

OCTOBER 2009 Presidential candidates set out their vision for the EPO

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Backlogs, budgetary concerns and managing the expectations of 36 member states are just three of the issues facing the next president of the EPO. The four candidates contesting the election this month tell Emma Barraclough why they are the right person for the job

Alison Brimelow's decision not to stand for re-election as president of the EPO when her term expires at the end of June next year opened the race for her successor. Four candidates will stand – all of them are the heads of their respective national IP offices and have the support of their governments.

The candidates will be heard by the Administrative Council at its meeting this month. The successful candidate requires a majority of three-quarters of the votes cast in the Council.

Once elected, the new president will take office for a period of five years. The UK's Brimelow and her French predecessor Alain Pompidou each served a term of three years in a deal that was regarded by many as a necessary but unsatisfactory compromise after member states failed to agree on one candidate for the EPO job.

Roland Grossenbacher

Director, Federal Institute for Intellectual Property, Switzerland

If you were elected EPO president, what is the first thing you would do?

If you want me to mention just one thing then it is that procedures should be simplified wherever possible. We are overregulated to an extent which makes it difficult to exercise effective leadership. Changing this is a long lasting and arduous task, which needs persevering determination, rather than any big announcements I could make here. The acronym KIS for "keep it simple" must become a leitmotiv.



There is also a thing I want to avoid: "Management by St Mark's Square" (Venice's central square), i.e. making a big noise when arriving, scaring all the pigeons and make them flutter around for a moment, and then after a while they would sit down exactly where they were before. We have had frequent change in the top management of the EPOffice [this term as opposed to the term EPOrganisation - I always make a difference between the two when using the French or English abbreviation], and recently there was change at the helm of the Administrative Council as well. So what is needed first of all now is stability and continuity. This does not mean standstill, not at all. There are excellent strategies that the AC has initiated during my chairmanship: IFRS which has led to financial rigour; restraining long term liabilities; raising the bar; the EPN. These must persistently and patiently be implemented and further developed.

How do you think the EPO should tackle its backlog?

There is no *deus ex machina* or miracle solution to the backlog problem. It can only be solved by a bundle of measures. Each of these measures must be directed at the EPOffice concentrating its resources on its core business. The keyword here is discipline. Raising the bar will help in the long term. Implementing KIS will be crucial. The EPN is decisive, as it permits the EPOffice to stick to its core business.

To what extent should the EPO and member state patent offices share work?

The label on this box is EPN (European Patent Network). But it is still an empty label. There are very different opinions about what should be in it. To me, the EPN is a logical consequence of the EPO being an international organisation of currently 36 member states. The main purpose of the Organisation is to provide the institutional frame for the Office; beyond that there is of course a need for cooperation, however. The EPN is an expression of the member states' will to make even better use of the given opportunities.

I was always impressed with the potential of human resources within the national patent offices (NPOs) when I visited many of the Members of the Organisation in my capacity as chairman of the AC. I am convinced that these can be engaged for the mutual benefit of both the EPO (Organisation and Office alike) and the NPOs. Yet the model for an effective and fruitful cooperation can probably not be implemented top-down and uniformly; it will have to be tailor-made, according to the possibilities and needs of any of the interested

partners. Solutions have to be explored with the Heads of interested NPOs. The only limitation is the European Patent Convention (EPC) as interpreted by the AC, which implies a centralised examination procedure. This leaves wide space for models that would provide enhanced training for local staff and recruitment opportunities for the EPOffice, in addition to a contribution to tackling the backlog.

Could the EPO and the other four big offices share work more effectively? If so, how?

We should not forget what is already being done in terms of cooperation among the big five, in continuity of the long and fruitful trilateral cooperation. These endeavours might not be as spectacular as one perhaps would expect, but they correspond to the perseverant step by step approach that I am advocating in other contexts as well. Progress in terms of harmonising tools and procedures as well as work sharing in support services must not be underestimated. On a more strategic level, discussions and pilot projects are showing room for manoeuvre and produce experience. This is by the way also true for bilateral projects such as the PPH. In the long run though, I think the most promising framework for enhanced cooperation worldwide is the PCT. Here again, continuous progress will lead to enhanced confidence in the quality of PCT products. This will be a precondition for making such a use of them that will considerably reduce duplication of work.

