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SUBJECT: Progress Report of the Working Group on a European Quality System

SUBMITTED BY: Working Group on a European Quality System

ADDRESSEES: Administrative Council (for decision)

SUMMARY

In 2007 the EQS working group (EQS WG) proposed to the Administrative Council a Standard for a European Quality Management System (EQMS, CA/57/07). The standard was adopted by the Council in its 109th meeting (Munich, 6 to 8 March 2007). The Council noted that the EQMS was directed to processes rather than products and mandated the EQS WG to continue its work, and in particular to give thought to drawing up standards for the quality of products (PQS).

The Annex to the current document comprises a set of "Product Quality Standards" for the members of the European Patent Network.

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I. SUBJECT

1. Progress Report of the Working Group on a European Quality System

II. STRATEGIC/OPERATIONAL

2. Strategic

III. RECOMMENDATION

3. The Administrative Council is requested:
 - to accept the set of "Product Quality Standards"
 - to decide that the Working Group on a European Quality System has completed its mandate and can now be disbanded

IV. MAJORITY NEEDED

4. Simple

V. CONTEXT

5. In 2007 the EQS working group (EQS WG) proposed to the Administrative Council a Standard for a European Quality Management System (EQMS, CA/57/07). The standard was adopted by the Council in its 109th meeting (Munich, 6 to 8 March 2007). The Council noted that the EQMS was directed to processes rather than products and mandated the EQS WG to continue its work, and in particular to give thought to drawing up standards for the quality of products (PQS).
6. The "Standard for the European Quality Management System" (EQMS, CA/57/07) and the set of "Product Quality Standards" (PQS, CA/135/08) provide a common quality framework for the members of the European Patent Network.
7. The ensemble of the standards mentioned above comprises a definition of the requirements with regard to patent offices in Europe, for their quality management systems on the one hand and minimum standards for product quality on the other.

VI. ARGUMENTS

8. The EQMS Standard requires inter alia the definition of quality objectives for patent products (see Section 1 "Leadership and Policy") and the validation, verification and monitoring of patent products in view of these objectives (see Section 4 "Quality Assurance").

9. The attached Annex comprises standards for patent products (PQS) which aim to contribute to harmonising the understanding of what constitutes a quality product and how the quality of products can be measured against these standards. The definition of objective criteria in the current document assists with the assessment of the extent to which patent products meet the PQS, whereby the EQMS provides a suitable infrastructure for the achievement of quality as defined by the PQS.
10. The EQS WG has noted the demand for high quality patent products emphasised throughout the patent world e.g. in CA/144/07 and has confronted the question of the purpose of product quality standards. The EQS WG was well aware that the "standards" it drafts must fit within existing legislation. Neither the Boards of Appeal at the European Patent Office nor judges of national courts can be bound by the PQS, even if adopted by the Council, nor are obliged to refer to them. Similarly, compliance with the PQS does not equate to a certification that products are compliant with the EPC or national legislations, respectively.
11. Secondly, efforts are underway under the EPO's Strategic Renewal Project to adapt to the changing environment, for example, within the scope of the "raising the bar" project. The EQS WG notes that the output from that project may impact on standards (i.e. Guidelines) applied by the EPO.
12. Thirdly, patent offices in Europe are fragmented in respect of the products they offer, thus ensuring that standards for most products that are relevant for all offices cannot be conceived. For example, some offices issue search reports with written opinions and others without. Therefore the working group proceeded to conceive a modular set of standards. Each participating member state could indicate which of its products will be compliant with the respective standard.
13. In the context of the EPN, patent offices in Europe may participate in the EPN with the products so indicated, adopting and implementing the relevant standards of the set of PQS and the standard for a European Quality Management System (CA/57/07).
14. The ultimate test of some aspects of quality of a final patent product is whether it can withstand contestation, before a national court for example, during revocation or infringement proceedings. The proportion of granted patents that face this test is low. The objective of implementing the EQMS and ensuring compliance with the PQS is to increase the certainty that patents granted would withstand this test.
15. Setting patent product quality standards only makes sense if they can be evaluated in an objective manner. This is now facilitated by assessing the extent to which patent products meet the respective standards.

