

**FICPI/AIPLA Colloquium on  
“THE PATENT OFFICES BACKLOG CRISIS”  
17-18 June 2010**

**E.5. Worksharing – the role of the backlog problem as an impetus for Offices to explore various worksharing initiatives with a detailed review of several proposals, including PPH, SHARE, TRIWAY, NEW ROUTE, etc. including relevant IP5 Foundation projects**

**DKPTO Mr. Jesper Kongstad, Director General, Danish Patent and Trademark Office**

The ever increasing Backlogs in patent filings naturally points to the exploitation of work sharing schemes as a means for dealing with this problem.

A great variety of work sharing programs has been launched in the last couple of years in particular among the trilaterals as previous speakers has already mentioned.

Denmark too, has encouraged and participated in work sharing programs for simple reasons:

- Backlogs are a threat to the entire global patent system which risk loosing it's credibility among users and politicians,
- It introduce a serious legal uncertainty to both patent holders and third parties

In consequence – pendency in the global patent system seriously hampers innovation, and imposes huge costs to the global economy.

Denmark has a long history for making use of **foreign work** in its own granting process to the extent possible.

Secondly, Denmark has been intensively involved in the so-called **Utilization Project** within the European Patent Network, where the European Patent Office in the future can make use of the National Offices classification and search work to the extent possible thereby improving efficiency and decreasing pendency.

Thirdly, Denmark is participating in **the Patent Prosecution (or PPH) Program**.

Let me share some of our reasons for engaging into the PPH and share some of our experiences with you:

The Patent Prosecution Highway Programs are **bilateral agreements among patent offices** to allow an applicant a fast-track granting process at an Office of Second Filing, if the First patent office intends to grant the corresponding patent application.

A PPH establishes a process whereby the Office of second Filing makes use of the work already carried out by the Office of First Filing in relation to the same invention. This means that the Office of Second Filing can process the patent application **faster** because the examination process begins at a **more informed level**. This also means that the **quality of the search and examination is improved** at the Office of Second Filing.

Naturally, the Office of Second Filing is not bound by the opinion or work performed by the Office of First Filing.

Denmark entered into the PPH Program in 2008 for the same reasons as many other countries;

- To investigate whether the PPH mechanism could increase work sharing among Paris route applications and, hence, reduce backlogs, and
- To investigate if applicants through a fast-track procedure could get faster, more predictable and less costly access to, for our industry, important markets.

Our experience with PPH so far confirms the goals we expected:

Danish users have provided our Office with a very positive feedback on the use of PPH based on a Danish First Filing.

In some cases our **users received a granted patent within 2 years from the filing of the Danish priority application**. In all cases they receive Office Actions much faster than usually.

At the same time PPH offer applicants to choose at which Office of First Filing they may wish to put their **initial efforts depending on the level of costs to national patent attorneys**. In any case, statistics prove that PPH cause fewer Office Actions from the Office of Second Filing thereby **saving costs for applicants**.

Global statistics confirm the experience of our users including the fact, that granting rates greatly increases.

Globally, more than **5500 applications have been filed under the PPH Program**. Few, compared to number of PCT filings but considering how new the PPH is it's a promising number.

It is my believe that the stumbling block for a wider use is still a great amount of **conservatism** and lack of case stories and advertisement. In addition hereto, it is a fact, that PPH is still a new program and we simply haven't yet had the time to harvest the advantages.

Lastly, I am convinced that the experiences of the PPH Program definitely had a helping impact on current and ongoing efforts on improving the PCT System.

Denmark held the first PPH meeting in Copenhagen in February 2009 and in the subsequent week WIPO DG Gurry held a meeting on the Future of the PCT, which in my opinion was not a coincidence.

Let me finish by stating that one among different remedies for tackling backlogs is work sharing. As a consequence, we should exploit the different work sharing programs including PPH and gain experience which could be fed into the international and global patent system. Our user deserves a global patent system which is capable and serves their needs.