




FICPI INFORMATION DOCUMENT

20 JUNE 2013

CET INFORMATION DOCUMENT

<p>TITLE: FICPI meeting with the European Patent Office</p> <p>DRAWN UP BY: <i>Commission d'Etude et de Travail (CET) Work & Study Commission</i>: Antonio Pizzoli, Chair CET Group 04, and Liz Dawson, Reporter, CET Group 04</p> <p>PURPOSE: For information and publication in the library section of FICPI's website</p>	<p>QR CODE:</p> 
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Munich, 20 June 2013

FICPI

Bastiaan Koster

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Daniel Alge

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European Patent Office

Benoît Battistelli (President of the European Patent Office)

Raimund Lutz (Vice President, Directorate-Legal/International Affairs)

Margot Fröhlinger (Principal Director, Patent Law and Multilateral Affairs)

Niclas Morey (Director, International Organisations, Trilateral and IP5)

Heli Pihlajamaa (Director, Patent Law)

John Beatty (Administrator, Patents and Procedures Management)

Jörgen Jochheim (Administrator, Quality Management Support)

1. Bastiaan Koster and Mr. Lutz introduced the FICPI delegates and the EPO attendees, respectively.

Update on EPO Practice

2. Ms. Pihlajamaa described the activities of SACEPO, which held its annual "big" meeting on 19 June 2013. Many topics were discussed, such as the Unitary Patent, EPO fees, patent law harmonization and divisional applications. The views of users on these topics have been heard through user consultations on the EPO website. During the last meeting of the SACEPO Working Party on Guidelines a decision was made to review the Guidelines every year: the next edition will be available in September or October 2013. Significant revisions for the next edition include a statement that there should not be a literal



approach in the application of Art. 123(2) EPC. Rules 36 and 164 EPC were discussed at the last meeting of the SACEPO Working Party on Rules (FICPI report available). Rule 164 EPC will be amended in order to allow also Euro-PCT applicants to request supplementary searches in case of non-unity, so that they will not be forced to file divisionals to obtain further search reports. The consultation on Rule 36 EPC received a large number of responses, with only about 7% users happy with the current rule, while the reinstatement of Rule 36 EPC was the most popular proposal. Some users also suggested prolonging the 2-year time limit, using the Australian system and/or increasing the fees for divisionals. The EPO plans to make a proposal "before the summer" to be discussed before the Committee on Patent Law (CPL) followed by the Administrative Council in the autumn so that a decision can be made by December 2013.

3. Daniel Alge explained the effects of Rule 36 EPC on the users and suggested as a possible compromise that the time limit for filing divisional application should coincide with the time limit for the response to Rule 71(3) EPC.
4. Eric Le Forestier added that the fees and the complex nature of the EP system are considered the main issues by the users.
5. Mr. Beatty proposed a workshop on Art. 123(2) EPC, organized by EPO Academy with epi and BusinessEurope.
6. Bastiaan Koster welcomed this proposal and suggested that there should be also a contribution of non-European practitioners and patent offices.
7. Daniel Alge indicated that there seem to be no harmonization in the Boards of Appeal with respect to Art. 123(2) EPC: is it a formal or substantial issue? Furthermore the European "direct and unambiguous" standard is not present in any other patent office in the world.
8. Eric Le Forestier observed that the literal approach of Art. 123(2) EPC by the Boards of Appeal is influencing also other offices, e.g. China.

EPO Projects

9. This topic was introduced by Mr. Beatty. He began by explaining that around 200 new examiners will be recruited in 2013, with all examiners enjoying more flexible working arrangements. There will be priorities in the examination of the files (about 7% include a request of acceleration) and examiners have been advised to be more transparent and proactive. Telephone interviews are encouraged (via a ticketing system with a reply within 24/48 hours). Applicants will be now able to check on the EPO Register or on MyFiles whether the search or the examination of an application has begun, so they can consider withdrawal of an application to obtain a refund of the search/examination fees. There are plans for computers and printers to be available in future during oral proceedings in order to keep fully electronic files and avoid handwritten amendments. More use of video conferencing for examination oral proceedings will be encouraged. There will be a PCT new case management system, which will be expanded to EP



applications, and a third pilot on PCT cooperative searches and examinations, which has already received positive feedback. Applicants can request to participate in this pilot, subject to a fee increase of 50%.

10. Mr. Lutz explained that small entity fees are being considered by the EPO but they would cause an increase in the large entity fees, which in the past has not been acceptable to industry. For the next regular fee increase in 2014 the EPO proposes to adjust the fees to the inflation rate, subject to the following exceptions: the International search fee, would not change, and the European search fee, would be instead increased by around 10%, with a view to bring the search fees for international and European direct applications into line; the appeal fee would be increased by 50% but a refund suggested at around 50% would be available in case of withdrawal of the appeal at least four weeks before the date scheduled for oral proceedings.
11. Antonio Pizzoli observed that claims fees should be considered in conjunction with the European search fee, since there are no PCT claims fees. He proposed then that the claims fees could be reduced if the European search fees were increased.

Quality Initiatives at the EPO

12. Mr. Jochheim mentioned that quality objectives are set every year and are reviewed in order to find new targets for quality. The president has accepted "seven principles of quality" which can be viewed on the website. There is a new online system for filing complaints and a handbook of quality which is useful for knowing what you would get if you deviated from the normal procedures.

Future of the EQE

13. Daniel Alge said that the main problem of the EQE is the pre-exam, because good candidates have to prepare for two years, while bad candidates are not filtered by the pre-exam (99% of pass rate). Another problem is the language for candidates who do not use the EPO-languages.
14. Mr Lutz answered that the pre-exam pass level will probably increased from 50% to 65% correct answers, so that the pass rate would drop from 99% to 80%. The ratio of EPO/epi examiners will be shifted from 1:1 to 1:2 and there will be a support for language and EPC training for candidates of countries with a small number of European Patent Attorneys.

Global Dossier

15. Mr. Morey related the status of the Global Dossier, which was discussed in The Hague in January 2013 and in Cupertino in June 2013). All of the IP5 offices are participating and it has been agreed that the dossier will include a passive part providing a single portal enabling the public can view the files of corresponding applications in different patent offices, and an active part where applicants can "cross-file" national phases in different PCT countries. Once a basic framework is in place other offices will be able to join at their own pace but arrangements will be based on reciprocity.



16. Eric Le Forestier observed there are dangers in allowing unrepresented applicants to do too much for themselves, possibly leading to irremediable loss of rights. Mr. Morey explained that the EPO is already alert to this.

Remarks from the Presidents

17. Mr. Battistelli mentioned the figures on filings, the project based on the pillars "Quality & Efficiency", the Epoque search system (now used in 40 countries, including Australia, Brazil, China and Canada), the CPC (recently adopted by China and South Korea), the restructuring of the IT system (cloud based), the Unitary Patent, the Tegernsee process, the ESAB workshops and the next celebrations of 40th anniversary of the European Patent Convention in Munich.
18. Bastiaan Koster referred to the Cartagena resolutions and the outcome of the Colloquium on patent quality and FICPI Symposium in Xi'an. Mr. Battistelli said that FICPI's request to become an observer that the IP5 meetings was discussed at the most recent IP5 meeting. Unfortunately it was decided not to allow any further observers other than the user groups already allowed as observers. Bastiaan Koster indicated that, this notwithstanding, FICPI is keen to play a role in the work of the IP5. Mr. Battistelli indicated that this will have to happen through one of the existing observer user groups.

Antonio Pizzoli & Liz Dawson

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