52001AE0411

Opinion of the Economic and Social Committee on the "Proposal for a Council Regulation on the Community patent"

Official Journal C 155 , 29/05/2001 P. 0080 - 0089

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(2001/C 155/15)

On 7 September 2000 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 14 March 2001. The rapporteur was Mr Simpson.

At its 380th plenary session (meeting of 29 March 2001) the Economic and Social Committee adopted the following Opinion by 77 votes to 22 and with eight abstentions:

1. Summary and recommendations

1.1. The Committee welcomes and supports the initiative of the Commission in proposing a Regulation to facilitate the establishing of a Community patent.

1.2. The Committee endorses the proposal that the Community should become a member of the Munich Convention as a method of introducing the Community patent.

1.3. The Committee hopes that the European Patent Organisation will welcome this proposal and co-operate on its implementation and thus provide extra encouragement of innovation and research in the European Community.

1.4. The Committee agrees that there are strong and valid reasons to introduce the Community patent by way of an appropriate Regulation.

1.5. The Committee accepts that the proposal to use the procedures of the European Patent Office to register a Community patent is both logical and simpler than any proposal for a parallel system.

1.6. The Committee believes that it is a crucial feature of the proposal for a Community patent application procedure that it should co-exist readily with the existing arrangements for national and European patent application procedures.

1.7. The Committee regards the prospect of lower cost for a Community patent as a crucial requirement of the proposed system. The Commission proposal offers the prospect that the cost of a Community patent might be considerably lower than those incurred when a European patent is registered for several countries within the Community.

1.8. After consideration of other options, the Committee supports the recommendation of the Commission that the Community patent would require to be registered in full in one of the three procedural languages and that the claims should be translated into the other two.

1.8.1. The Committee considers that the Commission should accept arrangements that an application for a Community patent could be presented in the language of the applicant and should be translated into one of the three procedural languages without additional cost to the applicant.

1.9. The Committee recommends that when a patent is unknowingly infringed, because it is not available directly in the language of the infringer, this should only be acceptable as a defence when the infringer shows that he could not reasonably and easily have had this information. Decisions on these issues would fall within the competence of the Community Intellectual Property Court.

1.10. For the effective operation of a Community patent, the legal mechanisms at each stage should be clearly defined and widely understood. The Committee expects further consultation on these issues to test their acceptability to those who have the main professional interest in their functioning.

1.11. The Committee considers that, if a Community patent is to operate effectively and efficiently, a Community-wide form of legal jurisdiction should be established and would support the proposal to establish a Community Intellectual Property Court on the lines proposed by the Commission with the proviso that the functions of First Instance are carried out in existing national tribunals operating in the capacity of a Community Court of First Instance (in the country where the defendant is domiciled or where the breach has taken place).

1.12. The Committee believes that the Commission should make proposals, at this stage, to ensure that a Community Intellectual Property Court would be accessible and affordable to smaller businesses. It would be unacceptable if the Community Court was in reality, because of cost, access and "right of audience", effectively not available to SMEs or small research organisations.

1.13. When the Commission publishes proposals for the functioning of the Community Court, the Committee expects that they will be designed to ensure that judgements are applied uniformly across the Community and avoid the potential inconsistencies of the present nationally based European Patent procedures.

2. Introduction

2.1. The merits and value of a patent procedure which facilitates the uniform application and enforcement of patent rights across the whole of the European Union are not in doubt. A mechanism to offer enforceable rights in the whole territory of the Community is a logical and necessary part of the creation of a genuine Single Market. As later sections of this Opinion will demonstrate, the Committee regards the successful conclusion of an agreement on the early introduction of a unitary Community patent as both necessary and urgent.

2.2. The Committee endorses the main thrust of the proposal from the Commission and commends the preparation of a timetable for its expeditious implementation, if possible before mid-2002.

2.3. It is already possible to be covered throughout the European Union by a centrally issued European patent, albeit one which is converted into a set of national patents in each Member State. However, a new industrial property right, applied without borders across the European Union is a necessary method of helping to ensure the free movement of goods that are protected by patents across national borders.

