

The EU patent

Protection of intellectual property is a driving force behind innovation, growth and competitiveness. However the current patent system in Europe is seen as a brake on innovation because of its high cost and the lack of legal security.

For years, the EU has tried to reach an agreement on a unified EU patent and a dispute settlement system for EU and European patents. These measures could help to achieve a more successful translation of research findings and new technical and scientific knowledge into industrial and commercial successes, and enable the EU to catch up with the US and Japan in terms of R&D investment.

Recently, there has been significant progress in negotiations about the reform of the European patent system, and the economic crisis has only heightened awareness of the urgent need for a breakthrough on this important issue. The Belgian EU Presidency will tackle the challenge of making important further progress towards the realisation of this instrument, which will be essential in order to safeguard the competitive position of the European Union.

What is the purpose of patents?

A patent provides its holder with powerful protection that prevents third parties from manufacturing, using or marketing a technical invention without the holder's permission for a specified period and within a specified territory.

The patent system plays an important role in the dissemination of technical information and technology transfer, thereby stimulating innovation.

The current system: national patents and the European patent

Patent protection in the EU is currently regulated by two systems, neither of which is based on an EU legal instrument, namely the national patent systems and the European patent system.

The European Patent, issued by the European Patent Office (EPO) in Munich, gives the holder national patent rights in each country designated by the holder. The European Patent Convention of 1973 currently has 37 signatories. When we speak of 'European' patents, this therefore includes countries that are not EU Member States.

The EPO offers the advantage of a unique grant procedure so that an applicant does not need to submit a new file to each of a number of national patent offices. There is therefore a uniform procedure for issuing the patent. However, once it has been issued, the European patent must be considered as a series of national patents subject to the rules of the countries where the patent is recognised.

As there is no integrated European legal system, disputes are handled according to national laws and procedures.

This system has a number of disadvantages:

- The protection offered by the patent varies by country. Once granted, the European patent has the same value as a national patent and is subject to national legislation in relation to its life cycle (payment of maintenance fees) and in the case of disputes (which must be settled by national courts). The protection is not uniform and the cost is relatively high.
- The Member States of the European Patent Organisation can require the holder of a patent to submit a translation of the patent into one of their national languages in order to make the patent legally valid in their territory (the London Protocol, which entered into force in 2008, makes the translation requirements in the participating countries considerably easier). This involves additional costs.
- Disputes about European patents are handled within the national legal systems of the EPO Member States. Therefore, patent holders wishing to protect their European patents against counterfeiting in Europe must often take legal action in several Member States. Apart from the fact that it is complicated and expensive to acquire intellectual property rights in multiple EU countries, this system can give rise to conflicting judgements and therefore a lack of legal security.

The solution: the EU patent and an integrated dispute resolution system

In 2000, the Commission proposed the introduction of a Community patent so that inventors could obtain a patent which was legally valid throughout the EU. This uniform patent would significantly reduce the burden on businesses and the cost of obtaining a patent. The underlying thought behind the implementation of this solution is that the EU patent would be issued by the EPO as a unitary title. In order to do this, the EU would have to become a member of the European Patent Organisation.

The future European patent system will offer the following advantages:

- Easier protection of inventions throughout the EU as the European Patent Office in Munich will issue a unitary title;
- Considerably lower costs, particularly for translation and applications;
- Greater legal security as the result of an integrated dispute resolution system conducted by a European Patent Court (to be established).

The EU patent is not intended to replace national patents and the European patent but to offer a new option. Inventors will be free to choose the patent protection which best suits their needs.

Current state of affairs: towards a breakthrough?

Although the urgent need for a simple, cost-effective, high-quality patent system in Europe has been clear, the lack of agreement about the language regime and dispute resolution, in particular, have resulted in something of a stalemate. However, in recent years the discussions have slowly but surely gained momentum and have now reached a 'tipping point'.

At the end of 2009, the Member States reached agreement about important elements of the European Patent Court which is to be established and the EU patent:

- Technical aspects relating to the establishment of a European and EU Patents Court (EEUPC) which will have jurisdiction over both EU and European patents and will have exclusive competence to administer justice in relation to validity and counterfeiting ;
- The procedure for setting the maintenance fees for EU patents and the formula for distributing the revenue from these fees. The maintenance fees for an EU patent will be paid to the EPO, which will keep 50% of the revenue (there is no agreement as yet on how the other 50% should be distributed) ;
- The creation of a stronger partnership between national patent offices and the European Patent Office. The EPO will be able to call upon the examinations carried out by national offices as part of a national patent application.

In the coming months, the following outstanding items will be on the agenda and the Belgian EU Presidency will tackle the challenge of achieving significant progress on each of these issues:

- The Commission will prepare a proposal relating to language rules for the EU patent. In the past, the language rules have always proved an insurmountable obstacle. The challenge will be to develop an acceptable system which is (financially) attractive and offers the necessary legal security.
- Before discussions about the European Patent Court can progress, the European Court of Justice must issue an advisory opinion about the compatibility of the existing draft with the European Treaties and integration into the European legal system. This advisory opinion is expected in the autumn.

The next step will be to achieve agreement on the distribution of revenue from maintenance fees for EU patents and on the practical implementation of the strengthened partnership between national patent offices and the European Patent Court.

Calendar of events

14 September 2010

Seminar 'From knowledge to competitiveness' – instruments (intellectual property, standardisation and public procurement) to promote innovation and competitiveness in the economy (organisation: Federal Public Service Economy)

30 September 2010

Informal Competitiveness Council (internal market)

11-12 October 2010

Competitiveness Council

3 November 2010

Seminar 'Reform of the European patent system' (organisation: Intellectual Property Service, FPS Economy in collaboration with the European Commission)

10 December 2010

Competitiveness Council