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**Remarks of the Polish Confederation Lewiatan on substantive patent law harmonization project,
in particular the notion of grace period**


The Polish Confederation Lewiatan promotes the progress towards a global patent system which facilitates the international competition of European companies in fields of innovation and technological progress. However, we remain highly sceptical to the Substantive Patent Law Harmonization project, currently on-going within the Patents Working Group as we perceive this initiative as contributing to a significant increase of legal uncertainty for all applicants. The notion of grace period is expected to be a kind of compromise between the already existing different types of grace periods in other countries. In fact, the modification of the patent system in this direction will result in complexity and unpredictability of patent application.

It has to be stated that among the five major patent systems (IP5), China, Europe, Japan, South Korea, and USA, two of them, China (SIPO) and Europe (EPO) traditionally have no grace periods. Since its introduction in 1973, the European Patent Convention offers a high degree of certainty for evaluation of patentability as well as for the scope of protection of inventions. We have to bear in mind that national patent systems differentiate from each other. Therefore, the harmonisation should be initiated by taking into consideration the quality as it will help avoid misuses of the system and lead to equal business opportunities within legal frameworks for both, global companies and SMEs.

Moreover, a grace period will generate additional costs due to the increase in the complexity of the European Patent Convention as well as national patent systems in member states. Additionally, we can expect the multiplicity of number of cases because of the fact that the grace period will create a new ground for starting litigation. Another controversial idea that we would like to stress is the intention to modify the concept of 'conflicting applications'. We strongly advocate lack of alterations in the wording of Art. 54(3) EPC which adequately regulates this issue.

We would like also to raise our concerns about the lack of transparency about the negotiation process and the way BusinessEurope has circulated the draft document, which results in the lack of open debate of all BusinessEurope members in such a crucial topic.

Yours faithfully,



Maciej Witucki
Prezydent Konfederacji Lewiatan

