Kevin Myhre in Germany: The Human Aspect of the Patent Process

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During my time in Germany, I have learned and discussed with colleagues differences between American and European patent laws ranging from the nuanced to the more pronounced, and the differences in argument strategies corresponding to these legal distinctions.

But one of the commonalities between the patent laws and processes has recently become especially clear.

The patent process, by its nature, requires a patent examiner to conduct legal analyses regarding technology, including proverbially stepping into the shoes of a person "with ordinary skill in the art" at the time the patent application was filed, to determine whether written claim language of the present application is sufficiently different from the prior technology to issue a patent. This determination necessarily involves varying degrees of judgment based on experience. Critical points of understanding can depend on small variations in language. An examiner's decision in a patent application is necessarily colored by his or her own opinions, personality and understanding of both the application and prior art.

One of my first experiences with the European patent process, mentioned in my previous post, was an efficient disposition of an application in which patent attorneys and representatives at the European Patent Office Board of Appeals arrived at a mutually agreeable solution to grant the patent. The procedure was unlike what would occur at the U.S. Patent and Trademark Office and was clearly a beneficial procedure to avoid delay to rule on an application. However, and perhaps unsurprisingly, I've discovered more recently that the human aspect of the patent process can create similar hurdles in both American and European patent prosecution. I observed another recent interaction with EPO examiners that resulted in a stalemate. The tone changed from the cordial negotiation of my first experience to a disagreement without common ground. The same variations occur at the USPTO. This experience further emphasized for me that the human aspect of the patent process, regardless of the particular jurisdiction, is an important factor that has a strong influence on the outcome of every patent application.

My time has been spent not only learning the differences in the patent process at the EPO, but also learning distinctions and strategies of practice at the German Patent Office (DPMA). Depending on the desired region of patent protection, clients can strategically choose to file at the DPMA to receive faster decisions on applications than at the EPO, and can also take advantage of a separate, streamlined form of a patent called a utility model. I also had an opportunity to visit the DPMA and found the offices to be quite similar to the USPTO, with the exception of one strangely dangerous feature that I'll describe in more detail in the next video post.

My time in Germany has been so full of interesting learning experiences and the making of valuable connections that it

is hard to believe I have nearly completed my month-long internship. Check back here for a final summary post after I return to the U.S., and feel free to contact me if you have any questions about any other differences between European and American patent processes.

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