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SUBJECT: Possible models of co-operation between the European Patent Office and the intellectual property offices of EPO member states, with emphasis on the PCT work

DRAWN UP BY: Chairman of the Administrative Council

ADDRESSEES: Administrative Council (for opinion)

SUMMARY

This document has been drawn up in order to launch the strategy discussion called for by the Administrative Council. It attempts to place the issue of PCT work within the more general context of co-operation within the European Patent Organisation. The Council Chairman has tried to define the objectives to be achieved. In addition, and after discussions by the Board on 27 May 2004, section 4 contains a proposal by the Chairman which would allow the Council to reach a consensus by way of an in-depth and structured process of consideration.

The contributions received so far from the member states are set out in addenda 1 to 12 to the present document. Addendum 13 contains a synoptic table, prepared with the help of the Office, summarising the options put forward by the member states.

1. In addition to PCT issues, the Administrative Council is currently discussing various issues dealing with the involvement of existing or potential activities of individual member states in the European context (such as those identified in Document CA/0/04, 'Improving the Synergy within the European Patent System: Follow-up', as well as the academy project). The structure of the co-operation between the European Patent Office (the Office) and the EPO member states needs to be considered from all possible angles in order to come up with a coherent strategy. Which of the EPO goals are significant here?
 - 1.1 Expanding the strong position of the EPO to a leadership role within the PCT system: This goal can only be achieved by further increasing the profile of the Office as a PCT authority because in other economic areas, the national European offices are barely known as PCT authorities. Strengthening the position of the Office means, first of all, creating the capacity to be able to process PCT registrations from anywhere in the world on time without exception. Secondly, it entails the ability to set standards for quality, and thirdly, offer attractive prices. In doing so, Europe could put itself in the position to define the quality standards of PCT work worldwide. The introduction of the "written opinion" has made this even more important because the PCT product could become a sort of "certificate of patentability".
 - 1.2 Further the harmonisation of patent procedure in Europe: This goal is about much more than harmonising legislation and guidelines, and controlling quality standards for Office products. It has to do with knowledge transfer 'brain-to-brain', with the creation of a unified doctrine ("unité de doctrine") among all patent experts in Europe, whether examiners, patents attorneys or judges, and finally, with education.
 - 1.3 Keeping the EPO on a solid financial footing: This is a central condition for guaranteeing a strong European Patent Office. The financial results for 2003 were poor in comparison with previous years. This alone is not enough to worry about; however, there is a series of trends which need acknowledging and response. The relative frequency of sick leave or attempts to expand privileges, for instance, can indicate a danger that the discrepancy between EPO salaries and those of national governmental employees is growing. In addition, the shift to International Financial Reporting Standards (IFRS) (which will show the financial situation of the EPO in a much clearer, and unflattering, light) is delayed. Finally, as the discussion of an academy and "improving the synergy" during the AC meeting of March 2004 has shown, large financial burdens that would be difficult to control might be looming on the horizon. This all shows that the goal of keeping the EPO financially sound is not attainable without increased efforts.

- 1.4 Maintaining the integrity of the EPO: Since its expansion, the EPO is no longer a “limited circle” of pioneers. There are new interests which must be considered if the EPO wants to continue developing in the interests of its integral role in the European economy.
2. What opportunities does the EPO currently have at its disposal?
 - 2.1 The USPTO and the JPO currently do not have the capacity to compete with the European Patent Office for leadership within the PCT system. The greater political weight of the USPTO can be compensated by the Office’s stronger operational position.
 - 2.2 The Office, as an arm of an international organisation, namely the EPO, also has experience in co-operating with differing national systems and, as such, would appear less threatening as a leading force in the PCT system to other member states than the USPTO which represents a monolithic instrument of the most powerful economic force.
 - 2.3 The reserve of personnel resources has increased through the enlargement of the EPO. In particular, it has been enlarged by personnel who, on the one hand, have less and less work on their shoulders in the national offices, and, at the same time, are used to much more modest working conditions.
 - 2.4 The top leaders of the Office will be changing twice in a relatively short period; there are changes ahead at the second and third management levels as well. While this is a great burden, endangering the continuity of leadership, it can nevertheless also be an opportunity - if the various approaches among the personalities involved can be successfully unified into a single, politically realisable direction from the very beginning. It is important that this should not be some kind of empty compromise but rather a true melding of the best aspects of each approach to create a coherent, unified strategy for achieving the goals mentioned above, indeed, to create basically a program of renewal for the next six years.
3. What are the conditions, guidelines, obstacles and restrictions which need to be considered when choosing the ways and means for achieving these goals? In other words, what do we need to consider in determining the political and operational viability of various measures?
 - 3.1 The stalemate around the Community patent has had a paralysing effect on the EPO. This can and must be overcome because the above-mentioned goals will help everyone, including the future Community patent. The EPO will also be obliged to continue developing autonomously.
 - 3.2 A growing number of EPO member states are setting a higher priority on maintaining and/or enlarging local know-how in their search and examination capacities for the benefit of their national industries. It is also in the EPO’s interest to foster local know-how.

- 3.3 Changing international treaties is difficult because of a required majority and, thus, very time-consuming. At the same time, in an organisation that already includes 28 members, the binding forces of strategies decided on simply by the Administrative Council apparently are not enough.
- 3.4 There is a big discrepancy between the working conditions at the Office and conditions at national offices and in private business.
4. How should the debate be organised?

In response to the request made at the Council meeting in March 2004, the delegations have submitted their comments, which are attached in full as addenda (1 to 12) to this document. Addendum 13 is a synoptic table, prepared with the help of the Office, summarising the sometimes divergent positions put forward by the member states.

After discussions by the Board on 27 May 2004, the Chairman proposes the following procedure:

- The overriding principle must be to launch a wide-ranging debate which extends beyond the issue of the PCT partnership. This debate must include a general discussion of co-operation within the Organisation and a definition in the first instance of the main objectives giving structure to this co-operation. The present document should serve to outline the objectives and the framework.
- The procedure to be followed should be agreed on at the June meeting of the Council.
- At the October meeting the Council should be able, based on the present document and its addenda, to reach an agreement on a precise definition of the boundaries of the debate and the strategic objectives. On that basis, a list of questions to be raised within the context of consulting the interested circles could, if necessary, then be drawn up.
- An extraordinary meeting of the Council, devoted exclusively to this strategic discussion, should be held at the end of November with a view to defining a model enabling a consensus to be reached within the Organisation and its member states. At the end of that meeting a decision would be taken on the subsequent procedure which could, for example, envisage a ministerial conference of the EPO with the aim of adopting, at the political level, the conclusions reached, even if these proved not to require the revision of treaties such as the Protocol on Centralisation.
- Throughout this procedure, the Board will continue to co-ordinate documentation, consolidate proposals received and, where appropriate, draw up proposals of its own. The Council Chairman welcomes the President's offer to provide technical assistance in this undertaking.