

EU vs EPO

European Union *Vs* European Patent Organisation

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About FFII

- FFII: Munich, 1999
- Free market for software
- Distorsion of the market
- Software Patents
- 500.000 signatures
- 3000 companies
- Open Standards
- Others

EU vs EPO: Base



Legal Base

EU Treaties

VS

European Patent Convention

Governance

<p>Legislative Power</p>	<p>National Parliaments</p>	<p>Administrative Council: for amendments of Implementing Regulations to the EPC (Rules) Diplomatic Conference: for substantive changes to the EPC (Articles).</p> <p>Parliaments?</p>
<p>Judicial Power</p>	<p>a) National Courts b) Specialist Patent Courts, e.g. CAFC (US), Federal Patent Court (Bundespatentgericht) in Germany, Patent County Court in the UK, Intellectual Property High Court in Japan. c) Supreme Court in important cases, e.g. House of Lords in the UK, Bundesgerichtshof (BGH) in Germany, US Supreme Court.</p>	<p>Boards of Appeal and the enlarged Board of Appeal create case law for the EPO which often serves also as a (non-binding) guidance to national courts. National patents resulting from the EPO granting procedure are subject to national judicial procedures (see left).</p>
<p>Checks and balances</p>	<p>In some countries: Third-party observations (pre-grant), opposition (pre- or post-grant), inter- or ex-parte re-examination.</p>	<p>Third-party observations (pre-grant), opposition (post-grant).</p>

Governance: Administrative Council

“The Administrative Council of the European Patent Organisation is mainly populated by representatives of national patent offices, which are struggling over fee distribution, since their offices receive approx. 50% of renewal fees.”

-> Governance structure creates incentives to grant **as many patents as possible**

Source: <http://www.epo.org/about-us/epo/administrative-council/members.html>

Governance: lack of trust

*“the Administrative Council (AC) and President have almost totally lost the confidence of the EPO staff. In 2004, just 8% of staff expressed trust in the Administrative Council, and 28% in the President. In 2006 this figure had fallen to **4% and 7%**.”*

Source: <http://www.digitalmajority.org/forum/t-11357/epo-staff-blame-admin-council-for-epo-woes>

Governance: lack of trust



Governance: lack of trust

*“When Staff Representatives mentioned such **potential conflicts of interest** in a recent Council meeting, some delegations reacted with irritation and even went so far as **to threaten expulsion of the Staff Representatives** from the Council if such allegations were made again.”*

Governance: EPC2000

Suepo: Further loosening of democratic control is contemplated

*“This Administrative Council is currently contemplating far-reaching changes to the European Patent Convention. These changes will effectively mean that in future the **Administrative Council can decide autonomously on the future direction of the law governing the award of patent rights in Europe**, and the very law by which it is governed itself. [...]”*

Governance: EPC2000

*“**No agreement by the European Parliament** or any other publicly accountable European organisation will be needed and, as in all deliberations of the Administrative Council, many of which are held in **secret session**, there will be **no participation of society at large**. This opens the door to uncontrolled wide-ranging changes to the European Patent System. Recent events suggest that these changes **may be against the interest of European citizens.**”*

Social rights for examiners

*“Staff of the EPO, however, do not enjoy the protection of the various international, European and member state initiatives on human and social rights. Such rights as do apply to staff - those defined in the internal service regulations – are systematically **overridden by the administration.***

[...]

*The administration has sought to **silence the Staff Union** and their elected representatives through a series of **threats, intimidations and illegal acts.**”*

EPO in EU or EU in EPO?

*“As proposed by the founding fathers of the European patent system, the Staff Union of the EPO proposes the **return of the entire European patent system to the framework of Community law***

[...]

*The **EPO should be integrated into the Community Institutions**, which alone are capable of exercising a **political control** taking into account **public interest at European level.**”*

EPO in EU or EU in EPO?

*“I believe that the future of the European patent system only in the **economic and political integration of Europe in the European Community** for truly secure, there is also its very basis. The efforts of the President of the European Patent Office in the direction of a close cooperation with the EC Commission are very welcome, but **in the long term should not be enough.**”*

**-- Otto Bossung, one of the founding fathers of
the EPO**

EPO in EU or EU in EPO?

*“The **EPO** should become part of the **European Union**, like the OHIM in Alicante. To keep the **EPO** outside that framework is quite ridiculous at a time when the EU is expanding to the political and historical boundaries of Europe. The EU institutions especially the **European Parliament**, must be given the wherewithal to exercise **firm democratic control** and to frame and implement European patent legislation. That is the only way to overcome the European Parliament's **growing suspicion of patent law.**”*

*-- **Alfons Schafers, german lawyer and President of GRUR***

EU in the EPOrg

- The **EU plans to sign the EPC**
- Reason: **EPO will grant Community Patents**
- Lisbon: **EU now a state** as such
- **No Parliamentary control over the EPO** itself
Still budgetary independence of the EPO
- No obligation for the EPO to follow EU directives and standards
 - staff regulations
 - parliamentary questions
 - access to documents
 - injection of only part of the *acquis communautaire* in the EPC (Swiss delegation fears)
 - OLAF investigations over problems at the EPO (Pompidou's wife)

Questions for debate

1. Do you think **the trust of EPO examiners** in the Administration Council **will raise** if the Commission has a seat at the Administrative Council? If so, about how much?
2. Do you think the EPO should **comply with EU law** if they are responsible for the grant of the Community Patent?
3. Should the EPO be **responsible in front of the ECJ**? How is it possible if the EPO is **not a Community institution**?
4. Do you think the EPOrg **represents the wide interests of European Society**?
5. Do you think the EPO should have **budgetary independence**, esp. with renewal fees?