

INTERNATIONALE GEWERKSCHAFT IM EUROPÄISCHEN PATENTAMT

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Interview with Dr Roland Grossenbacher

Head of the Swiss office and honorary Council chairman

"We want to consolidate the patent system, not reshape it"

1. Looking back

How has the patent system developed during your nine years (2000 to 2009) as Council chairman?

Dr Grossenbacher: *It continued to expand rapidly at first, but that has now slowed down. I think the peak was reached at some point during my chairmanship, not just for various key data but also for attitudes towards the system – which do however remain basically positive. Within the EPO, growth in the number of contracting states – from 20 to 35 – is one obvious change. Management structures have also been adjusted: we have activated the Council's Board under Article 28 EPC (B28), and by introducing International Financial Reporting Standards (IFRS) we have moved towards sustainable financing. This is proving painful because we must now take steps in response to a new and far more realistic view of our financial situation.*

People say that IFRS take no account of future renewal-fee income we shall certainly be getting, and therefore do not show the EPO's financial situation properly. The OECD and NATO use IPSAS (International Public Sector Accounting Standards), which the European Commission and UN and their agencies are also getting ready to adopt. Why not the EPO?

Dr Grossenbacher: *The EPO, unlike the other international organisations you mention, is fully financed from users' fees and largely steered by demand for its "products". So it is more like a service provider than a publicly financed and purely political body. That makes IFRS more appropriate – and standards, once chosen, should not be changed unless they have to be, even if there are indeed viable alternatives. Anyway, under IFRS we do in fact give figures for future renewal-fee income, and the Council is certainly capable of taking it into account.*

2. Looking ahead

What challenges face the patent system in the next five to ten years? How should the European patent system look in ten years' time? What changes do you think are essential?

Dr Grossenbacher: *We want to consolidate the European patent system, not reshape it. In ten years' time it should be able to process incoming filings quickly enough to reduce to a reasonable period the threat they pose to other firms (due to the legal uncertainty which exists until they are granted or refused). And it must sort the wheat from the chaff better and – above all – sooner, so that third parties are not impeded by unjustified IP rights. That means that the EPO must focus even more effectively on essentials and thus increase its core capacity. Also, there will be better co-operation between the different patent authorities, especially at operational level.*

3. Patent quality

People also say the quality of EPO patents is falling. What do you think? How can high quality be maintained, and the number of low-quality filings reduced?

Dr Grossenbacher: *If "quality" means a full search and careful examination, then I do not think such criticism of the EPO is justified. The real issues are different. They include how to interpret patentability criteria such as inventive step or unity of invention, whether an invention is actually "technical", and how to define the skilled person. Hence "raising the bar": the Council wants to see greater stringency, so that below a new – and higher – level there is room for spontaneous innovation to develop freely. This does not require spectacular measures; it's about raising awareness, creating incentives perhaps, so ultimately it's a question of training users.*

4. EPO internal structures

SUEPO is unhappy that so many heads of national patent offices sit on the Council. You yourself combined chairing the Council with running the Swiss office. How do you react to such criticism?

Dr Grossenbacher: *This is a governance issue, and the criticism is misplaced in both form and substance. Formally, the contracting states are free to decide who represents them on the Council. Substantively, those which select the heads of their national offices have good reasons for doing so: they are knowledgeable specialists and close to their countries' political decision-makers. No doubt a case could also be made for sending junior finance ministry officials with inflexible instructions to insist on radical spending cuts ...*

Interview conducted by

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