

EPLA

Resolution on a European Court System for Patents

The European Patent Lawyers Association (EPLA) is the representation of lawyers with long-time experience in Patent Litigation. EPLA wants to share the experience of its members with the EC-institutions (Commission, Council, Parliament, ECJ) active in preparing a Community Patent with a Community Patent Court system. It also wants to give any information or advice useful for the Working Group of the European Patent Convention (EPC) on a European Patent Litigation Protocol (EPLP).

During EPLA's 2. congress in Brussels on November 8, 2002, EPLA discussed questions relevant for both possible systems.

Lawyers are representing claimants and defendants. Their only "interest" lies in a high quality and a reasonably quick procedure, which, concerning the Community Patent, convinces the inventors that they are well advised to use the Community Patent and not to continue to use national patents or the EPC-bundle patent.

Regarding the Community Patent, the deliberations during the second congress form the basis for the following Resolution:

1. EPLA had welcomed the Common Approach reached under the Swedish Presidency in Stockholm stressing the importance, regarding the first instance, of
 - courts close to the conflict and to the parties,
 - courts using the language of the parties in its area of jurisdiction,
 - quick and low-cost proceedings.

The Community Patent will not be accepted, and the EPC-bundle-patent will continue to be used, if the solution for a central and regional Community Patent Court does not follow these principles, on which the Council agreed.

2. EPLA welcomes the proposal accepted by the European Parliament on April 10, 2002 regarding a court structure,
 - where the first instance decisions are rendered by national courts with long experience in patent litigation and
 - where an appeal from these courts is available to a centralized second instance.

This solution, which is implementing the principles of the Stockholm Approach would leave more than 70 % of all patent litigation cases close to the parties. The more difficult or the more disputed cases would, on appeal, be decided by the central appeal board, which would give, by its decisions, guidance for the courts of the first instance. This solution is compatible with the relevant Articles of the Nice Version of the EC.

3. EPLA would, if the proposal No. 2 is not accepted, be in favour of a system,
 - where the central panel and a sufficient number of regional panel of the Community Patent Court would decide in the first instance, and the court of first instance of the European Court of Justice would act on an appeal from these panels,
 - if the regional panels would be established where national courts with the highest numbers of decisions on European Patents exist showing the confidence of the owners of European Patents in their jurisdiction,
 - if the regional panels would start to work at the same time as the central chamber
 - if the regional panels would, if they not otherwise agree, use the language of their country, which would highly facilitate the procedure regarding difficult technical cases.
 - if the jurisdiction of the central chamber and the regional panels would follow the rules of Regulation 44/2001 (ex Brussels Convention).

4. EPLA strongly advises against the latest proposal of the EC-Commission, which would centralize all cases in the central panel, until this panel would decide 150 cases per year, starting only then with the establishment of regional panels. This would remove patent litigation for a long time from the neighbourhood of the parties and prove to be a strong deterrent against the use of the Community Patent. A patent owner would feel much more comfortable under the present European Patent-system.

5. EPLA does not see a lack of competence of EC-member-states to conclude a European Patent Litigation Protocol (EPLP). The Community Patent Court and the EPLP-Court would not decide on the same patents (Community Patents; EPC-bundle-Patents).

However, EPLA favours the Community Patent Court-system, leaving the EPC-bundle-Patent-cases to the national courts, which would, deciding EPC-bundle-patents, certainly follow the guidance of the Community Patent Court on Community Patents.