

EPO Strategic Plan (2019 – 2023)

The IP Federation¹ was pleased to receive the invitation from the President of the European Patent Office to contribute views on the Strategic Plan being developed for the period 2019-23. We welcome his wide consultation at this early stage of the strategy process and hope this open and outwardly-facing approach will be a hallmark of the working of the Office during his presidency.

At a general level, we support the President's commitment to developing a Strategic Plan which has clear deliverables and timescales. This suggests a commitment to clarity, simplicity and transparency: the Office is a large organisation with a number of different functions, but it is not inherently complex, and neither therefore should its Strategic Plan be. A relatively small number of high-level objectives could provide the necessary prioritisation and focus, with progress monitored against them using meaningful measures reported regularly in the appropriate forums.

The seven areas identified by the President are well chosen. They are not all equal in importance so far as the core function of the Office is concerned, namely the processing and granting of high quality patents in appropriate time and at reasonable cost. Nonetheless, for convenience we shall comment on each in turn in the order he presented.

1. Establishing stronger synergies between IP offices and the users, coordinating efforts to promote IP as a tool to foster innovation and economic development

If this area of activity is not to overlap unduly with several others (such as Nos 2 and 4), it is presumably focused on the promotion of IP as an economic tool. Clearly there is a role for the Office in publicising its patent-granting role, how that fits in the wider innovation ecosphere, and why businesses and potential businesses of all sizes can benefit from using patents effectively. In doing so, the Office should certainly co-operate with other actors, such as national offices, EUIPO, WIPO, and business and legal organisations, so as to ensure consistency of message, build synergies, and avoid duplication. That such work should be co-ordinated is important, but it is less clear whether ownership of that role should lie solely with Office.

¹ The IP Federation aims to improve the IP framework to meet the needs of innovative industry by representing, nationally and internationally, the views of UK-based businesses. Its membership of influential IP-intensive companies has wide experience of how IP works in practice to support the growth of technology-driven industry and generate economic benefit. As a cross-sectoral industry organisation covering all technologies, the IP Federation is able to offer a viewpoint which is authoritative and balanced. Details of the IP Federation membership are given at the end of this paper.

2. Developing new projects and initiatives envisaging the interoperability of the tools provided by the different IP offices, reducing costs and improving the access to the patent system

The Office is a pivotal member of a number of major networks, giving it an unrivalled ability to influence and drive greater compatibility in the IP tools available. Clearly as a member of the IP5, it holds a unique position to spread thinking based on European practices among the technologically most advanced and well-resourced offices. In addition, it works closely with 38 national patent offices of Europe, where a considerable expertise also exists, especially in the larger offices. Getting them on board also matters, as it is within those jurisdictions that businesses are located. Neither should WIPO or EUIPO, among others, be overlooked as partners. The more comprehensive the network of co-operation can be, the greater the benefit to users.

This last point is important as we believe the key consideration for any new work should be an assessment of customer benefit. That is to say, if there is not a sufficient customer benefit in a proposed project, its undertaking should be seriously questioned as a good use of resources. Initiatives designed and developed with users to provide the most frictionless transactions between users and offices should continue to be a priority.

3. Coordinating approaches to address the challenges posed by the 4th Industrial Revolution

Even if this area of activity is read as being by implication limited to the patent field, it remains a huge challenge. 3IR has not passed, and the development of digital technology *qua* technology is not at all mature. The enablement through 4IR of this and other technologies in connecting people, businesses and processes lies at another level.

It cannot be ignored that substantive patent law copes much less well with the fruits of successive IRs. For Europe, a patent convention agreed nearly half a century ago can hardly be expected to be centred on modern digital and post-digital innovation. It is a fundamental challenge for the patent system as to how it can add value in these fields to the same extent that it has been so successful for technology evolving from the first two IRs.

The work the Office has been doing in holding events and seminars about the different components of the 4IR, such as 3D printing and AI, have been enormously helpful and influential, and should be continued. Moreover, the Office is well-placed to work with others in Europe and beyond (as in No 2 above) to think imaginatively about how the patent system and the Office can add value. In many ways the most fundamental aspect is the least tractable: substantive law change. On the assumption that the revision of the European Patent Convention better to encompass these advances is at best unlikely in a reasonable timescale, we believe the Office should continue the debate it has already begun with users to develop detailed thinking which enables it to provide clear guidance on patentability, for example. Clearly the more this thinking can be harmonised across the globe the better.

