



RESOLUTION

EXCO/IT08/RES/2

"Inventive Step at the European Patent Office"

FICPI, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession throughout the world, assembled at its Executive Committee held in Florence from October 5 to 8, 2008, passed the following Resolution :

Noting the rise in the number of patent applications in the European Patent Office (EPO) and the problem of backlog of that office;

Further noting the criticism that too many patents are granted; more specifically, the criticism that many granted patents have questionable inventive merit; and that the grant of exclusive rights for obvious developments has a negative impact on innovation;

Recognising that most of this criticism is the result of those few cases where the criteria for the examination of inventive step were not properly applied;

Further Recognising that based on such cases there have been calls to “raise the bar” for inventive step at the EPO and that, for example, even in the “Board 28 Report” of the Administrative Council of the EPO, “raising the bar” is recommended as one of the measures to cope with the backlog problem;

Believing that raising the level of inventive step would not reduce the backlog in the short to medium term, but would in fact increase the workload of the examiners owing to increased debate with applicants;

Believing that the decision practice of the Technical Boards of Appeal at the EPO on the question of inventive step is correct and objective based on the current wording of Article 56 EPC;

Pointing out that there is no legal basis in the EPC for ‘raising the bar’ in response to an increase in the number of patent applications and that “raising the bar” for inventive step at the EPO is legally possible only by amending the EPC;

Considering that such an amendment would increase uncertainty regarding the validity and enforcement of European Patents;

Resolves that the EPO should not promote amendment of the EPC to ‘raise the bar’ in order to cope with the backlog problem and that any criticism with respect to the grant of patents with insufficient inventive merit should be addressed by enhancing quality of examination of inventive step at the EPO.