

PHILIPS

Trilateral Co-operation: Patently Obvious

Trilateral Conference, Washington

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8 November 2007

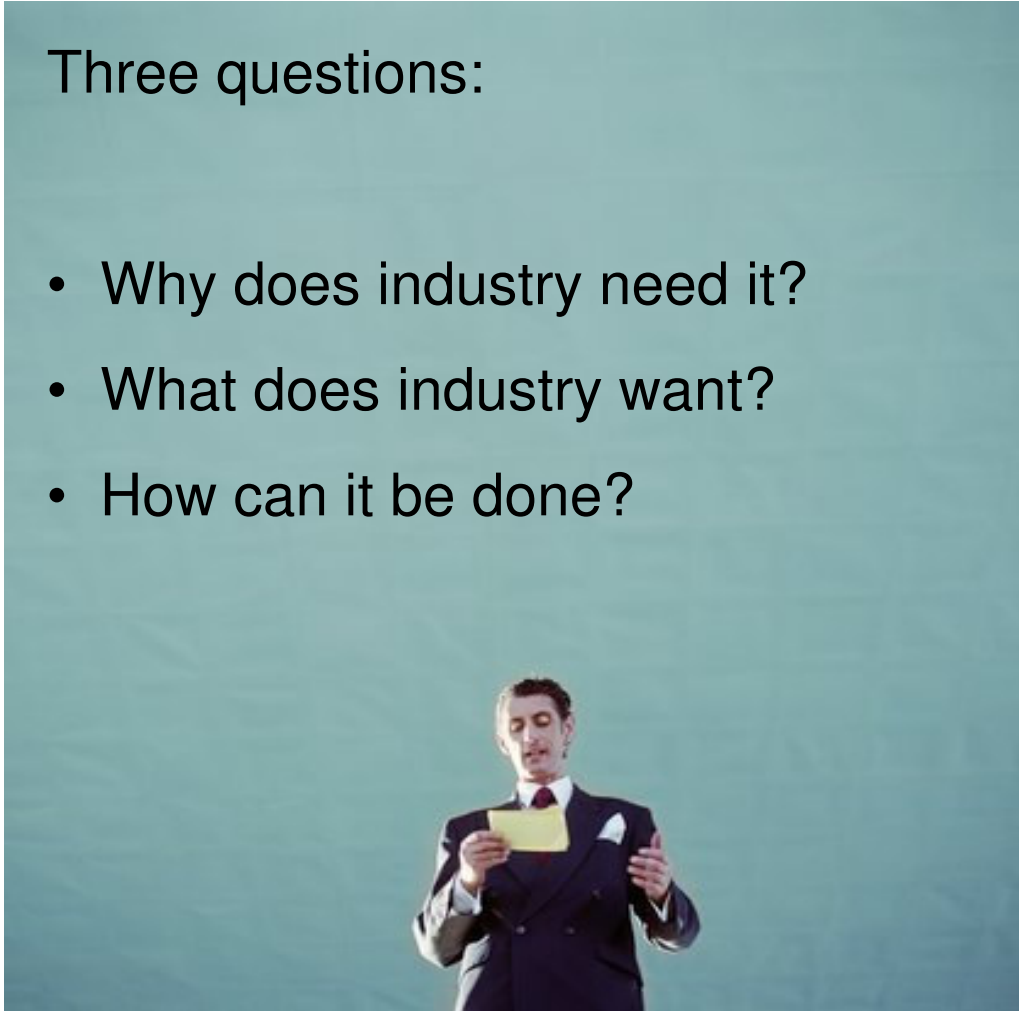
Congratulations with this 25th Trilateral Meeting



Trilateral Co-operation

Three questions:

- Why does industry need it?
- What does industry want?
- How can it be done?

