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The role of the European Patent Office in European patent policy

***A Europe of Innovation - Fit for the Future?***

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<b>1. Patent policy is part of innovation policy .....</b>	<b>3</b>
<b>1.1. EPO and EU .....</b>	<b>4</b>
<b>1.2. Under-utilisation of patents in Europe: high tech, small companies, research.....</b>	<b>6</b>
<b>2. The grant procedure at the EPO .....</b>	<b>9</b>
<b>2.1. Quality management at the EPO.....</b>	<b>9</b>
<b>2.2. Challenges to quality .....</b>	<b>11</b>
<b>2.3. Legal limits of patentability .....</b>	<b>14</b>
<b>2.4. Reducing uncertainty: Paris Criteria and EESR...17</b>	
<b>2.5. The EPO as a partner for applicants .....</b>	<b>19</b>
<b>3. Policy efforts .....</b>	<b>21</b>
<b>3.1. Reducing the cost of patenting .....</b>	<b>21</b>
<b>3.2. Harmonisation of litigation.....</b>	<b>23</b>
<b>3.3. Towards the Community patent .....</b>	<b>24</b>
<b>4. International co-operation.....</b>	<b>26</b>
<b>4.1. European Patent Network .....</b>	<b>27</b>
<b>4.2. International co-operation outside Europe.....</b>	<b>29</b>
<b>5. Conclusion: 30 years of EPO .....</b>	<b>32</b>

**Ladies and Gentlemen,**

**1. PATENT POLICY IS PART OF INNOVATION  
POLICY**

**I deeply appreciate the commitment of the German  
presidency and the of the BDI to ever strengthen the  
patent policy in Europe.**

**The patent system is a central tool for the revival of the  
Lisbon agenda, because patents foster innovation,  
technology transfer and knowledge circulation.**

**That is why the policy role of the EPO has to be seen  
within the wider framework of the European innovation  
policy.**

**I would like to share with you a bird's eye overview on  
EPO policy in a fast moving landscape.**

## 1.1. EPO AND EU

**Even though the EPO is not formally linked to the European Union, they both serve the citizens of Europe.**

**This has led the EPO to act *de facto* as a European institution, for example in its co-operation with the European Commission in its implementation of European law.**

**The EPO is associated with the European Union, for instance, in the 7th Framework Programme and the Commission's Competitiveness and Innovation Programme.**

**I would mention here in particular the EPO's Espacenet service, which makes 63 million patent documents from all over the world freely available on the internet. It was launched as a joint EU-EPO initiative in 1998, and the "European Inventor of the Year" awards that will be presented by Commissioner Verheugen and myself in Munich on 18 April in presence of Mrs Merkel.**

**Moreover, when granting patents, the EPO applies EU legislation such as the directive on the patentability of biotechnological inventions.**

**Now, the common basis for the European innovation policy and the EPO's patent policy is concern about the European economy's ability to transform its abundant intellectual capital into marketable innovations.**

**Despite that, a real concern for Europe is the under-utilisation of the dual function of patents: namely, legal protection and patent information.**

**1.2. UNDER-UTILISATION OF PATENTS IN EUROPE:  
HIGH TECH, SMALL COMPANIES, RESEARCH**

**European research laboratories tend not to protect their innovations as much as their main competitors. Only 62% of patent applications filed with the patent offices in Europe in 2005 came from within Europe, compared to 75% in Japan or 68% in the USA.**

**It also applies to emerging technologies such as for example, nanotechnologies.**

**In nanotechnologies, the European country with the most applications, Germany, represents less than 20% of patent applications received at the EPO, whilst the USA has a share of more than 50%.**

**As far as the size of applicants is concerned, 70% of European applicants filed only one patent application in 2005, This shows that the overwhelming majority of applicants at the EPO are small applicants, comprising SMEs, independent inventors, research institutions and universities.**

