



EU Commission Public Hearing on the Future Patent Policy in Europe

Brussels, 12 July 2006

Debate no. 2: Harmonisation and Mutual Recognition of National Patents

Intervention of Werner Fröhling, Volvo Technology Corporation, Gothenburg, Sweden

Issue description

The Directorate General for Internal Market and Services is consulting stakeholders on their needs in relation to the legal framework and possible actions in the field of industrial property.

Views are sought on the patent system in Europe, and what changes if any are needed to improve innovation and competitiveness, growth and employment in the knowledge-based economy.

As part of this consultation the Directorate General for Internal Market and Services has arranged a public hearing on the future patent policy in Europe which took place in Brussels on 12 July 2006. Volvo has been invited to present its view at this hearing on the harmonization and mutual recognition of national patents.

Impact on the Volvo Group

Volvo - one of the world's leading providers of commercial transport solutions - is active in the area of trucks, buses, construction equipment, aero, marine and industrial applications, and in financial services. Volvo produces transport related hard and soft products of superior quality, safety and environmental care for demanding customers.

A prerequisite for maintaining our competitiveness in the global market is to protect our investments in technology and product development by patents. Europe and the internal market are of key importance for our business. Therefore, it is of paramount interest for us to have an efficient, cost effective and flexible unitary patent system in Europe which provides strong patents of high quality.

Volvo Group's position presented at the Public Hearing on 12 July 2006

Mme President,

Thank you very much for giving me the opportunity to present the view of the Volvo Group on the topic "Harmonisation and Mutual Recognition of National Patents".

My name is Werner Fröhling. I am a German and European Patent Attorney and the Head of the Patent Department of the Volvo Group.

Turning to the first topic of our intervention – harmonization – I think we all agree that substantive patent law is in practice already harmonized within the EU. This is certainly one of the success factors of the European Patent Convention since all Member States of the EU are also Contracting States of the Convention, and the Contracting States of the Convention have already harmonised their substantive national patent laws with the substantive law of the Convention.

Today, 31 European states (inside and outside the EU) are Contracting States of the European Patent Convention, and more European states will join it in the next few years. This success of the European Patent Convention will guarantee that harmonisation of the substantive patent law will continue to happen throughout whole Europe even in the future. With the coming major revision of the European Patent Convention - “EPC 2000” - aligning it with TRIPS and entering into force in December 2007 this pan-European harmonisation process will accelerate even more.

Any problems which may exist in connection with the interpretation of the substantive patent law are mainly due to the fact that patent litigation even in respect to European Patents is conducted on a national basis only. This in turn had lead in the past in some few cases to differing interpretations by national courts in different countries. However, these problems occur rather seldom, and the judges involved in such litigations meet regularly in order to exchange their experiences and to harmonise their practices throughout Europe.

If there are any major differences in the national laws of the Member States of the EU related to patents these differences are found in the procedural law, in particular regarding litigation and enforcement of patents rights.

In general these problems could be solved in a very efficient way by implementing the EPLA system. Actually, we must not forget that there are already today thousands of granted European Patents for which we urgently need an efficient and cost-effective European litigation system. Comparing the various proposals for such a litigation system, we clearly prefer the implementation of the EPLA system instead of giving the European Court of Justice a more prominent role in the field of patent litigation.

In summary, we don't see any urgent need to stimulate further harmonization of the substantive patent law within the EU. If there is any such need in the future we recommend to amend the European Patent Convention accordingly thereby using the Convention as a very efficient “vehicle” to accomplish such harmonization subsequently also in the national patent laws throughout whole Europe - inside and outside the EU. With respect to the harmonization of procedural patent law we strongly recommend to implement EPLA as soon as possible.

Turning now to the second topic of our intervention - mutual recognition - in the questionnaire of the Commission one of the proposals was to implement a system of mutual recognition by patent offices of national patents granted by another EU Member State, possibly linked to an agreed quality standards framework, or a "validation" by the European Patent Office, and provided the patent document is available in the original language and another language commonly used in business.

In our opinion this proposal - mutual recognition of national patents granted by national patent offices - is a step in the wrong direction since it will jeopardize the quality of patents and will increase uncertainty regarding the legal effect of such patents. A "validation" of such national patents by the European Patent Office is not desirable either since it would duplicate work and costs, and it would extend the time needed for the examination procedure considerably.

Instead of focusing on building up a network of national patent offices granting national patents (with a varying degree of quality) and implementing a system of mutual recognition of such patents, the stakeholders in Europe should combine their forces and efforts and jointly strive for improving the work of the European Patent Office as the central patent authority in Europe centrally granting European Patents (and Community Patents, of course) of high quality at competitive costs for whole Europe – inside and outside the EU. The finalization of the ratification process and quick implementation of the London Agreement would be an important step in this direction.

European industry - SME's and large companies - is exposed to global competition. In other major markets of the world - USA, Japan, China - there are central patent offices centrally granting patents for the whole country, i.e. for the whole market, in a very cost-effective way. This gives the local industry of these foreign major markets a huge competitive advantage in their own home markets in comparison to the European industry having Europe as its home market. Therefore, we urgently need a similar central and cost-effective patent system in Europe in order to protect our R&D investments and to strengthen our competitiveness and - in the end - to maintain a sustainable development of the European society.

Referring to the Lisbon Agenda time is of the essence. Please remember how many years it took to agree upon the European Patent Convention until it eventually came into force 1978, and how many years the European Patent Office then needed in practice to establish a reasonably well-functioning uniform and harmonized patent granting process within its own organization.

In summary, the idea of mutual recognition of national patents granted by national patent offices is - under these circumstances - a step back into the past. It will split our forces and efforts, and it will not only reduce the chances of creating a true unitary European patent system with the European Patent Office as the central patent authority in Europe centrally granting patents of high quality for whole Europe (including the EU) but it will - in the very end - also weaken the competitiveness of the European industry and the development of the European society.

Thank you very much for your attention.