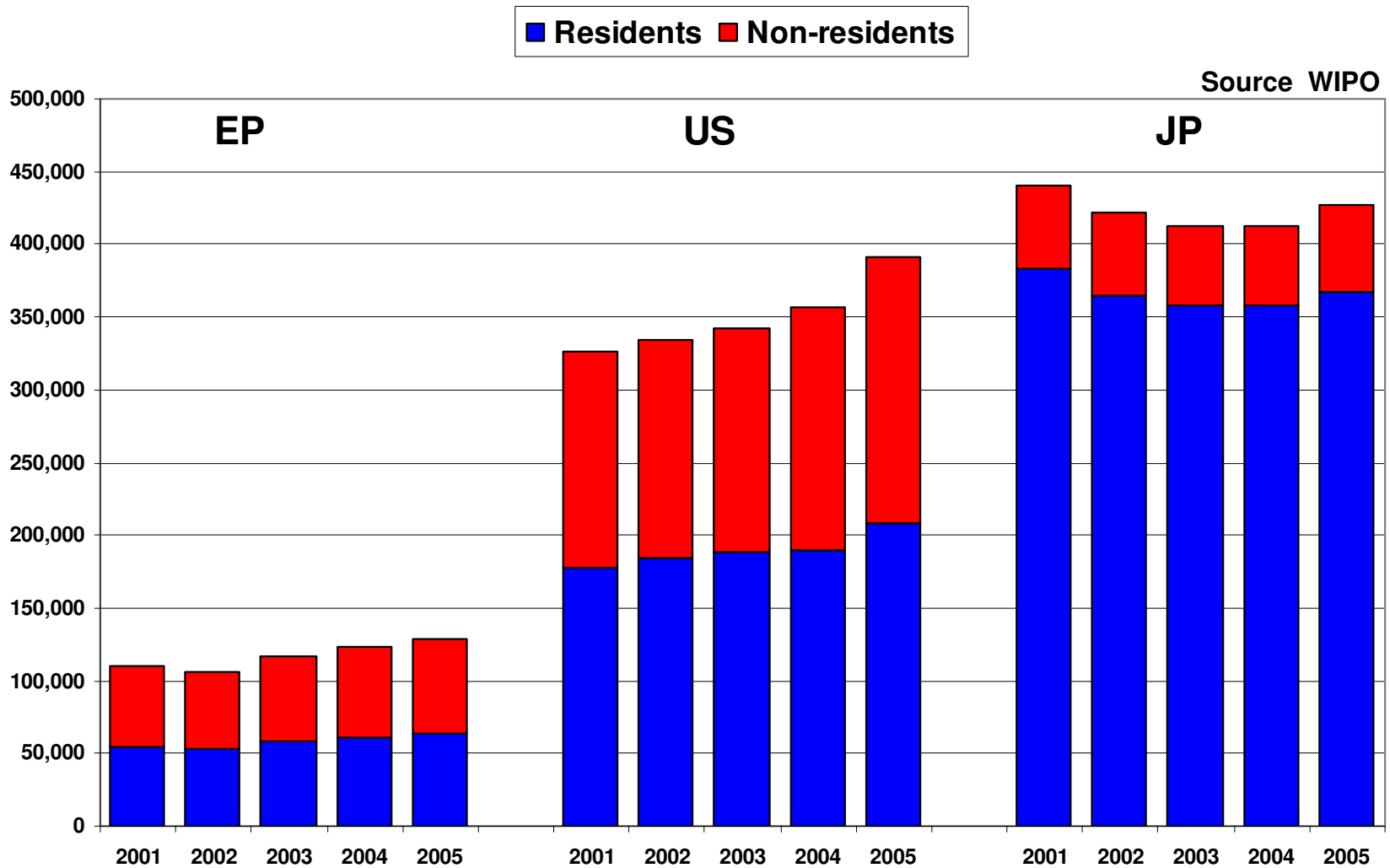


Why does industry need it?