2.4. A unitary Community patent is a useful step in the creation of a genuine Single Market. For businesses, this will encourage innovation and research and development, enhance access to markets, and give increased legal certainty. The expectation is that, over time, this will encourage the filing of a larger number of patents and reduce the deficit in filing numbers between the USA and Europe.

2.5. The earliest discussion of the merits of a patent with Community-wide application (a Community patent) can be found in the 1960's. Several initiatives have been taken at various dates but none have produced a proposal which has been formally approved and implemented within the Community.

2.6. More recently, the urgent need to create a Community patent was formally restated by the European Commission(1) and endorsed by the European Council(2). Reflecting the political thrust of the Lisbon European Council, these statements of intent now need to be implemented as quickly as possible. A successful conclusion is even more significant because of the rapid evolution of the capacity and use of new forms of information technology.

2.7. The Committee considered the role of a Community patent in an Opinion(3) adopted in February 1998. The rapporteur was Mr Bernabei. That Opinion responded to a Green Paper by the Commission on the merits of a Community patent and the way in which the existing patent system in Europe was functioning(4).

2.8. In May 2000, the Committee commented on "the need for the procedures required to establish and operate a European patent system (to) be made simpler, shorter and cheaper" in an Opinion on the creation of a European research area. The rapporteur was Professor Wolf(5).

2.9. More recently, in September 2000, the Committee asked the Commission to start work on creating a Community patent as part of an industrial and intellectual property policy reflecting the need to enhance Community research. The rapporteur was Mr Bernabei(6).

2.10. As part of the preparatory work in the drafting of this Opinion, members of the Study Group visited the offices of the European Patent Organisation in Munich and had the benefit of listening to the advice of the senior staff, lead by the Chairman of the Patent Office, Mr Kober, and staff representatives. This facilitated a wide-ranging discussion in a Round Table conference of experts to which were also invited representatives from the countries that may join the Community when the current enlargement negotiations are completed.

3. The Commission proposal: the background

3.1. The proposal for a Council Regulation on the Community patent has evolved, inter alia, from the responses to the earlier Green Paper. It was foreshadowed in the Commission Communication(7) published in early 1999.

3.2. The European patent(8) was introduced in 1973 as a product of the Munich Convention which established the European Patent Organisation. The European Patent Convention (EPC) regulates the procedure for the granting of patents. The European Patent Organisation incorporates an Administrative Council appointed by the Member States which have signed the Munich Convention.

3.2.1. The European Patent Organisation is an inter-governmental organisation which is not one of the institutions of the European Union and whilst all Member States of the Union have signed the Convention, it also has members from countries which are not members of the Union(9).

3.2.2. A patent registered with the European Patent Organisation can have effect in any or all the countries specified in the application, provided that it is (if the applicant so requires) fully translated into the official language of each country after it has been granted. Hence, a European patent may apply in up to 20 different countries.

3.2.3. European patents are enforceable but only under the national law of each country. Consequently, although described as European, they have the status in each country equivalent to a national patent. The legal proceedings under the patent may call for legal action in each country involved. Separate actions also involve the risk of inconsistent legal decisions in different jurisdictions.

3.2.4. The European patent application system was a considerable improvement on the earlier national systems but is unsatisfactory since registering a patent in only a small number of countries is nonetheless still expensive.

3.3. Following the compromise that lead to the Munich Convention in 1973, the Member States of the

European Union considered, in 1975, in a second round of negotiations, a further proposal for a Community patent.

3.3.1. In principle, there was agreement on the creation of a Community patent through what became the Luxembourg Convention. Over the years which followed, the Luxembourg Convention was amended by including, inter alia, a Protocol on the Settlement of Litigation concerning the Infringement and Validity of Community Patents. However, it never entered into force, since it was only ratified by seven (of the then 12) Member States.

3.3.2. The failure of all the EU countries to ratify the Luxembourg Convention is attributed to the lack of agreement on the cost and complications of the translations required by the different states as well as the complexity of the judicial system which would have been used.

