

Interview with the EPO's Wolfgang Pilch

By Richard Poynder



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INPADOC

RP: Can we start with your background: You began your career as a patent examiner, examining computer hardware applications in the Austrian Patent Office. Then in the 1970s you were involved in the Austrian bid to develop an international patent documentation centre.

WP: Right. In 1973 the World Intellectual Property Office ([WIPO](#)) tendered for a system that would bring [patent families](#) together, and prepare inventory lists of [IPC](#) (International Patent Classification) symbols as a support tool for the PCT (Patent Cooperation Treaty). It also had to be capable of delivering copies of patent documents. Austria proposed establishing an [I](#)nternational [P](#)atent [D](#)OCumentation centre in Vienna, which became INPADOC.

RP: The upshot was that the Austrian Patent Office won the bid, INPADOC was born, and you became technical director of INPADOC. Who else bid for the contract?

WP: The former International Patent Institute ([IIB](#)) also bid, as did [Derwent Information](#).

RP: Why did Austria win do you think?

WP: Well, our bid included investing in new computer-based systems, and building on the existing copy service of the Austrian Patent system. So from the start, INPADOC would offer computer-based systems with [COM](#) (Computer Output on Microfiche) products, PFS (Patent Family System), and PCS (Patent Classification System). It would also deliver patents on 16mm roll film. At the time this was break-through technology. Clearly WIPO liked the idea!

RP: INPADOC was a commercial service. And while it became an independent organisation I think perhaps this was the first time that a patent office had gone head-to-head with a commercial company (Derwent) in developing a paid-for information service, and perhaps the start of an ongoing competitive tension between public and private players in the patent information field.

WP: INPADOC was founded by the Republic of Austria and, with the exception of two former employees of the Patent Office working in INPADOC, there was no commercial interrelation between the Austrian Patent Office and INPADOC. I would add that INPADOC was in operation as an independent organisation for fifteen years (between 1974 and 1989), and during this time it had no real competition.

RP: When it began operations INPADOC was not an online system. How was patent information distributed in the early 1970s?

WP: Well, given the technical developments that have taken place since then we are talking about a long time ago; and during the period that the service operated the equipment used, and the products delivered, changed dramatically.

RP: Can you give me a sense of those changes?

WP: As I indicated, the patent family service started as a COM-based fiche set. But later it developed into a database system that could be used via teletype, and then into an online service accessible via data lines — initially at 110 Baud, and later at 300 and 1200 baud, as the technology improved.

RP: How did people obtain international patent information prior to INPADOC? Did they have to create it themselves by combining data from all the different national patent offices?

WP: Prior to INPADOC only rudimentary electronic patent family services existed, and manual collections on handwritten cards where the state of the art.

RP: When we talk about patent families we are talking about the way in which one invention can lead to many different patents, as the inventor seeks to protect his invention in different jurisdictions around the world. These are all part of the same patent family, but it may not be obvious by looking at any individual patent which other patents are related to it. The challenge for anyone doing a patent search, therefore, is to establish these family connections?

WP: Right, so it isn't just an issue of technology. At that time the [priority data](#) provided on the patent documents themselves were rudimentary, and there was no data standardisation. Consequently, patent families had to be assembled manually using applicant names, titles and content.

What this meant was that a search for a patent family was costly and time consuming — sometimes taking several weeks and only accomplished by contacting lawyers and attorneys worldwide. INPADOC changed this dramatically, bringing the search time down from weeks, to just minutes.

RP: Who used the INPADOC service?

WP: Our first customers were other national offices, soon followed by patent lawyers and then "big industry". INPADOC was a relatively high priced service, so the number of requests from SMEs was only small.

RP: Obtaining patent families was an expensive business then?

WP: It certainly was. In the first years of INPADOC we charged around 100 € for a single patent family. This was compiled by computer, but checked manually. Put it this way: if I had used my personal income I could have bought no more than 18 patent families a month!

Philosophical question

RP: As you say, INPADOC's raison d'être was as an international patent information service. What does that imply in terms of its coverage, and to what extent was the service unique?

WP: When INPADOC started in 1974 it offered only a modest dataset. But by the 1990s it covered more than 50 countries, so by then the coverage was outstanding — especially in [legal status](#) data. In that respect, it was totally unique.

RP: In those days all that was available in terms of patent information were bibliographic data. Today people expect full-text. Was it a serious limitation for searchers to have access only to bibliographic data?

WP: This is nearly a philosophical question. At that time there was a serious concern that full-text searching would simply introduce a lot of noise, and provide no useful additional results. Using classification systems was viewed as the most valuable search method.

