

# **ECONOMIC AND LEGAL ASPECTS OF THE PATENT LITIGATION IN THE EUROPEAN UNION: DEVELOPMENTS AND PERSPECTIVES**

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## **Abstract**

This article introduces an ongoing process of creation of the Unified Patent Litigation System (UPLS) in Europe and describes shortly the structure of the proposed European and European Union Patents Court (EEUPC). Current patent litigation systems in various European countries and deficiencies in the current systems are also described. The EEUPC will deal with the infringement and validity cases of European patents and EU patents. This article contains a detailed list of court actions over which EEUPC has exclusive jurisdiction, benefits of the new system as well as stakeholders' concerns.

**Keywords:** European Patent Litigation Agreement (EPLA), Unified Patent Litigation System (UPLS), European and European Union Patents Court (EEUPC), Agreement on the European and Community Patents Court, European Union patent (EU patent), European Court of Justice (ECJ), Competitiveness Council, exclusive jurisdiction, court actions.

**JEL Classification:** K10, K41

## **1. Introduction**

On 4 December 2009 the Member States of the European Union at the 2982nd Competitiveness (Internal Market, Industry and Research) Council meeting approved of the document "Conclusions on an enhanced patent system in Europe" also called a roadmap for a single European patent regime. A common patent system was viewed as single most important factor to improve the climate for innovation in the EU. Single patent is a necessary prerequisite for boosting growth through innovation and for helping European business, in particular the small and medium-sized enterprises (SMEs), face the economic crisis and international competition. Furthermore, effectively functioning European patent system is not only an economic tool to promote innovation, but has important impact also for all players on the European market by facilitating cross-border trade and investment.

The goal of the present study is to analyse situation in functioning of the legal mechanism of the current and future patent litigation systems in the EU and their economic impact, especially for SMEs. The results of this study may be used for adaptation of the Estonian domestic legislation to EU legislation.

The present study consists of seven sections. In the next two sections are described the current patent litigation system in Europe and deficiencies in the current system.

Section four gives the overview of the main features of the single European patent regime and historical background and development of the European patent litigation system. In sections five and six is presented the structure and jurisdiction of the European and European Union Patents Court. Benefits of the new patent litigation system and concerns of the users, especially SMEs are presented in section seven. A brief conclusion ends the study.

## **2. Current patent litigation system in Europe**

The patent litigation system in Europe is complex with differences in various European countries. First it should be mentioned that two legal systems based on different philosophical traditions are in use in Europe: common law and civil law system. Common law is the legal system developed among Anglo-Saxon people, especially in England and Ireland. Civil law system is used in Continental Europe and most of the rest of the world. However, differences between the common and civil law system do not have large significance in the patent field. The contrast between civil law and common law legal systems has blurred with the growing importance of jurisprudence in civil law countries and the growing importance of statute law and codes in common law countries (Wapedia, 2010). In the patent field the differences between the two traditions make themselves felt more clearly in matters of procedure than substance (Ladas & Parry LLP, 2010).

In practice there are several important differences in the court systems discussing patent matters in different countries in Europe. Some countries (Germany, France, the Netherlands and the United Kingdom) have developed specialised systems, which attract a large number of cases. Specialised patent courts have been set up also in Austria, Finland, Italy and Sweden.

The main difference of the patent courts lies in the fact that some countries in Europe practice a bifurcated system (split system) in which infringement actions and revocation actions (nullity actions) must be filed with separate courts, but in other countries one and the same court discusses both infringement actions and revocation actions. Courts discussing revocation actions may be either specialised courts or ordinary civil courts with specialised chambers or without them. Some countries, including Estonia, have systems, where patent cases are solved at ordinary courts, whereas appeals against the patent offices and revocation actions often belong to the jurisdiction of administrative or civil courts according to the location of the patent office, but infringement actions belong to the jurisdiction of the other civil courts of the state.

In Estonia Harju County Court (civil court) is responsible for all substantive matters, also appeals against the decisions of the Patent Office. Other county courts are responsible for infringement cases only.

In Germany action for the infringement cases can only be brought in certain land or district courts (*Landsgерichte*). All in all there are 13 courts over the various states, which have special patent infringement divisions. The most experienced patent

courts are in Düsseldorf, Mannheim and Munich, actually there are 50 per cent of hearings in Düsseldorf (Appelt, C. W., 2006). Appeals lie to the Regional Court of Appeals (*Oberlandsgericht*). Defences of lack of patentability and inadmissible extension are dealt with in revocation proceedings before the Federal Patent Court (*Bundespatentgerichts*) in Munich. If the Federal Patent Court issues a decision in a patent revocation action, all courts hearing an infringement action are bound to uphold the Federal Patent Court's decision with respect to the validity of that patent. The Federal Court of Justice (*Bundesgerichtshof*) has jurisdiction over complaints against Federal Patent Court decisions and also serves as the court of appeal on points on law with respect to decisions issued by Regional Courts of Appeals in infringement actions. Austria, like Germany, also has separate actions for infringement and revocation.

In the United Kingdom infringement and validity cases are dealt with in the same proceedings. As the United Kingdom comprises three separate jurisdictions the patent actions in England and Wales are brought before either the Patents Court or the Patents County Court in London. In Scotland patent actions are brought before the Outer House of the Court of Session and in Northern Ireland before the Northern Ireland High Court. Most patent actions in the UK are brought in London. If the parties so desire, for the purpose of saving time or costs, the Patents Court and Patents County Court will sit out of London (HMCS, 2008). The Patents Court forms a part of the Chancery Division of the Supreme Court. The Patents Court and the Patents County Court have identical jurisdiction and the rules and procedures in both courts are identical. However, the Patents County Court is more suited to smaller, lower-value cases (Freshfields Bruckhaus Deringer 2007).

In Switzerland the new Patent Court Act creates a special federal trial court with exclusive jurisdiction over all Swiss disputes regarding validity of patents and infringement, as well as applications for pre-trial relief. The Federal Patent Court is to take up its activities at the beginning of 2011 (JPD, 2010).

In France the new IP litigation regime entered into force on 1 November 2009. In two decrees the French Government has reorganised its court system for intellectual property. One of the decrees (Décret n° 2009-1204, 2010) related to the specialisation of courts in intellectual property matters and another (Décret n° 2009-1205, 2010) gave exclusive jurisdiction for all patent cases to the Court of Paris (*Tribunal de grande instance*). Before the reform, the civil trials were conducted before non-specialist judges belonging to one of the seven competent courts located throughout France. The French Government hopes that the new measures will lead to the development of Paris as a forum for solving patent disputes that will be competitive with the courts in the United Kingdom and in Germany (PatLit, 2010).

In Finland infringement and validity cases are dealt with by the District Court of Helsinki. The mentioned court has a specific division formed for intellectual property matters. A decision by the District Court of Helsinki can be appealed to the Helsinki Court of Appeals and, if a leave to an appeal is granted, to the Supreme Court of Finland.

