



**COUNCIL OF  
THE EUROPEAN UNION**

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**PI 62**

**WORKING DOCUMENT**

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from : General Secretariat of the Council  
to : Working Party on Intellectual Property (Patents)

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Subject : Revised proposal for a Council Regulation on the Community patent

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Delegations will find in Annex a revised proposal for a Council Regulation on the Community patent drawn up by the Presidency, based on recent discussions in the Working Party on Intellectual Property (Patents). Changes to the previous version of the proposal (doc. 8588/09) are marked.

The Working Party will be invited to have an exchange of views on this Working document at its meeting on 8 July 2009.

Proposal for a  
COUNCIL REGULATION  
on the Community patent  
(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Whereas:

(1) The activities of the Community include the establishment of an internal market characterized by the abolition of obstacles to the free movement of goods and the creation of a system ensuring that competition in the internal market is not distorted. The creation of the legal conditions enabling undertakings to adapt their activities in manufacturing and distributing products to a Community dimension helps to attain these objectives. A patent to which uniform protection is given and which produces uniform effects throughout the Community should feature amongst the legal instruments which undertakings have at their disposal.

(1a) A cost effective, legally secure Community patent will in particular benefit Small and Medium-Sized Enterprises (hereafter: SMEs) and would be complementary to the Small Business Act for Europe. The creation of such a unitary title should make access to the patent system easier, less costly and less risky, which would be of particular importance for SMEs.

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<sup>1</sup> Proposal for a Council Regulation on the Community patent, COM/2000/0412 final - CNS 2000/0177 \*, OJ C 337, 28.11.2000, p. 278.

<sup>2</sup> European Parliament legislative resolution on the proposal for a Council Regulation on the Community patent (COM(2000) 412 - C5-0461/2000 - 2000/0177(CNS), OJ C 127, p. 526.

<sup>3</sup> Opinion of the Economic and Social Committee on the Proposal for a Council Regulation on the Community patent, OJ C 2001 155, p. 80.

- (1b) The availability of a unitary title providing for equal protection throughout the entire territory of the European Union (hereafter: EU) will enhance and help raise effectiveness of the fight against counterfeiting and patent infringement to the benefit of inventors, businesses and society at large. A complete geographical coverage without any loopholes will ensure effective patent protection at all external borders of the EU and will help to prevent the entry of counterfeit products into the European Single Market on the basis of Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights<sup>4</sup>.
- (2) The [...] Convention on the Grant of European Patents of 5 October 1973 as amended by a revision act of 29 November 2000 (hereafter: EPC) established the European Patent Office (hereafter: EPO) and entrusted it with the task of granting European patents. The expertise offered by the EPO should [...] be used in the granting of the Community patent.
- (2a) The EPO will play a central role in the administration of Community patents and will alone be responsible for examination of applications and the grant of Community patents. Moreover, it is desirable to increase the efficiency of the patent granting process by creating an enhanced partnership between national patent offices of Member States and the EPO, while maintaining a high quality of patent rights. This can be achieved in particular by more efficient use of technical expertise to avoid unnecessary duplication of work or by optimal use of all resources.
- (2aa) National patent offices will likewise have an important role to play, inter alia by giving advice and support to potential applicants for Community patents, in particular SMEs, by receiving applications, by forwarding applications to the EPO, and by disseminating patent information. national patent offices shall be compensated for these activities.

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<sup>4</sup> OJ L 196, 2.8.2003, p. 7.

- (2b) Applications for Community patents should be filed directly with the EPO or via the national patent office of a Member State. In order to facilitate access to the patent system, in particular for SMEs, in those Member States who do not have a language in common with one of the EPO's languages, it should be possible for applicants to file an application in the working language of the national patent office, where this is an official language of the EU. When the applicant files in a non-EPO language he/she shall designate one of the official EPO languages as language of proceedings. The costs related to translations shall be borne by the system ("mutualisation of costs").
- (2c) The level of procedural fees for processing an application for a Community patent shall be the same regardless of where the application is filed and will be related to costs for handling the Community patent.
- (3) The accession of the European Community to the EPC will enable it to be included in the Convention system as a territory for which a unitary patent can be granted. The pre-grant stage of the Community patent shall thus be governed by the EPC. The Community can, therefore, limit this Regulation in particular to the creation of the law applicable to the Community patent once granted.
- (3a) The EPO should also be entrusted with the task of administering the Community patent in the post-grant stage, for example, as regards the collection, distribution of annual fees to national patent offices and the management of the Register of Community Patents.
- (4a) To the extent that this Regulation does not provide otherwise the substantive law applicable to the Community patent, for example as regards patentability, the scope of patent protection and the limitation of the effects of the patent, will be governed by the pertinent provisions of the EPC and national law where this complies with Community law.

