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**European Patent Office “Raising the bar” initiative: a review of its own law?**

In a recent speech, the President of the EPO indicated that the EPO has been aiming at an improvement of quality and a reduction of pendency times of EP applications and post-grant procedures. This is the stated goal of the “raising the bar” initiative launched by the EPO by 2008. In particular, within the framework of this initiative by the EPO one can include the rules on European divisionals which came into force on April 1, 2010, and which set a shorter period during which a divisional can be filed from a pending European application.

According to the EPO President, “the EPO is beginning to harvest the first results of the Raising the Bar initiative”. However, the EPO President has also indicated that, before launching any other initiatives of a similar kind, the EPO will first analyze the first results.

Indeed, on 13 January 2012 the EPO has announced the setting up of an Economic and Scientific Advisory Board whose task will be that of addressing “important patent-related economic and social issues in a more selective and dedicated way”. The Board will be made up of internationally recognised experts having a global perspective and an emphasis on Europe. According to the EPO announcement, the Board will advise the EPO on economic and social studies. Still according to the EPO announcement, the Board will also provide early warnings on sensitive issues as well as make policy recommendations on the basis of studies and analyses prepared by the EPO or by external bodies.

Given the very significant impact the new divisional rules have had both on applicants and on third parties, it will surely interesting to see whether the newly established Economic and Scientific Advisory Board will recommend any changes to such rules.

Indeed, the new rules on European divisionals have introduced time limits which are more difficult and time-consuming to determine and monitor, both for applicants and for third parties, than any other time limits provided for by the EPC. In addition, while one of the goals of the new rules on European divisionals may have been that of reducing the divisionals in number, it is an open question whether this goal was achieved. Indeed, while there may be less time with the new divisionals for filing “sequential” divisionals (i.e. for filing a first divisional, then a second divisional off the first, then yet a further divisional off the second, etc.), there is still plenty of time to file “parallel” divisionals (i.e. for filing several divisionals at the same time), for those cases that the applicant feels are particularly important and where the EPO’s reaction to the applicant’s substantive reply is too slow to give the applicant indication on of the chances of obtaining a patent with a suitable scope of protection on the parent application already.

The new divisional rules have been criticized by many users - we will see soon whether they will be (constructively) criticized by the Economic and Scientific Advisory Board, thereby hopefully leading the EPO to a change of policy and law on divisionals which will bring about simpler procedure and more legal certainty for all parties involved.