

The Future of the Patent System in Europe

Hearing on 12 July 2006, presentation by Marja-Leena Rinkineva

Ladies and gentlemen,

I am very honoured to be invited by the Commission to speak at this hearing. It is a great pleasure to be able to contribute to the discussion today. I would like to express my thanks to the Commission for arranging the patent consultation, and for preparing preliminary conclusions of the many responses it has received. I would also like to thank all previous speakers, which have provided valuable input to today's discussions.

Finland started its very challenging task as the EU Presidency two weeks ago. Promotion of innovation is one of our main topics and we are aiming at establishing innovation policy as a permanent topic in the debate on the EU's competitiveness. The challenges of innovation policy in Europe, including the development needs of the IPR system, were also highlighted at the informal Competitiveness Council, which was held just before this hearing. At this informal ministerial meeting the need to find practical solutions as well as the need to make decisions required was addressed several times. The ministers also expressed concerns on the long processing time of patents. It was concluded that the European innovation policy needs and effective patent system.

Efforts toward developing a more effective, competitive and cost-effective patent system are crucial, for instance, for a country such as Finland, with a high level of patent activity. Determining how the patent system should be developed requires open and extensive discussion on what the actual development needs of the current system are, and what would benefit users most. Therefore, I welcome the consultation

on the patent system. This consultation increases the awareness of various parties of the patent system, which can be regarded as an achievement in itself.

I am also pleased that the Commission has not limited the discussion to Community patent only but has shown openness to other alternatives as well. The increasing interest in the EPLA and the London protocol is a positive development. The strategy discussion at the EPO on topics such as avoiding duplication of work and utilisation has also contributed to the debate in Europe, and, I hope, that the results of all these discussions will take us a huge step forward.

Ladies and gentlemen, I have the pleasure to introduce to you this afternoon's first theme, the **jurisdiction**.

In general, a reliable and effective patent litigation system promotes the willingness to innovate and is in the interest of all patent system users: patent applicants, patent holders and third parties. A cost-effective litigation system with high-quality decisions is a vital element of both the Community patent system and reform of the EPC. It is, naturally, a vital element of patent systems on the international scale as well.

The major problems of the current system are high costs, on the one hand, and the lack of a unitary interpretation practice, on the other. We can all agree that it is important to find a balanced and workable solution to these problems as soon as possible. Having said this, however, I must draw attention to the fact that the proposed Community patent litigation system has been criticised in the responses in the consultation. But, then, no consensus exists on the main principles of the EPLA

either. Therefore, I believe that everyone agrees with me when I say that we are facing a huge challenge.

However, before we accept this challenge and start the development of the current litigation system, we must ensure that the basic elements of a patent system are in order. Therefore, I would like to highlight a couple of issues here, which, as the basic elements of a patent system, influence also the requirements that can be set for a litigation system. In my opinion, these issues are, first, the quality of the patents granted and second, the knowledge of the patent system.

Let me elaborate a little on what I mean in this context.

First, I'll address patent quality.

As responses in the consultation reveal, quality is a crucial element to a patent system, in terms of both granting of patents and enforcement of rights. Even though enhancing the cost-effectiveness of a patent system is a primary goal, it must not result in compromising the quality of patents. The lowering of the costs and the improvement of the patent quality should go hand-in-hand. Naturally, this is true not only in the EU but globally, too.

It is vital not to risk the confidence of users in the patent system. I believe that maintaining a high quality for patents secures the reliability of a patent system. Paying attention to the quality of patents can also help to avoid unnecessary litigation and the resulting costs. The litigation costs depend on several factors, among them legal fees, the degree of complexity of the case, and the claim in question. In estimating the total amount of costs, the direct or indirect costs incurred because of an interruption to business must be taken into account, too. Another indirect cost worth

mentioning is declining willingness to innovate. Hence, large sums are at stake, and the quality of patents plays a key role in preventing these costs from being realised.

I emphasise the significance of quality because fostering quality standards has several practical implications. If a patent is granted to an invention involving only a minimal development over the prevailing state of the art ie. trivial patent, such patent can be considered to prevent innovation or at least slow its pace, instead of promoting innovation. This means that competition in the market becomes distorted if patents are granted on grounds other than rewarding true innovations. The number of legal proceedings also increases in such a situation because it is not certain whether the patent in question has actually met the criteria for patentability. Patents should be granted only for inventions that are truly innovative and which enrich the present state of the art beyond the obvious. The question of patent quality is also an area in which Europe could act as a forerunner for the rest of the world.

Secondly, I would like to bring up the issue of awareness-raising.

Raising awareness is of great importance because the IPR system is changing all the time.

It is clear that technological development and globalisation have emphasized the significance of patents and other IPRs. It is in the interest of enterprises regardless of the size or the stage of development to use the various types of IPRs as effectively as possible. The exploitation of different, partly overlapping IPRs should be in line with their everyday operations as well as the overall business strategy of each company. Therefore I can only agree with what is stated in the Commission's report, that is,

awareness should be raised in order to enable different users to be better aware of the value of various IPRs and how to use them.

In relation to the litigation system, I would like to mention the significance of awareness in eliminating so called unnecessary legal proceedings. Regardless of size, companies should have the knowledge of which actions can infringe the rights of another rightholder. In other words, it is important to minimise the risk of inadvertent infringements. My opinion is that awareness-raising could prevent this. In particular this applies to the SME sector which does not always have resources for coping with the complex IPR framework.

Awareness should also be raised concerning the services rendered by national patent authorities. It is important that enterprises across Europe can have easy access to databases maintained by national patent authorities etc. This would prevent not only inadvertent infringement but also reinvention of already existing inventions. It would, at the same time, be an efficient way to promote exploitation of technology in society.

To summarise, we need to take necessary steps to enhance the quality of patents and to promote knowledge of IPR systems.

Ladies and gentlemen, I would like to conclude with a few words on costs, which have received particular attention in the replies received by the Commission, too.

Whichever decisions we make, any development of a litigation system should be based on accurate impact assessments and, above all, calculations of costs. It is essential to avoid any unnecessary costs being paid by patent holders, third parties, or

both. This is true regardless of whether the prevailing system is developed via a Community patent, or EPC, or whether the aim is to achieve a more uniform system via lighter measures.

I am convinced that we will hear most interesting views on the topic this afternoon. It is important that we continue intensively the discussion that began with the patent consultation and that we reach practical decisions that support innovation without further delay. As a Presidency we are ready and willing to do our best to facilitate the discussion on this very important dossier.

Thank you for your attention and I wish you a very fruitful afternoon.