

The Commission sets out its vision for improving the patent system in Europe

The Commission has published a Communication setting out its vision for improving the patent system in Europe and for revitalising the debate on this issue. Making the Community patent a reality and improving the patent litigation system in Europe should, together with supporting measures, make the patent system more accessible and bring cost savings for all. The Commission believes that this can be achieved provided there is political will to do so.

In today's increasingly competitive global economy Europe cannot afford to lose ground in an area as crucial as patent policy.

Patents are a driving force for promoting innovation, growth and competitiveness, but the single market for patents is still incomplete.

The difficulties in making progress in the field of patents and especially on the creation of a Community patent led the Commission to launch, in 2006, a broad



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consultation of all interested parties on the future patent system in Europe. The results leave no doubt as to the urgent need for action to provide a simple, cost-effective and high-quality patent system in Europe.

The Communication is intended to draw operational conclusions from the stakeholder consultation and to allow the Council to launch deliberations on patent reforms, in particular on the Community patent and on jurisdictional arrangements. Moreover it addresses various supporting measures for an improved patent system, such as patent quality, knowledge transfer and enforcement issues.

A separate and comprehensive Commission Communication on Intellectual Property Rights (IPR) is planned for 2008, which will complement the Patent Communication and address the main outstanding non-legislative issues in all fields of intellectual property.

Current system is expensive and legally insecure

The Communication highlights the fact that Europe's current patent system is considerably more expensive than the U.S. and Japanese systems.

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A Community patent would be far more attractive than legal models applied under the present system of European patents, which is essentially a bundle of national patents.

The existing system of patent litigation in the EU, with the risk of multiple patent litigation in several countries on the same patent issue, leads to unnecessary costs for all the parties involved and causes lack of legal certainty.

The Community patent

Many stakeholders continue to support the Community patent as the approach which will yield most added value for European industry under the Lisbon strategy. However they criticise the Council's Common Political Approach adopted in 2003* on the grounds of high costs of translation arrangements as well as the excessive centralisation of the proposed jurisdictional system.

The Commission believes that a truly competitive and attractive Community patent can be achieved provided there is the political will to do so. The concerns about an overly centralised jurisdiction should be taken into account in the work on the creation of an integrated EU-wide jurisdiction for patents.

On translation costs, the Commission will explore with Member States how to improve the language regime with a view to reducing translation costs while increasing legal certainty. Possible options could involve fee reductions for SME's or schemes allowing for flexibility in the

translation requirements. Moreover, pilot projects on machine translations of patent claims merit further consideration.

An integrated EU-wide jurisdictional system for patents

Recent discussions with Member States show polarised positions on patent jurisdiction arrangements with, on the one hand, Member States supporting the draft European Patent Litigation Agreement (EPLA) in the context of the European Patent Convention, which intends to create a unified system for litigation on European patents, and, on the other hand, Member States favouring the establishment of a specific Community jurisdiction for patent litigation on European and Community patents based on the EC Treaty.

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Under these circumstances, the Commission believes that consensus could be built on the basis of an integrated approach which combines elements of both EPLA and a Community jurisdiction.

The way forward could be to reflect on the creation of a unified and specialised patent judiciary, with competence for litigation on European patents and future Community patents. This system could be strongly inspired by the EPLA model but could allow for integration in the Community jurisdiction.

As a first step, work should concentrate on building consensus among Member States around principles on which consensus is emerging.

The patent judiciary would have competence for infringement and validity actions as well as for related claims such as damages. The jurisdiction should ensure an appropriate degree of proximity to the parties and comprise a limited number of first instance chambers as well as a fully centralised appeal court which would ensure uniformity of interpretation. The chambers could make use of existing national structures but should form an integral part of the single jurisdictional system. In the context of this single, yet multinational system of litigation, the allocation of cases would be handled by a registry of the judiciary on the basis of clearly defined and transparent rules.

The first instance chambers and the appeal court should work under common rules of procedure based on best practices in the Member States. This would be by using the knowledge and experience of specialised patent tribunals within the EU.

The patent jurisdiction should comprise legally and technically qualified judges who should enjoy full judicial independence.



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Finally, the patent jurisdiction must respect the European Court of Justice as the final arbiter in matters of EU law, including questions related to the *acquis communautaire* (the body of EU law currently in force) and to the validity of the future Community patent.

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* Following the agreement in the Competitiveness Council of 3 March 2003, work continued at working party level to transpose the principles of the common political approach in the proposal for a Council Regulation on the Community patent. On this basis, the Commission presented two proposals concerning the establishment of a Community patent jurisdiction on 21 December 2003. Negotiations are stalled in the Council since 2004.