



The Eurasian Patent Organization: the first five years

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Abstract

The Eurasian Patent Organization (EAPO) was founded in the aftermath of the break-up of the former Soviet Union into independent states. The rationale for its formation and the history of that formation are described, along with statistical information on filings, grants and maintenance over the first five years of operation. Some 4000 applications have been filed, in part through national offices and directly at the EAPO, but mainly through the Patent Cooperation Treaty (PCT) route. Documentation available to EAPO examiners, as well as training provided for examiners in the EAPO and in the corresponding national offices are also outlined. © 2001 Elsevier Science Ltd. All rights reserved.

Keywords: Eurasian Patent Organization; Eurasian patent convention; Minsk agreement; Filing statistics; Grant statistics; Maintenance statistics; Automation; Eurasian patent attorneys; Economic integration

1. Introduction

Recently, the Eurasian Patent Organization (EAPO) celebrated its fifth anniversary. Our celebration, most likely as any appreciable landmark, is a traditional reason to sum up and comprehend the results achieved. Today we have got a lot to sum up.

But I, a person whose way towards this anniversary was purposive and started many years ago, would like to remind you about the anniversary-preceding stage of forming the EAPO, that developed against a background of the challenging and dramatic events of the break-up of the USSR and searches for ways of unification within the framework of the Commonwealth of Independent States.

As is known, 1991 was marked by the break-up of the USSR followed by the formation of 15 new independent States in the ex-Soviet Union territory, and the USSR patent system which had been a united one in former times, disintegrated accordingly. A majority of these new States, with the exception of Russia, were faced with the objective to create their own national patent systems.

This process of disintegration took place during the period when the tendency towards patent cooperation and integration was becoming more and more distinct in the world patent practice. The procedure of filing international applications under the Patent Cooperation Treaty (PCT) was developing more and more dynamically.

At that time, 43 countries were member States to this Treaty. Currently, the number of PCT member States has more than doubled and reached 110. As a result of patent integration throughout the world, there were three international regional patent organizations at that date; among those, the European Patent Organization (EPO) was, and continues to be, a recognized leader.

A tendency was becoming more and more distinct towards a need to create a global patent system affording significant simplification and cost-reduction of the procedure for patenting inventions, exclude duplication of work of patent offices in the field of patent search and examination with respect to the same inventions claimed in different countries.

In so doing, the newly formed States, the ex-Soviet Union republics, set about the establishment of national patent systems and reunification of a common patent system under new conditions and on new principles. The need for cooperation was especially acute for those countries that had only started to establish their patent laws and as a consequence had no practice for protecting industrial property.

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2. Past history of the establishment of EAPO

2.1. The beginnings

The beginnings of a complicated, prolonged and result-producing process for establishing a common patent system in the ex-Soviet Union territory were marked at the working meeting of representatives of the States on 10 October 1991 in Moscow. At that first meeting, goals of joint activities in the protection of industrial property were formulated for the first time, and policies in the patent branch as a component of economic integration were agreed upon.

The meeting resulted in the elaboration of principles for establishing a united patent system agreed upon by the participants; later, on these principles the foundations were laid of an Interim Agreement on the Protection of Industrial Property.

Against a background of the accelerating process for breaking-up the former USSR, the elaboration of principles for rapprochement, even with respect to one specific orientation, on the basis of mutual economic gains, that is a new concept for the former USSR republics, had demonstrated the readiness of the participants for meaningful cooperation. Further development of this orientation in patent integration came up against many obstacles, which were consistently removed owing to a political will and purposefulness of the initiators to establish a common patent system in the ex-Soviet Union territory.

It is important to take note of the fact that the participants of the meeting considered the Interstate Patent Office as a self-contained and independent institution to be the most appropriate tool for the purposes of managing the protection of industrial property rights.

From here on, this provision has become the subject of acute debates and a rather typical example of the manifestation of narrow departmental approaches, masked with high rhetoric and pleads to the state interests.