16. A suitable infrastructure for the achievement of patent product quality as defined in the respective standards is established in the EQMS Standard which outlines the necessary procedural and organisational elements of a quality management system, the need to assess its effectiveness continuously, and the need to regularly review respective office's quality policy.

17. The standards have been achieved by:

- collecting and assimilating the experiences with quality systems of the national patent offices in Europe and the EPO
- providing a common vocabulary
- specifying objective product quality criteria

This provides a foundation for participating offices to achieve convergence and continuous improvement in the quality of their patent products and service (see also CA/120/06 and CA/122/06).

VII. FURTHER WORK - IMPLEMENTATION OF THE EQMS/PQS

18. With the EQMS and the PQS the WG has provided a proper foundation for a common quality framework for the members of the EPN. The FOCUS is now on implementation. Within the framework of the European cooperation policy support could be given to member states interested and willing to bring their quality management systems into line with the common quality standards. It is suggested that the EQS WG monitors the implementation process and reports to the Council every two years.

VIII. THE ALTERNATIVES ARE:

- not to accept the set of "Product Quality Standards" annexed to the current document
- to decide that the EQS WG should continue working on specific quality implementation projects that the EQS WG can elaborate together with the Office

IX. FINANCIAL IMPLICATIONS

19. If the Council decides that the EQS WG shall continue its work it will need to decide how this work should be funded. To align the funding with the policy on cooperation as agreed by the Council (CA/185/06) the work could be defined as an element of a "Programme" (see CA/185/06 II.3) to which participating offices would contribute.
20. The expenditure, including funding for workshops and enlarged meetings to which all Member States were invited, was € 140.877 in 2006 and € 67.585 in 2007.

X. LEGAL BASIS

21. Art. 29(4) EPC, in combination with Art. 14 Rules of Procedure of the Administrative Council"

XI. DOCUMENTS CITED

22. CA/120/06, CA/122/06, CA/185/06, CA/57/07, CA/144/07

ANNEX 1 PRODUCT QUALITY STANDARDS

The Modular SET OF STANDARDS for patent products

**Product Quality Standards for the European Patent Office
and the National Offices of the Member States
of the European Patent Organisation**

PRODUCT QUALITY STANDARDS

DRAFTED BY THE EQS WORKING GROUP

July 2008

PREAMBLE

This document sets out a modular set of quality standards for patent products issued by patent offices in Europe participating in the European Patent Network (EPN) - the European Patent Office (EPO) and the National Patent Offices of the Member States of the European Patent Organisation (NPOs). Each office will declare which of its products comply with which of the following standards

This document defines the minimum requirements for each of the following:

- The standard for classification,
- The standard for reports of search results,
- The standard for written communications
- The standard for refusals,
- The standard for patents granted after examination.

As the European IP-environment has multiple legislation jurisdictions regarding patent examination and the rulings of higher instances, indicating the differences between the different legislations is beyond the scope of this document. The term "relevant legislation" used in the standards pays tribute to this and shall comprise the applicable acts, laws, provisions, and all other regulations a particular patent office has to follow.

Due to the impact of the processes underlying the search and examination products, it is not always possible to exclude completely any reference to the process in the definition of product quality standards. Aspects of the underlying processes are intrinsic in the quality of the resulting product.

A. THE STANDARD FOR CLASSIFICATION

1. Classification shall be carried out at IPC advanced level.
2. Classification shall be in accordance with the instructions contained in the current version of the International Patent Classification.
3. Assigning the appropriate classification symbols identifying the technical subject(s) of the entire claimed invention (or inventions in case there is more than one) is mandatory. In addition, classification symbols may be attributed to any additional information contained in the document to be classified.

