



Advancing Industry's View On Intellectual Property Since 1920

TRADE MARKS PATENTS & DESIGNS FEDERATION - TMPDF

Response to Commission Consultation on Future Patent Policy

Introduction/General comments

We appreciate the Commission's initiative in conducting this timely consultation.

We stress at the outset that the award of patent rights, in a well balanced system, is an important encouragement to innovation and to the improvement of product quality. The encouragement of innovation and quality is crucial to the promotion of competitiveness. Furthermore, the information contained in published patent specifications facilitates dissemination of technical information, technology transfer and the creation of the knowledge based economy. Thus, patents are an essential force for good in the EU. The Commission and all others concerned with the economic well-being of Europe should proclaim their virtues and emphasise their essential importance to the EU competitiveness agenda.

Patents are increasingly subject to attack from an ideological standpoint by those who oppose them and the political/economic context in which they exist. In one particular line of attack it is asserted that patents block incremental invention. However, without the original inventions, there would be nothing to increment, so that patents cannot be said to block progress. Rather, they encourage competitors to develop alternatives which will provide greater choice in the marketplace.

We are aware of the argument from some economists that patents can only be justified to the extent that they alleviate a defect in the free market, the defect being that market forces can inhibit innovation if there is no protection against copying. This argument is reflected in section 1 of the consultation questionnaire by the reference to "allowing a breathing space to recoup investment". This is too restricted a way in which to justify patents. Awareness that patents exist, are beneficial and are an honourable reward for creativity contributes to a stimulating environment for innovation. Creators and innovators should be entitled to an exclusive right to prohibit unauthorised copying for a reasonable time, just as the owner of tangible property has exclusive rights in his property. This is justified both from a moral standpoint and from the perspective of promoting innovation and thus competition and economic well-being.

Section 1 - Basic principles and features of the patent system

The Commission introduces this section by opining that the idea behind the patent system is that it should be used by businesses and research organisations to support innovation, growth and quality of life for the benefit of all in society. Essentially the temporary rights conferred by a patent allow a company a breathing-space in the market to recoup investment in the research and development which led to the patented invention. It also allows research organisations having no exploitation activities to derive benefits from the results of their R&D activities. But for the patent system to be attractive to its users and for the patent system to retain the support of all sections of society it needs to have the following features:

clear substantive rules on what can and cannot be covered by patents, balancing the interests of the right holders with the overall objectives of the patent system;

transparent, cost effective and accessible processes for obtaining a patent;

predictable, rapid and inexpensive resolution of disputes between right holders and other parties;

due regard for other public policy interests such as competition (anti-trust), ethics, environment, healthcare, access to information, so as to be effective and credible within society.

Question 1.1 Do you agree that these are the basic features required of the patent system?

At least three different and separable subjects are incorporated in the so-called "basic features" outlined above:

(a) *Purpose of the patent system:*

We consider that the essential purpose of the patent system (i.e., the legal framework under which patents are published and granted, and rights in them recognised and enforced) is to encourage and support innovation. Innovation may sometimes be initiated by individuals, but it is more usually initiated and followed through by businesses, large and small. Increasingly, emphasis seems to be put on promoting the work of, and environment for, SMEs. However, as the recent Aho report on "Creating an Innovative Europe" stated:

"Policy measures should recognise that large firms are essential for the innovation system. The recent trend of concentrating resources on SMEs ignores the natural ecology of industry."

We completely agree that the innovation environment, including the patent system, must take into account the interests of SMEs. Nevertheless, its characterising features must be acceptable to larger businesses.

In general, innovation will provide benefits to society and its consumers by leading to improvements in quality and the introduction of new and improved products and processes. Innovation leads to increased consumer choice and competition. The publication, development and use of new products and processes are the major contributors to economic growth. There should be no subject matter restrictions within the patent system to discourage innovation in particular technical fields.

Return on investment cannot be tied to individual patents. The concept of providing a "breathing space in the market to recoup investment" is too narrow, if applied, as proposed in the introduction, merely to the research and development which led to the patented invention. Research and development programmes need to be broad based. They are

undertaken as an investment in the future and at the outset it is often not known which avenues will be the most fruitful and lead to successful products. Successful inventions help to fund whole programmes. Every patent needs to be able to enjoy a full life, for the whole the term embedded in national and international legislation. (Since market considerations apply, many if not most patents are not maintained for their full life. The inventions disclosed in them often become available for others to use at an early stage.)