3.3.3. With this history, the Commission has prepared the present proposal for a new Regulation.

4. The Commission proposal: a summary

4.1. The Commission proposal contains two crucial elements. The first is an extension of the working methods of the European Patent Organisation to create a Community patent. The second is a proposal to introduce a mechanism to ensure an acceptable form of legal enforcement for the Community patent within the institutional framework of the European Community. The Committee suggests that these two elements should be considered together in reaching a conclusion on the Commission proposal. There are other consequential proposals to clarify the administrative arrangements.

4.2. A Community patent will be introduced by allowing the European Community, as a single entity, to become a member of the Munich Convention (which created the European Patent Organisation). The Community would have the status equivalent to that of a member joining an international convention so that any applicant, whether based in the Community or not, could obtain a patent which would apply to the whole territory of the Community. Registration, examination of applications and the granting of patents would be handled by the European Patent Office.

4.3. When the procedures to register and grant a Community patent are agreed, there will be three patent instruments available. Patent users may, according to their own interests, register either with their national authorities, or seek a European Patent, or consider registering a Community Patent.

5. General comments

5.1. For the proposal for a Council Regulation on a Community Patent to be accepted there is a number of related questions to be determined. These include the need to obtain co-operation from the European Patent Organisation.

5.2. The Committee endorses the proposal that the Community should become a member of the European Patent Convention as a method of introducing a Community patent.

5.2.1. The Committee notes that the European Patent Office welcomes this proposal and will co-operate actively on implementation in order to make for easier access to a patent covering the entire European Community.

5.2.2. This will call for some amendments to the Munich Convention which would need to be agreed by another diplomatic conference on the Munich Convention(10).

5.2.3. The Committee notes that the Commission has obtained a negotiating mandate from the Council of Ministers of the European Community to revise the Munich Convention. These negotiations not only have to ensure the mechanisms to create a Community patent but also that arrangements are made so that, over time, any further changes are accommodated in a symbiotic fashion and so that consistency between the Regulation and the Munich Convention is maintained.

5.2.4. The Committee notes that the introduction of the Community patent will have far-reaching effects on the national patent offices, especially with regard to their role and functions and even their financial resources. The Community patent as such is not dependent on the involvement of national patent offices. Nevertheless, national patent offices have an important role to play in the development of the patent system in Europe. Therefore, it is important to address the question of the future of the national patent offices in order to identify what measures are appropriate to ensure that they can continue to play their part in support of innovation in the Community.

6. Specific comments on the proposal

6.1. The concept of a Community patent registered through membership of the European Patent Convention raises a number of related and operational questions.

6.1.1. The more important are:

1. the method of introducing this decision to Community law;

2. the inter-action with the European Patent Organisation;

3. the relationship with existing patent systems and the national patent offices;

4. the cost of a Community patent;

5. information and language requirements;

6. implications of the language rules for enforcement processes;

7. appropriate legal institutions to enforce the Community patent.

6.2. To achieve an acceptable framework for the creation of a Community Patent, the Committee acknowledges that the questions related to cost, languages and legal processes are interlinked. The proposals which follow in later paragraphs represent a compromise to reflect the competing pressures in devising an acceptable and practical outcome.

6.2.1. The legal basis for a Community patent

6.2.1.1. The Commission has proposed that the introduction of a Community patent should be by means of a Regulation, under Article 308 of the Treaty. This procedure has already been used in relation to the fully implemented Community Trade Mark and for the proposal for Community Designs(11).

6.2.1.1.1. The reason for the proposal that a Regulation should be used to introduce the legal instrument is that the procedures must be standardised across the Community and Member States should not be left with discretion, as would be implicit in the use of a Directive. If a Community patent is to have the necessary impact in terms of its acceptance, its application and its administration, then a clear single binding framework is needed.

6.2.1.1.2. The Committee agrees that the introduction of the Community patent by way of a Regulation is both appropriate and necessary and this proposal has the strong support of the Committee.

