

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

Contribution in Panel Discussion of Dr. Thomas Reimann for GRUR

Thank you, Madam Chair, for the opportunity to speak here today.

I speak for the "German Association for the Protection of Intellectual Property" which encompasses all circles interested in IP from judges over industry to attorneys and scientist.

In the member states and the European Patent Organisation there is since decades a well functioning patent system.

That only such inventions will be granted patent protection which really go beyond the prior art, is ensured by the quality of the examination by the EPO, opposition proceedings before it and national invalidity proceedings. The quality of the work of the EPO must be maintained, possibly, improved by no means, however, jeopardised by a decentralisation and delegation of vital tasks to a great number of national patent offices.

The substantive patent law in Europe is already harmonised to a great extent by the articles of the EPC and the protocol on claim construction. Insofar as national courts applying such rules still come to clearly diverging results there is, however, a tendency to be observed in the national courts of the member state to look into the corresponding case law of the other national courts and to specifically deal with it in their decision; this is, at least, the rule in Great Britain, the Netherlands and Germany. Thereby, an attempt is to be seen in these courts to achieve a further harmonisation in the interpretation of patents. This is backed up by corresponding attempts of the attorneys at law and patent attorneys presenting the cases to the courts. All this is reflected in the declaration of a great number of the most experienced patent judges in a conference in Venice in October 2005 that they are prepared to examine still existing differences and to work out guidelines for a still more uniform application of the law.

We, therefore, do not see room or necessity for a harmonisation directive or other ways of harmonisation. After the submission of the guidelines of the European Judges just mentioned it can be expected that on the basis thereof the national courts and the EPO

will follow such suggestions which are born by the very high authority of special knowledge and extensive of experience of such judges.

Further, corresponding effects would be achieved by the European Patent Litigation Protocol.

We see a unitary Community patent still as a goal to be thrived at in the long run. However, the "common political proposal" is not a viable instrument for a well functioning system of a Community patent system since

- the proposed central approach in first instance litigation will not lead to practically working proceedings
- the language regime - not only asking for translations of some or all claims or of the abstract without binding force - is too costly, overly cumbersome, creating new difficulties and not necessary.

Hence, we prefer the EPLA proposals which are well balanced and promise to be workable in practice. Further, EPLA offers the advantage that it can be implemented for the great number of European patents already in existence without a start up phase of many years. The unanimously favourable acceptance of the EPLA proposals by the leading European patent judges on the Venice conference in October 2005 already mentioned, speaks clearly for this system and its usefulness in Europe.

The Commission should - after a corresponding authorisation by the Council - participate in the preparation of EPLA as if the Community were already a member of the EPC.