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Quality of Patents

OCTOBER 9, 2017

The answers to this questionnaire have been provided on behalf of:

Country: South Africa

Office: Companies and Intellectual Property Commission

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QUESTION 1

Various aspects may be relevant to the concept "quality of patents". It may relate to, for example, quality of patent procedures and management in the office, quality of search and examination, quality of granted patents or quality of a patent system. In addition, the expression "quality of patents" may be understood differently depending on the perspectives of various stakeholders, for example, the perspectives of a patent office, an applicant etc.

How does your office understand the term "quality of patents"?

Our understanding of the term "Quality of Patents" is the extent to which the office will go to ensure and provide a level of certainty to the patentee, that the patent granted by it is legally enforceable. Key to a quality patent is the tools implemented by the office (search tools and databases), the training of its examiners, and mechanisms for review of the office's work (third party observations, appeal mechanisms and oppositions).

South Africa has a depository system, i.e. patent applications are examined as to formalities only and not substantively. However, the South African government has indicated its preference to substantive examination and has accordingly instituted measures to introduce examination of patents. In preparation for search and examination, CIPC has hired examiners who are currently receiving training through our partnerships with other offices.

QUESTION 2

What types of cooperation does with other patent offices does your office have with respect to search and examination?

Those types of cooperation, may include, for example, access to documents/databases of other offices, use of search and examination work products, expertise and resources available in other offices, collaborative search and examination, outsourcing search and examination etc.

Our examiners have received training on search and examinations from a number of patent offices including: Austria, China, EPO, India, Japan, UK Patent office and USPTO.

Our office has also signed a Memorandum of Understanding (MoU) with the EPO in terms of which, our office will collaborate on best practices in terms of search and examination. As part of the MoU, the EPO will provide training to our examiners; and a two training program has been agreed to in this regard. Furthermore, the EPO will provide access to its EPOQUE NET software for a period of one year free of charge. Thereafter, an agreement will be concluded as to usage.

QUESTION 3

When performing prior art search, patent examiners prepare search strategies and queries (for example, indications of databases and publications, classification codes, search terms and key words used) to find relevant prior art.

Does your office share (for example, via an official website) or exchange such search strategies and queries with other collaborating offices?

Currently not. However through our partnership with the EPO and the use of EPOQUE NET we will have access to the work of their examiners. We will also have access to WIPO case through our partnership with WIPO.

QUESTION 4

In order to facilitate the cooperation, what kind of platforms and tools to share information on search and examination are available in your office? Such platforms and tools include, for example, WIPO CASE, databases allowing other office to retrieve information and internal databases used to retrieve information.

(i) Platforms and tools provided by your office.

Our office does currently have platforms and tools which it provide to other offices. It is however envisaged that we will do so once we have established search and examination and once we are in position to provide our result to platforms such as WIPO CASE and similar platforms.

(ii) Platforms and tools used by your office.

We do not currently make use of any sharing platforms.

QUESTION 5

What are the impacts of such cooperations in the area of search and examination in your office? If your office has different types of cooperation and each type of cooperation has different impacts, please indicate them separately.

South Africa has not yet introduced substantive search and examination but we plan to do so in the near future. We however acknowledge that we lack the required knowledge tools infrastructure and capacity to implement full search and examination. Our cooperation with other patent offices from a training and best practices perspective is therefore essential in insuring that we implement an effective and affective search and examination regime in South Africa. We have therefore partnered with offices with expertise in this area to insure that we align ourselves with best practices.

QUESTION 6

What kind of capacity building are required for different types of cooperation between offices in search and examination? Please indicate any specific capacity building needs to conduct such cooperation successfully.

In this context, the capacity building is understood to refer to various activities and training that support development of knowledge and skills of office employees for effective cooperation between offices in search and examination.

CIPC as there implanting office of search and examination requires training in the area of search and examination. In particular, determining concepts such as novelty, inventive step, clarity, unity of invention, sufficiency of disclosure and other patent ability aspects. We also require a fully automated process for the registration of patent rights and the requisite training. Currently our process are predominantly manual.