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# 'Raising the Bar, Efficiency, Quality and Stakeholder Incentives'

## Panel session at the 4th Annual Conference of the EPIP Association

Alison Brimelow  
President EPO

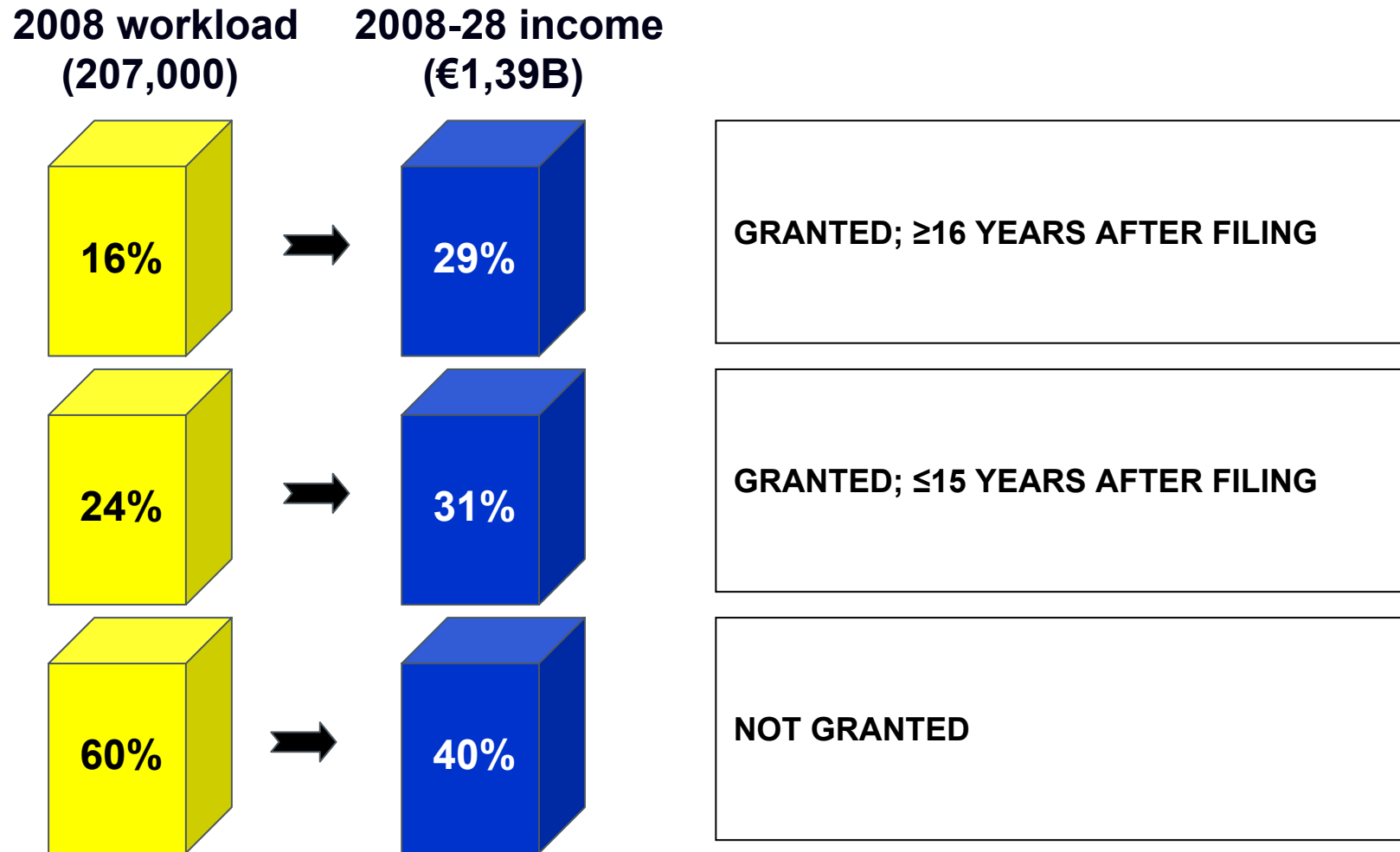
Bologna, 25th September 2009



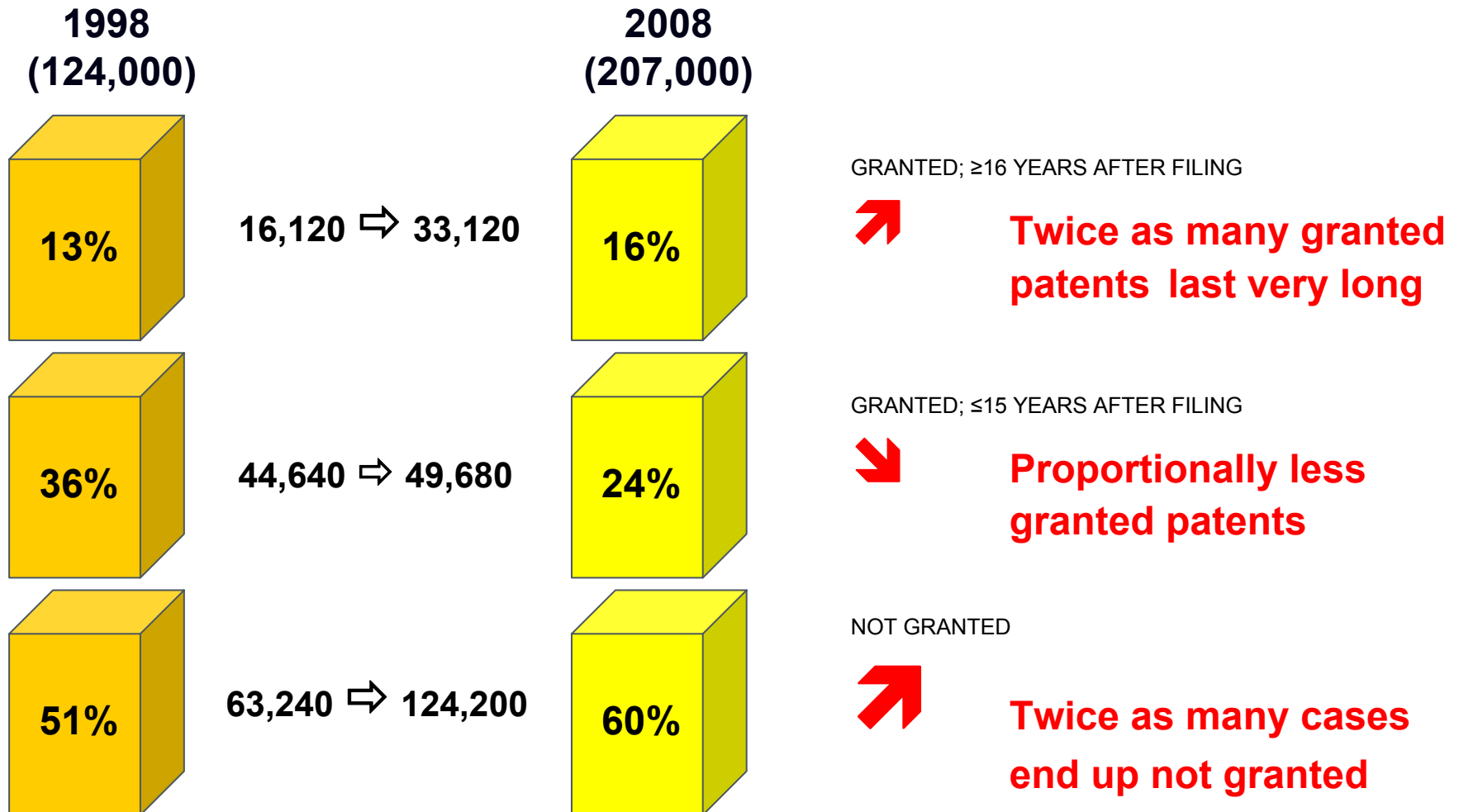
# OVERVIEW OF THE PRESENTATION

- Some basic figures
- Raising the bar
  - Increase procedural efficiency
  - Strengthen current examination practice
  - European divisional applications
- Quality improvements 2003-2008
- Stakeholder incentives / contrary incentives

## SOME BASIC FIGURES: EPO WORKLOAD/INCOME PERSPECTIVE



# TRENDS OF WORKLOAD AT EPO



# RAISING THE BAR

## OBJECTIVES OF 'RAISING THE BAR'

*"Grant patents only for innovations with sufficient inventive merit meeting the needs of society".*

- Right benchmark for inventive step
- Clarity regarding subject matter of search
- Substantive examination within scope of the subject matter searched
- Faster examination procedure
- Improved patent information

## MEASURES TO INCREASE PROCEDURAL EFFICIENCY

- **Clarification of Subject Matter for Search within two months**  
(*new Rule 62a & Amended Rules 63 & 64 EPC*)

- **Obligatory Response to Search Opinion**  
(*new Rule 70a EPC*)

- **Obligatory Response to WO-ISA / IPER**  
(*Amended Rule 161 EPC*)

- **Amendments**  
(*Modified Rule 137 EPC*)



Administrative Council approved changes to the  
EPC Implementing Regulations in March 2009  
(CA/D 2/09 & 3/09 published in OJ 05/09 -  
296-304)  
Entry into force April 1, 2010

