



SUBJECT: Integrated European Patent Litigation System – Harhoff–Report to the European Commission of 26 Feb. 2009
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PURPOSE For information

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Executive Summary

Prof. Dietmar Harhoff has conducted this study on the “Economic Cost–Benefit Analysis of a Unified and Integrated European Patent Litigation System”. Prof. Harhoff is Professor at the Institute for Innovation Research, Technology Management and Entrepreneurship (INNO–tec) of the Ludwig–Maximilians–Universität (LMU) Munich.

The cost–benefit assessment focusing on avoided duplication leads to a highly positive evaluation of the proposal. Even if the low estimate of savings (EUR 148 million) is taken, the new system would create substantial benefits and reach a benefit–cost ratio of 5.4, however, could be as high as 10.5. Additional benefits could flow in case of additional litigation activity, be it in terms of infringement or revocation actions. The availability of a low–cost litigation path offered by a unified Patent Court is likely to lead to additional activity from parties in countries which currently do not use the European patent system extensively. Moreover, the cost level of litigation in the unified Patent Court system is likely to be below the cost levels currently observed in some Member States and parties in these Member States are also likely to engage in more litigation activity in the

medium–run. These effects will also contribute to generate private and public benefits. These estimates and considerations are based on the assumption that the unified Patent Court will offer litigation at roughly the same cost level as the three largest low–cost national systems.

In a robustness check, the report explores to what extent the gains from saved duplication would be dissipated if the cost level were higher. The computations show that even with a substantial average cost increase, benefit–cost ratios remain above one, and for most scenarios considerably above one. It is more difficult to predict cost–induced changes in the demand for litigation. The relevance of such changes will depend on the level and type of costs imposed on users of the new system. These will be mostly determined by the private costs for legal support and advice, but also by the fees levied by the Court itself. Measures to contain the private costs to parties in litigation are important, and the Presidency’s proposal includes a number of such measures which are discussed in the report with respect to their impact.

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A particularly promising measure is to admit representation of parties by specialized European Patent Attorneys. Please note on page 50 the study: "Representation by specialized patent attorneys. Undoubtedly, the proposal to allow for representation by specialized and experienced European patent attorneys will be controversial. From an economics point of view, however, it is a suitable measure to limit the cost of litigation by allowing for more competition among representatives."

To summarize, this report recommends strongly that the Presidency should proceed in its efforts to establish a unified and integrated patent litigation system for European patents and future Community patents.

annex: Prof. Harhoff report of 26 Feb. 2009

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