



**COUNCIL OF
THE EUROPEAN UNION**

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PI 45

PROGRESS REPORT

from: Presidency
to : Council (Competitiveness)
No. prev. doc 14912/07 PI 44
Subject : Enhancing the patent system in Europe

I. INTRODUCTION

1. Following the Conclusions adopted by the Competitiveness Council on 4 December 2006 and the European Council on 8-9 March 2007, the Commission presented on 4 April 2007 a Communication on enhancing the patent system in Europe (doc. 8302/07).
2. Following discussions in the Working Party on Intellectual Property (Patents) under the German Presidency on the basis of the above-mentioned document, a progress report was submitted to the Permanent Representatives Committee (doc. 10710/1/07 REV 1(en)) in June 2007. The Permanent Representatives Committee took note of the progress report and agreed on the need to continue work towards finding solutions for both the Community Patent system and a Europe-wide patent litigation system.

3. In accordance with this mandate by the Permanent Representatives Committee, the Portuguese Presidency concentrated its efforts on making progress towards finding a workable solution for a Europe-wide patent litigation system, around which a consensus can be built. To this effect, it organised three Working Party meetings on 20 July, 17 October and 7 November 2007. On the basis of technical information gathered under the German Presidency, discussions with stakeholders and users of the patent system and consultations with Member States, the Presidency presented a working document setting out the main features of an EU-wide litigation system, the latest version of which is contained in document 14492/07.
4. The purpose of the present report is to inform the Competitiveness Council of the progress achieved so far in discussions on the single patent litigation system as a basis for an initial exchange of views at Council level.

II. PROGRESS ACHIEVED SO FAR

5. The essence of the progress achieved to date is reflected in document 14492/07. While a number of delegations still have reservations, it is broadly acknowledged that all the key issues for a future patent litigation system have been addressed in that document and that discussions are heading in the right direction. The Presidency underlines the constructive and positive climate in the Working Party and acknowledges the efforts made by all Member States, with no exception.
6. While there appears to be broad agreement on most of the key features set out in the working document, there remain some issues which need to be discussed further. This concerns, in particular, the so-called split arrangement between infringement and invalidity actions at first instance level, and the language arrangements in judicial proceedings.

7. As a first step, the Working Party agreed to concentrate all efforts on arriving at a common understanding on the architecture and main features of the future patent litigation system. Once further consensus has been reached on the jurisdictional system, solutions for the Community patent will be explored since a number of Member States consider that the jurisdictional system and the Community patent should form a package. The question of the appropriate legal basis and the choice of the right legal instruments will then have to be properly addressed.

8. As a result of the combined synergies of all delegations, there has been an ongoing process of improvement, clarification and fine-tuning of the Presidency working document. Further suggestions for technical improvements and clarifications have been made at the Working Party meeting on 7 November 2007 and will be addressed in a further revised working document for discussion at the next meeting of the Working Party.

III. CONCLUSION

9. As a result of the Working Party discussions, the Presidency considers that considerable progress has been achieved in producing a right basis for further work in respect of the features of a jurisdiction for European and future Community patents.

10. **The Council (Competitiveness) is invited to take note of this progress report at its forthcoming session on 22-23 November 2007 and to instruct its preparatory bodies to:**
 - **continue work on the patent litigation system on the basis of document 14492/07, with a view to resolving the remaining outstanding issues;**

 - **resume work on the Community patent as soon as possible, with a view to making equally rapid progress also on that dossier.**