

EPLAW

European Patent Lawyers Association

YEARBOOK

2006 – 2007

(Editor : F. de Visscher, Past Secretary to the Association)

Association européenne d'avocats spécialisés dans le contentieux des brevets d'invention
Europäische Vereinigung der Patentrechtsanwälte

Siège : Avenue Louise, 149 (boîte 20) 1050 BRUXELLES - BELGIQUE
Association sans but lucratif (Loi du 27 juin 1921)

Dear Colleagues

When I wrote the foreword to the 2006 Yearbook I reported that the EPLA project had had a good year. The response to the Commissions' 2006 Questionnaire was overwhelming in support of EPLA and the Judges at Venice had just produced a workable set of procedural rules.

I did however note that there was a risk that the EPLA project would be "communitised". That fear has to some extent materialised, not as a result of the actions of the Commission but rather as a result of a small, but significant, group of member states who announced their opposition to EPLA in early 2007. The significance of this number of member states is, we are told, that the necessary majority support within the EU does not exist for EPLA. It seems that the EPLA project as originally conceived is now dead. This was in fact reported at the last Venice meeting in November by Dr. Fröhlinger from the Commission who is now charged with assisting the Portuguese Presidency to find a satisfactory alternative jurisdictional regime for Europe. The latest Portuguese proposals will be reported on at our 2007 Congress. They were given a cautious but positive reception by the Judges.

I must say that I approach the 2007 Congress, my third as President, with mixed feelings. I am proud that our small organisation has now become a powerful voice in Europe in respect of patent law development; it is vital that the views of practitioners are heard alongside those of the users if we are to have a patent system that works. I am however sad that this will be my last Congress as President. I have enjoyed the last three years enormously with the support of wonderful colleagues on the Board. The Board will recommend Willem Hoyng to be the next President of EPLAW. I believe that under his leadership our organisation will continue to grow in influence. I wish Willem well and I shall remain on the Board to support him.

I look forward to seeing you all in Brussels.

Kevin Mooney
President

12th November 2007

EPLAW Congress

President's Report

20 November 2006

Kevin Mooney

Simmons & Simmons

EPLAW Congress - President's Report

■ EPLAW CONGRESS 2006

■ GUESTS:

- Lord Justice Jacob
- Judge Meier-Beck
- Chris Mercer
- Erik Nooteboom
- Friedrich Oelschlager
- Stefan Luginbuehl
- Vinciane Vanovermeire
- Ivan Verhoegstraete
- Jan Willems
- Prof. Damien Geradin
- Paul Lugard
- Hans Pegt
- Dr. Heike Lörcher
- Bill O'Brien
- Dr. Jochen Bühling
- Pierre-Yves Charles

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EPLAW Congress - President's Report

■ EPLAW's MAIN OBJECT:

- "Consistent and cost-effective enforcement of patent rights throughout Europe in one court offering local access to patentees and a simple language regime."

■ PROGRESS IN 2006

- GAT -v- LUK
 - Roche -v- Primus
- } 13 July 2006: A step back?
- EPLA
 - Judges' Resolution October 2005 - 29 Judges
 - Thessaloniki Declaration 16 September 2006 - additional 45 signatures
 - Commission Questionnaire on the Patent System in Europe (Section 3) 16 January 2006

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EPLAW Congress - President's Report

- Brussels Meeting - 12 July 2006:
 - "[EPLA] is a promising route towards [a] more unitary jurisdiction" per C McCreedy
- C McCreedy's speech to the European Parliament - 28 September 2006
 - "A solid legal framework is essential. I must repeat this: we need to keep up. Compared to our major trading partners, Europe is losing ground.."
 - "... there is a strong call for the improvement of the existing European Patent system... by the successful conclusion of a... EPLA..."
 - "... the Community needs to get involved in EPLA..."

BUT

- "I recognise that there are legitimate doubts and concerns... [including] the impact of the rules of procedure which we have yet to see..."

