



EXCO MEETING CARTAGENA, 20-24 JANUARY 2013

WORKING DOCUMENT

TITLE: *Report of FICPI meeting with representatives of the EPO, 15 October 2012*
 DRAWN UP BY: *Eric Le Forestier, CET President*
 TABLED TO: All ExCo attendees
 PURPOSE: For information

The FICPI delegation for this meeting was led by Bastiaan Koster and included Daniel Alge, Eric Le Forestier and Antonio Pizzoli.

The meeting started with introductory words from the EPO (Raimond Lutz) and from Bastiaan Koster, who explained the outcome of the Melbourne Congress in particular on the theme of cooperation and communications between the free profession and the offices.

1) *State of play at the EPO*

The validation agreements with third party countries are expected to expand, based on the initial agreement between the EPO and Morocco. There are ongoing discussions with Tunisia.

Concerning South Africa, there are discussions around EPO assistance to the South-African Patent Office concerning examination of domestic first filings, and a validation on the South African phase of a PCT based on a corresponding EP grant.

The filing numbers are still increasing, mainly due to increased filing activities from Asian countries.

On quality issues, the grant rate in is the range of 42-45%, and the current efforts of the EPO are to improve efficiency for dealing with growing number of cases without staff increase, so as to better control operation costs.

The Roadmaps initiated by Mr. Battistelli include human resources management, information technologies, facilities, quality of operations (ISO certification being in progress and to be achieved in 2013), and improved cooperation with member states and with other EPO partners.

The Strategic priorities from a global standpoint include the development of the Cooperative Patent Classification, machine translation of patent (there seems to be an average of 30000 users per day, many being examiners from foreign patent offices), the improvement of the PCT and substantive harmonization.

2) *EPC practice*

Regarding the long-standing Article 123(2) issue for practitioners, the awareness thereof is still developing at the EPO. The case law of the Boards of Appeals is closely watched, and internal quality measures have been taken.

FICPI should continue to inform the EPO on the issues, being noted that users/office meetings exist for this purpose.

Mr. Stohr mentioned an interesting track to be pursued, namely trying to rely more on the common general knowledge of the skilled person when considering a description, in order to conduct to a greater flexibility.

The decision T2464/10 on disclaimers was interestingly mentioned in this regard.

The proposed restriction to fee refund was briefly mentioned, being discussed the next day during the SACEPO Working Party on Rules meeting to take place on the next day and to be attended by Eric Le Forestier (cf. separate report on www.ficpi.org).

Regarding divisionals of Euro-PCT applications Mr. Stohr mentioned that the aim is to have equal treatment between Euro-PCT applications and direct EP applications. Proposals for amendments to Rule 164 EPC would also be discussed during the above-mentioned SACEPO Working Party on Rules meeting.

He reminded that a complaint procedure is available in case of abusive lack of unity treatment during the international phase.

The Brüstle case was then discussed. The 2012 Guidelines for Examination take the decision into account (G.II.5.3) with an additional sentence that the point in time where the human embryos are destroyed is irrelevant.

The EPO considers that it has implemented the Biotech Directive with as much flexibility as possible.

The discussion then came to the fee for late filing of sequence listings, and the EPO would appreciate having practical examples where there have been problems.



3) *Multilateral cooperation*

The Trilateral was indicated to celebrate its 30th anniversary in November 2012. The cooperation included a number of achievements, including the publication of Quality of Practices recommendation, the Common Citations Document (CCD), access to patent information.

Nowadays with the two additional major players, KIPO and SIPO, the focus has moved to the IP5 cooperation, which has taken over the CCD and patent information dossiers.

The Common Application Format (CAF) topic is now closed as all five offices agreed to adopt this format.

The influence of the IP5, born in 2007, is expected to grow, an important aspect of the current work being the Global Dossier allowing sharing of search and examination information among offices.

It is also expected that the trilateral cooperation on PCT matters is expanded to Korea and China.

4) *Lunch with Mr. Battistelli*

The meeting continued in a working lunch hosted by President Battistelli, during which various topics were informally addressed.

Mr. Battistelli first insisted on the Cooperative Patent Classification to be effectively launched on Jan. 1st, 2013, with an on-line access for all users on a dedicated website.

It was suggested that FICPI has this topic on the agenda when visiting the JPO later in the year, the idea being to promote the CPC in Japan for adoption by the Japanese Office, which is currently not contemplated.

The strengthening of the PCT was also stated by Mr. Battistelli as being important, and events associated to this will be organized.

The EPO President regretted that the date of the FICPI-AIPPI-AIPLA Colloquium on Privilege in Paris was colliding with the date of the EPO Administrative Council in Munich, and suggested to improve cooperation on scheduling between the Office and users organizations.

Finally it was mentioned that on Oct. 17, 2013, the 30th Anniversary of the signature of the European Patent Convention would be celebrated in Munich, and representation of FICPI at this event was of course most welcome.

The technical discussions resumed in the afternoon.

5) *Strengthening of the PCT*

Again this topic was indicated to be on the agenda of the SACEPO Working Party on Rules meeting on the next day. A "market survey" was indicated to be in progress, the idea being to provide an equal service level. This project includes accessibility to international preliminary examination at the EPO for PCT cases where the EPO was not the International Searching Authority, and to generalize the collaborative search and examination pilot conducted between the EPO, the USPTO and KIPO as an IP5 project.

6) *EPO-OHIM Cooperation*

Both offices currently have together a MOU on training. Other areas of cooperation are explored, one related to the European Observatory on Infringements of Intellectual Property Rights (recently transferred from the EPO to OHIM) and the other related to research on the economic value of IP.

7) *Training*

The operations of the EPO Academy were discussed. A current main aim is to regenerate the IP profession in certain countries. There is a WIPO/EPO cooperation on training, and joint seminars with OHIM are also organized.

8) *Logica IT developments*

The first deliverables on this new management system for the granting of European patents were indicated to be expected by the end of 2012.

9) *Raising the Bar assessment*

This would be also discussed at the SACEPO Working Party on Rules meeting on the next day. The assessment indicated a significant increase of the divisional applications, i.e. Contrary to what was expected, and a slight decrease only in the backlog, with still very long delays between first substantive action and the next one.

It was indicated a more streamlined approach to substantive examination was contemplated, which could lead in the Rule 36 constraint on divisionals becoming less and less relevant.

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