



July 7, 2009

Hon. Allison Brimelow
President
European Patent Office

Hon. Takashi Suzuki
Commissioner
Japan Patent Office

Hon. John Doll
Acting Undersecretary of Commerce for Intellectual Property and Director
United States Patent and Trademark Office

Dear Trilateral Office Heads,

The Industry Trilateral previously stated in April 2004 its general support for substantive patent law harmonization through both the Substantive Patent Law Treaty (SPLT) initiatives within the Standing Committee on Patents (SCP) of WIPO and the independent Group B+ Working Group activities. There remains general agreement on most of the elements of a limited package among the organizations that comprise the Industry Trilateral (BUSINESSEUROPE, the Japan Intellectual Property Association, the Intellectual Property Owners Association, and the American Intellectual Property Law Association). Subsequent discussions and debates of various issues, however, have demonstrated the difficulty in achieving agreement between Member States of WIPO on the details of even a limited harmonization package.

Nonetheless, we would emphasize that the Industry Trilateral is resolute in its support of the efforts of the Group B+ Working Group to achieve agreement on a limited package, and reaffirms its support for work toward a substantive patent law reform treaty as expressed in our April 2004 Resolution.

Specifically, the Industry Trilateral continues to desire the negotiation and conclusion of an effective Substantive Patent Law Treaty (SPLT) that will reduce costs to applicants and industrial property offices, promote legal certainty, and reduce pendency. We also recognize that in the near term, the Group B+ Working Group and its consideration of a limited package of issues may offer the best opportunity to provide balance to the desires and needs of applicants from the Member States of the World Intellectual Property Organization, as well as address the desires and needs of industrial property offices in these Member States. Therefore we recommend that the Trilateral Offices, through their activities in the Standing Committee on Patents and the Group B+ Working Group, concentrate their efforts on a reduced set of provisions which will lead industrial property offices to the adoption of common search and

examination standards as well as the effective implementation of workload sharing, and will provide applicants with legal certainty regarding the patentability of their inventions.

Specifically, the Industry Trilateral recommends that the harmonization of substantive patent laws in the SCP and Group B+ Working Group initially concentrate on achieving a reduced harmonization package containing the following provisions:

- a first-to-file system of priority,
- an international grace period for a first-to-file system that provides an adequate safety net for applicants against inadvertent, unauthorized or untimely disclosures of their inventions,
- a uniform standard and period for publication of applications,
- an agreed definition of prior art having no geographic limitations
- an agreed definition of how and when pending published patent applications, including PCT applications, are to be used as prior art, including any necessary solution for double patenting.

Thank you for your continuing efforts to achieve meaningful patent law reform and for your consideration of the views of the Industry Trilateral.

Yours sincerely,



Philippe de Buck
BUSINESSEUROPE Director General



Tsuneaki Hagiwara
President of JIPA



Steven W. Miller
President of IPO



Teresa Stanek Rea
President of AIPLA

cc: **Mary Carman, Commissioner of Patents, Registrar of Trade-marks and Chief Executive Officer
Canadian Intellectual Property Office**

**Francis Gurry, Director General;
World Intellectual Property Organization**

**James Pooley, Deputy Director General – Designate, Patents
World Intellectual Property Organization**