- (4b) The Community patent shall constitute a third option. Applicants shall remain free to apply instead for a national or a European patent. This Regulation is without prejudice to the right of the Member States to grant national patents and shall not replace Member States' laws on patents or European patent law as established by the EPC.
- (5) In order to promote the availability of patent information, the dissemination of technological knowledge and multilingualism, the Community will set up a Community patent machine translation program enabling instant access to translated publications of patent applications in all official languages of the EU. This program would provide translations at the request of any interested party via the internet upon publication of a patent application. Such instant translations would be for information purposes only and not produce any legal effect. The program shall be financed by the system and be fully operational once the Community patent system takes effect.
- (5a) The renewal fee for a Community patent must not exceed the level of the corresponding renewal fees for an average European Patent and will be progressive throughout the life of the Community patent.
- (5b) Renewal fees for Community patents will be payable to the EPO. The EPO shall retain from each renewal fee paid for a Community patent an amount not exceeding 50 percent. This proportion may be revised according to rules laid down in the EPC. The remaining amount will be distributed among the national patent offices of the Member States in accordance with a distribution key.
- [...]
- (5c) [...] A Select Committee of the Administrative Council of the European Patent Organisation shall, once the Community patent Regulation enters into force, [...] fix both the level of the renewal fees and the [...] distribution key for their allocation. The Select Committee shall periodically review its decisions taking into account economic development and changes in patent activity.

- (5d) When fixing the level of the renewal fees the Select Committee shall take into account that the renewal fees shall :
- facilitate the protection of innovation in Europe;
  - foster the competitiveness of European business, especially SMEs, in the global economy;
  - together with the fees due to be paid during the application phase, cover the costs associated with the granting and administration of the Community patent, thus contributing to the financial stability of the EPO, and
  - reflect the size of the market covered by the Community patent, duly taking into account comparable patent systems.
- (5e) When fixing the distribution key the Select Committee shall take into account that a basket of fair, equitable and relevant criteria shall be reflected. Amongst these criteria the following should be given particular importance :
- proportionality with regard to the level of patent activity;
  - proportionality with regard to the size of the market;
  - compensation for the lack of an official language in common with the EPO, and
  - in cases of disproportionate low levels of patent activities, due account must be taken to the need to promote patent activity and facilitate innovation.
- (6) [...] Negative effects of an exclusive right created by a Community patent should be possible to mitigate through a system of compulsory licences. This is without prejudice to the application of Community competition law by the Commission or national authorities. However, the [European and Community Patents Court] Court (hereafter: Court) should be entrusted with the grant of compulsory licences in situations not falling under Community competition law.
- (7) The jurisdictional system for the Community Patent shall be part of the Court having jurisdiction for both European and Community patents. This jurisdiction is established and governed by *[quote title of the legal instrument]*.

- (8) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, in particular the creation of a unitary right with effect throughout the Community can be achieved only by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

HAS ADOPTED THIS REGULATION:

## **CHAPTER I GENERAL PROVISIONS**

### Article 1

#### **Scope of application**

This Regulation applies to all Community patents within the meaning of Article 2 (1) and to all applications for such patents.

### Article 2

#### **Community patent**

1. The Community patent is a patent designating the Community, [...] granted by the EPO under the provisions of the EPC<sup>5</sup>.
2. The Community patent shall have a unitary character. It shall have equal effect throughout the Community and may only be granted, limited, transferred, declared invalid or lapse in respect of the whole of the Community.
3. The Community patent shall have an autonomous character. It shall be subject only to the provisions of this Regulation and to the general principles of Community law. The provisions of this Regulation shall be without prejudice to the application of Community competition law or the law of Member States with regard to criminal liability, unfair competition and mergers.
4. The provisions of the EPC shall apply to the Community patent to the extent that this Regulation does not provide for specific rules.

