



7-23-15

Mr. John Alty
CEO, UK Intellectual Property Office
Chair, Group B+ Sub-group on Patent Harmonization
Via email Group B+ Secretariat: saito-kenji2@jpo.go.jp

Re: IPO Comments on Group B+ Objectives and Principles Paper

Dear Chairman Alty:

Thank you for the opportunity to review and respond to the June 2015 cover letter from the B+ Chair and the accompanying Objectives and Principles Paper (B+/SG/2/10, 27May2015) produced by the B+ Sub-Group on Patent Harmonization. We welcome the B+ Sub-Group's interest and involvement in patent harmonization topics, and applaud the Chair's leadership and the transparent process being followed to include non-government stakeholder input.

IPO is a trade association representing companies and other members across all industries and fields of technology that own or have intellectual property rights interests. IPO's membership includes over 200 companies and 12,000 individuals worldwide that are involved with IPO either through their professional role with an employer, or as inventors, authors, entrepreneurs, or legal industry professionals.

We find the B+ Paper helpful in understanding government thinking on harmonization topics and the areas where there is alignment and areas where alternatives exist. More importantly, it is refreshing to see the B+ Sub-Group step back to take an objective studied approach to articulating clear objectives and policy considerations in the interest of all stakeholders in an international patent community.

IPO is a member of the Industry Trilateral group, and we are encouraged that the B+ Paper's content and approach appears substantially aligned with the approach taken by the Industry Trilateral group and the May 20, 2015, "Policy and Elements" working paper we produced. IPO supports the "Objectives of the Global Patent System" stated on page 1 of the B+ Paper, and we plan to separately study and provide comments on the five substantive topics addressed in the B+ Paper in due course.

In the meantime, we believe that it is beneficial for us to submit feedback to you on the four operations-oriented questions noted on page 2, item 9 of your June 2015 cover letter. The comments below address each of these questions in turn. (We have labeled them 1-4 for reference.)

1. Where consensus has been reached within the sub-group, are there any further considerations which need to be taken into account when developing proposals?

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IPO believes that we need to consider the impact of any agreed upon changes in the context of different patent systems and litigation environments. Thus, to the extent possible, patentability requirements should be based on objective standards, to avoid uncertainty and disparate results depending on the legal system.

Consider, for example, a requirement for a declaration or similar disclosure for entitlement to a grace period (known also as an exception for non-prejudicial prior art) to the extent known to the applicant. What are the consequences of a failure to respond? How do you determine what the applicant knew and when he knew it? How will such a determination be made, and who will make it? What will happen in litigation in countries with extensive discovery procedures versus those countries without discovery? As noted in the Industry Trilateral paper, very different results would be obtained for this same declaration requirement depending on the legal system involved.

IPO notes that there is a significant amount of overlap and agreement between the B+ paper and the Trilateral User Group's paper, so consideration should be given to maximizing the points of agreement between the offices and the user groups.

Also, IPO, as an organization representing users including individual inventors, as well as SMEs, academic institutions, and larger corporations, urges that the proposals should take into account the needs of all users of the IP system, including third parties.

2. Where members of the sub-group currently hold differing views, how should competing considerations be balanced, and what new approaches might reconcile these differences?

IPO believes that the overriding principle should be what is best for the system generally. The question should be: how can we develop a system that provides the right kinds of reliable incentives for innovation among the various countries? IPO has long advocated for a system that provides uniform, objective, predictable, and cost effective acquisition and enforcement of patents globally. Less consideration should be given to concerns over how much the revised system will change the long held policies of any particular system. International harmonization efforts have historically been very accommodating to individual legal systems that require time to make changes necessary to achieve agreed-upon international norms.

To the extent offices have done studies of the usage of provisions being discussed, particularly the impact on the incentives for innovation, such studies should carry significant weight in any deliberations.

3. When developing proposals, how important is it that the various aspects under consideration are progressed together, and which aspects, if any, can be progressed separately?

One of the threshold issues discussed among the Trilateral Industry Group members has been that the proposed changes should be considered as part of a package. That is the context in which the discussions have progressed, and we cannot assume that there is support by any group for any change in isolation from the other. Thus, IPO continues to believe in pursuing as comprehensive a package as can be achieved. Indeed, in the context of the issues being discussed in the B+ and Trilateral Industry paper, there is quite a bit of interrelation between the concepts discussed, e.g., between grace period and prior user rights, and between prior art and conflicting applications.

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4. How should these and other discussions, for instance amongst industry stakeholders, move forward, so that areas of consensus can be formally agreed and implemented?

Since there is a significant overlap between the work of the B+ group and the Trilateral Users group, IPO supports the creation of a combined document showing the areas of consensus, and identifying areas where further discussions are warranted.

Further, as noted above, IPO believes that all stakeholders including users (individuals, SMEs, academic institutions, and larger corporate applicants), third parties, and other members of the public, should be taken into account. It would be ideal to have their involvement in the process as we proceed.

In conclusion, we note that this process comes at a critical time for the IP systems of the world. We have seen that some parties have criticized or questioned the value of patents as an incentive for innovation. IPO believes that the patent system is essential to providing the incentives for innovation to solve the myriad unmet needs of the world. If we can have a coalition of offices, users, and the general public all urging for a system providing for uniform, objective, predictable, and cost effective acquisition and enforcement of patents globally, it is more likely that will be accomplished.

IPO appreciates the opportunity to comment on the B+ process. Please let us know if you have any questions or concerns. We look forward to future discussions.

Sincerely,



Herbert C. Wamsley
Executive Director