B. THE STANDARD FOR REPORTS OF SEARCH RESULTS¹

1. THOROUGHNESS

- 1.1 Reports of search results shall mention those documents, available to the searching office at the time of drawing up the report, which may be taken into consideration in deciding whether the invention to which the patent application relates is new and involves an inventive step. The date of publication of a document shall be indicated.
- 1.2 Reports of search results shall, whenever possible, mention any document which refers to an oral disclosure, a use, or any other ways of disclosure which took place prior to the date of filing of the patent application, together with an indication of the date of publication of the document and the date of the non-written disclosure.
- 1.3 Reports of search results shall indicate the scope of the search by defining which information sources, databases and which classes within the IPC, ECLA and National Office classification schemes and any other classification scheme used by the examiner have been searched. The term "databases" includes printed or electronically available information.
- 1.4 If it is impossible to carry out a meaningful search on the basis of all or some of the claims, reports of search results shall either declare that no search is possible or a partial report shall be drawn up or, where applicable under the relevant legislation, a communication of the defects shall be sent to the applicant.
- 1.5 If it is considered that the patent application does not relate to one invention, or one group of inventions only, reports of search results shall be drawn up on those parts of the patent application which relate to the invention, or the group of inventions, first mentioned in the claims or, dependent on the relevant legislation, at least one invention selected, or presumed to have been selected, by the applicant.
- 1.6 The examiner shall have conducted an efficient search until sufficient documents pertinent to the patentability of all claims are found or until the relevant classes and databases have been fully covered.

¹ In Europe, multiple ways to report on search results exist. The provisions of this standard therefore apply to different products such as search reports as published by the EPO, stand-alone communications of search results or communications of the examiner including the search result as issued by other offices.

2. CLARITY

- 2.1 Reports of search results shall be explicit as to which piece of prior art cited, or portion of it, applies to which claim(s) and as to the extent to which each piece of prior art applies.
- 2.2 Reports of search results shall list the relevant documents and indicate the category or pertinence. The report shall distinguish between cited documents published before the date of priority claimed, between such date of priority and the date of filing, and on or after the date of filing.
- 2.3 Citations shall be referred to the claims to which they relate. The relevant parts of the documents cited shall be identified, references to "the entire document" should be avoided.
- 2.4 The complete classification of the subject-matter of the patent application in accordance with the current International Patent Classification shall be indicated as well as the scope of the search (see B 1.3, above) at least in terms of IPC classes.
- 2.5 Reports of search results shall be accompanied, where provided for by the relevant legislation, by an opinion on whether the application meets the requirements of the relevant legislation.

3. ACCURACY

- 3.1 Each statement made in the reports of search results shall be factually, technically and legally correct and relevant.

4. TIMELINESS

- 4.1 Unless otherwise provided for in the relevant legislation, for non-PCT first filings, the reports of search results shall be available no later than 9 months after the filing date.
- 4.2 The office shall publish its goals with regard to time limits for the issuance of reports of search results for second filings.

5. TRANSPARENCY

- 5.1 The searching office shall publish the guidelines according to which it carries out its searches, or alternatively, indicate this on the reports of search results.

- 5.2 The searching office shall publish the extent of search documentation available to it and the report shall include a reference to where this may be found. Where the search documentation is more restricted than the PCT minimum set of documentation, this shall be stated by the office publicly.
- 5.3 File inspection shall be available upon request after publication, preferably online, provided that the relevant legislation permits this.
- 5.4 The name of the examiner who carried out the search shall be indicated unless prohibited by the relevant legislation.
- 5.5 The date of issuance shall be indicated.
- 5.6 If applicable under the relevant legislation, the report shall indicate upon which claims the search has been carried out and their filing date.

C. THE STANDARD FOR WRITTEN COMMUNICATIONS

The following provisions shall apply to examiners' written communications regarding patentability including those accompanying the report of the search result.

1. COMPREHENSIVENESS

- 1.1 All objections to the application under the relevant legislation relating to substantive matters and formal matters shall be raised in the written communication.

2. CLARITY

- 2.1 The written communication shall be reasoned with reference to the relevant legislation and be explicit as to against which parts or aspects of the application objections are raised. The reasoning shall be clearly drafted and conclusive.
- 2.2 Citations shall be referred to against the claims to which they relate. The relevant parts of the documents cited shall be identified in the written communication.

