



Patent harmonisation

Substantive Patent Law Harmonisation (SPLH)

Representatives of the IP Federation have continued to play a leading role in the development of global thinking on improving the international patent system, especially through increased harmonisation of substantive law. Currently the patent laws of leading industrial nations or regions, such as the US, Japan and Europe, differ on several fundamental principles. While business has become accustomed to managing these differences, greater harmonisation of patent laws would bring considerable benefits through reduced transaction costs in global patenting and lower obstacles to trade. Crucially though, the resulting system must offer the best incentives to invent, and rewards for investment in innovation.

The IP Federation membership has not only the expertise to understand the complex legal and technical concepts involved, but also the experience of knowing what will work for industry. On behalf of the IP Federation, Carol Arnold and Tony Rollins have participated in a range of domestic and international meetings over the past year aimed at building understanding, developing options, and exploring possible avenues for progress.

Patent law harmonisation is by no means a new endeavour: it has in different guises been under discussion for decades. But over the last few years, greater momentum and a more positive outlook have been developing, through the work of the so-called B+ group of patent offices from the US, Japan and countries belonging to the European Patent Convention, the Trilateral Offices (US Patent and Trademark Office, Japan Patent Office, and the European Patent Office), and the "IP5" (comprising the Trilateral Offices and the patent offices of the Republic of Korea and the People's Republic of China). Central to that progress has been connected activity by various industry groups, in particular the Industry Trilateral ("IT3") and IP5 Industry, within which BusinessEurope ("BE") is the relevant European body.

With the agreement of the Confederation of British Industry ("CBI"), the IP Federation represents the UK in the BE team, both in terms of building thinking and being an active part of its delegation to meetings. That has involved Carol and Tony in contributing ideas and analysis for the evolution of the BE position on a range of complex issues, in face-to-face meetings and substantive web meeting discussions. They have then made the case for the resulting positions in IT3 and IP5 Heads/Industry meetings in Seoul in June 2019 and IT3 and B+ meetings in Geneva in autumn 2019, and in a number of bilateral meetings. The aim has been to progress work on a package of measures for substantive patent law harmonisation for wider consideration and hopefully approval. Such a package should fairly balance the interests of businesses, individuals and other bodies, encourage innovation and protect the rights of innovators and third parties. Most recently, the possible implications of Artificial Intelligence and other new and rapidly emerging technologies for these discussions have been recognised.

While it is recognised in all discussion fora that agreement must be achieved on any package as a whole, and not separately on individual issues, consensus does seem to have been reached on a number of issues. Though progress has been made elsewhere, there remain areas on which an agreed position has still to be reached, particularly on certain aspects of a grace period system, and on appropriate third party protections.

Looking ahead, the B+ group has agreed that IT3 can continue its SPLH work, to which IP Federation members will continue to contribute and influence.

Global Patent Assignment

The harmonisation of patent practices and procedures (as distinct from substantive law) also offers opportunities for eliminating duplication of work and corresponding time and cost reductions.

The IP5 Patent Harmonisation Expert Panel (“PHEP”), a technical body of patent experts under the umbrella of the IP5, was established in 2012 to explore the potential for alignment of patent practices. Recognising the importance of bringing on board the views of stakeholders, the PHEP has been working in close co-operation with IP5 Industry. At the IP5 meeting in June 2019, particular focus was placed on a new project called “Global Patent Assignment”. The proposal is that a universal form and database for patent assignments should be developed to replace the current requirements to file separately with each patent office assignment documents following different formats and procedures. Benefits would include improved efficiency and greater legal certainty. Work is now underway to gather and validate data on the position in as many jurisdictions as possible, to which the IP Federation will certainly be contributing.

Sean Dennehey, 6 November 2019