### 3. Deficiencies in the current patent litigation system

Due to the membership of all the EU Member States to the Contracting States of the European Patent Convention (EPC) and the fact that enforcement of the rights deriving from the European patent belongs to the jurisdiction of the national law and therefore it is different in different countries, would bring along serious complications in the trade between the EU Member States. From the standpoint of trade it would be significantly easier if the national laws related to the enforcement of the rights were completely harmonised or regulated by the EU law. Principally it would also be easier if a single specialist court would be responsible for all patent cases and the decisions of such court would be valid with regard of all EU Member States.

Implementation of the cross-border measures by the courts of the EU Member States is a special issue regarding the competence of the EPC Contracting States. Namely in the end of the 1990-ies the Brussels Convention was applied to Article 6.1 referring to the cross-border measures against the defendants located in different states (Brussels Convention, 1968). Pursuant to the decision of the European Court of Justice of 13 July 2006 in case C-539/03 against Roche Nederland BV *et al.* Frederick Primus, Milton Goldenberg (ECJ, 2006) the EU Member States do not have the right to implement cross-border measures pursuant to Article 16.4 of the Brussels Convention and Articles 2(2) and 64(1) of the EPC (pursuant to which the European patent is equal to the national patent). The mentioned decision of the Court shows that in case of the EU Member States there is an effect of the European patent in each Member State despite of its effect in the other states. Nowadays the European patent should not be attributed features of the unitary patent in the European Union, e.g. implementation of the cross-border measures.

The sole competence of the national courts of the Contracting States of the EPC in solving the matters concerning the validity of the European patent and the enforcement of the rights as well as not permitting of the use of cross-border measures from the equality of the European patents with the national patents, follows the independence principle of the political and legal system of the Contracting States, but makes patent litigation complicated, expensive and legally uncertain for these enterprises the activities of which are related to the trade between the states.

**Complexity.** One of the principal deficiencies of the current patent litigation system is its complexity. Enterprises wishing to protect their invention in various European countries can achieve this protection through separate national patents or through a European patent (EPC has currently 36 Contracting States) and litigate their rights parallel in all countries. However, in fact there is very little parallel litigation in Europe at present. According to the statistical data contained in a survey undertaken under the German Presidency the following estimate of the number of litigation cases were obtained (European Council, 2007):

- Germany 600 - 700 infringement cases, 220 validity cases;

- France 459 cases (2005), 487 cases (2006);
- UK 153 cases (2004), 54 cases (2005);
- the Netherlands 50 -70 cases p.a.;
- Denmark 10-15 cases p.a.;
- Sweden 30-50 cases p.a.;
- Finland 15 - 20 cases p.a..

There have been two validity cases in Estonia so far.

The survey assesses that litigation in these first four countries (DE, FR, UK, NL; IT – n.a.) represent ca 90% of all patent litigation activities in Europe. The implied share of cases tried in Germany would be ca 60%.

**Costs.** Costs in current patent litigation systems differ significantly by jurisdiction and also according to type and technical field. As a rule, cost of litigation in common law countries (the UK) are much higher than civil law countries (France, Germany, the Netherlands etc.).

Court fees amounts are in some European countries fixed and in some countries variable depending on the value of the dispute. For example, in Germany court fees are variable depending on the value of the dispute. In Sweden and Finland court fees are fixed amounts. In the UK and Denmark fees depend on the value of the dispute and have to be paid in addition to the fixed fees. Switzerland also has a system with both fixed and variable fees. In the Netherlands fees are fixed or variable, depending on the type of claim (EPO, 2003).

For the current national court systems several judges deal independently of each other with infringement and revocation actions involving the same patent and the same parties. It is not affordable to litigate in parallel before several national courts, especially for most of the SMEs.

**Table 1.** Average cost of patent litigation

| The UK  | France             | Germany  | The Netherlands   | The USA                            |
|---|--------------------|--|---|------------------------------------|
| High Court: £1m<br>Patents County<br>Courts (PCC):<br>£150 -£250K | EUR 30 –<br>50,000 | First Instance:<br>EUR 25 – 50,000<br>Second Instance:<br>EUR 90,000 | EUR 10 – 20,000<br>for summary<br>proceedings,<br>EUR 40,000 for a<br>simple action | US \$ 2 to 4<br>Million<br>upwards |

Source: Intellectual Property Advisory Committee (IPAC, 2003) and COM (2007) 165 final.

**Speed.** There are differences in the speed of the proceedings in various jurisdictions. In most European countries a patent infringement claim causes a counterclaim for the revocation. It has become popular practice for an alleged patent infringer to challenge the validity of a patent. Another consequence to slow proceeding is split

procedure. The practice of the courts is generally to stay the infringement claim until the validity is decided by another court. Quality of the patents and qualification of judges are also important factors. Relatively rapid courts are in Germany, the Netherlands and England.

**“Forum shopping.”** One of the deficiencies in the current patent litigation system in Europe is a possibility to play procedural "games". Parties, because of the differences between national systems, have started shopping around (so called "forum shopping") to find a country that may be more likely to grant them a favourable outcome in their patent trial. An infringer trying to escape a justified claim will attempt to initiate an action for a declaration of non-infringement before a court reputed as slow or inexperienced. A patent proprietor with a strong case will attempt to bring the case before a court known to award high damages or reputed as "patent-proprietor-friendly". Using possibility of "forum shopping" parties had developed blocking strategies (so called "torpedoes") based on the *lis pendens* rules in Regulation (EC) 44/2001 and the Lugano and Brussels Conventions. Torpedoes are used by alleged infringers as a means to avoid being hurt by actions taken in infringement proceedings and cross-border injunctions (EPO, 2006).

**Table 2.** Patent litigation costs by “small – large” case

| First Instance Proceedings |                       |                        |              | Second Instance Proceedings |              |
|----------------------------|-----------------------|------------------------|--------------|-----------------------------|--------------|
| Country                    | Litigation Cases (EP) | " Small - Medium Case" | "Large Case" | "Small - Medium Case"       | "Large Case" |
| DE                         | 420                   | 50,000 €               | 250,000 €    | 150,000 €                   | 190,000 €    |
| FR                         | 210                   | 50,000 €               | 200,000 €    | 40,000 €                    | 150,000 €    |
| GB                         | 105                   | 150,000 €              | 1,500,000 €  | 150,000 €                   | 1,000,000 €  |
| NL                         | 56                    | 60,000 €               | 200,000 €    | 40,000 €                    | 150,000 €    |
| <b>Total</b>               | <b>791</b>            |                        |              |                             |              |

Sources: Final Report. EC tender No. MARKT/2008/06/D.

**Unpredictability and legal uncertainty.** In a fragmented court system case duplication may lead to divergent outcomes. The German courts and the French courts still tend to allow patent claims a broader scope than the English courts. A well-known example is the Improver/Epilady case (Improver Corp. v. Remington Prods. Inc.), where infringement was found in Germany, Austria and the Netherlands, and non-infringement in England and Italy (GRUR, 1993). This case is a good illustration of how courts in different EPC jurisdictions adjudicating the same patent have come to conflicting conclusions caused by different interpretation of the claims under the doctrine of equivalents. There are some other cases where

uniformity of criteria does not assure uniformity of decision (Franzosi, M., 2001). Besides different application and interpretation of harmonized substantive patent law, national procedural rules and different views on cross-border litigation are the reason for the increase of uncertainty as well as unbalanced qualification and experience of judges.

