



Mr António Campinos
President
European Patent Office
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GERMANY

by e-mail to president@epo.org

11 January 2019

Dear Mr Campinos

EPO user consultation on the introduction of a postponed examination system

The IP Federation represents the views of UK industry in both IP policy and practice matters in the UK, the EU and internationally. Its membership comprises the innovative and influential companies listed at the end of this letter. It has wide experience of how IP law works in practice, to support the growth of technology-driven industry and generate economic benefit.

The European Patent Office has invited stakeholders to take part in an online consultation on the possibility of allowing more flexibility in the timing of the examination process by offering means to postpone the examination of European patent applications. This online consultation will remain open until **11 January 2019**.

Deferred examination is a feature of patent systems in Japan, Korea, China and a number of other countries. Recent proposals by the EPO to introduce a new option for deferring examination for European patent applications are, however, controversial. It is widely understood that procedural deferral can benefit applicants, for example if the commercial value of the invention is uncertain, to allow data generation to support patentability or to mitigate the effects of approval processes required in some regulated industrial sectors. On the other hand, the detrimental effects of delaying the progress of patent applications in other circumstances can outweigh benefits for applicants; for example, the effect of prolonging uncertainty on third parties. There is a careful balance that needs to be struck and appropriate safeguards, including the ability of a third party to activate examination in a specific case where it has been deferred, should be included in any proposal that may go forward. Notably, as the speed of the examination procedure increases, so a desire to moderate the speed of proceedings may be of interest to a broader range of sectors, such moderation is achievable in potentially a number of different ways, of which deferral is one.

The IP Federation represents the views of companies across a wide range of industrial sectors. As a cross-sector industry organisation, the IP Federation is especially well-placed to provide a balanced view on the desirability and suitability of deferral provisions, precisely because no one sector can dictate its position, and because members represent both patent applicants and third parties. To provide a thoroughly reasoned recommendation as to the suitability of deferral across all sectors, detailed empirical research of the likely impact of deferral would be required. Such research should explore issues such as: the likely uptake of deferral; the likely duration of deferral in use; the types of safeguards and their operation; and the effect of deferral on each of the European Patent Office, the applicant, competitors of the applicant, and the public in general.

The European patent system is designed to serve all industry sectors with common patent application procedures. There is no reasonable suggestion that such procedures should, or even could, be differentiated on a sectoral basis. Accordingly, on balance, the IP Federation urges that a comprehensive and impartial study is commissioned to fully inform future proposals of the likely effects of deferral on the patent office, applicants, and third parties across a wide range of sectors. In response to such a study, a process of soliciting proposals from the user community, consultation on the detail of such specific proposals, and if necessary a decision of the Administrative Council can be used to effect any justifiable change.

In view of the complexity and wide-ranging nature of the issues involved, representatives of the IP Federation would be delighted to discuss the issues with EPO representatives at their convenience.

Yours sincerely

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Secretary, IP Federation

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IP Federation members 2019

The IP Federation represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below. The CBI, although not a member, is represented on the Federation Council, and the Council is supported by a number of leading law firms which attend its meetings as observers. It is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

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HP Inc UK Limited
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Merck Sharp & Dohme Ltd
Microsoft Limited
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Ocado Group plc
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