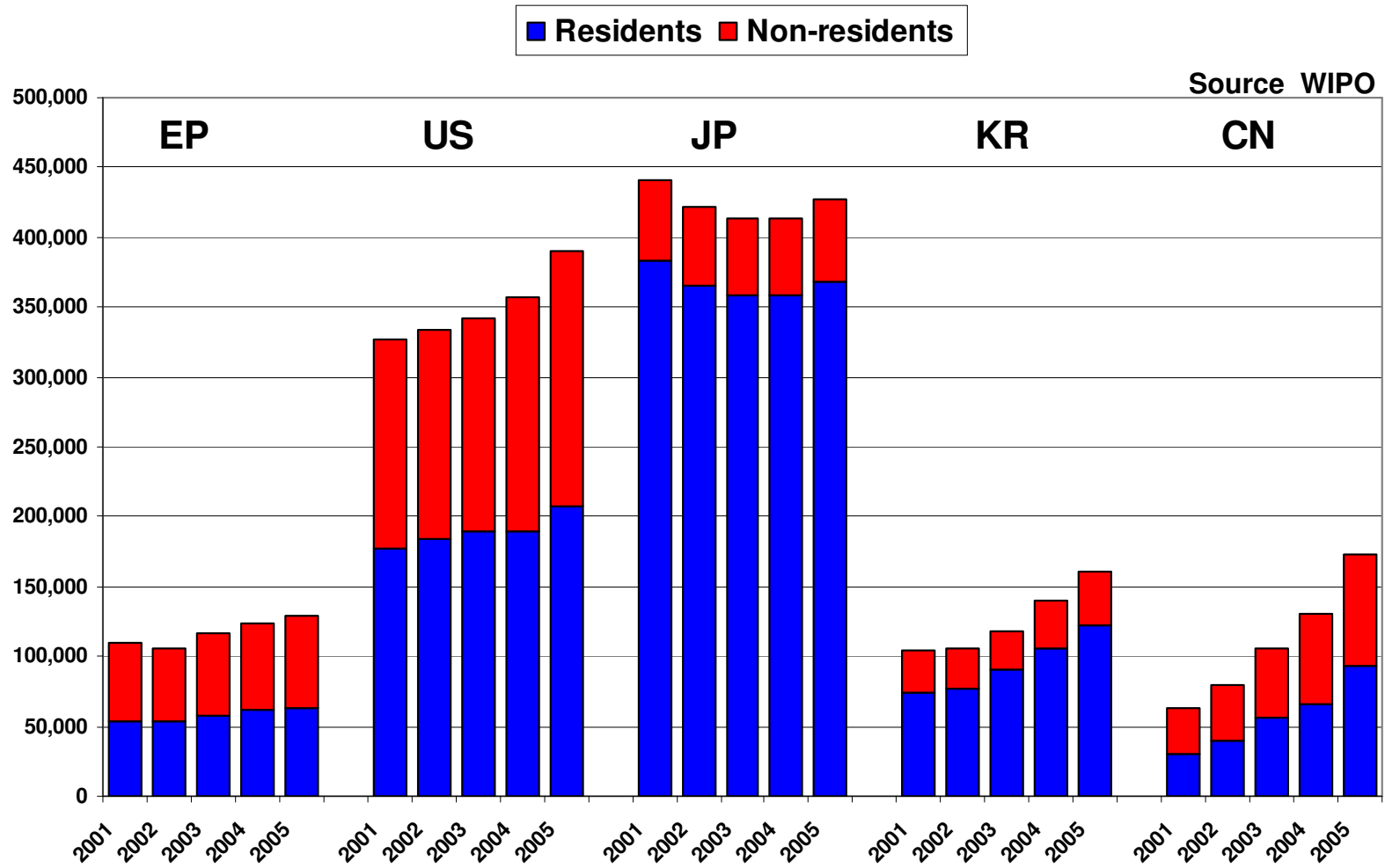
- Operate in a global markets
 - manufacturing and sales in more countries
 - more players in markets
 - more competition

- Patents needed in more countries
 - protecting own products
 - third party co-operations
 - trade IP/ technology





Trilateral cooperation needed to cope with increasing workload from other countries



Closer cooperation with increasing number of patent offices needed

Why does industry need it?