**Of course, in terms of application numbers, large multinational corporations are dominant.**

**The use of patents by research centres and universities is very limited, resulting in a lack of incentive and financing for research as well as a poor record for licensing and transferring technology and knowledge to industry.**

**The latest European innovation scoreboard listed only five European countries, including Germany, as innovation leaders. This shows that patenting issues remain insufficiently addressed.**

## 2. THE GRANT PROCEDURE AT THE EPO

**One important role the EPO has to play in the European patent policy is therefore to encourage the use of a strong centralised patent system by ensuring high quality, and implementing the examination procedure in dialogue with the applicant.**

### 2.1. QUALITY MANAGEMENT AT THE EPO

**Quality management is important both for the patent granting procedure and substantive examination. It provides European patents with a high presumption of legal validity and sound technical value.**

**This reinforces the positive effects of patents for securing markets, facilitating reliable partnerships.**

**Patent quality therefore represents a virtuous circle.**

**The quality of European patents is on a par with, or even superior to, those of the best patent offices in the world. Its success is evidenced by the recognition European patents enjoy among patent professionals and experts. based on the very low rate of litigation on European patents. The EPO strives to set a benchmark both at the European and global level.**

**First and foremost, quality is guaranteed by the skills of the more than 3 500 highly qualified engineers and scientists who work as patent examiners at the EPO.**

**They can rely on top quality supporting tools and staff.**

**Moreover, all our processes are thorough and rigorously applied.**

**We are the only patent office that relies on three examiners for the examination of each file.**

**Under a newly defined quality management policy all processes are also constantly reviewed in the light of customer feedback to ensure compliance with the law.**

## **2.2. CHALLENGES TO QUALITY**

**The quality of patents, however, is constantly being put under strain by a number of factors, such as the exploding workload, the changing technological, scientific and legal environment and the evolution in the behaviour of applicants.**

**Regarding our workload: The number of applications filed with the EPO has more than doubled during the last ten years, with over 200 000 applications received in 2006. We expect the annual growth rate in applications to increase by an average of 6 per cent over the next ten years.**

**In some high tech sectors, we have not only received far more applications, but have also had much more difficulty in processing them. This is mostly due to the growing complexity of technologies themselves, and some inventions in the field of emerging technologies are indeed more difficult to describe and understand.**

**Another reason is the sharpened competition among innovators, for instance in the field of chemistry, which can lead some applicants to file patents too early in the research process, when they do not yet have a clear enough view of the real scope of their invention.**

**A third cause of the growing difficulty with some applications in high tech fields is the increase in applications that could be called "speculative". They have no chance of resulting in the grant of a valuable patent, but they do keep our examiners busy.**

**We could say that, while the EPO does not grant trivial patents, there is undeniably a trend towards trivial applications. I am confident, however, that such behaviour, which does not actually create economic or technical value, will continue to diminish as the stringency of our granting procedure is appreciated.**

### **2.3. LEGAL LIMITS OF PATENTABILITY**

**The work of the EPO is not the sole source of the quality of European patents. It is the European Patent Convention that provides the basis for the strength of our patent system.**

**However, the buoyant evolution of new emerging technologies poses a challenge to both the European legislator and the examiners at the EPO.**

**Actually, existing legal provisions require further case law decisions for them to be interpreted correctly in this rapidly evolving environment**

**The EPO cannot take the place of the legislator, but it has to decide how to interpret the EPC and other relevant norms. This is in particular the role played by the EPO's Boards of Appeal.**

**The EPO will have to implement the decisions of the Boards of Appeal in its practice.**

**Legal clarification is all the more necessary since the European Parliament has not, despite attempts to do so, reached an agreement on a directive for computer-implemented inventions.**

**Although such a directive does not exist, the EPO is well aware of the ongoing public debate on the patenting of Clls. Our practice has meanwhile already found widespread acceptance and approval. The thoroughness of our procedure, which results in a considerable number of withdrawals of applications and refusals to grant a patent, is an essential element in that acceptance.**