(b) Substantive requirements and procedures of the system:

Substantive requirements concerning patentability have not been clearly referred to above. In general, we agree with the requirements of the European Patent Convention (EPC). We agree furthermore that procedures for obtaining patents should be transparent and accessible. Third parties who might be affected by the granted patents should have the right to challenge them at some stage. Opposition procedures should be efficient.

More importantly, the system should be of high quality, such that a granted patent has a high presumption of validity. This is important to the patent owner, interested third parties and general public confidence in the system. It is particularly important that a high quality search and examination should be performed. These not only determine the scope of the granted patent but set it in context for the information of third parties affected by it. Subject to these requirements, grant procedures should be cost efficient.

Great sums, both in terms of investment deployed and prospective return, can depend on the outcomes of patent litigation. It is essential that judicial arrangements for the litigation of patents should result in high quality decisions. It is the quality of decisions, rather than their predictability, that is important. Judges and other adjudicators should be appropriately expert, both in patent law and technically. Subject to the overriding requirement that decisions should be of high quality and trustworthy, litigation procedures should be cost efficient.

Quality both at the grant and enforcement stage is vital. It should not be sacrificed for the sake of reduced costs.

(c) Interaction with other public policy interests:

The ways in which patent rights and patented products and processes might be used may be affected by public policy considerations. Public policy regarding competition and anti-trust, unethical use of products and processes, expropriation, or the circumstances and authorisation of government use of products and processes in the environment or for public health, should for the most part be determined under other laws, rather than the patent law. The rights of individuals and businesses to obtain patents for technical inventions should not be circumscribed under patent or any other law. However, the ways in which patents, or patented products and processes, are used can of course, depending on adequate justification, be subject to other laws. Moreover, acts which are not to be regarded as infringing, such as research relating to the subject of the invention or farmer's privilege in relation to biotechnological inventions, should be recorded in the patent law.

We accept that remedies such as compulsory licenses or cancellation for activities deemed in other legislation to be contrary to public policy may be applied through the patent system. Procedural rules covering the grant and content of compulsory licenses, for example, should be provided within the patent system, in accordance with the rules in the TRIPS agreement.

Question 1.2 ***Are there other features that you consider important?***

The Commission introduction confounds several issues that should be kept separate, as discussed above, and introduces features that should be outside the patent system. It also fails to refer clearly to the substantive requirements for patent grant and the right of third parties to contest the grant. It does not address the need for quality, and thus confidence in, both patent grant (as determined by presumption of validity) and legal decisions.

Question 1.3 ***How can the Community better take into account the broader public interest in developing its policy on patents?***

The Commission, the Parliament, and those member states that do not have them at present, should institute formal consultation mechanisms that ensure that users, especially business and industry, and those others affected by patents, such as consumer groups, are properly informed and consulted before any initiative. Such consultation is important to reaching informed judgments as to policy. It is most important that those judgments should also be based on the quality, rather than the volume, of the argument. While the present consultation is welcome, it is *ad hoc*. There have often been occasions in the past where consultation - at national and EU level - has been limited or non-existent (e.g., in relation to disclosure of origin of biotechnological resources). Systematic consultation should reinforce careful and considered analysis. A mechanism such as an Advisory/Consultation Committee, on which the main representative organisations of those likely to be affected are present, should be established. Such a committee would have the incidental benefit of encouraging interaction between the interested groups, so that better understandings might be achieved.

But adequate consultation is not sufficient. An intellectual change is necessary, whereby supposed "political" concerns and perceptions of political expediency are subordinated to the practical requirements of an efficient, workable patent system. There is no point in consulting if full weight is not given to the considered opinions of those most qualified to comment and of those most likely to be affected by the policy choices to be made. Consultation should be real, not just for show. Thus a serious exercise to explain the national, regional and international patent systems, and the careful checks and balances within them that have been developed over very many years, to those who will make the decisions concerning future development, is called for.