**Judges.** In these countries, where there are specialized patent courts or where the number of cases is big as in the above-mentioned four countries Germany, France, the United Kingdom and the Nederland, the judges are qualified and have sufficient experience. In some countries concentration of patent cases on a limited number of courts enables for some judges to specialize in patent litigation and obtain some qualification. But nowadays there are neither specialised patent courts nor sufficient number of cases for the judges to obtain the required experience in many European countries. Furthermore, in the majority of countries the judges dealing with patent cases have technical qualification, but the constitution of many countries requires a university degree in law. In these countries the judges often make use of assistance by the technically qualified experts, who unfortunately do not have the knowledge of the patent law. (Such problems have arisen also in the Estonian court practice, although very few patent cases have been discussed in Estonia. Only four countries (Austria, Denmark – 1<sup>st</sup> instance, Germany, Hungary) of the European Union have technically qualified judges. Probably the judges in the German patent court system are the most highly qualified and have the best experience. At the German Federal Patent Court, 56 legally qualified judges and 63 technically qualified judges serve alongside the court's President and Vice-President. The Revocation Boards, which are competent for adjudicating actions to revoke a patent, are as a rule composed of one legally qualified judge as a presiding judge, an additional legally qualified judge and three technically qualified judges. Regional Courts at the first instance and with Higher Regional Courts on appeal are composed exclusively of legally qualified judges (Bundespatentgericht, 2010).

In the United Kingdom patent cases are heard before specialist patent judges. The Patent Court in the High Court is staffed by two judges, who have long experience at the patent bar before elevation to the bench.

However as in Italy there is lack of technical expertise of the judges dealing with patent litigation, an expert witness will be appointed to advise the court objectively on technical issues in virtually all patent cases and also on the determination of the amount of financial compensation (Freshfields Bruckhaus Deringer, 2007).

In Finland the Helsinki District Court is assisted by two technical experts to be appointed by the Court. The experts shall be entitled to question the parties and the witnesses. However, these technical experts have no knowledge of legal or technical aspects of patents, but are merely experts in certain technological fields. Unfortunately, a patent owner cannot expect too much expertise from the courts. Although some judges have a certain degree of experience in hearing patent cases, they do not have the same expertise as patent judges in the UK or Germany.

Furthermore, there are no technically capable patent judges among the court members (Palm, J. and Konkonen, T., 2008).

#### **4. Main features of the single European patent regime and background information**

The EU Council conclusions of 4 December 2009 contain the main features of a European and European Union Patents Court (EEUPC) as well as a European Union patent (EU patent). A separate regulation is prescribed to be worked out in order to solve the language problems related to an EU patent. For enhancing the efficiency of the patent granting process closer cooperation between the European Patent Office (EPO) and national industrial property offices (The Enhanced Partnership) is foreseen. In order the EU patent to become operational and for the accession of the EU to the EPC, amendments would be necessary to be made to the EPC. The proposals are subject to a pending opinion by the European Court of Justice (ECJ) on whether the proposed ideas comply with the EU law. At the beginning of July 2009 the EU Council submitted a request to the European Court of Justice for an opinion on the compatibility of the proposed agreement on the UPLS with the EC Treaty (Opinion 1/09, European Court of Justice). A response may take up to two years to arrive.

The unified patent litigation system for Europe is not an EU initiative. The idea to set up a European Patent Court was presented by the Contracting States of the European Patent Organisation. At the Paris Intergovernmental Conference on 25 June 1999, the Contracting States set up a Working Party on Litigation (WPL). WPL was mandated (EPO, 1999):

- to study under what conditions the principle of arbitration in litigation relating to validity and infringement might be acknowledged by the Contracting States,
- to define the terms under which a common entity can be established and financed, which national jurisdictions can be referred to, with a view to obtaining advice, that part of any litigation relating to validity and infringement,
- to present a draft text for an optional protocol to the EPC which, with regard to litigation concerning European patents, would commit its signatory states to an integrated judicial system, including uniform rules of procedure and a common court of appeal.

A sub-group of the WPL was set up in October 2000 by the WPL to produce a draft agreement. Agreed by the WPL legal instruments, which had to be established, were the Draft Agreement on the establishment of a European patent litigation system and the Draft Statute of the European Patent Court. The texts of both documents were completed on 16 February 2004. In September 2005 the Draft Agreement was amended with the provisions of Directive 2004/48/EC. Timing of work with the European Patent Litigation Agreement (EPLA) coincided with working out of the new regulation of a Community patent. In addition to the EPLA also amendments to the text of the Convention with the aim of making EPO's Boards of Appeals an organisationally autonomous Board of Appeal was prepared in the European Patent



Organisation (EPO, 2006). Due to the fact that the regulation of a Community patent was not adopted elaborate work on the EPLA stopped. The latest draft (EPO, 2005) was submitted to the WPL on the occasion of its meeting on 14 December 2005 after which the work on the Draft Agreement was stopped. In February 2006 the European Patent Office acting as secretariat of the WPL issued a document named "Assessment of the Impact of the European Patent Litigation Agreement (EPLA) on litigation of European patents" (EPO, 2006). The document explains the shortcomings of the current system as well as the benefits for the participating states, the users and the European patent system in general. The document also presents cost estimates for the current European patent litigation and before the future court.

Further working out of the European patent litigation system moved from the European Patent Organisation to the working groups of the European Commission and the EU Council. Information exchange and observation of the developments in the working groups of the EU Council have remained activities of the WPL. In January 2006 the Commission launched the consultations with the aim of collecting stakeholder's views on the patent system in Europe. On 12 July 2006 the Commission hosted a public hearing in Brussels. The aim of the hearing was to initiate the second phase of the consultation. Issues for debate were preliminary findings of the first phase. Following the conclusions adopted by the Competitiveness Council of Ministers on 4 December 2006 and the EU Council on 8 and 9 March 2007 the Commission presented the Council Communication on enhancing the patent system in Europe (EU Commission, 2007) to the European Parliament on 3 April 2007 (hereafter Communication from the Commission).

In the mentioned document three options for the patent litigation system were presented to the Member States. The EPLA was the basis of option A. According to option B litigation concerning both Community patents and European patents would belong to the jurisdiction of the Community Patents Court to be set up for that purpose. Option C or the Commission's compromise option prescribed implementation of the EPLA solely with regard of the European patents and out of the jurisdiction of the Community. On the basis of that Communication in the Council Working Party on Intellectual Property (Patents) the discussions on developing the main features of the patent court system and solutions for the Community patent have taken place. First extension of the system to the Community patent was decided not to be discussed in order to facilitate the circumstances and avoid disputes. The Slovenian Presidency in the first half of 2008 presented a preliminary Draft Agreement creating a Unified Patent Litigation System (UPLS) and a revised proposal for a Council Regulation on the Community patent.