RP: So how did examiners conduct a patent search at that time?

WP: In those days perfectly complete documentation of the "pigeonhole type" was available, so after you had decided on a classification term you could manually scan a batch of maybe 100 documents. The human brain is still more effective than a computer in certain tasks, and so the search results obtained from scanning drawings and taking quick samples from the text. The results were impressive indeed.

RP: You are talking about physically searching patent documents?

WP: Right. Before automated systems like [EPOQUE](#) were available in patent offices the search files were just collections of paper documents subdivided by classifications. In Austria around 1970 these collections consisted mainly of patent documents received from [\(AT\)](#) [BE](#) [CH](#) [DE](#) [FR](#) [GB](#) and [US](#).

When received, these documents were subdivided into the national classifications. The examiners then further subdivided them by classification, producing batches of approximately 100 to 200 documents per classification system. These were then stored in wooden pigeonholes.

So when doing a search an examiner would physically flip through the documents. As they scanned many of these small batches over and over again the examiners knew pretty well the contents of each pigeonhole, and so a search was often completed very quickly. That's what I mean when I say the human brain is often more effective than a computer.

European Patent Office

RP: INPADOC was incorporated into the EPO in 1991? How and why?

WP: It was a win-win situation. INPADOC at that time had a universal database, a worldwide customer base and know-how in the creation and management of bibliographic patent information. But while it was financially self-supporting, the money needed to invest in new technologies (e.g. CD-ROM, document scanning on a global scale etc.) was missing.

For its part the EPO wanted to dramatically reduce its printing costs, and so had started a CD-ROM series. It also wanted to create a Patent Information Directorate.

So it was a perfect match, and a contract with the Republic of Austria was negotiated, and concluded, and the staff of INPADOC became EPO staff as of 1st January 1990.

RP: That was when you moved to the EPO too. What are your responsibilities today?

WP: I am Principal Director for Patent Information. So I am responsible for all aspects of the EPO's patent information services — from planning and development, to the marketing of the patent information tools of the EPO.

I should add that after five years working for the EPO as the director for development of patent information products I returned to the Austrian Patent Office, where I worked for another seven years. I applied for a post at the EPO again in 2003.

RP: I earlier suggested that the development of INPADOC was the first time that a patent office could be said to have gone head-to-head with a commercial information provider. But it was really only after it had "acquired" INPADOC that the EPO truly began to be viewed by commercial patent vendors as a threat. And that, of course, was when it began to distribute patent information electronically. Would you agree?

WP: Actually, that view — which in my opinion is incorrect — only emerged after the new pricing policy of the EPO was formulated 1995.

RP: Right, and the new pricing policy was very controversial. What led to it, and what was the goal?

WP: INPADOC had a set of contracts to sell bibliographic data to database vendors and also sub-contractors. The income from these contracts allowed INPADOC to operate its own services. INPADOC, for business reasons, did not want to have such contracts with too many vendors.

When we became part of the EPO, however, the policy changed, and INPADOC began to treat all patent information providers on an equal footing. In addition, it was felt that the EPO had to offer patent information to the public — in order to complete the "contract" which a patent applicant has with society.

RP: One consequence of the new pricing policy was that the French patent office ([INPI](#)) lost its preferential treatment in distributing the EPO's EPAT file. It also saw the royalty payments that it had been paying to the EPO rise from around 9% to 40%. I think you are saying that this decision was driven by the EPO's determination to ensure that the contract a patent applicants has with

society was properly fulfilled — by ensuring details of patents were distributed as widely as possible. Clearly the Web facilitated better distribution, but the EPO needed to invest in new technology. The higher level of royalties would enable it to make that investment. Is that correct?

WP: My perception is different. In the process of merging the data in INPADOC with the vast data collection of the EPO it became clear to us that these data should really be available to a much broader user community.

But the existing contracts we had with a specific group of information providers did not allow us to do that. We decided, therefore, to restart the system, and treat all information providers on an equal footing.

RP: What was the relationship between the EPAT and INPADOC files?

WP: At that time the INPADOC database included a lot more data than the EPAT file.

Changing Mission

RP: When the new pricing policy was introduced in 1995 [Serge Chambaud](#) of INPI [said to me](#), "Our concern is that the EPO is changing its mission and pushing the [Administrative Council](#) into taking decisions that will result in its becoming a commercial information producer, and eventually an online host." Was that a misunderstanding on Chambaud's part, or foresight?

WP: It was both. The EPO planned to distribute the bibliographic patent data and later also full text information for marginal costs to commercial operators to allow them to produce their services more economically. It also had a vision of providing an Internet patent service that would allow first time users and SMEs to get basic patent information for free.