6.2.2. The inter-action with the European Patent Organisation

6.2.2.1. The Community Regulation will necessarily need to conform with the requirements of the Munich Convention so that the Community can accede as a member of the Convention.

6.2.2.2. An advantage of the accession of the Community to the Munich Convention is that the Community Regulation does not need to develop a separate set of substantive rules on specific

mechanisms for the registration of a Community patent. For example, the conditions of patentability will be those established under the Convention. The rules of the Convention, already tried and tested, will apply. So also will the case law under the Munich Convention that has evolved within the European Patent Organisation.

6.2.2.3. The Commission does, however, propose that the Community patent should be governed with some departures from (or additions to) the existing rules of the Convention. In particular, these variations relate to the cost of the grant of the patent, the need for and scale of translations, and the issue of jurisdiction. These are commented on in the following sections.

6.2.2.4. The Committee agrees that this forms the basis of an effective and efficient relationship with the European Patent Organisation.

6.2.3. Relationship with existing patent systems

6.2.3.1. The Commission has proposed that the Community patent system should co-exist with the other systems (e.g. the national patent system and the European patent system).

6.2.3.2. At this stage in the evolution of the Community there do not seem to be any convincing arguments that this co-existence of patent systems will make for undue difficulties. Co-existence cannot, however, mean complete flexibility of choice between the European patent system and the Community patent system once an initial application has been filed in both the Munich Convention countries and with the Community.

6.2.3.3. Where the party applying for a European patent designates only some - i.e. not all - Community countries, an extension to convert to a Community patent would not be an option. This position is based on the generally accepted principle of Patent Law of protecting third party rights that the territories to be protected must be stated at the time of application and cannot be increased thereafter. This does pose a question about the applicability of any Community patent to countries which become members of the Community at a later date.

6.2.3.4. If the Community patent attracts significant support, as would be expected, then at some later date the Commission may wish to consider a submission to the European Patent Organisation to rationalise the European patent or make it a variant, or extension, of the Community patent applicable to countries outside the Community. Nevertheless, it should continue to be possible for applicants to seek registration in a selection of countries from those participating in the European patent system rather than applying for a Community patent.

6.2.3.5. The Committee believes that it is a crucial feature of the proposal for a Community patent application procedure that it should co-exist readily with the existing arrangements for national and European patent application procedures.

6.2.4. The cost of a Community patent

6.2.4.1. The challenge for the Community patent is to find an acceptable compromise which reduces translation cost, simplifies and reduces the fee charges, including the renewal fees, and as a result will also reduce the fees paid to agents for a patent with Community coverage, which provides the requisite information and is acceptable in all the Member States.

6.2.4.2. The Commission has included in its proposal for a Council Regulation an illustrative calculation of the comparative cost of registering a European patent which applies to each of the countries of the European Community and must be registered in the language of the applicant and also translated into up to eight national languages(12). Cost will differ widely depending on the nature of the application and the necessary amount of translation. Nevertheless, there is little doubt that a European patent system, which requires the granted European Patent to be translated in the language of each country concerned, incurring renewal fees in each country and fees to agents, is significantly more expensive than a single mono-

lingual application and patent, i.e. in countries such as the USA or Japan(13).

6.2.4.3. The interests of the applicant contrast with those of the general public and other potential users who are obliged to respect an industrial property right with EC-wide validity. National Patent Offices also need financial resources to fulfil their remit and these come from fees.

6.2.4.4. The implication of the Commission recommendations is that for a Community patent:

a. initial examination and filing fees would be those charged by the European Patent Office;

b. maintenance fees would be set by the Community Regulation and paid to the European Patent Office and should be lower than the sum of the national renewal fees of each of the EU Member States;

c. translation cost would be lower because of the removal of the obligation to provide a translation into all the EC languages. It is acknowledged that this would lead to the available information on existing property rights being less available in individual countries. To compensate for this, particular provisions are envisaged (see below) where a breach of patent case occurs.

