P5_TAPROV(2002)0163

Community patent *

Proposal for a Council regulation on the Community patent (COM(2000) 412 – C5-0461/2000 – 2000/0177(CNS))

The proposal was amended as follows:

Text proposed by the Commission[1]	Amendments by Parliament
Amendment 21 Recital 2	
(2) The Munich Convention on the Grant of European Patents of 5 October 1973 (hereinafter referred to as the "Munich Convention") established the European Patent Office (hereinafter referred to as "the Office") and entrusted it with the task of granting European patents. The expertise offered by the Office should be used in the granting and administration of the Community patent.	(2) The Munich Convention on the Grant of European Patents of 5 October 1973 (hereinafter referred to as the "Munich Convention") established the European Patent Office (hereinafter referred to as "the Office") and entrusted it with the task of granting European patents. The expertise offered by the Office should be used in the granting and administration of the Community patent. ***The national patent authorities may be enabled to carry out some of the work of dealing with Community patent cases, including the investigation of novelty, for the European Patent Organisation, provided that the national patent authorities meet quality standards agreed in advance. The granting of Community patents remains the sole responsibility of the European Patent Organisation.***
Amendments 2 and 22 Recital 5 a (new)	
	(5a) A balance should be struck between the right of all citizens of the European Union to have any file processed in their own language, the principle of legal certainty making the content of the patent readily available and the need to guard

[1] OJ C 337 E, 28.11.2000, p. 278.

against cost increases. This balance is present in the formula established for the language arrangements under Council Regulation (EC) No 40/94 of 20 December 1993[1] on the Community trade mark.

---

[1] ***OJ L 11, 14.1.1994, p. 1.***

Amendment 3
Recital 7

(7) ***For reasons of legal certainty***, all actions relating to certain aspects of the Community Patent should come under the jurisdiction ***of one court, and the decisions of that court should be enforceable throughout the Community. Exclusive jurisdiction for a certain category of actions and applications relating to a Community patent, and in particular for actions relating to infringement and validity, should therefore be given to the Community intellectual property court. Judgements of a Chamber of First Instance of that court should be subject to appeal to a Chamber of Appeal of that court.***	(7) All actions relating to certain aspects of the Community Patent should come under the jurisdiction, ***in the first instance, of the Community Patent courts (CPC) of Member States and, in the second instance, of the European Chamber for Intellectual Property (ECIP), created under Articles 225a and 229a EC, established by the Nice Treaty.*** ***(7a) The use of existing national courts with experience in patent cases as first instance courts (CPC) for Community Patent litigation follows, for the first instance, the example of Regulation (EC) No 40/94. The factors of speed, cost effectiveness, local language, proximity to users and the use of existing infrastructure and expertise are thus duly taken into account.*** ***(7b) The number of CPCs per Member State should be limited. CPCs covering two or more Member States may be created by agreement between Member States.*** ***(7c) The uniform application of community law should be safeguarded by the control of the CPC by the ECIP, acting as an appeal court. The ECIP may give leave to an appeal to the Court of First Instance regarding important questions of law.*** ***(7d) In patent cases two instances considering factual (mostly technical) questions are essential. The CPC and ECIP will therefore decide on questions of fact and of law. The implementing regulation may restrict the extent to which ECIP***

considers the factual basis for the decision of the CPC.

(7e) The ECIP, acting as a central appeal court, is a "first instance" court within the meaning of Article 225a EC, established by the Nice Treaty, because the European Court structure, comprising the European Court of Justice (ECJ), the Court of First Instance (CFI) and the European Chamber for Intellectual Property (ECIP), is involved "for the first time" as a result of an appeal from a CPC, which in itself is not part of the European Court structure. This, again, follows the example of the Community Trademark System, where the CFI rules on actions brought against the decisions of the appeal boards of the Office for Harmonisation in the Interior Market (Alicante), thus acting as a second (or even third) instance.