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<sup>5</sup> <http://www.epo.org/patents/law/legal-texts/epc.html>



### Article 3

#### **Application to the sea and submarine areas and to space**

1. This Regulation shall also apply to the sea and submarine areas adjacent to a Member State's territory in which that Member State exercises sovereign rights or jurisdiction in accordance with international law.
2. This Regulation shall apply to inventions created or used in outer space, including on celestial bodies or on spacecraft, which are under the jurisdiction and control of one or more Member States in accordance with international law.

## **CHAPTER II PATENT LAW**

### **SECTION 1 RIGHT TO THE PATENT**

#### Article 4

#### **Right to the Community patent**

1. The right to the Community patent shall belong to the inventor or his/her successor in title.
2. If the inventor is an employee, the right to the Community patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has his/her place of business to which the employee is attached.

3. If two or more persons have made an invention independently of each other, the right to the Community patent shall belong to the person whose Community patent application has the earliest date of filing or, where applicable, the earliest date of priority. This provision shall apply only if the first Community patent application has been published under Article 93 of the EPC.

#### Article 5

#### **Claiming the right to the Community patent**

1. If the Community patent has been granted to a person who is not entitled to it under Article 4(1) and (2), the person entitled to it under that Article may, without prejudice to any other right or remedy which may be open to him/her, claim to have the patent transferred to him/her.
2. Where a person is entitled to only part of the Community patent, that person may, in accordance with paragraph 1, claim to be made a joint proprietor.
3. Legal proceedings in respect of the rights referred to in paragraphs 1 and 2 may be instituted only within a period of three years after the date on which the Community Patent Bulletin, referred to in Article 57, publishes the mention of the grant of the Community patent. This provision shall not apply if the proprietor of the patent knew, at the time of the grant or of the acquisition of the patent, that he/she was not entitled to the patent.
4. The fact that legal proceedings have been instituted shall be entered in the Register of Community Patents, referred to in Article 56. The final decision in the legal proceedings or any withdrawal thereof shall also be entered.

## Article 6

### Effect of change of proprietorship of the Community patent

1. Where there is a complete change of proprietorship of a Community patent as a result of legal proceedings referred to in Article 5, licences and other rights shall lapse upon the registration of the person entitled to the patent in the Register of Community Patents [...].
  
2. If, before the institution of legal proceedings has been registered,
  - (a) the proprietor of the patent has used the invention within the territory of the Community or made effective and serious preparations to do so,  
or
  - (b) a licensee of the patent has obtained his/her licence and has used the invention within the territory of the Community or made effective and serious preparations to do so,  
  
he/she may continue such use provided that he/she requests a non-exclusive licence of the patent from the new proprietor whose name is entered in the Register of Community Patents. Such request must be made within the period prescribed in the implementing regulations. A licence shall be granted for a reasonable period and upon reasonable terms.
  
3. Paragraph 2 shall not apply if the proprietor of the patent or the licensee was acting in bad faith at the time when he/she began to use the invention or to make preparations to do so.

**SECTION 2**  
**EFFECTS OF THE COMMUNITY PATENT AND THE COMMUNITY PATENT**  
**APPLICATION**

Article 7

**Right to prevent the direct use of the invention**

The Community patent shall confer on its proprietor the right to prevent any third party not having his/her consent from:

- (a) making, offering, putting on the market or using a product which is the subject-matter of the patent, or importing or stocking the product for these purposes;
- (b) using a process which is the subject-matter of the patent or, when the third party knows, or it is obvious in the circumstances, that the use of the process is prohibited without the consent of the proprietor of the patent, from offering the process for use within the Community;
- (c) offering, putting on the market, using, importing or stocking for these purposes a product obtained directly by a process which is the subject-matter of the patent.

Article 8

**Right to prevent the indirect use of the invention**

1. In addition to the right conferred pursuant to Article 7, the Community patent shall confer on its proprietor the right to prevent any third party not having his/her consent from supplying or offering to supply within the Community to any person, other than a party entitled to exploit the patented invention, with means, relating to an essential element of that invention, for putting it into effect therein, when the third party knows, or it is obvious in the circumstances, that these means are suitable and intended for putting that invention into effect.

