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München/Munich, 31.05.2005

BETRIFFT: Gemeinsame Erklärung zum europäischen Patentnetz
SUBJECT: Joint statement on the European patent network
OBJET : Déclaration conjointe relative au réseau européen en matière de brevets

VERFASSER: Ratssekretariat
DRAWN UP BY: Council Secretariat
ORIGINE : Le secrétariat du Conseil

EMPFÄNGER: 1. Haushalts- und Finanzausschuss (zur Stellungnahme)
2. Verwaltungsrat (zur Beschlussfassung)
ADDRESSEES: 1. Budget and Finance Committee (for opinion)
2. Administrative Council (for decision)
DESTINATAIRES : 1. La Commission du budget et des finances (pour avis)
2. Le Conseil d'administration (pour décision)

Das beigefügte Dokument wurde von der britischen Delegation im Namen einer Gruppe von Mitgliedsstaaten vorgelegt. Es wurde nur in Englisch verteilt.

The attached document has been submitted by the UK delegation on behalf of a group of member states. This document has been issued in English only.

Le document ci-joint a été soumis par la délégation du Royaume-Uni de la part d'un groupe d'états membres. Le présent document a été distribué uniquement en anglais.

JOINT STATEMENT ON THE EUROPEAN PATENT NETWORK.

Madrid, 26th 2005

Delegates from Austria, Denmark, France, Germany, Hungary, The Netherlands, Portugal, Slovenia, Spain and the United Kingdom, as members of the informal Council's Working Group met in Amsterdam on April 22, 2005 and Madrid on May 26, 2005.

Main focus point of this meeting was the strategic debate on co-operation between EPO and National Offices together in the European Patent Network.

The delegates discussed the following principles and facts and agreed among themselves as follows:

1. The European Patent Office's (hereinafter, the EPO) specific role as the sole European Authority for granting European Patents must be maintained and reinforced. However, the delegates shared their concerns about the functioning of the EPO. These concerns are: EPO's financial situation, decreasing productivity, cost-effectiveness, functioning of MAC, quality of patents and patent examination, present lack of timeliness and high cost of patents.
2. The participants, bearing in mind the magnitude of these problems are of the opinion that EPO should concentrate itself on its core business e.g. patent granting. It should decrease its expanding involvement in training and education activities for third parties as well as in promotion and marketing business. These activities divert EPO from its key role and impacts the role of the National Patent Offices (hereinafter, NPOs) negatively. To optimize the proper functioning of the patent system in Europe and to increase its competitiveness a closer co-operation is necessary between the National Offices and the EPO. To summarize this, EPO should:
 - a. Stick to its core business.
 - b. Recognize and accept the specific responsibility of the NPOs
 - c. Recognize and accept NPO's role as part of the overall patent network.
 - d. Accept and obey the principle of subsidiarity in relation to the contribution of the NPO's.
3. The European Patent Convention together with the Protocol on Centralization are the backbones of the Organization. They should stay unchanged. However, this does not impede future adaptations.
4. The participants also emphasized that the political role of the AC should be strengthened and the AC should concentrate its work on the above mentioned strategic issues. Also EPO's role in the trilateral discussions requires additional attention of the AC.
5. To reach the Lisbon goals EPO together with the NPOs have to co-operate as much as possible. They together can contribute a lot to reach this goal by taking advantage of each others competences and to avoid duplication of work as much as possible.
6. The network model could be based on the following interlinked principles:
 - a. Free choice for applicants.
 - b. No compulsory outsourcing
 - c. No automatic utilization by EPO of the work of NPOs

- d. Equal Treatment of all member States
- e. Introduction and assurance of equal quality standards.

Free choice for applicants. For the existence of free choice it is necessary to have comparable conditions between EPO and NPOs having PCT status and acting under their own responsibility. First of all, the quality standards have to be of the same high level. Fees should be comparable. At present, applicants in non-English-French-German speaking languages have a certain disadvantage. Fee differentiation could be used to deal with this problem (equal payments). Therefore, competition on the basis of fee reduction contradicts this principle. To assure the same quality standards the AC has to establish an overall quality framework.

No compulsory outsourcing. Any outsourcing of EPO's work to NPOs has to follow objective criteria, in particular, quality standards, determined by the AC and applied by EPO's management when deciding on outsourcing. Outsourcing must not exceed 5 % of total demand addressed to EPO (if necessary this exact figure could be reviewed).

No automatic utilization by the EPO of the work of NPO's. First of all, it is the responsibility of the AC to develop objectives and criteria that ensure an objective and neutral use within the EPO of the work done by NPOs. These should be used by the examiners when they have to deal with work of the NPOs. The participants agreed that there should not be further political interference by the AC.

Equal Treatment of Member States. Equal treatment means:

Equal Access. This implies that the discrimination as a consequence of present language regime should be compensated for.

Equal use of know-how. The existing know-how must be made available to all users as they wish so. Partners in a network need equal conditions to operate in order not to be in mutual competition.

Equal treatment: The establishment of a new system according to the new framework within this document may need two to three years. This new system will replace the present co-operation agreements. These will then automatically be ended.

Assurance of quality standard. At present a high quality standard is endangered by the increase of applications, the existing backlogs and the production norms within the EPO and it is up to the AC to review the present quality standards as soon as possible. The assurance of quality control could be organized by internal measures and/or external quality boards.

The Council is asked to agree:

1. That the above forms the basis of the working relationship between the EPO and the member states

2. That the Office, in consultation with member states, makes proposals for decision by the Council covering

- the implementation of a European quality management system
- a framework meeting the above and governing the utilization by the EPO of searches produced by National Offices
- the feasibility, conditions, and working arrangements for any outsourcing
- the impact of the above on EPO efficiency, productivity, and finances and on customer service.