

Policy options for the improvement of the European patent system

Dissemination workshop in Brussels,
June 14th, 2007

1. Introducing a preamble

What / Where / Why ?

What is it? As a suggestion:

The granting of patents serves the purpose of enhancing social and economic welfare by means of encouraging inventions and their diffusion. The protection provided by patents should be sufficient to ensure proper incentives to inventors. This should imply that patents should be granted in a proportionate and transparent manner, so as to ensure legal certainty.

Please note: The purpose of the system can and should be expressed in a very concise and short form

Where to place it?

In the legislation: the EPC and a (future) Community Patent

Why do we need it?

We need it to guide the public, the legislators and (possibly) the courts in patent discussions.

2. Challenges to the governance of the European Patent System

- PATENT THICKETS
→ COMPETITION POLICY ISSUES

- MARKETS FOR IPRs AND LICENSES
→ INNOVATION POLICY

- INCREASED ATTENTION TO IPR ISSUES IN THE SOCIETY AT LARGE

Enhancing the governance of the European Patent System

1. Enhancing “patent awareness” within the European Parliament

European Parliament Standing Committee on Patents (EP-SCP)

External Advisory Body to the EP-SCP (Experts, Practitioners, Stakeholders)

- Info gathering from EPO
- Reports on trends & issues

- Strengthen role & expertise of EP in patent matters
- Accommodate rise of public concern for patent matters

2. More participatory environment within EPO

- Regular communications by EPO Administrative Council on current projects and decisions taken
- Open up the Standing Advisory Committee (SACEPO) to other stakeholders and experts

3. Enhance participatory environment within the Commission

- From “ad hoc” to regular consulting with experts and stakeholders, esp. for legislative authorities touched upon by patent matters (e.g. Directorates)

3. Rigorous application of patent standards

- **current trend:** more applications, more patents, greater complexity/volume
- patent offices struggling with workload
- threshold for patents (seen as) too low

Two possible reactions:

1. handle growing numbers by being less strict (leading to more but less valuable patents)
2. reinforce stringent examination (leading to less but more valuable patents)

Policy option: *raise the bar* for patents (and applications)

1. *rigorous application of the standards* (novelty, inventive step, industrial applicability), but also clarity, disclosure, relation disclosure and claimed invention
2. *review standard of inventive step*; definition of person skilled in the art (KSR decision of Supreme Court in the USA)

Preconditions:

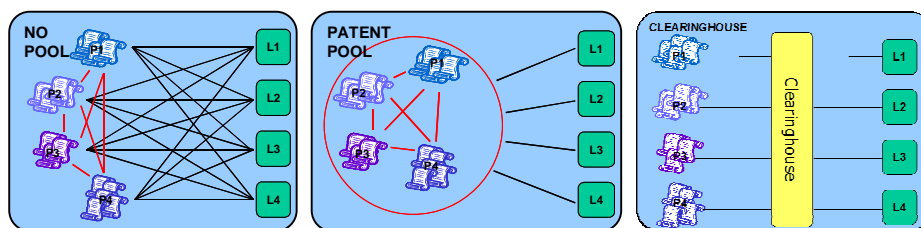
- strong patent offices with expertise and resources
- keep in touch with the world of innovation
- be aware of public function

4. Dealing with emerging technologies

- **Challenge**
 - Improve patent quality
- **Option**
 - Policy level
 - Mission statement (preamble) in the EPC
 - Executive level
 - Allocate additional resources to EPO examiners to better assess prior art and avoid too broad patents
 - Ensure on-going deliberations on what is patentable and what is not

5. Increasing access to patented inventions

- **Challenge:** limitation of patent thickets
- **Option:** explore more flexible, non-exclusive exercises of patent rights, such as license of right and collective rights management models



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