4. Facilitating efficient patent prosecution for users acting globally by intensifying efforts towards aligning patent practices and procedures

Similar points arise here as under Nos 2, 3 and 5. The Office's standing in the IP5 offers a basis on which to extol the virtues of the European patent system of law, practice and procedure. The efforts to secure substantive patent law harmonisation should be continued. However, the difficulties which have been encountered there, and the inherent issues with transposing treaty commitments into national and regional law, mean that efforts to align practices and procedures bring earlier and more practical benefits. By working with users and national offices within Europe, the Office can also reduce the extent to which businesses have the cost and inconvenience of meeting different requirements between offices.

5. Improving the consultation process with the users on the Office legislative and procedural initiatives

The Office has a number of long-established mechanisms for engagement with users, notably the SACEPO and its working parties, and the presence of representatives of Business Europe and epi in the EPO Administrative Council and its committees. These mechanisms are valued and provide a systematic way for issues to be approached. The Office also consults on specific questions, such as recently on user-driven early certainty. We believe there is scope for the Office to complement these existing avenues with additional mechanisms which are more flexible, inclusive and transparent to users.

Greater flexibility might be developed in a number of ways. For example, more frequent consultation meetings might be held, and especially at the earliest stages of the Office's thinking. Indeed, consultations which take as their starting point ideas from users rather than proposals from the Office would be welcome.

Greater inclusiveness would see the Office routinely reaching out more widely than currently. European-wide bodies are invaluable, but national organisations can sometimes bring an additional dimension of thinking. There might be increased demands on the Office and consultees, such as the IP Federation, but we certainly believe that, if undertaken sensibly, the benefits would outweigh the overheads.

Flexibility and inclusion could be bolstered by more digital consultations and mechanisms. These might also serve to reduce the overhead just mentioned.

Greater transparency would also be welcome. In particular, it would be helpful for users to understand more clearly how their views were considered, how they influenced the Office's thinking, and why their opinions were not adopted, as inevitably will sometimes be the case.

6. Enhancing transparency of the procedures and user interaction

Assuming this is talking about the patent granting procedure, accessibility and responsiveness are key. The willingness of examiners and others to use the

telephone and email are critical. So too is promptness. Delays in communication create cost and uncertainty.

7. Joining efforts in the promotion of the European Patent System worldwide

We agree there is a role for the Office in this respect. To some extent, our comments under area No 1 apply.

There are a few other areas which we believe the Office's Strategic Plan should address.

The first relates to the fundamentals of patent quality and speed. We would expect the Strategic Plan to set ambitious objectives to bring processing timescales more closely into line with user expectations. In saying that, we recognise from recent discussions on the possibility of deferred examination that different business sectors can take different views on appropriate timescales and how they relate to the interests of third parties. Similarly, the Strategic Plan should set out the steps the Office will take on quality to continuously improve by building on its existing strengths.

Secondly, we believe the Strategic Plan should have an explicit efficiency narrative. It is the fees paid by users which support the system, who therefore have a legitimate interest in the fees being sufficient to deliver high quality, timely patents, but not more than is necessary for that. Aspects of the fee structure should be reviewed. In particular, the renewal fees charged by the Office for holding pending applications should be reduced. Also, inflation-based fee increases should not be regarded as routine. Businesses are relentlessly cutting costs and wherever possible not passing on inflationary pressures to customers. The Office should consider this too.

The third relates to the people who work in the Office. Users have been aware that recent years appear to have been uncomfortable for the Office and its people, as changes necessary to make the Office more modern and sustainable have been introduced. It is widely recognised that an engaged, diverse and inclusive workforce delivers better services for customers in a more efficient manner, and we therefore commend this as an area for action.

We hope these comments, offered in a constructive spirit, will provide food for thought. We shall be very happy to discuss them further with the Office if that would be helpful.

IP Federation
15 February 2019



IP Federation members 2019

The IP Federation membership comprises the companies listed below. The UK Confederation of British Industry (CBI), although not a member, is represented on the IP Federation Council, and the Council is supported by a number of leading law firms which attend its meetings as observers. The IP Federation is listed on the joint Transparency Register of the European Parliament and the Commission with identity No.83549331760-12.

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Registered Office 60 Gray's Inn Road, London WC1X 8AQ

Email: admin@ipfederation.com | Tel: 020 7242 3923 | Web: www.ipfederation.com

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