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EPLAW Congress - President's Report

- AIPPI Resolution dated 11 October 2006
 - "Urges the member states of the [EPC]... to adopt EPLA... as early as possible"
- European Parliament Resolution on Future Patent Policy in Europe dated 12 October 2006
 - "Urges the Commission to explore all possible ways of improving... patent litigation systems in the EU including participation in... EPLA"

BUT

- "as regards the EPLA, considers that the proposed text needs significant improvements, which address concerns about democratic control... and a satisfactory proposal for the Rules of Procedure of the EPLA Court."

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EPLAW Congress - President's Report

- Venice II Resolution re. Rules of Procedure - 04 November 2006
- FUTURE:
 - Commission Policy Statement re. EPLA and the Community Patent - ? November 2006
 - German Presidency: EPLA Conference - ? June 2007
- COMMISSION QUESTIONNAIRE
 - Detailed Response in March 2006
 - Attendance at Public Hearing, July 2006
- VENICE II FORUM: 02-04 NOVEMBER 2006
 - Resolution on Rules of Procedure
 - Mock Trial
 - Future of Venice?

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EPLA Congress - President's Report

■ WEBSITE

- Refreshed
- Blog-site to come

■ MEMBERSHIP & FEES

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Consultation on a patent strategy for Europe and follow-up

A Uniform European Patent Jurisdiction

EPLAW congress
20 November 2006
Brussels

Erik Nooteloorn
Head
Industrial Property Unit
European Commission

Internal Market & Services DG

IPR Law – Commission perspective

Common EU interest

Renewed Lisbon Agenda for growth and employment

Promotion of innovation I

Internal Market & Services DG

Public consultation on the Patent System in Europe – why?

Progress in the field of patents difficult

Timely in light of new industrial policy (launched 5 October 2005)

Seek views of all interested stakeholders (from individuals to multinational companies, research and academia)

Ensure that future patent policy reflects stakeholders needs

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Public consultation on the Patent System in Europe

Consultation launched on 16 January 2006
Extended deadline 12 April 2006

Parallel consultation through the SME Panel

Over 2500 replies I

Public hearing in Brussels 12 July 2006
Wide range of speakers from interested circles

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Substance: What did we ask?

Focus on structure of patent system

- 1) Basic principles and features of the patent system
- 2) The Community patent as a priority for the EU
- 3) The European Patent System – in particular EPLA
- 4) Approximation and mutual recognition of national patents

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Section 2: Community Patent

Stakeholders generally support the Community Patent (COMPAT)

However not at any price – must offer advantages over existing system

Rejection of the 2003 Common Political Approach, mainly because of an unsatisfactory language regime and jurisdictional arrangements

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Jurisdictional arrangements Community Patent

Community Patent Court – strong support for the idea but different opinions on details

Concerns include:

- Centralisation first instance
- Technical knowledge
- Languages

Some favour Community Trademark add CD system as a model

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Section 3: European Patent System

London Protocol

Clear priority for industry (would have an immediate effect on the attractiveness of European patents)

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European Patent Litigation Agreement (EPLA)

European Patent Court to deal with European Patents
Strong Support

Advantages

- Uniform jurisdiction with regional chambers (1st instance) (proximity) but
- Centralised Appeal
- Attractive language regime
- Technical Judges
- Common Rules of procedure
- Cost 2/3
- Quality of patents

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EPLA

Some issues need to be settled

- Optional or mandatory?
- Cost
- Rules of Procedure: efficient, transparent and simple
- Relation with the ECJ
- Independence of the Court from EPO
- Constitutional concerns from some MS
- Who joins?

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EPLA – EP Resolution – Oct 2006

European Parliament Resolution on future action in the field of patents

“Whereas there have been growing concerns about undesirable patents in various fields and about a lack of democratic control over the processes by which such patents are granted, validated and enforced

Internal Market & Services DG

EPLA – EP Resolution – c/d

“Urge the Commission to explore all possible ways of improving the patent and patent litigation systems in the EU, including participation in further discussions on the European Patent Litigation Agreement (EPLA) and accession to the Munich Convention, as well as revision of the Community patent proposals, as regards the EPLA, considers that the proposed text needs significant improvements, which address concerns about democratic control, judicial independence and litigation costs, and a satisfactory proposal to the Rules of Procedure of the EPLA Court

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