6.2.4.5. The expectation is that a Community Patent would be less costly than a European Patent which was registered in several countries. Fee charges (which are a major part of total cost) would be lower and translation cost should be lower.

6.2.4.6. The Committee regards the prospect of lower cost for a Community patent as a crucial requirement of the proposed system. The Commission proposal means that the cost of a Community patent could be considerably lower than those incurred when a European patent is registered for several countries within the Community.

6.2.5. Information and language requirements

6.2.5.1. A major cost saving proposal to help the users of the patent system is linked to a significant policy decision on the language arrangements for Community patents with particular regard to the extent to which reducing the number of translations is acceptable.

6.2.5.2. The proposed Regulation suggests that, once a Community patent has been granted in one of the three procedural languages of the European Patent Office (French, German and English) and published in that language, it should be accompanied by a translation only of the claims of the patent (and, compulsorily, only the claims) in the other two procedural languages. The Community patent will then be valid in that form in all Community countries without any other translations.

6.2.5.2.1. The Committee would point out that natural and legal persons resident or established in the territory of a Member State whose official language is other than English, French or German can submit patent applications in the official language(s) of their country. They must however submit a translation in one of the abovementioned official procedural languages within a given period of time.

6.2.5.3. A complete translation - as currently required under the European patent system - could become relevant in any later legal proceedings where an allegation of infringement was made. Then, a complete translation of the description and the claims into the language of the Member State where the suspected infringer is domiciled might be required to gain full legal benefits.

6.2.5.4. The Committee has considered various options related to two aspects of this part of the proposal for a Community patent. First, the language requirements on registration and second, the suggested presumption when the language question is linked to a claim of "unknowing infringement".

6.2.5.5. The Commission has proposed a radical change from the language requirements of a European patent. If a Community patent is to prove particularly cost-effective, this is a necessary consideration. The advice of the European Patent Office is that this is a crucial factor.

6.2.5.6. A range of possible alternatives, in addition to the Commission proposal (see point 6.2.5.2) was considered by the Committee.

6.2.5.6.1. One was a proposal that would ask for a translation of the claims (and only the claims) into all the official languages of the Community. The problem lies in the number of languages that would be required. If the European Union is to enlarge to over 20 Member States, the cost become more formidable, but would still be more modest than a complete translation of the Community patent.

6.2.5.6.2. Another possibility is that the application should be prepared in the language of the applicant and the claims translated into English (but not, as a requirement, into French and German), as English is the main working language used in the European Patent Office(14). In this connection, consideration was also given to a requirement for a translation of the complete patent into English.

6.2.6. Implications of the language rules for enforcement processes

6.2.6.1. As a consequence of the proposal on the official languages of the Community patent, the Commission is faced with a further difficult question in terms of the enforcement of Community patents. Should the obligation to observe the Community patent apply without any exceptions across the Community? This would be consistent with the usual presumption that "ignorance" is no excuse. Alternatively, if the claims or full patent are not published in the language of the relevant country, is a defence of unknowingly infringing the patent acceptable, whatever the size of the organisations? The objective of securing legal certainty points to the need for adequate information on the claims at least being available in full translated form.

6.2.6.2. The Commission has proposed that "a suspected infringer who has been unable to consult the text of the patent in the official language of the Member State in which he is domiciled, is presumed, until proven otherwise, not to have knowingly infringed the patent"(15).

6.2.6.3. This presumption then has consequences for the claims for damages on behalf of the patent holder but not on liability for infringement.

6.2.6.4. One alternative is that the Community should place an obligation on businesses, and their agents, to undertake a search of Community patents. However, unlike other legal processes where there is a duty "to know", such an obligation for knowledge of existing patents is not considered a practical suggestion. It would place an extra burden, on all potential users, in contrast to the existing European patents.

6.2.6.5. If a defence of "unknowing infringement" is to be acceptable, the wording used by the Commission may need to be made more restrictive. The proposal as presently drafted, might encourage wilful neglect of what should be a duty of due diligence and care. In addition, Article 6 confers some right to a licence of the patent on those who wrongfully but unwittingly register a patent that is later found to be invalid.