The Unified Patent Litigation System will have jurisdiction both in relation to European patents and Community patents in the future. Therefore the system envisages a mixed agreement to be concluded between the Community, its Member States and other Contracting Parties to the European Patent Convention. However, the Council Working Party had almost finished with the text of the "Draft Agreement on the European and Community Patents Court", whereas it was not clear whether the Community had the required competence and possible legal basis

to conclude such agreement. The first issue is whether the Member States have the right to implement such court system, where all the competence belongs to the Courts of the European Commission, on the European patents and whether this system is in accordance with the first regulation of Brussels (Council, 2000). In its Opinion of 10 November 2008 (doc.15487/08), the Council Legal Service recommended that the ECJ be consulted on the compatibility of the Draft Agreement with the EC Treaty. Accordingly the Presidency drew up a document outlining issues to be covered in a request for an Opinion under Article 300(6) EC on the compatibility of the Draft Agreement with the EC Treaty (9076/09). This issue was discussed by the Council Working Party on 8 May 2009. There was always a certain degree of pessimism among the Working Party members to have a positive opinion from the ECJ. The delegations also had broad consensus to defer a detailed examination of the Commission's recommendation until the ECJ has given an opinion on the Draft Agreement. However, in terms of the text of the proposal, long list of issues such as the composition of the judicial panels, the language arrangements, jurisdiction on validity, control exercised by the Court of Justice, the financing of the judicial system and the transitional arrangements were needed to be discussed further in order to reach a consensus. Meanwhile the Working Party had preliminary discussions on the Commission Services' Working Paper on Rules of Procedure for a Unified Patent Litigation System (doc.11813/09) on 22 July 2009. The European Commission started a study of caseload and financing of the EEUPC. Concerning the EU patent EU Council also agreed on 4 December 2009 draft Regulation on the EU patent - General approach and set of conclusions including arrangements related to renewal fees for the EU patent and their distribution. Translation arrangements related to EU patent will be dealt with in a separate Regulation. Regulation on the EU patent comes into force together with Regulation on the translation arrangements.

## **5. European and European Union Patents Court**

As outlined in the last Draft Agreement (Doc. ST7928/09 of 23 March 2010) the EU patent court system has two levels. EEUPC should comprise a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance should comprise a central division as well as local and regional divisions. The ECJ shall ensure the principle of primacy of the EU law and its uniform interpretation. It would rule on preliminary questions asked by the court on the interpretation of the EC law. Figure 1 illustrates the structure of the EEUPC.

**The Court of First Instance.** The Court of First Instance shall comprise a central division, local divisions and regional divisions. A local division shall be set up in a Contracting State upon its request and in accordance with the Statute of the Court. An additional local division may be set up when more than one hundred patent cases per calendar year have been commenced in that Contracting State during three successive years prior to or subsequent to the entry into force of the Agreement. The number of divisions in one Contracting State shall not exceed three. A regional division may be set up for two or more Contracting States upon their request in accordance with the Statute. The regional division may hear cases in multiple

locations. At all divisions of the Court of First Instance sub-registries shall be set up, which shall upon filing notify every case to the Registry.

**The Court of Appeal.** An appeal against a decision of the Court of First Instance may be brought before the Court of Appeal by any party, which has been unsuccessful, in whole or in part, in its submissions. The appeal against a decision of the Court of First Instance may be based on points of law and matters of fact. The seat of the Court of Appeal shall be designated by the Contracting States in the later stage.

**A Registry** shall be set up at the seat of the Court of Appeal. The Registry shall keep records of all cases before the Court. The Registry shall be subject to certain limitations public.

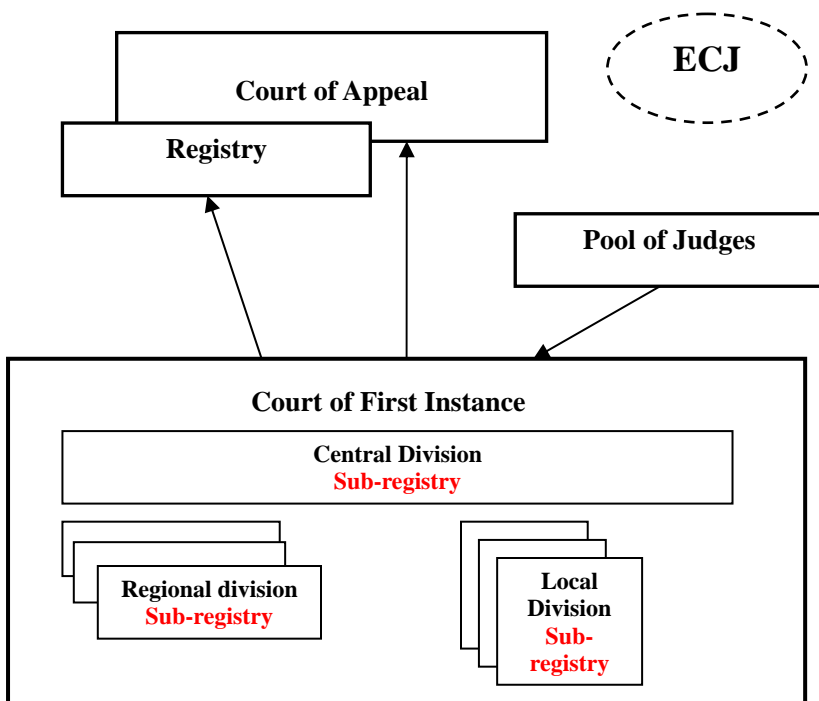
**Judges.** Any panel of the Court of First Instance shall have a multinational composition and sit in a composition of three judges. Any panel of a local division consists of two qualified permanent national judges and the third judge, of a different nationality, allocated from a Pool of Judges on case by case basis. In a Contracting State, where during a period of three successive years more than fifty patent cases per calendar year have been commenced at first instance, the third judge may serve also on a permanent basis. Any panel of a regional division consists of two permanent judges chosen from the regional list of judges, who shall be nationals of the Contracting States concerned, and one judge from the Pool of Judges of a different nationality. The President of the Court of First Instance may, after having heard the parties, allocate from the Pool of Judges a technically qualified judge with qualifications and experience in the field of technology concerned.

Any panel of the central division shall sit in a composition of two legally qualified judges and one technically qualified judge. The allocation of judges shall be based on their legal or technical expertise, linguistic skills and proven experience.

The Pool of Judges shall be composed of all legally qualified judges and technically qualified judges from the Court of First Instance, who are full-time and part-time judges of the Court. The Pool of Judges must have at least one technically qualified judge with qualifications and experience per field of technology.

Any panel of the Court of Appeal shall sit in a multinational composition of five judges. It consists of three legally qualified judges and two technically qualified judges. Any panel shall be chaired by a legally qualified judge.

The judges of both instances are appointed from the Member States and they act as EU judges. It is not excluded that the judges might be the judges of the national courts and who have sufficient experience in solving the disputes concerning patents. For the purpose of appointment of the judges the Advisory Committee shall establish a list of the most suitable ones. On the basis of this list, the Mixed Committee shall appoint the judges of the Court acting by common accord.



**Figure 1.** Structure of the EEUPC.

All panels of the local and regional divisions and the central division of the Court of First Instance should guarantee equally high quality of work as well as high level of legal and technical expertise. Legally qualified judges shall possess the qualifications required for appointment to judicial offices in a Contracting State. Technically qualified judges shall have a university degree and proven expertise in a field of technology. They shall also have proven knowledge of civil law and procedure. Training network of the patent judges should be created.

