TMPDF
TRADE MARKS, PATENTS & DESIGNS FEDERATION

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PP14/07

Towards a European Patents Jurisdiction – Summary of basic requirements

1. A European jurisdiction should not be pursued primarily for political ends, regardless of cost and effectiveness. There is much that could be done to improve the operation of the present EPC (e.g., more flexibility on languages and representation and harmonised formal requirements, after national entry).
2. There should be a central European Patent Court of first instance. The court should deal with infringement (including declarations of non infringement) and validity (including counterclaims for revocation) of European and Community patents[1]. It should deal with other patent related issues. The court would have exclusive jurisdiction for Community patents. It would have full powers to order damages, injunctions and other remedies.
3. For European patents, at least until the new court has a proven track record (likely to be more than seven years), use of the court would be optional for litigants and there should be no central revocation. Moreover, it would be for individual member states to decide whether to recognise judgements of the court in relation to their national patents, at least for an interim period.
4. Judgements of the court must be of high quality, i.e., consistent, reliable, based on a full appreciation of both the law and technology involved and cost effective. The court should have its own, independent, uniform rules of procedure that aim to achieve this quality without unnecessary delay and time wasting.
5. Regional chambers of the court could sit in member states other than that in which the central court is located. Any such chamber should observe the same uniform rules of procedure as the central court and should not pay regard to the judicial procedures and awards of the state in which it is located. Judges in regional chambers should be of differing nationalities and background.
6. Cases should be allocated to the regional chambers in accordance with clear rules from a central registry, having regard to the domiciles of the parties, especially of the defendant. The regional chamber used, if any, should not be at the choice of the plaintiff.
7. Judges of the court, both of the central division and of the regional chambers, should have long and successful experience of patent law and litigation. They should preferably have a technical background in addition to judicial prowess but at least should have demonstrated the technical competence necessary to deal with technically complicated cases. A special cadre of "technical" judges should not be appointed, although in particularly difficult cases the court may seek help from (non-judge) technical experts.
8. The language of proceedings should be the language in which the patent is granted. Interpretation should be provided if required.

[1] It is a basic requirement that, to ensure that the interpretation of a given patent is the same for infringement and validity, the same court should deal with both issues - at the same time when counterclaims are involved.

Fifth Floor, 63-66 Hatton Garden, London EC1N 8LE
Tel: 020 7242 3923 Fax: 020 7242 3924
admin@tmpdf.org.uk www.tmpdf.org.uk

9. Appeal should be to a central European Patent Appeal Court (at second instance) on facts and law. There would be no regional chambers at this instance. Similar parameters concerning quality, competence of judges, etc., to those discussed above at first instance should apply. Only in the event of dispute involving interpretation of Community law should there be any onward reference to the ECJ.

10. More details of the Federation views on this and related topics are to be found in position papers PP1/04, PP9/04 (e.g., see annex on patenting costs), PP10/04, PP11/06 and PP5/07.

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