6.2.6.6. The Commission further suggests that, if the presumption applies, the proprietor of the patent would not be able to obtain damages for "the period prior to the translation of the patent being notified to the infringer". However, the investments made and then lost by the party which unknowingly infringed the patent may greatly exceed the level of damages.

6.2.6.7. Would the Commission be prepared to add a condition that an "unknowing infringement" would only be acceptable if the infringer could not reasonably have known of the patent and could not easily have gained that knowledge without undue difficulty?

6.2.6.8. After consideration of other options, the Committee supports the recommendation of the Commission that the Community patent should be required to be registered in full in one of the three procedural languages and that the claims should be translated into the other two, despite the fact that this may make questions of legal enforcement more complex.

6.2.6.8.1. If this method is chosen the Committee considers that the Commission should accept arrangements to ensure that an application for a Community patent could be presented in the national language of the applicant, and should be translated into one of the three procedural languages without cost to the applicant.

6.2.6.9. The Committee recommends that when a patent is unknowingly infringed, because it is not available directly in the language of the infringer, this should only be acceptable as a defence when the infringer shows that he could not reasonably and easily have had this information. Decisions on these issues would fall within the competence of the Community Intellectual Property Court (as discussed in the following section).

6.2.6.10. The language question not only affects legal certainty but also the accessibility of information on the technical content of the Community patent. The Commission should consider what steps might be taken to ensure wider dissemination of information.

6.2.6.11. The Committee considers that if the legal institutions are to be fully effective both the Register of Community patents and the Community Patent Bulletin must be considered as necessary publicity instruments with regard not only to knowledge of patents granted but also to users.

6.2.7. Appropriate legal institutions to enforce the Community patent

6.2.7.1. The Commission proposes the establishment of a Community Intellectual Property Court for legal action on the questions of validity and infringement. The Court would comprise two Instances, one of First Instance, the other of Appeal. This would offer a centralized judicial system specialising, inter alia, in patent matters. Only with a centralised system, the Commission argues, will there be an assurance of Community-wide application of the law and the development of consistent jurisdiction.

6.2.7.2. In other respects, the Community patent would fall within the remit of national courts (e.g. law of unfair competition, inventor's compensation, employee invention law).

6.2.7.3. These proposals differ dramatically from those outlined in the Luxembourg Convention which envisaged a mixture of competencies for purely national courts and rules to delineate the involvement of the European Court. The responses to the earlier consultation have persuaded the Commission that the concepts in the Luxembourg Convention risked becoming impracticable. The new proposal is more radical but clearer in its remit and operations.

6.2.7.4. Because this is a particularly specialized area of law, because there is a need for cases to be handled within a short time-scale, and because of the existing demands on the European Court of First Instance and the Court of Justice, the proposal is to establish a system which, in some institutional respects, parallels those of the European Court. In support of this suggestion, the Commission quotes the ruling by the Court of Justice that Community intellectual property rights cannot be created by harmonising national legislation(16).

6.2.7.5. National courts may need to refer to the Community Court when a case raises wider issues of the validity of a patent. However, national courts will be competent to request preliminary rulings on the intellectual property of a Community patent.

6.2.7.6. The Community Intellectual Property Court would consider cases of infringement and cases claiming invalidity. It would also consider cases arising during the period of "temporary protection", i.e. between the time of filing and the actual granting of a patent. The Community Court would not have a remit to consider issues falling to national courts such as the right to a patent, transfer of a patent, or contractual licences.

6.2.7.7. Whilst the Committee acknowledges and accepts the need for a Community Intellectual Property Court, because of the language problems and the need to bring the legal process closer to the interested parties, the Committee recommends that the Court of First Instance should, where appropriate, hear cases

in the national language of the country in which the case is heard.

6.2.7.8. The summit at Nice, December 2000, has introduced in the EC Treaty a declaration on Article 229 a TEC which allows the creation of the necessary legal institutions.