What is the biggest challenge that the EPO faces? And the biggest challenge facing IP owners?

The biggest challenge to the EPOffice I consider to be the relationship between top management and staff and staff policy in general. The virtual "traditional tension" between top management, staff representation and staff union has to be overcome. This is of course difficult since the times when social peace could be secured just by giving additional advantages to staff have definitely passed. In the current financial and political environment, any improvement of employment conditions and of the remuneration package has to be earned. Not even maintaining the status quo is for free. But earning this is not a debt of the staff towards top management; it is a common engagement of top management and staff to the Administrative Council. This is why, if I were to be the next EPO president, I would personally deal with staff policy, not in any detail of course, but certainly by setting the course for recruitment, training and promotion methods. I would do it by means of preparing succession in key positions in a long-term perspective, by trying hard to move away from the existing appeal culture to a culture of dialogue and, if needed, mediation and/or arbitration. And I certainly would involve myself personally in negotiations with the staff.

As to the IP owners, the biggest challenge that they face is the growing complexity of the patent system and the enormous risks it contains because of the lack of predictability. In order to help them face this uncertainty, the patent authorities must ever increase the quality of their products. On the political level, a unified jurisdiction in patent matters has to be implemented.

What aspect of the EPO are you most proud of? And what is the one thing it is most important for it to do better?

Now here I would like to refer to the EPOrganisation. Being proud of something should imply having substantially contributed to it, and this is what I have done with respect to the Organisation as chairman of the AC during nine years. I am proud of how we succeeded in managing the tremendous growth in terms of geographical coverage, going from some 20 to currently 36 member states. It is in building on this success that we should further improve the decision making process.

Which individual in your IP career has impressed you the most - and why?

Bob van Benthem, the first president of the EPOffice. He had a great vision and he realised it by persistent, patient hard work. A brilliant mind, combined with true modesty and courtesy.

If you didn't work in IP, what job would you like to have?

I have no idea; or rather I think I would have done well in almost any job. The important thing is not so much what you are doing, but how you are doing it.

What aspect of IP theory or practice do you find most interesting?

Finding the right level of protection is the crucial issue in IP. It is a matter of balance between giving incentives to innovate by promising higher return on investments in case of success, and providing freedom

to operate for less creative businesses. The interesting challenge in practice is to implement such a system and to adjust this balance according to the actual developments in science and economy.

Benoît Battistelli

Director-general, National Institute for Intellectual Property



If you were elected EPO president, what is the first thing you would do?

If I am elected, my first decision would be to launch two external, short-term (three-month long) audits on budgetary and financial trends and information systems.

With what goal in mind? That of questioning what I believe have been artificial and dogmatic considerations which have guided our approach to IFRS norms. Let us remember that the latter were conceived for for-profit business and that, even for such businesses, the current financial and macroeconomic crisis underscores the limits of such a theoretical approach. This is even more valid in the case of the EPO, a public institution with a public mission. Of course, the EPO must be managed responsibly. But please, let us not be misled. The short and midterm operational capacities of the EPO should not be put into question due to considerations on the financing of retirement benefits in 25 or 30 years time. Reducing investments in IT and cutting technical cooperation allocations have been serious mistakes.

The idea is hence to determine professionally and objectively what are the mid-term budgetary leeways in order to be able to offer the Council concrete policies that will allow for IT development/improvements and enhanced technical cooperation. And by doing so, of course, my objective is the full, efficient and genuine implementation of the European Patent Network constituted by the EPO with the exclusive ability of granting patents recognised throughout Europe (and the world) and national offices with the indispensable proximity they offer.

How do you think the EPO should tackle its backlog?

This is a problem that has grown significantly over the past few years. Of course it has not reached the level known by other big offices. Nevertheless it must be tackled very seriously. Now, it is important to recognise that efforts have been made in this field. But more must be done. The EPO has to re-engineer its processes focusing, particularly but not exclusively, on management, rationalization of proceedings and IT tools. Moreover, the Office must also pursue its efforts to upgrade its requirements. In this context, we should continue to focus our efforts around the Raising the Bar process, in order to discourage the filing of patent applications which don't really reach the level of patentability or which are filed mainly for defensive purposes. Finally, I am convinced that the reinforcement of European and international cooperation with other offices would help resolve this problem.

