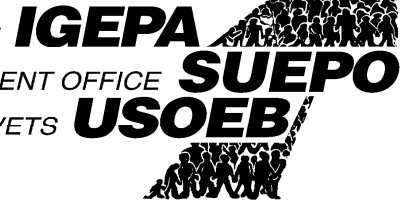


INTERNATIONALE GEWERKSCHAFT IM EUROPÄISCHEN PATENTAMT



STAFF UNION OF THE EUROPEAN PATENT OFFICE

UNION SYNDICALE DE L'OFFICE EUROPEEN DES BREVETS

Zentraler Vorstand . Central Executive Committee . Bureau Central

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Interview with Ruud J. Peters CEO of Philips Intellectual Property & Standards Executive Vice President of Philips International BV

1. 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. In one of your speeches you say: "Drives need for high quality patents".

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

Users basically expect the European Patent System to be:

- Predictable: applicants need to be assured that the same standards are applied in examining their patent applications (independent of area/examiner etc)
- Reliable: applicants must have confidence that patents granted can stand the test of validity, when needed
- High quality: only high quality patents can create value for applicants

Why does industry need patents?

Industry needs patents:

- as incentive for taking financial risks in investing in the development of new activities (products/services)
- as tool facilitating trade of technology between companies, which stimulates growth of markets for the relevant technologies/products and ultimately more affordable prices for consumers. Licensing of IP is the best known example of IP trade. It is a good and proven means for disseminating patented technology.

- as tool facilitating collaboration between companies, universities and research institutes (Open Innovation type of collaborations). Without clear IP arrangements defining who owns what and what is each party involved is allowed to do with the results from the collaboration, it will not be possible to get such collaborations off the ground.

How has the behaviour of patent applicants changed in recent years?

- We have seen that, for more than a decade, companies (applicants) have been increasing their filings. This is partly caused by the increase in R&D efforts and the need for more protection in the move towards the knowledge economy, but partly also by the fact that companies were considered to be more innovative if they would file more patents.
- The effects of this trend are well known: backlogs at the major patent offices, because they could not cope with the ever increasing numbers, resulting in lower patent quality, which in turn made companies less selective in filing applications.
- Activities such as frivolous lawsuits initiated by patent holders (especially in the US) on the basis of marginal patents with the only goal to obtain some quick financial gains, have led to the patent system being criticized as no longer stimulating but hampering innovation. This has led to the various patent reform proposals in the different countries/regions.
- Triggered by these developments many companies have rethought their patent strategies and have come to the understanding that it is not quantity but quality that matters in the end and that they are only served by a good functioning patent system that delivers high quality patents. The economic crisis will accelerate this awareness and will likely drive the change in applicant behaviour towards a more selective patent filing approach.

2. Filings quality

Every year, the number of applications filed at the European Patent Office (EPO) continues to grow, rising from 79 000 in 1995 to 218.000 in 2007. You say about this issue "We simply file too many patents and the number is still growing."

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

Indeed there is this risk. If you want to examine an increasing number of filings within a certain period of time without a substantially higher amount of resources, it is inevitable that the quality will go down somewhat.

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

By most applicants patents are considered highly valuable assets. If so, companies should not have a problem in investing somewhat more in generating these assets. A higher filing fee will make companies more selective in what they file and thus will help to reduce the numbers. Of course, in doing so, one needs to take care that it doesn't increase the

threshold for making use of the patent system for SME's (small and medium-sized enterprises). Special measures for this category will be needed.

Should the quality of patent applications be improved from industry and if so, how can this be achieved?

As mentioned above, industry should go for quality instead of quantity and become more selective in which patents to file. This will automatically lead to higher quality filings.

Or should the quality of patent applications be improved by the EPO? (e.g. by developing higher standards for applications?)

It is not only the applicants or only the EPO that should do something. We think that there is a joint responsibility for improving the patent system in Europe. The standard for applications from the EPO is already quite high and as such does not need to be improved. Stricter use of these standards may help to increase quality of the filings that are received.

