



REFORM OF THE BOARDS OF APPEAL OF THE EPO

FICPI-UK

FICPI-UK is a self-governing national association of FICPI (The International Federation of Intellectual Property Attorneys). We represent the interests of our members, who are all intellectual property attorneys (patent attorneys and trade mark attorneys) working in private practice (i.e. in firms that have more than one client) in the United Kingdom, as well as of our members' clients.

We have about 95 members in over 30 firms spread across the UK, and members' clients vary from large international organisations, UK plcs, Universities and Charities to Small and Medium Enterprises and sole inventors.

Response

We submit the following comments on the proposals to be presented to the Administrative Council at the end of this month regarding Reform of the Boards of Appeal.

A number of the proposals made appear to allow the President of the EPO some opportunity to interfere with the work of the Boards of Appeal; these should be removed to ensure the independence of the Boards of Appeal. Such proposals include 'consideration' of the yearly budget by the President¹, retention by the President of 'functions and powers where there is or could be an impact on the European Patent Office or the European Patent Organisation'² and the right of the President to attend the BOAC³.

The document says in paragraph 25 that "the users of the appeals system are not formally involved in the [rule setting] procedure". We strongly believe that a formal mechanism for user input should be established as part of the reforms. A formally constituted User Group to the Boards of Appeal could be created, with the possibility of having User observers at the BOAC. We believe such approaches mirror those of other judicial bodies, such as the UK Patent Courts, which have proven to be helpful.

Although the provision of a separate building for the Boards of Appeal is not seen as strictly necessary, we believe this would contribute positively to the appearance of independence. We also think that a new building would offer the possibility to provide an adequate number of hearing rooms that are specially designed for appeal hearings, as well as suitable facilities for the users. Consultation with users should take place in the design of such facilities.

The document presents a New Fee Policy for Appeals. The presentation of this policy seems unnecessary at this time, and is unrelated to the important reforms being considered now. Therefore, in our view, discussion of the fees for appeals should take place separately in an appropriate manner. There are many possibilities for reforming

¹ Proposed Rule 12a(3) of the Implementing Regulations; Paragraph 19 of the document

² Paragraph 3(d) of the proposed Act of Delegation

³ Proposed Rule 12c(1) of the Implementing Regulations; Paragraph 23 of the document



the structure of appeal fees that could be considered. Nevertheless, we offer the following comments:

- Appeals are an essential part of the process of the European Patent Office, and should therefore be funded in a similar way to the other activities of the Office, such as search and examination, from the general income the Office receives.
- The comparative fees presented in the document are not appropriate. The USPTO appeal fee is US\$800, much less than the recently introduced *Inter Partes* Review fees.
- Increasing the appeal fee from €1860 to €7350 over a period of 5 years is an unreasonable level of increase for applicants and opponents to bear, and would reduce access to the appeal system. The document provides no clear justification for such a huge increase, and the shifting of the costs of one part of the EPO's system to the users.

Further information

If the UK IPO would like to discuss our comments, they should either contact the undersigned or:

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The above comments have been approved by the Council of FICPI-UK.

Robert Watson
Immediate Past-President
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