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Utilisation scheme – open letter

Dear Mr Battistelli,

At its 33rd meeting, the Board 28 discussed setting up a working group for implementation of the scheme for EPO reutilisation of national-office searches on priority documents (cf. summary of conclusions, item 3.1). This group is to deal with the technical and operational aspects of implementation, reporting directly and exclusively to the Administrative Council. This raises an issue of principle regarding the Office's operational management, and casts doubt on the project's intended purpose.

We would first point out that the reutilisation project – presented by the Administrative Council (see CA/147/08 Add. 1) as a great success and a sound basis for developing the European Patent Network (EPN) – is actually based on an unrepresentative dossier sample and a tendentious interpretation of the results. Although the EPO and several national offices have spent a year trying to promote the scheme, the vast majority of applicants have declined to take part, providing only 211 of the 1 268 dossiers studied. EPO user representatives, especially Business Europe, have also frequently stated their preference for a centralised procedure conducted exclusively by the EPO. Due to applicants' non-participation, over two thirds of the dossiers considered were selected direct by the German office, whose search quality is considered to be well above the member-state average. Consequently, the sample is certainly not representative, either qualitatively or quantitatively, of the dossiers processed by the EPO. No serious conclusions can be based on such a limited sample, and the underlying methodology is dubious to say the least.

Irrespective of the sample's statistical validity, the conclusions drawn by the Administrative Council and Office from the study (CA/147/08) are odd and do not seem objective. It is stated for example that documents are reused in 68% of cases, but not that in only 16% did the two search reports cite identical documents – i.e. that documents considered relevant were added in 84% of cases. The 3% extra time taken to process a dossier is extrapolated into potential savings "in normal operation" – which is hardly convincing. The study says nothing about (non-)availability of national searches in time for use at the

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EPO (deferred proceedings, delays, etc.) and the simple fact that, for any examiner, checking the priority document's search report – if it exists – on the relevant national office's site is an elementary part of search work.

Despite this unfavourable outcome (the gains are zero, but the costs of introducing the scheme probably not) and users' clear lack of interest, the Board 28 has nonetheless decided to implement the project, thus raising doubts as to its real purpose. EPO staff have the unfortunate feeling that the study is a fig leaf in an attempt to prove that EPO recognition of national-office searches is achievable without any drop in the quality of granted patents.

That feeling can only be reinforced by the summary of conclusions of the Board 28 meeting – especially its consensus that the implementation group should report direct to the Administrative Council. Creating this working party would thus set a precedent, and seems to be a further step in muddling the tasks and responsibilities of the Council and Office management.

To avoid any misunderstanding, we would therefore be grateful if as Council chairman you could have the group's mandate clearly specified, clarify the arrangements for steering it, and let us know the costs it will generate and who will bear them.

We thank you in advance for your reply and remain,

Yours sincerely,

Ansgar Wansing
Chairman of the Central Staff Committee

cc.: Alison Brimelow