(7f) As institutions, the CPCs are national courts. They will, however, only apply European law, specifically the substantive and procedural provisions of this Regulation. Therefore, national sovereignty of Member States does not stand in the way of an appeal from CPC to ECIP.

Amendment 4
Recital 8

(8) The ***court*** ruling on infringement and validity should also be able to rule on penalties and compensation for damage on the basis of common rules. Those powers are without prejudice to the powers to apply any rules on criminal liability and unfair competition provided for under the Member States' national law.

(8) The ***CPC*** ruling on infringement and validity should also be able to rule on penalties and compensation for damage on the basis of common rules. These powers are without prejudice to the powers to apply any rules on criminal liability and unfair competition provided for under the Member States' national law.

Amendment 5
Recital 9

(9) The rules for proceedings before the ***Community intellectual property court*** are laid down in ***the court's statute and rules of***

(9) The rules for proceedings before the ***CPC and ECIP*** are laid down in ***implementing regulations.***

procedure.

Amendment 6
Article 1 a (new)

Article 1a

National patent offices

1. With regard to the Community patent, the national patent offices may, under the terms laid down in the implementing regulation provided for in Article 59 of this Regulation, provide advisory services on application procedures for the Community patent, receive patent applications and forward them to the European Patent Office, and disseminate information on the Community patent.

2. National patent offices which so request within the framework of the Munich Convention may, in their respective working languages, undertake other tasks relating to Community patent applications, particularly in the field of search and research operations. These activities shall not affect the uniformity of the Community patent, which in all cases must be granted by the European Patent Office.

Amendment 7
Article 1 b (new)

Article 1b

Functions of national patent offices

In the context of the application procedure for a European patent, the national patent offices shall support the applicant in entering a Community patent under the terms laid down in the implementing regulation provided for in Article 59 of this Regulation.

In particular, they shall receive patent applications, forward them to the European Patent Office, and provide advisory and research services. They shall also provide

information services in relation to the legal form which a Community patent should take. The Community patent shall in all cases be granted by the European Patent Office.

Amendment 8
Article 9, point (b)

(b) acts done for experimental purposes relating to the subject-matter of the patented invention;	(b) acts done for experimental purposes relating to the subject-matter of the patented invention ***including experiments and tests necessary for registration purposes.***

Amendment 9
Article 25, paragraph 1

1. Annual renewal fees in respect of Community patents shall be paid to the Office in accordance with the implementing regulations referred to in Article 60. These fees shall be due in respect of the years following the year in which the Community Patent Bulletin referred to in Article 57 mentions the grant of the Community patent.	1. Annual renewal fees in respect of Community patents shall be paid to the Office in accordance with the implementing regulations referred to in Article 60. ***A certain part of the fees shall be paid in order to finance the Member States' duties in connection with patent information, in accordance with the significance of the national patent office.*** These fees shall be due in respect of the years following the year in which the Community Patent Bulletin referred to in Article 57 mentions the grant of the Community patent.

Amendment 10
Article 30, paragraphs 3 and 4

3. The actions and claims referred to in paragraph 1 come under the exclusive jurisdiction ***of the Community intellectual property court. In the first instance, they are brought before the Chamber of First Instance of that court.***	3. The actions and claims referred to in paragraph 1 come under the exclusive jurisdiction ***(a) in the first instance, of the Community Patent Courts (CPC) of Member States and*** ***(b) in the second instance, of the European Chamber for Intellectual Property (ECIP) created under Articles 225a and 229a EC, established by the Nice Treaty.*** ***3a. Member States designate national courts with experience in patent litigation***

	as CPCs.
	3b. The number of CPCs in a Member State shall not exceed two.
	3c. Member States may come to an agreement allowing a CPC in one Member State to act as CPC for each of them.
4. Subject to the provisions of the treaty and of this regulation, the terms and procedures relating to actions and claims referred to in paragraph 1 and the rules applying to judgements given shall be established ***in the statute of rules of procedures of the Community intellectual property court***.	4. Subject to the provisions of the treaty and of this regulation, the terms and procedures relating to actions and claims referred to in paragraph 1 and the rules applying to judgements given ***by CPC and EICP*** shall be established ***by the implementing regulation referred to in Article 59.***