**Languages of proceedings.** The language of the proceedings of the local and regional divisions is the language of the Contracting State, where the division is located. Either parties may agree, subject to approval by the competent division, on the use of the language in which the patent was granted. Moreover, the Contracting States may designate one or more working languages of the European Patent Office as the language of proceedings (i.e. English, German or France).

The language of proceedings at the central division is the language in which the patent was granted. The language of proceedings before the Court of Appeal shall be the language of proceedings before the Court of First Instance. Parties may agree on the use of the language in which the patent was granted as language of proceedings. The Court of Appeal may decide to make an exception.

**Legal status and financing.** The Court shall have legal personality. The Court shall be represented by the President. There are a Mixed Committee, a Budget Committee and an Advisory Committee to ensure functioning of the Court. The Mixed Committee and the Budget Committee shall be composed of one representative of each Contracting Party. The EU shall be represented by the Commission. The Advisory Committee shall comprise patent judges and practitioners in patent law and patent litigation with the highest recognised competence.

The budget of the Court shall be financed by the Court's own revenues comprising court fees, other revenues and, if necessary, by contributions from the EU and from the Contracting States. Court fees shall be fixed by the Mixed Committee on a proposal by the Commission. The Mixed Committee should ensure a principle of fair access to justice, particularly for SME-s, and the same time should consider the adoption of measures aimed at the objective of self-financing of the Court.

**Accession.** Initially, accession by the Contracting States of the EPC, who are not EU Member States, should be open only for the Contracting Parties to the European Free Trade Agreement. After the transitional period the Mixed Committee may invite other Contracting States of the EPC to access to this Agreement, if they have fully implemented all relevant provisions of the EU law and have put into place effective structures for patent protection. The Commission has requested that the Council authorise the Commission to open on behalf of the EU negotiations for the adoption of an Agreement creating a Unified Patent Litigation System (European Commission, 2010).

## **6. Jurisdiction of the ECPC**

**Scope of application.** The EEUPC will have an exclusive jurisdiction over civil cases dealing with the infringement and validity of European patents and EU patents. Court deals with:

- European patents and European patent applications;
- future EU patents;
- compulsory licences in respect of the EU patents;
- supplementary protection certificates (SPC).

Patents granted by national patent offices (NPO) would remain outside of the jurisdiction of the EEUPC. Exclusive jurisdiction of the EEUPC is for:

- infringement actions of patents and SPCs;
- actions or counterclaims for revocation of patents;
- actions for declaration on non-infringement;
- actions for provisional and protective measures and injunctions;
- actions for compensation in respect of the protection conferred by a published patent application;
- actions relating to the use of the invention prior to the granting of the patent or to the right based on prior use of the patent;

- actions for the grant or revocation of compulsory licences in respect of EU patents and
- actions on compensation for licences.

In case of infringement EEUPC would have essentially the power:

- to order the infringer of such a patent to cease and desist;
- to order the destruction of infringing goods or materials used to manufacture infringing goods;
- to order the payment of damages to the injured party and for the infringer to inform the injured party of the identity of any third person involved;
- to issue provisional and protective measures, including preliminary injunctions, orders for inspection of property, freezing orders and sequestration;
- revoke a European or a EU patent.

The national courts shall have jurisdiction in actions related to EU patents and European patents, which do not come within the exclusive jurisdiction of the ECPC such as inventorship, entitlement to the patent, assignment, criminal measures under the applicable national law etc.

In case of infringement of rights the competence of the courts is determined on the basis of the Brussels I regulation. Thus, infringement actions, actions for provisional and protective measures and injunctions, actions for compensation conferred by a published patent application (derived from the provisional protection) and actions relating to the prior use shall be brought before the local division (or the regional division), where the infringement has occurred or may occur or where the defendant is domiciled. If there is neither local division nor regional division hosted by the Contracting State concerned, the actions shall be brought before the central division.

In case of a counterclaim for revocation the local or regional division concerned shall have, after having heard the parties, the discretion either to proceed with both the infringement action and with the counterclaim for revocation or refer the counterclaim for decision to the central division. With agreement of the parties the case may be referred for decision to the central division.

## **7. Benefits of the new patent litigation system and concerns**

According to the Commission, the absence of a unified patent litigation system renders access to the patent system complex and costly and hampers effective enforcement of patents, especially for SMEs (European Commission, 2010). International Chamber of Commerce (IIC) in its basic requirement for a new litigation system finds that a new patent litigation system involving European patents must be significantly better for the users than the present one. Companies, both large and small, which rely on patents for protecting their innovations in their daily business would only benefit from a new patent litigation system, if it is of high quality, cost-effective, efficient and predictable (IIC, 2008).

**Quality and judges.** To guarantee a high degree of quality and legal certainty, the panel should be composed of judges experienced in patent matters. All patent cases, which fall under the jurisdiction of the EEUPC, relate not only to legal issues, but also deal with technical subject matter. Therefore, technical expertise is indispensable on the part of each panel. Therefore, the technically qualified judge has an important role to play in revocation proceedings, where the questions of novelty and inventive step are looked at, and also in infringement cases, where a particularly difficult technology is the subject of the patent dispute. In order to create an efficient system the technically qualified judges would have to be highly specialised. An estimated number of at least 40 technically qualified judges, each covering a specialised field of technology, would be necessary (Council, 2008).

The issue of enhancing technically qualified judges was the one causing hot discussions and will remain the one in the future also. As it was already mentioned before there are technically qualified judges only in four states out of 27 EU Member States. In many states judges should have academic education in law in accordance with the Statutes. Generally technically qualified judges do not have a degree in law. They shall have a university degree and proven expertise in a field of technology. As the Agreement on the EEUPC is an international treaty and the judges are the ones of the international court acting in accordance with the Agreement and as the conditions of their appointment are also determined by the Agreement nothing prevents making use of the technically qualified judges in the court system. But it may prevent such states from accession to the system, where the decisions are made by the judges without having an academic degree in law are invalid.

According to the agreement any panel of the Court of First Instance and the Court of Appeal shall have a multinational composition. A local division shall sit in a composition of two permanent judges and one judge from the Pool of Judges. Permanent judges are as a rule legally qualified judges. Any panel of the central division shall sit in a composition of two legally qualified judges and one technically qualified judge. Any panel of the Court of Appeal shall sit in a composition of three legally qualified judges and two technically qualified judges. By using the multiple legally qualified judges of different nationalities it was estimated to achieve a unified procedure and legal certainty of the decisions.

It should be mentioned that in order to guarantee the right decision from the standpoint of the technical substance of invention, for example the Revocation Boards of the German Federal Patent Court, which are competent for adjudicating actions to revoke a patent, are as a rule composed of one legally qualified judge as presiding judge, an additional legally qualified judge and three technically qualified judges (Section 67 (2) of the German Patent Act). Furthermore, according to Article 19 of the EPC the Opposition Divisions, which are responsible for the examination of oppositions against any European patent and make a decision of revocation or maintenance of the European patent, shall consist of three technically qualified examiners. Only, if the Opposition Division itself considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner.

It should be admitted that enhancing technically qualified judges in the system is a significant achievement. At working out of the EPLA the EPO WPL (Working Party on Litigation) had enhanced patent experts, including employees of the patent offices from the Contracting States, whereas mostly judges and attaches from the Permanent Representations of the Member States to the EU participated in the work of the EU Council Working Party on Intellectual Property (Patents).

