



Patent harmonisation

Substantive Patent Law Harmonisation (SPLH)

The last review in *Trends and Events* on the topic of patent harmonisation (cf, *Trends and Events*, 2015) looked forward to a stepping up of work on SPLH from the B+ Sub-Group and from the Industry Trilateral, all working under the remit of the Group B+.

Through 2017 and to date in 2018, the Industry Trilateral (IT3) has met numerous times, and with increasing frequency, both in person and via WebEx calls with the aim of trying to reach agreement on a possible SPLH package that could be acceptable to users.

On 20 June 2017 the European Patent Office hosted a B+ Sub-Group/Industry Symposium. As preparation the discussion document “Cornerstones for patent law harmonisation” was produced by the B+ Sub-Group, and the Industry Trilateral, made up of organisations representing Europe, Japan and the USA, presented a revised “Policy and Elements for a Possible Substantive Harmonisation Package” setting out the IT3 positions at that time. Other user groups from various of the Group B+ locations participated, as well as observers from WIPO and the European Commission. This Users’ Symposium provided an excellent venue for detailed discussion of all aspects of the four significant areas for SPLH: grace period, conflicting applications, 18-month publication, and prior user rights.

The discussions continue in all quarters and the IT3 have held further presentations in Europe and the USA to further the debate. IP Federation participates in the BusinessEurope (BE) delegation to the IT3 on behalf of the CBI and has also assisted in several stakeholder roundtable events held by the UK IPO as well as the lively roundtable discussion held with interested members of the BE Patents Working Group in Brussels in May 2018. Other user organisations outside the IT3 are also actively considering their positions on SPLH.

The European Industry view of the SPLH project is that any harmonisation package has to balance benefits provided for applicants with protections for third parties, since we all know that a user of the patent system can be both an applicant and, on other occasions, a third party.

The Group B+ has charged the IT3 to provide recommendations for an SPLH package, if agreement can be achieved on such, by the B+ Sub-Group meeting at the end of September that will be held in the periphery of the WIPO General Assembly.

Procedural Harmonisation (IP5 Initiatives)

The IP5 have a real success on their hands with the Global Dossier. At its simplest, it provides a web portal link through to the registers/online files of the IP5 Offices as well as detailed information on patent families: all IP5 Offices can provide file wrapper data in a standardised format allowing the viewing of all IP5 file wrapper documents from any one IP5 Office. The Global Dossier is a very useful adjunct to the work of patent professionals and examiners globally.

Other aspects are also in development under the auspices of the Global Dossier Task Force. In June 2016, agreements were reached among the IP5 Offices to set the scope of the next five priorities. These include:

- alerting (EPO led): delivering file change information at IP5 patent family level
- XML (JPO led): providing applicants with documents in XML format

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- applicant name standardisation (KIPO led): standardising applicants' names for better prior art searches and improved patent file administration
- legal status (SIPO led): providing legal status at IP5 level
- inter office document sharing (USPTO led): seamless exchange of forms between offices for given business processes

The offices are progressing, albeit at different speeds, in all the above areas.

EPO and SIPO have delivered an alerting system from the Global Dossier that can be provided via RSS feed (EPO & SIPO) or email (EPO); other offices will be implementing similar alerting services for their users in due course. Advances have been made on all of the other priorities for the Global Dossier.

With a view to building on the success of the Global Dossier Task Force, the IP5 Heads of Office agreed in late 2016 to establish a new forum, the IP5 Industry Consultation Group (ICG) to expand the consultation process with IP5 Industry to further areas of IP5 co-operation. The first two meetings (January 2017 and February 2018) have been held alongside the Global Dossier Task Force meetings but in the future the ICG may be assembled less frequently, depending on the stage of the various projects that will come under its remit. The ICG discusses the projects of the IP5 Patent Harmonisation Expert Panel (PHEP), the PCT Collaborative Search and Examination (CS&E) pilot programme and potential new work-sharing between the offices. The PHEP projects are drawing to a conclusion and new projects have been proposed by the IP5 Industry for the offices to consider. The PCT CS&E project is starting a major pilot in July 2018, which is reported in more detail elsewhere. The learnings from earlier pilots of the CS&E project and other Collaborative Search programmes have shown that work-sharing between the IP5 Offices is viable and can be very useful, and further work-sharing projects will be considered going forward.

Carol Arnold, 6 July 2018