RP: Questel's complaint in 1995 was that the EPO's decision to offer patent information meant that it would take a much larger share of the income Questel earned from selling EPO data. You are saying that at a later date the EPO changed tack, and began to sell the information to commercial providers at marginal costs?

WP: Yes. The patent information policy of the EPO is that basic information should be free for everybody. Since it was clear that this would impose a burden on commercial patent information providers the EPO stopped charging them royalties, and today it only charges them for the production of the copies of the data sets they need.

The aim was to avoid duplication of efforts, and allow patent information providers to invest their resources more effectively.

RP: You use the phrase marginal costs. What does that mean? How do you calculate the marginal costs?

WP: Our definition of marginal costs refers to those costs which we have to bear when a customer asks for an extra copy of an existing file. So we do NOT calculate the development, the compilation, checking and processing of the data. We only charge for the EXTRA copy. This is a very modest figure, and for patent information providers it is very attractive.

RP: I think commercial providers probably now accept that. One recently conceded to me: "We feel it [the EPO data] is definitely at marginal cost, especially compared with the USPTO." But tell me, who is INPADOC data sold to today?

WP: As I said, the database is now part of the EPO databases which are part of the esp@cenet system, and also part of the data delivered to patent information providers.

RP: So INPADOC is sold as a bibliographic database to services like Dialog, STN International and Questel, and also incorporated into [esp@cenet](#), the EPO's free Web service? In addition, esp@cenet offers full text patent information at no cost?

WP: We do not charge our users, but bear in mind that patent information is something you cannot easily digest, you have to work with it, which needs training, time and therefore resources.

RP: So what exactly does esp@cenet offer the public today and how does that differ from what other PTOs offer?

WP: The esp@cenet system comes in two flavours. Level one is used by many national offices to offer their most recent data. Level two is a worldwide database which aims to provide [PCT](#) [Patent Cooperation Treaty] minimum documentation. It offers bibliographic data, legal status data, facsimile data — in some cases full texts — and it also now includes a translation service.

RP: How many records, are there in esp@cenet currently?

WP: More than 63,000,000 records are available in esp@cenet, representing approximately 28 million patent families. 50 million of them are captured as facsimile documents, 20 million come with full text, and 45 million with English abstracts. In addition, 45 million events concerning the legal status of nine million applications are available, along with nine million applications.

RP: Can you give me some feel for current usage of esp@cenet, and how this has changed over time?

WP: Between October 2005 and October 2007 average successful requests for pages per day rose from 16,420 to 2,441,588. The number of distinct hosts served per day rose from 18,163 to 22,779.

RP: Who are these users?

WP: From the feedback we get we believe that esp@cenet supports our strategy of providing useful information to first time users and to inexperienced users

RP: Do you have any data to confirm that?

WP: We do NOT record, monitor or trace the queries of users. The only information we have on users is derived from a survey carried out in 2003, and published the same year.

RP: Can you give me the headline figures from that survey?

WP: The press release is [available](#) on the EPO site, as is the [report](#) itself. In a nutshell, the survey found that European companies still fall short in exploiting the potential of patent information

databases, CDs and DVDs produced by the European Patent Office and the different national patent authorities in Europe when developing their innovation and business strategies.

Apart from a general lack of awareness it also showed that there is a widespread knowledge deficit concerning the purpose and scope of the information that can be derived from patent documentations, particularly in terms of business intelligence.

Bear in mind that esp@cenet was launched as an initiative of the EC, which wanted to see such a system introduced for the benefit of the European market.

RP: You said earlier that patent applicants have a contract with society and you clearly believe that the EPO has a duty to ensure that that contract is fulfilled. Can you say more about that contract, and the EPO's responsibility?

WP: Whenever a patent is granted the applicant gets a right to block others — that is, other members of society — from exploiting his invention. To put it loosely, everyone else is denied the opportunity to use the invention detailed in a patent specification. In some ways you can make an analogy here with the issuing of a new law. In effect, society says: "You are not allowed to use this invention without the permission of the person who owns it."

If society issues a new law, however, then it has a responsibility to ensure that everyone knows about (or can find out about) it. In addition, society should get something in exchange for the opportunities that it has given the patent owner, which the rest of society cannot now enjoy.

RP: In other words, a patent applicant is given a twenty-year monopoly?

WP: So what the EPO has to do is to make sure that information about that invention is made readily available to the public. Since a published patent document defines the state of the art, this helps others to invent new things. In short, our job is to ensure a positive feedback mechanism exists. The published information helps stimulate new R&D, and so encourages further innovation.