Amendment 11
Article 39

1. An appeal to the ***Chamber of Appeal of the Community intellectual property court*** shall lie from judgements of the ***Chamber of First Instance of that court*** in respect of proceedings arising from the actions and claims referred to in the provisions of this section.	1. An appeal to the ***ECIP*** shall lie from judgement*s* of the ***CPCs of Member States*** in respect of proceedings arising from the actions and claims referred to in the provisions of this section.
2. The action shall be brought before the ***Chamber of Appeal*** within two months of the date of notification of the judgement in accordance with the statute of the Community intellectual property court.	2. The action shall be brought before the ***ECIP*** within two months of the date of notification of the judgement in accordance with the statute of the Community intellectual property court.
3. ***The Chamber of Appeal*** shall have jurisdiction to rule on the facts of a particular case as well as on points of law and to annul or alter the contested decision.	3. ***The ECIP*** shall have jurisdiction to rule on the facts of a particular case as well as on points of law and to annul or alter the contested decision.
4. The action shall be open to any party to proceedings before the Community intellectual property court adversely affected by its decision.	4. The action shall be open to any party to proceedings before the Community intellectual property court adversely affected by its decision.
5. The action shall have suspensive effect. However, the ***Chamber of First Instance*** may declare its judgement enforceable while, if necessary, subjecting enforcement to the provision of security.	5. The action shall have suspensive effect. However, the ***CPC*** may declare its judgement enforceable while, if necessary, subjecting enforcement to the provision of security.
	5a. The ECIP may give leave to an appeal to the Court of First Instance regarding important questions of law.

Amendment 12
Article 40

1. Where necessary in the Community's interest, the Commission may bring invalidity proceedings against a Community patent before the ***Community intellectual property court.***	1. Where necessary in the Community's interest, the Commission may bring invalidity proceedings against a Community patent before the ***CPC which has jurisdiction for the Member State in which the owner is based.***
2. The Commission may also, under the condition referred to in paragraph 1, intervene in all proceedings before ***the Community intellectual property court.***	2. The Commission may also, under the condition referred to in paragraph 1, intervene in all proceedings before ***any CPC or before the ECIP.***

Amendment 13
Article 41

In the proceedings referred to in Articles 33 to 36, the ***Community intellectual property court*** shall have jurisdiction in respect of ***acts committed and activities undertaken in a part or in*** the entirety of the territory, zone or space to which this Regulation applies.	***1.*** In the proceedings referred to in Articles 33 to 36 ***brought before the CPC for the Member State in which the defendant is based,*** the ***CPC*** shall have jurisdiction regarding ***the actions and claims referred to in Article 30, paragraph 1. Regarding infringement proceedings and actions for a declaration of non-infringement, the CPC concerned has jurisdiction for*** the entirety of the territory, zone or space to which this Regulation applies. ***2. The first sentence of paragraph 1 applies to all CPCs in Member States where the patent is infringed, or, in the case of an action of non-infringement, where the patent is alleged to have been infringed. Regarding infringement procedures and actions for a declaration of non-infringement, the CPC concerned has jurisdiction only for that Member State.***

Amendment 14
Article 42

The ***Community intellectual property court*** may take any necessary provisional or protective measure in accordance with its	The ***CPC*** may take any necessary provisional or protective measure in accordance with its statute.

statute.

Amendment 15
Article 44, paragraph 1

1. The ***Community intellectual property court*** shall have the power to order the payment of compensation for the damage underlying the actions referred to in Articles 31 to 36.	1. The ***CPC*** shall have the power to order the payment of compensation for the damage underlying the actions referred to in Articles 31 to 36.

