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**COMMUNITY PATENT JURISDICTION****I. REQUIREMENTS ON THE JURISDICTIONAL SYSTEM FOR COMMUNITY PATENT LITIGATION**

A reliable jurisdictional system that provides consistent and efficient patent enforcement is a key element of any patent system that will satisfy the needs of industry. Without confidence in the litigation system that will apply to Community Patents, industry will not choose Community Patents over European 'bundle' patents.

A reliable jurisdictional system for Community patent litigation must satisfy the following requirements:

- ❑ A language regime that allows judges and parties of different nationalities to communicate directly without requiring unrealistic language skills among judges or extensive translations. An appropriate language of proceedings for a European patent court is the language of the litigated European patent or preferably English only.
- ❑ Judges in both first and second instance must have solid experience as specialised patent judges, in order to ensure a reliable and speedy litigation. The evaluation of both technical facts and law is central for patent litigation. Therefore, it is also crucial that the judges understand presentations of complex technical matters and that the procedure is appropriate for such presentations, both in writing and orally.
- ❑ Procedural rules are key for a coherent patent litigation. In view of the present disparities of national laws, it is a demanding task to establish a completely new system at Community level. Until the rules are clearly set out, industry cannot properly evaluate the proposed jurisdictional system.

Until there is both an attractive Community patent and an efficient and reliable enforcement system for Community Patents, industry cannot be expected to have confidence in the Community Patent system.

According to the European Commission's estimates, only half of the future European patents will be Community Patents. European patents will continue to co-exist with Community Patents. This means that for the foreseeable future, litigation concerning European 'bundle' patents will be more frequent than litigation concerning Community Patents. Lack of coordination between the proposed system and the judicial systems for patent litigation in Europe will result in a judicial dichotomy between Community Patents and 'bundle' patents that will be detrimental for industry.

**II. THE PROPOSED COMMUNITY PATENT JURISDICTION**

The proposed language regime for the Community Patent Court means that any of some twenty languages may become the language of proceedings and that the litigation may be conducted in a language that none of the judges understands. Consequently, all documents prepared in this language will have to be translated by the Court into a language understood by the judges. This is burdensome, expensive and unacceptably time-consuming. Furthermore, these translations may not accurately reflect the precise meaning of a document. No more will simultaneous interpretation of hearings secure the full and precise understanding by the judges of presentations in such a language of proceedings.

Present Community jurisdiction provides neither any experience of litigation proceedings, where listening to oral presentations including evidence may have such crucial importance as in patent

litigation, nor any experience of a language regime based on the defendant's domicile. In UNICE's view, Community Patent litigation must ensure an appropriate balance between written and oral procedures. The opportunity for an oral hearing is an indispensable element of a balanced procedure and consequently a language regime that does not allow for a normal trial is unacceptable.

Existing experience therefore indicates, that the proposed language regime will be inappropriate for patent litigation and will give rise to insurmountable problems. The principle of the non-discrimination of the official languages of the EU should not exclude the possibility of having a reasonable language regime and could not justify a result that for e.g. a Community Patent granted to a German enterprise in the German language and infringed in Germany by a foreign enterprise should be litigated in another language than German.

Ignoring what the realities of patent litigation demand will result in such inconveniences, restrictions on the procedure and legal uncertainty that the Community Patent litigation system will inevitably become unattractive.

Furthermore, the Commission proposal has excluded a proposal for technically trained judges with an appropriate level of technical specialisation for patent litigation. However, without such technical competence and experience of the judges, patent litigation will become more time-consuming and costly and will not generate the necessary confidence in the Community Patent jurisdiction.

UNICE does not consider that the proposal to introduce a panel of assistant rapporteurs supporting the judges provides an acceptable alternative. No more can technical competence and experience of the judges be dispensed with the use of court appointed experts. Consequently, the appointment of such experts is no satisfactory alternative to the ability of a court having technically competent and experienced judges to rightly evaluate the extensive technical evidence presented by the parties that is normal in patent cases and often crucial for the outcome of the proceedings.

The proposal leaves it to the discretion of the Community Patent Court to establish its procedural rules. This task constitutes an important work and should be carried out on the basis of a transparent consultation involving all interested parties. The proposed course of action will further delay the evaluation of the precise effects of litigating Community Patents as compared with litigating 'bundle' patents. The judicial arrangements for Community Patent litigation and the Community Patent system as a whole will not be complete without these rules of procedure. Industry will need to take this into consideration in assessing whether to choose the Community Patent instead of 'bundle' patents for a number of Member States. This would inevitably further delay the use of the Community Patent system.

### **III. MAXIMUM INDIVIDUAL FINE**

UNICE notes with astonishment that in article 22 of the draft Council decision establishing the Community Patent Court and concerning appeals before the Court of First Instance, the maximum individual fine for non-compliance is set at only €50,000. When fines for non-compliance with court orders are set at such low levels, in many cases it is much more attractive to continue infringement and pay the €50,000 fine than to comply with the court order.

### **IV. CONCLUSION**

The current proposals regarding the Community Patent jurisdiction do not meet industry's needs and require a fundamental revision.

Until an acceptable jurisdictional system for Community Patents is agreed, there is not a sufficient basis for adopting the Community Patent Regulation and introducing a Community Patent.

Therefore, UNICE's earlier expressed wish that the Community Patent project be re-initiated on a sounder basis extends to the proposed jurisdictional system. A re-initiated work on the jurisdictional system must take into account the need for co-ordination of the enforcement of Community Patents and 'bundle' patents.