

Report Q162

Community Patent Regulation

1) Names and Functions of Committee Members

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
Responsible Reporter	Jochen BÜHLING	Germany

2) History

The special committee was established for the purpose of studying and preparing an opinion paper expressing the views of AIPPI national and regional groups on the Euro-pean 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 for the Geneva Congress, a report of June 2005 for the Berlin EXCO and a report of July 2006 for the Gothenburg Congress, a report of August 2007 for the Singapore EXCO meeting and a report for the Boston EXCO meeting 2008.

Neither the EXCO meetings nor the Congress have passed any resolution in relation to the Community Patent.

3) Development since the Boston congress

In relation to the draft Agreement on the European and Community Patent Court and draft statute I refer to the Q 165 report. The latest draft is dated 23 March 2009 - ST07 928. It has been decided to request an opinion by the European Court of Justice on compatibility with the EC Treaty of the envisaged agreement creating a Unified Patent Litigation System. The latest drafts of the request are dated: 24 April 2009 document number ST090706 and 18 June 2009 - document number ST11125/09.

It is expected that there will be no further work on the agreement till the ECJ has given its opinion on compatibility with the EU-Treaty, probably not till after 18 months to two years have passed.

The Swedish presidency has planned to work on the proposal for a Council Regulation on the Community Patent. The latest draft is dated 25 June 2009 - document 11417/09.

Since our last report at the Working Group on Intellectual Property (Patents), the national representatives have discussed, with the EU Commission, the following issues:

- 1) The language regime
- 2) Distribution of fees
- 3) Workshare between the different national offices
- 4) The fee structure

Nevertheless, it has not been possible to reach an agreement on these four issues.

On the other hand, the EU Commission and this Working Group received a of 07 April 2009 conducted by Prof. Bruno van Poltelsberghe, economist at the Solvay Brussels School of Economics, on the "Economic Cost-Benefit Analysis of the Community Patent". Several delegations have found this analysis insufficient.

As reported in our report from August 2008 one of the main issues to be solved is the language regime. The 25 June 2009 draft contains chapter IIa:

"CHAPTER IIa

Language Arrangements for the Community Patent:

Article 24a

Language of the application

Applications for a Community Patent shall be filed in one of the languages referred to in the EPC. However, applicants may instead choose to submit their application in one of the official languages of their Member States, which shall be an official language of the EU. In the latter case the application shall be translated into one of the official languages of the EPO which should be designated by the applicant as language of proceedings. The translation costs concerned shall be borne by the system

Article 24b

Translation for the provision of patent information

- 1) Translations of the patent specifications and claims into all official Community languages shall be made available upon publication of the patent application for the provision of patent information.
- 2) These translations will be carried out on demand by a specialized central service based upon a machine translation program. Such program will involve electronic dictionaries with technical vocabulary linked to the international patent classification system.
- 3) The translation referred to in this Article shall be for the provision of information and shall have no legal effect.

Article 24c

Translation in case of dispute

In the case of a dispute relating to a Community Patent, the patent proprietor, at his/her own expense, shall provide:

- a) at the request of an alleged infringer, a full translation of the patent into an official language of the State in which the alleged infringement took place or in which the alleged infringer is domiciled;
- b) at the request of the Court in the course of legal proceedings, a full translation of the patent into the language of proceedings.

Article 24 d

Deleted"

As it appears, this proposed language regime is the same as the language regime proposed in the EU document st 9465/08 of 23 May 2008, which was submitted to the Council of Ministers on Competitiveness, on 29 May 2008, and which was not approved by that Council. Nevertheless, this proposal has been again taken back in the EU document of 7 April 2009 st 8588/09, and in the EU document 11417/09.

The questions which were raised in our report of August 2008 concerning machine translation do not seem to be solved. Some questions were:

"How trustworthy are these machine translations?

Is it acceptable that translations of the full translation of the specifications and claims have no legal effect?

Should it be a requirement that at least the claims are translated into all official languages in such a manner that it has legal effect?

Does a translation produced in litigation have legal effect?"

In accordance with Article 13a any Community Patent application may be converted into a European patent application designating one or more Member States by a request filed with the EPO up until the grant of the Community Patent.

On the other hand, there will in accordance with Article 54 be a prohibition of simultaneous protection. Where a national patent in a Member State relates to an invention for which a community has been granted to the same inventor, that national patent shall be ineffective to the extent that it covers the same invention for the same territory as the Community Patent. Thus, there is a flexibility to convert the community patent to a European patent, but it is not possible to uphold both a national patent and a community patent.

Today it is in several European countries possible both to uphold a European patent and a national patent covering the same invention.

Future development:

The draft document 11417/09 dated 25 June 2009 was discussed at the Working Group meeting of 8 July 2009. Further meetings have been planned in the second half of 2009 during the Swedish Presidency.

The working programme for the Swedish Presidency has the following remark concerning the patent system:

"The presidency will work towards making as much progress as possible in the negotiations on the Community patent and the European Patent Court. The creation of a cost-effective Community patent and a patent litigation system is important for the innovation climate in Europe and thus for EU competitiveness. Effective protection of intellectual property rights is also crucial to how all the EU can make use of existing innovation capacity."

On 15-16 December 2009 a conference will be held in Stockholm with the title: "The enforcement of Intellectual Property Rights".

4) Future work for the Special Committee

The special Committee does not propose a resolution on the proposed Community Patent Regulation for the Buenos Aires EXCO Meeting. The Special Committee Q 162 will continue to follow the developments and report to the Bureau and the next congress.

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