Beyond its brief?

RP: As we agreed, historically commercial vendors complained that they were being asked to pay too much for EPO data. Today, however, the EPO provides its data at marginal costs, so pricing is not an issue. As I understand it, the deal was that PTOs would sell commercial vendors raw data at a price that would allow them to add value to it, and then sell it on for a profit. It was also understood that individual PTOs would make their own data available, but it would be vendors who would aggregate the data from different office. Consequently, the public could get the raw data for free by visiting the various PTO sites, or they could obtain aggregated value-added data from vendors for a price. Vendors now complain, however, that the EPO has reneged on that deal. As the vendor I quoted earlier on pricing, put it, for instance: "The issue [today] is not with the data, or the cost of it. The issue is with Esp@cenet." Essentially, vendors worry about the depth and breadth of the information that the EPO now offers for free on the Web. Why, for instance, does it provide data from jurisdictions beyond Europe?

WP: Ignorance of the law is dangerous. When the state of the art, defined perfectly by the published patent documents, is not known to inventors and developers it can lead to an enormous waste of resources.

RP: You mean that people may end up re-inventing the wheel?

WP: Right. R&D money is lost. But it also means that the EPO's resources are wasted. The office is burdened with a great many applications that are not sufficiently innovative or new. By providing basic patent information in esp@cenet we can give applicants the opportunity to search before they start development work, or at least before they file an application.

RP: By why does the EPO offer a broader range of information than other national offices do? Why, for instance, does it offer non-European patent data? Why does it feel it has a responsibility beyond its own borders?

WP: The EPO is of the opinion that the data collections that the EPO has to create for its own purposes (for the use of its own examiners) should be generally available to the public.

We are also of the opinion that it is in the interests of European companies that they should be able to protect their inventions worldwide, not only within Europe. So we want to see that good patent systems exist worldwide. Clearly, it helps if other offices can use the data collections of the EPO for examination purposes too — because it makes them more efficient.

RP: The USPTO, by contrast, offers only US data. In fact, I do not think that any of the patent offices go beyond offering their own national data. The EPO has gone beyond its brief hasn't it?

WP: Definitely not.

RP: So how would you define the EPO's brief — in terms of supplying patent information — and why does it believe its brief to be wider than those of other PTOs?

WP: I cannot speak for the other patent offices, but it is evident that the EPO works in a totally different environment to, say, the USPTO. In Europe we have different national systems and the European patent system all working in parallel. We also have a market comparable in size to the US, but which is fragmented by languages. Moreover, European industry is more export oriented than US industry. All this demands a very different approach.

Emotional debates

RP: Patent information vendors have another concern. As I suggested, the deal (as understood by vendors at least) was that the EPO would provide basic patent data for free on the Web, and also sell the raw data to commercial vendors at marginal costs. The vendors would then be able to add value to the data and sell it on to professional users.

WP: Right.

RP: Commercial vendors, however, argue that the EPO is now also offering value-added data. As LexisNexis' Peter Vanderheyden [put it](#) when I interviewed him recently: "The offering of free value added content and functions (i.e. beyond making available the information related to a given patent office) unnaturally disrupts the normal economic lifecycle of commercial products." His argument is that vendors need to make a sufficient profit to be able to invest in developing new

products. But they cannot do this if the EPO competes directly with them by offering value-added services too. He has a point does he not?

WP: It is my sincere belief that the patent offices have an obligation to serve the public and to ensure that information on patents is readily available to all. On the other hand we do take care not to inflict collateral damage on commercial patent information providers.

RP: But in providing value-added data you are inflicting collateral damage on them are you not? You are providing for free what they have to charge for?

WP: The complication here is that definitions of value-added data change constantly in the patent information field. Many features that are initially viewed as value added soon become a commodity.

At one time, for instance, features like full-text searching, indexing, or on-the-fly translation were considered value added features. But in today's environment, where we have omnipresent free web services, they no longer are.

RP: I get the feeling from what you say that the EPO feels that it too has to compete with these free sites?

WP: We do not push totally new features, but we don't want other services offering features for free that we cannot offer. Consequently we adapt our services accordingly.

RP: Leaving aside definitions of value add, vendors believe that the EPO is destroying their business model, and that in the end no one will be able to compete with it. The danger, they say, is that its actions could lead to a situation in which the distribution of patent information lay in the hands of a few state monopolies. Is this a serious threat? Would it matter if it did happen?

WP: In order to avoid the sometimes emotional debates that take place on this issue we would need to discuss this claim in detail. But to make a long story short, I will just list a few facts.

