

**European Commission**  
**Future Patent Policy in Europe**  
Public Hearing – 12 July 2006

Debate no. 4 **Jurisdiction**

Intervention by Tim Frain, Nokia

**Nokia is not against the EPLA, but has some concerns**

Nokia does not *disagree* with the idea establishing a centralized litigation system for European patents. Progressing the European Patent Litigation Agreement (EPLA) may be advantageous for users, particularly in the absence of a Community Patent. However, it does need to be supported by the majority, preferably all, Member States if it is to bring the benefits of a truly unitary system.

However, we do have some concerns. The legal framework for the court system has to be (a) reasonable cost (language requirements are a challenge here), (b) practically accessible for litigants from all member states, (c) staffed by specialist patent judges, i.e. who are experienced in patent law and are either technically competent or have long experience in patent matters, (d) have clear procedures agreed at the outset, and (e) deliver reliable decisions and consistent case law.

**Cost**

As to cost, we would point out that is unusual, at least in our experience, to litigate the corresponding patent in more than one European county and even more unusual to litigate the corresponding patent in several European countries simultaneously. It is therefore of some concern if, as the EPO has estimated, the cost of centralised litigation would be more than double the cost of litigating nationally in France or Germany, particularly if litigants are denied the choice of using the national system in future. Of course, higher cost might be justified if the procedure proposed involves clear additional benefits in comparison to some existing national systems.

**Reliability of decisions – new risks**

The quality and reliability of the decisions made by the European Patent Court will be of paramount importance as infringement and validity decisions will apply Community-wide, so bringing new wide-reaching risks both for users of technology and patent owners. For any company, like Nokia, with sizeable product sales throughout Europe, a centralized decision about patent infringement will have extremely far-reaching consequences, and therefore must be of the very highest quality and reliability. In particular, the European Patent Court would have the power to grant final injunctions and provisional injunctions for the whole Community which clearly represents a substantial new risk for technology providers in Europe.

**Procedural rules**

Aside from the substantive law, we believe it is extremely important to have clear procedural rules, agreed at the outset – before the EPLA is adopted, not afterwards. It must also be recognised that the various national systems existing today have varying advantages and disadvantages, which makes choice of forum a key issue today. A new procedural code must provide and preserve the benefits from those systems or have the flexibility to do so, otherwise the new system would obviously be inferior to the current system.

**Scope of jurisdiction**

Frequently the question of patent infringement - especially in the telecoms industry - is also tied up with questions of competition law, or contractual law, for example. If the European Patent Court has exclusive jurisdiction over patent infringement and validity issues, but jurisdiction for non-patent matters is left solely with the national courts, it will be contrary to the interests of justice to arrange for and co-ordinate two separate sets of proceedings, leading to possible inconsistencies, inefficiency, uncertainty and delays.

**EPLA as an optional route for litigants**

Nokia would like to maintain a choice of litigation routes for patents obtained via the different routes in Europe, so that users can have at their disposal the route best suited to all the circumstances. We would prefer that the European Patent Court does not have exclusive jurisdiction over European patents, but that national courts would continue to have parallel jurisdiction, even after the transitional period of seven years (Article 85, EPLA), unless and until all Contracting States unanimously agree otherwise. In other words a **litigant** should always be able to choose whether to use a centralised European litigation system or the existing national system selectively in whichever Member States she chooses, particularly if it would be cheaper to do so, and – in any case - at least until the centralised court has a proven track record.