- Markets show high dynamics
 - rapid development for new products
 - high competition
 - high price erosion
- Drives need to have patents quickly
 - timely and effective support business
 - locally / globally



Why does industry need it?

- Increasing cost of R&D
 - high initial cost to develop new systems/products
 - low cost of reproduction
 - high volume, low margin products



- Patents are essential element in doing business I

→ Drives need to have high quality patents, quickly and globally

Why does industry need it?

- Move to knowledge economy
 - manufacturing has become commodity
 - creation of new business/product concepts
 - bring products/services to market quickly
 - Knowledge economy = IP driven economy
 - companies seek more protection
 - leveraging intellectual assets
- Drives need for high quality patents, globally



Why does business need it?

- Trend to Open Innovation
 - convergence of technologies
 - shortening time to market
- Need to collaborate more with others
 - patents / IP facilitate collaborations
 - partners around the globe



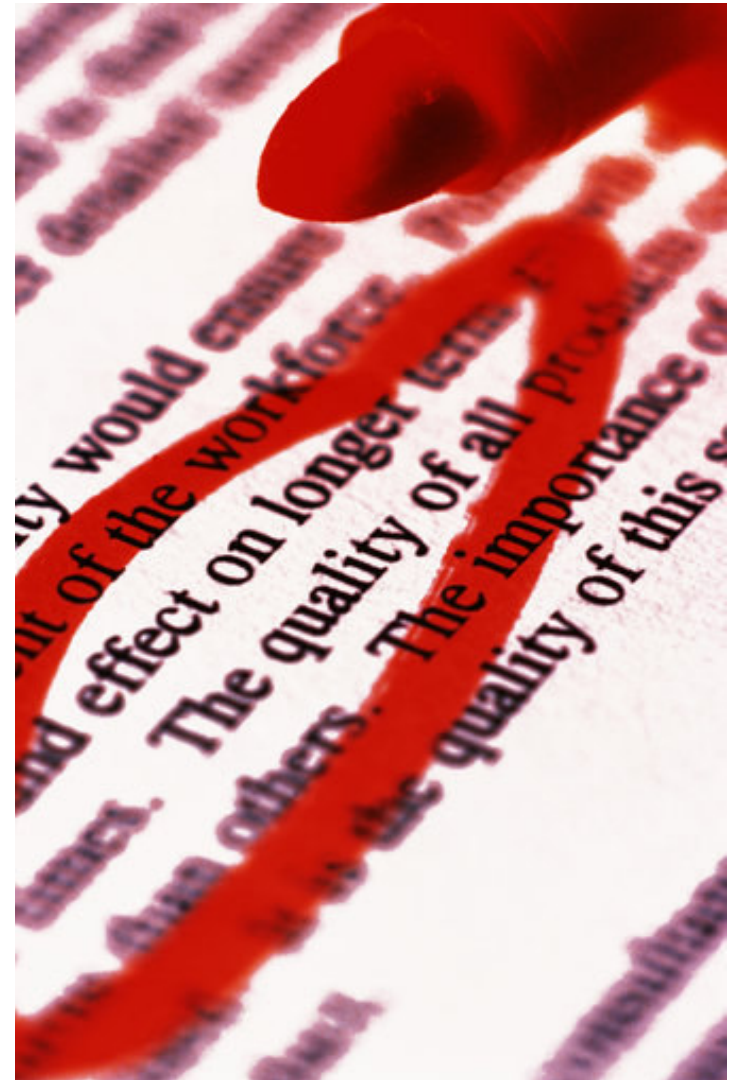
→ Drives need to high quality patents, quickly and globally

What does industry need?

- Globally operating companies need patents in increasingly more countries in support of their businesses
- Locally different patent systems may create market distortions:
 - we want to know whether we can sell our products and not where we can sell them
- Need uniform, efficient and effective, predictable patent systems in countries:
 - quality patents
 - timely granted
 - reasonable cost

What do we mean with quality?

