



**FÉDÉRATION INTERNATIONALE DES CONSEILS EN PROPRIÉTÉ INDUSTRIELLE
COMMISSION D'ÉTUDE ET DE TRAVAIL (CET)**

CET WORKING DOCUMENT

SUBJECT:	Draft EPC Amendment for EU Patent	DATE:	4 December 2009
PURPOSE:	Information	REFERENCE:	EXCO/AR10/CET/1403
AUTHOR:	Daniel Alge	MEETING:	ExCo Buenos Aires, Argentina
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		DISTRIBUTION:	All attendees

Executive Summary

“Proposals for amendments to the European Patent Convention” of the EU Council of 29 September 2009 (st13707/09_en.pdf = annex)

On 4 Dec. 2009, the EU Competitiveness Council agreed on the “Enhanced European Patent System”. This “Enhanced European Patent System” is based on two pillars, the EU Patent (formerly: the “Community Patent”; see also: EXCO/AR10/CET1401) and the “European and EU Patent Court” (“EEUPC”; see also: EXCO/AR10/CET1402, EXCO/US09/CET/1404).

The present draft should establish the necessary changes for the EU Patent to be functional: The European Patent Office (EPO) examines, grants and administers the EU Patent, the Opposition Division and the Boards of Appeal decide on oppositions and appeals against decisions of the Divisions of the EPO.

The EPC will be amended to allow the EU to become EPC Member. A new Division will be created, the “Community Patent Division” that is responsible for all acts of the European Patent Office relating to Community patents, insofar as those acts are not the responsibility of other departments of the Office.

The independence of the Boards of Appeal will be significantly reduced: Whereas the Boards according to present law are not bound by any instructions and must comply only with the provisions of the EPC, this will change: According to the proposed amendments, the Boards will have to “take due account of relevant principles deriving from the jurisprudence of the European Court of Justice or of the unified court structure established” (= the EEUPC) (see new Art. 24a EPC).

The renewal fees for the EU Patent—part of the future European Patent will have to be paid to the European Patent Office which retains 50 %. The other 50 % is distributed under a new “PROTOCOL TO THE REVISION ACT OF THE EUROPEAN PATENT CONVENTION ON THE RENEWAL FEES OF THE COMMUNITY PATENT” (Annex III) to the national patent offices which form an “enhanced partnership” under another new “PROTOCOL TO THE REVISION ACT OF THE EUROPEAN PATENT CONVENTION ON ENHANCED PARTNERSHIP” (Annex II). The enhanced partnerships will be established through individual agreements between the EPO and the central industrial property offices of Member States based on a “European Standard for Searches” (“ESS”), thereby establishing common criteria for ensuring quality.

Due to the stipulations contained in the EUPR (EXCO/AR10/CET/1401), Art. 139 EPC is changed to state that a “national patent application and a national patent in a Member State of the European Community [now: EU] shall have with regard to a Community Patent [now: EU Patent] the same prior right effect as if the Community Patent [now: EU Patent] were a national patent”.

The present draft also contains an “AGREEMENT ON THE TRANSLATION ARRANGEMENTS APPLICABLE UNDER THE EUROPEAN PATENT CONVENTION TO THE COMMUNITY PATENT” (well hidden as Annex IV) wherein the language arrangements for the EU Patent are defined similar to the “London Agreement” on Art. 65 EPC (Art. 65 remained unamended in this draft).

Under this agreement, the Member States of the EU will dispense with the translation



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requirements provided for in Art. 65 of the EPC with respect to EU Patents. The costs incurred in respect of the translation of an application for a EU Patent filed in an official language of the European Union that is not one of the official languages of the EPO into one of the official languages of the European Patent Office shall be borne by the system. In fact, they will be delivered by machine translation. These translations of the patent specifications and claims into all official languages of the European Union will be made available upon publication of the application for the EU Patent.

annex: st13707/09_en.pdf

“Proposals for amendments to the European Patent Convention” of the EU Council of 29 September 2009

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Since these translations will be based upon a machine translation programme involving electronic dictionaries with technical vocabulary linked to the international patent classification system, the translations have no legal effect. In case of a dispute relating to a EU Patent, “the patent proprietor, at his/her own expense, shall provide:

- (a) at the request of an alleged infringer, a full translation of the patent into an official language of the State in which the alleged infringement took place or in which the alleged infringer is domiciled;
- (b) at the request of a Court in the course of legal proceedings, a full translation of the patent into the language of proceedings.

However, as for the London Agreement, even these translations in case of dispute shall have no legal effect. Of course, Art. 70 (3) EPC (“Any Contracting State may provide that a translation into one of its official languages, as prescribed by it according to this Convention, shall in that State be regarded as authentic, except for revocation proceedings, in the event of the European patent application or European patent in the language of the translation conferring protection which is narrower than that conferred by it in the language of the proceedings.”) is not applicable.