2. Paragraph 1 shall not apply when the means are staple commercial products, except when the third party induces the person supplied to commit acts prohibited by Article 7.
3. Persons performing the acts referred to in Article 9(a) to (b.1) shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph 1.

## Article 9

### **Limitation of the effects of the Community patent**

The rights conferred by the Community patent shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes relating to the subject-matter of the patented invention;
- (b.1) acts carried out solely for the purpose of conducting tests and trials in accordance with Article 13 of Directive 2001/82/EC<sup>6</sup> or Article 10 of Directive 2001/83/EC<sup>7</sup> in respect of any patent covering the reference product within the meaning of either of the said Directives;
- (c) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription nor acts concerning the medicine so prepared;
- (d) the use on board vessels of countries other than Member States of the patented invention, in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of Member States, provided that the invention is used there exclusively for the needs of the vessel;
- (e) the use of the patented invention in the construction or operation of aircraft or land vehicles or other means of transport of non-Member States, or of accessories to such aircraft or land vehicles, when these temporarily or accidentally enter the territory of Member States;

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<sup>6</sup> Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products, OJ L 311, 28.11.2001, p. 1, as amended by Directive 2004/28/EC of the European Parliament and of the Council of 31 March 2004, OJ L 136, 30.4.2004, p. 58.

<sup>7</sup> Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, OJ L 311, 28.11.2001, p. 67, as last amended by Directive 2008/29/EC of the European Parliament and of the Council of 11 March 2008, OJ L 81, 20.3.2008, p. 51.

- (f) the acts specified in Article 27 of the Convention on International Civil Aviation of 7 December 1944<sup>8</sup>, where these acts concern the aircraft of a country other than a Member State;
- (g) the use by a farmer of the product of his/her crop for propagation or multiplication on his/her own holding, provided that the reproductive vegetable material was sold or otherwise commercialized by the holder of the patent or with his/her consent to the farmer, for agricultural purposes. The scope and the detailed methods of this use are laid down in Article 14 of Regulation (EC) No. 2100/94<sup>9</sup>;
- (h) the use by a farmer of protected livestock for farming purposes, on condition that the breeding animals or other animal reproductive material was sold or otherwise commercialized to the farmer by the holder of the patent or with his/her consent. Such use includes the provision of the animal or other animal reproductive material for the purposes of his/her agricultural activity, but not the sale as part of or for the purpose of commercial reproductive activity;
- (i) the acts allowed pursuant to Articles 5 and 6 of Directive 91/250/EEC on the legal protection of computer programs by copyright<sup>10</sup>, in particular, by its provisions on decompilation and interoperability;
- (j) the acts allowed pursuant to Article 10 of Directive 98/44/EC on the legal protection of biotechnological inventions<sup>11</sup>.

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<sup>8</sup> International Civil Aviation Organization (ICAO), "Chicago Convention", Document 7300/9 (9th edition, 2006).

<sup>9</sup> Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, OJ L 227, 1.9.1994, p 1.

<sup>10</sup> Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, OJ L 122, 17.05.1991, p. 42.

<sup>11</sup> Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions OJ L 213, 30.7.1998, p. 13.

## Article 9a

### **Government use**

Any provision in the law of a Member State allowing non-commercial use of national patents by or for the government may be applied to Community patents, but only to the extent that the use is necessary for essential defence or national security. The patentee should be informed as soon as reasonably possible about the act and be compensated in respect of the act by the government concerned. Any dispute as to whether a Community patent has been used as provided for in this Article or over the amount of compensation shall be decided by the national courts of the Member State concerned.

## Article 10

### **Community exhaustion of the rights conferred by the Community patent**

The rights conferred by the Community patent shall not extend to acts concerning the product covered by that patent which are carried out within the territories of the Member States after that product has been put on the market in the Community by the proprietor of the patent or with his/her consent, unless there are legitimate grounds for the proprietor to oppose further commercialization of the product.

