

DR. INGVE BJÖRN STJERNA, LL.M.



Rechtsanwalt | Fachanwalt für gewerblichen Rechtsschutz

Paul-Pieper-Straße 18
40625 Düsseldorf

T +49 211 985 95 946
F +49 211 952 64 078
www.stjerna.de

Rechtsanwalt
Klaus-Heiner Lehne

40593 Düsseldorf

14.06.2016

“Unitary patent package” – Cost situation for SMEs

Dear colleague Lehne,

I make contact with you in your position as the former rapporteur of the European Parliament’s Legal Affairs Committee for the international Agreement on a Unified Court. As you may know, I have followed the project of the European “patent package” for some time, having published articles on this topic on my website on a regular basis.

In the legislative proceedings, you were one of the most vociferous proponents of the “patent package”, claiming that it would in particular serve to support and ease the burden on SMEs and would significantly reduce their costs for obtaining patent protection and for its enforcement in court. This may have been your expectation, since at the time the components of the “patent package” were adopted in the European Parliament on 11/12/2012 neither the costs for the “unitary patent”, especially the annual renewal fees having to be paid for it, nor the court fees and the level of reimbursable costs at the Unified Patent Court (“UPC”) were known.

After these costs have meanwhile been determined, the allegation that the “patent package” would reduce costs and support SMEs is obviously incorrect. I have recently written an article on this which I enclose for your information.

As you can see from it, it is rather the contrary of the aim communicated in the legislative proceedings that has been created. Especially the cost situation at the UPC will be prohibitive for many SMEs. Interestingly, the latter has been confirmed by the Commission in a working



paper at the end of October 2015, in which it was said that in terms of the significant cost risk entailed, SMEs would need litigation insurance, at the same time admitting that such insurance is not currently available on the market (more details on this can be found in my article).

I would be interested in your assessment of the situation as a former rapporteur, in particular with regard to the envisaged SME support. Do you think this is acceptable, bearing in mind the clearly communicated objectives of the legislator?

I know that you have meanwhile taken up a new function, but I assume that, with regard to your previous position and your clearly communicated attitude, you will have an opinion on this. I would be glad if you could share this with me.

With kind regards

Dr. Ingve Björn Stjerna
Rechtsanwalt
Fachanwalt für gewerblichen Rechtsschutz

Enclosure



EUROPÄISCHER
RECHNUNGSHOF

Klaus-Heiner Lehne
Mitglied

Herrn Rechtsanwalt
Dr. Ingve Björn Stjerna
Paul-Pieper-Straße 18

29. Juni 2016

D – 40625 Düsseldorf

Dear Dr Stjerna,

thank you very much for your letter of 14/06/2016 and the enclosed article.

It was indeed a personal objective for me that the new patent system will bring advantages in particular for SMEs. It is for this reason that I have supported the specific measures for SMEs that you mention in the article.

Meanwhile, I am a member of the European Court of Auditors since more than two years and I am no longer involved in the matter. Therefore and due to a lack of deeper knowledge about the current state of play, I cannot provide any comment on the arrangements that are currently being discussed.

I do hope, however, that the ultimately found arrangements will pay sufficient regard to the legitimate interests of SMEs.

With kind regards

Klaus-Heiner Lehne

From: Ingve Stjerna
Sent: Tuesday, 5 July 2016 10:56
To: Klaus-Heiner Lehne
Subject: "Unitary patent package" - Cost situation for SMEs, your letter of 29/06/2016

Dear colleague Lehne,

many thanks for your letter of 29/06/2016.

I am surprised that you do not wish to comment on the matter in more detail. Of course, some time has passed since the conclusion of the European legislative proceedings and you have taken up a new function. However, I assume that in your capacity as a former rapporteur with intimate knowledge of the subject matter and as a lawyer you will have an opinion on the cost situation as it now stands as a result of the recent decisions - the amounts for cost reimbursement are not "currently being discussed", but are subject to a final draft decision ready for adoption, cf. its most recent version here.

As pointed out in the provided article, in the debate in the EU Parliament on 11/12/2012 you stated that the new system was "an enormous step forward for small and medium-sized enterprises" and that with it "for the first time, equality of arms is created between large companies and small ones." As you can see from the comparative calculations in my article (ibid., p. 6, r. col.), at the Unified Patent Court the reimbursable representation costs will increase by approx. the factor 2.5 to 6 when compared to the amount currently due at the same value in dispute under German law.

The specific measures for SMEs mentioned in your letter of 29/06/2016 - insofar as they are relevant at all in this context - do not make much of a difference for that, as I had pointed out in my article as well.

I may be that - as you say in your letter - you hope that arrangements will be found that "pay sufficient regard to the legitimate interests of SMEs". However, in your function as a rapporteur, you have repeatedly and with emphasis presented it as a guaranteed fact (and I abstain from providing further citations) that SMEs would profit considerably from the new system, especially that it would be much cheaper for them than the traditional one.

In view of this obvious discrepancy between the promises made and the actual reality I would be very much interested what your thoughts as the formerly responsible rapporteur are about this. Thus, I again ask for your opinion. Is the system in its current form the one that you as a rapporteur have presented at the end of the EU legislative proceedings and that you strongly supported or is it not?

It should be possible for you to give an estimate on this. I would be grateful if you could provide this to me.

With kind regards
Ingve Stjerna