2.2. The Minsk agreement

In fact, a meeting of representatives of the governments of CIS member States held in Minsk on 27 December 1991 became the starting point of the process for establishing a common patent system in the territory of a majority of the ex-Soviet Union republics and a goal-oriented rapprochement of positions of the meeting's initiators.

The problems involved with the establishing of a common patent system, needed a high degree of document scrutiny but the stated interest of the participants in a solution of the many controversial issues made it possible to complete the Minsk meeting with the signing of an *Interim Agreement on the Protection of Industrial*

Property. However, only Ukraine ratified this agreement. The remaining States failed to reach any decision, despite their obvious desire for cooperation.

Against a background of objectives having a global scale, such as interstate programs, joint use of scientific and technological objects, coordination of efforts in the area of training of scientific and pedagogical personnel, cooperation in the field of scientific and technological information, standardization, metrology, certification, etc., it seemed that the significance of issues on cooperation in the protection of industrial property compared unfavorably with the above-mentioned objectives and fell within the "second echelon" of problems having in fact an operative and not a strategic nature.

Life has demonstrated that just this orientation of cooperation turned out to be the most viable. During the two subsequent years, work continued "step-by-step" to prepare a new agreement to replace the above-mentioned interim agreement.

2.3. Establishment of an Interstate Council on the Issues of Industrial Property Protection

On 12 March 1993, a meeting of the Heads of the Governments of CIS countries was held at Moscow. The meeting resulted in the signing of a new *Agreement on the Measures for the Protection of Industrial Property*.

Article 1 of this agreement provided for the establishment of an *Interstate Council on the Issues of Industrial Property Protection* to coordinate joint activities aimed at establishing an interstate system for the protection of industrial property rights, harmonize national legislation in the field of legal protection of these rights and elaborate an *open Convention for the Protection of Industrial Property*.

At the first session of the Interstate Council, proposals on immediate steps to establish an interstate system for the protection of industrial property rights were elaborated and the proposed Interstate Bureau for the protection of industrial property was established. This Bureau was proposed to be the basis for the establishment of an Intergovernmental Patent Office. To elaborate the *open Convention*, as well as a series of relevant documents, a permanent Intergovernmental Working Group of Experts, headed by the President of the Interstate Bureau, was established.

2.4. Establishment of the Eurasian Patent Organization

The Working Group, with the active participation of World Intellectual Property Organization (WIPO) staff and the personal efforts of Dr. A. Bogsch, Director General of WIPO, prepared a draft *Eurasian Patent Convention*, which was adopted on 17 February 1994 at the session of the Interstate Council on the Issues of

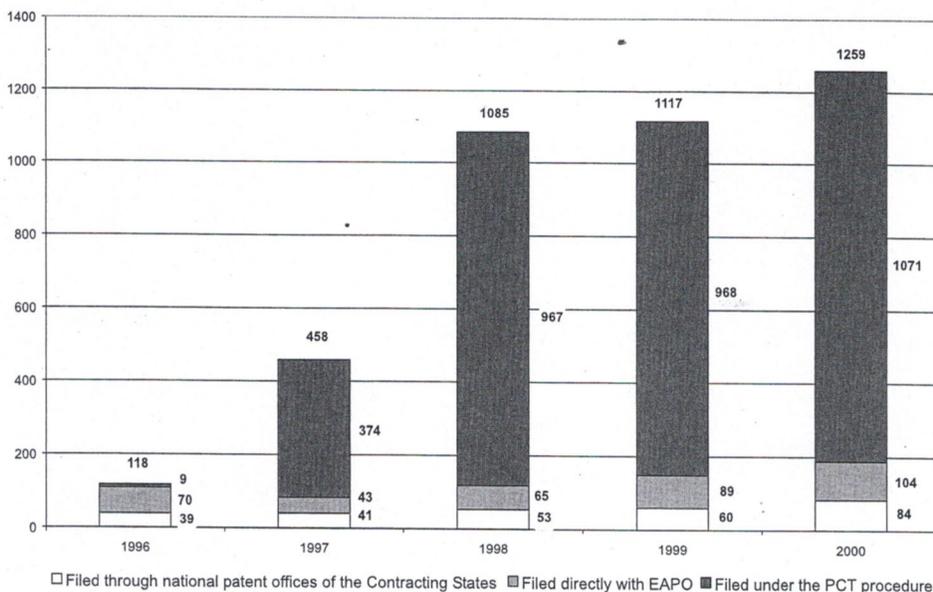


Fig. 1. Number of applications filed.

