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Conference on the occasion of 85th anniversary
of Industrial Property Protection in Poland

Policy of the European Patent Office in the context of enlargement of the European Union by new countries, including Poland

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The Under Secretary of State of the Ministry of Justice, Mr Krystowski,

the President of the Patent Office of the Republic of Poland, Dr Adamczak,

Eminent speakers,

Distinguished Ladies and Gentlemen,

1. Purpose of speech

It is a great pleasure for me to be here with you today at this conference in Warsaw, not only celebrating the auspicious occasion of 85 years of industrial property protection in Poland, but also to greet Poland and especially the Polish Patent Office, as they stand on their respective thresholds of accession to the European Union and the European Patent Convention early next year. It is, therefore, more than a usual honour, for me to speak to you about the future of the European patent system, and in particular to discuss the roles of the European Patent Office (EPO) and the National Patent Offices of the member states of the European Patent Organisation, in which Poland will very soon play an integral part.

2. The Enlargement of the European Patent Organisation and the European Patent Office

Let me, however, give you first of all, a brief background to the European Patent Organisation and its executive arm, the European Patent Office. These were created in 1977 when the European Patent Convention, or the EPC for short, came into effect in seven European states. The EPO is not an EU institution. It is entirely self-financing and is administratively autonomous.

The establishment of the EPC was, in itself, a breakthrough in European patent law, offering a centralised patent grant procedure, whereby an applicant can obtain protection in some or in all of the EPC states. The benefits to the applicant of the EPC procedure, rather than applying separately for the corresponding national patents, are enormous.

The number of member states of the European Patent Organisation has risen substantially in recent years. This is particularly true as a result of the Administrative Council's historic decision of July 1999 to invite 10 countries in Central and Eastern Europe from behind the "Iron Curtain" to accede to the Organisation from 1 July 2002 onwards. The Organisation now comprises 27 member states.

3. New Member States

Poland will be the next country to join the Organisation. Thereafter, Latvia and Lithuania will join. Also joining early next year will be Malta and Iceland, such that

by mid 2004, the European Patent Organisation will number 32 member states. We also look forward to welcoming Norway when it decides to join.

Moreover, as a consequence of Extension Agreements signed with Albania, Croatia, the Former Yugoslav Republic of Macedonia, Serbia and Montenegro, and very soon with Bosnia and Herzegovina, European patents may also be validated in these countries. All these countries will also be member states of the European Patent Organisation, as well as the European Union, in due course.

Therefore, there are likely to be 38 member states in the near future. Finally, but of major importance, the introduction of the Community Patent will mean that the European Union itself will be the 39th Party in the European Patent Organisation.

When these accessions are completed, the EPC area will form the largest single patent region in the world - a single grant procedure which can lead to patent protection in a potential market of more than 450 million people, considerably bigger than that of the USA and Japan put together. We will thereby have achieved a remarkable unification in the patent regime across the continent of Europe.

Although the European Patent Organisation will itself be more complex through this enlargement, it will, however, be a more diverse and richer institution, with the new member states playing an important active role in the Organisation. In particular, Poland must play not only an active and constructive role in the Organisation, but also a major role which corresponds to its economic and historical importance in Europe.

4. The RIPP Programme

This unification and the enlargement of the European Patent Organisation have been well prepared. From the beginning of the 1990s, the EPO has been committed to work closely with the national patent offices of Central and Eastern Europe and has played a fundamental role in integrating and harmonising the legal and institutional infrastructures of these countries into the mainstream IP structures of Europe, such as the European Patent Convention.

From 1993 to 2001 the European Commission and the European Patent Office conducted joint programmes - notably the Regional Industrial Property Programme - in the region, investing together more than EURO 15 million with the aim of improving not only the work of the national industrial property offices in the region, but also of developing all aspects of IP protection in the national systems.

5. The CARDS Programme

A similar programme to the one completed for the Central and Eastern European countries has recently been launched for the countries of the Western Balkans. The new programme, called CARDS, which stands for Community Assisted Reconstruction, Development and Stabilisation, will involve Albania, Bosnia and

Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, and Serbia and Montenegro.

6. Patents and the Economy

The patent system is of fundamental importance in the development and consolidation of market positions. By providing protection for the underlying inventions, patents make products marketable. In the context of a global, knowledge-driven economy, effective patent protection is often the key to investment and the availability of venture capital.