Due to overwhelming majority of judges strong opposition could be felt against the use of technically qualified judges at all in the system. There was almost the same or even stronger opposition against recognition of technically qualified patent attorneys as independent representatives in court procedures. In the answers to the Questionnaire on European Patent Judiciary for the Fourth European Judges' Forum 2008 in Venice judges approved by more than a 2/3 majority proposed by the EU Presidency composition of the Court of three legally qualified judges from two nationalities. But judges were divided on the necessity and the practice of the involvement of a technical judge as the fourth judge. One group voted for the proposal of the Presidency, namely an optional involvement of a technical judge, another group for a mandatory involvement and a third group against a technical judge (Fourth European Judges' Forum, 2008).

Contrarily to the standpoint of the judges concerning the need for technically qualified judges the representatives of industry were worried about the sufficient number of both qualified and experienced technically qualified judges in all technical fields (EPLAW, 2008). Besides, the representatives of some technical field and branches of industry were very concerned, because of the fact that limited number of technically qualified judges of the Pool of Judges will have exclusive power to determine the fate of the inventions in the particular technical field. The latter mentioned danger may actually be a real one. In order to decrease the occurrence of the danger it would be necessary to have more technically qualified judges in each panel as it is in the Revocation Boards of the German Federal Patent Court and Opposition Divisions of the EPO.

**Costs.** It is clear that use of the UPLS is less costly compared to litigation in all EPC Contracting States or even in EU countries. Expenses for litigation include besides court fees, assistance of lawyers, patent attorneys, experts, witnesses and translators, costs of technical investigations and also security amounts in connection with injunctions or enforcement of judgments, the other party's costs or the costs for the opponent's damages or losses if the party loses the case. Costs may vary significantly according to the type of proceedings, complexity of the case, technical field and amounts in dispute. Therefore, avoiding duplication of infringement and revocation cases give likely large benefits to the European industry.

The data given in the Communication from the Commission estimate that overall cost for litigation before one European Patent Court would vary between 97,000 EUR and 415,000 EUR at first instance and between 83,000 EUR and 220,000 EUR at the second instance. Depending on which three of the four EU Member States are considered the cost of an average case heard by a unified patent jurisdiction is



estimated at 10 to 45% less than the cost of today's parallel litigation at first instance and 11 to 43% at second instance.

According to an expert study performed by professor Dietmar Harhoff for Commission (Harhoff, 2010) currently between 146 and 311 infringement cases are being duplicated annually in the EU Member States. By 2013, this number is likely to increase to between 202 and 431 duplicated cases. It is estimated that by 2013 the creation of the UPLS would result in total private cost savings between 148 and 289 EUR million per annum. The estimates are based on the assumption that the EEUPC will offer litigation at roughly the same cost level as the three largest low-cost national systems (Germany, France and the Netherlands). The operational costs of the EEUPC with capacity for 940 cases per annum are estimated to be at 27.5 EUR million. Thus the average operational costs per case are estimated to be at 29.280 EUR.

In the Communication from the Commission it is pointed out that patent litigation in the EU is unnecessarily costly for all parties involved. This is not as severe a problem for big business as for SMEs and individual inventors, for whom the costs of litigation can be prohibitive. The Commission declares that their patent strategy should involve a reduction of litigation costs for SMEs. But looking at the data given in the before mentioned studies and other calculations made at different times on the cost of the UPLS it seems that the costs of litigation, even under a reformed European system, are still likely too high for SMEs. It is the standpoint of several organisations uniting SME-s in Europe and also IPR expert groups (Pro Inno Europe, 2007). According to the FFII statement given to EPLA at EU patent policy hearing (FFII, 2006) the EPLA means higher costs for small businesses and increased litigation risks. It will become harder to enforce patent, because litigation just became 2-3 times more expensive.

From the viewpoint of Estonia the cost of UPLS causes concerns. In Estonia ca 99.9% of the Estonian enterprises are SMEs. About 16% of these are small enterprises and 81% are micro enterprises. Average turnover for the Estonian SMEs was 0.62 million EUR, including 0.22 million EUR for micro enterprises (Antons, O., 2007). It is clear that UPLS is not in the near future affordable for the Estonian SMEs. The proposed UPLS may be more affordable for bigger European SMEs.

What could be the solution for SMEs? One possible solution is that litigation cost would partly or fully be compensated by the Commission. Creation of a specific mechanism is needed for realisation of this opportunity. Another possible solution is patent insurance.

**Patent insurance.** Patent insurances may aid SMEs in paying the litigation costs connected to defending or enforcing their rights. There are two types of patent insurance (IPR helpdesk, 2006):

- offensive patent insurance or patent enforcement insurance, which covers costs incurred by insured party in connection with a dispute aimed at enforcing patent rights and

- defensive patent insurance, also called patent infringement liability insurance, which protects alleged patent infringers from paying the costs and damages of patent infringement litigation.

The brokers in Germany, Austria, Belgium, Sweden and the UK have most experience. High premiums (20,000-50,000 EUR annually) are the main reason why patent insurance is not considered by most SMEs. In order to make patent insurance more affordable the Commission is considering introducing a patent insurance scheme at the European level. An essential element of the possible European patent insurance scheme is also low fixed premium 300-600 EUR per annum for each European patent throughout the life of the patent (EU Commission, 2006). The proposal on which the study is based is for mandatory insurance of all European patents. The patentee could choose his insurer, but would need to produce his certificate of insurance or exemption on national validation and each subsequent renewal. Unfortunately, most of insurance companies did not seem to be very enthusiastic about introducing patent insurance.

**Other concerns.** There are more concerns of different stakeholders in connection with the UPLS and EEUPC. For example, Nokia does not disagree with the idea establishing a centralized litigation system for European patents. Particularly in the absence of an EU Patent, UPLS may be advantageous for users. However, Nokia has an opinion that if the EEUPC has exclusive jurisdiction over patent infringement and validity issues, but jurisdiction for non-patent matters is left solely with the national courts, it will be more difficult dealing with two separate sets of proceedings, and having to rely on one court's discretion to grant appropriate stays etc., when dual questions arise (Nokia, 2006).

The Foundation for a Free Information Infrastructure (FFII), which represents more than 3,000 small-to-medium IT firms and 8,000 IT professionals, is afraid that the Commission will use this centralised and trusted court for pushing software patents (FFII, 2010). FFII President Pieter Hintjens has explained that UPLS will make it easier for large US companies to sue small European IT firms (FFII, 2007).

The key concern of *Digitaleurope* is that the agreement allows local and regional patent litigation divisions in the Court of First Instance to use their own national languages instead of limiting the system to the EPO language regime (Standeford, D., 2010).

**Winners.** Users of the UPLS, who are indubitably the biggest winners, are large companies, especially those interested in the EU cross-border patent litigation, pharmaceutical industry and also the US and Japanese companies interested in European markets.

