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SUBJECT: Activities report of the President of the European Patent Office

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for information)

SUMMARY

This activities report focuses on the strategic aspects of the period under review (first half of 2009) and on the outlook for the rest of 2009. In order to reduce the volume of information in the report itself, a list of documents containing further details has been appended.

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I. GLOBAL SITUATION

As far as the Organisation is concerned, 2009 began with the accession of the former Yugoslav Republic of Macedonia to the European Patent Convention as 35th contracting state. On 1 July 2009, San Marino will become the 36th EPC contracting state. An agreement on the extension of European patents was signed by the Government of Montenegro and the EPO on 13 February 2009 and is expected to enter into force later this year.

For the Office, the first few months of 2009, like the last half of 2008, were marked by the global financial crisis. The experts are still divided on whether we have reached rock bottom or whether there may already be light at the end of the tunnel. It is therefore undoubtedly too early to draw any conclusions. We cannot even be certain of the extent to which the Office will have been affected by the crisis.

However, the efforts to cut costs, increase productivity and improve efficiency which the Office has been making for years have enabled us to soften the blow dealt by the crisis. We were not caught unawares, and I can proudly report that we were able to close 2008 with a positive result - in many respects.

Let us look, first of all, at the Office's core task, which is - and always will be - the grant or refusal of patent applications, as set out in our mission statement:

"As the Patent Office for Europe, we support innovation, competitiveness and economic growth across Europe through a commitment to high quality and efficient services delivered under the EPC".

We must not lose sight of this, even if the ever greater economic challenges facing the patent system oblige us to pay more attention to the budgetary situation.

The strategic renewal programme launched by the Office in 2007 has begun to bear fruit. It has three main aims: improved efficiency, improved relations within the Office and improved relations between the Office and the outside world. The three priorities I have set for 2009 are in line with these general aims: social partnership, IP5 and stabilisation of the Office's finances.

I will address these three priorities in more detail in the sections below. However, I would like, first of all, to reiterate how important it is to make the Office fit for the future in a rapidly changing economic, technical, social and financial environment. Given that, I am all the more pleased to be able to report that we have achieved some initial tangible results. Thanks not least to your support, we have adopted a

first set of measures to improve the quality of European patents and streamline procedures. Some of these measures are already having an impact, whilst others will not take effect until 1 April 2010. The "raising the bar" domain of the strategic renewal programme can rightly take the credit for these achievements.

We have made less progress on another of our key projects for examiners and formalities officers which forms part of the strategic renewal process. But there is a good reason for this: an external review of the "Future Patent Tools" project which I commissioned revealed a need to revise important elements of the business case and reorient the project. We have since completed this revision and made the appropriate adjustments. In the project as revised, now called "Single Patent Process", we have followed the recommendation that the focus be shifted to overhauling our patent examination processes and have adapted the entire programme in accordance with the "managing successful programmes" method (MSP). We also took this opportunity to introduce the MSP method as mandatory for all major Office programmes.

IP5 (formerly known as "Big 5") will also be run in accordance with MSP. This important, global programme is about reducing the workload and stock facing the world's five largest offices through improved co-ordination and utilisation of the preliminary work done by the other offices. It was reviewed at the beginning of June and the management of the five offices will meet in September with a view to giving this ambitious programme the green light.

Our social partnership programme was likewise launched in the second half of 2008. It too originated from the strategic renewal process. It has two aims: a general improvement in relations between the management and the staff representatives and the development and implementation of a structure providing a stable and reliable legal basis for these relations. We have already held a first round of meetings, and I am confident that I will be able to announce concrete progress in my next report.

As explained at the Council meeting in March and the BFC meeting in May, we are seeing an increase in DG 1 production. The details are given in the following sections. The positive effect of this on our budget will be enhanced by maintaining the successful measures to control spending. In the section on our finances, I will set out how we are continuing to improve our financial-control processes and instruments. At the end of this report, you will find references to Council documents which confirm the positive trend in figures.

The debate on sustainable consolidation of the Office's finances was launched in March. In the meantime, I have brought the BFC up to date on how this debate is progressing. An initial working meeting has been held with Council and BFC delegates. By October, I want to have held similar meetings in all regions of Europe. This will prepare the member states better for the strategic decisions which will have to be taken in the course of this debate and which will be a crucial factor shaping the future of the Office and the Organisation.