Section 2 - The Community patent as a priority for the EU

The Commission states that its proposals for a Community patent reached an important milestone with the adoption of the Council's common political approach in March 2003 [<http://register.consilium.eu.int/pdf/en/03/st07/st07159en03.pdf>]; see also [http://europa.eu.int/comm/internal_market/en/indprop/patent/docs/2003-03-patent-costs_en.pdf]. The disagreement over the precise legal effect of translations is one reason why final agreement on the Community patent regulation has not yet been achieved. The Community patent delivers value-added for European industry as part of the Lisbon agenda. It offers a unitary, affordable and competitive patent and greater legal certainty through a unified Community jurisdiction. It also contributes to a stronger EU position in external fora and would provide for Community accession to the European Patent Convention (EPC). Calculations based on the common political approach suggest a Community patent would be available for the whole of the EU at about the same cost as patent protection under the existing European Patent system for only five states.

Question 2.1 *By comparison with the common political approach, are there any alternative or additional features that you believe an effective Community patent system should offer?*

(a) *Role of Community patent:* Before commenting on the form that an effective Community patent should take, we emphasise that the Lisbon Agenda has placed too much stress on the importance of the Community patent. While such a patent, in an acceptable form and system, would be a desirable addition to the presently available national and European patents, it should not be said that it is a key to innovation in Europe.

As far as most industries (other than regulated industries such as pharmaceuticals) in Europe are concerned, the internal market has developed such that the presently available national and European patents serve business and industry reasonably well. As a result of the improved effectiveness of the internal market and increasingly uniform product offerings across Europe, most companies find that patents in two to four of the larger national markets, obtainable via the European Patent Organisation (EPO), are sufficient to protect their interests throughout the European Union. Competitors are unlikely to infringe across Europe when access to several major national markets is denied. Similarly, a single litigation action in a state that provides relatively trustworthy judicial decisions will often (though not invariably) serve as an example around the Union.

(b) *Features of an effective Community patent system:* The Council's common political approach (CPA) is seriously flawed as a basis for a satisfactory, trustworthy and useful Community patent system. To develop a satisfactory system, the starting point should be the Commission's original proposal made in 2000, not the CPA. We have submitted views in the past on those proposals [see attached].

The proposed language and translation arrangements forming part of the CPA are major stumbling blocks in the way of a satisfactory Community patent. First, they will involve applicants in large and unnecessary costs. Second, a Community patent that has different scopes in different states because of translation differences, or that fails altogether, or does not have effect in particular states, because of the absence of particular language translations, will be unacceptable. THE COMMISSION AND MEMBER STATES MUST SERIOUSLY CONSIDER THE USE OF A SINGLE LANGUAGE FOR THE COMMUNITY PATENT. English is the overwhelming preference of European industry as a whole.

The judicial arrangements under the Community patent system - as with any litigation system - will be very important. They must be independent of national judicial systems and national judicial prejudices and must not lead to forum shopping between regional courts. Impartial expert judges,

able to deal competently with technical and patent law issues will be required. Language requirements, including provision for interpretation, should be satisfactory.

The May 2003 Common Political Approach, which was driven by political - not industrial policy - considerations, led to proposals which were unworkable.

(c) *An unsatisfactory Community patent system is not acceptable:* We have always expressed the view that we would prefer that there should be no Community patent, rather than have an unsatisfactory Community patent. We consider that there should always be a choice for applicants between a Community patent and the European or national patents, and would be opposed to any proposal that the Community patent should be made compulsory. It should NOT become the only patent available within the EU. Even an entirely optional system will be unacceptable, unless it is of high quality and trustworthy and in all other respects entirely satisfactory, since third parties would inevitably be affected by those patents that are applied for and granted.

(d) *Translation work generally:* The proposals in CPA reflect a general political requirement within Europe for each state to have an authentic version of a legal text in its own language. While this requirement may be justifiable in other fields, it fails to reflect the reality of the patent field in Europe and the wider world. Patent applications at the EPO are published for information 18 months following the application date and most of those are in English, the others being in German or French. Anyone seriously interested in innovation must be able to understand these documents, since the eventual grant and national language translation (even when one is provided by the applicant) will not be for several more years, by which time the technology could be obsolescent.

Thus the translations required by most national administrations at the grant stage are so much waste paper. The cost of producing these unnecessary translations, which will moulder unread in the national files, is a huge and pointless burden on all patent applicants and should not be part of the Community patent system. If applicants were not burdened with unnecessary translation costs, many would be prepared to spend more on work giving added value, such as improved examination and search leading to a higher quality grant. Improved grant quality would be of general benefit in all those states where the patent will take effect.

