's globalised world also includes patents, and we don't see why standards should differ. The Chinese, Japanese and Indian offices have set a good example: they are now using a common information system. We would not really have expected that. And if they can do it, it ought to be possible in a more integrated Europe.

We would like to see a Community patent. True, we have the EPC, but all national patent laws still have their own peculiarities. So we have a European Economic Area (EEA), but very different legal arrangements for patents within it.

3. Internal EPO structures

Dr Steiling: Another point to mention is that the Administrative Council – and EPO presidency – is made up of representatives of the member states, all with an interest in making sure they get their slice of the cake. The EPO's efforts to reduce processing times show this very clearly: faster grants mean more money sooner for national offices. But their interests and industry's are not necessarily the same.

Would you like to see a different division of powers at the EPO?

Dr Steiling: We've talked a lot about this. But we can see that nothing will change as long as the national offices benefit from the set-up. A colleague from the automobile industry once said that it's like having the bosses of all the other car-makers sitting on your own company's board – a difficult situation.

Should the EU have more influence?

Dr Steiling: Spontaneously, I would say that's probably the way to go. Although of course we would then have the problem of the EPC contracting states which are not EU countries, such as Switzerland and Turkey.

A brief concluding statement about the future, ideas and opportunities

Dr Steiling: As Europe grows together and the EEA develops, we must get away from national agendas.

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