



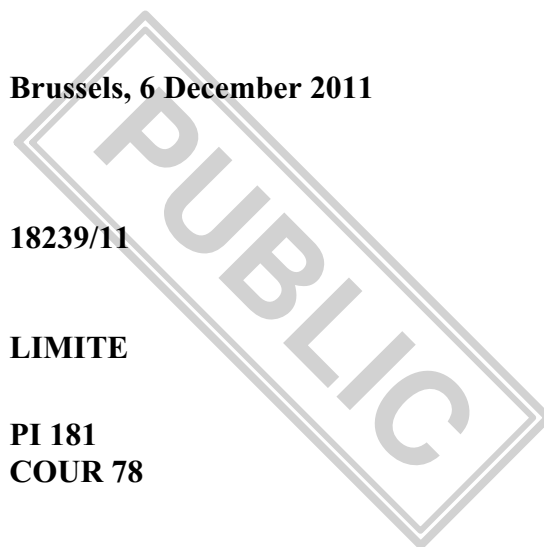
**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 December 2011

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LIMITE

**PI 181
COUR 78**



NOTE

from: Presidency

to: Delegations

No. prev. doc.: 17580/11 PI 170 COUR 72

Subject: Draft Agreement on the creation of a Unified Patent Court
- Presidency compromise text

Delegations will find attached, for information, the final compromise proposal tabled by the Presidency at the meeting of the Competitiveness Council on 5 December 2011.

Renewal fees

The Council should agree by the way of a declaration that the renewal fees which are to be fixed by the Select Committee on the basis of the criteria spelt out in the Regulation should allow to all Member States that they keep their current renewal fee income while at the same time ensuring that those Member States which currently have a low renewal fee income that they will significantly increase their renewal fee income.

The financial contribution of the Member States hosting a local division, a regional division, the central division of the Court of 1st Instance or the Court of Appeal

The Presidency proposes that the host Member State provides for the necessary facilities (premises, office equipment including IT equipment) and, for the duration of the initial transitional period (first 7 years), provides and pays also for the administrative support staff without prejudice to the statute of the staff concerned.

Other financial contributions of the Member States

While the objective should be that the Unified Patent Court becomes self financing over time and in principle at the latest at the end of the initial transitional period (in 7 years), financial contributions will be required in the setting up phase.

The Presidency proposes that during the initial transitional period (first 7 years) the financial contributions are based on option A, namely: contributions based on the number of European patents in force and the number of European patents litigated in the Member State concerned, but without an equal contribution from all Member States. After the transitional period, it is expected that the Court has become self-financing. If it is not the case, contributions shall correspond to the scale applicable for the distribution of renewal fees for the patents with unitary effect.

Court's fees

In the last paragraph of the draft declaration, on p. 9 it should be clarified that the fee system should be mixed - composed of an intermediate fixed fee and an additional value based fee applicable above a certain ceiling.

The Contracting Member States consider that the fee system of the Unified Patent Court should be straightforward and predictable for the users. The Unified Patent Court should apply a mixed system of fixed and value based fees. The Court should be accessible for parties with limited resources. Thus the court fees should be set at an appropriate level. Whilst all users of the Unified Patent Court should contribute to its financing, users having more significant economic interests should provide a reasonable and proportionate contribution to the functioning of the Court, on the basis of an additional value-based fee, **proportionate to the economic value of the case at stake in the specific procedure**, applicable above a pre-defined ceiling. **The fee system should provide adequate and specific tools to ensure proper access for small and medium sized enterprises to the Unified Patent Court, especially in relation to cases of high economic value.**”

Presidency proposes for paragraph 8 of the draft declaration that it should be clarified that such specific tools should be available not only for the SME but also for micro entities, natural persons, non-profit organisations, universities and public research organisation in order to align it with the specific measures in the two Draft Regulations.

Language of proceedings

While the principal should be maintained that the language of proceedings of a local division can be changed only with the agreement of both parties, the Presidency proposes as a matter of compromise that a party can address a request to the President of the Court who can change the language of proceedings into the language of the patent for reasons of fairness to that party, taking into account all relevant circumstances, including the position of the parties, in particular the position of the defendant. In such a case the necessity of specific translation and interpretation arrangements shall be assessed.

Actions to be brought to the central division.

The Presidency proposes as a compromise to give parties the choice to bring an infringement action before the central division if the defendant is domiciled outside the European Union.

If the defendant is domiciled within the European Union and the alleged infringement has occurred in the territory of three or more regional divisions, the defendant should have the possibility to request a transfer of the case to the central division. Furthermore if a revocation action is already pending before the central division the patent holder should have the possibility to bring an infringement action to the central division.

Transitional period

The Presidency proposes to fix the transitional period for "classical" European patents without unitary effect during which actions can still be brought before the national court, for an initial duration of 7 years and to foresee the possibility of prolongation for a maximum of up to a further 7 years.

The Presidency proposes that an opt-out for European Patents is available also for patents which have been granted or have been applied for also during the transitional period.

Revision clause

Many users of the patent system have argued for a broader range of provisions, which can be reviewed by the Administrative Committee in order to improve the functioning, efficiency and cost effectiveness of the Unified Patent Court and the quality of its judgements. Some Member States argue that such a review should require unanimity in the Administrative Committee, others fear that unanimity may render a necessary review too difficult.

The Presidency proposes as a compromise to maintain the three quarter majority for a review decision of the Administrative Committee but to give Member States the possibility to reject a review on the basis of their relevant internal decision making procedures.

Number of ratifications required for the entry into force

There is general agreement that the Unified Patent Court should enter into force once a minimum number of Member States have ratified the Agreement. The Presidency proposes as a matter of compromise that the number should be fixed at 13 Member States.

Breeders' privilege

The Council should agree by way of a declaration that in art. 8 of the Draft Regulation implementing the enhanced cooperation a further limitation of the patent protection should be added to cover acts excluded from patent protection as provided for by the MS for their territory in accordance with the implementation of the directive 98/44 on the legal protection of biotechnology inventions".

Local divisions

The Presidency proposes to increase the maximum number of local divisions in one Contracting Member State from three to four.

The seat of Central Division of the Court of 1st Instance, the seat of the Court of Appeal with the Registry and the seat of the Patent Mediation and Arbitration Centre

The Presidency proposes the seats of the Unified Patent Court in the following Member States:

Central Division: France (Paris)

Court of Appeal with the Registry: Luxembourg

Patent Mediation and Arbitration Centre - two seats: Slovenia (Ljubljana) and Portugal (Lisbon)

Training Facilities for judges: Hungary (Budapest)