Industrial Property Protection held at WIPO headquarters in Geneva.

The Convention was signed on 9 September 1994 by the Heads of the Governments of the Russian Federation, Ukraine, the Azerbaijan Republic, the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Kazakhstan, the Republic of Moldova, the Republic of Tajikistan, the Kyrgyz Republic (10).

To put the Convention in force, at least three States had to deposit their instruments of ratification or instruments of accession.

Turkmenistan became the first State to accede to the Eurasian Patent Convention following deposition of its instrument of accession on 1 March 1995. Thereupon, Belarus submitted its instrument of ratification on 8 May 1995, followed by Tajikistan that deposited a similar instrument on 12 May 1995.

The Eurasian Patent Convention, under its Article 26(4), entered into force on 12 August 1995. This date became a final moment in the chronicle of the EAPO "past history".¹

The first (extraordinary) session of the Administrative Council of the EAPO was held on 2 October 1995 in Geneva, where I was elected President of the Eurasian Patent Office. This was the start of the five-year period being summed up here.

3. EAPO in figures and facts

3.1. Introduction to statistical information

A five-year period of work of an international regional organization is a very short term, as a rule insufficient for the successful solution of all tasks raised. At the same time, while summing up the results of the first five years in the EAPO activities, we could note with satisfaction that this new regional patent organization has received recognition and held a steady position in the world system for the legal protection of inventions. This is illustrated by an annual growth in the number of Eurasian applications received and Eurasian patents granted.

3.2. Eurasian patent applications filed

In the course of five years of its existence, a total of 4037 Eurasian patent applications were filed with the EAPO.

Fig. 1 shows the dynamics of receiving Eurasian patent applications according to years and categories of applications.

A good share of Eurasian patent applications fell within applications filed under the PCT. In 1999, the number of international applications that contained the designation of a Eurasian patent and were filed with the WIPO accounted for 56% (+3% as compared to 1998).

A total number of Eurasian applications filed under the PCT for five years accounted for 3389 (nine in 1996, 374 in 1997, 967 in 1998, 968 in 1999 and 1071 in 2000), representing 84% of the total number of applications

¹ Editor's note. To date, the Convention has also been ratified by the Russian Federation, the Republic of Kazakhstan, Republic of Azerbaijan, the Kyrgyz Republic, the Republic of Moldova and the Republic of Armenia – position as specified on the EAPO website (<http://www.eapo.org>) on 8 April, 2001.

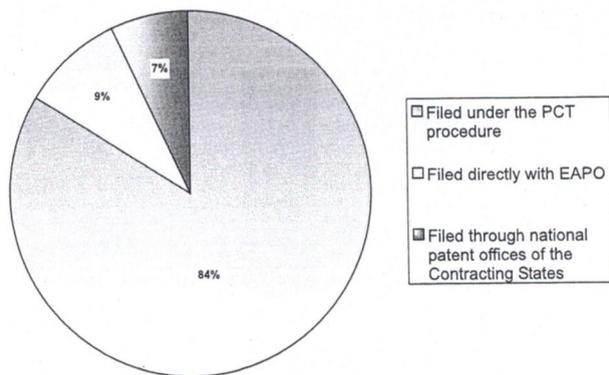


Fig. 2. Filing route.

received. Fig. 2 shows the breakdown of Eurasian applications depending on specific features of their filing procedure.

Two hundred and seventy-seven applications were filed through national offices (39 in 1996, 41 in 1997, 53 in 1998, 60 in 1999 and 84 in 2000), representing some 7% of the total number. Three hundred and seventy-one applications were filed directly with EAPO (70 in 1996, 43 in 1997, 65 in 1998, 89 in 1999 and 104 in 2000), or 9% of the total number of applications filed.