First, it is true that patent offices hold a monopoly in the granting of patents. In fulfilling their role, however, they have to serve two players, and treat both of them fairly in the process. That is, the applicant who gets a patent, and the public — which has to be informed about the content of the patents.

Second, many new patent information services have been created in recent years, the majority of which are based on buying data from the EPO at marginal costs.

Third, takeovers in the patent information business demonstrate that patent information services are still viewed as attractive investments.

RP: That's all true. And I am struck that while Vanderheyden complains about the impact of the EPO, in 2005 LexisNexis acquired [Univentio](#), invested in it, and last month re-launched it as [TotalPatent](#). Maybe commercial vendors are not quite as threatened as they claim?

WP: I hope that each and every service will be able to meet the needs of users successfully, but I do not want to comment on any individual service.

RP: Just to pursue this a little further: Vanderheyden said to me, "I'm sure they [the EPO] feel they have an economic responsibility that is better fulfilled by providing access to 'all' government patent data (including value added data and analytic tools for that matter), but I think their argument is weak given that there are more than a sufficient number of private players willing and actively providing this information to the public today." Does he have a point?

WP: Commenting on a statement made in a previous interview may be not extremely polite or particularly effective. I will simply repeat, without any reference to the statements of Mr Vanderheyden, that we see ourselves as being responsible for the contract between the applicant and society.

RP: Vanderheyden also said to me, "Having been in this industry for over 10 years my sense is that the free services have become an impediment to the growth and development of more robust offerings and analytic capabilities from the private sector." He added, "The end result is that the patent research market is really not substantially advanced from where it was in 2000-2002." Do you accept that the actions of the EPO have impeded innovation in the patent information services market?

WP: I have some sympathy for established companies when they say such things, but as I indicated, it is clear that many new companies have seen opportunities in distributing our raw data. It is still possible to start a patent information service based on a new idea, and using data collections supplied by the EPO at a minimum price.

And we support this process by offering our Open Patent Service ([OPS](#)) which is already being used by several start-up companies to create new services combining internal databases with the data we offer.

RP: What is your message to commercial providers then?

WP: The EPO is trying to improve constantly the quality (coverage, completeness, timeliness) of its databases, and we provide this data to vendors at marginal cost. We will do our best to improve the services for the public, but the patent information providers will be the ones who benefit most from these investments and efforts.

RP: Am I right in thinking that some members of the EPO Administrative Council are a little uncomfortable with the tension between the EPO and commercial vendors?

WP: That was true at one point. However, the reformulation of the EPO's patent information policy was accepted by the Administrative Council and today there is full agreement with the policy.

RP: Can you say something about this reformulation, and when it occurred?

WP: The reformulation was a long process that started in 2005 and was concluded when our Administrative Council accepted our proposal in June 2007. This policy aims at "barrier free access" to patent information, as we explain in detail in our conferences workshops etc.

Too set in their ways?

RP: *There are, of course, always two sides to every story. I wonder if perhaps commercial providers are simply too set in their ways. Perhaps it is not that the EPO has gone beyond its brief, but that traditional patent information providers are simply reluctant to adapt to changing times?*

WP: After 38 years working in the field, and less than 3 months before retirement, I have learned something: You always make a situation more complicated if you don't try to understand your partners, but just assume that their motives are somehow questionable.

My understanding is that these companies work under enormous pressure. They have to create shareholder value, and every change in the system forces them to adapt. This is terribly complicated and means that in order to be successful they have to change constantly. But I do not see anybody who is unwilling to change and adapt.

On the other hand, it seems to me that the most significant challenges come not from the PTOs, but from a combination of constantly changing technology, and fierce competition — particularly from the emerging countries. So I have full respect for all the companies who work in the patent information market.

RP: *Your point I assume is that since all the major PTOs now make their data freely available in electronic form, anyone — from anywhere in the world — can very quickly and simply aggregate that data and offer services that compete with commercial incumbents, probably at lower cost. And you believe this represents a greater threat to commercial vendors than the actions of the EPO?*

WP: Well, the majority of patent information now comes from countries with other languages than English — countries with low wages but very good technical infrastructures; countries which challenge us not only in price, but also with the quality of goods and especially services that they provide. If you work in the patent information business the challenge is the data coming from these countries, and the level of service that we can expect them shortly to be offering.

