



**International Chamber of Commerce**

*The world business organization*

## **Public hearing “Future Patent Policy in Europe”: Intervention on behalf of ICC**

### **Debate n°4: “Jurisdiction and litigations issues (EPLA)”**

Currently, European Patents are enforced nationally, which can lead to conflicting interpretations by different national courts and increases costs as well as legal uncertainties for companies. Moreover, the cost of obtaining patent protection in Europe, including translation costs, is high. This makes it difficult for small innovators to participate fully in the patent system. This is a competitive disadvantage vis-à-vis Asia and the US. Therefore, reducing patent costs and establishing a European patent litigation system should be key priorities.

ICC supports the EPLA as the best proposal so far for a common judicial system to deal with European patents. For companies who use and are affected by patents, the principal advantage of Pan-European litigation arrangements as set out in the draft EPLA is that it would enable companies to resolve patent disputes in a timely and cost-effective manner, while at the same time generating a coherent and harmonized body of European case law on patent infringement and patent validity. Such a system would also reduce cost by eliminating the need for litigation in multiple fora. Alternative proposals cannot provide the advantages the EPLA provides. A Community patent litigation system is only effective as regards Community patents, and does nothing as regards all present and future European patents that will not be Community patents. The EPLA provides just that.

With regard to the possible coexistence of three patent systems in Europe (the national, the Community and the European patent), ICC does not foresee any conflict between the proposed EPLA and the existing law. Furthermore, a common judicial system for litigating European Patents would not be inconsistent or prejudice in any way the development of a Community Patent, but be complementary to this development for the following reasons:

1. The Community Patent as envisaged by the proposals made under the common political approach of March 2003 does not satisfy two very important criteria set by ICC for a Community Patent system to be acceptable to business. These are fully satisfactory litigation arrangements, and low cost for obtaining and maintaining Community Patents. The insufficient resources envisaged for the proposed Community Patent Court, the lack of regional chambers, the language requirements and the respective translation regime costs are the main deficiencies of the proposals made under the common political approach. Therefore, ICC doubts the viability of the Community Patent. If it ever happens, it will take sometime to put into place. In the meantime, there is a real need for a judicial system that corresponds to the European Patent.
2. The EPLA will still be required irrespective of whether the Community Patent ever happens:
  - This is because of the need to provide a better litigation system for the vast number of European Patents already granted which will be in force for 20 years with no prospect for conversion into Community Patents.
  - Even if the Community Patent is established, the European Patent Office will each year still issue many thousands of European Patents that will not be Community

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patents. As per the European Commission's own estimates, only some 50% of all future European patents will be Community patents.

- Further, such a system will provide some experience of a common judicial system from which the Community Patent can benefit.

Even though it is still premature at this stage for ICC to comment on the details of EPLA's contents, ICC believes that the EPLA should remain optional for plaintiffs unless and until the proposed European Patent Court has a proven track record.