



The position of the European Industry

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THE PATENT SYSTEM OF THE FUTURE:

Position of the European Industry

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THE NEED FOR CONVERGENCE

- In a global world, widely different patent systems are a hindrance to world trade development.
- Users welcome the work of the Trilateral of Offices towards convergence of practices and requirements.
- Users also welcome the work in other fora on further convergence of substantial aspects of patent systems
 - WIPO: the present political issues need resolution
 - Group B+: to define the way forward

THE POSITION OF EUROPE

- The European patent system provides a strong basis for discussions on convergence
 - Common system for more than 30 countries
 - Largely satisfactory for users and society
- There is, however, room for improvements
 - improvements that are related to convergence issues
 - improvements that are independent of convergence

IMPROVEMENTS RELATED TO CONVERGENCE

1. Europe needs to seriously consider the introduction of a grace period
 - as a “safety net” for applicants against inadvertent or unavoidable divulgations of their inventions before filing;
 - not applicable to prior patent applications;
 - no effect on any third party rights acquired before filing;
 - preferably 6 months but could be 12 if convergence requires;
 - for practical purposes, declaration could be dispensed with;

IMPROVEMENTS RELATED TO CONVERGENCE

2. Europe should consider the opportunity of giving prior art effect to prior international (PCT) patent applications:

- as of their priority date;
- provided they are later published;
- whether or not they subsequently enter national phase;
- for novelty assessment purposes only;

IMPROVEMENTS UNRELATED TO CONVERGENCE

1. Europe needs to review its patent grant process with a view to:
 - focusing on quality: granting valid patents with proper scope;
 - limiting the cost of patenting;
 - cost control at the EPO through refocusing its resources on core task of granting European patents;
 - reduction of translation costs through ratification of the London Agreement by Member States not having done so yet;

IMPROVEMENTS UNRELATED TO CONVERGENCE

2. Europe needs to create a common court system for litigating European patents;
 - present fragmented litigation venues is harmful to Europe's competitiveness;
 - a common court system as contemplated by the draft European patent Litigation Agreement (EPLA) should be promptly put in place;

IMPROVEMENTS UNRELATED TO CONVERGENCE

3. The creation of a European patent for the whole of the European Community (the “Community Patent”) is a worthy objective, provided that:
 - it is cost effective from a user viewpoint: procedural costs but also translation costs and renewal fees;
 - it is truly one single legal instrument for the EU;
 - litigation is handled generally as defined in EPLA;