In this context, the London Agreement on translations under the European Patent Convention, whereby the member states will accept the granted European patent in the language of grant, is of considerable importance. Industry would be saved substantial sums on translation costs if this agreement were to come into force with as many members as possible. It would improve the working of the internal market, as discussed under (a) above, if this agreement were to come into force in the near future. The Commission should use its influence and powers to bring this agreement into force. While it could explore whether it could be effective with a more limited membership than originally expected, the Commission should press all member states to adhere to the Agreement.

Section 3 - The European Patent System and in particular the European Patent Litigation Agreement

The Commission notes that since 1999, States party to the European Patent Convention (EPC), including States which are members of the EU, have been working on an agreement on the litigation of European patents (EPLA). The EPLA would be an optional litigation system common to those EPC States that choose to adhere to it.

The EPLA would set up a European Patent Court which would have jurisdiction over the validity and infringements of European patents (including actions for a declaration of non-infringement, actions or counterclaims for revocation, and actions for damages or compensation derived from the provisional protection conferred by a published European patent application). National courts would retain jurisdiction to order provisional and protective measures, and in respect of the provisional seizure of goods as security. For more information see [http://www.european-patent-office.org/epo/epla/pdf/agreement_draft.pdf]

Some of the states party to the EPC have also been tackling the patent cost issues through the London Protocol which would simplify the existing language requirements for participating states. It is an important project that would render the European patent more attractive.

The European Community is not a party to the European Patent Convention. However there is Community law which covers some of the same areas as the draft Litigation Agreement, particularly the "Brussels" Regulation on Recognition and Enforcement of Judgments (Council Regulation no 44/2001) and the Directive on enforcement of intellectual property rights through civil procedures (Directive 2004/48/EC).

[http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_195/l_19520040602en00160025.pdf]

It appears that there are three issues to be addressed before EU Member States may become party to the draft Litigation Agreement:

- 1) the text of the Agreement has to be brought into line with the Community legislation in this field;*
- 2) the relationship with the EC Court of Justice must be clarified;*
- 3) the question of the grant of a negotiating mandate to the Commission by the Council of the EU in order to take part in negotiations on the Agreement, with a view to its possible conclusion by the Community and its Member States, needs to be addressed.*

Question 3.1 What advantages and disadvantages do you think that pan-European litigation arrangements as set out in the draft EPLA would have for those who use and are affected by patents?

We have a number of criticisms of the litigation arrangements set out in the draft EPLA [as set out in the accompanying paper]. They are not acceptable in their present form.

In general, we would be in favour of a pan-European litigation arrangement for European patents, subject to the overriding requirement that it is of high quality and will reliably deliver trustworthy decisions. Impartial judges who are technically competent and expert in patent law, clear and fair procedures and **no** facility to forum shop among regional divisions of a central court are necessary.

Although there is much to commend the proposals for the EPLA as they appear on paper, they do represent a new and untested system. Under the proposals, patent owners could find themselves

subject to central attacks for revocation. This is a feature of the current EPLA proposal that must be removed for the agreement to be acceptable - otherwise, the risks involved in the proposed system will simply be too great. Companies that have invested millions in research and development should not be at risk from a single revocation proceeding, initiated as a first strike before a centralised court, on an entire bundle of separate national patents. They could find their entire investment vitiated by one bad centralised decision. (This is to be distinguished from a counterclaim concerning invalidity in a central infringement action, which should reasonably be considered together with the allegation of infringement.)

Neither should it be compulsory for patent owners to use the centralised court, rather than national courts, to enforce their European patents. They should not be compelled to use a court that will deliver a decision across all or much of Europe, at least until such time as it can convincingly be shown that the court has operated to deliver high quality decisions over a considerable period of time, and this has been recognised and accepted by all contracting states.

Further, we believe that more work needs to be done to establish the cost-effectiveness of the EPLA system. As we note above, a decision in one member state (e.g. Germany) very often suffices to dispose of the dispute across the EU. We believe that there are comparatively few cases of multi-jurisdictional litigation, but are aware of no research on the matter. A February 2006 EPO "Assessment of the impact of the EPLA on litigation of European Patents" suggests that the cost of litigation in the centralised court will be approximately twice the cost of litigation in each of Germany and France and substantially more than in the Netherlands. If this estimate is accurate, and if it is true that most patents are not litigated in more than one jurisdiction, it seems that to make it mandatory to litigate in the centralised court will be to increase the costs in the majority of cases without any discernable advantage.

