Patent ethics in Norway

"Look to Norway" [1]

Jostein Sandvik
Senior legal advisor
jsa@patentstyret.no
Manchester 13 May 2008
EEA-Agreement

- Two referendums on EU membership, both resulted in a close NO-vote
- EEA-Agreement from 1st January 1994, obliges Norway (and Iceland and Liechtenstein) to implement new legislation in the field of intellectual property
  - EEA Agreement Article 65, reference to Protocol 28 and Annex XVII. The Annex is after a decision in the EEA Committee updated with new legislation in the field of Intellectual Property Law, so also for the directive 98/44/EC
  - Decision of the EEA Committee of 31st January 2003 to integrate the directive, subject to approval from Parliament
The court decided 9 October 2001 in case C-377/98 that the application for annulment of the directive from the Kingdom of the Netherlands (Norway intervened in support of the Netherlands) should be dismissed;

- Meaning:
  - Correct legal basis
  - Does not give rise to legal uncertainty
  - No breach of international obligations
  - No breach of human dignity
Directive 98/44/EC

q Implemented in the Norwegian Patent Act, 1st February 2004
   §§ The Prime Minister (Bondevik) dissented to his own coalition-government’s proposal, Parliament approved the decision of the EEA Committee and also the amendments with a clear majority (Labour Party, Conservative party)

q A number of measures were adopted, all of whom could be viewed as concerning ethics
   §§ Necessary conditions for the Parliament’s decision and the compromises made, in other words is is likely that the acquis had not become part of the Agreement
The measures

- Establishment of the Board on Ethics
- Prolonged time period for filing opposition with regard to the objection that the invention is in breach with public order (3 years plus a fee)
- Restrictive practise in line with the most restrictive in the EEA–Area regarding the conditions for granting a patent for naturally occuring biological material
  - This is difficult to practise because the legislation in the EEA-Area is not harmonised
  - Difficult to reject an application (it is for the Office to substantiate the correct level)
The measures

- Obligation to give information about the origin of
  - Biological material and consent (CBD)
  - Human material and consent

- Compulsory licences can be granted not only by the courts, but also by the Competition Authorities
  - It has only happened once during the last 40 years that a compulsory licence has been applied for in Norway
  - The application was then rejected by the Supreme Court

- The scope is limited, only what is clearly described in the application enjoy protection
Norwegian membership in EPC

- Signatories since 1973
  - Ratification of EPC
  - Accession to EPC 2000
- In effect from 1st January 2008
  - Approx. 80% of the applications will be filed with the EPO
- Introduced some additional amendments
  - Possible also for third parties to file for administrative review of patents
    - Effect ex tunc
  - The parties to a court proceeding regarding the validity of a granted patent can ask the Ethics Committee for advice
Experience

1. One case has been tried before the Ethics Board
   - Useful advisory statement
   - The applicant stated that the salmon in question did not suffer, it was earlier generations which were affected by the deformations and dysfunctions
   - The negative environmental effects could not be substantiated
   - The patent was granted
   - The statements from the applicant are important with a view to determining the scope of the claims
2. The possible cases are few, and the other measures that are built into the patent system also secure that the patents that are granted are in line with public order