3.3. Substantive examination requests filed for Eurasian patent applications: substantive examinations made

In 1996, a substantive examination was initiated only in respect of three Eurasian applications. In the subsequent years, however, the number of applications that passed a substantive examination was rising steadily. A total of 142 Eurasian applications were examined in 1997, 469 in 1998, 780 in 1999. For 2000, examination has been carried out in respect of 530 Eurasian applications by 1 July 2000.

3.4. Eurasian patents granted

In April 1997, EAPO granted the first Eurasian patent. A 1997–1999 period of activities was characterized by a tendency towards an annual growth in the number of Eurasian patents registered and granted by EAPO. This tendency remains unchanged in 2000.

As of 1 January 2001, a total of 1513 Eurasian patents have been registered in the Register of Eurasian patents and 1308 Eurasian patents have been granted, including 24 in 1997, 209 in 1998, 430 in 1999 and 645 in 2000. Fig. 3 shows data regarding the number of Eurasian patents granted in 1997–2000. As follows from the figure, the number of Eurasian patents granted to applicants from EAPO member States accounted for 131, including eight in 1997, 26 in 1998, 48 in 1999 and 49 in 2000.

The number of Eurasian patents granted to applicants from the States not party to EAPO accounted for 1177 patents, including 16 in 1997, 183 in 1998, 382 in 1999 and 596 in 2000.

A good share of Eurasian patents granted in 1997–2000 were patents for inventions based on international applications which entered the regional phase under the PCT. This indicator accounted for 1061 patents (81%). The dynamics of growth in the number of Eurasian patents granted for applications filed under the PCT and entered the regional phase, according to years, in number and percentage, is as follows: 4 (17%) in 1997, 129 (61%) in 1998, 356 (83%) in 1999 and 572 (88%) in 2000.

The number of nationalities of applicants which obtained Eurasian patents has expanded considerably. In 1997, representatives of seven countries obtained Eurasian patents, whereas the number of such countries reached 30 in 1998, 43 in 1999 and 2000.

The largest number of patents obtained for the these years falls within applicants from the USA – 22%, Germany – 12%, Russia – 9%, France – 8%, Netherlands – 7%, Great Britain – 6%.

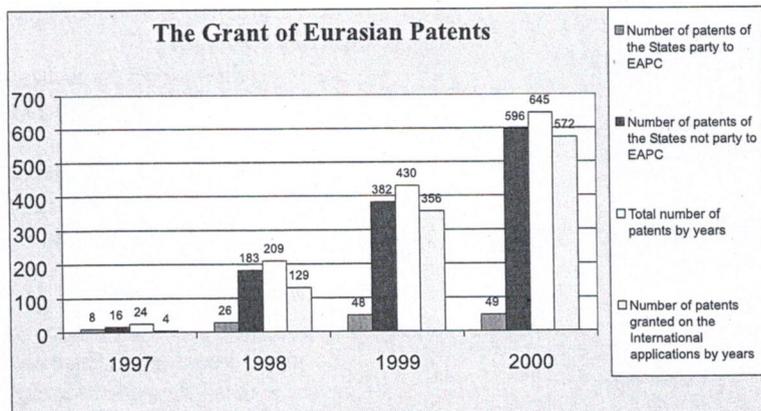


Fig. 3. Eurasian patents granted.

Patents granted to applicants from EAPO member States for these years account for 10%.

3.5. Maintaining Eurasian patents

Payment of annual fees for the maintenance of Eurasian patents became obligatory in 1998. In 1998, payments only concerned the first annual fee. In 2000, along with payment of the first annual fee, holders of patents started payment of annual maintenance fees for the second, third and fourth years of validity of Eurasian patents after they had been granted.

During 1998-2000, the first annual fees for maintaining patents in the States designated by holders of patent, were paid in respect of 813 Eurasian patents, or 62% of the total number of Eurasian patents granted, including 79 in 1998, 268 in 1999 and 469 in 2000.