RP: *You say that commercial vendors have to constantly adapt to change and you do not see any that are unwilling to do so. But I wonder if perhaps they are blind to the most important change. As you said, we live in an age of omnipresent free web services, and indeed many believe that eventually all information on the Internet will be free. Perhaps that is as it should be: in order for society to benefit from the so-called knowledge economy, one could argue, information does need to be free. Consequently any access barriers — including price access barriers — will eventually have to be removed if we are to exploit the Internet effectively. This is exactly the debate that surrounds the [Open Access](#) movement: scholarly publishers are being told that instead of charging readers to access research papers, they should charge the authors (or their funders) to publish them. In this way publishers can still make a profit, but they are able to do so in a way that ensures that research information is freely available to everyone, and the number of people able to make use of it is therefore maximised. What's your view?*

WP: This in fact is the model that the PTOs have operated since patents were first published. The only factor that has changed is the technology. To oversimplify the situation a little: In the first half of the 20th century patent offices used part of the patent fees to print specifications and to run public reading rooms, where we invited interested parties to come and read the specifications. In

the 21st Century the offices can now deliver the information in XML format, and run web servers, and the Internet community can now access the information in that form.

RP: *Right, so PTOs charge patent applicants a service fee for examining their patents, and then use some of that money to make the information freely available to society. It's part of the social contract you referred to. Such a model, however, is not available to commercial providers, since they earn no revenue from patent applications. For them, historically, the business opportunity lay in the fact that not everyone lived near a reading room, or was able to easily pool the data from many different patent offices, or even necessarily understand the documents. Like scholarly publishers, therefore, they provided a value-added distribution service. In the age of the Internet, however, the distribution problem has gone away, since patent offices can make the data available themselves. Vendors clearly believe that they should still have a role in aggregating the data from the different offices, and in distributing it. However, today the real opportunity lies not so much in distribution, but in doing so in a value-added form. As we discussed, their complaint is that the EPO is now not only distributing the data, but inflicting collateral damage on them by also providing value-added services.*

WP: I cannot comment on how vendors may understand their role but as I explained before, INPADOC was at the forefront of collecting this information. And by means of the relations that exist between patent offices the EPO now has the biggest data collection in the world.

These relations stem from a time when countries exchanged their document sets "per country" independent of the size. The point is that this exchange of data still exists, but it can now be done by very modern means.

New business models

RP: *The upshot is that vendors fear the point may arrive where there is no longer any viable way in which they can run a business selling patent data. On the other hand, as you said, quite aside from the PTOs, there is no shortage of free patent information on the Web, including sites like [Google Patents](#). You also point out that we continue to see new entrants setting up shop, suggesting that many still believe there are business opportunities in distributing free patent information. One option for traditional vendors, therefore, would seem to be to offer the information for free themselves, and earn their revenues in some other way — to find a new business model in other words. This seems to be what LexisNexis' sister company Elsevier is experimenting with in the scholarly publishing space. Last month, for instance, it launched a new service called [OncologyStat](#) that [offers](#) value-added information for free. Like Google, it plans to earn money from advertising. A few weeks later Elsevier launched [DoctorPortal](#), another advertising-supported service based around enhanced online versions of the Doctor and Hospital Doctor magazines. Do you see this as a possible model for commercial patent information providers?*

WP: Discussions with patent information providers has taught me that I should abstain from giving them hints or advice! They have said to me — and I agree with them on this — that you should never give advice unless you are personally prepared to implement your own advice.

That said, I agree that new players like Google have shown that totally new business models are possible nowadays, and so there are new possibilities that did not exist before.

RP: *Do you expect that eventually all patent information will be freely available?*

WP: You do not define a time horizon for your question. What I will say is that I am convinced that the parameters in the area of patent information will change constantly in the coming years. Anyone who surfs the Net regularly can see that more and more information is available, and that new business models exist.

I would add that many of these new models are based on a trade in personal data, and that the patent area is peculiar in so far as secrecy is generally of the utmost importance when undertaking patent searching. Nevertheless, I can imagine that in maybe ten years most patent information will be available without financial charge. In return, users may be asked to pay by giving their opinion, or they may have to reveal their search strategy as payment.

What this could lead to, therefore, is a bifurcation of the market, where the same information can be retrieved without financial payment — but by the exchange of information — or for a financial payment if the user wants to access it in a totally secure system. But this is pure speculation on my part.

RP: *Just to return to the role of the PTOs for a minute: Vanderheyden said to me that he thought the public would be better served if, rather than constantly enhancing its patent information services, the EPO "invested their fees in improving patent quality and working with vendors to develop solutions that will benefit the world patent system." Patent quality has certainly been a source of some concern in recent years. Is Vanderheyden not right?*

WP: I respect this opinion, but I do not share it. Again, this topic would deserve a complete discussion on its own, but in the hope that a short answer will not be interpreted as a lack of argumentation on my part, I will simply say this: If we reduce the problem to an investment question, then it is quite obvious that this model only works when the vendors do their job better, or more economically, than the EPO can. I do not believe that to be the case.

