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WORKING DOCUMENT

from: Presidency

to : Working Party on Intellectual Property (Patents)

No. Cion prop. 8302/07 PI 11

Subject : Commission Communication on enhancing the patent system in Europe
- Presidency questionnaire

Delegations will find in Annex a Presidency questionnaire as a basis for future discussions on the patent system in Europe.

**Communication on enhancing the patent system in Europe
(8302/07 of 4 April 2007 – COM(2007) 165 final of 3 April 2007)**

Input paper for the Working Party on Patents

It is the Presidency's intention that the Working Party on Patents should first discuss issues arising in the Commission communication with regard to the Community patent and an integrated jurisdictional system for patents (section 2). The statistical material provided by the Commission for impact assessment purposes should also be examined (section 1 and annexes).

The questionnaire in this paper is not to be regarded as exhaustive. It remains open for any other questions or issues raised by delegations.

Progress in enhancing the patent system in Europe requires a consensus among all Member States. It is therefore particularly important for *all* delegations on the Working Party to reply to the questions relating to Member States' circumstances or positions.

Section 2

Subsection 2.1. Community patent

Should discussions on the Community patent be reopened in the light of the points made in the communication with regard to simplification of the language regime?

Are the European Commission's calculations, showing the Community patent to be more attractive than European patents in cost terms (translation costs, examination fees, maintenance, etc.), based on realistic assumptions?

Which of the following options or what other basic systems for reducing translation costs are favoured:

- a one-language regime;
- a three-language regime (Commission proposal, 2000);
- a five-language regime (as at the European Office for Harmonisation, in Alicante);
- translation into all or a number of or official languages, with translation costs borne by the Member State concerned;
- any other arrangements?

In the case of multilingual options, which language version should be authoritative in the Community?

Can the London Protocol serve as an example for the language system for the Community patent?

Subsection 2.2. An integrated jurisdictional system for patents

2.2.1. Practice in Member States

2.2.2. National patent litigation systems

How many patent cases a year are heard by each Member State's courts? How many initial judgments go to appeal?

Does national courts' case law show any examples of patent litigation rulings deviating from rulings by courts in other Member States?

Are revocation and infringement proceedings conducted in the same court or in different courts?

Is patent litigation concentrated in specialist courts (e.g. locally and/or institutionally)?

Do the courts have any special personal requirements for judges? Do judges hearing patent litigation need any additional or different qualifications in comparison with other judges?

Are there any technically qualified judges, i.e. judges having a non-legal training, e.g. as chemists or biologists, who sit on the bench on a par with legally trained judges or assist them in coming to a decision? Can technically qualified judges be provided, where appropriate, under national constitutional law or case law?

Do the European Commission's estimates of litigation cost savings in a unified patent jurisdiction, as compared with the current national patent litigation system, sound reasonable?

2.2.3. The way forward

Option A. EPLA optional dispute-settlement system

Should the European Commission be authorised to participate in the European Patent Litigation Agreement (EPLA) negotiations, with a view to bringing the present draft EPLA into line with Community law?

Should the EPLA in that event be opened up to a future Community patent ("EPLA plus")?

What points would the negotiating directives have to include for alignment of EPLA with Community law?

Option B. Community jurisdiction for European and Community patents

What should be contained in the proposed international agreement to "confer competence on the Community judicature over European patents"?

Is it possible under the EC Treaty, especially in the light of the opinions given by the European Court of Justice (ECJ) on the EFTA Court, to assign entirely new areas of jurisdiction and types of proceedings (particularly civil patent litigation) to the ECJ by means of an international agreement?

In what form would the Community participate in negotiations for such an agreement?

What points would have to be included in negotiating directives for the European Commission?

Would the Community have to accede to the European Patent Convention in order for the ECJ (its specialist panels) to apply that Convention's provisions?

Option C. The European Commission's compromise proposal

What are the differences between option B and option C?

What is the difference between opening up the EPLA to (future) Community patents ("EPLA plus"), combined with a requirement for referral to the ECJ, and option C?

By what legal instrument should the present national jurisdiction over European patents be integrated into the Community jurisdiction?

On what legal basis should the first-instance chambers be established?

If the proposed first-instance chambers are to be panels of the kind referred to in Article 225a TEC (as in option B), how do they satisfy the condition under the second paragraph of Article 220 TEC that such panels can exercise (only) the competence laid down in the EC Treaty?

What criteria should apply to the establishment of regional first-instance chambers (caseload, forensic experience, etc.)? How can it be ensured that only a limited range of regional chambers are established?

Of whom should the first-instance chambers be composed? Should technically qualified judges have a say in ruling on cases?

What additional qualifications should judges have?

Could the central appeal court also include technically qualified judges (see the second paragraph of Article 224 TEC)?

Should each Member State finance its own first-instance chamber, or should such chambers be financed out of EU funds or procedural fees?

What rules should govern the "allocation of cases" by the registry of the judiciary? Should there be any deviation from the current Brussels I Regulation? If so, why and in what respects?

What language arrangements should apply to proceedings in first-instance chambers and to the central appeal court?

What features and types of decision should injunctive relief proceedings involve at first instance and on appeal?

Can it be ensured that the existing ECJ Rules of Procedure incorporate the special features of the new procedural rules to be introduced for first-instance chambers hearing patent cases?

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