



Keynote Speech
at the
Trilateral User Conference

"CHALLENGES FACING THE GLOBAL PATENT SYSTEM"

16 November 2006
Tokyo

Professor ALAIN POMPIDOU
President of the EPO

Contents

1. Introduction
2. Results of the Strategy Debate;
3. European Commission's Consultation process;
4. London Protocol;
5. EPLA
6. The challenges and the Mandate;
7. PCT vs. others;
8. Long-term sustainable improvements;
9. Harmonisation;
10. Utilisation;
11. Conclusion

Good Afternoon Mr Omori (IIP)

Mr Kamisugi (JIPA)

Dear Mr Nakajima (JPO),

Dear Mr Dudas (USPTO),

Dear Mr Kasper (AIPPLA)

Dear Mr Adler (IPO)

Dear Mr Sueur (UNICE)

.....

Eminent speakers,

Distinguished Ladies and Gentlemen,

[Introduction]

It is my great pleasure to be here with you today for the Trilateral Users' Conference and I would immediately like to take this opportunity to thank the Institute of Intellectual Property of Japan, which together with the Japan Patent Office and the Japan Intellectual Property Association have so efficiently organised and hosted this conference here in Tokyo.

Indeed I feel Tokyo reflects many of the features that we all desire to see in a global patent system, particularly its international, modern, dynamic and flexible qualities. I am certain that this city's spirit will greatly energise today's discussions and exchanges of views and will allow us to see more clearly how we can play our part in overcoming the current challenges facing the global patent system, how we would like to see it develop in the future and how we can secure this future for the benefit of all its stakeholders.

[Strategy Debate results]

Let me start by mentioning some of the results emanating from the conclusion of the European Patent Organisation's Strategy Debate and which are likely to impact the European Patent Office's proposals and actions within the Trilateral Co-operation in the future.

In June this year, the Administrative Council of the European Patent Organisation agreed to and adopted a series of policy documents which provide the principles for establishing a European Patent Network comprising of the EPO and all the National Patent Offices of the Member States of the European Patent Organisation. In order to implement this network, a series of practical actions have also been initiated.

These actions can be divided into five elements:

- A utilisation pilot has been established to show how EPO examiners can utilise unpublished results from national patent offices

during the European patent 2nd filing search procedure; the approach at present is case by case driven;

- A Quality Working Group has been created to promote quality within the European Patent Network involving all patent offices in Europe; the goal of the working group will be to establish how the European Patent Network can define minimum quality requirements for all the patent offices involved; the working group will also review existing quality systems;
- The promotion of increased efficiency of services provided to users of the European patent system and establishing a broader range of activities to be performed locally by national patent offices; a consortium of National Patent Offices will establish a clearing house to handle commercial special search requests for the private sector; in addition, the EPO will outsource specific activities to the consortium's members, such as translation and re-classification work; the aim will be to increase the efficiency of the services provided to users of the European patent system and to establish a broader range of activities performed locally by National Patent Offices;
- The drafting of a new co-operation policy with the Organisation's Member States, including the implementation of EPTOS, focusing particularly on scope, financing, eligibility for and the scale of EPO funding; the goal is to make a major contribution to the European Patent Network by establishing common IT standards, enhancing the

sharing of skills and knowledge and promoting patent awareness and education;

and last, but certainly not least,

- The establishment of a working group to study how the European patent system should best deal with the future workload; UNICE and the *epi* will also be invited to contribute to the discussions; the group's goal will be to analyse the challenges facing the patent system in Europe and worldwide and thereafter to make recommendations for a common strategy for Europe to address the workload issue.

[Consultation & public hearing on the future patent policy in Europe]
Earlier this year the European Commission launched an initiative to revive the debate on the patent system in Europe. The consultation process which included a survey collecting European stakeholders' views on the future of the patent system in Europe was launched in January and was followed by a public hearing to discuss the findings of the survey in July this year. At the public hearing in July, I stated that the consultation process had brought new momentum to the endeavour of reforming the patent system in Europe.

Let me briefly just mention a few key points from this meeting, as I am certain the representatives from European industry will give more details later today. European stakeholders are first and foremost concerned about maintaining and improving patent quality. This is something that the EPO not only agrees with but is doing everything in

its power to realise. Moreover, European industry is unanimous that innovation and competitiveness do not depend on the number of patents granted every year but on their quality and on the level of legal certainty which they provide. I will refer to the paramount importance of quality quite a few times still in my speech today.

As regards a Community patent, although there is a widespread preference for one, European stakeholders are not urging to have one at any cost and not on the basis of the 2003 Common Political Approach.

In the meantime, stakeholders look favourably on the London Protocol and the European Patent Litigation Agreement.

[London Protocol]

The London Protocol aims to reduce the present translation requirement for European patents in the member states. It can enter into force when eight states have ratified, including Germany, France and the UK. To date, ten states, including Germany and the UK, have adopted the agreement in parliament, and seven have already deposited their instruments of ratification. Although the Protocol has yet to be ratified by France in order to enter into force, most recently there are encouraging signs coming from Paris in favour of the Protocol. Ratification of the agreement would lead to a significant reduction in translation costs of up to 45% or some EUR 3 000 per application, resulting in major savings for European industry.

[EPLA]

The EPLA's aim is to replace the current system of parallel litigation on the same European patent by proceedings before a single European Patent Court. The present system consists of litigation on a country-by-country basis for the 750 000 patents granted by the EPO and is marked by high costs and legal uncertainty. As a result of diverging national decisions and long delays it distorts the current litigation procedure within Europe. Again, the EPO is very supportive of industry's wish and would like to see the EPLA submitted to an intergovernmental conference for adoption as soon as possible. I am further encouraged by the recent positive support given to this initiative by the European Parliament.

