Report on outcome of IP5 expert round table on artificial intelligence

IP5 ICG, The Hague, 16 January 2019
Objective

IP5 Heads (June 2018) identified AI as one of the strategic priorities for the IP5 and mandated offices to:

- explore impact of AI on the patent system
- promote common understanding on legal practices in the field of AI
- prepare further discussions at IP5 Deputy Heads/Heads level
- develop/discuss policy options
Roundtable agenda

- Inventorship/ownership
- Patent eligibility
- Sufficiency of disclosure
- Inventiveness
- Wrap-up / next steps
Inventorship/ownership – discussion points

- Types of AI inventions: utilising AI and developed by AI

- Concept of inventor: natural person

- Rationale: patent system to support human progress facilitated by human activity

- AI as a tool for creating inventions

- Designation of inventor: natural person; designation of AI could in some jurisdictions lead to issues during prosecution
Patent eligibility – discussion points

- Patentability for AI: no specific rules for inventions in the field of AI, regular patentability criteria apply, AI inventions treated as CII in some jurisdictions

- Eligibility of implemented algorithms: depends on the how the invention is claimed, its use and claim construction, i.e. how it is written in the claim
Sufficiency of disclosure – discussion points

- Requirement of sufficiency of disclosure: fully applicable
- Define where the contribution lies and fully disclose such
- Promote reproducibility, repeatability, predictability
- Prevent insufficient description of essential subject matter
- Person skilled in the art: human; takes account of several factors including the wide spread use of AI
Inventiveness – discussion points

- No separate inventiveness standard needed or used for AI inventions, despite the different types of AI inventions

- All the features of the invention must be taken into account for the assessment of inventiveness

- Concept of the person skilled in the art unaffected
Next steps

- Summary report to be submitted for approval by the IP5 Deputy Heads (April 2019) and endorsement by the Heads of Office (June 2019)

- IP5 Industry feedback to be invited

- Publication on the IP5 website following endorsement

- Further steps to be discussed:
  - need for IP5 AI Task Force?
  - other AI relevant topics to be explored?
Thank you for your attention!