

Zentraler Vorstand . Central Executive Committee . Bureau Central

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Interview with Dr Klaus-Dieter Langfinger

1. What were the most important values and ideas underlying the EPO's foundation and helping to ensure its success?

Dr Langfinger: These ideas can be found in the EPC's Protocol on Centralisation. The basic aim has always been to create a single patent granted by a central European authority – the EPO – without calling the national offices' existence into question. The applicant decides. The EPO's success clearly shows that applicants welcome the concept, which saves them a lot of paperwork. National offices should take advantage of falling filings to redeploy resources, providing local applicants with improved support and raising awareness of IP generally. That would increase quality and thus ease the EPO's workload.

2. Do the same basic principles still apply today, or does the system need to change?

Dr Langfinger: With both EU and EPO member states increasing steadily in number, today these principles are, if anything, even more important and beneficial to applicants than in the EPO's early years, when there were fewer member states and thus less potential for administrative savings. So the answer to the first question is a clear "yes".

At today's filing levels the EPO certainly faces great challenges, and needs to think hard about how to set quality standards which provide applicants with appropriate protection for their inventions without granting so many patents that third parties are obstructed. In this connection, transferring back to national offices tasks currently performed by the EPO would not be a good idea, because uniform quality standards would then no longer be a realistic proposition.

Introducing deferred examination might help, by reducing the amount of substantive examination. However, to avoid abuse, it would have to be possible for examination to be triggered not only by applicants, on payment of the relevant fee, but also – and anonymously – by interested third parties.

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

Dr Langfinger: The EPO is not an EU institution; nor, since not all EPC contracting states also belong to the EU, can it become one. It is independent, and should stay that way. The EPO should not be made accountable to the EU, which for over thirty years has been trying in vain to create a centrally enforceable Community patent. That suggests that incorporating the EPO into the EU is unlikely to be very helpful. As I see it, too few member states have the political will for an EU-wide system of patent enforcement under appropriate Community arrangements, and if the EPO were put under the EU it too would suffer from that.

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

Dr Langfinger: For 30 years now, the EPO has been co-operating intensively with its member states' national authorities on all kinds of levels. So the basic concept of an EPN is nothing new.

If however the idea is to solve EPO workload issues by outsourcing its tasks to national offices, then it is not a good one: most users are not in favour, and industry is solidly against. It is also doubtful whether outsourcing core EPO work is lawful, given the clear provisions of an EPC which is binding on all the member states.

5. Relationship between patent applicants and EPO

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

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

Dr Langfinger: From an economic point of view, the EPO is obliged to grant patents of appropriate quality, i.e. enabling applicants to protect their R & D investments without impeding further innovation. It is also in the general interest for the EPO to do this work as cost-effectively as possible.

The patent system's basic principles should not affect the EPO/applicant relationship one way or the other – which of course is no reason not to aim for constructive co-operation between both sides. Most applicants are in any case unlikely to want patents which turn out to be unenforceable.

How important are patents for industry?

Dr Langfinger: These days, patents are indispensable to industry as a tool for managing competition – a role they can only fulfil only if lawfully granted and fit for purpose.

6. Filings quality

Every year, the number of applications filed at the EPO continues to grow, rising from 79 000 in 1995 to 178 000 in 2004 (+ 125%).

Is there a danger of patent quality falling as filings increase?

Dr Langfinger: In recent years, rapid growth in filings worldwide has prompted more and more talk about a link – which in my view does not exist – between their quantity and quality. Unfortunately, this discussion is increasingly politicised, and conducted by people who lack the necessary knowledge.

In reality there is no correlation between quantity and quality of filings, and no such connection is logically sustainable. But that does not alter the fact that the EPO should grant patents of the right quality.

Would increasing filing fees help to reduce the number of applications?

Dr Langfinger: This idea is sometimes put forward but it is not a good one, because it would mainly affect small firms. Big, wealthy multinationals would find it easier to pay more. The result would be a system only they could afford, to the detriment of the substantial contribution made to innovation and progress by small firms. That would be the wrong approach altogether.

7. Internal EPO structures

The Administrative Council runs the EPO together with the President. Most of its members work at national patent offices.

What are the effects of this combination of national and European offices?

Dr Langfinger: That countries are normally represented on the Council by the heads of their national patent offices is something of a birth defect in the system. As a result it is not uncommon for national representatives to feel that they are competing with the EPO, and the goals pursued can be more about national office interests than the basic ideas underlying the EPO.

What are your recommendations to the Administrative Council?

Dr Langfinger: It should reflect on a vote-weighting system which properly reflects the member states' involvement in the system but is not too hard on countries where filings are on the low side.

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