

Commission Consultation on the Patent System in Europe: UK Response

Section 1 – Basic Principles and features of the patent system

The UK is a strong supporter of a patent system that supports and encourages innovation by businesses, research organisations and individuals. We recognise the many benefits to the European economy, consumers and society of a patent system which encourages and rewards the development of new and innovative technology. We recognise intellectual property as a key driver towards increased European innovation and competitiveness.

We agree with the view that a patent system best designed to achieve its objectives is one which takes account of the concerns of a broad range of interests and is characterised by its low cost, fair and transparent procedures, high standards of quality, consistent application of rules, rapid delivery and effective enforcement of rights. We believe that such a system should be central to a broader framework of support which facilitates the access to, exploitation and enforcement of patents, particularly by innovative SMEs.

However, it is clear that the current system is failing to deliver these goals. Patents in Europe are often costly to obtain and translate. Industry has to navigate a patchwork of national systems when pursuing patent litigation in the EU, and enforcement of rights is uncertain, expensive and complex. Simplification of the patent system is urgently needed if the EU is to achieve the competitiveness goals set out in the Lisbon Agenda.

Section 2 – The Community Patent as a priority for the EU

As a way to achieve a patent system that meets the needs of European industry, enabling its users to access and operate within an innovative European single market, we remain committed to the development of a Community Patent which meets the requirements mentioned above. We regret therefore that all attempts to reach

agreement, subsequent to the Common Political Approach, have so far come to nothing.

Despite its flaws, the existing system under the EPC is one which is well understood by the majority of its users. Progress on the Community Patent should address the weaknesses of this system. A compromise resulting in a system which does not address issues of cost, quality and simplicity would be little used and to the detriment of the single market. Therefore the Commission is right to be considering a variety of approaches to achieve a patent system for Europe which is fit for purpose and meets the needs of its users.

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

A simplified, European-wide litigation system is highly desirable whatever means by which it is achieved, and development of the European Patent Litigation Agreement (EPLA) is necessary with or without the Community Patent. This is the clear view of industry, who see the EPLA as an urgent opportunity that should not be missed, and of European Judges, who gave the Agreement their emphatic support in their Venice Resolution.¹ The EPLA should be seen as a serious contender capable of delivering the levels of affordability, quality and certainty that its users require, through simplified procedures and the decisions of top IP Judges. The recent financial impact assessment of the EPLA, prepared by the EPO,² sets a clear case for rapid progress towards an agreement.

The view of the UK is a pragmatic one. We recognise that the current system is used extensively by industry and is an essential tool. However, we also recognise the continuing burden placed on innovative SMEs unable to effectively exploit the value of their intellectual property. The UK therefore believes that action must be taken to deliver real improvements now, exploring all possible options, as well as planning for progress towards long term goals.

¹ Available from <http://www.eplaw.org/Downloads/Venice%20Resolution.pdf>

² European Patent Office, working as secretariat of the Working Party on Litigation, “Assessment of the impact of the European patent litigation agreement (EPLA) on litigation of European patents” February 2006.

Section 4 – Approximation and mutual recognition of national patents

The UK recognises potential market distortions caused by the variation of patent law between member states. However, if any harmonising measures are to be adopted this should only be done on the basis of clear evidence for each individual issue.

On the question of mutual recognition, the UK believes that there is considerable scope for the better exchange of information and work sharing between offices. Indeed, the UK Patent Office has already piloted the contracting of search and examination work to the Dutch and Danish Patent Offices. This pilot has been a success, with its integral quality assurance system ensuring that consistent quality standards have been maintained. The topic is currently the subject of “strategic debate” amongst member states of the European Patent Organisation, and is one which the UK strongly supports. Industry considers the quality of granted patents to be very important, and we believe that our experience of successful international cooperation can help to establish a common understanding of what a quality and efficiency framework could and should achieve.

The Patent Office