

Institut der beim Europäischen Patentamt
zugelassenen Vertreter

Institute of Professional Representatives
before the European Patent Office

Institut des mandataires agréés
près l'Office européen des brevets

**Questions by epi to the candidates
for the position as President of the EPO**

Mr. Benoît Battistelli (BB)
Director General of the Institut National de la Propriété Industrielle (INPI)

1. The Presidency of the EPO is an important role for IP in Europe, and for the development of European industry. The EPO also has an important role globally. Bearing these matters in mind, what qualities do you think you have which qualify you for the Presidency of the EPO?

BB. The qualities I would list are:

(a) As a manager. The EPO needs a firm Manager. It is an important international organisation with a large staff and budget. I have management experience at INPI which has about 800 staff, and a budget of about 200 M€. I have modernised INPI over the last 5 years and it is now I believe an efficient organisation. My experience there would stand me in good stead as the President of the EPO.

(b) As a diplomat. The EPO has at present 36 Member States. Each carries the same weight, and diplomacy is needed to acknowledge this and to facilitate bi - and multi-lateral agreements, both within the EPO and outside the Organisation. Most of my career has been spent on international questions. I have as part of that career lived in 3 MS - Italy, Poland and Turkey - as well as having experience at WIPO and WTO. I thus believe I have the necessary diplomatic skills to be President of the EPO.

c) As a true European: The EPO is part of the EU construct. The next EPO President needs to have a very good knowledge of EU institutions and its mechanisms from inside, considering the importance of the coming EU projects. As regards the possibility of a Community patent, to accelerate the finalization of this long term negotiation, it could be explored again the possibility of a Technical Agreement between the EPO and EC, which latter would delegate to the EPO the granting procedure. There would therefore be little change in the present system, the innovation being that applicants would have the possibility of obtaining a European patent as now, or a Community patent. Market forces will decide which is preferred. There would be a review after say 10 years from any Community Patent Regulation

2. The pace of change can be slow in many areas of life, not least in IP. If elected, would you have a plan to stand for a second term, and if so, how would you see development between your first and second terms?

BB: As presently advised, I would stand for one term, as I shall be 60 years old in 2010. But in a 5 year term, I can launch changes - the INPI is now a different office from the one I took over 5 years ago.

3. As mentioned, the EPO has a global role in IP. What are your views on this - should the EPO be involved, and if so, how should its role develop?

BB. The EPO does have a global role to play in IP, firstly because it essentially represents all of Europe in these matters, and secondly because it has a high degree of technical and legal expertise in patents. Individual countries cannot go it alone, but the EPO can and should play a lead part in developing IP in partnership with MS and other extra-European Patent Offices. As President, I would see a main role as that of developing a model for providing a balance between holders of patent rights, and third parties.

4. Member States (MS) have an important role in the governance of the EPO. At the same time, the EPO is entering into partnerships with the NPOs of the MS, particularly to encourage them to give local advice, particularly to SMEs. Do you agree with this partnership principle, and if so, how do you see this partnership, or collaboration, developing, if at all?

BB: I am strongly in favour of the EPN. Therefore there are in practice two levels, the EPO level and the National level. These must work in a complementary way. It is important that the NPOs do not reduce the role, capacity and authority of the EPO, but at the same time the role of the NPOs should be strengthened. Nevertheless, this does not reduce the EPN to simple work sharing. As President, I would have the idea that the EPO Examiners in their different groups would act as a cluster of competence which would have the overall say in the granting procedure. So it is not a question of sharing files, but of providing a network of competencies between the EPO and the NPO examiners, so-called "virtual clusters of Examiners could be created, to enhance the examination procedure.

As regards the future, the operational capacity of the EPO and its budget (1.4 Bn € at present) would need to be looked at from the point of view of the IFRS norms which may not be suitable for an International non-profit organisation. The IFRS spirit may be right, but perhaps not the letter. Therefore as President I would as one of my first tasks commission an external audit to determine the exact financial situation of the Office.

5. The PCT is an increasingly important IP tool. What are your views on whether a patent could be granted via the PCT?

BB: The improvement of the PCT should be a priority. With a new US Commissioner, there may be scope for movement forward. As President, I would (and do now as President of INPI) fully support Francis Gurry's initiatives.

As to the PPH, INPI is not convinced of its appropriateness. Some EPO MS have gone down the PPH route, and as President I would not deny that a pilot scheme might be looked at. However, resources should not be taken from the PCT, which is the only truly multi-lateral option.

6. The AC meets several times a year. It has a heavy agenda. As more MS join, representation of some MS could be said to be diluted. There is a perception too that the AC can also sometimes split into 'blocks' for decision on important issues. What are your views on the way the AC currently operates, and what reforms, if any, would you put in place to facilitate the workings of the AC?

BB: The AC has its own Chairman, the President of the Office has a different role, but the two need to work together. If elected President, I would have no difficulties in cooperation with the AC, whose main role as I see it is to vote the office budget, elect the President and Vice Presidents and to control the activity of the Office. My view is that the AC should concentrate on these main tasks, must stick to important questions, try to reduce time and to encourage colleagues from the MS to take decisions.

7. People are important to any organisation. There has been a history of EPO staff dissatisfaction over many years now, during which time there have been strikes and other distractions. What are your plans for dealing with the question of social partnership with the staff?

BB: The staff is greatly dissatisfied with the management of the Office, and with the AC. This mostly stems from a lack of understanding as to their role, the future of the EPO and thus their future, including pensions. As President I would look to provide transparency for the staff and would convene meetings to explain what is going on in the EPO. My experience as a Manager would help this. My aim would be to get everyone in the Office pulling in the same direction. I am realistic enough to know that this would be a difficult but not impossible task, and I am optimistic that I could engender the necessary management skills in the Office sufficient to get the staff on-side.

8. The epi is part of the European Patent Organisation by virtue of the Founding Regulation. Do you see the relationship between the Office and profession as a partnership, and how do you see that relationship developing?

BB: The EPO must not be isolationist, and must not ignore the users. The epi is one of the main partners of the EPO. As such the Office should look to cooperate with the epi and whilst the EPO would not

*always be able to take the same position as the users, nevertheless, as President, I would be open and would wish to have interactions with the **epi** in order to enhance the patent system in Europe. The EPO and **epi** could cooperate too within the framework of the EPN. I have already launched in France the so-called "pre-diagnosis" which associates the French Office and the French IP attorneys, working together to enhance SME's IP awareness.*