

Facts about the European Patent Office

Thirteen countries signed the European Patent Convention (EPC) in Munich in 1973; today there are 20 members and a number of observer countries. The objective of the EPC is to develop a uniform patent system in order to make patent protection in Europe easier and cheaper.

The European Patent Office (EPO) was founded in Munich four years later. The executive organ of the European Patent Organisation, its task is to grant valid patents Europe-wide.

Twenty countries are now members of the European Patent Organisation. As well as the states of the European Union, Switzerland, Liechtenstein, Monaco, Cyprus and Turkey are also members. Eight central and east European countries are supposed to join in 2002. The EPO is not under the control of the European Union.

Decision-making in the EPO

The President

The President presides over the EPO's five Directorate-Generals (search and documentation, examination/opposition, appeals, administration and legal/international affairs). He has the right to give directions to the examination and opposition section and initiates Administrative Council resolutions.

The Administrative Council

The Administrative Council of the twenty member countries exercises political control over the EPO. The basic legal line taken by the Office is also subject to control by the Administrative Council.

Conference of Contracting States

Also referred to as the Diplomatic Conference, this is the only body which has the right to make changes in the text of the European Patent Convention. Since all the parliaments of the member countries have to ratify changes, amendments to the EPC can only be made if there is unanimity. Such Conferences take place irregularly and have been rare events in the EPC's history.

EPO granting of patents

"A patent is a legal title granting its holder the exclusive right to make use of an invention for a limited area and time by stopping others from, amongst other things, making, using or selling it without authorisation." (EPO's website)

A **European patent** has the same legal effect in the above contracting countries as does a national patent granted in the country itself. The patent is valid for a period of twenty years.

About 35,000 patents a year are granted by the EPO. 50% of applications for patents come from EPC countries, 8% from the USA and 16% from Japan.¹

Over 15,000 applications for patents in the genetic engineering sphere have now been filed at the EPO in Munich. Some of these are especially controversial.

¹ data from EPO Annual Report 1999

- Over 2,000 applications for patents on human genes have been filed at the EPO; by 1998 about 300 had already been granted.
- Of some 600 applications for patents on animals about a dozen have already been approved.
- Over 1,500 European patent applications are related to plants. Over 100 of these have been granted.²

According to research by Greenpeace about 40 new applications per month for patents on animals and plants are filed.

Appeals Procedure

Objections can be filed against an EPO decision to grant a patent. The Office cannot revoke its decisions if an objection from without has not been made.

Third parties can depose their opposition within nine months after a patent has been granted. The EPO opposition department decides in the first instance. The case may subsequently be referred to the higher authority, the Technical Board of Appeal and finally to the Enlarged Board of Appeal which is the supreme legal authority. The higher legal bodies cannot be appealed to directly by those objecting. As a rule the Technical Board of Appeal decides whether or not a case will be put before the Enlarged Board of Appeal.

The EPO's Boards of Appeal are required to function as independent courts. But with few exceptions, however, they are composed of office staff.

Oppositions filed at the European Patent Office are sometimes drawn out for years. Seventeen oppositions were filed in 1993 against the first patent on mammals, the so-called "cancer mouse" patent. Initial proceedings were broken off without result in 1995. Since then the procedure has been in abeyance.

How the EPO finances itself

The EPO is financially autonomous. The Office finances itself entirely from its income from annual fees and fees for procedures in granting patents. Its income in 1999 was 1.3 billion German marks (660 Mio Euros), with profits stated at DM 250 million (125 Mio Euros). The average cost of having a patent granted is DM 60,000 (EUR 30.000). The Office receives about DM 10,000 (EURO 5000) of this per patent.

The European Patent Office and the genetic engineering industry are thus pursuing common interests. The more patents that are granted, the higher is the authority's income.

² data from GRUR Int 1999 issue 8-9, p.713, and independent research