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# **Group B+ Working Group on Substantive Patent Law Harmonisation**

2024 Summit of Global Network of National IP Practitioner Associations

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# The Group B+ Voluntary Working Group on SPLH

- Group B+ Membership: WIPO Group B members, EU Member States, EU Commission, EPOrg Member States, EPO, South Korea
- Working Group set up in 2022 to conduct comparative analysis of national/regional consultations to:
  - Identify areas of convergence in user opinions across jurisdictions
  - Identify areas where more work & discussion needed
- Continuing analysis on areas of diverging user views to inform further discussion and work in Group B+ on SPLH
- Current WG Membership: UK (Chair), AU, CZ, DE, JP, KR, TR, EPO. [*FR, SE & EU observe*]

# Comparative Analysis of National Consultations (July 2023)

- Provide overview of different existing systems
- Compare results of national consultations and related reports
- Identify areas of convergence in stakeholder views and areas requiring further work
  - Areas of convergence to help initiate the core of a common package
- Identify options for issues where further work is needed
  - Take account of existing legislation, consultation results and other work previously done

Full report published on Group B+ website

[https://link.epo.org/web/law-practice/harmonisation/group\\_b\\_plus\\_comparative\\_analysis\\_2023](https://link.epo.org/web/law-practice/harmonisation/group_b_plus_comparative_analysis_2023)

# Key findings

- Strong support for SPLH package.
- Consensus on Prior Art and 18-month publication
- Grace Period
  - Consensus on types of disclosure, burden of proof and rejection of Defence of Intervening User.
  - Divergence on critical date, statement and Prior User Rights
- Prior User Rights
  - Large degree of consensus.
  - Divergence on interaction with grace period, good faith and scope (change of volume/embodiments/activities)
- Conflicting Applications
  - Difficult to draw conclusions from consultation responses.
  - Consensus on general principles

# The WG Programme for 2023/24

- Further study of options identified in the comparative analysis of 2023
- Aim to identify impacts & effects of options and to seek further views from users
- Work in two parts:
  - Analysis of existing studies
  - Engagement with user associations & professional organisations

# Methodology

- Reviewed existing studies by Group B+, Tegernsee Group, & national/regional offices
- Focussed on Grace Period, Conflicting Applications, & Prior User Rights
- Further & more in-depth analysis of the options identified in comparative analysis:
  - Pros & cons of the options
  - Effects of the options
  - Stakeholder views & preferences
- Impacts identified were used to inform stakeholder discussions and questionnaire.
- Questionnaire probed stakeholder views on impacts, preferences and flexibilities

# Key Findings: Analysis of Previous Studies

- Identified wide ranging impacts of options
- Evident users prefer their own systems generally, e.g. on conflicting application
- Found a lot of information on users' views of best practice but less on flexibilities
- Gaps exist in Prior User Rights evidence – particularly scope and conditions of accrual.

# Key Findings: Questionnaire

- Support for SPLH very high, at over 93%
- Over 65% happy to acknowledge that compromise will be necessary to achieve SPLH
- Some results clearly favour particular outcomes – e.g. 95% agreement on intervening disclosures by 3<sup>rd</sup> parties should form prior art
- In other cases, it may be possible to rule some options out – e.g. on PURs support for standard of behaviour of good faith without definition was very low so maybe focus on other options here



# Future Work

- Incorporate questionnaire analysis into report of prior studies
- Engagement with users
- Commence further study focussed on Prior User Rights