RP: *Let me put it another way: the EPO has a responsibility to ensure that patent information is freely available to the public — an open access model if you like. Clearly one important reason for the EPO to offer patent information on the Web itself is that vendors charge for it, thereby making it inaccessible for many. The EPO, by contrast, does not need to charge for it because it is funded by patent fees. But I wonder if the EPO would need to continue distributing patent information if commercial providers were to develop new business models that enabled them to make the data freely available on the Web too. Would that not allow the EPO to focus on examining patents (and improving patent quality), and leave the distribution business to private vendors?*

WP: As I said, one of the major tasks that the EPO has engaged in is that of compiling the input from most of the patent offices of the world. It has to do this in order to create efficient search files for its own examiners. In a world that uses the present technology of distributed databases I cannot imagine that the open access model would change this.

I also think that the office needs a stable "knowledge centre" that can constantly work with its examiners. This could not be achieved effectively if it were based on tendered contracts in which the partners might constantly need to be changed.

RP: *Ok, so the EPO has to create and manage its own database, and develop its own search tools, in order for its examiners to be able to do their jobs as effectively as possible. Having done that, the rational thing to do is to also make this data freely available to the public — which is really*

what esp@cent is all about. But one could turn that around, and say: "Why not outsource both the provision of patent information services and the examining of patents." Is this not the road that the USPTO started down two years ago, when it began [outsourcing](#) the processing of international applications?

WP: Discussions about outsourcing centres always seem to revolve around the issue of costs, rarely around quality — and never around responsibility. If you feel responsible for the quality of your products you only can outsource them if you have reasonable means to control the quality.

This is possible for standard products, becomes complicated but manageable for [EDP](#) processes, but could never work when you are responsible for the quality of single patents. Patents, moreover, that might end up in million € suits before a court.

So my view is that while you can outsource many things, you can never outsource your core business.

RP: Would it be accurate to describe you as the architect of the EPO's patent information policy?

WP: No the architect of the Patent Information policy way back in the 1990s was my predecessor Gérard Giroud. He is the "father" of the original Patent Information Policy. My role has been to reformulate the policy and adapt it to present requirements.

RP: Does Giroud still work at the EPO?

WP: No. He is now principal director for European and International Affairs in DG5.

Scenarios of the future

RP: I'd like to just broaden the conversation out a little before we finish — to explore if you like the raison d'être of patents. You will know, for instance, that there is today considerable controversy about the scope of what is patentable. On one side are the so-called IP maximalists, who believe that the best approach is always a proprietary one, and so all new technologies and all new methods and techniques should be patented. On the other side are the IP minimalists, who argue that in the age of the Internet innovation is best served by open systems and information sharing. As an employee of the EPO are you inevitably an IP maximalist?

WP: If you work for many years in patent offices you must be convinced that you work for a system that operates for the good of society. In my personal opinion patents stimulate innovation, and freely available patent information is something the public can expect in exchange for giving a patent holder exclusive rights.

Actually, the EPO's "[Scenarios of the Future](#)" project demonstrated the kind of issues you are talking about, and explored ways in which the intellectual property system might evolve over the next fifteen to twenty years.

In that project we looked at four different ways in which the system could be disrupted if a certain business driver, or political view, became dominant and influenced the system. The aim was to

ensure that we are constantly checking what developments are driving the system, politically, economically or emotionally.

RP: *The aim is to monitor these different forces in the hope of better maintaining a balance between them is it?*

WP: I doubt that we can balance these forces, but we can adapt the system to a changing balance. It means that as a result of that project we now have (for the first time) a model that tells us what we need to monitor.

RP: *Certainly there is no shortage of people who believe the patent system has got out of balance. There has, for instance, been a long-running controversy over obvious patents, over software patents, and over business method patents. Where do you sit in this debate? Do we need some reform of the patent system?*

WP: An interview cannot replace a lecture, so I will try to be brief. Yes, obvious patents, as well as incomprehensible patent documents, or indeed a growing language barrier, are a threat to the system. However, modern technology allows us to ameliorate these dangers.

Software and business method patents, however, raise legal questions. As I work in an important area of the executive body I personally cannot express political opinions — it is essential in a democracy that there is a strict division between the legislative and executive bodies.

That said, I would like to underline the official position of the EPO, which has a clear view that business methods are not patentable under our law. The same is true for pure software.

