

Future patent policy in Europe

Basic principles of the patent system

- **points of a presentation to be made at the public hearing**
 - **on 12 July 2006 in Brussels**

The Polish Patent Office recognizes the existing patent system in Europe as not responding to the needs and interests of all its users. Procedures under the European Patent Convention are in their opinion too complicated, too lengthy and too expensive, and consequently adversely affect their competitive potential vis a vis USA's and Japanese companies. The EPC system is considered by Polish industry as more favourable for big companies than for Small and Medium – sized Enterprises and individual inventors, although it is widely recognized that the latter are the driving power of economy. For this reason, when developing a new patent system in Europe, a slightly modified policy than that agreed in the Common political approach of March 2003 is desirable to be considered, particularly in respect of the role of national patent offices. Our position is that this role should not be reduced to a “mail-box” for patent applications and providing services in patent information. The future patent system in Europe should be built on competent and resilient National Patent Offices. This would require proper balancing of the interests of all stakeholders concerned and providing equal opportunities for their participation in the new system.

Success of the future system will mainly drive on the quality of patents and elimination of duplication of work through the creation of an efficient European patent network, where the work of National Patent Offices would be mutually recognized and utilized. Only under these conditions the goals of the revised Lisbon Agenda would have a chance to be achieved.

Poland agrees that the features such as clear substantive rules concerning subjects of patents, transparent, cost-effective and accessible processes for obtaining patent, predictable, rapid and inexpensive resolution of disputes as well as due regard for other public policy interests (for example ethics or competition) are essential and most important for the patent system.

However in the process of negotiating a new patent system the issues of legal security and certainty of economic and legal transactions must be taken into consideration. The same concerns also the language issue, which continues to remain an open and difficult question, particularly in the context of national regulations of many EU Member States, which provide for a mandatory use of a native tongue in any proceedings before state authorities as well as making accessible all the information for

the public in that tongue. A compromise solution acceptable for all the players of the system, both from the point of view of the equal treatment of languages and cost-effectiveness of the patent system must be found.

Regarding a useful system for the settlement of litigation concerning the infringement and validity of European patents, the establishment of a single centralized court procedure, ensuring uniform jurisdiction across the territory of the EPC Member States, seems to us to be a good solution. However it has some serious disadvantages, especially for Small and Medium – sized Enterprises and individuals, since the proceedings conducted in, for example, the EPO languages and a distant location of the court would cause problems for them. It follows from our consultations that quite a number of Polish users would prefer to have a local court of first instance, where the proceedings would be conducted in their native language.

The ideal patent litigation scheme in Europe should in our view be based on a net of specialized national courts of first instance and one or a limited number of courts of appeals. One of the most important features of such scheme should be accessibility of the courts in terms of relatively low costs and a possibility of reducing these costs under certain circumstances.

At present, in our view, further approximation of national patent laws does not require any immediate action. What needs to be harmonized is a patent quality system and standards for search and examination in National Patent Offices in order to avoid unnecessary duplication of work. This could even initiate a process of establishing a system of mutual recognition of national patents within Europe in future.

The very idea of mutual recognition is extremely interesting and worth further considering. It seems to be a solution, which would meet expectations of most of the users. Nevertheless we have to keep in mind, that establishing and implementing (if ever) of such a system would take considerably amount of time.

This debate is one of the initial steps in the process of developing a solution acceptable for most of the stakeholders and hopefully will provide a couple of yeast ideas which would be helpful in creating a new desirable patent system.