
Harmonisation Update BUSINESSEUROPE's perspective

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SPLH Background

- ❖ In September 2014, B+SG invited Industry Trilateral (BE, AIPLA, IPO and JIPA) (IT3) to come up with proposals on SPLH after termination of the Tegernsee process
- ❖ Frequent face to face meetings and conference calls since then to discuss the four Tegernsee issues and a definition of Prior Art
 - Grace Period
 - Prior User Rights
 - Conflicting Applications
 - 18 month Publication
- ❖ A “First Elements Paper” that outlined the possible bases for an over-all harmonisation package was prepared in 2015. The updated IT3’s “Policy and Elements Paper” was published in June 2017
- ❖ IT3 submitted an updated Elements Paper to B+ in early September 2019. IT3 authorised the publication of this 2019 version of the Elements Paper in fall 2021. IT3 made clear that this draft is still a non finalised draft and not agreed by the IT3 and their membership
- ❖ IT3 to met with B+ Group in September 2022 and July 2023 to discuss on the results of Offices’ consultations and next steps



BUSINESSEUROPE's perspective

- ❖ Since 2020 intense discussions within BUSINESSEUROPE on Substantive Patent Law Harmonisation (SPLH)
 - Broad member consultations in 2020, 2022 and 2023
 - Since 2021 enlarged team of experts
 - More European Contracting States represented
 - More than 40 meetings dedicated to SPLH
 - Active participation to the EPO Symposium in spring 2023
 - Adoption of BUSINESSEUROPE's Comprehensive Paper in early October 2023



BE's Comprehensive Paper on SPLH

- ❖ Adoption of **BUSINESSEUROPE's Comprehensive Paper on SPLH** in early October 2023
 - Aim to find a common European understanding on a grace period that could be accepted in Europe in case a future international harmonisation on patent law
 - Need to preserve the “first-to-file” paradigm
 - Grace period can be accepted as part of a balanced harmonisation package – There is no appetite for unilateral adoption of the grace period in Europe
 - BE carefully analysed how to design a grace period system which would be workable and ensure legal certainty for both patent applicants and third parties

BE's Comprehensive Paper on SPLH

- ❖ **Mandatory publication** of all patent applications **at 18-months** from the Pre-Filing Disclosure
- ❖ **6-month grace period** from the priority date is the acceptable option – but some believe that 12-months would be preferable
- ❖ **Strict declaration requirement:** Mandatory filing of the declaration indicating the document(s) or the public disclosure(s) which should be graced
- ❖ **Robust prior user rights:** Full and directly derived prior user rights should be applicable
- ❖ Rules on **conflicting applications** under the European patent Convention (EPC) represent best practice, i.e., conflicting applications are relevant for the examination of novelty only, without anti-self-collision



Next steps

- ❖ BUSINESSEUROPE presented its position to the Industry Trilateral at the margin of the Trilateral meeting in early October
- ❖ BUSINESSEUROPE believes there is still **momentum for SPLH** and is committed to continued working with the Delegations of the Group B+ and IT3



Thank you!

