

**DISCUSSION ON PATENT QUALITY (SCP/16/5) - COMMENTS FROM THE
PORTUGUESE INSTITUTE OF INDUSTRIAL PROPERTY**

1. The Portuguese Institute of Industrial Property expresses its support for the proposal of Canada and United Kingdom for a work program on quality of patents set out in document SCP/16/5 and it is our opinion that the three proposed components of work (technical infrastructure development; information exchange on quality of patents; and process improvement) would be beneficial to all involved in the patent system.

2. Regarding the first proposed component, we think that the quality of search and examination is related with the availability of sources of information relevant to patentability. In order to ensure the access to appropriate search documentation it is important to be in compliance with the PCT minimum documentation and also have a good computerised system, in order to monitor workload of each examiner, assure that all legal deadlines associated to the processes are fulfilled, and avoid the existence of processes in paper.

3. Referring to the second proposed component, we support that sharing and exchanging information on patent quality among patent Offices is a very useful approach at various phases, as users of the patent system would be able to learn from each other.

This proposed work program is complementary to what has been done in European patent Network (EPN), since 2006, which provides a base for continually improving the quality of the products of the Offices of the European member states.

In 2008 the Portuguese Office, to assure its compliance with the requirements set out in European Quality Management System (EQMS), created two documents: "Product Quality Standards", which defines the minimum requirements for classifying applications, drafting reports on search results, written opinions, and requirements

for refusals and patents grants; and “Attribution and management process of technologic incidence rights applications guide”, which its main topics are based on the international quality standard ISO 9001.

We think that the creation of an international forum, where all Offices can share information about the quality of their patents and their systems could be helpful to improve the quality system in each national Office and to share best practices.

We also agree with the comment done by the German Office about “Information about the work done under the EQS could be helpful for an in-depth discussion within the WIPO Standing Committee on the Law of Patents as well”.

Further, we express our strong support for the proposal for each Office collecting views and experiences from their users relating to quality of patent Office processes and operations and share them with the Committee. For that, we suggest an elaboration of a common questionnaire. The results of the questionnaire of each Office could be compiled in quality reports elaborated by WIPO, and shared among the Offices.

It is important that Offices have communications channels between examiners and respective users, such as phone, e-mail and business-to-business, and also an appropriate system for handling complains. The Portuguese Office believes that to understand how an Office can improve its quality system, it is essential each Office has a mail box where the users can leave their suggestions and complains or interactive platforms where the users can give opinions about the Office’s strongest and weakest points.

4. Regarding the third component of the proposed work plan for the SCP, the process improvement, the PT Office considers that is an essential topic to be discussed at the SCP sessions.

The PT Office states that quality could be defined as the fulfilment of patentability requirements by patent Offices in a transparent way. For that reason, we think it is adequate each national Office creates internal guidelines and it is equally important to share them with the patent users.

Further, we think that each Office could implement internal audits of patents decisions to evaluate the decisions taken and to identify the existing errors in each file each process. According with the results of these audits corrective and preventive actions could be developed and undertaken to assure a continuous improvement of the established procedures, of the search and examination products and processes. Additionally, we propose that the results of the audits and the consequent corrective and preventive actions of each Office could be compiled in quality reports elaborated by WIPO, and these reports should be shared between all Offices, allowing the experience exchange between Offices. We further suggest that with the sharing of those results, WIPO could evaluate areas with more errors and according with that, WIPO could propose preventive actions, for instance, specific training programs directed to the Offices in order to minimize the occurrence of errors.

A key issue within the patenting process improvement is directly related with Office examiners team. We consider that the quality of patents is straight related to the diversity of technological areas of the examiners team in order to allow the high-quality patent examination at different technological fields. Another aspect with relevance to the patent quality is the appropriate training of the examiners team, not only scientific training but also legislation and patent examination training. In addition, we would like to emphasize the importance in the patents quality of the examiners sharing between Offices with a training and exchange of experiences purpose.

The PT Office believes that the definition of the term quality is also associated with

the average time to achieve a final decision about the grant or refusal of a patent application. For instance, in order to avoid backlog, the examiners of our Office need to comply with quality deadlines of each item of their working list (formal exam, search reports, examination report and others). Therefore, we suggest that this point should be considered to the definition of the term quality in order to increase the patenting process improvement.

Moreover, the PT Office considers that the existence of indicators for the quality management (qualitative and quantitative indicators) consists in an essential practice to measure the quality of the work done by each Office.

Another practice that could improve the quality of patents is the development of patent training programs for the main patent system users, for instance, universities and companies/enterprises, with the aim of approaching the Offices to users and potential users. This practice could improve the quality of the patent applications filed and, consequently, all the patent phases until the final decision would be faster. The PT Office offers several training programs directed specifically to universities, enterprises and other users involved in Industrial Property.

5. In order to enhance the quality of granted patents, the Portuguese Office implemented a Quality Management System, which it is certified by ISO9001:2008, since 2006.

6. We appreciate a constructive debate on patent quality between all Member States.