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PCT Cooperation in Europe

Contribution to the discussion

The Protocol on Centralization did not have the historical objective to ensure that the EPO had enough work in the early years, but to concentrate the specialized knowledge necessary to cover all fields of technology and to ensure highest and uniform quality. The exceptions granted in the Protocol were made to muster consent to the Munich agreement, as a preliminary stage for full concentration.

In order to cover all fields of technology with highly competent specialists, the number of examiners necessary today is 1000 at least, it may have been 100 sometimes in the past. It is difficult to imagine how an NPO with a staff nearer to 100 than to 1000 can endeavour to cover the whole field with the necessary competence.

As far as PCT is concerned, it should have been only in English from the very beginning. It would have saved us the discussion we have now at hand and, into the bargain, publications in Japanese and Russian, which many of us cannot read. The PCT system should be mainly for big companies worldwide, they have attorneys who can work in English.

The best service NPOs can provide to their economies is to receive first filings and provide a comprehensive and reliable search report in good time as a basis for further decisions. After such filtering, PCT cases would be less in number and could be mastered by EPO alone. Recognizing this as their main task, would allow NPOs to specialize, even to excel, in the fields of their home industry, and to provide valuable service with a limited number of examiners.

As things have developed to the present situation, the following is the position from the point of view of our field of industry:

- a) Applicant must have the choice of the ISA, with the exception of c)
- b) EPO must be free to decide freely, whether an ISR (or ISO for that matter) from a particular NPO is acceptable or not,
- c) EPO should have the possibility to delegate searches (ISR) to NPOs of their free decision and choice (without any possibility of intervention) for peak-shaving. But EPO must keep the ultimate responsibility. This would give NPOs who successfully specialize and excel in particular fields of technology a fair chance, even the chance to grow.
- d) The question of fees is secondary to quality.

The issue of quality needs special attention. Comparing even EPO's proclaimed efforts to maintain high quality (and encouraging enhancement of the quality of filed applications) with one's own experience in day-to-day work, one cannot help seeing a discrepancy.

If, then, NPOs in their subject papers stress the importance of quality, there is a tinge of lip service. They may be confident that a truly stringent quality control is too labour-intensive to be feasible. There is also a temptation to quench criticism by intervention.

Therefore cooperative quality assurance will not do, quality would inevitably converge toward a lower level. Instead, a completely independent quality control body is an absolute necessity. This body must consist of very experienced patent professionals, with the power to enforce corrective action.

Without such a body, a pessimist could see the European Patent system going down the drain very slowly, so slowly that it will not be remarked until it is too late. The members of the Council are implored not to sacrifice the best Patent system in the world (though far from perfect) to short-term and petty national interest.

Werner Kovac