II. PERFORMANCE AND PRODUCTION

DG 1 is firmly on course to achieve its aim of producing 300 000 products in 2009. This not only exceeds the target in the medium-term business plan (MTBP), it also includes an extra effort of approximately two additional products or a 2.5% production increase per examiner. DG 1 is thus doing its bit to overcome the budgetary shortfall.

The last quarter of 2008 was marked by the expansion of the financial crisis and its impact on the world economy, which led to a slowdown in filings. At the end of the third quarter, the number of European applications filed at the EPO was about 5% above the corresponding figure for 2007. Although the effects of the crisis began to show in the last quarter, the final 2008 figure of 146 600 applications was still an increase of 3.6% over 2007. For the first quarter of 2009, the preliminary figures show that we are at the same level as in 2008 prior to the surge of filings preceding the fee adjustment, which indicates that we are far below the MTBP target.

Some other trends in our overall workload (European applications plus other products such as PCT international Chapter I and II work, national searches, etc.) also deviated from the reference figures. For instance, during the first quarter of 2009, the EPO received 3.8% fewer search requests (including 9% fewer PCT international search requests), but 1.5% more examination requests compared to the same period last year.

In the first quarter of 2009, DG 1 completed 9% more searches than in 2008 and almost the same number of examinations. The number of refusals rose from 1 155 to 1 440, an increase of 25%. Consequently, the number of published patents is lower than last year and also lower than forecast in the budget. The number of searches completed on time at the end of March 2009 was slightly higher than for

the same period in 2008. The pending workload (search, examination and opposition) has increased by 1.3% since the end of 2008 to reach 708 000 cases. By the end of April, the classification backlog had been reduced by 77 000 documents. This significant improvement in the classification situation is, at least in part, due to the introduction of more efficient classification procedures.

The above general trends were expected to continue for the first half of the year. It should be noted that this confirms the revised forecast, which recommended that an almost flat development of the filing rate be assumed for planning purposes.

III. FINANCES

Due to further successful improvements to the year-end process, Finance was able to prepare the IFRS Financial Statements 2008 - an important tool in governing the EPO which forms the basis for other management tools (forecast income statement, unit cost, etc.) - even more quickly than previously and presented the (unaudited) financial statements to the BFC in May. This year, for the first time, it also presented its key assumptions and key figures for the 2010 forecast income statement to the BFC in May. This newly initiated practice of early communication is intended to ensure a better integration of the Office's budget preparation processes and approval by the supervisory bodies.

In matters of budget execution, the first months of 2009 have seen implementation of the new budget dynamic described in CA/69/08, which was approved by the Administrative Council at its June 2008 meeting. Several budget articles have been decentralised per DG as set out in Annex X to the 2009 budget in CA/D 1/08. The possibility of extending the scope of the decentralised envelopes to new articles in the 2010 budget will be analysed on the basis of our experience in the first half of 2009. Any proposed extension will be submitted to the supervisory bodies at their autumn meetings.

Finance has also invested further in management accounting and unit cost and in internal financial communication, financial training and cost-awareness. In particular, it organised an internal workshop on the Office's financial situation for the MAC members and principal directors. The workshop covered the whole spectrum of financial reporting and forecasting and led to a common understanding on the Office's current financial situation and the main issues at stake.

IV. PERSONNEL AND MANAGEMENT MATTERS

In the first quarter of 2009, PD Human Resources concentrated first and foremost on implementing the Administrative Council's decisions on **pension matters**. A supervisory committee has been set up to oversee the new salary savings plan (SSP). The external service provider Fidelity has developed a framework for managing and administering the assets in the individual SSP accounts and the contract has also been signed. Information sessions for staff have been organised.

In the **administrative area**, the Office is continuing with its programme of delegating authority to line managers and of simplifying and automating administrative procedures.

Recruitment: 94 examiners and 24 non-examiners were recruited in the period from January to May 2009 to replace colleagues leaving the Office, most of whom were retiring.

The **renovation of the Isar building** started slightly later than planned. However, the consulting engineers in charge of the project currently take the view that sufficient time remains to make up for this delay and complete the job on schedule. So far, the quality of the work done meets our expectations.