## Article 11

### **Rights conferred by the Community patent application after publication**

1. Compensation reasonable in the circumstances may be claimed from a third party who, in the period between the date of publication of a Community patent application and the date of publication of the mention of the grant of the Community patent, has made any use of the invention which, after that period, would be prohibited by virtue of the Community patent.
2. In determining the reasonable compensation, the Court shall take into account all relevant aspects, such as the economic consequences to the injured party of the use made of the invention, as well as the undeserved profits made by the person using the invention and the behaviour and the good or bad faith of the parties. The compensation shall not be punitive.

## Article 12

### **Right based on prior use of the invention**

1. A Community patent may not be invoked against a person who, in good faith and for business purposes, had used the invention in the Community or had made effective and serious preparations for such use before the filing date or, where priority has been claimed, the priority date of the application on the basis of which the patent is granted (hereinafter referred to as "the prior user"); the prior user shall have the right, for business purposes, to continue the use in question or to use the invention as planned during the preparations.
2. The right of the prior user may not be transferred either during the user's lifetime or following his/her death other than with the user's undertaking or that part of the undertaking in which the use or the preparations for use took place.

## Article 13

### **Process patents: burden of proof**

1. If the subject-matter of a Community patent is a process for obtaining a product, the same product when produced without the consent of the proprietor shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process.
2. The reversal of the burden of proof provided for in paragraph 1 shall apply equally where there is a strong likelihood that the same product was obtained by the process and the holder of the Community patent has not been able, despite reasonable efforts, to determine what procedure has actually been used.  
In adducing proof to the contrary, the legitimate interests of the defendant in protecting his/her manufacturing and trade secrets shall be taken into account.



Article 13a

**Conversion into a European patent application  
designating one or more Member States**

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 to the grant of the Community patent and under the conditions specified by the provisions of the EPC.

**SECTION 3  
THE COMMUNITY PATENT AS AN OBJECT OF PROPERTY**

Article 14

**Dealing with the Community patent as a national patent**

1. Unless otherwise specified in Articles 15 to 24, the Community patent as an object of property shall be dealt with in its entirety, and for the whole of the Community, as a national patent of the Member State in which, according to the Register of Community Patents [...]:
  - (a) the applicant for the patent had his/her residence or place of business on the date of filing of the Community patent application;
  - (b) where subparagraph (a) does not apply, the applicant had an establishment on that date.

In all other cases, the Member State referred to shall be that in which the EPO has its seat.

2. If two or more persons are mentioned in the Register of Community Patents as joint applicants, the first subparagraph of paragraph 1 shall apply to the joint applicant first mentioned. If this is not possible, the first subparagraph of paragraph 1 shall apply to the joint applicants next mentioned in order of entry. Where the first subparagraph of paragraph 1 does not apply to any of the joint applicants, the second subparagraph of paragraph 1 shall apply.

## Article 15

### **Transfer**

1. The transfer of the Community patent shall be made in writing and shall require the signature of the parties to the contract, except when it is a result of a judgment; otherwise it shall be void. The transfer shall be registered in the Register of Community Patents.
2. Subject to Article 6(1), a transfer shall not affect rights acquired by third parties before the date of transfer.
3. A transfer shall, to the extent to which it is verified by such written documents referred to in paragraph 1, have effect vis-à-vis third parties only after entry in the Register of Community Patents [...]. Nevertheless, a transfer, before it is so entered, shall have effect vis-à-vis third parties who have acquired rights after the date of the transfer but who knew of the transfer on the date on which the rights were acquired.

## Article 16

### **Rights in rem**

1. The Community patent may, independently of the undertaking, be given as security or be the subject of rights in rem.
2. At the request of one of the parties, the rights referred to in paragraph 1 shall be entered in the Register of Community Patents [...] and published in the Community Patent Bulletin [...].

## Article 17

### **Levy of Execution**

1. The Community patent may be levied in execution.
2. At the request of one of the parties, the levy of execution shall be entered in the Register of Community Patents [...] of this Regulation and published in the Community Patent Bulletin [...].

## Article 18

### **Insolvency proceedings**

1. The only insolvency proceedings in which a Community patent may be involved shall be those opened in the Member State within the territory of which the centre of a debtor's main interests is situated.
2. In the case of joint proprietorship of a Community patent, paragraph 1 shall apply to the share of the joint proprietor.
3. Where a Community patent is involved in insolvency proceedings, on request of the competent national authority an entry to this effect shall be made in the Register of Community Patents [...]and published in the Community Patent Bulletin [...].