6.2.7.9. The relationship of the Community Intellectual Property Court, the Court of First Instance and the European Court of Justice raises some difficult issues in determining competence of the various institutions and the relationships with the Commission and national authorities.

6.2.7.10. In the filing and registration of a Community patent, the proposal is to accept the existing, or amended, procedures of the European Patent Office and its administrative appeal mechanism. There would be no further appeal from the European Patent Office on these issues to any other agency. When a Community patent is registered, disputes about validity and/or infringement would be within the remit of the Community Intellectual Property Court. For administrative actions by the Commission, under the proposed Regulation, the normal reference to challenge the Commission competence or actions would be to the Court of First Instance.

6.2.7.11. For the effective operation of a Community patent it is important that the legal mechanisms at each stage should be clearly defined and widely understood. The Committee expects further consultation on these issues to test their acceptability to those who have the main professional interest in their functioning.

6.2.7.12. The Committee considers that, if a Community patent is to operate effectively and efficiently, a Community-wide form of legal jurisdiction should be established and would support the proposal to establish a Community Intellectual Property Court on the lines proposed by the Commission with the proviso that the functions of First Instance are carried out in national specialist tribunals operating in the capacity of a Community Court of First Instance (in the country where the defendant is domiciled or where the breach has taken place) using rules of procedure devised by, and common to all aspects of, the Community Intellectual Property Court.

6.2.7.13. The Committee believes that the Commission should make proposals, at this stage, to ensure that a Community Intellectual Property Court would be accessible and affordable to smaller businesses. It would be unacceptable if the Community Court was, in reality, because of cost, access and "right of audience", effectively not available to SMEs or small research organisations.

6.2.7.14. The operational proposals for the Community Intellectual Property Court will presumably be outlined in a further consultative process. The arrangements should allow proceedings in the Court of First Instance to be conducted in more than one location. The Court should have regard to the merits of offering a degree of proximity to users, particularly SMEs. Also, the arrangements should make provision for intermediary, or professional and business organisations, to be permitted to represent their members.

6.2.7.15. The Commission has suggested (point 2.4.5.4 of the Draft) that there should be no provision for references to the Court of Justice for preliminary interpretation of difficult issues. This seems to be undesirably restrictive when a new parallel legal framework is being introduced.

6.2.7.16. When the Commission publishes proposals for the functioning of the Community Court, the Committee expects that they will be designed to ensure that judgements are applied uniformly across the Community and avoid the potential inconsistencies of the present national patent procedures which are part of the framework for European patents.

Brussels, 29 March 2001.

The President

of the Economic and Social Committee

Göke Frerichs

(1) COM(1999) 42 final, 5 February 1999.

(2) European Council conclusions, Lisbon, 23 March 2000.

(3) OJ C 129, 27.4.1998, p. 8.

(4) "Promoting innovation through patents", COM(1997) 314, 24 June 1997.

(5) "Towards a European research area"OJ C 204, 18.7.2000, p. 70.

(6) "Follow-up, evaluation and optimisation of the economic and social impact of RTD"OJ C 367, 20.12.2000, p. 61.

(7) op. cit, February 1999.

(8) Throughout this document care must be taken not to confuse the different concepts of a European patent (as presently defined) and a Community patent (which is the object of the Commission proposal).

(9) In early 2001, this includes Switzerland, Monaco, Liechtenstein, Cyprus and Turkey.

(10) A diplomatic conference on the reform of the European Patent Organisation was held in Munich in November 2000. However, this conference did not deal with the Community Patent.

(11) COM(2000) 412 at point 2.2.

(12) COM(2000) 412 at point 2.4.3.1, Table 1.

(13) COM(2000) 412 at point 2.4.3.2, Table 2.

(14) OJ C 204, 18.7.2000, see footnote 5, rapporteur Professor Wolf, the ESC suggested the use of English as a common second language (point 7.9) for the European patent system.

(15) COM(2000) 412 at point 2.4.4.

(16) Opinion 1/94 of the CJ, 15 November 1994.