**Research organisations and Universities.** Commission recommendation on the management of intellectual property in knowledge transfer activities and code of practice for universities and other public research organisations exist (EU Commission, 2008). According to point 4 of this Recommendation universities and

other public research organisations are requested to be responsible for broad dissemination of knowledge created with public funds by taking steps to encourage open access to research results, while enabling, where appropriate, the related intellectual property to be protected. The main reasons for low activity of the litigation of patents of universities are considered to be:

- low level of funding of R&D - typically university budget is very tight;
- risk of losing millions of dollars/euros in litigations costs;
- litigation may damage good relationships with donors and sponsors from industry;
- low IP awareness.

UPLS may be advantageous for universities and R&D organisations however, the possible costs of patent litigation should be properly considered in the universities research revenues.

## **Conclusions**

On 4 December 2009 the Member States of the European Union at the 2982nd Competitiveness (Internal Market, Industry and Research) Council meeting unanimously approved of the document “Conclusions on an enhanced patent system in Europe” also called a roadmap for a single European patent regime. A common patent system was viewed as the single most important factor to improve the climate for innovation in the EU. The conclusions of the EU Council contain the main elements of a European and European Union Patents Court (EEUPC) as well as a European Union patent (EU patent).

The current patent litigation system in Europe is complex with differences in various European countries. The main difference of the patent courts lies in the fact that some countries in Europe practice a bifurcated system (split system) in which infringement actions and revocation actions (nullity actions) must be filed with separate courts. In other countries one and the same court discusses both infringement actions and revocation actions. Courts discussing revocation actions may be either specialised courts or ordinary civil courts with specialised chambers or without them. Some countries, including Estonia, have systems, where patent cases are solved at ordinary courts, whereas appeals against the patent offices and revocation actions often belong to the jurisdiction of administrative or civil courts according to the location of the patent office.

Main deficiencies in the current patent litigation system are complexity, slowness of the judicial procedure and high cost of litigation, unpredictability and legal uncertainty of decisions and a possibility to play procedural games (“forum shopping”, “torpedoes”).

The objectives of the new system are high quality, cost-efficiency and predictability of the decisions.

EEUPC should comprise a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance should comprise a central division as well as local and regional divisions. The ECJ shall ensure the principle of primacy of the EU law and its uniform interpretation. It would rule on preliminary questions asked by the court on the interpretation of the EC law. Figure 1 illustrates the structure of the EEUPC.

The Court of First Instance shall comprise a central division, local divisions and regional divisions. A local division shall be set up in a Contracting State upon its request. An additional local division may be set up, when more than one hundred patent cases per calendar year have been commenced in that Contracting State during three successive years. The number of divisions in one Contracting State shall not exceed three. A regional division may be set up for two or more Contracting States, upon their request. The regional division may hear cases in multiple locations. An appeal against a decision of the Court of First Instance may be brought before the Court of Appeal by any party, which has been unsuccessful. The Registry shall keep records of all cases before the Court.

Any panel of the Court of First Instance shall have a multinational composition and sit in a composition of three judges. The President of the Court of First Instance may allocate from the Pool of Judges a technically qualified judge with qualifications and experience in the field of technology concerned. Any panel of the central division shall sit in a composition of two legally qualified judges and one technically qualified judge. The Pool of Judges must have at least one technically qualified judge with qualifications and experience per field of technology.

It should be admitted that enhancing technically qualified judges in the system is a significant achievement. The use of the UPLS is clearly less costly compared to litigation in all EPC Contracting States or even in EU countries. It is estimated that by 2013 the creation of the UPLS would result in total private cost savings between 148 and 289 EUR million per annum. The estimates are based on the assumption that the EEUPC will offer litigation at roughly the same cost level as the three largest low-cost national systems (Germany, France and the Netherlands). But it seems that the costs of litigation are still likely too high for SMEs. In Estonia ca 99.9% of the Estonian enterprises are SMEs. About 16% of these are small enterprises and 81% are micro enterprises. Average turnover for the Estonian SMEs on the basis of data presented in 2007 was 9.7 million EEK (0.62 million EUR), including 3.44 million EEK (0.22 million EUR) for micro enterprises. It is clear that UPLS is not affordable for the Estonian SMEs in the near future. The proposed UPLS may be more affordable for bigger European SMEs. The biggest winners are large companies, especially those interested in the EU cross-border patent litigation, pharmaceutical industry and also the US and Japanese companies interested in European markets.

## References

1. **Antons, O.** 2007. Ettevõtjate koostöö omavalitsustega: miks ja kuidas? EVEA, 15.02.2007,

- [http://portaal.ell.ee/orb.aw/class=file/action=preview/id=10414/Olavi.Antons.EVEA\\_DUETTO\\_150207.ppt](http://portaal.ell.ee/orb.aw/class=file/action=preview/id=10414/Olavi.Antons.EVEA_DUETTO_150207.ppt) (28.12.2010).
2. **Appelt, C. W.** 2006. Patent Litigation in Europe. Presence and Future. [http://www.ip4inno.eu/uploads/tx\\_cmsip4inno/Appelt-Litigation.pdf](http://www.ip4inno.eu/uploads/tx_cmsip4inno/Appelt-Litigation.pdf) (13.12.2010).
  3. Brussels Convention.1968. Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, <http://www.jura.uni-sb.de/convention-bruxelles/en/c-textes/brux.htm#6> (20.12.2010).
  4. Bundespatentgericht. 2009. Der technische Richter im deutschen Patentgerichtsverfahren. Historische Entwicklung und derzeitige Funktion, [http://www.bpatg.de/bpatg/das\\_gericht/techn\\_richter\\_deutsch.html](http://www.bpatg.de/bpatg/das_gericht/techn_richter_deutsch.html) (26.12.2010).
  5. Council. 2008. DE Delegation Non-Paper on the Draft Agreement on the European Patent Court (Doc. 11270/08 of 30 June 2008). Berlin, 3 September 2008.
  6. Council. 2000. Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. EÜT L 12, 16.01.2001, p 1.
  7. Décret n° 2009-1204 du 9 octobre 2009 relatif à la spécialisation des juridictions en matière de propriété intellectuelle. Journal Officiel de la République Française, 11 octobre 2009, texte 4 sur 53.
  8. Décret n° 2009-1205 du 9 octobre 2009 fixant le siège et le ressort des juridictions en matière de propriété intellectuelle. Journal Officiel de la République Française, 11 octobre 2009, texte 5 sur 53.
  9. ECJ. 2006. Case C-539/03, Judgment of the Court (First Chamber) 13 July 2006, Roche Nederland BV and Others, v Frederick Primus, Milton Goldenberg, [http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher\\$docrequire=alldocs&numaff=C-539/03&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100](http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher$docrequire=alldocs&numaff=C-539/03&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100) (20.12.2010).
  10. EPLAW. 2008. Letter to Ms Fröhlinger at European Commission re Community Patent and Patent Litigation, Amsterdam, 18 March 2008, [http://www.eplaw.org/Downloads/Letter%20to%20Ms%20Fröhlinger\(2\).pdf](http://www.eplaw.org/Downloads/Letter%20to%20Ms%20Fröhlinger(2).pdf) (28.12.2010).
  11. EPO. 1999. Intergovernmental conference of the member states of the European Patent organisation on the reform of the patent system in Europe, Paris, 24 - 25 June 1999, OJ EPO 8-9/1999, 545, [http://archive.epo.org/epo/pubs/oj99/8\\_99/8\\_5459.pdf](http://archive.epo.org/epo/pubs/oj99/8_99/8_5459.pdf) (09.12.2010).
  12. EPO. 2003. WPL/4/03
  13. EPO.2005. Draft Agreement on the Establishment of a European patent litigation system. WPL/10/05, Munich, 07.12.2005.
  14. EPO. 2006. Assessment of the Impact of the European Patent Litigation Agreement (EPLA) on Litigation of European Patents, Munich, February 2006.
  15. EPO. 2006. Organisational Autonomy of the EPO's Boards of Appeal, [http://patlaw-reform.european-patent-office.org/boards\\_appeal/index.en.php](http://patlaw-reform.european-patent-office.org/boards_appeal/index.en.php) (25.11.2010).