This is now also recognised by policy-makers in politics and business. The promotion and protection of innovation are among the top priorities in modern economic policy. The European Commission and national governments and parliaments now concern themselves with detailed issues of patent law, which always used to be left to the experts. The general public, too, has now discovered patent law. The technological revolution in biotechnology and IT is making an increasingly visible mark on everyday life and is becoming a subject of broad debate, not least thanks to patent office publications.

What needs to be further realised is that a market in patent rights has now developed and that the patenting system is no longer solely about managing risks for inventors, but that it does so also for investors, competitors, partnerships, licensees, standard bodies, consumers and nation states. The patenting system in Europe therefore has become a key element in the success of the European economy.

7. Relationship between economic development and patents

Allow me to mention but a few numbers so as to provide evidence of the growing importance of patenting. In 2001 patent licensing revenues were worth more than €120 billion[1] EURO worldwide or the equivalent of 11%[2] of the combined earnings of the world's quoted companies. This is in spite of the fact, deriving from research recently carried out by the EPO, that on average, only 13% of patent portfolios are actively licensed.

Moreover, on a macro-economic scale, recent research shows that the strength of a patenting system has a direct influence on the economic growth of a country. Research carried in 1996 suggested that economic growth induced by intellectual property rights is around 0.66% higher per annum in open economies than in closed economies. This is because countries with closed economies do not benefit from intellectual property rights to the same extent, as the competitive conditions in these countries are inadequate to stimulate innovation[3].

[1] "Rembrandts in the attic" by Kevin G. Rivette and David Kline. They in turn quote The Economist, Fred Warshofsty's "The Patent wars" and Aurigin Systems Inc.
[2] Calculation by EPO with thanks to SMG Consulting and Morgan Stanley Dean Witter
[3] David M. Gould and William C. Gruben, "The role of intellectual property rights in economic growth", in the Journal of Development Economics, 1996, vol. 48, pages 323-350

Indeed, further research in 1998, taking into account the rather significant differences in patenting systems between regions and within Europe concluded, "that, other things being equal, countries with stronger intellectual property rights attract larger volumes of licensed technology…"[4].

When we talk about living in a "knowledge society", what we mean is not only that our technical knowledge is growing at an exponential rate, but also that the systematic exploitation of this knowledge using worldwide protective rights has become a cornerstone of corporate strategies in the global economy.

8. The European patent system in the Knowledge-based Society

Having outlined the role attributed to the patent system by today's global economy, let me turn to the consequences of this development for the European patent system. More than ever, it must be emphasised that the mandate for the European patent system is to produce economic value for Europe. All our future actions must be determined by this maxim.

A major task will be the improvement of synergies between the national patent offices and the EPO, with a view to enhancing the value of the European patent system in the interest of users.

In this context, it is important to note that today's demands on the European patent system are different to the demands in the early seventies when it was created. In those days, there was the very real, post-war political philosophy of a peaceful, trading community of member states. Economically, the main risks were to obtain the same monopoly rights and scope of protection in each European state.

These perspectives are still relevant, but the economic risks are very different today. Nowadays, globalisation, the single market, the Euro, deregulation and privatisation, TRIPS, and the knowledge economy - a market in ideas - dominate the economic landscape of Europe and the World.

The EPO and the national offices must enable the various economic actors to manage their global risks efficiently. The issue is not therefore one of re-nationalisation or outsourcing - the issue is one of complementarity of roles helping Europe to compete globally in the knowledge economy. The issue is how the European patenting sub-system (as part of the European patent system) can create global value for Europe. The issue is to re-configure the patenting business in Europe such that the EPO and the National Patent Offices are complementary institutions with the same mission.

Fundamentally, the reconfigured system must offer increasing security during the lifetime of a patent and enable the functioning of an efficient market in ideas. All institutional actors, the national patent offices, the EPO, the EU and the patent courts must be focused on the added value they deliver. The logic here is not to give the users what they want - this would simply undermine the patent system. The main logic behind having a service provider focus means that these

[4] G. Yang and K.E. Maskus, "Intellectual property rights and licensing: an econometric investigation", November 1998

institutional actors will understand the economic, social and legal risks of all economic and social actors and will act to manage these risks in an efficient way.