V. BOARDS OF APPEAL

In the first five months of 2009, 1 148 technical appeals were filed, a 12.1% increase over the corresponding period of 2008. The number of technical cases settled in this period went up by 8.3%; the number of cases pending before the technical boards of appeal - currently 5 163 - is up by 15.2%.

So far this year, the Enlarged Board of Appeal has received nine petitions for review (in 2008: 11) under the new procedure introduced by the EPC 2000, which allows parties to petition the Enlarged Board of Appeal on the ground that there has been a fundamental procedural defect or that a criminal act may have had an impact on the decision. The Enlarged Board of Appeal has handed down eight decisions on petitions for review this year (in 2008: three). At the time of writing of this report, seven petitions for review were pending.

Seven referrals under Article 112(1) EPC are pending: I have referred a number of questions to the Enlarged Board of Appeal concerning the exclusion from patentability of computer programs as such (Article 52(2)(c) and (3) EPC). The case is pending as **G 3/08**.

Turning to referrals from the boards, the questions in **G 1/07** concern methods for treatment by surgery. **G 2/07** relates to a non-microbiological process for the production of plants. This referral has been joined with **G 1/08**, which is concerned with similar issues.

The questions referred to the Enlarged Board in **G 2/08** include the following: where use of a particular medicament to treat a particular illness is already known, can this known medicament be patented under the provisions of Articles 53(c) and 54(5) EPC for use in a different, new and inventive treatment by therapy of the same illness?

Among the questions to be examined in **G 4/08** is whether an applicant whose PCT application has been filed and published in an official language of the EPO can, on entry into the regional phase before the EPO, file a translation of the application into another official language which then becomes the language of the proceedings.

G 1/09 is concerned with the question whether an application refused by the examining division remains pending until expiry of the period for filing an appeal where no appeal has been filed.

VI. CONCLUSION

The big question we have been asking in 2009 is what are the effects of the current economic recession? Six months on, we know more but still do not have the full picture. Our approach is to remain fully committed to the high quality and efficient services we deliver under the EPC. In addition, based on the strategic renewal process, we have set three main priorities for 2009:

- **developing a social partnership** to create a positive climate and establish a working environment which is favourable to achieving our goals. Firm agreements between management and staff on working structures and procedures are still in the pipeline, but the relationship has clearly developed in a positive direction.
- **balancing the budget:** good progress is also being made here, despite external challenges. Both our production results and our financial performance are promising. The Office is showing it can work more efficiently and effectively and this is at least partly attributable to the positive working climate.
- **establishing co-operation at IP5 level:** this has begun, but progress will be slow. However, given that it is being structured according to MSP and is

closely linked to our own Single Patent Process (SPP) project, I am confident that it will result in real tangible benefits for the EPO.

The results are not a reason for complacency. I believe they should encourage us to say we are on the right track and we will remain fully committed to moving in this direction.

VII. REFERENCE DOCUMENTS

Global situation: Status of ratification procedures (CA/18/09), IP5 Foundation Projects: progress report and next steps (CA/89/09)

Performance and production: Business Plan 2009-2013 (CA/40/08), General EPO statistics (CA/21/09), Filing figures as at 03/2009 (CA/22/09), Basic assumptions for the business plan, the budget 2010 and the financial estimates 2011-2014 (CA/35/09), Basic assumptions for the 2010 plan (CA/35/09 Add. 1)

Finances: Quarterly financial statement after the first quarter of 2009 (CA/16/09), Quarterly financial statement (1/2009) (CA/16/09 Add. 1), Budget of the European Patent Organisation for the 2009 accounting period and estimates for the period 2010 to 2013 (CA/D 1/08)

Personnel: Information on examining capacity (position as at 31.12.2008) (CA/19/09)

Information management: IT Strategic Plan 2008 - 2010 (CA/13/08), Information Management Plan (CA/30/08)

Quality: Amendments made to the Implementing Regulations to the EPC in the context of the "Raising the Bar" initiative, with a view to improving the quality of incoming patent applications and streamlining the grant procedure (CA/29/09)

Co-operation: Progress report on co-operation with the member states (CA/6/09 and CA/6/09 Add. 1 Corr. 1), Co-operation programme to reorient patent information centres (CA/73/09)