## Article 19

### **Contractual licensing**

1. The Community patent may be licensed in whole or in part for the whole or part of the Community. A licence may be exclusive or non-exclusive.
2. The rights conferred by the Community patent may be invoked against a licensee who breaches any restriction in the licensing contract.
3. Article 15(2) and (3) shall apply to the grant or transfer of a licence in respect of a Community patent.

## Article 20

### **Licences of right**

1. The proprietor of a Community patent may file a written statement with the EPO that he/she is prepared to allow any person to use the invention as a licensee in return for appropriate compensation. In that case, the renewal fees for the Community patent which fall due after receipt of the statement shall be reduced under the conditions specified in the EPC. Where there is a complete change of proprietorship of the patent as a result of legal proceedings under Article 5, the statement shall be deemed withdrawn on the date of entry of the name of the person entitled to the patent in the Register of Community Patents.
2. The statement may be withdrawn at any time by a written communication to this effect to the EPO, provided that no-one has yet informed the proprietor of the patent of his/her intention to use the invention. Such withdrawal shall take effect from the date of receipt of that communication by the EPO. The amount by which the renewal fees were reduced shall be paid within one month after withdrawal; Article 25(2) shall apply, but the six-month period shall start upon expiry of the above period.
3. The statement may not be filed while an exclusive licence is recorded in the Register of Community Patents or a request for the recording of such a licence is before the EPO.
4. On the basis of the statement, any person shall be entitled to use the invention as a licensee. A licence obtained under the terms of this Article shall, for the purposes of this Regulation, be treated as a contractual licence.
5. No request for recording an exclusive licence in the Register of Community Patents shall be admissible after the statement has been filed, unless it is withdrawn or deemed withdrawn.
6. The Member States may not grant licences of right in respect of a Community patent.

## Article 21

### Grant of compulsory licences

1. The Court may grant a compulsory licence for lack or insufficiency of exploitation of a Community patent to any person filing an application four years or later after the patent application was filed and three years or later after the patent was granted if the patent proprietor has not exploited the patent in the Community on reasonable terms or has not made effective and serious preparations to do so, unless he/she provides legitimate reasons to justify his/her inaction, and on the condition that the grant of the compulsory licence is required in the public interest. In determining the lack or insufficiency of exploitation of the patent, no distinction shall be made between products originating within the Community and products imported to the Community from a member of the World Trade Organization.
2. On request, the Court may grant a compulsory licence in respect of a first patent to the proprietor of a national or Community patent or to the proprietor of a plant variety right who cannot use his/her patent (second patent) or his/her national or Community plant variety right without infringing a Community patent (first patent), provided that the invention or new plant variety claimed in the second patent or plant variety right involves an important technical advance of considerable economic significance in relation to the invention claimed in the first patent. In the case of a compulsory licence in respect of a dependent patent or plant variety right, the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the patented invention or protected plant variety. Where on the corresponding conditions as above in this paragraph a proprietor of a Community patent is granted a compulsory licence in respect of a first national patent or national or Community plant variety right, the owner of the first patent or plant variety right shall be entitled to a cross-licence on reasonable terms to use the patented invention of the dependent Community patent for the territory of the first patent or plant variety right.

3. The Court may grant a compulsory license under the conditions set out in the Regulation (EC) No 816/2006 of the European parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems.
4. In times of national emergency or in other situations of extreme urgency, including those relating to a public interest of extreme importance, the Court may authorise at the request of a Member State the exploitation of a Community patent.
5. In the case of semi-conductor technology, exploitation shall be possible without the authorisation of the right holder only in the situations set out in paragraph 4 .
6. A licence or exploitation set out in paragraphs 1 and 2 may be granted only if the proposed user has made efforts to obtain authorization from the patent holder on reasonable commercial terms and conditions, and if such efforts have not been successful within a reasonable period of time. However, the authority granting the licence may derogate from this condition in the situations set out in paragraph 3. In these situations, the right holder shall be informed as soon as reasonably possible.
7. The detailed rules of application and the procedures to be used for applying the principles set out in this Article shall be laid down in the Agreement on, and the Statute and the Rules of Procedure of the Court.