In 2000, a mean number of designations of Contracting States when paying the first annual fee for maintaining a Eurasian patent accounted for 5.2 States versus 4.3 States in 1999.

3.6. Developing a Eurasian patent legislation

The development of Eurasian patent legislation corresponds, as to both the contents and terms of adopting new documents, closely with the activities of the EAPO. There is a short period between the origin of a problematic situation and its solution at the level of legal documents.

Effective elaboration and adoption of amendments and additions to the Statute on fees, which significantly enhanced the attractiveness of a Eurasian patent, serves as an example in this respect. EAPO decided to reduce its earnings from single procedural fees and those for a substantive examination. It was not a populist step. A new fee structure makes the fees more available for small companies, thus leading (based on a favorable forecast) to a growth in the number of applications filed with EAPO. Applicants, holders of patents, patent attorneys exercised positive judgement in not only cost reduction, but also in simplification of appraising the amount of fees to be paid.

This example serves as a good illustration of the creative way for dealing in an optimum way with other tasks facing EAPO's dynamic development.

3.7. EAPO information supply and automation

EAPO pays special attention to the development of automation systems and the provision of information supply for the examination process.

Progress in these aspects of the EAPO is not an accident. As far back as at the stage of forming the EAPO, initiators of its creation were oriented towards the highest standards in this field, in many respects owing to

scientific achievements and many years of paperless technology experience of patent offices in the leading countries and of international organizations, primarily the International Bureau of WIPO and the EPO. Their assistance rendered to EAPO at every stage of its formation is inestimable.

Use of the above-mentioned experience, correct selection of automation procedures and means, scientific and practical experience of the leading examiners of the Office allowed EAPO to go over, in a very short time, to information technologies conforming to high world standards.

EAPO is trying to attain, in future, a status of the International Searching Authority in accordance with such a right stipulated in the Eurasian Patent Convention.

Even now, patent documents on CD-ROMs of WIPO, EPO, Germany, Japan, Austria, USA, Russia, Great Britain are available to EAPO examiners.

EAPO examiners have telecommunication access, through a dedicated ISDN channel, to information patent resources of the EPO in the Hague, in particular to the systems EPOQUE-I and EPOQUE-II.

All examiners are provided with access, from their workstations, to information resources of the Internet.

Since 1998, EAPO has been developing its own automated patent information system (APIS) designed to complete and handle the collections of patent and non-patent documents on machine-readable carriers and to carry out patent information searches in these collections.

All that, in the aggregate, provides the documentary base for the examination of Eurasian patent applications by EAPO.

3.8. Eurasian patent attorneys

EAPO successfully interacts with the institution of Eurasian patent attorneys. Over 150 attorneys representing nine countries constitute an efficiently operating machinery. Activities of this informal system with respect to organizational, financial, statutory and legal issues are well coordinated with those of EAPO. The adopted Procedure and Program for holding qualification examinations to certify and re-certify patent attorneys serve as a good support to the above activities.

The results of re-certification fully confirmed the high professional skills of Eurasian patent attorneys, good knowledge of the Eurasian patent law and an ability to put this knowledge into practice.

It is very important that interaction with Eurasian patent attorneys is not confined to formalities - it is carried out in dialogue. Joint clarification of interaction problems, the quest for ways to solve these problems, attorneys' proposals to improve EAPO statutory and

legal base enable simplification and acceleration of the procedure for examining application.

3.9. EAPO personnel

Finally, to me, as Head of the Office, it is extremely important to mention our personnel – a key characteristic of the Organization.

EAPO structure was finally formed by the beginning of 1998 on the basis of equal participation of citizens from the Contracting States in EAPO activities. Qualified, creative personnel got down to work. High professionalism – a prerequisite for establishing a viable organization – was achieved. However, any organization, especially an international organization, is a dynamic system. Objectives become wider, more complicated. Relations between countries – partners undergo political, economic changes. Macrolevel changes must have an effect on microlevel work of an international organization.