**Issues such as the patentability of stem cells are also major catalysts for public debate, and the EPO is very aware of its role and responsibilities in these fields.**

## 2.4. REDUCING UNCERTAINTY: PARIS CRITERIA AND EESR

**In view of its rising workload, both in terms of the number of applications and the amount of work involved in each examination procedure, maintaining the quality of its patents is not the only challenge facing the EPO. Reducing the delay between filing and grant is also a major preoccupation. Reducing legal uncertainty, not only in extent but also in time, is a further service the EPO wishes to offer European industry.**

**At 44 months on average for a final decision on an application, and more than 40 % of patents granted after less than 36 months for 12 out of 14 technical fields, I am pleased to report that a lot has been accomplished in implementing the mandate our member states gave us at the Paris intergovernmental conference.**

**This rate was actually 20% only two years ago.**

**Furthermore, with the introduction of the so-called Extended European Search Report, we have managed to considerably reduce the uncertainty for applicants at a very early stage in the procedure. This additional communication goes out together with the results of the state of the art search. It gives the applicant a fair idea of the chances of the patent eventually being granted.**

## 2.5. THE EPO AS A PARTNER FOR APPLICANTS

**More generally, the Extended European Search Report is one of the many ways in which the EPO is striving to be a valuable service provider for applicants.**

**A further way in which the EPO helps the European economy is by providing training on the legal or technical aspects of patents.**

**This is the role of the European Patent Academy which, in addition to its traditional training programme, has recently developed e-learning modules, further facilitating the use of the patent system, in particular for SMEs, research centres and universities, and raising awareness of the benefits of the European patent.**

**In a word, the EPO is an important player of the innovation process, as it serves the European economy by protecting technical inventions.**

**This partnership aims at enriching the innovation process by bringing legal certainty to it on the basis of a high-quality patent granted in a centralised, consistent, transparent and interactive procedure provided by the EPC.**

### 3. POLICY EFFORTS

**Providing the European economy with legal certainty for innovation does not only rely on the EPO's patent granting procedure. The cost of patents and the harmonisation of patent litigation in Europe are also major factors.**

#### 3.1. REDUCING THE COST OF PATENTING

**Patent protection must be affordable. In particular, we should avoid unnecessary costs such as translation costs.**

**As far back as 1973, the first breakthrough was achieved when the Western European countries agreed on a three-language regime for the new European Patent Office: that solution made daily work at the EPO feasible.**

**It and made the publication of all applications at 18 months a unique vehicle for the dissemination – worldwide – of technological information, in three languages – English, German or French.**

**For the post-grant phase, Europe must now move away from the requirement for full translation of the overall patent in all languages. And this second breakthrough is within reach: if the London Agreement enters into force, post-grant translation costs will be slashed, for the benefit of all patent proprietors and also for those who today have the potential to file more but refrain from doing so on account of prohibitive costs.**

### 3.2. HARMONISATION OF LITIGATION

**As regards harmonisation of patent litigation in Europe, our aim must be to improve legal security: an efficient European court system must be established so that patent proprietors, their competitors, potential licensees or future infringers will all know that, if it comes to a dispute involving one of the 800 000 European patents granted to date by the EPO, one common court will rule.**

**We must put an end**

- **to parallel litigation involving the same European patent, and thus**
- **to the high costs, cross-border issues, forum shopping and legal uncertainty – due to diverging national decisions and long delays – which today distort the rules of the game.**

**A special panel discussion was devoted yesterday afternoon to the intricate question: how can this best be done? I will not at this juncture resume this complex discussion. Several proposals are on the table, some old, others new or brand new. But it is clear that**

- it will not be an easy task – legally or politically – to set up a common court dealing with European patent litigation and**
- if nobody moves, nothing will be achieved in our time – and European businesses will continue to suffer waiting for appropriate solutions while officials and politicians wrangle.**

### **3.3. TOWARDS THE COMMUNITY PATENT**

**Why is it so important that we succeed in the coming months in making progress on the cost issue and the litigation issue?**

