



A I P P I

**ASSOCIATION INTERNATIONALE
POUR LA PROTECTION DE LA PROPRIETE INTELLECTUELLE**

**INTERNATIONAL ASSOCIATION
FOR THE PROTECTION OF INTELLECTUAL PROPERTY**

**INTERNATIONALE VEREINIGUNG
FÜR DEN SCHUTZ DES GEISTIGEN EIGENTUMS**

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Report
Special Committee Q162

Community Patent Regulation
Règlement sur le brevet communautaire
Die Gemeinschaftspatent-Verordnung



Report Q162

Community Patent Regulation

by Peter-Ulrik PLESNER (Denmark)

1) Names and Functions of Committee Members

Chairman:	Peter-Ulrik PLESNER (Denmark)
Co-Chairman:	Luc SANTARELLI (France)
Secretary:	Enrique ARMIJO
Members:	Geoffrey BAYLISS (United Kingdom) Nanno LENZ (Germany) Anna FERREIRA Da SILVA (Portugal) Takashi ISHIDA (Japan) Gerald J. MOSSINGHOFF (USA) Luigi Carlo UBERTAZZI (Italy)

2) History

The Special Committee was established to study and prepare an opinion paper expressing the views of AIPPI National and Regional Groups of the European Commission Proposal for a Community Patent Regulation.

The Special Committee has prepared a Report of 10 June 2002 for the Lisbon EXCO Meeting and a Report of 30 October 2003 for the Lucerne EXCO Meeting.

The EXCO Meetings did not pass any Resolution in relation to the Community Patent.

3) Development since the Lucerne EXCO Meeting

3.1) The Report to the Lucerne EXCO Meeting did not refer to the draft of 4 September 2003 with a proposal for a Council Regulation on the Community Patent (dok 12219/03) since it was not publicly available. The draft did not contain any material changes of relevance to the Report.

On 13 November 2003 and on 21 November 2003 the Council issued new proposals containing certain changes in the draft Regulation (dok 12 130/2/03 PI 111/03 and dok 15 0 86/03 PI 122). Among other proposals the last document contained a new Article 24c providing, in each Member State, a limited right to third parties to continue to use the invention in the case this use would fall outside the scope of the translated claims.

Being subject to the good faith of the third parties this proposed limited effect, would be also subject to the payment of an adequate compensation to the patentee and to a limited period of time. This proposal was not approved by the Competitiveness Council held under Italian Presidency on 26-27 November 2003. In our Report of 30 October 2003 we had mentioned that this article should be considered further because we found that there should be some consequence of the discrepancy between the authentic text and the translation of the claims.

- 3.2) On 23 December 2003 the Commission issued a proposal for a Council Decision establishing the Community Patent Court and concerning appeals for the Court of First Instance (COM(2003) 828 final 2003/0324 (CNS)). This proposal is drafted in line with the Council's common political approach of 7 March 2003 and in line with Recitals 7a, 7b, 7c and 7d in part recited in our Report of 30 October 2003.

The Community Patent Court shall consist of seven judges, including the President. The Community Patent Court will normally sit in chambers with three judges. Seven judges would allow formation in two chambers with three judges in each. Seven judges would enable the Court to sit and issue a collected decision due to the uneven number of judges. The expected caseload in the initial phase is estimated for the first three consecutive years at approx. 50, 100 and 150 newly launched cases which would mean a caseload of 25, 50 and 75 new cases per year per chamber. The appeal from the Community Patent Court will be to the Court of First Instance. The number of judges in the Court of First Instance will be increased by three judges and there will be formed a specialised appeal chamber.

- 3.3) The Community Patent was on the agenda of the Competitiveness Council (Internal Market, Industry and Research) on 11 March 2004.

The new Irish Presidency presented to this meeting an alternative proposal leaving to the discretion of the Court to decide on any discrepancies that could come up between the original text of the patent as granted and the text of the translated claims.

This proposal was not approved by the Competitiveness Council which met again on 17-18 May 2004.

The press release from the latter meeting contains the following:

“Community Patent

The Council did not reach agreement with the necessary unanimity on the Presidency's compromise proposal for a Council Regulation on the Community Patent, with Germany, France, Spain and Portugal voting against and Italy abstaining. Noting that all conceivable compromise solutions for the only outstanding issue which is related to the translation of patent claims had been tried, the Presidency stated its intention to bring this matter to the President of the European Council.”

Internal Market Commissioner Frits Bolkestein is after the meeting cited for stating the following:

“The Commission will now have to reflect carefully on its next steps. All I can say is that all options are open, including withdrawal of the proposal. After all, if there is no prospect whatsoever of Member States agreeing this proposal, there is no point in keeping it on the Council's table and going round in circles.”

- 3.4) As far as the Committee is aware the discussion which lead to the breakdown of the negotiations has been concerning the language question. Germany's position was that translations should have no legal effect, and that the term for filing these should be at least 1 year.

On the other hand, Spain maintained that according to the Common Political Approach agreed by the Member States, during the Greek Presidency, on the Competitiveness Council Meeting of 3 March 2003, the translation of all Claims into all Official Community languages should have legal effect and the time for filing them should be in the range of 3 months.

4) Future work for the Special Committee

Special Committee Q162 will continue to follow the development and if it turns out that the proposal for a Community Patent is withdrawn, it will be proposed to dissolve the Special Committee.