To what extent should the EPO and member state patent offices share work?

The EPO and the national patent offices have launched a European Patent Network but it is not yet real. Now, we all know that the EPO is mainly a second file office (85% of European patent applications are second filings), which is to say that member state patent offices are *de facto* the frontline of the European System. This clearly indicates that cooperation between the EPO and the member state patent offices should be developed and some new ways should be explored, like pooling resources, human and material (IT tools).

For example, a system of "virtual clusters" could be imagined that would include examiners from the EPO and from member states offices, competent in the same area of technology. If implemented in the right way this could be a win/win agreement. It should of course be studied carefully. I am open to a large debate without preconditions or taboos on legal, technical, financial and management issues within EPC guidelines and respecting the centralisation protocol which constitutes the framework of our organisation and which each member state has agreed to when joining. Up to now, we have tried to tackle this issue by sharing the workload. I suggest we network our respective competences.

Could the EPO and the other four big offices share work more effectively? If so, how?

The five biggest offices should find ways to make progress in terms of harmonisation. Progress should be made at every level, not only in patent law, but also in proceedings, administrative requirements and IT tool. By doing so, we will facilitate the exchange of information, reduce the duplication of work and as a whole simplify the system for users. These 5 offices are already cooperating in the so-called IP5 projects, in a very

promising way. Considering the weight of the five biggest offices in the work performed as PCT administrations, it is also fundamental that they make efforts to improve the PCT, which is the most adequate international platform to help reduce the duplication of work. In this regard, I fully support the initiative of WIPO DG, Francis Gurry.

What is the biggest challenge that the EPO faces? And the biggest challenge facing IP owners ?

Clearly to improve the quality of its service while controlling its costs!

Here the staff has an essential role to play and must be given a clear vision, presently missing, of where the Office is heading to. Now we must be realistic: none of the European governments are ready to accept significant fees' increase nor to change the 50/50 rule on annual fees.

So, if we want to improve the quality of our services and control our costs, we have to increase efficiency, having always in mind the Paris criteria.

Coming to users, we have firstly to understand that the term "users" covers very different kinds of entities, namely, big industry, SMEs, individual inventors, universities, and of course we should not forget third parties. Then, we have to recognise that those "users" have different and sometimes contradictory interests. Nevertheless, they have something in common. They operate in a context of growing numbers of patent applications which increasingly reduces legal certainty. So their biggest challenge clearly is linked with the reduction of the surrounding legal uncertainties. That explains why, by the way, I am strongly committed to the creation of a unified and affordable patent jurisdiction in Europe.

What aspect of the EPO are you most proud of? And what is the one thing it is most important for it to do better?

Of course, the fact that the EPO is a worldwide reference in the patent field for the quality of its work is something European people should be proud of. I will point out in particular its role in the diffusion of patent information and technology through esp@cenet for example, which is a very important aspect of the patent system that is not always properly recognised.

Nevertheless things can always be improved. There are different areas where progress should be made such as in respect to the quality of delivered patents or cooperation with member states. But I think the goal of making the system more affordable for small actors, like SMEs, is an important one.

For the EPO, to deliver the further on COMPAT, covering directly the whole EU territory, will also represent an important step for the improvement of the patent system in Europe. And I hope this negotiation will be finalised soon.

Which individual in your IP career has impressed you the most - and why?

Instead of singling out a specific individual, I will mention the founding fathers of the EPO as a group, as they managed to set up such a successful and balanced system. If you except EPC 2000, a reform merely caused by an adaptation to the new international and technological environment, this system has proven repeatedly over the course of the past 30 years its capacity to address different kinds of challenges, such as the extension of the organisation to different member states to mention just one.

If you didn't work in IP, what job would you like to have?

I have always admired creative people, inventors, those who, through their passion and their work, bring about scientific progress or artistic evolution. I was not blessed with such talent myself. I therefore have no regrets. The job of public administrator, that is the job of managing as well as possible scarce resources for the best social and economic use, is a particularly noble one as far as I am concerned.

What aspect of IP theory or practice do you find most interesting?

