

Tegernsee Report from the Danish Patent and Office – based on the results of the user consultation

Summary

The DKPTO has received 8 responses to the survey posted on the DKPTO website. Subsequently, the DKPTO hosted a user meeting where participants substantially where those who responded to the user survey.

User responses on each of the four topics have been fragmented with no firm or clear tendencies or preferences.

On grace period users where flexible both to content and length; they were anyway well aware of the differences across jurisdictions and were able to manage in those differences. However, if harmonized it was important that its contents and length should be the same across jurisdictions.

Publication of the patent application appeared to be the most important topic to harmonize. 18 month publication was a good compromise, and the US opt-out possibility introduced serious uncertainty.

On conflicting applications users viewed that the European model stroke an appropriate balance. There was no clear attitude on whether an anti-self collision mechanism should be part of a system. Collision should preferably only appear against novelty.

Prior User Rights were practically never used. Prior user rights is a national issue, however, companies operate in an international environment. PUR's were less relevant to harmonize.

To summarize, users have some pragmatism and flexibility on the topics. Users do not have firm opinions on wishing harmonization on the individual topics; this should be seen as a package which should be balanced.

Grace Period

Generally, users are well aware of the differences of a grace period in each jurisdiction and operate accordingly.

Users generally perceive that a grace period introduce legal uncertainty and prediction.

Users where mixed on the length of the grace period and the use of a declaration, but all users responded that a grace period should be counted from the earliest priority/filing date.

Certain users explained that they could be able to support a grace period system along the lines of the US system. Users increasingly co-operated with universities which were difficult to control, as researchers often like to explain their inventions. A grace period could remedy such a disclosure when filing a patent application.

In essence, users where not firm on the content of a grace period or the length of a grace period. It was, however, important that any harmonization should harmonize all elements of a grace period system.

Publication of Applications

18 month publication is perceived as the best period and the results of a search/examination should be available in good time before publication.

The US opt-out of 18 month publication is viewed as a problem, as later “submarine”-publications may cause severe damage. None of the users had negative experience with such “submarine”-publications, however this was not an issue to measure in a quantitative manner; the potential effect was serious.

18 month publication was viewed as the most important topic to harmonize.

Conflicting Applications

On conflicting applications users viewed that the European model struck an appropriate balance. There was no clear attitude on whether an anti-self collision mechanism should be part of a system.

Collision should preferably only appear against novelty. It was considered unfair that collision could appear against inventive step, as the applicant would have no chance of having knowledge to colliding prior art that was not published on the date of filing.

Further, users viewed that the effective date of a conflicting PCT-application was the earliest priority/filing date, and a PCT-application should only be conflicting if it entered the relevant regional/national phase.

Prior User Rights

Users have little or no experience with prior user rights.

Users view that actual use or preparations, or both, shall give rise to prior user rights.

There shall be no exceptions to prior user rights for any patents/institutions, and prior user rights should be acquired before the priority/filing date.

Users noted that prior user rights are a national issue while companies operate internationally.

Users did not view a harmonization of prior user rights to be essential.