

2nd GRUR Int./JIPLP Celebratory Seminar

The European “Patent Package”

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German Patent and Trade Mark Office
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Vice-President DG1

Welcome speech:
"The unitary patent and the role of the EPO"

Time slot: 14:50 h - 15:00 h

I. Introduction

Ms President, Ladies and gentlemen,

It is a great honour and pleasure for me to be addressing you here today and I shall warmly thank the organisers for having invited the President of the EPO, Mr Battistelli, at this distinguished celebratory seminar on the EU patent package. Due to a prior commitment, Mr Battistelli is regrettably unable to attend and it is with great enjoyment that I will say a few introductory words on the EPO and the unitary patent in his stead.

Ladies and gentlemen, the creation of the EPO was a cornerstone of European integration. It replaced the previous patchwork of national patent systems with a comprehensive regional system enabling users to obtain patent protection in up to 40 European countries on the basis of a single application. It established a uniform, centralised procedure for searching and examining patent applications, with a consistent standard of quality. And it served, moreover, to harmonise the patent laws of the participant countries.

The EPO has been carrying out this mission very successfully since 1978. In terms of hard figures, the demand for its services has always been high and is continuing to grow. Despite the current economic difficulties in Europe and elsewhere, we have been receiving more patent applications than ever before. In 2012 our filings total was over 258 000, 5.7% more than the previous year and the international make-up of our applicant base shows that recognition of our work has spread far beyond Europe's borders.

The key to that recognition is the quality of our work. High-quality patents offering maximum legal certainty, thereby protecting the interests of both innovators and the public, are the basis of a functioning patent system. This has been repeatedly acknowledged in independent user satisfaction surveys, which have rated the EPO as the world's best patent office.

II. Completing the European patent system

Nevertheless, ladies and gentlemen, efficient and successful though it is, the present European patent system is only a partial reflection of the original idea of a single, unitary patent for the common market - an idea which has so far failed to materialise, and to this extent, the European patent system is still incomplete. In particular, the lack of a unitary title and the absence of a unified patent litigation system make the patent system complex and costly and hamper the enforcement of patents.

It is therefore an economic imperative to move forward in completing the European patent system, with a unitary patent and unified patent court. This is the only way that companies operating in Europe will be on a level playing field with their competitors in other markets such as China, Japan and the USA.

III. Making the system a reality for business

Never before in the history of the European patent system have we been so close to creating a truly supranational patent protection scheme.

But important challenges still lie ahead to implement the patent reform: The Unified Patent Court needs to be established and made fully operational and important measures will also have to be taken by the Member States participating to enhanced cooperation within the EPO framework.

In particular, the two Regulations on the unitary patent will have to be complemented by a range of implementing rules, to be adopted by the so-called Select Committee of the EPO's Administrative Council, a special body provided for by the EPC. This body will also have to set the renewal fees for the unitary patent.

We, for our part, are now making the legal and technical preparations for integrating the unitary patent into our existing systems.

Once the system will be running, it will involve two main elements: one, attributing unitary effect to European patents granted by the EPO and two: entrusting the EPO with the administration of the resultant unitary patents.

In practice, applicants will have to file an application for a European patent with the EPO as they do today. Once the European patent is granted, and the mention of the grant is published in the European Patent Bulletin, the patentee can request the EPO to register the unitary effect in the Register for unitary patent protection within one month.

A further important aspect is that the unitary patent will be an additional option to national patents and classical European bundle patents. I am confident that this flexibility in the choice of the appropriate patent protection will make the European patent system even more attractive for its users.

Administering the unitary patent will be an additional task for the EPO, which under the new scheme will act as a one-stop shop for patentees. Everything, from filing the request for unitary effect to paying renewal fees and keeping a register for unitary patents, will be managed centrally. For users of the system, this means a cost saving and a major reduction of administrative burdens and complexity.

The EPO already has the technical and legal expertise to carry out these administrative tasks, and preparations are under way to ensure that we are ready to take up our new role on the day the first request for unitary effect is filed.

I am convinced, too, that the necessary implementation rules to be adopted will be in place in time in order to make the new system a reality for business.

As regards the translation regime, it certainly seems to me that building on the EPO's three-language regime without any further translations to be furnished after the grant of the patent is a balanced solution of proven effectiveness and with broad user acceptance.

The EU Regulation on the translation arrangements provides for transitional measures until a system of high quality machine translations becomes available. The EPO has taken steps to ensure that this will soon be the case.

Our web-based Patent Translate service, using Google technology, is already operational, offering free, high-quality machine translation for purposes of public information. The range of languages is continually being extended: by 2014, the system will cover all the official languages of our member states, and eventually it will also include the non-European languages most relevant in the patent world.

Patent Translate is already proving popular with applicants. Use of the new facility has been growing exponentially since the official launch in February. From 2 500 translation requests per day we have now reached peaks of 35 000 requests per day.

IV. The Unified Patent Court

The signing of the Agreement on the Unified Patent Court on 19 February 2013 by 24 EU Member States, including Italy, is a decisive step towards the long-awaited introduction of a truly supranational patent system in Europe. Following the endorsement of the unitary patent package by the European Parliament and Council in December 2012, it will give a tremendous boost to the completion of the European patent system.

Looking back at the interminable, fruitless debates on this part of the patent package over the decades, one realises the scale of this very recent achievement of creating a complete, dedicated litigation system with

jurisdiction for so many countries with widely differing legal traditions. This is all the more true since the court will have exclusive jurisdiction for the settlement of disputes relating to both European patents with unitary effect and classical European bundle patents.

This, in my view, is unparalleled, and one can only be appreciative of how much effort has gone into creating this important new piece of architecture which is a tangible expression of the Single Market in an area where the EU is falling behind competitors.

I sincerely hope that the Agreement will be ratified by a sufficient number of countries as soon as possible, thereby making the whole unitary patent package a reality. It is also to be hoped that the EU Member States maintain the momentum as they look towards the implementation stage where attention will turn to important practical matters such as the rules of procedure of the Unified Patent Court.

V. Conclusion

As I said at the outset, the foundation of the EPO was a cornerstone of European integration and the completion of the unitary patent package is now in sight although a good deal of work remains to be done in implementing it.

Making the unitary patent a reality will render the system even more attractive for applicants and have a positive effect on innovation, growth and the competitiveness of European industry. Therefore, I see it as our duty to build upon the work done so far.

The EPO is prepared for the future and is ready to take on its role in a completed and re-shaped European patent system serving innovation in Europe.

Thank you for your attention, ladies and gentlemen.