- Clarity about what is protected
 - clear claims, scope, description
- Enforceable
- Stand test of validity



Why is high quality needed?

- High quality is in interest of both applicants and third parties
 - Guide R&D investments
 - Determine risks in product development
 - Certainty in commercial transactions
- High quality patent examination is thus important
 - but why the same examination multiple times?
 - cooperation offers gains in quality, efficiency and cost



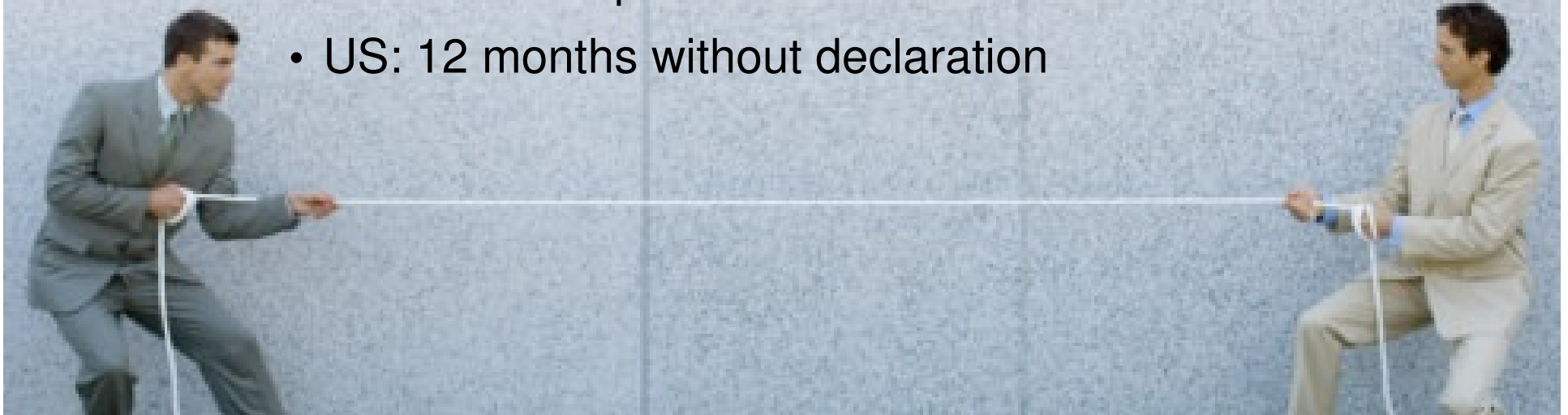
How to cooperate?

- Substantive Patent Law Harmonization
- Other Patent Law Harmonization
- Close cooperation between offices



Substantive Patent Law Harmonization

- Optimal solution for applicants and offices:
 - avoids multiplication of work
 - road towards global patent system
- Not likely to happen soon because of current impasse:
 - e.g. Grace Period
 - Europe: none
 - JP: 6 months plus declaration
 - US: 12 months without declaration



Other Patent Law Harmonization

- What can be done re harmonization of contents and formalities?
- A vast and increasing number of applicants use PCT :
 - good search before entry national phase
 - avoids cost for applicant and offices (other than ISA) if not continued
- PCT treaty already harmonizes contents and formalities
 - Art. 27 PCT: no national criteria different from PCT criteria
 - PCT Diplomatic Conference Washington 1970