We would be highly concerned about the involvement of the European Court of Justice in giving opinions on patent issues, such as validity and inventive step, that have to be determined in the context of a technical invention, unless it were to be reformed to incorporate an expert patent division. At present, it seems most unlikely that this would happen.

Question 3.2 Given the possible coexistence of three patent systems in Europe (the national, the Community and the European patent), what in your view would be the ideal patent litigation scheme in Europe?

There is currently only one way to litigate patents within Europe, through the national courts. If and when an **acceptable** high quality pan-European system is established, to be used by patent owners who are free to choose between this and the national systems, then we would not object to it running in parallel with the national systems.

We would be reluctant to have two pan-European systems. If an acceptable Community patent system can be established, it should be possible to merge its judicial system with that of EPLA.

Section 4 -Approximation and mutual recognition of national patents

The Commission comments that the proposed regulation on the Community patent is based on Article 308 of the EC Treaty, which requires consultation of the European Parliament and unanimity in the Council. It has been suggested that the substantive patent system might be improved through an approximation (harmonisation) instrument based on Article 95, which involves the Council and the European Parliament in the co-decision procedure with the Council acting by qualified majority. One or more of the following approaches, some of them suggested by members of the European Parliament, might be considered:

- 1) Bringing the main patentability criteria of the European Patent Convention into Community law so that national courts can refer questions of interpretation to the European Court of Justice. This could include the general criteria of novelty, inventive step and industrial applicability, together with exceptions for particular subject matter and specific sectoral rules where these add value.*
- 2) More limited harmonisation picking up issues which are not specifically covered by the European Patent Convention.*
- 3) Mutual recognition by patent offices of patents granted by another EU Member State, possibly linked to an agreed quality standards framework, or "validation" by the European Patent Office, and provided the patent document is available in the original language and another language commonly used in business.*

To make the case for approximation and use of Article 95, there needs to be evidence of an economic impact arising from differences in national laws or practice, which lead to barriers in the free movement of goods or services between states or distortions of competition.

Question 4.1 What aspects of patent law do you feel give rise to barriers to free movement or distortion of competition because of differences in law or its application in practice between Member States?

Patent laws around Europe are largely harmonised on substantive matters, as a result of the impact of the EPC and the Resolution on the Adjustment of National Patent Law attached to the 1975 Community Patent Convention (see Official Journal of the European Communities, Vol. 19, No. L 17, 26 January 1976). As a result, and despite some relatively slight differences, our companies consider that there are few serious barriers to free movement or distortions to competition from national patent laws, save as follows.

There is scope for improved harmonisation as regards patentability in certain subject fields (see below) and in the more detailed requirements of patent offices, concerning such matters as the evidence required to support inventive step or the presentation of patent claims. The EPO provides a suitable forum for the discussion of these matters.

Many EU states appear to have laws requiring that representatives who deal with the local industrial property office should be domiciled in the state concerned; furthermore, it may be required that they are nationals of, or qualified or registered in, the state concerned, in order to perform even routine procedures. We expect to submit a report on this problem to the Commission.

Different procedural requirements prevail in different states in the conduct of litigation, and this can lead to more problems than differences in substantive patent law. However, such problems are of a general character; they are not specific to the patent system.

In one or two fields, such as software related inventions or biotechnology, patentability is to some extent assessed differently in the EPO and different member states. The Court of Justice is ill suited to resolve these matters without an intermediate specialist patent appeal court. The ECJ in its

present form lacks the technical and patent law expertise needed to give high quality opinions on the basic issues of patentability.

Question 4.2 *To what extent is your business affected by such differences?*

In general, our companies consider that their businesses are little affected, but would like to see better harmonisation between the EPO and national authorities in some areas, as noted under question 4.1 above.

Question 4.3 *What are your views on the value-added and feasibility of the different options (1) - (3) outlined above?*

As regards option 1, we seriously doubt that there is any good reason to go further than the present *acquis communautaire*, which we understand calls for adherence to the EPC and the Resolution on Harmonisation mentioned above. Our members feel that involvement of the ECJ could be counter-productive, for reasons mentioned earlier.