It might seem to be enough for the office's administration to maintain favorable working atmosphere, ensure social protection of the staff in order to achieve the effect of a "team". But today one cannot forget that the need for training and the ability to be trained represent one of the superior qualities of workers in the intellectual sphere, regardless of their position, age, and self-appraisal. Desire for the improvements in professional skills should be realized with the greatest effect both for the organization and the individual. Such work became one of priority lines in the activities of the EAPO administration. On-the-job training under individual programs, language courses for the staff, international seminars, scientific and practical conferences constitute a partial list of measures which are traditional in EAPO activities.

From the very moment of establishing the Organization, these activities were greatly supported, and continue to be supported, by international organizations – partners and good friends of EAPO. Note should be taken of a valuable contribution made by the EPO to the training of EAPO personnel.

To elaborate a unified approach to examination of Eurasian patent applications among the examiners, taking into account modern international practice, EAPO carries out the training courses using a special curriculum worked out on the basis of EPO curriculum. While solving tasks of granting reliable Eurasian patents, EAPO simultaneously carries out another important task – training of qualified specialists for national patent offices of the States party to Eurasian Patent Convention.

Essentially all EAPO examiners have been on a special course at the EPO – a recognized leader among regional patent offices. Beginning examiners are super-

vised by experienced mentors – examiners having a considerable experience in patent examination.

There is an extremely important notion in the patent branch, that it is a totality of features that influence the achievement of a result.

In our case, such a totality comprises a "starting" professionalism, qualification growth, social security, microclimate; a result consists in the aim of the organization for the creation and maintenance of the reputation of EAPO as a patent office of high world class.

Already in 1997, the stage of EAPO formation was carried to completion with all aspects of activities shaped organizationally. An agreement between WIPO and EAPO governing cooperation in the field of industrial property has entered into force. Basic statutory instruments of EAPO have been amended and modified, as necessary. A mechanism for exchanging patent documents between EAPO and States not party to the Convention has been devised. This triggered off a growth in the number of patent documents that entered EAPO from the patent offices of the leading countries of the world.

4. A Eurasian Patent – one of the important factors of economic integration of EAPO member States

Among the tasks facing the EAPO today, still the most important are further development of the Organization and assistance rendered to national patent offices of the States that have ratified the Eurasian Patent Convention and adhered thereto, on the issues of examination, supply of information, use of new technologies, training of personnel.

Economic integration of the States could be proclaimed, but it is attained, as a rule, with small specific steps. Such steps, in line with practice in European, and in African, integration were achievements in the protection of industrial property.

Of course, the state of the patent branch in the member States of the Eurasian Patent Organization is only one of components of the investment climate and, possibly, not the major component, against a background of economic instability in our States, low reliability of banking and financial systems.

World experience, however, says: in the States where the rights in intellectual, including industrial, property are well protected, investors have one problem less. Hence, a real sector of economy has more chances for development.

Today, a Eurasian patent plays the part of a "pathfinder" in a real rapprochement of economic interests of the States party to the Eurasian Patent Convention and their strategic partners.

This lays emphasis on the important role of the EAPO in the provision of effective protection of indus-

trial property rights and expansion of cooperation for the benefit of inventors from all countries.

Acknowledgements

The firm position of the EAPO in the world patent system has been attained owing to the energy and professionalism of many people. First of all, these are representatives of the States party to the Eurasian Patent Convention. Every stage in the preparation of the Convention and formation of the EAPO was accompanied by the assistance and advice of the former Director General of WIPO, Mr. A. Bogsch, Deputy Director General of WIPO, Mr. F. Curchod and WIPO officials, Mr. V. Trussov and Mr. E. Bobrovsky. And now WIPO, in the person of its current leader, Dr K.

Idris, is a reliable partner of EAPO. We highly appreciate attention and support rendered by the President of EPO, Mr. I. Kober, and his associates. Finally, the success and efficiency in EAPO work could not be achieved without the coordinated and substantial work of plenipotentiary representatives in the Administrative Council and of EAPO personnel.



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