**These two issues not only hamper our worthy old European patent; they have also effectively thwarted all the efforts made during the last 30 years to create a unitary Community patent.**

**If we want to pave the way for the Community patent,**

- we must gather experience now – with the London Agreement – to be able to convince society in the future that all innovative businesses in Europe – not only big industry but also SMEs – can live and thrive with limited post-grant translation**
- and we must experiment the effectiveness of a common court for European patents, staffed by specialised judges dealing with infringement and revocation actions involving private parties, under common European rules of procedure.**

**Only on the basis of that experience will it be possible to create a Community patent which will offer decisively better added value than the present European patent.**

#### 4. INTERNATIONAL CO-OPERATION

**I would now like to turn to the importance of international co-operation, both inside and outside Europe, for achieving a fully-fledged European patent system.**

#### 4.1. EUROPEAN PATENT NETWORK

**To reinforce use of the patent system in Europe and guarantee high-quality European patents, the co-operation between the EPO and the national patent offices of the member states is a key factor. This is why the Administrative Council of the European Patent Organisation, following a two-year debate, has formulated a new strategy for European co-operation, with a view to creating a European Patent Network that will contribute to ensuring the quality of patents and the services delivered to applicants.**

**The strategy provides for a better division of tasks between the EPO and the national patent offices. On the basis of a common approach to quality, pilot projects are being conducted to explore ways in which the EPO examiners could use the work done by national patent offices on the same file when it reaches the EPO, which is *the* centralised authority firmly anchored in the EPC.**

**A second feature of the strategy relates to enhanced co-operation between the 33 patent offices, with the development of more common standards, forms and IT tools.**

**Thirdly, the strategy provides for sharing expertise and developing the role of national patent offices as a local front office and first point of contact for national companies. In promoting patent use and raising awareness of the advantages of the patent system, national patent offices have a central role to play.**

#### **4.2. INTERNATIONAL CO-OPERATION OUTSIDE EUROPE**

**Here the EPO's efforts are directed towards greater harmonisation with our Trilateral partners, and towards integration of emerging powers such as China, Brasil and India in the global patent system.**

**Within the Trilateral, the three patent offices of Europe, Japan and the United States are exploring the possibilities of sharing or harmonising resources such as documentation as well as administrative and electronic tools, and they are even exploring the possibility of using one another's search results.**

**The EPO's interest is of course to strengthen Europe's position in the global field of patents and to set benchmarks in terms of technical standards standing firmly out of any kind of mutual recognition.**

**The prominent position of Europe is no longer undisputed as new innovative economies emerge, such as India, China and Korea. They have already made their mark on patent statistics. Chinese applications at the EPO, for instance, have increased 18-fold over the last ten years.**

**The Chinese and Korean patent offices are now among the five biggest patent offices in the world.**

**Europe and the EPO already have a number of co-operation projects running with these emerging powers. The ECAP2 programme, for example, aims at enhancing the use of IP in the ASEAN states. Under the EU-China TPR co-operation programme, the EPO acted as an executive arm of the EU in the field of intellectual property.**

## 5. CONCLUSION: 30 YEARS OF EPO

**Ladies and Gentlemen,**

**Creating a European patent culture is an important component of a patent policy that reinforces the existing structure and promotes a common commitment to high-quality European patents.**

**When the EPO was set up, 30 years ago, it was a pioneering project and was met with scepticism by patent attorneys, patent offices and companies. It has since grown from 100 staff members to now nearly 6500, from 7 to 32 member states, and from less than 10 000 to over 200 000 applications each year.**

**It has matured to being a global player and among the biggest, most active and most efficient patent offices of the world.**

**It can be considered as a major European achievement and, most of all, as a major European asset. But it is still under-utilised in Europe. It is high time that we addressed the deficiencies in the European patent system to make it an even greater success in the future.**

**Thank you for your attention.**