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Patents: Commission sets out vision for improving patent system in Europe

The European Commission has set out its vision, in the form of a Communication, for improving the patent system in Europe and for revitalising the debate on this issue. Making the Community patent a reality and improving the existing patent litigation system should, together with supporting measures, make the patent system more accessible and bring cost savings for all.

Internal Market and Services Commissioner Charlie McCreevy said: *"Patents are a driving force for promoting innovation, growth and competitiveness, but the single market for patents is still incomplete. Our 2006 stakeholder consultation showed that the EU simply must deliver, in particular on the Community patent and sound litigation arrangements, because in today's increasingly competitive global economy Europe cannot afford to lose ground in an area as crucial as patent policy. That is why I propose to have a fresh look at the various options and to work with the Council and the Parliament towards political consensus on real improvement of the patent system."*

Why a Communication on patents?

The Communication highlights that Europe's current patent system is considerably more expensive than the US and Japanese systems. A Community patent would be far more attractive than models under the present system which is a bundle of national patents. A European patent designating 13 countries is 11 times more expensive than a US patent and 13 times more expensive than a Japanese patent. The existing system of patent litigation in the EU, with the risk of multiple patent litigation in several countries on the same patent issue, leads to unnecessary costs for all the parties involved and causes lack of legal certainty.

The difficulties in making progress on patents and especially on the creation of a Community patent led the Commission to launch, in 2006, a broad consultation of all interested parties on the future patent system. The results leave no doubt on the urgent need for action to provide a simple, cost-effective and high-quality patent system in Europe.

The Communication is intended to draw operational conclusions from the stakeholder consultation and to allow the Council to launch deliberations on patent reforms, in particular on the Community patent and jurisdictional arrangements. It addresses various supporting measures for an improved patent system, such as patent quality, knowledge transfer and enforcement issues.

A separate and comprehensive Communication on Intellectual Property Rights (IPR) is planned for 2008, to complement the Patent Communication and address outstanding non-legislative and horizontal issues in all fields of intellectual property.

The Community patent

Many stakeholders support the Community patent as the approach which will yield most added value for European industry under the Lisbon strategy. However they criticise the Council's Common Political Approach adopted in 2003 because of high translation costs and excessive centralisation of the proposed jurisdictional system.

The Commission believes that a truly competitive and attractive Community patent can be achieved provided there is political will to do so. Concerns about an overly centralised jurisdiction should be taken into account in the work on the creation of an integrated EU-wide jurisdiction for patents. On translation costs, the Commission will explore with Member States how to improve the language regime with a view to reducing translation costs while increasing legal certainty.

An integrated EU-wide jurisdictional system for patents

Recent discussions with Member States show polarised positions on patent jurisdiction arrangements with, on the one hand, Member States supporting the draft European Patent Litigation Agreement (EPLA) in the context of the European Patent Convention, and, on the other hand, Member States favouring the establishment of a specific Community jurisdiction for patent litigation on European and Community patents based on the EC Treaty.

Under these circumstances, the Commission believes that consensus could be built on the basis of an integrated approach which combines elements of both EPLA and a Community jurisdiction. The way forward could be to reflect on the creation of a unified and specialised patent judiciary, with competence for litigation on European patents and future Community patents. This system could be inspired by the EPLA model but could allow for integration in the Community jurisdiction. As a first step, work should concentrate on building consensus among Member States around principles on which consensus is emerging.

More information is available at:

http://ec.europa.eu/internal_market/indprop/patent/index_en.htm