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~BACKGROUND~

TOWARDS A UNITARY PATENT PROTECTION IN EUROPE

Since the 1970s, the EU member states have been in agreement on the necessity of setting up a common system of patents. Both a common patent system and a unified patent litigation system are needed to improve the competitiveness of European companies, especially of small and medium-sized enterprises.

This would reduce the cost of patent registrations and litigation, easing access to inventions and improving innovation, therefore contributing to economic growth.

At the same time a unitary title providing equal protection throughout the entire territory of the EU would enhance and render more effective the fight against counterfeiting and the copying of patented products produced by European companies.

However, no agreement has been reached between member states so far.

The current patent system

Patent titles in Europe are currently granted by the European Patent Office (EPO). The EPO administers a single procedure for the grant of patents. However, once a European patent has been granted it becomes a national patent and is subject to the national rules of the contracting EPO states¹ designated in the application. The EPO's official languages are English, French and German.

The existing European patent is not a unitary title; it is a bundle of national patents. There is at present no single jurisdiction for disputes on European patents. Any infringement, invalidity counterclaim or revocation action in relation to "bundled" European patents may be subject to diverse national laws and procedures. Consequently, claimants and defendants bear the risk of multiple litigation in a number of countries on the same patent issue.

¹ The European Patent Organisation was set up in 1977 on the basis of the European Patent Convention signed in Munich in 1973. It has two bodies, the European Patent Office (EPO) and the Administrative Council. The organisation has now 38 countries, including the 27 EU member states.

P R E S S

Searching for the right solution

Following a Commission proposal in 2000, the EU Council tried to find a solution to this problem. Nevertheless, member states did not support a common position neither as regards a single jurisdictional system with the power to decide matters affecting the validity of patents, nor as regards the language regime.

In January 2006, the Commission launched a public consultation broadly supported by member states, researchers and academics. Further to this consultation, the Council asked the Commission to present a comprehensive intellectual property rights strategy.

On 4 April 2007, the Commission submitted a communication on "enhancing the patent system in Europe" ([8302/07](#)), considering key elements for developing the new system, such as quality, costs, efficiency, knowledge transfer, enforcement of patent rights and international aspects.

It also identified three options in order to create an integrated jurisdictional system for patents:

- the accession of the EU to an intergovernmental agreement creating a European patent court (the draft European Patent Litigation Agreement, EPLA), which has been negotiated under the auspices of the EPO;
- the creation of a specific EU jurisdiction for patent litigation on European and, once created, on EU patents; and
- a mixed system that would combine features of both EPLA and the EU jurisdiction.

All these elements have been under examination under successive EU Council Presidencies and culminated with the adoption, on 4 December 2009, of Council conclusions on an "Enhanced patent system for Europe" ([17229/09](#)) and a general approach on a draft regulation on the EU patent ([16113/09 ADD1](#)). However, the translation arrangements for the EU patent remained out of the scope of these conclusions.

The Council conclusions were adopted without prejudice to the opinion requested on 25 June 2009 to the European Court of Justice on the compatibility of the envisaged system with EU law.

On 2 July 2010, the Commission submitted to the Council a proposal on the translation arrangements for the EU patent ([11805/10](#)).

After verifying, on 10 December 2010, the failure to reach the required unanimity on the translation arrangements in the foreseeable future, and therefore the impossibility to establish a unitary patent protection in the entire EU within a reasonable period, several member states expressed their wish to establish an enhanced cooperation² in the area of the creation of unitary patent protection.

On 15 February 2011, the European Parliament gave its consent to proceed with the enhanced cooperation.

The Council is due to authorise the launch of the enhanced cooperation on 10 March 2011([5538/11](#)).

Once authorised, the Commission will present proposals on how to implement such cooperation.

² The enhanced cooperation is a procedure enshrined in the EU treaty (articles 326 to 334) that allows a group of countries to adopt new common rules when an EU-wide agreement cannot be reached.