How could the examination itself be improved? (e.g. prioritized examination)

The EPO can improve the quality of examination (raising the bar) which will drive applicants to increase the quality of their filings. In addition, the EPO can and in the meantime has limited the number of occasions that an applicant can file amendments or file divisional applications, etc.

For a number of years now we have been advocating the system of deferred examination as a means to more efficiently and effectively use the available resources within the EPO to examine only those patent applications that applicants want to see granted first and defer examination for the others for a limited number of years. Because of the current average renewal curves (about 50% of all patents/applications are abandoned by applicants after 7-10 years from filing) this will lead to a lower number of applications that need to be examined. Such a deferred examination system should have a built-in mechanism to allow third parties to request examination of those cases that they want to have clarity about in view of their own commercial activities or planned investments in R&D.

We are happy to see that deferred examination gets more and more support both from industry and from patent offices.

3. Internal EPO structures

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

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

This is a built-in complexity in the governance of the European Patent Office. It means that members of the Administrative Council have to serve frequently contradicting interests. The result is that the EPO cannot always act with the speed and decisiveness that would be required to respond to changes in its environment and wishes from its users. The

members of the Administrative Council bear a great responsibility for keeping the EPO as one of the leading patent offices in the world.

What are your recommendations to the Administrative Council?

I would recommend the Administrative Council to think European! Europe has to compete with the big economic and political powerful countries like the US, China (and in the future India, Russia and Brazil). We can only be successful in that if we operate as one Europe instead of as individual countries. This also holds for the area of innovation, including the patent systems supporting that. For Europe the only viable option is to go for a strong European patent system.

What do you think about the idea of a European Patent Network (EPN)? (According to this plan, the EPO would give some of their duties – e.g. patent search – to the National Patent Offices.)

Our preference is to have a strong EPO that has the necessary resources to take care of the total patent process, from search to examination. However, in view of the current backlog we could accept that under strict conditions and fully under the supervision of the EPO at least some NPO's (having the relevant resources and capabilities) handle some task for the EPO, like pre-filtering of applications that clearly don't meet the filing criteria or patent searching. In this respect it is of utmost importance that strict quality standards are applied and monitored in order to ensure that uniform search quality is guaranteed.

4. Wishes/ Ideas/ Changes/Future

In one of your speeches you develop a “New Intellectual Property Landscape”. Please define the main ideas.

Originally companies built their IP portfolios completely based on their in-house R&D. However, in the era of Open Innovation, that is no longer the case. Next to their in-house R&D activities, they have collaborations with other companies, universities and research institutes in various settings, where they have to share IP with their partners. We also see that companies acquire more technology/IP because they can no longer afford to develop themselves the increasing number of technologies that flow into new products. And given the high dynamic nature of the industry, companies also do more M&A (Merger & Acquisition) activities, through which they acquire (and divest) activities, including the related IP portfolios. All this means that the way companies have to build and manage their IP portfolios is different to the past. A similar situation has emerged for the way companies capture value from their IP portfolios. Whereas cross licenses and licensing for royalties were once the main ways to do that, nowadays companies have multiple ways, and in fact an unlimited number of ways, in which they can create value from their IP portfolios. If you consider an IP portfolio as an asset that has value, one can trade it for anything else that also has value, such as shares in joint ventures and start-ups, for commercial value in transactions with suppliers and customers, for securing loans etc.

If you could change parts of the European Patent System, what would you change?

- First, I would introduce a deferred examination system as we have been promoting for a while.
- Secondly, I would introduce a Community Patent System by providing a centralized administration of grant of Patents and having a simple translation regime that takes into account the realities of doing business in today's world.
- Thirdly, I would introduce a European Patent Litigation system that takes quality, experience and cost-effectiveness as its basic design criteria.

What is the main challenge for the European patent system in the upcoming years?

The major challenge for the European Patent system would be:

- to further develop the European Patent System into the most efficient and effective patent process in the world that meets the needs of both internal and external users and ensures that the EPO remains the leading patent office in the world, also in the future.
- to let the major patent offices in the world work together in a manner that benefits both applicants and offices and that is fully using the benefits that the PCT system provides.

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