

CIPA

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Well, today is my lucky day. I've inherited a whole set of notes, so somebody might want to claim them afterwards. Thank you for giving us an opportunity to speak a little and catch up on many of the points that have been raised. I have a whole set of notes here, and I'm very fortunate in that a number of points that I was going to make have already been made extremely ably by our speakers in the last two days.

In principle, CIPA would like to achieve a truly harmonized patent system, but we're realistic. It's going to be difficult. That doesn't mean you shouldn't try, but it's going to be difficult and it's going to take time. In the meantime, why don't we work on the things that are easier to achieve that would still be of benefit to applicants and users of the system? When I say "users of the system," I mean both those who are applying for patents and those who are looking at it from a third-party's perspective. So, we suggest a parallel approach, where we move — I hesitate to use the word "quickly" — but reasonably forward on the issues that are less controversial, while still discussing in parallel solutions to the bigger issues.

So, what about those bigger issues? First-to-file, we've heard basically consensus all around the room in favor of first-to-file. We recognize that there are

issues in the United States, and perhaps there's something that we can do, whether we are based in the United States or whether we're based abroad, that will help our U.S. colleagues in their efforts to convince their legislature that moving to first-to-file is a good thing for everybody. I'll leave that to thought. It might be something that we could do constructively moving forward.

The grace period: We're generally opposed to a grace period. We've heard a lot today from various organizations who are very deeply opposed to a grace period. We do believe it will create a longer period of uncertainty for third parties. That's been brought out in some of the discussions today. There have been a number of different surveys that find that the universities and small inventors who are supposed to benefit from such a system do not, in fact, benefit due to the additional complexity which is introduced into the system.

That said, everyone has sympathy for the small inventor, and I think particularly possibly in countries that are less developed than the Western economies and Japan, who just wasn't aware of the provisions. So, maybe there is room for a compromise here, provided that the compromise is part of a system that works as a whole. If there is to be such a compromise, there has to be restraints placed on the grace period, such as to act as a safety net rather than as part of the routine patent strategy for large corporations and small corporations. And yet, similarly, there have to be the prior user rights also as a safety net for people who

would otherwise be adversely affected. We've heard more details from the other speakers on the type of constraints that should be considered. Those are the sorts of constraints that CIPA agrees with, and I'm not going to repeat them now.

Turning to the prior art, we favor an absolute standard in order to avoid complicated and, therefore, costly arguments about accessibility and cataloging systems and the adequacy thereof. In addition, we don't want to make things even more difficult for the patent offices in their searching. We believe that a public disclosure or a public prior use in any country in any language should be prior art. A secret prior use or disclosure under confidentiality or with an understanding of confidence should not be prior art. That is not accessible to the public.

Continuing in the same vein, there have been discussions about PCT applications and whether they should be considered as prior art as from their priority date in all countries regardless of whether they enter the national phase. We believe that you should not have to wait until a PCT application enters the national phase in order to ascertain whether or not it's prior art. Consider the situation where one applicant enters the national phase early, because he wants to progress rapidly to patent, and there is an earlier-filed PCT application. Or, the patent office, then, you're supposed to sit around and wait until that applicant decides at 30 months whether or not he or she wishes to continue in the national phase. Just something from a practical point of view, I think that's another layer

of complexity we could well do without. It's a simple solution. If it's published, it's prior art. Everyone can understand that.

On the thorny issue of whole contents and novelty and inventive step, we can see that there are arguments on this both ways. We are based in Europe, and we're familiar with European practice. The whole contents approach is something that we understand and use and are comfortable with that. You could even say we like it in some circumstances. In other circumstances, perhaps it does cause problems. We don't believe that the solution is a specific anti-self-collision provision requiring assignment to the same entity. We believe that that actually could give an advantage to "Megacorp," who can ensure that lots and lots of applications are assigned to the same entity, as compared with smaller inventors or SMEs. In addition, if you're going to be aware of any prior art that's not available to public, then it ought to be your own. So, why introduce this specific anti-self-collision provision? It seems, to us, to complicate the circumstances.

On the point of third party or your own earlier applications and inventive step, that's a difficult one. And, part of the problem here is that, perhaps, when we're talking about inventive step, we're not necessarily all talking about the same thing. The standards of examining inventive step do vary at the moment around the world. In addition, the flexibility in the amendments that you can make in order to overcome such objections do vary. In some countries, where there's a

very strict added matter standard, you are prevented from making restricting types of amendments if you haven't got clear basis for those particular amendments.

You all know that. But, this is an additional complexity, which makes certainly Europeans very worried about introducing a very strict inventive step requirement where you're talking about pending applications, co-pending applications, where you couldn't possibly be aware of their existence.

So, if we are going to find a solution to this difficult issue, maybe we should try and move away from language, such as whole content and double patenting, that brings with it historical significance and possibly national prejudices. Perhaps we should start from first principles, another of these baby steps, and say that we want a system that will not allow two patents for the same invention.

We heard from IIPS some possible compromises on novelty plus, so whether you call it novelty plus or inventive step minus, I don't think we really care. There may be a way forward in this area if we sit down, work together, and think about a reasonable approach that will result in the applicants not getting patents for the same invention, but not prejudicing an applicant unduly when the prior art was simply not available to him. That's an area that we think we may well be able to find a compromise on in the future, although not today, not

tomorrow. And I do sincerely hope that, before I retire, we have found some solutions to some of these problems, because I'm not intending to retire tomorrow.

In the meantime, I think there are some very quick wins on some of the easier issues, and those have been brought out also in some of the presentations today. Let's not delay going for those quick wins, but let's also continue to work on the difficult points of principle. Thank you. (Applause)