Amendment 16
Article 46

The national courts of the Member States shall have jurisdiction in actions relating to Community patents which do not come within the exclusive jurisdiction of either the Court of Justice under the Treaty or the ***Community intellectual property court*** according to the provisions of Chapter IV, Section 1.	The national courts of the Member States shall have jurisdiction in actions relating to Community patents which do not come within the exclusive jurisdiction of either the Court of Justice under the Treaty or the ***CPC*** according to the provisions of Chapter IV, Section 1.

Amendment 17
Article 51

1. A national court hearing an action or application referred to in Article 30 shall declare of its own motion that it has no jurisdiction.	1. A national court, ***other than a CPC,*** hearing an action or application referred to in Article 30 shall declare of its own motion that it has no jurisdiction.
2. A national court hearing an action or claim relating to a Community patent other than the actions referred to in Article 30 shall treat the patent as valid unless it has been declared invalid by ***the Community intellectual property court*** in a decision which has the authority of res judicata.	2. A national court hearing an action or claim relating to a Community patent other than the actions referred to in Article 30 shall treat the patent as valid unless it has been declared invalid by ***the CPC or the ECIP*** in a decision which has the authority of res judicata.
3. A national court hearing an action or claim relating to a Community patent other than the actions referred to in Article 30 shall stay the proceedings if it considers a decision on an action or application referred to in Article 30 to be a prior condition for its judgement. Proceedings shall be stayed either by the court of its own motion, after	3. A national court hearing an action or claim relating to a Community patent other than the actions referred to in Article 30 shall stay the proceedings if it considers a decision on an action or application referred to in Article 30 to be a prior condition for its judgement. Proceedings shall be stayed either by the court of its own motion, after

hearing the parties, where an action or application referred to in Article 30 has been brought before the ***Community intellectual property court***, or at the request of one of the parties, and after hearing the other parties, where proceedings have not yet been brought before the ***Community court***. In the latter case, the national court shall invite the parties to bring such proceedings within a period prescribed by it. If such proceedings are not brought within the prescribed period, the proceedings before the national court shall continue.

hearing the parties, where an action or application referred to in Article 30 has been brought before the ***CPC***, or at the request of one of the parties, and after hearing the other parties, where proceedings have not yet been brought before the ***CPC***. In the latter case, the national court shall invite the parties to bring such proceedings within a period prescribed by it. If such proceedings are not brought within the prescribed period, the proceedings before the national court shall continue.

Amendment 39
Article 56a (new)

Article 56a

Role of national patent offices

The Commission and Council shall ensure that, during the next diplomatic conference,

- national patent offices may retain an important role in the processing of the Community patent, with particular regard to the giving of advice to applicants and to the forwarding of patents to the European Patent Office;

- national patent offices which so desire may be instructed by the European Patent Office to produce research reports relating to a limited number of patent applications, provided that they fulfil the quality criteria established in advance with a view to guaranteeing the quality and uniformity of the Community patent. Such activity by national patent offices must on no account adversely affect the uniformity or quality of the Community patent which will, at all events, be issued by the European Patent Office. With a view to guaranteeing the quality and uniformity of the patent, a quality-control system shall be established under the authority of the Commission, working in conjunction with the European Patent Office.

European Parliament legislative resolution on the proposal for a Council regulation on the Community patent (COM(2000) 412 – C5-0461/2000 – 2000/0177(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2000) 412)[1],

– having been consulted by the Council pursuant to Article 308 of the EC Treaty (C5-0461/2000),

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Industry, External Trade, Research and Energy (A5-0059/2002),

1. Approves the Commission proposal as amended;

2. Calls on the Council and Commission to ensure that at the next Diplomatic Conference to revise the European Patent Convention it is established that the language regime for the Community patent will be that provided for in Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark[2];

3. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

4. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;

5. Calls for the conciliation procedure to be initiated should the Council intend to depart from the text approved by Parliament;

6. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;

7. Instructs its President to forward its position to the Council and Commission.

---

[1] OJ C 337 E, 28.11.2000, p. 278.

[2] OJ L 11 E, 14.1.1994, p. 1.