

Tegernsee Heads Meeting II Statement

The second "Tegernsee Heads" Meeting, attended by Heads of Offices and representatives from Denmark, France, Germany, Japan, UK, the USA and the EPO, took place upon the invitation of EPO President Battistelli at Spitzingsee near Munich on 19 – 20 April 2012, with the aim of considering steps to advance patent law harmonization.

The participants were pleased to note that there have been several significant developments in European, Japanese and US patent law which have provided additional impetus to harmonization since the first Tegernsee Heads meeting (Tegernsee I) in July 2011. The America Invents Act (AIA) was passed in the United States, the revised law relating to non-prejudicial disclosures (grace period) in Japan went into effect on 1 April 2012, and there has been significant movement in Europe toward the establishment of a Unitary Patent and a Unified Patent Court.

In addition, the participants took note of the input received from their respective technical and legal experts (the "Tegernsee Experts Group"), and approved the Aggregate Matrix Document as a fair reflection of the national/regional patent laws in their respective jurisdictions, to form the basis of further work of the Tegernsee Experts Group.

The participants reaffirmed that the following issues identified at Tegernsee I are key to harmonization: first-to-file, grace period, prior user rights, scope of prior art, definition of novelty and non-obviousness/inventive step, 18-month publication and treatment of conflicting applications.

The Tegernsee Expert Group has been mandated to carry out a detailed comparative analysis of these issues on the basis of the information contained in the Aggregate Matrix Document, so as to identify the extent of harmonization achieved. Moreover, the Expert Group will carry out studies on the following issues on the basis of fact-finding work, mainly of a technical nature:

1. Grace period
2. 18-month publication
3. Prior art effect of secret prior art
4. Prior user rights

It was further agreed that given the window of time available to the USPTO for rulemaking as regards the first-to-file issue under the AIA, the Tegernsee Experts Group should provide input to the USPTO for consideration in the rulemaking process on an expedited basis with regard to practices that will promote further international alignment.

The Tegernsee Expert Group will report on the ongoing state of their work to the Tegernsee Heads at a meeting to be called in the Fall.