

## NEW NORMAL EPO

The pandemic that has been raging for the past year has affected all countries, particularly in Europe, from a health, economic and societal perspective. Businesses and institutions of all kinds have been forced to change their operations and wherever telework is possible, it has become widespread and encouraged by Governments.

The EPO, which had already some experience in this field for several years, having implemented, with the appropriate tools, telework on a part-time and limited basis, has efficiently put in operation this new way of working. It was made feasible due to all the computer developments that have been carried out over many years, both for the search and examination tools and for those enabling the complex management of the European patenting procedure. The deployment of highly ergonomic workstations in 2020 has facilitated the use of these existing systems.

Although over the past year telework has become widespread at the Office and has enabled it to continue its activity as much as possible, it is regrettable that it has not been limited to the homes linked to the duty stations of the employees of the Office, in particular Munich, The Hague and Berlin. This breach of the Convention (Article 5, 6...) should be corrected as soon as possible.

It should be remembered that during the revision of the Convention (Art 4a) it was planned that a Conference of Ministers of Member States should take place, at least every 5 years, to discuss the issues the Organisation and the Office are facing. Such a Conference would be appropriate to address the future of the Office following the pandemic and in particular the content of the New Normal EPO document.

Is it realistic and feasible **today**, before the end of the pandemic and based on limited experience (duration and nature of tasks) to define for the EPO a new organisation of work and new working methods? It seems far too premature. The problem is not unique to the EPO and there are many questions for all companies and institutions about this way of working without coherent and clear answers. For the EPO, its **European mission**, its role and its operation, have specific features that need to be carefully analysed. It should also be noted that the basic proposal presented in the New Normal paper relies heavily on two staff surveys, a few months after the start of the pandemic, the results of which are far from clear. In any event, if the staff's opinion is still desirable, it is not for the Staff to decide the future of the Office and the Organisation.

In general, while telework can withstand the pandemic, it is increasingly being challenged by companies and employees as the solution of the future. The direct work relationship within its physical environment, with colleagues, with superiors, is confirmed by the vast majority. Many debates involving employers, unions, employees, sociologists, psychologists etc... are unambiguous in this respect.

With regard to telework, **the EPO has its own very specific characteristics** that need to be taken into account:

Granting a **European patent** has a potential impact on all Member States and a market of more than 500 million consumers. It results in a monopoly situation for 20 years and creates a distortion of competition during that same period. This is therefore a heavy decision which must be fully justified and taken with the highest objectivity and neutrality towards the applicants. For this reason, it was decided that the system would be **centralised**, a key point of the EPC, and that the staff responsible for the grant would be located mainly at the headquarters in Munich, in The Hague branch and in Berlin (centralisation protocol). Duty stations are fixed even if regular controlled transfers occur. The distribution of staff between the main duty stations is also provided for by the Convention.

Given the impact of the European patent, **the neutrality and quality** of the work of the Office's staff, in particular the examiners, to which users are particularly attached, are essential throughout the entire procedure. It imposes the following conditions

- an initial patent examiner training lasts 3 years, based on lectures and tutoring provided by experienced colleagues. Initial and ongoing training in search and search tools through learning process sessions. The quality required is also based on an excellent knowledge by the examiner of his or her technical field, because it is this knowledge that makes it possible to judge the level of inventive step of an invention. In this regard, formal or informal permanent contact between examiners is essential.

- The team manager and/or the director through his daily contacts with the examiners must guide them in their activity, develop a team spirit, generate initiatives, highlight the positive proposals of each other and strive to implement them.

- The decision to grant a patent is made by an examining division. The decision of an isolated examiner is neither in the spirit nor in the letter of the Convention. This is a characteristic peculiar to the EPO compared to all other offices in the world. Each file is therefore given to 3 examiners. The division operates either informally through daily contact between examiners or formally when the case to be dealt with is sensitive and difficult. Opposition divisions ~~are~~ consisting of three examiners, two of whom are different from the examining division, also meet the same requirement

- oral proceedings or oppositions which are the subject of often heated debates where the stakes of each party are high require the physical presence of the participants so that their effectiveness and efficiency are optimized. The use of video conferencing is likely to be a source of either refusal to participate or subsequent conflict.

## **EPO and DIGITALISATION**

The EPO has been a pioneer in automation for both search tools and procedural management systems: EPOQUE, BNS, Espacenet, EPASYS, Phoenix, Registry online, Online file inspection. They have been operational for more than 20 years, have been regularly improved and are still essential to the operation of the Office.

These systems are among the most integrated in the patent world, (sometimes called spaghettis) to ensure that internal and external users have an unparalleled level of functionality at their disposal in the patent world. This level of system integration combined with the availability of a huge volume of specific data requires a development and maintenance team with a high level of knowledge not only in IT but also and necessary in patents and patenting procedures for the internal and external users (examiners, formality officers, lawyers and applicants' representatives). It is worth pointing out that the Office systems are used worldwide by other patent offices and contribute by the enormous volume of data they manage and by their functionality to the quality of service of these offices.

Wishing to intensify digitalization and all the new information technologies is of course desirable, but its success implies several conditions:

- Permanent dialogue between internal and external system users on one side and IT teams on the other side. Functional specifications must be defined by users and transcribed into appropriate technical specifications by IT people. In this regard, many paragraphs of the document "New Normal" describing what is envisaged are very vague given the complexity of the tasks of granting a patent and disregard the functional specifications desired by users.
- Priority should be given to search tools because without a good search there cannot be a good grant decision. The Office must therefore strive to have and master search tools which make it more powerful in comparison with what is available elsewhere.
- after a cost-benefit study, each project must be managed by a mixed team of users and IT specialists.
- Each project must be tested and finally accepted by a significant group of users before being deployed.
- Systematic and absolute sub-contracting such as currently taking place presents serious risks.

## **CONCLUSION**

The NEW NORMAL project deserves a thorough revision in order to meet the intrinsic requirements of the Organisation and the Office at the service of the European economy and its industry.

Among the possibilities, well-controlled telework is an interesting method. However, given the nature of the tasks to be performed, it will have to be designed in such a way that each staff member, in particular the examiners, are physically present at the Office's premises several days a week to ensure efficient operation with the quality required by users.

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