

EU Commission- Public Hearing- 12 July 2006, Brussels: “Future patent policy in Europe”

Submissions by Francesco Macchetta, President AICIPI (Associazione italiana dei consulenti ed esperti in proprietà industriale dipendenti di enti o imprese)

On behalf of this association, whose membership is composed of industrial property experts working in-house in industry or research institutions in Italy, I would like to thank the organizers for the opportunity of bringing our contribute to the debate.

As expressed also in our reply to the Questionnaire, AICIPI considers it to be important to have in Europe, in the future, a flexible, affordable and workable Community Patent system with the relative unitary Court system, alongside with the EPC, although integrated by a common Court system (represented by EPLA) and with simplified language provisions according to the London Agreement.

EPLA and London Agreement are at reach, as mentioned already several times today, and we cannot miss this opportunity to have them in place as soon as feasible.

As to the Community Patent, we see some lines for a future agreement, that on the still controversial issues could be:

1. The Community patent (from filing to grant)
 - a. Filing of the application in any language of the EU
 - b. only one procedural language (English) for the procedure up to grant (patent application published in “the language of the procedure” plus the original language);
 - c. on grant, translation of the claims (at choice and under responsibility of the patentee) in the prescribed national language(s)
2. Legally binding text of the patent: the one in the language of the procedure, but the translated claims are the terms of reference for possibly collecting damages for acts occurred in the area to which a given language pertains
3. Procedural and maintenance fees at the grant stage are abolished or drastically reduced to take into consideration the cost/burden of claim translations for the patentee

[all the above without prejudice to the current EPC system, that should continue as it is, with the addition of EPLA and London Agreement]

As to the Court system, it should be to a maximum extent integrated with the EPLA system and should in particular have “technical” judges with strong background in patent matters alongside with “legally trained” ones and “regional chambers” distributed in the EU territory to be closer to the “users” of the system.

We see in fact that there is now a chance for progressing the whole “Patent” agenda for the EU, provided both the political/institutional level and the industry/users’ level pragmatically work for an acceptable compromise. The lines suggested above require of the Institutions to accept to de-emphasize a lot the “language” issues, while the users/industry should in our view accept that a certain degree of “language complications” will be a fact in EU for quite some more time and find a way to live with it..

While the London Agreement is now “overdue” and we expect it to enter into force as soon as possible, we believe that it might be optimal for the EPLA and the Community patent system to proceed in parallel but only if a Community system, having the unanimous consent of all EU Countries, e.g. along the lines outlined above, is rapidly devised and unanimously approved, otherwise, EPLA should proceed at a speedy pace, with no further delays.