9. Mastering the Workload and Quality

The EPO recently described the worldwide economic context in which it must assume its mission as the Patent Granting Authority for Europe and analysed the current workload situation at the Office concluding that it is, rapidly and without sacrificing quality, mastering its own workload with its own means. Thus, in view of the political, legal and economic arguments against a re-nationalisation of the European patent system - which become even weightier in the global perspective - such a re-modelling of the European patent system in accordance with such an idea is neither an option nor a practical necessity and it is certainly not the way national patent offices will encourage innovation in Europe.

This does not mean that national patent offices are not concerned with the objective of Mastering the Workload. In fact, national patent offices and the EPO can and should complement each other to the benefit of the European economy. The EPO agrees that it is strategically important for EPO member states to have intellectual property skills available to serve and develop their national economy. The EPO is prepared to back up this agreement with concrete action and sees three basic strategies being complementary in a way that they ensure that technical intellectual property skills are retained and enhanced on a national level whilst the European patent system is strengthened to the economic benefit of the citizens of Europe.

10. Possible synergies within European patent system

A first strategy implies enhancing and strengthening within the European patent system the pre-filing filtering role of national patent offices. Furthermore, pre-classification and classification support by national offices would also be welcomed by the EPO.

National offices could also assist potential applicants by providing a tool for the commercial evaluation of technical developments, thereby giving substantial input to the process of making the decision whether or not to file a patent application.

The second strategy involves EPO assistance to national patent offices in view of jointly developing skills that will help develop a local intellectual property infrastructure.

I particularly refer to:
- skills required to understand the use and exploitation of patents;
- skills that will help local small and medium sized enterprises better manage their pre-filing patenting risk;
- skills that will help these small and medium sized enterprises better understand patenting risks in terms of technology coverage, provisions of loss of protection, enforcement mechanisms and duration;

- skills that will help develop a local intellectual property infrastructure - licensing knowledge, competitive watch, infringement prosecution etc;
- as well as all those skills that will help develop a market in ideas.

More specifically, it is envisaged to create a new innovation support training programme, not only for national patent offices, but for all national structures involved in IPR. The training would concentrate on assistance to be given to an applicant beyond the usual patent granting procedure of patent offices. The staff member involved would understand how patenting delivers value to the economy and how patents are used in the knowledge economy and thereby, amongst other things, be able to advise on the different patent granting procedures available; match business strategy to patenting strategy; utilise general business knowledge; evaluate innovations and translate them into the patenting process; undertake pre-filing analysis and pre-classify incoming or potential applications; carry out a search over broad area of technology; advise on patent licensing, claims analysis and post-grant analysis; as well as use patent valuation tools.

A strategic development in the field of training is also the possible creation of a dedicated European Training Centre, which would be better suited to providing intensified training in intellectual property to the various component parts of the European patent system. A feasibility study is currently being prepared for the Administrative Council.

Amongst the groups to benefit from such an initiative would also be patent attorneys, particularly for those intending to join the profession and in view of the relative difficulty of passing the European Qualifying Examination. Without doubt, it is of utmost importance to the European patent system to have an efficient and healthy patent profession.

And finally the third strategy to achieve synergies within the European patent system is the development of joint strategies between the EPO and National Patent Offices. On the one hand, it is necessary to pay attention to the individual needs of the Contracting States and their patent authorities, which differ greatly. On the other hand, with regard to policy issues of global impact, the Contracting States should strive to achieve common positions and develop coherent strategies in order to bring the highest possible value to the European economy. Doing this, the Contracting States would extract the maximum benefit from the European patent system, which should represent the economic interests of Europe in a strong and unified manner.

On a practical level, a series of consultations with all national offices of the Member States took place late last year, as well as during the first half of this year 2003. The main focus of these meetings had been how to identify areas of synergy within the European patent system and to configure the patent business in Europe such that the EPO and the national offices better employ resources and actively contribute to offer increasing economic security during the lifetime of a patent, enabling the creation of an efficient market in ideas. Such an initiative, broadly supported by the member states of the European Patent Organisation, resulted in a list of actions and projects agreed upon by all parties.

11. Revision of the EPC

Ladies and Gentlemen, as I have already mentioned, there is a growing positive attitude by both patent users and policy makers to the work of patent offices. This represents both a vindication and a challenge. That is particularly true of the European Patent Office, given its major contribution over the last 25 years to the rationalisation, modernisation and harmonisation of the patent system in Europe.

