

Stakeholders debate future policy on patents

There is widespread support for a Community Patent but not at any cost. A recent consultation on the way forward to providing simpler patent protection in Europe has elicited a very lively debate. A packed public hearing in Brussels in July brought together stakeholders from across the board to discuss the preliminary conclusions from the consultation.

In January the Commission launched a consultation on stakeholders' views on the patent system in Europe and what changes if any are needed to enable it to improve innovation and competitiveness, growth and employment in the EU's knowledge-based economy.

The consultation was timely considering the difficulty the EU faces in making progress in the patents area and in view of the new industrial policy launched by the Commission in October 2005, where IPR is identified as one of the major policy initiatives.

The Commission felt a consultation of all interested parties would be crucial in ensuring that future patent policy properly reflects stakeholders' needs. The consultation was important against the backdrop of the deadlocked discussion on the Community Patent (see box) but



was much broader in content. The Commission's consultation focused on four areas:

- basic principles of the patent system;
- the Community Patent;
- the European patent system, in particular EPLA - the European Patent Litigation Agreement;
- approximation and mutual recognition of national patents.

Lively response

There was very lively response to the consultation with more than 2,500 replies emanating from all sectors of industry, patent lawyers and other stakeholders.

Participation was particularly high from sectors such as ICT, pharmaceuticals, chemicals, automotive, consumer electronics, biotechnology and mechanical industries. Furthermore there was a big response from Europe's SMEs - 664 SME's in total from 14 Member States and the two acceding countries.

The Commission drew up preliminary conclusions from the consultation submissions and invited stakeholders to discuss the key issues raised at a public hearing in Brussels July 12.

More than 350 participants attended the hearing where some 60 speakers from

industry, legal specialists, trade associations and other interested parties took the stand to give their perspective.

COMPAT yes - but not at any cost

Although the consultation showed that there is widespread preference for the Community Patent (COMPAT) as a way



forward, stakeholders, it is clear, do not wish to have this system at any price, and in particular not on the basis of the Common Political Approach reached by EU Ministers in 2003.

Many stakeholders reject the deal currently on the table on account of an unsatisfactory language regime and inadequate jurisdictional arrangements.

What most parties appear to be looking for is an improvement over the current situation in terms of a truly unitary high quality patent. If this cannot be achieved quickly and without major political compromises affecting the usefulness of the

final solutions, then some stakeholders go as far as urging the Commission to withdraw its proposal and concentrate its resources on other issues. Other stakeholders point to the EPLA as a possible solution to the current difficulties.

Some stakeholders (many SME-related organisations) put forward the idea of setting up a regulatory framework for mediation as a means of alternative dispute resolution in patent cases, with the exclusion of issues concerning the validity of a granted patent.

Regarding the translation issue there are two extremes: those who unequivocally support a single language patent and those who want full translation into all official EU languages immediately upon grant.

EPLA

Both industry and patent attorneys seem to favour the Community's involvement in the European Patent Litigation Agreement (EPLA). This preference flows from the general opinion that the existing patent system based on the EPO and the EPC works well and outstanding problems relate to the lack of unitary jurisdiction. Some also believe that it could act as a precursor for the Community Patent and its jurisdictional system.

Support for EPLA is not viewed as being

necessarily incompatible with support for the Community Patent.

Basic principles for patent system

Based on the feedback from the consultation, the basic principles which need to guide the patent system in Europe are:

- the patent system must provide an incentive for innovation provided that patentability criteria are rigorously respected;
- it must ensure the diffusion of scientific knowledge and technologies by an efficient, transparent and complete publication of patent documentation;
- it must facilitate the transfer of technology;
- it must be available to all players on the market;
- it must offer legal certainty to the patentee and the users.

It is clear that stakeholders are first and foremost concerned about maintaining and improving patent quality in Europe in order to avoid the shortcomings of some patent offices such as the USPTO.

Industry is unanimous that innovation



and competitiveness do not depend on the number of patents granted every year but on their quality and on the level of legal certainty which they provide. Cooperation with the EPO is considered crucial in this respect.

Harmonisation and mutual recognition

There is very little support for approximation of national laws. Mutual recognition of national patents is rejected almost unanimously by stakeholders.

On the basis of the considerable number of written contributions received and the input from the public hearing, the Commission will consider the best way forward to ensure that the patent system in Europe properly stimulates innovation and growth.

info

Grazyna Piesiewicz
TEL: +32 (0)2.298 01 24
FAX: +32 (0)2.299 31 04
Markt-D2@ec.europa.eu

info

http://ec.europa.eu/internal_market/indprop/index_en.htm

The Community Patent

In 2000, the Commission proposed the creation of a Community Patent to give inventors the option of obtaining a single patent which is legally valid throughout the EU.

At the moment, patents can be awarded either on a national basis or through the European Patent Office (EPO) in Munich, which grants so-called 'European Patents' with a single application and granting procedure. However, once granted the European patent becomes a national patent for the designated Member State. Each Member State may still require that (in order for it to be legally valid in their territory) the European Patent is translated into its official language.

Translation costs make patenting an invention in Europe significantly more expensive than in the US or Japan. This difficulty is increased by the need to work in different national legal systems in case of dispute. The current system is therefore considered to be a significant barrier to research, development and innovation.

On 3 March 2003, the Competitiveness Council reached agreement on a Common Political Approach for the key elements of the proposed Community Patent. This included a centralised Community Court which would rule on disputes, language regimes, costs, the role of national patent offices and the distribution of fees. However, the Council has failed

to come to an agreement on the details of the Community Patent despite regular efforts.

The main sticking point has been the question of the translation of patent claims. Ministers have so far been unable to agree on time delays for translations (into the remaining languages) and the effects of possible errors in translations.

The original Commission proposal foresaw that the patent be valid as granted by the European Patent Office in one of the three EPO languages: English, French, German, while translations need to be published in the other two EPO languages for information purposes.