Other Patent Law Harmonization

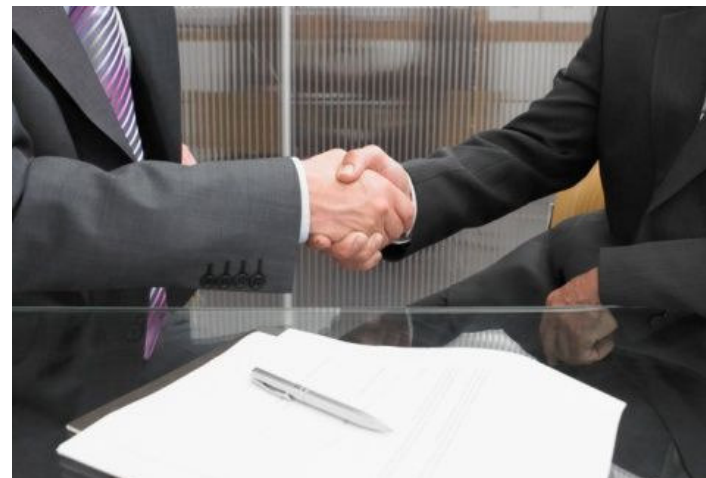
- Consequently PCT already harmonizes:
 - description (i.e. sufficiency of disclosure)
 - claims (i.e. support by description, clarity and conciseness)
 - unity of invention
- If compliant with PCT provisions, additional / different local rules should not be applicable
- Uniform application of these harmonized provisions is assisted by PCT international search and examination guidelines

Other Patent Law Harmonization

- PLT 2000 harmonizes provisions on a.o:
 - filing date requirements
 - relief in respect of time limits / reinstatement of rights
 - correction or addition of priority claim
 - request for recordation
 - request for correction of mistake
- Declares PCT form/contents provisions applicable to non-PCT applications as well.

Other Patent Law Harmonization

- Only 16 states joined PLT, excluding e.g. CN, JP, KR, US
- EPC 2000 will make the EPC compliant with PLT
- Greater support for PLT would simplify obtaining patents in multiple countries



Close cooperation between Offices

Additional opportunities for greater efficiencies for both applicants and offices:

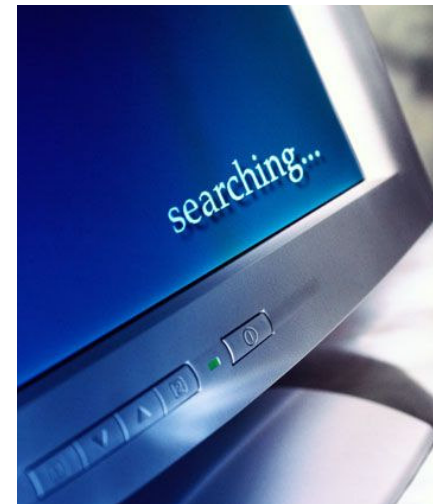
- extended PCT examinations
- Triway / Supplementary PCT searches (2009)
- utilization of search results
- Patent Prosecution Highway (PPH)

Extended PCT examinations

- PCT search examines patentability criteria
- Optional examination of description and claims not done in practice
- Designated offices examine description and claims after entry into national phase (including ISA itself)
- Examining description and claims during international phase would increase efficiency for both applicants and offices

