



PP20_09

Competitiveness Council conclusions concerning the Enhancement of the Patent System in Europe (as agreed at the 2982nd COMPETITIVENESS (Internal market, Industry and Research) Council meeting Brussels, 4 December)

1. The Federation has noted the agreement reached at the Competitiveness Council on 4 December 2009 setting out conclusions concerning the enhancement of the patent system in Europe. We recognise that this agreement represents a significant step in the development of both a unified patent litigation system and a Community patent for the European Union and that to reach it, major organisational, legal and political issues had to be resolved.
2. The Council conclusions have the capacity to serve as a basis for the development, in the longer term, of a satisfactory European litigation system. However, this will depend critically not only upon the quality and consistency of judicial decisions under the system but also upon the arrangements made concerning the language of proceedings and the selection of division to hear particular cases. As regards languages, it is essential from the point of view of cost to litigants, usability and efficiency that the language requirements are simple and straightforward. The language of the patent should be used, unless the parties agree something else. As regards the appropriate division for any given case, plaintiffs should be able to sue for infringement in the central division of the European patent court, while defendants sued elsewhere than in their state(s) of domicile should be able to transfer the case to the central division. Without changes of this nature the system will never fully support UK innovators and drive innovation in Europe.
3. Moreover, the delivery of an acceptable system in the longer term will depend greatly on the rules of procedure. These must allow cases to be tried quickly, to a reliable and fit-for purpose standard. The conclusions reached at the Competitiveness Council are therefore only a beginning. A great deal of work to establish, in full detail, a litigation system that is in the best interests of potential users (including defendants), lies ahead.
4. We welcome the opt-out for existing patents and applications. This is a crucial provision which will play a vital role in allowing companies to manage the uncertainties inherent in this new and untested system.
5. The system has the potential to cause enormous problems for SMEs. If, rather, it is to benefit them, the points mentioned in paragraph 2 must be addressed. It is vital that divergent practices between divisions must be minimised and costly forum shopping must be avoided.

The IP Federation is the operating name of the Trade Marks, Patents and Designs Federation
Registered Office 5th floor, 63-66 Hatton Garden, London EC1N 8LE

Email: admin@ipfederation.com | Tel: 0207 2423923 | Fax: 0207 2423924 | Web: www.ipfederation.com

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6. Judicial quality will be the essential key to making the system work in a reliable and trustworthy way. We therefore encourage the Commission and the Member States to conduct an open debate about how judges will be trained and given the necessary relevant experience. The stakeholders in this go beyond the judiciary and attorneys. The views of users must be heard and taken into account if we are to have a system which enhances rather than chills innovation.

7. The Community patent will only have a significant future if it has simple language arrangements and its costs are reasonable - no more than the cost of national patents in 3 major EU states. Otherwise it will be a white elephant. These requirements have become even more necessary in recent years because the strengthening of the single market and the proposed new arrangements for litigating European patents respectively diminish the economic case for a single pan-European right. The incremental benefit that such a right must bring has become greater. It must be recognized by all involved that industry has moved on since 1999 and Lisbon.

8. Business performs best in an environment which is both stable and predictable. The business models of many of Europe's best companies depend critically on patents. Europe cannot afford to get the litigation system wrong. An unnecessarily complex litigation system will lead to high costs and wasted business opportunities. The Federation will continue to contribute actively to the development of a European litigation system that is better than the present arrangements, but will not support a system that does not offer clear advantages.

IP Federation

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IP Federation members 2010

The IP Federation (formerly TMPDF), represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below.

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