

INTERNATIONALE GEWERKSCHAFT IM EUROPÄISCHEN PATENTAMT



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## Interview with Jesper Kongstad

Director General and CEO of the Danish Patent and Trademark Office  
Chairman of the Administrative Council of the European Patent Organisation

***„I will make sure that the intergovernmental principle of EPO is safeguarded.“***

### 1. Introduction

*You have recently been elected Chairman of the Administrative Council of the European Patent Organisation. What are the most important aims and challenges for you in the upcoming years?*

**Jesper Kongstad:** As Chairman of the AC, my most important task is obviously to ensure that the AC can function smoothly and take decisions, and that all contracting states are given adequate opportunity to participate in the decision making process. For this main function, the success criteria is that the contracting states are satisfied with the operations of the AC, and that they trust their chairman.

A more personal goal for me is that working with the new President of the Office, we will be able to create a much closer cooperation between the AC and the management of the Office, between the AC and staff, and indirectly between management and staff, which is within the responsibility of the President. I see it as an important aim to reduce the level of conflict by means of transparency. Ultimately, by strengthening cooperation, the goal is to make the organisation better at addressing and solving the challenges facing our European users.

The EPO is a strong organisation in Europe which contributes to enhancing the competitiveness of European industry. One of the reasons for this is that the EPO is an intergovernmental organization for which the contracting states are responsible. I would like to mention that the intergovernmental character of the EPO is not always in focus, but I strongly feel that it is necessary to highlight that the contracting states play a decisive role

when it comes to defining the orientations of the organisation, and I will make sure the intergovernmental principle is safeguarded.

## 2. EU/Community patent

*In "enhanced cooperation" with ten other European states Denmark has argued for implementation of a single EU patent. The new regulation on the EU patent may be finalised by the end of 2011 and is expected to reduce the current costs at least tenfold. Beside the costs, what do you think will be the main consequences of this regulation on industry, on NPOs and on the EPO?*

**Jesper Kongstad:** First and foremost, I am pleased that our political masters have now been able to ensure progress on the question of the EU patent. After many years of unproductive negotiations, we are now moving in the direction of a solution, and this is something which I find of crucial importance. Furthermore, it is important to note that the desire to move forward on this question has wide support not only from the member states signatories to the formal request for enhanced cooperation, but also from a vast number of other EU member states. Indeed, this is a very good sign.

It is true that costs are an important aspect of the introduction of a unitary EU patent, but other aspects such as operational and legal circumstances should also be mentioned.

For instance, the EU patent will make it possible to pave the way for an EU and European patent litigation system, and coming from a country which counts many SMEs, such a litigation system is of great importance as many of these companies are not at present economically at liberty to defend their patent rights in all EPO states.

On an operational level, it will be important to explore how national patent offices and the EPO complement each other and to continue to build and refine this complementarity between the roles of the national offices and the EPO.

*It is argued that, thanks to lower costs, innovation will be stimulated, resulting in a growing number of filings. Is there a danger of patent quality falling as filings numbers increase?*

**Jesper Kongstad:** This is an important point for concern and has been for long. Let me be very direct: I think that Europe needs to increase the number of patent applications for our companies to be able to compete in our future economy which is developing every day.

The main task is therefore that we do our best to facilitate the competitiveness of our European companies by being able to rapidly process applications, and at the same time maintain a high quality when it comes to the issuing of rights. This is clearly a challenge as we must expect an increased influx of applications from non-European countries in the future. This, in itself, calls for a further cooperation between the EPO and the contracting states on how to deal effectively with these challenges.

### 3. National Patent Offices - European Patent Network

*You support the concept of the European Patent Network (EPN) in which the EPO and the National Patent Office cooperate more closely and share the workload. In your opinion, what should this work-sharing look like?*

**Jesper Kongstad:** As head of the Danish delegation, I have a very pragmatic approach to work-sharing. If work-sharing provides a clear advantage, then the use of work-sharing should be encouraged. For instance, I warmly welcome the rule change within the EPO which now provides that national products shall be sent to the EPO to improve the patent granting process. Work-sharing is a very clever and practical way of working together. The EPN provides a very good forum for exploring and experimenting with these kinds of initiatives.

Having said this, I would also like to stress that I do not foresee any dramatic changes in the roles of the EPO and the national offices. The EPO is the regional patent granting authority and should continue to be the organisation which makes the final decision on European applications.

### 4. Administrative Council

*The Administrative Council runs the European Patent Office together with the President. Many heads of national patent offices sit in the Council. You yourself combine chairing the Council with running the Danish Patent Office. It has been argued that this combination of functions generates a conflict of interests. How do you balance the demands of these different functions?*

**Jesper Kongstad:** I believe that there are two essential aspects that need to be underlined:

First of all, the participating countries are sovereign states, who are solely competent when it comes to appointing their representatives. I will always support the contracting states when it comes to their right to freely decide who they want as representatives in the AC.

Secondly, I do not believe that there really is a conflict of interest. From a Danish perspective, we do not see that there is a struggle for distribution of work. The Danish office does not want to undertake the work of the EPO as we have more than enough tasks working for Danish and foreign users.

What is needed is to strengthen cooperation both professionally and operationally. If we are not able to handle our operations we will not be able to handle the challenges of the increased workload and the need for high quality statutory products.

Let me, as a final remark, say that I think it is a great advantage to have a civil servant as myself from the national IP offices chairing delegations to the AC, because it provides substantial IP insight in the decision making process. This is something which we have drawn the benefits from on many occasions during AC proceedings.

*Some experts recommend a change in the governance structure of the EPO. In their opinion European politicians, scientists, industry representatives, patent attorneys and representatives of consumer associations should have a stronger presentation in the Administrative Council. What is your opinion on this?*

**Jesper Kongstad:** As head of the Danish delegation, I do not believe that a renewed governance discussion will lead to anything positive. Examining and granting patents is and should remain a task reserved for public authorities under direct political control by the contracting states. This provides the legitimacy for the operation of the EPO and it also allows for a stronger coordination with growth and competitiveness policies which are crucial for the future of Europe.

The public interest in upholding a strong and efficient patent system is in my opinion only possible, if the patent granting process is controlled by an impartial organisation subject to public law requirements. In my view, these public authority tasks can not be privatised as this could lead to questioning the impartiality of the system. The same argument holds true when it comes to user groups or specific interest groups which have particular professional interests. We cherish and value their contributions, and we encourage them to speak up and participate, but I must maintain that final decisions should be in the hands of the contracting states.

## **5. Changes and Chances**

*If you could change parts of the European Patent System, what changes do you think are essential?*

**Jesper Kongstad:** I have already mentioned some of the changes, i.e. the EU patent, which will have an important impact on the European Patent System. I also believe that we should explore ways of ensuring a greater cooperation in Europe in order to meet the challenges that our knowledge industry is currently facing, but the fundamental structure of the EPO as an intergovernmental organisation should not be changed.

EPO has been an immense success story and we should constantly strive to continue this success. However, we also need to realise that the EPO should be a dynamic organisation and we should constantly look for ways to improve the systems. For instance, the EPO must be shaped so that it can be adapted to changes in our environment, and it is my hope that this will be discussed in an open way.

### **Interview conducted by**

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