## Article 22

### **Conditions applicable to compulsory licences**

When granting the compulsory licence under Article 21, the Court shall specify the type of use covered and the conditions to be met. The following conditions shall apply:

- (a) the scope and duration of the exploitation shall be limited to the purpose for which it was authorized;

- (b) the exploitation shall be non-exclusive;
- (c) the exploitation shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- (d) the exploitation shall be authorized predominantly for the supply of the internal market of the Community;
- (e) the Court may, on reasoned request, decide to cancel the authorization, subject to adequate protection of the legitimate interests of the persons so authorized, if and when the circumstances which led to it cease to exist and are unlikely to recur;
- (f) the licence holder shall pay the right holder adequate remuneration in the circumstances of each individual case, taking into account the economic value of the authorization;
- (g) in the case of a compulsory licence in respect of a dependent patent or a plant variety right, the exploitation authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent or plant variety right.

### Article 23

#### **Effects vis-à-vis third parties**

1. Legal acts referred to in Articles 16 to 22 concerning a Community patent shall have effects vis-à-vis third parties in all the Member States only after entry in the Register of Community Patents. Nevertheless, such an act, before it is so entered, shall have effect vis-à-vis third parties who have acquired rights concerning the patent after the date of that act but who knew of the act at the date on which the rights were acquired.
2. Paragraph 1 shall not apply in the case of a person who acquires the Community patent or a right concerning the Community patent by way of transfer of the whole of the undertaking or by any other universal succession.

## Article 24

### **The application for a Community patent as an object of property**

1. Articles 9a and 14 to 19 and Article 21(3) to (6), and Article 22 shall apply to the application for a Community patent, whereby it is understood that all references to the Register of Community Patents include references to the European Patent Register provided for by the EPC.
2. The rights acquired by third parties in respect of a Community patent application referred to in paragraph 1 shall continue to be effective with regard to the Community patent granted upon that application.

## **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

### **Translations 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 translations referred to in this Article shall be for the provision of information and shall have no legal effect.

Article 24c

**Translation in case of a 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 24c

*Deleted*

**CHAPTER III**  
**RENEWAL, LAPSE AND INVALIDITY OF THE COMMUNITY PATENT**

**SECTION 1**  
**RENEWAL AND LAPSE**

Article 25

**Renewal fees**

1. Annual renewal fees in respect of Community patents shall be paid to the EPO. These fees shall be due in respect of the years following the year in which the Community Patent Bulletin referred to in Article 57 mentions the grant of the Community patent.
2. When a renewal fee has not been paid on or before the due date, the fee may be validly paid within six months of that date, provided that an additional fee is paid at the same time.
3. Any renewal fee in respect of a Community patent falling due within two months after the publication of the mention of the grant of the Community patent shall be deemed to have been validly paid if it is paid within the period mentioned in paragraph 2. No additional fee shall be charged in this case.

Article 26

**Surrender**

1. The Community patent may be surrendered only in its entirety.
2. Surrender must be declared in writing to the EPO by the proprietor of the patent. It shall not have effect until it is entered in the Register of Community Patents.

3. Surrender shall be entered in the Register of Community Patents only with the agreement of any third party who has a right in rem recorded in the Register or in respect of whom there is an entry in the Register pursuant to Article 5(4), first sentence. If a licence is recorded in the Register, surrender shall be entered only if the proprietor of the patent proves that he/she has previously informed the licensee of his/her intention to surrender; this entry shall be made in accordance with the provisions of the EPC.

#### Article 27

#### **Lapse**

1. The Community patent shall lapse:
  - (a) 20 years after the date of filing of the application;
  - (b) if the proprietor of the patent surrenders it in accordance with Article 26;
  - (c) if a renewal fee and any additional fee have not been paid in due time.
2. The lapse of a patent for failure to pay a renewal fee and any additional fee within the due period shall be deemed to have occurred on the date on which the renewal fee was due.
3. The EPO shall record the lapse of the Community patent in accordance with the provisions of the EPC.

