

CONVERGENCE OF PRACTICE STATUS REPORT

I. GENERAL

With the adoption of the Strategic Plan 2023, it was decided to launch discussions on a convergence of administrative practice. During the consultation phase on the EPO Strategic Plan 2023, both the national offices of the Contracting States and users proposed topics to be assessed for the Convergence of Practice. Based on this input and considering the work done in different context, the Office presented document CA/PL 14/19 at the 51st meeting of the Committee on Patent Law including a proposed list of topics, their prioritisation, as well as the suggested working method. The Committee on Patent Law gave a positive opinion on the proposal to launch discussions on such a convergence of practice with regard to the first two topics "Examination of unity of invention" and "Designation of the inventor". In accordance with the agreed working method, two Working Groups were set up to explore possible common practices in these two areas. In response to the call for interest, 20 EPC Contracting States and 1 Extension State expressed their interest in participating in the discussions of Working Group 1 "Examination of unity of invention" and 17 EPC Contracting States and 1 Extension State in participating in Working Group 2 "Designation of the inventor". It should be noted that any Contracting State may join a particular Working Group at any time. Mr Stefan Luginbuehl, Head of Department European Legal Affairs at the EPO, has been appointed to chair Working Group 1 and Mr Philipp Römer, Lawyer in Directorate Patent Law at the EPO, has been appointed as chair of Working Group 2.

Both Working Groups proceed with the stated objective to conclude the work by the end of the year. In order to meet this tight schedule, a call for interest has been issued in December 2019 and the two Working Groups have been constituted in January of this year. So far the two Working Groups have held three virtual meetings, on 18 March 2020, 23 April 2020 and 9 June 2020. The EPO has kept users regularly informed via the SACEPO framework of the progress made and the subjects covered in both Working Groups' discussions.

It is planned to conclude the discussions on possible common practices in both groups at the latest in October 2020, so that their recommendations can be submitted for opinion to the Committee on Patent Law at its next meeting in November 2020 and to the Administrative Council for possible adoption at its meeting in December 2020 and subsequent voluntary implementation by the Contracting States.

The methodology applied by both Working Groups to achieve their goal of identifying common practices can be briefly described as follows:

- Collect information on practice as regards the agreed discussion areas in the various participating states and at the EPO.
- Analyse the information and determine areas for discussion.
- Explore similarities and differences in practice.
- Discuss and adopt proposals on possible common practices in these areas for recommendation to the Committee on Patent Law and the Administrative Council.

II. STATUS OF WORKING GROUP DISCUSSIONS

1. Working Group 1 – Examination of unity of invention

Working Group 1 is composed of the following 20 Contracting States and 1 Extension State:

Denmark (DK), Estonia (EE), France (FR), Germany (DE), Greece (GR), Hungary (HU), Italy (IT), Lithuania (LT), Latvia (LV), Montenegro (ME), North Macedonia (MK), Netherlands (NL), Norway (NO), Poland (PL), Portugal (PT), Romania (RO), San Marino (SM), Spain (ES), Sweden (SE), Turkey (TR) and the United Kingdom (GB).

In order to collect and analyse information on the practices at national level, the chair issued a questionnaire to the members of the group and compiled a summary of their answers (**ANNEX WG1-I**). This summary was then adopted by the group and served as basis for exploring possible areas for discussion of common practices as regards the examination of unity of invention. Based on the summary, the group felt that it

would be promising to further explore possible common practices in the following areas:

- Definition of single general concept/corresponding features
- Assessment of unity of invention *a priori*
- Minimum reasoning in support of non-unity objections

In order to provide additional background information and learn more details about the national practices in these areas, the EPO drew up a discussion paper with additional questions for the members of the Working Group (**ANNEX WG1-II**). The responses to these questions are currently being summarised and will serve as a basis for initial proposals for common practices in these three discussion areas. The proposals will be distributed to the group members in summer and will be discussed at its next meeting, which is scheduled for mid-September 2020.

2. Working Group 2 – Designation of inventor

Working Group 2 is composed of the following 17 Contracting States and 1 Extension State:

Bosnia & Herzegovina (BA), Bulgaria (BG), Denmark (DK), Estonia (EE), Finland (FI), France (FR), Germany (DE), Greece (GR), Hungary (HU), Iceland (IS), Italy (IT), Latvia (LV), Monaco (MC), Poland (PL), San Marino (SM), Serbia (RS), Spain (ES) and the United Kingdom (GB).

Following the setting-up of the Working Group in January 2020, the chair issued a questionnaire to establish the national practices regarding the designation of the inventor. All participating States replied to the questionnaire. The chair prepared a summary of the replies received as a basis for further discussions within the Working Group on possible areas for a convergence of practices concerning the designation of the inventor. The summary document (**Annex WG2-I**) was shared with the participants of the Working Group and the results were presented at the first meeting in March 2020. Following some clarification of open points during the first and second meeting, the final summary document was eventually adopted at the third virtual meeting in June 2020.

On the basis of the outcome of the questionnaire and the discussions during the first virtual meeting, the Working Group identified the possibility of discontinuing the notification of inventors about their designation and of limiting the publication of inventor data as topics for a potential convergence of practice.

Throughout the second and third virtual meeting the group therefore discussed concrete proposals in both of these selected areas (**Annex WG2-II**):

- With regard to the possible discontinuation of the notification of inventors about their designation the vast majority of participants in the Working Group indicated their support for the adoption of a common practice that inventors are not formally notified about their designation.
- Concerning the possibility to limit the publication of inventor data, the Working Group discussed whether a common practice could be adopted envisaging to no longer publish the inventors' address in the patent register or whether inventors should be given the possibility to decide about the extent of information provided to patent offices in their designation and to which extent this information is subsequently made available to the public.

At the occasion of the fourth and last virtual meeting of the Working Group in October, it is intended to conclude the discussions and to agree on a recommendation for a common practice in both of these areas.

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