



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

Congress

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October 8 to 12, 2006

Report

Special Committee Q162

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

Report Q162

Community Patent Regulation

Composition of the Committee

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

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, a report of 30 October 2003 for the Lucerne EXCO Meeting, a report of 1 June 2004 to the Geneva Congress, and a report of June 2005 for the Berlin EXCO.

Neither the EXCO Meetings nor the Congress passed any Resolution in relation to the Community Patent.

Development since the Berlin EXCO

On 19 January 2006 the European Commission issued a Questionnaire on the Patent System in Europe. In a press release of 16 January 2006 the Commission stated:

"The European Commission has launched a public consultation on how future action in patent policy to create an EU-wide system of protection can best take account of stakeholders' needs. While the Community

Patent remains a priority, the Commission is also seeking views on what measures could be taken in the near future to improve the patent system in Europe. All interested stakeholders, including industry and individuals, are encouraged to reply. The closing date is 31 March 2006."

The Questionnaire contains 5 sections:

Section 1:

Basic principles and features of the patent system.

Section 2:

The Community patent as a priority for the EU

Section 3:

The European Patent System and in particular the European Patent Litigation Agreement

Section 4:

Approximation and mutual recognition of national patents

Section 5:

General

The text of section 2 concerning the Community Patent reads as follows:

"Section 2 – The Community patent as a priority for the EU

The Commission's proposals for a Community patent have been on the table since 2000 and reached an important milestone with the adoption of the Council's common political approach in March 2003

<http://register.consilium.eu.int/pdf/en/03/st07/st07159en03.pdf>;

see also

http://europa.eu.int/comm/internalmarket/en/indprop/patent/docs/2003-03-patentcosts_en.pdf].

The disagreement over the precise legal effect of translations is one reason why final agreement on the Community patent regulation has not yet been achieved. The Community patent delivers value-added for European industry as part of the Lisbon agenda. It offers a unitary, affordable and competitive patent and greater legal certainty through a unified Community jurisdiction. It also contributes to a stronger EU position in external fora and would provide for Community accession to the European Patent Convention (EPC). Calculations based on the common political approach suggest a Community patent would be available for the whole of the EU at about the same cost as patent protection under the existing European Patent system for only five states."

"Question

2.1 By comparison with the common political approach, are there any alternative or additional features that you believe an effective Community patent system should offer?"

On 12 July 2006 the Commission held a Public Hearing on the Future Patent Policy in Europe.

During this hearing, the Commission stated that it would make a last attempt to launch an EU patent although it remained unclear when and how this would be done. A material harmonization was not envisaged, e.g. concerning software.

The issue of judicial control was problematic and a solution similar to that of EPLA could be possible. At the same time, it was important that the EU acceded to the EPLA system.

Among the present stakeholders, enforcement and costs of an EU patent were the main concerns. The European patent law London Agreement, signed in 2000, which relates to the language provisions under the European Patent Convention, continued to be of utmost importance. Not only a centralized solution should be endorsed, but other possibilities should be considered such as regional chambers known from EPLA.

For additional information on EPLA please refer to Q165.

Future work for the Special Committee

Special Committee Q162 will continue to follow the development.