

European Patent Jurisdiction: Proceedings and Rules of Procedure

Conference on Industrial Property Rights in the Internal
Market

Strasbourg, 16 – 17 October 2008

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Duesseldorf District Court

I. Current situation – Main deficiencies

1) A patchwork of national jurisdictions

Differences in

- Experience of lawyers and judges**
- Rules of procedure**
- Speed of proceedings**
- Costs**

Differences in

- **the interpretation of harmonized patent law by national courts**
 - **e.g. doctrine of equivalence under Art. 69 EPC**

2) No cross-border jurisdiction of national patent courts

- Generally no „internal market“ for judgements in patent infringement litigation matters (cf. ECJ, 13 July 2006, C-4/03, - Gat/LuK)
- Result: parallel patent infringement litigations in different member states

II. Future situation – European Patent Jurisdiction

Proceedings and Rules of Procedure (selected issues)

1) Judges

Legally qualified judges on a multinational panel should be

- **experienced in dealing with technology cases**
- **able to write a judgement in the language of the local/regional division they are assigned to.**

Technically qualified judges with experience and qualifications in the field of technology concerned should be on the panel

➤ when the validity of the patent is at issue.

2) Infringement action/counter-claim for revocation

**Local/regional divisions should have
discretion**

- **either to proceed with infringement and
revocation action**
- **or to proceed only with infringe-ment
and refer the counterclaim for decision to
the central division.**

3) Proceedings/rules of procedure

(1) Front loaded proceedings

- Written statements, in which all facts and allegations (including all available evidence) of the case have to be presented
- Court sets time limits for the statements

(2) Oral Hearing

- should focus on the **decisive issues** of the case

(3) Expert evidence

- **Court appointed expert possible**

(4) Duration of proceeding in first instance

- in an average case **no longer than 1 – 1 ½ years**

(5) Appeals

- ***De novo*-appeal to the Court of Appeal**
- **No appeal from decisions of the Court of Appeal to the ECJ, only references to the ECJ with regard to EU treaty**

Thank you very much for your
attention!

Merci beaucoup pour votre
attention!