Not only is this a major contribution to the unification of law in Europe; it also forms the basis for a unified position for Europe in moves towards worldwide harmonisation of patent law. Harmonised European patent law and the central European grant procedure guarantee the efficient granting of thoroughly examined patents with a legal force which is now widely recognised.

Although the EPC represents a very genuine success story, nearly thirty years have passed since the original treaty was signed and there is, of course, a need to adapt and modernise the system. The main structural and legal issues, where change is being introduced or discussed with regard to the EPC fall essentially into the areas of:

- bringing the EPC into line with the latest technical and legal developments;
- simplifying the grant procedure and reducing costs;
- consolidating the EPC postgrant, i.e. with regard to dispute settlement.

In the first two of these areas, significant moves have been made in the shape of the EPC revision in 2000 and the signing of the London Agreement on language arrangements, guaranteeing the affordability and viability of the EPC for the future.

The revised text of the Convention does not enter into force until it has been ratified by the parliaments of the contracting states; so it is likely to be three or four years before the amendments adopted by the conference come into effect. The accession of the new contracting states to both the current and the revised version of the Convention has, in fact, now initiated this process of ratification. Once it is in place, the revised EPC will strengthen European patent protection and provide greater support for innovation in Europe.

While revision of the Convention is primarily designed to improve and modernise the European patent grant procedure, the work on cost reduction and dispute settlement initiated by the 1999 Intergovernmental Conference in Paris relates to significant improvements in the post-grant phase.

An important result of the intergovernmental conference was the London Agreement on the application of Article 65 EPC, signed by ten contracting states (CH, DE, DK, FR, GB, LI, LU, MC, NL, SE). To enter into force it must be ratified by at least eight contracting states, and must include Germany, France and Great Britain.

This agreement is about creating appropriate translation requirements for European patents, an issue we have worked on for years and which is of huge significance for users of the European patent system. The parties to the agreement commit themselves to dispensing, in full or in part, with the filing of

translations of European patents in their national languages. This constitutes a major breakthrough on the language question, rendering the European patent system considerably more attractive and affordable. Translation costs will be cut by more than 50% if the agreement enters into force for the ten signatory countries. Indeed, the new member states should seriously consider joining the London Agreement because it would no doubt lead to more patents being validated in their countries.

Much work has also been devoted to fulfil Part 2 of the Paris mandate, which aims at improving the litigation system for European patents. The EPO readily supported the "Working Party on Litigation" made up of EPC Contracting States, since unified patent litigation would be a major improvement of the European patent system.

The Working Party on Litigation agreed to the concept of an optional agreement negotiated between those EPC Contracting States ready to move forward to a common judicial system for litigation concerning infringement and validity of European patents. It would be a self-contained international agreement setting up a new organisation, namely the European Patent Judiciary comprising a European Patent Court of First Instance and a Court of Appeal. It now remains to be seen how this can complement the judicial system planned for the Community patent.

12. Community patent

A major breakthrough in the negotiations regarding the Community patent was made when the “Common political approach” was agreed amongst EU members at the beginning of March this year. It was stressed that the purpose of the Community Patent is to provide for the creation of a single industrial property right for the whole European Community as well as further eliminating the distortions of competition created by the territorial nature of national protection rights in Europe. The Community patent would be granted by the European Patent Office

Progress has been made in drafting the regulation of the Community Patent, in studying the necessary modifications to the EPC and in attempting to solve the open questions on translation and jurisdiction. The Italian Presidency of the European Union has recently proposed a new compromise, by which the Council of Ministers meeting in Brussels on 27 November 2003 will try to arrive at a new political agreement.

13. Conclusion

Ladies and Gentlemen, I think I have demonstrated that the patent system in Europe is the focus of much serious negotiation. In discussing all these developments it is easy to overlook the real purpose of the patent system, which is to assist in the innovation process by ensuring that good ideas can be protected in the market place.

Patents play a central role in the commercialisation of inventions and act as an important stimulus for investment and economic growth. Moreover, as IP assets take a bigger place in company balance sheets, the importance of IP in the global economy is greatly increasing.

The EPO is proud of the European patent system and its support of the innovation process in Europe, but we are not complacent. Conscious of our responsibilities to users of the system, we shall continue to seek improvements and enhancements of the system wherever possible, the cooperation with the national patent offices acting as the cornerstone for the development of such a system.

Thank you very much for your patience and attention.