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B+/PL/10/13

ORIGINAL: English

DATE: 23/9/2014

Group B+ Plenary Tenth Session Geneva, 23 September, 2014

MEETING REPORT

prepared by the Secretariat

 The annual Plenary session of the Group B+ took place in Geneva on 23 September 2014. The meeting was chaired by John Alty, CEO and Comptroller General UK IPO, while the EPO acted as Secretariat.

I. CROSS-BORDER ASPECTS OF CLIENT ATTORNEY PRIVILEGE

- 2. The delegation of CH introduced the document that was co-sponsored by the delegations of CH, SE and the UK. The document pointed out the inadequate protection of the provision of legal advice and in particular the lack of cross-border protection. It proposed that a multilateral agreement setting minimum binding standards was necessary in order to enhance legal certainty as to the confidentiality of legal advice.
- 3. AIPPI and FICPI representatives admitted to the meeting for the introduction of this agenda item in an observer capacity confirmed the need for coordinated action and underlined the advantages, if client-attorney privilege were to be established globally.
- 4. A large number of delegations expressed support for the initiative and confirmed their commitment towards the resolution of this important issue. While the Group B+ was regarded as the appropriate forum to deal with this item, it was felt to be important that a critical mass of countries participate in the exercise and some members suggested a soft-law approach, i.e. a non-binding framework should be considered in order to encourage this. Concerns were also expressed as to specific elements of the current draft agreement, particularly as regards the limitation of its application to IP attorneys only, its potential impact on the rules of procedure regarding discovery in civil or criminal procedures, the definition of the IP adviser and the lack of flexibilities for in-house counsels.
- 5. The delegation of CH thanked the participants for their input, which would be duly taken into account in the revised version of the document. At the same time delegations were encouraged to include their competent authorities and stakeholders at national level and provide additional comments by March 2015 at the latest so that a revised version of the paper including, if appropriate, the draft agreement could be made available to Group members for review before the summer break 2015. All comments received from delegations would also be circulated.
- 6. The Chair concluded that delegations remained committed and supported further work to be undertaken. A number of countries would have challenges to deliver the measures as set out in the agreement, but delegations should now establish at the national level what they could commit to so that the next version of the agreement reflected the best possible outcome which would command the necessary critical mass. As requested comments should be given to the CH, UK and SE coordinators no later than March 2015. He would report the outcome of the meeting to the business representatives.

II. PATENT LAW HARMONISATION

- 7. In his introduction the Chair recalled that no further progress was made as regards the involvement of CN in the B+ process and confirmed that there were no immediate plans for a change in the B+ membership.
- 8. The EPO reported on the outcome of the Tegernsee exercise and provided a brief analysis of its findings particularly as regards the issue of the grace period.
- The JP delegation briefed the participants on the Tegernsee Symposium which was hosted by the JPO in July 2014 and was focussed on the grace period.
- 10. A report on the recent developments within the IP5 Patent Harmonisation Experts Panel (PHEP) was delivered by KR.
- 11. With reference to document B+/PL/10/3 (Chair's note) the Chair introduced his views on how the Group B+ could engage with work in the area of substantive patent law harmonisation. While there seemed to be considerable interest on harmonisation among B+ delegations as well as national and regional stakeholders, neither the role nor the involvement of the Group B+ were entirely clear. Taking advantage of the existing momentum it was essential to define the appropriate forum and determine the terms upon which countries could advance work on substantive patent law harmonisation issues. Subject to the members' consensus a first step towards enhancing the value of the B+ process would be the establishment of a sub-group that would assist the Chair in providing the B+ Plenary with direction also in coordination with industry representatives and users.
- 12. The majority of delegations expressed support for the Chair's note and in particular the proposal to establish a sub-group and to actively involve Industry in the process. Many delegations noted that the issues relevant to substantive patent law harmonisation are best dealt with within a multilateral environment and that transparency was key to the process. Some delegations wanted to see progress on a package of measures, while other delegations preferred to discuss issues without a predetermined linkage between topics.
- 13. The US delegation drew particular attention to a roundtable scheduled to take place in the US in November 2014 with the objective to validate the direction of the harmonisation exercise framed around the issues of the so-called reduced package (with its focus on initiatives facilitating work sharing) and, subsequently, to identify practical and concrete goals.

14. The Chair concluded that there was broad support for the reintroduction of the discussions on substantive patent law harmonisation into the B+ process and invited members to confirm their interest to contribute to the work of the sub-group. The group would then consider the options, taking account of industry discussions, for progressing this agenda. He would ensure transparency with the full B+ Group and that decisions on further work were endorsed by the Group.

III. INVOLVEMENT OF INDUSTRY IN THE WORK OF THE GROUP B+

15. The discussions confirmed the positive attitude of the Group towards the involvement of Industry in the B+ process on an ad hoc, case-by-case basis.

IV. PROGRESS ON MULTILATERAL INITIATIVES

- 16. The JP delegation gave an update on the developments in the area of the Patent Prosecution Highway (PPH). In light of the discussions during the recent meeting of the WIPO PCT Working Group the WIPO delegation pointed out the difficulties in currently pursuing the proposal to formally integrate the PPH into the PCT and concluded that work-sharing on the basis of the PPH did not seem to be an agreed concept yet.
- 17. The UK delegation reported on progress in the endeavours undertaken to further improve the PCT and promote its use, while the US shared information as to the recent activities in the field of the IP5 cooperation.

V. IT RELATED DEVELOPMENTS

18. The Group took note of the recent progress in developments within the IT work stream, the WIPO CASE and OPD linkage and the Global Dossier as reported upon by the delegations of AU, JP and the EPO respectively.

VI. UPDATES FROM DELEGATIONS ON SIGNIFICANT NATIONAL DEVELOPMENTS

19. A series of delegations provided updates on important national developments. The AU delegation made particular reference to the decision of the Australian Federal Court in the Myriad case, according to which isolated gene sequences are patentable. An application for special leave to appeal before the Australian High Court had been sought. If granted, a final judgement on an appeal could be expected in 12 to 18 months. Furthermore, the delegations of the EPO, NL and the EC reported on the status of the work towards the establishment of the UPP/UPC.

VII. ADOPTION OF THE GROUP B+ STATEMENT

20. The Chair said that a revised Group B+ Statement reflecting the discussions during the Plenary session would be made available to Group members in due course together with a note summarising the discussions.