

## **CHAIRMAN'S COMMENTS**

*Jan Brinkhof, attorney and former judge*

## INTRODUCTORY REMARKS

The EPC and the EPO have drastically changed patent law in Europe. The task of the EPO is to grant European patents (Article 4 EPC). In carrying out its task, the EPO is bound by the EPC, the Implementing Regulations and the various Protocols. In this manner the EPO interprets the requirements for patentability as laid down in the EPC. Meanwhile the Boards of Appeal have created a comprehensive body of case law. However, the EPO's work is not confined to granting patents. Within the framework of opposition proceedings, the EPO also fleshes out the mirror image of these requirements: the grounds for revocation. It is the task of the Enlarged Board of Appeal to ensure uniform application of the law within the EPO (Articles 112 and 22 EPC).

It is not just the EPO that rules on the interpretation of the provisions in the EPC on requirements for patentability and grounds for revocation – once European patents have been granted, they also become a matter for the national courts. National courts also rule on the infringement of European patents, and are required to apply the same European rules with regard to validity and scope of protection. However, the difference with the EPO is that they lack the mechanism to arrive at a uniform application in all the Contracting States: there is no equivalent of the Enlarged Board of Appeal. Not surprisingly, then, there are currently sizeable differences in the case law in the various Contracting States.

The European patent system is complicated. At the end of the day national courts determine in court cases whether or not the departments and Boards of Appeal of the EPO have done their job well. Therefore, the case law of the national courts should be the reference point. The problem is that the case law of the national courts do not have the same orientation.

It is a tremendous initiative of the EPO to organize this conference. It demonstrates the strength of this organisation. Clearly, it does not avoid the debate on the quality of its work.

It is a pleasure to give the floor to Peter Messerli, Vice President of DG 3. From my own experience in the Enlarged Board of Appeal, I learned how much value he attaches to the quality of the decisions and how important he considers the case law of the national courts in this respect.