



SUBJECT: **Integrated European Patent Litigation System – Update**
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PURPOSE **For information**

DATE: **29 May 2009**
REFERENCE: **EXCO/US09/CET/1404**
MEETING:: **ExCo Washington D.C., US**
MEETING DATE: **6 & 10 June, 2009**

Executive Summary

On 23 March 2009, the EU Council issued the present – most recent – draft for an „Agreement on the European and Community Patents Court and Draft Statute” (st7928/09) for the integrated European patent litigation system.

In this new draft, many issues have been improved compared to earlier proposals. Especially many issues which have been criticised by FICPI in earlier projects and drafts have been improved, such as the full right of representation for qualified national Patent Attorneys (Article 28 (2) of the draft) and the sufficient competence of the court (Article 15 (1) a of the draft).

The present draft will now move to the European Court of Justice (ECJ) for requesting an opinion whether the envisaged Agreement is compatible with the EC Treaty. This request has been concluded in the Working Party on Patents and the EU Commission (under advice of the Legal Service of the EU Council). At the Council of Competitiveness on 28/29 May 2009, the Council “reached an agreement in principle” for requesting the ECJ to this question.

The ECJ will therefore analyse the question of compatibility of this concept (which involves EU Member States as well as the non EU countries of the EPC). Based on this analysis it will be clarified whether our FICPI approach (to introduce this legislation by a EU Regulation (and let the non-EU countries access via a “Lugano-like” Treaty) rather than by a Treaty based on a Diplomatic Conference) turns out as the more viable strategy.

annex: st7928/09 of 23 March 2009

Draft Agreement on the European and Community Patents Court and Draft Statute
– Revised Presidency text

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