

Brussels, 13 May 2009

Orgalime Position on the Community Patent and the future Patent Jurisdiction System – COM/2007/0165 final

The companies represented by Orgalime, which are regarded as exceptionally innovative companies and supply many of Europe's critical enabling technologies, rely heavily on a competitive and effective patent and patent jurisdiction system in Europe.

Orgalime therefore welcomes the substantial progress made by the French and earlier EU Presidencies on both the community patent and the future patent jurisdiction system, and hopes that the Czech and Swedish Presidencies will give priority to these dossiers. Any future Community patent and patent jurisdiction system must bring considerable improvements for companies compared to the current European patent system, and must meet users' needs in terms of quality, legal certainty, cost-effectiveness and reliability. Orgalime will support all efforts in this direction with a constructive approach.

COMMUNITY PATENT

The completion of the single market is overdue with regard to the protection of innovation. Although the Community trademark and the Community design already exist, there is no EU-wide competitive patent protection; the current European patent is merely a bundle of national patents.

The present European patent system does not sufficiently meet the needs of our industry. In particular, the high translation costs under the current system deter companies, especially SMEs, from applying for patent protection and therefore constitute an enormous disadvantage in relation to competitors from other economic areas. A Community patent with a competitive language regime could remedy this situation. For that reason, we support the provision in the draft Council Regulation on the Community patent¹ aiming to establish a centralised machine translation service to reduce translation costs. In order to guarantee the highest legal certainty, it is of key importance that these translations are not legally binding and are for information only.

Articles 21 and 22 of the draft Regulation include the possibility to grant a compulsory licence in cases involving no or insufficient exploitation. This compulsory licence regime is contrary to the European patent tradition. Orgalime therefore requests that these provisions are deleted from the draft Regulation.

Orgalime, the European Engineering Industries Association, speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 11.1 million people in the EU and in 2008 accounted for some €1,885 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

PATENT JURISDICTION SYSTEM

Any future Community patent system must be completed by a single Community-wide patent jurisdiction with a unitary character and fulfilling the highest requirements in terms of quality, legal certainty and cost-effectiveness. This patent jurisdiction system must also be open to European patents.

Regarding the future patent jurisdiction system, Orgalime requests a single language regime. The language of proceedings must be the language in which the patent was granted – not only at the central division (as provided in article 29 paragraph 5 of the draft Agreement on the European and Community Patents Court²) but also at the local and regional divisions and in both instances.

The only eligibility criteria for the judges should be the highest standards of competence and proven experience in the field of patent litigation as provided for in article 10 of the draft Agreement. Any national influence over the appointment procedure jeopardising the qualification of the judges must be excluded.

Orgalime welcomes the multinational composition of the panels as provided for in article 6 and 7 of the draft Agreement. In order to achieve the highest quality, the involvement of a technically qualified judge for any proceeding in respect of the validity of a patent is of crucial importance. Orgalime therefore supports the provisions in article 15a paragraphs 2 and 3 of the draft Agreement.

Orgalime welcomes and supports the compromise regarding the so-called split-jurisdiction in article 15a paragraph 2 of the draft Agreement. The local / regional division concerned (after having heard the parties) should have the authority to refer the counterclaim of revocation to the central division and to proceed with the infringement action (split-jurisdiction) or to take both actions after the allocation of a technically qualified judge from the pool of judges.

We believe that these provisions meet all justified interests of the different parties involved in the discussion of the split-jurisdiction issue.

¹ working document no. 8588/09 PI 28, 7 April 2009, in the following “draft Regulation”.

² working document no. 7928/09 PI 23 COUR 29, 23 March 2009, in the following “draft Agreement”.

Contact at Orgalime:
 Željko Pazin
 Senior Adviser
 Tel: +32 2 706 82 38
 E-mail: zeljko.pazin@orgalime.org