## Article 27a

### **Restitutio in integrum**

1. The holder of a Community patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the EPO, shall, on request, have his/her rights restored if the non-observance in question directly resulted, by virtue of the provisions of this Regulation, in the loss of a right or means of redress. The processes of restitutio in integrum laid down in the EPC shall apply.
  
2. Where the holder of a patent has his/her rights restored, he/she may not invoke his/her rights vis-à-vis a third party who, acting in good faith, began to exploit, or to make effective and serious preparations to exploit in the Community an invention covered by a Community patent during the period between the loss of the right referred to in paragraph 1 and the publication of notification of the restoration of that right.

## **SECTION 2**

### **REVOCATION AND LIMITATION OF THE COMMUNITY PATENT**

## Article 28

### **Grounds for revocation**

1. The Community patent may be revoked only on the grounds that:
  - (a) the subject-matter of the patent is not patentable according to Articles 52 to 57 of the EPC;
  
  - (b) the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

- (c) the subject-matter of the patent extends beyond the content of the patent application as filed, or, if the patent was granted on a divisional application or on a new application filed in accordance with Article 61 of the EPC, beyond the content of the earlier application as filed;
  - (d) the protection conferred by the patent has been extended;
  - (e) the proprietor of the patent is not entitled under Article 4(1) and (2) of this Regulation;
  - (f) the subject-matter of the patent is not new having regard to the content of a national patent application or of a national patent made public in a Member State on the date of filing or later or, where priority has been claimed, the date of priority of the Community patent, but with a filing date or priority date before that date.
2. If the grounds for revocation affect the patent only in part, the patent shall be limited by a corresponding amendment of the claims and revoked in part.

#### Article 29a

#### **Request for limitation**

At the request of the holder of a patent, lodged with the EPO, the Community patent may be subject to limitation in the form of an amendment to the claims. The provisions of the EPC relating to the request for limitation shall apply.

**CHAPTER V**  
**IMPACT ON NATIONAL LAW**

Article 54

**Prohibition of simultaneous protection**

1. Where a national patent granted in a Member State relates to an invention for which a Community patent has been granted to the same inventor or to his/her successor in title with the same date of filing, or, if priority has been claimed, with the same date of priority, that national patent shall be ineffective to the extent that it covers the same invention for the same territory as the Community patent, from the date on which:
  - (a) the period for filing an opposition to the decision of the EPO to grant a Community patent has expired without any opposition being filed;
  - (b) the opposition proceedings are concluded with a decision to maintain the Community patent;
  - or
  - (c) the national patent is granted, where this date is subsequent to the date referred to in point (a) or (b), as the case may be.
2. The subsequent lapse or invalidity of the Community patent shall not affect the provisions of paragraph 1.
3. Each Member State may prescribe the procedure whereby the effect of the national patent is determined to have been lost in whole or, where appropriate, in part. It may also prescribe that the loss of effect shall apply from the outset.

4. Simultaneous protection by a Community patent or Community patent application and a national patent or national patent application shall exist prior to the date applicable under paragraph 1.

## **CHAPTER VI FINAL PROVISIONS**

### Article 56

#### **Register of Community Patents**

The EPO shall keep a Register of Community Patents, which shall contain those particulars whose registration is provided for by this Regulation. The Register shall be open to public inspection.

### Article 57

#### **Community Patent Bulletin**

The EPO shall periodically publish a Community Patent Bulletin. It shall contain entries made in the Register of Community Patents, as well as other particulars whose publication is prescribed by this Regulation or by the implementing regulation.

## Article 62

### **Report on the operation of the Community patent system**

Not later than five years from the date on which the first patent designating the Community is granted, the Commission shall present to the Council a report on the operation of the Community patent system and where necessary make appropriate proposals for amending this Regulation. The report shall include assessments of quality and consistency, the deadlines required for decisions and the costs incurred by inventors. Subsequent reports on the operation of the Community patent system shall be presented by the Commission every five years.

## Article 63

### **Entry into force**

1. This Regulation shall enter into force on the sixtieth day following that of its publication in the Official Journal of the European Union.
2. Applications for a Community patent may be filed with the EPO from the date on which the EPC takes effect for the European Community.
3. The date referred to in paragraph 2 shall be published in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

The President

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