On many aspects, I am always impressed by the capacity of IP laws to introduce very new principles, unknown in the broader legal system. Just think about the fact that the Paris Convention created the priority right, giving rights to applicants over the borders, way before the adoption of WTO and EU rules. Regarding patent laws in particular, the concept of absolute novelty which takes into account everything that has been made public in the world, is something really challenging. I was also always impressed by the dynamic

balance which constitutes the basis of the concept of patents, midway between the interest of the inventor and that of society as a whole through the obligation to divulge and hence through the contribution to technical progress. Let us not forget patents were spawned by the spirit of the Enlightenment, which allowed for the industrial revolution and economic development.

Susanne Ås Sivborg

Director-general, Swedish Patent and Registration Office



If you were elected EPO president, what is the first thing you would do?

I would get to know the organisation better. I know it to some degree because I was an examiner there but I know that things will have changed since then. I would get to know the management team and the issues and challenges, both short-term and long-term, that they are facing. I would start to build more open communication with managers at all levels and the staff. There are different ways of increasing openness but I would want to encourage people to come to talk to me about issues. It's a very important part of my management style - I like to make myself available to my team wherever possible.

How do you think the EPO should tackle its backlog?

The EPO is a very large organisation and as such it is always possible to address efficiencies and effectiveness. It is very important to look at processes and procedures with a view to tackling the backlog. We need to look at all possible ways of doing that and evaluate them. It is important that any measures that are considered are evaluated from the perspective of users and staff. I know that the EPO is already doing this but there is always more that can be done.

There needs to be more open communication between the EPO and users because I am sure that users have some good ideas about ways of improving efficiency at the organisation.

There is no one solution that will solve all of the EPO's backlog problems. Looking at fees is very sensible but as part of that it is important to ensure that the system is accessible to all parties, including SMEs.

The EPC has been very successful over its 30-year history and we need to ensure that it continues to be so. Maintaining quality is the key. The EPO has been successful which means that lots of people want to use it - which has led to a backlog. But we shouldn't accept that it is the status quo.

To what extent should the EPO and member state patent offices share work?

The Administrative Council has taken some decisions on the European Patent Network and utilisation of work and the new president needs to ensure that the steps and measures already decided on - plus any new ones - are implemented and constantly evaluated. The issue of work sharing is a sensitive one. There are some countries that favour a decentralised approach and some that are more centralist. We need to ensure that discussions about the right way to deal with this question are done with the needs of the users at the centre of the debate. I won't make commitments about being a centralist or a decentralist but I will make a commitment to being open about looking at different possibilities for work sharing.

Could the EPO and the other four big offices share work more effectively? If so, how?

The EPO is already taking part in discussions in the IP5 group and there are certainly areas where it could draw benefits. Ultimately, of course, we want to maintain the EPO's record on patent quality but harmonisation is useful for both users and examiners. Harmonisation has already proved quite successful in Europe so why not look at possibilities for more harmonisation internationally? Users want harmonisation of formal requirements. They also want greater predictability when it comes to knowing whether a patent will be granted in different jurisdictions. But whatever happens we must not compromise on patent quality - that is the most important aspect for a user because it is what gives the patent value.

What is the biggest challenge that the EPO faces? And the biggest challenge facing IP owners?

The EPO has lots of challenges. First, the backlog; secondly, the perception that quality is going down. Whether that is actually the case or not is difficult to measure: if you look at litigation, for example, that

raises questions about the expertise of judges. You also have to look at how patents are drafted, and whether an application covers a big breakthrough or an incremental change, even if that gives big commercial benefits. Then you have to look at the quality of the search, and then finally look at the examination process. There are so many factors involved it is very difficult to say that patent quality is going down. Other challenges for the EPO are the relationship between the management and the rest of the staff and the global recession. The financial situation means that companies are looking at their portfolios more carefully and deciding whether to patent an invention in as many countries as they would like, or even at all, or whether to maintain an existing patent. All of that has financial implications for the EPO. So really it faces a number of serious challenges.

As for users, I think the discussion in wider society about the role of IP is one of the biggest challenges they face. There is a negative view of IP covering areas from patents over AIDS drugs to file sharing and copyright. But it's not the only challenge: litigation costs are rising and counterfeiting and piracy is increasing, so they face a number of issues.

What aspect of the EPO are you most proud of? And what is the one thing it is most important for it to do better?

The EPC has been very successful and the EPO is playing a leading role in the international IP arena in areas such as the IP5 talks. It has become the IP voice of Europe and it will play an important role in any Community patent. On top of that, the EPO employs some very knowledgeable and competent people.

