

## **QUESTION 137**

### **The Future of the Patent System in Europe**

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Q137

#### **Question Q137**

#### **The Future of the Patent System in Europe**

#### **Resolution**

#### **AIPPI**

- A. Recognizing the importance of the present and future development of the patent system in Europe not only for that region but for Industrial Property systems of the whole world.
- B. Noting that the European Commission has the intention of issuing a draft Regulation on the Community Patent in the near future.
- C. Noting that a Community Patent system will only be successful if it meets the requirements of users and of third parties, in particular with regard to greater legal certainty and to perceived good value in the costs of litigation and of application and grant procedures.

#### **Resolves as follows:**

##### **1. In General**

That harmonization of law and procedure between patent systems existing or to exist in Europe is highly desirable from the point of view of users, administrators and third parties.

##### **2. Regarding the Community Patent**

2.1 That a unitary Community Patent of supranational effect for the whole of the Community and with its own substantive law should come into existence, if it meets the criteria of Recital C above.

- 2.2 That the EPC and national systems should continue.
- 2.3 That the Community Patent should be a unitary patent which can only be granted, transferred or revoked as a whole with effect for the entire Community.
- 2.4 That a granted Community Patent should have only a unitary renewal fee which should be at a level which is a proportion only of the fees which would be payable individually for national or European patents in all the countries involved.
- 2.5 That conversion from a European Patent Application to a Community Patent Application should be possible when all Community member countries have already been validly designated.
- 2.6 That conversion from a Community Patent Application to a European Patent Application for some or all of the member states of the Community should be possible.
- 2.7 That conversion from a granted Community Patent to national patents should in principle not be possible.

### **3. Compulsory Licences, Exhaustion**

That compulsory licences should be granted on the bases permitted by TRIPS only and should, in the case of a compulsory licence granted on a Community Patent under national law, be effective in the country of grant only; since the licence was not granted with the express consent of the proprietor, the doctrine of international exhaustion should not apply. However, in the case of Community Patents use in any part of the Community should suffice to overcome an application for compulsory licence based on non-use.

### **4. International Cooperation**

That increased cooperation between Patent Offices, with particular reference to the trilateral agreement between the EPO, the USPTO and the JPO, is desirable and there should be further harmonization of standards and implementation of search and examination and harmonization of the substantive laws of patentability.

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