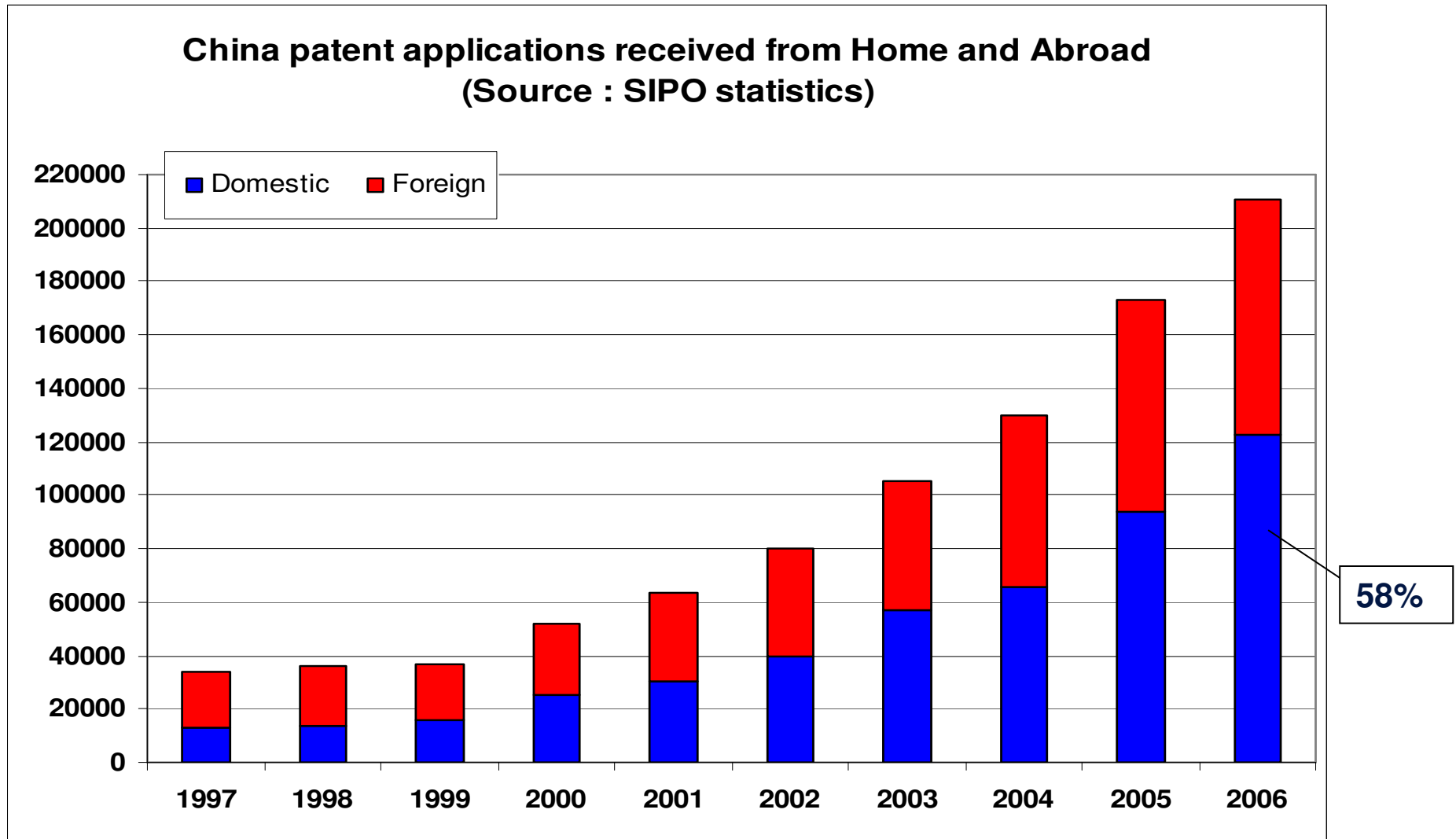
Supplementary Searches

- Supplementary searches increase quality search
 - Triway: use search results other two offices upon request
 - PCT searches (2009) : additional searches in f.e. non-English patent literature (CN, JP, KR)
 - No additional work for ISA



- Better to have things done once in the international phase than multiple times in the national phase

China patent applications filed



Quality search

- Drive for patent quality should start with focus on high quality search
- Missing out increasingly larger collection of Chinese prior art is inconsistent with this drive
- Both PTO's and industry need access to all relevant prior art
- What can be done to solve this problem:
 - machine translations: takes 3-5 years before quality is acceptable
 - what do we do in the meantime?
 - manual translations: cooperation between offices, industry, suppliers?

Utilization of search results

Examination process could be made more efficient:

- Require applicant to respond to PCT written opinion before designated Office starts examination
- National phase examination becomes logical continuation of PCT examination

Summary



- Intensified cooperation between offices creates win-win for offices and users
 - Users can contribute to increase efficiency system as well
 - Industry needs more efficient, high quality system now
 - Stimulates innovation, trade and economic development around the globe
- Acceleration of harmonization discussions highly desired