Returning to the consultation process as a whole, the European Commission is now reviewing the various views and proposals submitted and expects to announce the options it intends to pursue as a result of this exercise by the end of the year.

[The Challenges and the Mandate]

Ladies and gentlemen, allow me now to turn to the current challenges facing the global patent system and indicate how the EPO, particularly through listening and acting on the concerns and recommendations of all stakeholders of the patent system, intends to play its part in overcoming them.

Moreover, this is a role that the European Patent Organisation now wishes to play more dynamically and more pro-actively on the

international, and particularly Trilateral, stage. To this end, the Organisation's Administrative Council approved last month a mandate for me to discuss, explore and propose possible solutions to these challenges on behalf of the European Patent Office and its contracting states.

This, ladies and gentlemen, is a historic milestone within the framework of the Trilateral Co-operation as regards the contribution of the European Patent Office.

The challenges which dominate the current patent landscape are, as we all know too well, the rapidly growing numbers of patent applications and their consequent growth as workload and backlogs in many parts of the world. The effect of these increases threaten the foundations upon which the whole patent system works and affects, in particular, quality and timeliness.

[PCT vs. others]

In order to overcome the challenges new proposals have been put forward by some of the Trilateral Offices. While the EPO has contributed to the debate on the viability of these projects it has made it clear that it sees the PCT as the primary vehicle for the processing of patent applications at the international level and is opposed to any project which might jeopardise or hinder the continuing development of the PCT both in terms of increasing usage by applicants and geographical expansion of membership, in particular the inclusion of developing countries.

This is not to say that the PCT in its current form is ideal. Much more work clearly still needs to be done. Indeed, the recent pace of reform at the PCT has in fact been so rapid as to necessitate a period of relative consolidation in order not to create too much confusion on the part of the applicants and national offices with regard to recent changes. If this is true for the PCT, then surely the establishment of entirely new international legal instruments or new procedures for the handling and evaluation of application search and examination results, will not likely contribute to any greater efficiency, nor reduce complexity, nor provide consistent quality of service within the global patent system.

The EPO believes that the PCT reform exercise since the year 2000 has led to many real gains to the system. Moreover, significant progress has been made in recent years in establishing and defining agreed quality management system standards as incorporated into Chapter 21 of the PCT international search and preliminary examination guidelines. This year has seen further developments with agreement in the PCT MIA on common reporting templates which will allow for more transparent and effective monitoring of quality compliance. The EPO has also carried out a study into PCT costs wherein it seems clear that the financial savings associated with the PCT filing route, particularly in the later logistical expenses, outweigh the minor additional costs linked to initial filing costs.

Consequently, the EPO's preference would be to concentrate Trilateral efforts in the short and medium term on tackling those aspects of the PCT which are still seen in some ways as deficient. This would focus at present on supporting current projects which have the potential to significantly improve the PCT system, such as:

- supplementary international searches;
- international publication in multiple languages;
- provision of a digital library for priority documents;
and
- continued developments regarding quality issues in the context of the aforementioned Chapter 21.

The supplementary international search aims to introduce a multiple search facility into the PCT which would again clearly benefit quality. The publication in multiple languages would mitigate the effects of certain national law provisions which can discriminate between domestic and PCT filings regarding prior art effect. While the establishment of a digital library for priority documents would bring extensive benefits to users as regards convenience and costs. And I need not underline again the absolute importance the EPO attaches to quality and the need for constant efforts to improve it, in this case within the context of the PCT system.

But on a practical and immediate level with the Trilateral Offices, how can we co-operate together in meeting the challenges of ever increasing application numbers and backlogs?

[Long-term sustainable improvements]

Well, first of all, efforts should be redoubled in achieving sustainable, long-term improvements in the global patent system through the improvement of quality standards and the harmonisation of tools and practices of the Trilateral Offices, particularly in view of how best to:

- utilise our work more effectively and efficiently;
- further improve compatibility between our IT systems;
- develop e-business tools such as e-filing, electronic exchange of documents and e-learning;
- achieve harmonisation of our classification systems,
- improve dissemination of patent information;
- improve our joint technical cooperation throughout the world; and
- raise public awareness of the benefits of the patent system more effectively.

[Harmonisation]

In order to achieve all this we must start with the elements necessary for building an efficient global patent system: harmonised law, harmonised practice and a system of quality promotion, maintenance and control. The Trilateral Offices should immediately focus on those projects required to achieve this. This should be our primary goal which is both realistic and achievable in the relative short term.

As regards the first element, harmonisation of substantive patent law, this should continue to be forcefully pursued within the Group B+ with the maximum of Trilateral co-operation and weight behind this process to achieve significant progress.

The second element, harmonisation of practices, is something that the Trilateral Offices have been working hard for many years to improve, but which efforts should be redoubled and refocused on practical issues such as on concluding the harmonisation of our classification systems or the completion of a common patent application format. In unison with industry and users, the European Patent Office realises the utmost importance of such immediate goals.

[Utilisation]

As I have mentioned earlier, the EPO is moving on with the creation of the European Patent Network, wherein pilot studies of work utilisation and user support activities and work groups regarding quality aspects and future workload considerations have been started and will be ready for assessment by early 2008. The results of all these studies and activities will be shared with our Trilateral partners.

Overall, the EPO's clear short-term objective, therefore, is to promote practical changes that are long overdue and which would by themselves present improvements for users, regardless of whether they are followed up by more fundamental legal and procedural changes.

[Conclusion]

Ladies and gentlemen, this is my final Trilateral Conference as President of the European Patent Office, but it is one that I am sure marks the beginning of a new era of Trilateral Co-operation with all the stakeholders of the global patent system working ever more closely together and that the future offers more opportunities than challenges.

Thank you, *arigato gozaimasu*, for your kind attention.