

EXCO Lisbon 2002

REPORT

Special Committee Q162 – Community Patent Regulation

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. Mossighoff (USA)
	Carlo Ubertazzi (Italy)

2 History

The European Commission issued a draft regulation dated 1 August 2000 KOM (2000) 2412 for a community patent regulation.

After the Melbourne Congress Peter-Ulrik Plesner was appointed chairman instead of Annika Ryberg.

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.

3 Development since the Melbourne Congress

The community patent was up for a discussion on the Council meeting - (internal market) - in Brussels 30-31 May 2001. The Council agreed on the following common approach as guidelines for the continued work of the community patent.

"1. The Council instructs the Permanent Representatives Committee to continue to give priority work on a Community patent based on the principles of full respect of the Community legal order, legal security, affordability, user responsiveness, procedural efficiency, simplicity and non-discrimination between Community citizens and gives the following guidelines for the overall structure:

- A central role is to be played by the European Patent Office in the grant and administration of Community patents.

- National patent offices should have an important role as regards Community patents and the public, in particular small and medium-sized enterprises, with which contacts in the local language are important.

- Costs to applicants for and proprietors of Community patents have to be kept at a competitive level.

- As regards languages, the Community patent system should be based on the general principles which have been outlined, including the principle of non-discrimination.

- A certain percentage of income from annual renewal fees for the Community patent, to be negotiated between the Community and the European Patent Organisation should be distributed among the Community Member States/national patent offices in accordance with a fair and justified distribution key to be agreed as soon as possible by the Community Member States.

- Jurisdictional arrangements for the Community patent should be set up in accordance with the framework of Articles 225a and 229a of the EC Treaty as adopted at Nice. The first instance judicial panel should be arranged with account taken of the need for uniform application of Community law and factors such as cost effectiveness, demand and local languages, closeness to users and use of any existing infrastructure and expertise. Appeals should be heard by the Court of First Instance.

The above-mentioned main issues were discussed again at the Council's meeting 25 November 2001 in Brussels.

The Belgian presidency has prepared a note proposing that the community patent should be issued in the official language used during examination and that a claim should be translated to the other languages. The jurisdictional system should be set up in accordance with article 225a and 229a. The First Instance should consist of a central chamber in Luxembourg with the possibility a certain decentralisation. The second instance should be the Court of First Instance.

The conclusion of the Barcelona Summit in March reaffirmed the importance of the Community patent and invites the Council to reach a common approach at its meeting in May.

Before the meeting 21 May 2002 the Spanish presidency had prepared a paper on a common political approach. The above-mentioned items were again discussed. In relation to the jurisdictional system it was added that the language regime of the system should allow for all community languages to be used in proceedings before the jurisdic-

tional instances of both levels. On the basis of the fundamental principle that "nothing is finally agreed until everything has been agreed" the Commission will now prepare a paper on the jurisdictional system. The paper will probably consist of 40-50 pages but it will not be in the form a draft regulation.

It is the intention of Danish chairmanship for the second half of 2002 to work on the question of the jurisdictional system and not to discuss the other issues. The position of the parties is known. The regulation proposal will be on the agenda in the Council's meeting in September and November but the Danish representatives do not expect to put forward a new formal proposal.

4 Questionnaire

The committee had prepared a questionnaire to be sent to the national and regional groups in order to get input from the groups.

Based on this common approach from the meeting in Brussels May 2001 it was, however, decided for the time being not to send the prepared questionnaire to the national and the regional groups but to wait for further development.

5 The European Commission's Green paper on the protection of the protection of utility models in the single market (COM 95 370 filing)

The committee prepared a reply to the Commission based on the previous Montreal resolution on Q 117a followed by Council of Presidency recommendation in Oslo 1999.

6 Future

The Committee will continue to follow the development for a European Community Patent regulation.

June 10, 2002