

**Conference on Industrial Property
Rights in the Internal Market
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HOWREY_{LLP}

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Introduction

EPLAW: European Patent Lawyers Association

EPLAW: advocates better European litigation system

Venice Conferences (EPLAW and EPO)

40 specialized patent judges and 15 European patent litigators

Goal: toward a better system and harmonization

Venice I Resolution: Adopt EPLA

Venice II Resolution: detailed procedural rules for European patent court

Present System

Good : you can obtain a European patent

Bad : you cannot enforce it throughout Europe in an efficient, cost effective, predictable way

Result:

1. Patent System is not credible:
2. Less investment in innovation
3. Unfair: SME's cannot enforce vs Big (see: Primus)
4. High Economic cost
5. No one EU market
6. Lack behind US, Japan

Commission

In essence good plan and remarkable work after listening to experts but

1. Certain improvements necessary
2. No watering down because of political considerations

Better no system than a bad system

Openness of EU Court for third countries

Yes the Court should be open to all EPO memberstates

If certain EU countries do not want to join then possibly
“enhanced cooperation”

Decentralization of first instance, relationship between central and local divisions

Compromise between German/Austrian and other systems

Better and more efficient to have no split between validity and infringement

Fear: bad validity judgment of unexperienced court in first instance

But: No practical consequences with good Court of Appeal as patent remains valid or Court of Appeal can suspend enforcement of bad patent

Proposed system is acceptable with following amendments:

If a validity and declaration of non infringement is filed in Central Division, Patentee has to decide within one month to file infringement case elsewhere otherwise infringement case stays in Central Division.

The local Division where the Patentee files the infringement may decide within one month after filing that the case should be heard in the Central Division.

Composition panels of judges at First Instance

- the proposal as it stands is good for quality, training and harmonization
- President who appoints pool judge to panel is supposed to make wise choice!
- If the local division decides to decide upon validity defense then the panel should consist of four judges (two local, one legal and one technical pool judge)
- Presiding judge has the decisive vote
- Language issues: choice of Judge and if really necessary translation

Concept and feasibility of regional divisions

Concept is very good because it promotes

- a) more expert judges and lawyers
- b) more conversion of legal concepts
- c) more European integration

Feasibility

If there is a will there is a way!

Problems (language, venue): flexible regional solution

Example:

Regional Court of the Hague for UK, Benelux, Portugal

Language:

English in written phase,

English in oral proceedings but simultaneous translation
at request for non English defendant in the region
(Dutch, French, Portugese, German)

Venue: hearings can take place in location of defendant

Forum competition

It is important to maintain possibility to sue in country (region) of infringement

If you sell in a territory you can be sued in that territory

Increases quality and avoids discrimination and frustration of justice!

Qualification of judges, including technical judges

The proposal is good as long as the composition of the Advisory Committee is good and advice is followed.

Representation of the parties

What is best for an efficient system:

Parties should be represented by members of the bar as litigation is a legal process with many procedural and other legal concepts. This is the case in all specialist areas of the law such as construction, product liability etc.

Patent attorneys should be entitled to appear with a member of the bar and should have the right to speak.

Best would be a specialized bar to which a member of the bar is admitted by the Court or the Advisory Committee after having asked advice from EPLAW (compare French model of Cour de Cassation)

Contact details

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