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2023 SUMMIT OF THE GLOBAL NETWORK OF NATIONAL IP PRACTITIONER ASSOCIATIONS UPDATE ON SUBSTANTIVE PATENT LAW HARMONISATION

SYLVIE STROBEL | LAWYER, DEPT. 5.2.1.2 PATENT LAW POLICY AND HARMONISATION | THURSDAY 26 OCTOBER 2023

GROUP B+: STATUS QUO

- 2022: User consultations carried out in AU, CA, Europe and JP on user proposals for SPLH drawn up by Industry Trilateral (AIPLA, IPO, BusinessEurope, JIPA), FICPI + AIPPI Resolutions
 - Also, informal user consultation in KR by KINPA in 2023; renewed interest in SPLH in KR
- 2023: Working Group on SPLH (WG) asked to compare / analyse consultation outcomes and determine areas of **convergence** and **divergence** across jurisdictions (AU, CA, Europe, JP, KR)
 - Chair: UK
 - Participating AU, CZ, DE, EPO, PL, JP – delegations invested and motivated
 - US did not consult its users, but US user positions deduced from Industry Trilateral efforts
- July 2023: Presentation of Report to Group B+ Plenary, now posted on the Group B+ website

GROUP B+ : NEXT STEPS

- Clear mandate of users for delegations to pursue SPLH
- Group B+ Working Group (WG) will carry out further work based on proposal by WG Chair (UK)
 - Further investigate options on issues where divergences remain, based on existing evidence
 - Re: grace period, conflicting applications, prior user rights
 - Hold meetings with users to receive additional input on these options
 - Broaden scope of the consultations to user associations not currently represented
 - e.g. from AU, CA, KR
 - Attorney associations will be included, not just industry associations
- Report to be finalised by next Group B+ Plenary in July 2024

THE EUROPEAN ALIGNMENT PROCESS

- Past complaints in international fora: Europe does not speak with one voice in SPLH matters
- November 2021: decision by the EPO's Patent Law Committee to hold a common European consultation and, once consultation + EPO study on the grace period completed, begin an **alignment process aiming to reach a common European position on contentious SPLH issues**
- European common consultation in 2022: 80% of respondent user associations considered SPLH to be important or very important
- EPO Symposium initiated the alignment process to determine **best practice** and **possible areas of flexibility**
 - European national and supra-national user associations + delegations
 - Background document + questionnaire to assist in internal consensus-building w/i associations

EUROPEAN SYMPOSIUM ON SPLH 2023 AND NEXT STEPS

- Responses from 24 national user associations from 11 member states (CH, CZ, DE, ES, FI, FR, IS, IT, PL, SE, UK) + BUSINESSEUROPE, epi, EARTO and Medicines for Europe
- Substance: confirmed results of the 2022 European common consultation on the grace period
 - 21% of respondent user associations are against a grace period (GP) whereas 25% are in favour, with 54% in favour "only as a compromise within a balanced harmonisation package"
 - 79% of user associations would accept a GP as a **compromise** within a **balanced harmonisation package**, provided it is a **"safety net"** (statement + prior user rights)
- Next step: member states will discuss outcomes of European user consultation, Symposium outcomes and EPO Study on the grace period, beginning in the EPO's Patent Law Committee in November 2023, with the goal of moving towards an aligned position – ongoing process

MAIN TAKEAWAYS OF THE PROCESS

- Europe is interested in pursuing SPLH, there is **momentum**
- Both stakeholder associations and delegations are investing in the process, with two detailed consultations in 2022 and 2023 yielding promising results in terms of **consensus** and **flexibility**
- Readiness in Europe to accept a GP **provided it is within a balanced SPLH package** shows a **flexibility which should be recognised** by our partners
- This window of opportunity to advance discussions on SPLH should be seized by willing delegations
- But some delegations in the Group B+ are voicing doubts whether the exercise is useful and a good use of resources