APPENDIX

to the Opinion of the Economic and Social Committee

The following Members, present or represented, voted for the Opinion:

Mr/Mrs/Miss: PAULO ANDRADE, EDOARDO BAGLIANO, JEAN-PAUL BASTIAN, GIANNINO BERNABEI, LUCIAN BOUIS, UMBERTO BURANI, CLAUDE CAMBUS, GIACOMINA CASSINA, EDUARDO CHAGAS, CAMPBELL CHRISTIE, ALFREDO CORREIA, GÉRARD DANTIN, JOHN DONNELLY, ROY DONOVAN, ERNST EHNMARK, SOSCHA ZU EULENBURG, DAVID EVANS, C. FAKAS, DAVID FEICKERT, RAINER FRANZ, GÖKE FRERICHS, LUCIA FUSCO, P. GERAADS, FILIP HAMRO-DROTZ, RENATE HORNUNG-DRAUS, A.M. HUNTJENS, SEPPO I. KALLIO, TUULIKKI KANNISTO, SØREN KARGAARD, DETHMER H. KIELMAN, ENRICO KIRSCHEN, JONANNES KLEEMANN, JOHANN KÖLTRINGER, URSULA KONITZER, JORMA U. KONTIO, CHRISTOFOROS KORYFIDIS, BERND KRÖGER, ARTHUR LADRILLE, GORAN LAGERHOLM, PHILIPPE LEVAUX, MALCOLM LEVITT, STURE ERIK LINDMARK, GEORGES LINSSEN, JOHN LITTLE, ANDERS LUNDSTRÖM, BERNARD MALABIRADE, HENRI MALOSSE, TED MATHGEN, HELEN MCGRATH, VITOR MELÍCIAS, DARIO MENGOZZI, LEIF

NIELSEN, STAFFAN NILSSON, YIANNIS PAPAMICHAÏL, ROBERT PELLETIER, INGER PERSSON, ANTONELLO PEZZINI, JEAN-CLAUDE QUENTIN, GUIDO RAVOET, GIACOMO REGALDO, AINA MARGARETA REGNELL, MARTTI OLAVI REUNA, JEAN-CLAUDE SABIN, FRANZ SCHOSER, VICTOR HUGO SEQUEIRA, JOHN SIMPSON, ULLA SIRKEINEN, MÁRIO DAVID SOARES, KLAUS STÖLLNBERGER, RUDOLF STRASSER, PAUL VERHAEGHE, BRUNO VEVER, GIANNI VINAY, HEINZ VOGLER, KENNETH WALKER, CLIVE WILKINSON, GUSTAV ZÖHRER.

The following Members, present or represented, voted against the Opinion:

Mr/Mrs/Miss: MANUEL ATAÍDE FERREIRA, RAMON BAEZA SANJUAN, PEDRO BARATO TRIGUERO, JOSÉ BENTO GONÇALVES, MARJOLIJN BULK, MIGUEL CABRA DE LUNA, JOSÉ MARIA ESPUNY MOYANO, JOSÉ IGNACIO GAFO FERNÁNDEZ, GABRIEL GARCÍA ALONSO, LAURA GONZALEZ DE TXABARRI, JOSÉ DE LAS HERAS CABAÑAS, BERNARDO HERNÁNDEZ BATALLER, JOHANNES JASCHICK, KOMMER DE KNEGT, MARGARITA LOPEZ ALMENDARIZ, JUAN MENDOZA CASTRO, FERNANDO MORALEDA QUILEZ, JESÚS MUÑIZ GUARDADO, LUIS MIGUEL PARIZA CASTAÑOS, JOSÉ RODRÍGUEZ GARCÍA CARO, SERGIO SANTILLÁN CABEZA, JOSÉ MARIA ZUFIAUR NARVAIZA.

The following Members, present or represented, abstained:

Mr/Mrs/Miss: LISBETH BAASTRUP SØRENSEN, ANN DAVISON, MANFRED DIMPER, AN LE NOUAIL, DANIEL RETUREAU, CARLOS RIBEIRO, JOHN SVENNINGSEN, ALMA WILLIAMS.