## MEASURES TO STRENGTHEN CURRENT EXAMINATION PRACTICE

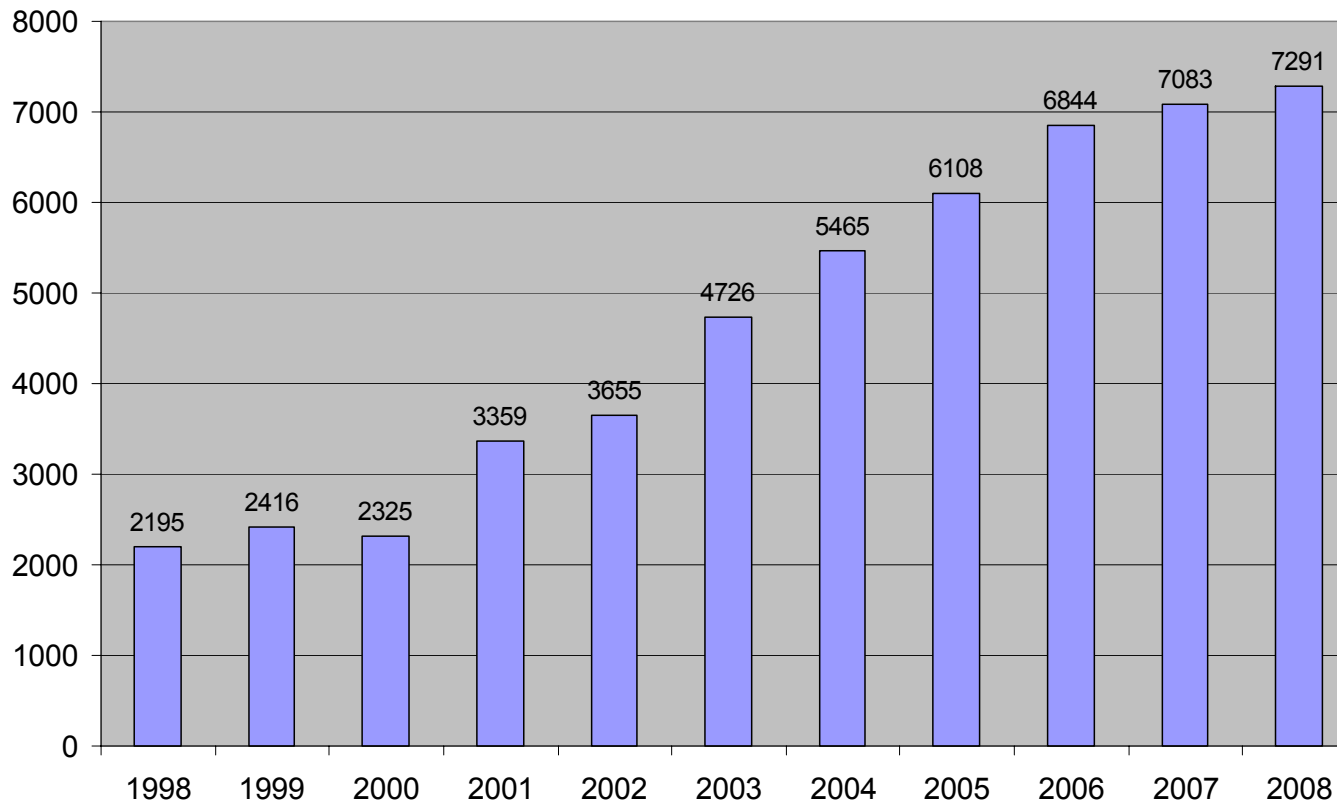
- Patentability Standards
- Definition of the Skilled Person
- Problem-Solution Approach



Revised Guidelines  
(draft pre-publication available from  
November 2009 at [www.epo.org](http://www.epo.org))  
Apply as from April 1, 2010

# EUROPEAN DIVISIONAL APPLICATIONS

## The dimension of the problem



## NEW REGULATIONS FOR DIVISIONAL APPLICATIONS as from 1. April 2010

- Decision of the Administrative Council in March 2009  
(CA/D 2/09 published in OJ 05/09 - 296-298)
- Amended Rule 36, new time **period of 24 months**
- A **voluntary divisional** application may be filed on the basis of a pending earlier application within a period of 24 months from the examining division's first communication.
- After that date, only **mandatory division** shall be allowed
  - A new time limit of 24 months can only be triggered by a communication from the Examining Division in which a new, different non-unity objection is raised.

## INTENDED EFFECTS OF RAISING THE BAR

- Encourage higher quality incoming applications
- Earlier focus of attention on scope of protection sought
- Increased value of search report
- Appropriate patentability standards
- Assist applicant decisions prior to entry into substantive examination
- Increase usefulness of patent information
- Predictable process

# QUALITY IMPROVEMENTS 2003-2008

## QUALITY IMPROVEMENTS 2003 VERSUS 2008

	2003	2008
Search without written 'opinion'	157,000	<u>zero</u>
Search with written 'opinion'	<u>zero</u>	186,000
PCT Preliminary Examination	36,000	10,000
EP examination with prior 'opinion'	<u>zero</u>	47,000
EP examination without prior 'opinion'	92,000	64,000
Grant rate	58 %	50 %
Refusal rate	1,7 %	2,8 %

# STAKEHOLDER INCENTIVES

## **BUT .... PROBLEM OF CONTRARY INCENTIVES**

1. Improve quality, earn less
2. Do nothing, earn more (on stocks)
3. Be faster, earn less
4. Applicants encouraged to file more,  
create uncertainty (and costs) and pay  
less

**THANK YOU FOR YOUR ATTENTION**