3. ACCURACY

- 3.1 Each statement made in the written communication shall be factually, technically and legally correct and relevant.

4. TIMELINESS

- 4.1 Unless otherwise provided for in the relevant legislation, for non-PCT first filings where the search report is accompanied by a written communication this shall be available together with the search report not later than 9 months after the filing date.
- 4.2 The office shall publish its goals with regard to time limits for the issuance of subsequent communications and for written communications for second filings.

5. TRANSPARENCY

- 5.1 The office shall publish the guidelines according to which it carries out the examination, or alternatively, indicate this in the written communication.
- 5.2 File inspection shall be available upon request after publication, preferably online, provided that the relevant legislation permits this.

- 5.3 The name of the examiner who established the communication shall be indicated unless prohibited by the relevant legislation.
- 5.4 The date of its issuance shall be indicated.
- 5.5 The claims, and if applicable under the relevant legislation, their filing date, on which the written communication has been established shall be indicated.

D. THE STANDARD FOR REFUSALS AFTER EXAMINATION

1. GENERAL

- 1.1 The refusal shall cover at least one pertinent objection to the application under the relevant legislation relating to substantive matters and/or formal matters.

2. RIGHT TO BE HEARD

- 2.1 Unless otherwise provided for in the relevant legislation, the refusal shall only be based on grounds or evidence on which the party concerned has had an opportunity to present its comments.

3. CLARITY

- 3.1 The refusal shall be reasoned with reference to the relevant legal provisions and shall be explicit as to against which parts of the application objections are raised. The reasoning shall be clearly drafted and conclusive.

4. ACCURACY

- 4.1 Each statement made in the refusal shall be factually, technically and legally correct and relevant.

5. TRANSPARENCY

- 5.1 The office shall publish the guidelines according to which it carries out the examination leading to the refusal, or alternatively, indicate this in the refusal.
- 5.2 File inspection shall be available upon request after publication, preferably online, provided that the relevant legislation permits this.
- 5.3 The refusal shall state the name of the person(s) responsible for the decision.
- 5.4 The refusal shall state the date the decision was taken or the date of its issuance.
- 5.5 The refusal shall indicate the claims, and their filing date, on which the decision has been based, if applicable under the relevant legislation.

E. THE STANDARD FOR PATENTS GRANTED AFTER EXAMINATION

1. GENERAL

- 1.1 A granted patent shall only contain subject-matter which does not extend beyond the content of the application as filed.
- 1.2 The claims on the basis of which a patent is granted shall relate to an invention in a field of technology.
- 1.3 Each claim shall be clear for a person skilled in the art as to what it covers and the patent shall contain a disclosure that enables a person skilled in the art to carry out the invention as claimed.
- 1.4 The subject-matter of each independent claim shall be susceptible of industrial application, novel and it shall comprise an inventive step - in the meaning that it is not obvious to a person skilled in the art - with regard to the state of art known to the examiner.
- 1.5 The claims on the basis of which a patent has been granted shall have been subjected to a search for patent applications which were filed before, but published after the date of filing of the granted patent.

2. ACCURACY

- 2.1 The title of the patent specification shall be precise, concise and shall reflect the content of the invention, at least in terms of the independent claims, if applicable under the relevant legislation.
- 2.2 The abstract shall be a clear and concise summary of the invention where required under the relevant legislation.

3. TIMELINESS

- 3.1 The offices shall take and publish measures to achieve the goal to complete examination in 3 years after the confirmed request for examination has been received².

² cf. The Paris Intergovernmental Conference foresees patents granted within three years from the date of filing.

4. TRANSPARENCY

- 4.1 The office shall publish the guidelines according to which it performs the examination of patent applications.
- 4.2 The granted patent specification shall be published or made available to the public.
- 4.3 File inspection shall be available upon request after publication, preferably online, provided that the relevant legislation permits this.