



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 21 November 2008
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PI 88

PROGRESS REPORT

from : Presidency

to : Competitiveness Council

No. prev. doc. : 15674/08 PI 86

Subject : **Enhancing the patent system in Europe**

(a) Proposal for a Regulation on the Community patent

(b) Draft Agreement on the European Union Patent Court

1. On 4 April 2007, following the conclusions adopted by the Competitiveness Council on 4 December 2006 and the European Council on 8 and 9 March 2007, the Commission presented a Communication on enhancing the patent system in Europe (8302/07).
2. On the basis of that communication, the Working Party on Intellectual Property (Patents) (hereinafter referred to as "the Working Party") examined, under the German, Portuguese and Slovenian Presidencies, the possibility of establishing a new, unified patent litigation system in the European Union applicable to both the European patents and future Community patents. Under the Slovenian Presidency, the Working Party also examined solutions relating to the main aspects of the Community patent. Progress reports were submitted to the Permanent Representatives Committee in June 2007 (10710/1/07) and to the Competitiveness Council in November 2007 (15162/07) and May 2008 (9473/08), with the latter noting *inter*

alia the importance of reaching an agreement on a package covering both the judicial system and the Community patent and the need to continue work on both aspects. Following a brief exchange of views, the May 2008 Council instructed its preparatory bodies to continue work on the patent litigation system and on the Community patent with a view to finding solutions and reaching agreement in both areas as soon as possible.

3. As instructed by the Council, the French Presidency has continued to examine the various aspects of the patent litigation system. In addition to an information item discussed by the Working Party on the Court of Justice on 10 October, three meetings of the Working Party on Intellectual Property (Patents) (on 24 July, 25 July and 11 September) were devoted to that subject, based on a working document comprising a draft Agreement on the European Patent Court (11270/08), which had been established jointly by the Slovenian and French Presidencies. This led to the drafting by the French Presidency of a revised working document (14970/08), which was examined by the Working Party on 11 November 2008. At that meeting, the Working Party was also able to consult an opinion issued by the Council Legal Service (15487/08 + COR 1).
4. The French Presidency has also continued proceedings relating to the Community patent. Two meetings of the Working Party (on 8 July and 8 October) were devoted to that subject, based on a revised version of the proposal for a Regulation on the Community patent (9465/08) drawn up by the Slovenian Presidency and a working document prepared by the Commission (13752/08) on the distribution of annual renewal fees from future Community patents.
5. The aim of this report is to inform the Competitiveness Council, at its meeting on 1 and 2 December 2008, of the progress which has been achieved to date.

6. As regards the patent litigation system, the Presidency has conducted detailed discussions on the draft Agreement and the draft Statute as a whole. On the basis of substantial exchanges at meetings and written contributions from Member States, the work which has been carried out has enabled a number of improvements to be made in connection with important points and a better coordination between the provisions of the various jurisdiction instruments to be achieved. The Working Party has also received an opinion from the Legal Service on the compatibility of the draft Agreement with the EC Treaty and on a possible request to the Court of Justice for an opinion on the basis of Article 300(6) of the Treaty. This opinion has *inter alia* confirmed the possibility of adopting a mixed agreement once the Commission has presented draft negotiating directives regarding the competence of the Community. In terms of the text of the proposal, several issues still need to be discussed further in order to reach a consensus. These include, in particular, the composition of the judicial panels, the language arrangements, jurisdiction on validity, control exercised by the Court of Justice, the financing of the judicial system and the transitional arrangements. The Presidency believes that the continued examination of its most recent proposal, as set out in 14970/08, will enable progress towards a consensus.
7. With regard to the Community patent, the Presidency has conducted detailed discussions on an amended version of the draft Regulation. Those discussions have identified delegations' concerns, in particular in relation to economic issues and the rules governing languages. Work has focused on annual renewal fees and the distribution key applicable to any resulting revenue, and has enabled broad agreement to be reached on the objectives defined in the document submitted by the Commission services: (1) to facilitate the protection of innovation for European companies, (2) to foster competitiveness of European businesses, including SMEs, in the global economy, (3) to guarantee the functioning and financial security of the EPO and (4) to allow for harmonious co-existence between national, European and Community patents. The preliminary results of a Commission study on the economic aspects of the Community patent have given rise to an initial exchange of views. The study is expected to be completed by the end of 2008. The Presidency believes that these discussions will enable progress towards a consensus.

8. The Competitiveness Council is invited to:

- **take note of this progress report, and**
- **instruct its preparatory bodies to continue work on the patent litigation system and the Community patent with a view to finding solutions and reaching agreement in both areas as soon as possible.**

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