The situation may be different in other patent offices, but we have to accept that conflict and diverging opinions about patentability are a constant feature of the patent system. Nothing is cast in concrete, as our "Scenarios" study clearly demonstrates

RP: *You rightly say that nothing is cast in concrete. In fact, I get the feeling that the tide may be turning. Certainly we are witnessing a backlash against what one might describe as the patenting frenzy of recent years. And one could argue that the first sign of this turning tide occurred in Europe in 2005, when the free and open source software movements defeated a proposed European bill that would have made it easier to patent software. Do you have any views on this defeat, and whether we might yet see such a bill introduced in Europe?*

WP: Having been an examiner in this field I am very tempted to give you my opinion, which is I hope well founded, but I would prefer to repeat my answer to last question and decline to express any political opinions.

What I will add, however, is that the legislative power lies with the EU, and there is no sign that they intend to reopen the debate.

RP: *Meanwhile in the US there have been three important changes to the patent landscape recently — changes that one might also view as a retreat from an IP maximalist position: [The Patent Reform Act 2007](#), the US Supreme Court ruling [KSR International Co. v. Teleflex Inc.](#), and changes to the USPTO rules limiting the number of claims that can be attached to a patent. What impact do you see these changes having, and what do they reveal about changing attitudes to the role of intellectual property in a knowledge economy?*

WP: These changes will have an important impact on the patent information world: They will reduce the flood of documentation on non-inventions, and they will make patent documents easier to comprehend. As such, they are for me proof that the system responds to abuse, and adapts itself for the future.

People's dreams, victories and failures

RP: *You said that you are due to retire in three months. Perhaps then it is an opportune moment to ask you some personal questions about your career in patents. What, for instance, has been the most memorable incident in your career? And what was the most amusing?*

WP: I would not call it an incident, but for me the most memorable event was the signing of the agreement between the Republic of Austria and WIPO on the creation of INPADOC, which I was pleased to attend in person.

As to the most amusing event, sadly wisdom prohibits me talking about politically incorrect events, and politeness prevents me from referring to specific people who are still in the business, so I can only comment very generally.

What I will say is that I have always been struck at the difference between the way that we in the patent business discuss patent-related problems and the way that the public perceives them. We talk passionately and in depth about the issues, and then often find that they are ignored by the public. Perhaps we patent people are just too serious sometimes!

RP: *What do you consider to have been the most important patents to have been granted during your career?*

WP: I am very hesitant to answer. Generally I don't think that the most important necessarily means the most successful in economic terms; for me the most important means those that have changed public perception. In this group my favourite patents include those that were at issue in the [Eastman Polaroid](#) case, the [OncoMouse](#) patent, and the patents at the heart of the [Blackberry](#) case.

RP: *Who would you say have been the two most important people in the patent business in the post-war world, and why?*

WP: One was the director general of WIPO, [Árpád Bogsch](#), whom I had the honour of meeting in late 1973. It was he who had the vision that later led to the PCT ([Patent Cooperation Treaty](#)) and also to the TRT ([Trademark Registration Treaty](#)).

The other was [Monty Hyams](#), whom I met some months later and whom I deeply respect, both because of his detailed knowledge of patent systems and for his entrepreneurship — which was unmatched.

RP: *Most people think that patents are deadly dull, and anyone involved with them must be equally dull. What are such cynics missing?*

WP: Rating something as dull is an individual perception. I know people who have become addicted to patents, and sometimes I have seen in them an effect similar that described in [Stefan Zweig's Chess Story](#). For me patents are fascinating because they report on people's dreams, sometimes on

their victories, and sometimes on their total failure. However, I realise that this is a very personal view and may not be shared by too many people.

RP: What was the most absurd patent application that ever came across your desk when you were an examiner?

WP: When you start as an examiner in a small office you are always given patent applications that match the area in which you specialise — which in my case was computer hardware. In addition, you are given those classes that nobody else wants to deal with.

In my case I had to deal with certain medical classes, and one of the most interesting applications I came across was a method to feed people simply by putting them in full sunshine, while at the same time cooling them with fans. It was stated that this temperature difference was enough to feed them completely.

RP: This was a real patent application?

WP: Yes. It was an application filed in total earnest, and offered as a way of overcoming hunger in the world.

I would stress that I did not find it funny, just interesting. As I say, for me patents are an insight into people's dreams and aspirations, and so I would not like to laugh at the ideas in them. I view patents as a good source of information about the kind of solutions that people are looking for — often in areas where, for the present at least, there is no solution discernible.

RP: My final question then: How do you plan to spend your retirement?

WP: I have been married for 33 years, so you had better ask my wife that question.

RP: Perhaps not! But thank you for your time. I wish you a very happy retirement.

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