

NOTE

8 February 2007

Danish Views on the EPO Strategy Debate

Even though Denmark fully supports a strong EPO, it is obvious that the present European patent system has a number of shortcomings and faces severe challenges within several areas. These challenges were at the heart of the so-called "EPO strategy debate".

Prolonged patent processing times

It is necessary to address the current challenges with prolonged patent application processing times in Europe and not least in the European Patent Office. The present situation is directly hindering economical growth as long processing times prevents both the patent applicant and third parties from taking business decisions of significant economical value. The fast rising number of applications coming in from Asia makes this even more important.

Recently, we have seen a decline in efficiency at the European patent Office. Combined with an increasing number of applications, it is a dangerous cocktail for the European users and it has led to a rise in the processing times. A continuously increasing size of the European Patent Office is not the answer to this challenge. Further growth of the European Patent Office will inevitably lead to a further decrease in efficiency. It is thus not a feasible path in an economical and structural context.

To counteract the described development, a future European patent system needs to make use of the possibilities that modern information technology offers in relation to re-utilization of work and outsourcing. Re-utilization of work is essential if duplication of work is to be avoided. Avoiding duplication is one of the keys to bringing down the processing time of patent applications in Europe. A close cooperation between the European Patent Office and the national patent offices is required in order to avoid such duplication of work. This Cooperation should entail the creation of a European patent network, where re-utilization of work done by other offices can be implemented. In a situation where resources are in short supply doing the same work twice is obviously not an ideal solution.

Quality is essential in any work sharing scheme. Therefore, a prerequisite for re-utilization, work sharing and outsourcing is the establishment of a common European patent quality system and a European standard for search and examination.

Quality of patents

The European politicians and public have expressed severe doubts about the quality in granted patents. It is absolutely necessary to regain the European public's general

support to the patent system. For this reason, there is an urgent need to address the issue of quality in patents. Patent quality should therefore be put high on the patent policy agenda. Denmark, Germany and The Netherlands have raised this issue in the Administrative Council of the European Patent Organization.

Top grade tools like documentation services and information retrieval technology are indispensable for a truly efficient state-of-the-art processing of patent applications. It requires resources to both develop and maintain such tools. The sheer size and resources of the EPO makes it better suited than most national offices for developing and maintaining such tools. This fact should of course be exploited.

These principles, however, do not apply to the handling of patent applications. In this process, the performance of the examiner is decisive for the quality of the work as perceived by the applicant. Excellent examiner performance can also be achieved in smaller offices, in particular if sufficient attention is given to quality assurance. Another fundamental component of our proposal is therefore, as mentioned above, to enhance quality assurance by establishing a quality assurance system covering EPO and all national patent offices' (NPOs).

Local IP competences

Future innovation and economical growth in Europe will to a large extent depend on contributions from small and medium sized companies. These companies are located all over Europe, and we should stimulate and support their growth.

The NPOs continue to be in demand by users and play a role of growing importance in supporting innovation at local level. As a matter of fact, only 9% of European patent applications from European applicants are EPO first filings. The rest passes through a NPO before going to the EPO.

There are several reasons for this:

- It is essential to have access to professional IP competences and services at national level under conditions tailored to the national needs. Users are not a homogeneous group. They have different language and IP skills and they are located in countries of much diversified stages of industrial and innovative development. This creates a need for customized interfaces to the IP system through the NPOs and covering all kind of services ranging from searches over help desk functions to awareness activities and education.
- The expansion of the EPO to now 31 contracting states has made this need even more prominent.
- Growth in European innovation has to an increasing extent been attributable to the activities of SMEs located all around Europe. They have a particular need for the services provided by the NPOs. This development will continue and even accelerate in the future.
- The technical development has made it possible to carry out searches at any geographical location without physical access to huge paper-based search files.

The different roles of the NPOs and EPO should therefore be reconsidered.

Conclusion

The ultimate objective of the European patent system should be to support innovation in Europe and improve Europe's competitiveness on a global market in accordance with the Lisbon agreement. Since innovation takes place in the contracting states and requires support from local IP competence centers, the innovation will not be enhanced by a simple streamlining of the existing geographically centralized system. A streamlined and efficient system offering high quality is necessary, but it is also necessary to give much more attention to bringing the system closer to the users and those it in fact affects.