16. EU Commission. 2007. Communication from the Commission to the European Parliament and the Council on the enhancing the patent system in Europe. COM(2007) 165 final.
17. EU Commission. 2006. Patent litigation insurance. A study for the European Commission on the feasibility of possible insurance schemes against patent litigation risks. Final report. CJA Consultants Ltd., June 2006, [http://ec.europa.eu/internal\\_market/indprop/docs/patent/studies/pli\\_report\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/patent/studies/pli_report_en.pdf) (29.12.2010).
18. EU Commission. 2008. Commission recommendation on the management of intellectual property in knowledge transfer activities and Code of Practice for universities and other public research organisations. Brussels, 10.4.2008 C(2008)1329.
19. European Commission. 2009. Recommendation from the Commission to the Council to authorise the Commission to open negotiations for the adoption of an Agreement creating a Unified Patent Litigation System. Brussels, 20.3.2009, SEC (2010) 330 final.
20. European Council. 2007. WD 11622/07 PI 135, 12.7.2007.
21. FFII. 2006. FFII statement given at EU patent policy hearing, Brussels, 12 July 2006, <http://press.ffii.org/Press%20releases/FFII%20statement%20given%20at%20EU%20patent%20policy%20hearing> (28.12.2010).
22. FFII. 2007. Single EU patent law good for US giants, bad for small EU firms. Press release, Brussels, 4 April 2007.
23. FFII. 2009. European Commission pushes for software patents via a trusted court. Press release, Brussels, 12 May 2009.
24. Fourth European Judges' Forum. 2008. Questionnaire on European Patent Judiciary. Venice, 14 November 2008, <http://www.eplaw.org/Downloads/Questionnaire.PDF> (28.12.2010).
25. **Franzosi, M.** 2001. Three European Cases on Equivalence – Will Europe Adopt *Catnic?*, in 32 IIC, 2001, 113 ff., <http://www.franzosi.com/english/article/legals08.htm> (26.12.2010).
26. Freshfields Bruckhaus Deringer. 2007. Patent litigation in Europe. England and Wales, <http://www.freshfields.com/publications/pdfs/2007/dec19/20313.pdf> (13.12.2010).
27. Freshfields Bruckhaus Deringer. 2007. Patent litigation in Europe. Italy. December 2007, <http://www.freshfields.com/publications/pdfs/2007/dec19/20310.pdf> (26.12.2010).
28. GRUR. 1993. Improver Corp. v. Remington Prods. Inc., 21 IIC 572 (1990), 24 IIC 838 (1993), GRUR Int. 242 (F.R.G.)
29. HMCS. 2008. The Chancellor of the High Court. The Patents Court and Patents County Court Guide, London, 7 July 2008, <http://www.hmcourts-service.gov.uk/infoabout/patents/index.htm> (11.12.2010).
30. IIC. 2008. Proposed European patent litigation jurisdiction. Document n° 450/1034,23 April 2008, Paris, [http://www.iccwbo.org/uploadedFiles/ICC/policy/intellectual\\_property/Statements/EU\\_patent\\_litigation\\_jurisdiction\\_final%20\\_2-policyB.pdf](http://www.iccwbo.org/uploadedFiles/ICC/policy/intellectual_property/Statements/EU_patent_litigation_jurisdiction_final%20_2-policyB.pdf) (26.12.2010).

31. IPAC. 2003. The enforcement of patent rights, November 2003, <http://www.mandyhaberman.com/media/IPAC-18-11.pdf> (20.12.2010).
32. IPR helpdesk. 2006. How to avoid high patent litigation costs. [http://www.ipr-helpdesk.org/documents/ES\\_Litigation\\_0000006558\\_00.xml.html#N20045](http://www.ipr-helpdesk.org/documents/ES_Litigation_0000006558_00.xml.html#N20045) (28.12.2010).
33. JPD. 2009. Medienmitteilung, Eidgenössisches Justiz- und Polizeidepartement 14.12.2009 [https://www.ip4all.ch/fileadmin/user\\_upload/Juristische\\_Infos/d/medienmitteilungen/Medienmitteilung\\_Bundespatentgericht\\_20091214.pdf](https://www.ip4all.ch/fileadmin/user_upload/Juristische_Infos/d/medienmitteilungen/Medienmitteilung_Bundespatentgericht_20091214.pdf) (20.12.2010).
34. **Kartus, R.** 2009. Community Patents Court. Winners and Losers. AIPPI Baltic Conference. 2–5 September 2009. Tallinn, Estonia.
35. Ladas & Parry LLP. 2009. Foreign Patent Litigation. Civil and Common Law Systems, [http://www.ladas.com/Litigation/ForeignPatentLitigation/Civil\\_Common\\_Law\\_Sys.html#fn1](http://www.ladas.com/Litigation/ForeignPatentLitigation/Civil_Common_Law_Sys.html#fn1) (11.12.2010).
36. Nokia. 2006. Nokia Responses on the EC Questionnaire on the Patent System in Europe, [http://media.ffii.org/EcPatentConsultation/n\\_contributions/Nokia.pdf](http://media.ffii.org/EcPatentConsultation/n_contributions/Nokia.pdf) (03.01.2010).
37. **Palm, J. and Konkonen, T.** 2008. Patents in Europe 2008. Finland. Intellectual Asset Management (IAM), <http://www.iam-magazine.com/issues/Article.aspx?g=c4e434ac-2502-47fd-90c6-959b4e197550> (28.12.2010).
38. PatLit. 2009. France: the new IP litigation regime, <http://patlit.blogspot.com/2009/11/france-new-ip-litigation-regime.html> (20.12.2010).
39. Pro Inno Europe. 2007. A memorandum on removing barriers for a better use of IPR by SMEs. A Report for the Directorate-General for Enterprise and Industry by an IPR Expert Group, June 2007, [http://www.proinno-europe.eu/NWEV/uploaded\\_documents/IPR\\_Expert\\_group\\_report\\_final\\_23\\_07\\_07.pdf](http://www.proinno-europe.eu/NWEV/uploaded_documents/IPR_Expert_group_report_final_23_07_07.pdf) (28.12.2010).
40. **Standeford, D.** 2009. EU Patent Regime Approved: Includes EU Patents Court, EU Patent, Coordination. IP Watch, 4 December 2009. Wapedia. 2009. Common law legal systems in the present day, [http://wapedia.mobi/en/Common\\_law?t=5](http://wapedia.mobi/en/Common_law?t=5) (11.12.2010).