

Amendments in the European Patent System



Protection of interests of 3rd parties

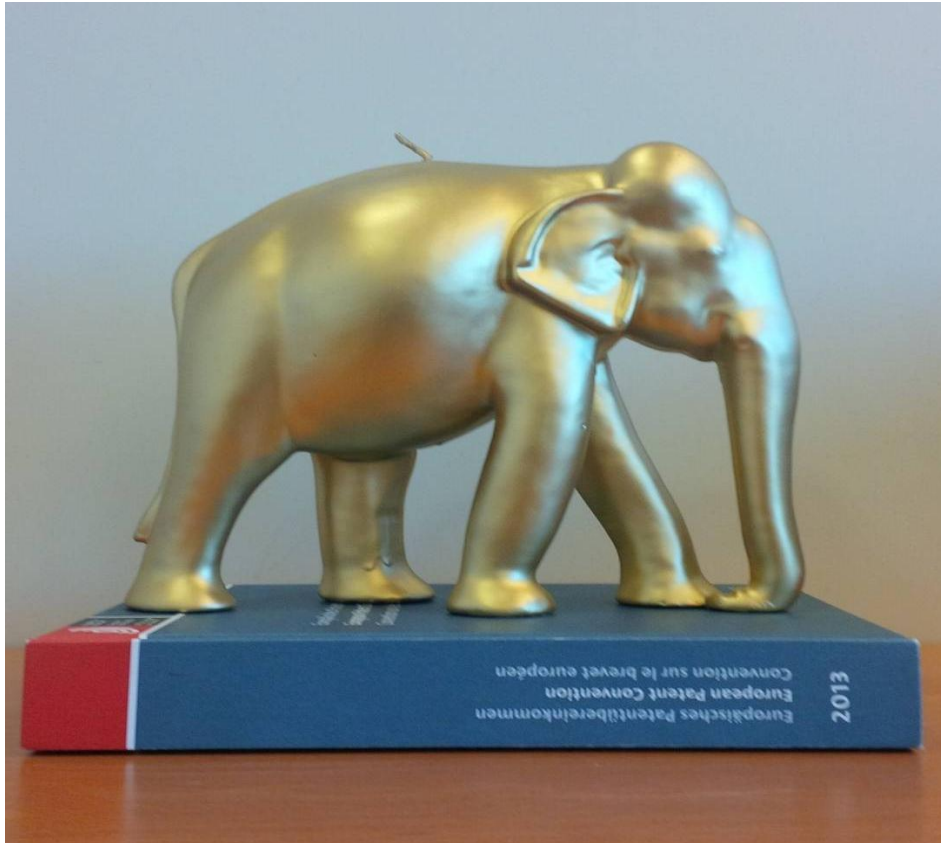
No surprises, no unwarranted advantages



Disclosure test



Gold standard



G 3/89 G 11/91

G 1/93 G 2/98

G 2/10

“within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of the documents as filed”

Directly and unambiguously derivable



Article 123(2) EPC

Discussions with experts in four technical fields: mechanics, electrophysics, chemistry and biotechnology.

Result: Room for improvement in practice:

| EPO | Applicants |
|--|-------------------------------|
| Consistency in approach | Better use of Rule 137(4) EPC |
| Consideration of the invention – skilled person | Actively provide arguments |
| Directly and unambiguously does not mean literally | |
| Less time should be spent on added subject matter | |

There is a broad consensus that the same criteria should be used for the assessment of added subject-matter, novelty and priority.

Non-unity upon entry of European phase

- More flexibility through amendment of Rule 164 EPC
- Equal treatment irrespective of the choice of ISA
- Similar handling of non-unity in direct EP and Euro-PCT procedures

Recent procedural changes at the EPO – Abolition of handwritten amendments (Rules 49 and 50 EPC)

- In compliance with Rules 50(1) EPC and 49(8) EPC, handwritten amendments are no longer accepted in documents replacing parts of the European patent application submitted in proceedings before the first instance departments of the EPO
- Documents containing handwritten amendments are considered formally deficient. If the deficiency is not timely remedied, the consequences provided for in the EPC will apply
- In oral proceedings, documents containing HWA can be used as a basis for discussion – no final decision before formally compliant version is submitted. Additional time limit for submitting it may be granted in exceptional cases.
- In force as of 01.01.2014

Questions?

Thank you for your attention !

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