When it comes to improvements, I think the EPO can address challenges in a more proactive way. It is already doing this but I think there is scope to do more. It needs a clear willingness to engage more with users and take into account the implications of any proposed changes on them. We also need to have more open communication internally. Alison Brimelow has done a lot of good things in this area but it is something we must continue because cultural change like that takes a lot of time.

Which individual in your IP career has impressed you the most - and why?

There are three people, but I am not going to name them. The first is a former boss who inspired and mentored me. He encouraged us to look at IP from the perspective of business and he was willing to share his knowledge and views. I haven't worked with the second person directly but he also understands the commercial value of IP and has been prepared to share those views with the IP community by speaking at conferences and engaging in debates. Finally, a woman who has reached a very high level in European IP. She has been open to different possibilities and ways of achieving her goals.

If you didn't work in IP, what job would you like to have?

This is a difficult question because I have only worked in IP and it is subject very close to my heart, I have been an examiner, an attorney, I have managed an IP portfolio and that means I have seen quite a lot. I have been very happy in this area: it is technical, international and challenging because it changes all the time. I like challenges.

What aspect of IP theory or practice do you find most interesting?

Its complexity. You can work in IP in so many different ways, as an attorney, a business person or a litigator. IP plays such a big role in companies. However small it is I don't think there is any company that could say that it has no IP.

Jesper Kongstad

Director-general and CEO, Danish Patent and Trade Mark Office

If you were elected EPO president, what is the first thing you would do?

I will initiate a process of dialogue with the staff and management team in order to become acquainted with their views and perceptions.

How do you think the EPO should tackle its backlog?

There is no simple solution. The most important is to focus on the EPO's core activities - search and



examination. But we also have to consider other contributions, including reuse of work.

To what extent should the EPO and member state patent offices share work

For me, reuse of work is a practical measure that might be used if it increases the efficiency of the patenting process in Europe. When assessing this and other measures, my point of departure is that we have a centralised procedure in Europe, and this should remain so. Consequently, it will always be the examining office that will have to decide whether other offices' work can be reused or not. This is in line with the conclusion on the strategic debate that the EPO's Council conducted to define the roles and relationship between the EPO and the national offices (the Madrid document CA/94/05).

Could the EPO and the other four big offices share work more effectively? If so, how?

Yes, if it contributes to the efficiency of patenting processes, hence the offices' ability to cope with workload. I think that we all have an obligation to investigate ways to increase the capacity of the global patent system in order to deal with the all too big backlogs. The five big offices have already embarked on projects that will help them become more efficient. I will certainly like to see that we continue this work.

What is the biggest challenge that the EPO faces? And the biggest challenge facing IP owners?

I think that one of the main challenges is the ever increasing backlogs and the need to find new ways of dealing with it, without losing the quality of products and the consistency in work processes that the EPO is well known for. For existing and future right holders, the most important challenge is the increasing legal uncertainty that is the result of the ever increasing backlogs.

And perhaps all of us who work in the IP area - both at the patent offices and the IP owners - should think about the future legitimacy of the IP system. It is necessary to communicate why we think that IP is important for the European economy, and I think that all of us who are engaged in the IP area are responsible for getting this message through to our political leaders.

What aspect of the EPO are you most proud of? And what is the one thing it is most important for it to do better?

The EPO's reputation as an international patent office that provides high-quality and consistent patent products. The EPO must improve the overall efficiency so it can cope with its workload problems.

Which individual in your IP career has impressed you the most - and why

Pat Sullivan and his US group of corporate IP specialists who have continuously been seeking answers to how companies may best commercialise their rights.

If you didn't work in IP, what job would you like to have?

I have worked both in public and private companies at senior management level, and had I not been headhunted to the IP world six years ago, I would most properly have chosen to be chief executive in a knowledge-based company.

What aspect of IP theory or practice do you find most interesting?

Having a commercial background, I find that the use of IP to develop companies' and countries' competitiveness is interesting and challenging. The DKPTO got a new logo some years ago: "Turning ideas into assets". It contains a message to users, but it also reminds us who work in patent offices why we are here - to help businesses turn their ideas into assets. This is also my personal philosophy, and should I be elected president I will bring this to Munich.