



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 March 2003

6843/1/03

**Interinstitutional File:
2000/0177 (CNS)**

REV 1

PI 20

NOTE

from: Presidency
to: Council (Competitiveness)

No. prev. doc. : 6843/03 PI 20
No. Cion prop. : 10786/00 PI 49

Subject : Community patent
- Common political approach

The Presidency herewith submits a new revised proposal for a common political approach regarding the main principles and features of the Community Patent for consideration by the Council. It contains suggestions for the key elements of the jurisdictional system for the Community Patent, the language regime, costs, the role of national patent offices and the distribution of fees.

1. THE JURISDICTIONAL SYSTEM

1.1 The jurisdictional system of the Community Patent will be based on the principles of a unitary Court for the Community Patent, securing uniformity of the jurisprudence, high quality of working, proximity to the users and potential users and low operating cost.

1.2 The Court of Justice shall have exclusive jurisdiction in actions and claims of invalidity or infringement proceedings, of actions of a declaration of non-infringement, of proceedings relating to the use of the patent or to the right based on prior use of the patent, or requests for limitation, counterclaims for invalidity or applications for declaration of lapse, including requests for provisional measures. The Community patent may also be the subject of proceedings or claims for damages.

1.3 The litigation of Community Patents shall at first instance take place before a judicial panel established by a Council decision according to Article 225a of the EC Treaty. The appeal shall lie with the Court of First Instance of the European Communities (CFI). This judicial panel, called Community Patent Court (CPC), shall be attached to the CFI. Its seat shall be at the CFI. The judges shall be appointed on the basis of their expertise and taking into account their linguistic skills. The Community Patent Court may hold hearings in Member States other than that in which its seat is located.

1.4 The chambers of the CPC shall sit in sections of three judges.

1.5 The judges shall be appointed by a unanimous decision of the Council for a fixed term. The candidates for appointment must have an established high level of legal expertise in patent law.

1.6 Technical experts will assist the judges throughout the handling of the case.

1.7 The CPC will conduct the proceedings in the official language of the Member State where the defendant is domiciled, or in one of them to be chosen by the defendant, where in a Member State there are two or more official languages. At the request of the parties and with the consent of the CPC, any official EU language can be chosen as language of proceedings. The CPC may, in accordance with the rules of procedure, hear parties in person and witnesses in an EU official language other than the language of proceedings. In that case translations and interpretation into the language of the proceedings from another official EU language should be provided.

1.8 An appeal against a final decision of the CPC may be brought before the Court of First Instance.

1.9 The Community Patent Court shall be established at the latest by 2010. Each Member State shall designate a limited number of national courts to have jurisdiction in the actions and claims mentioned in paragraph 1.2 above until that time.

2. LANGUAGES AND COSTS

2.1 The language regime must meet the objectives of affordability, cost-efficiency, legal certainty and non-discrimination.

2.2 The language regime for the Community Patent will, up to grant, be the same as the one provided for in the European Patent Convention. This means that the applicant has to present a complete application document in one of the three official languages of the EPO as well as, at the time of grant of the patent, a translation of the claims into the two other EPO languages. However, where the applicant files the application in a non-EPO language and provides a translation into one of the EPO languages, the cost of that translation will be borne by the system ("mutualisation of costs").

2.3 For reasons of legal certainty - in particular in connection with actions or claims for damages - non-discrimination and dissemination of patented technology, the applicant must, upon the grant of the patent, file a translation of all claims into all official Community languages except if a Member State renounces the translation into its official language. The translations will be filed with the EPO and the costs borne by the applicant, who decides on the number and the length of claims to be included in the patent application, thereby having an influence on the cost of translation.

2.4 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. The level of procedural fees for processing an application for a Community Patent will be the same regardless of where the application is filed and where the novelty search is carried out (EPO or national patent office). The level of fees will be related to costs for handling the Community Patent and must not lead to any indirect subsidy of national patent offices.

2.5 The Commission is invited to carry out a study into the possibility of further savings in costs, for example in respect of services rendered by patent agents.

3. ROLE OF NATIONAL PATENT OFFICES (NPO)

3.1 The European Patent Office (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.

3.2 All national patent offices will have an important role to play, as set out in the Common approach of 31 May 2001, *inter alia* advising potential applicants for Community Patents, receiving applications and forwarding them to the EPO, disseminating patent information and advising SMEs.

- 3.3 Applications for Community Patents can be filed with the National Patent Office of a Member State in its working language(s). Applicants will remain free to present their patent applications directly to the EPO. They may also request that their applications be fully processed by the EPO.
- 3.4 On behalf of the EPO and at the request of the applicant, National Patent Offices of Member States having an official language other than the three official languages of the EPO may carry out any task up to and including novelty searches in their respective language(s).
- 3.5 National Patent Offices of Member States having as their official language one of the three EPO languages, which have experience of cooperation with the EPO and which need to maintain a critical mass may, if they so wish, carry out search work on behalf of the EPO.
- 3.6. The relationship between NPOs carrying out tasks referred to in paragraphs 3.4 and 3.5 above and the EPO will be based on partnership agreements, containing *inter alia* common criteria for quality assurance. These criteria (covering documentation, staff training and qualifications and working tools) would aim to guarantee a comparable quality and uniformity of the Community Patent. The implementation of these partnership agreements, i.e. the compliance with these objective quality standards, will be subject to independent periodic review.
- 3.7 The Community Patent system will include a safeguard clause according to which the Council, acting on a proposal from the Commission after consultation with the EPO, can agree to extend the involvement of any NPOs in search activities to meet any severe problems of capacity in delivering Community Patents. Such arrangements must not lead to any reduction of quality of the Community Patent.

4. DISTRIBUTION OF FEES

4.1 NPOs will be compensated for the activities in respect of Community Patents referred to in paragraphs 3.2, 3.4 and 3.5.

4.2 Renewal fees for Community Patents will be payable to the EPO, which will keep 50 percent to cover its costs, including the costs of searches carried out by NPOs. The remaining 50 percent will be distributed among the NPOs of the Community Member States in accordance with a distribution key, which will be decided by the Council.

4.3 The distribution key will be based on a basket of fair, equitable and relevant criteria. Such criteria should reflect patent activities and the size of the market. In addition, considering the role to be played by NPOs as described in paragraph 3 above, a balancing factor should also be applied where Member States have a disproportionately low level of patent activities. On the basis of these criteria the Member States' share shall be adjusted periodically to current figures.

5 REVIEW CLAUSE

Five years after the grant of the first Community Patent, the Commission will present a report to the Council on the functioning of all aspects of the Community Patent and, where necessary, make appropriate proposals. The assessment will cover the issues of quality, coherence and time required for decisions and cost to the inventors. The Commission may propose recommendations for further changes of the jurisdictional system. Further reviews should be made periodically.

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STATEMENT BY THE COUNCIL

The Council states that the words "upon the grant of the patent" in paragraph 2.3 mean within a reasonable time from the date of grant of the patent. During this time, the granted patent shall be valid irrespective of availability of translations of all claims into all official Community languages.

The Council notes that the German delegation considers that a reasonable time would be within two years from the date of the grant of the patent and that no delegation disagrees with this interpretation.
