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Group B+ Plenary Thirteenth Session Geneva, 3 October, 2017

SUMMARY OF DISCUSSIONS

prepared by the Secretariat

1. Opening of the meeting and adoption of the agenda

The Plenary session of the Group B+ took place on 3 October 2017 in Geneva. The meeting was chaired by Ms Patricia Kelly, Director General, IP Australia, while the EPO acted as Secretariat.

2. Cross-border aspects of client-attorney privilege

The CH delegation provided an update on the ongoing work on the crossborder aspects of client-attorney privilege and noted that the Group B+ was the only forum capable of achieving a tangible outcome.

The delegation of AIPPI recalled the importance of this topic for the IP community. Progress was overdue and AIPPI continued to support the efforts and the work undertaken. Protection should apply regardless of the subject-matter communicated in all phases of the IP life cycle – this was particularly essential for companies operating globally. AIPPI welcomed the way forward proposed by the CH delegation.

The US delegation updated on domestic progress particularly with regard to a proposed rule extending privilege to foreign practitioners before the Patent Trials and Appeals Board.

The Chair summarised that the Group was supportive of the work led by the CH delegation, which should now focus on the definition of professional advice. A draft agreement would be submitted for the consideration of the Group B+ Plenary in 2018.

3. Patent Law Harmonisation

In her introduction the Chair stressed the increased activity on this item over the last year. It was decided not to proceed with a consultation paper, but to engage more intensely with the users. A lot of work had been invested both by the Industry Trilateral as well as the B+ Sub-group and the EPO had hosted the Users' Symposium on Substantive Patent Law Harmonisation in June including users and key international organisations beyond the framework of the Industry Trilateral.

Update on progress within the Group B+

The delegation of the UK pointed out that a major outcome of the Symposium was that the B+ Sub-Group committed to producing a formal response and to providing detailed feedback to the Industry Trilateral. While the focus remained on the principles, users were encouraged to develop pragmatic proposals aiming to simplify the system.

Update on progress within the Industry Trilateral

The delegation of Business Europe provided an update on behalf of the Industry Trilateral.

The Symposium was indeed very useful also because it allowed for a wider representation of users' interests. Industry Trilateral was much closer to achieving consensus in many areas of work. Significant progress had already been made regarding the definition of prior art, where Industry had reached consensus in principle. Similarly, progress had been made regarding conflicting applications, while anti-self-collision remained a contentious topic. A series of further physical meetings was planned to work on the outstanding issues. In the course of 2018 and in order to advance work on Substantive Patent Law Harmonisation Industry Trilateral would come together on 31 January 2018, on the occasion of the Global Dossier Task Force meeting in Japan; 1 March 2018, on the occasion of the Industry Trilateral meeting in Japan; and 11 June 2018, on the occasion of the IP5 Heads and Industry meeting in the USA.

The delegation of AIPLA provided additional details as to some of the topics the Industry Trilateral was addressing. Accelerated publication was explored in cases where a grace period had been claimed. Incentives for applicants to identify pre-filing disclosures were discussed. The concept of the Defence for Intervening Users (DIU) was considered when the statement invoking the grace period was not provided in a timely way, while, at the same time, the compatibility of the DIU with the Paris Convention was examined. The interaction between the Grace Period and the Prior User Rights as well as the qualifying activities for Prior User Rights were also discussed. Finally, the AIPLA delegation stressed the importance of sharing information relevant to the Industry Trilateral work with a wider user audience.

Next steps

The JP delegation which would be in charge of the Group B+ Secretariat for 2018, expressed the wish that Industry Trilateral would progress in a timely manner. Furthermore, it noted concerns with regard to accelerated publication which could have detrimental consequences, in case the application contained more information than the initial disclosure. Also, it was felt that the DIU proposal was based on a creative idea, but would potentially add complexity to the system.

The delegation of DE was pleased with the current status of work and was hopeful that more progress would be achieved in the future. Engagement with Industry remained extremely useful. The material available provided a solid basis for future work. Nonetheless, for a successful future user consultation it was essential to provide structured information and formulate questions in a clear and precise manner.

The EPO delegation thanked both the Chair and the Industry Trilateral for the work undertaken so far. The subject-matter was highly complex, hence, additional time was required to clarify contentious points and develop a balanced, well-structured and comprehensive package that would from the basis for a consultation.

Similar comments were made by the delegation of the US that argued that the Industry Trilateral should have sufficient time to elaborate the concepts it was developing.

In terms of next steps the Chair concluded that the meeting initially proposed for February 2018 would be moved to a later point in time, while the Plenary Group B+ 2018 would consider an Industry led harmonisation package and a users' consultation strategy. The Chair encouraged activities that would enable the engagement of a wider audience including, for example, SMEs and universities with substantive patent law harmonisation issues. All relevant material was available via the Group B+ website.

4. Updates on significant regional developments*

IP5 activities – summary of the IP5 Heads of Office and IP5 Industry meeting

The EPO presented a summary of the recent IP5 Heads and IP5 Industry meeting that took place in Valetta, Malta on 31 May 2017.

The Group B+ members took note of this presentation.

Unitary Patent and Unified Patent Court

The delegation of EE in its capacity as Presidency of the EU updated on the ongoing work as regards the Unitary Patent and the Unified Patent Court. This endeavour was kept very high on the Presidency's agenda. Particular reference was made to the national ratification proceedings as well as to the signature of the protocol of provisional application. It was hoped that the constitutional motion brought before the German Constitutional Court would not delay progress on this item.

The BE delegation recalled that the Unitary Patent and the Unified Patent Court presented major advantages in terms of legal certainty, cost savings and simplicity and reported on the work on the implementation of the Unitary Patent package within the EPO Select Committee. All implementation steps had been completed and once the Unified Patent Court came into force, the system would become fully operational.

Finally, the delegation of SE provided a progress update on the work establishing the Unified Patent Court.

The Group B+ members took note of this information.

Impact of Brexit

The UK delegation updated the Group B+ on the issue of Brexit.

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^{*} Closed session: Group B+ delegations only

This remained a sensitive topic. In the short term regarding IPRs very little was expected to change, and this also applied to the endeavour to establish the Unitary Patent and the Unified Patent Court. The UK delegation also noted its commitment to the work of the Group B+.

The delegation of the EC referred to a position paper it had published on IPRs explaining the UK disentanglement issues. The paper did not include the Unitary Patent as this was currently not applicable.

The Group B+ delegations took note of this information.

5. Future agenda of the Group B+*

The Chair noted that CAP and SPLH have been on the B+ agenda for quite some time and invited input on potential future agenda items.

The UKIPO highlighted that in recent years, in addition to its current agenda, this group had looked into what it could do in IT related areas, and there appeared to also be interest in practical measures that could help promote the global patent system, such as WIPO DAS and increased use of such systems.

The Chair asked delegations to think about future agenda items and whether the Group should stick to SPL or broaden its agenda. She indicated she would be happy to receive input over the coming months.

6. Adoption of the draft Group B+ statement*

The draft Group B+ Statement was adopted.

7. Summary and close*

The Chair thanked the delegations for their contributions and closed the meeting.