As regards option 2, there may be scope for more harmonisation of procedural matters. We believe that the possible scope for such harmonisation is under consideration both at the EPO and in WIPO. There seems no need for additional EC involvement at present.

As regards option 3, there are such major differences between the procedures of national offices, varying from full examination and search of national patent applications to immediate registration, and in the quality of the patents issued, that it is premature to consider mutual recognition. At the international level, there is scope for moving towards common search criteria.

Question 4.4 *Are there any alternative proposals that the Commission might consider?*

The issue of quality control within the existing European and national patent grant systems should receive attention. While many offices pay lip service to quality, they are very reluctant to admit outside scrutiny of, or advice on, quality control procedures. In this respect, incentive schemes for patent examiners, including the ways in which output is credited and which may have an uncertain effect on quality, may need critical, external, review.

Centralised validation of European patents and centralised payment of renewal fees would be useful measures.

Section 5 - General

The Commission would appreciate views on the general importance of the patent system to business.

On a scale of one to ten (10 is crucial, 1 is negligible):

General comment: In most cases rankings would be meaningless. They have not been given.

Question 5.1 *How important is the patent system in Europe compared to other areas of legislation affecting your business?*

This very much depends on the field of activity and its legislative framework. Laws concerning employment, health and safety, protection of the environment and so on will often be very important as will those concerning assistance to research and development. Legislation affecting the trading environment should be considered separately from that concerning innovation. To innovative companies, an effective patent law is an important encouragement to invest in innovation.

Question 5.2 *Compared to the other areas of intellectual property such as trade marks, designs, plant variety rights, copyright and related rights, how important is the patent system in Europe?*

Again, this cannot be answered in a comparative way. Depending on their fields of activity, any of these rights will be very important to some companies

Question 5.3 *How important to you is the patent system in Europe compared to the patent system worldwide?*

The patent system in Europe is a component part of the world wide patent system and most of our companies apply for patents not only in Europe but also elsewhere, such as in the United States. As pointed out in Question 1 above, the European system is very important in helping European companies to maintain their competitiveness, not only in Europe but throughout the world. As the European market is often of a similar value to the US market, protection of investment in innovation through the patent system in Europe is often as important as it is in the US.

Question 5.4 *If you are responding as an SME, how do you make use of patents now and how do you expect to use them in future? What problems have you encountered using the existing patent system?*

Federation members are in the main larger businesses, but their subsidiaries are often small companies in themselves. The Federation makes every effort to reflect the concerns of small companies also. It should be appreciated that while SMEs are important to the European and national economies, larger companies are very important, in terms of employment, trade and innovation.

The concerns of companies of all sizes in the patent system are often similar. These centre around:

- (i) costs, particularly wasted costs as in requirements for unnecessary translations, deterrent fees at the application stage and fees siphoned off by governments to general taxation and non IP related activities;
- (ii) quality of granted patents, in terms of the presumption of validity. Poor quality patents affect both applicants and third parties who might be affected by the patents;
- (iii) judicial arrangements, both from the points of view of quality and trustworthiness of decisions and costs.

Question 5.5 ***Are there other issues than those in this paper you feel the Commission should address in relation to the patent system?***

Some patent related issues, which may or may not give rise to policy concerns but might justify some consideration include:

- a) abuse of strong patent positions; patent ambushes; patent trolls; and related matters;
- b) use of patented technology in setting standards and access to the necessary patents;
- c) uniform rules on acceptable exemption of research (commercial or non-commercial) from patent infringement;

Should the Commission be interested in considering one or more of these issues, we would be pleased to submit an introductory paper.

TMPDF

March 2006

Attached: previous papers on ComPat and EPLA

TMPDF Members 2006

TMPDF represents the views of UK industry in matters concerning intellectual property. It has close links with the CBI. Its members include many of the major innovative UK companies, which are represented at meetings of the governing Council and Committees of the Federation by their professional IP managers. Before the Federation takes a position on any issue, official consultation documents and other relevant papers are submitted to the members for debate and dialogue. An appropriate Committee and/or the Council, depending on the issue, then determines the position, taking account of comments.

The published views/opinions/submissions of the Federation are normally approved by consensus. In cases where there is a substantial majority view falling short of consensus, any significant disagreement will be indicated.

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