

BUSINESSEUROPE



**ARE COMPANY STRATEGIES AND
PRACTICES AN IMPEDIMENT TO FINDING
SOLUTIONS TO THE PATENT OFFICE
BACKLOG CRISIS?**

BACKLOGS AND COMPANY PRACTICES

Insofar as backlogs result from a difference between output and input, they are influenced by:

- Company practices that lead to an excess of filings (increased input)
- Company practices that lead to a slowing down of the decision process (delayed output)



EXCESS OF FILINGS

- This is of course a relative notion. It may be taken to mean filing more than the actual inventive activity of the company would normally deserve.
- Many possible reasons for such a strategy, e.g.
 - ✓ Build patent thicket around a technology for improving exclusivity effect
 - ✓ Improve image of technological leadership
 - ✓ Improve standing in patent pools where fee sharing is based on number of (essential) patents
 - ✓ Increase portfolio value on patent rights markets



SLOWING DOWN THE PROCESS

Again, many possible reasons for such a strategy, e.g

- ✓ Get enough time to ensure that the claims finally obtained cover the product the company puts on the market
- ✓ Get enough time to adjust the claims to what other people put on the market or to what standards will mandate
- ✓ Share the burden of the inherent uncertainty of the process with competitors for as long as possible



BACK TO BACKLOGS

- Company strategies and practices do have an influence on backlogs
- This is not enough, however, to conclude that such strategies and practices are bad and should be eradicated
- Most of them serve a legitimate business purpose and any judgment that some do not should be based on overall economic policy grounds, not just seen as an expedient way of solving the backlog issue
- After all, the main purpose of the patent system is to help companies develop their business and create jobs



SEEKING SOLUTIONS

- Solutions to the « backlog crisis » should take company strategies into account rather than try to force companies to change to sub-optimal or ill-suited strategies
- Using as starting point that companies are misusing, abusing or « gaming » the system is unlikely to lead to economically sound and efficient solutions
- Let's try to work out appropriate solutions together rather than spend our time painting the other as the bad guy

