

THE EUROPEAN COMMISSION PROPOSES THE CREATION OF A COMMUNITY PATENT

Recently the European Commission published a draft Regulation (which can be downloaded from the EPO via our website, within Newsletter 69 in the Newsletters section) that would create a single Community patent effective throughout the European Union (EU). Although the draft Regulation must be approved by the European Council and Parliament, the Commission nevertheless hopes that the Community patent will be available by the end of 2001. However, we believe that it is unlikely that a Community patent system will be in place by then.

Under the Commission's proposal, the EU would accede to the European Patent Convention (EPC), so that one would simply designate the EU in place of the individual national designations of the EU Member States. The existing national and European patent application procedures would coexist with the Community patent system, so that applicants would be free to choose which patent system best suits their needs. The patent would stand or fall as a single patent, rather than being a bundle of national patents.

As under the European Patent Convention, the application would be examined, granted and published by the EPO in English, French or German, with a translation of the claims in the other two languages at grant. Once granted, it would become effective throughout the EU without any further translation being required, thus reducing the usual translation and national processing costs. However, an infringer in a country that did not have the language of the patent as an official language could avoid liability for damages until a translation was made available to him.

Infringement and validity disputes will only be heard centrally by a new EU Intellectual Property Court, having a First Chamber and an Appeal Chamber. The Commission believes that a centralised Community tribunal for dealing with patent disputes will lead to greater legal certainty when compared with the system under the EPC. In parallel a supranational European Patent Court has recently been proposed by a working party of the EPO (also available via our website, within Newsletter 69 in the Newsletter section). This Court would have exclusive jurisdiction for

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ruling on the validity and/or infringement of European Patents and it is thereby hoped that there will be greater legal certainty under the EPC. These two proposals may coalesce.

The Commission's proposed regulation follows three decades of attempts to create a single Community Patent. In 1975 the Community Patent Convention was signed. The Convention, however, was never ratified and so it has not come into effect.

Please contact Richard Bassett for further information.

The information in this Newsletter was correct at the date of release. More up to date information is available by contacting Eric Potter Clarkson. All comments contained here are of a general nature and full professional advice should be sought on any specific problem.

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