REGERINGSKANSLIET

Justitiedepartementet
Näringsdepartementet

Enheten för immaterialrätt och transporträtt
Enheten för marknad och konkurrens

2008-06-04

Se sändlista

Gemenskapspatentet – nytt förslag om översättningar och fördelning av avgifter

Ni bereds tillfälle att **senast den 27 juni 2008** inkomma med synpunkter på *bifogade* arbetsdokument med förslag om ordningen för översättningar samt fördelning av avgifter för gemenskapspatentet. Frågan har inverkan på det nationella patentverket (PRV) och ärendet bereds därför tillsammans av Justitiedepartementet och Näringsdepartementet.

Ev. synpunkter skickas per e-post till **registrator@justice.ministry.se** med kopia till **lena.stridsberg@enterprise.ministry.se.** Ange ärendenumret **Ju2008/352/L3.** Om ni har frågor, vänd er till Samuel Hägg, 08-405 42 08, eller Carl Josefsson, 08-405 47 41, Justitiedepartementet, enheten för immaterialrätt och transporträtt. Alternativt till Lena Stridsberg, enheten för marknad och konkurrens, 08-405 21 51.

Bakgrund

Vid ett remissmöte den 28 april 2008 lämnade ni synpunkter på bl.a. ett förslag från det slovenska ordförandeskapet om ordningen för översättningar samt fördelningen av avgifter för gemenskapspatentet. Det bifogade förslaget är en reviderad version av förslaget.

Årsavgifterna för ett europeiskt patent fördelas idag lika mellan de nationella patentverken och det europeiska patentverket (European Patent Office, EPO). I den mån gemenskapspatentet kommer att ersätta europeiska patent blir en effekt att de nationella patentverken kommer

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att förlora intäkter från det europeiska patentsystemet. De nationella patentverken kommer enligt förslaget inte att utföra något arbete i samband med granskningen och beviljandet av gemenskapspatent.

Patent- och registreringsverket (PRV) räknar med 119,6 mkr i minskade intäkter om PRV inte skulle erhålla några intäkter från årsavgifter för europeiska patent, vilket utgör ca en tredjedel av PRV:s totala intäkter från patent. Intäktsbortfallet kommer enligt PRV inte att kunna kompenseras med intäktsökningar eller kostnadsminskningar utan mycket stora konsekvenser för PRV:s förmåga att dels ge stöd och service till det svenska näringslivet i patentfrågor, dels förse Sverige med patentinformation på den nivå som hittills har skett.

Syftet med remissen; frågeställningar

För regeringen är det viktigt att Sverige har och fortsatt kan ha ett drivande och utvecklande patentverk som på immaterialrättsområdet kan främja svenskt näringslivs möjligheter att utvecklas och att bli mer konkurrenskraftigt.

Mot denna bakgrund är syftet med denna remiss att ge er tillfälle att skriftligen lämna era synpunkter på förslaget samt *komplettera* de synpunkter ni lämnat tidigare.

Synpunkterna bör *särskilt avse frågan om fördelningen av avgifter från gemenskapspatentet* och *besvara följande frågeställningar*:

1. Hur ser ni på PRV:s – och övriga nationella patentverks – roll och uppgifter efter att ett gemenskapspatent har införts jämfört med förhållandena idag?

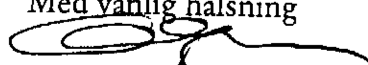
2. Bör Sverige verka för att *nationella patentverk genom fördelning av avgifter från gemenskapspatentet kompenseras för minskade intäkter från EPC-systemet ? I vilken utsträckning bör kompensation i så fall ske?*

3. Med utgångspunkten att PRV:s verksamhet också fortsatt ska vara avgiftsfinansierad, hur ser ni på effekterna för PRV av minskade intäkter från EPC-systemet till följd av gemenskapspatentet när det gäller

dels höjda avgifter för svenska patent;

dels effekterna av besparingar för främst *bibehållandet av teknisk kompetens inom alla teknikområden*, myndighetens roll för att *fortlöpande utbilda patentingenjörer* samt för *informationsspridning och medvetandegörande om patentsystemet*?

Med vänlig hälsning



Carl Josefsson
Ämnesråd
Ju L3

Göran Grén
Departementsråd
N MK

Sändlista

1. Advokatsamfundet
2. Föreningen Svenskt Näringsliv
3. Företagarna
4. Läkemedelsindustriföreningen , LIF
5. Stockholms universitet, Juridiska fakultetsnämnden
6. Svenska Föreningen för en fri informationsstruktur, FFII
7. Svenska Uppfinnareföreningen, SUF
8. Svenska Föreningen för Industriellt Rättsskydd, SFIR
9. Svenska Industriens Patentingenjörers Förening, SIPF
10. Sveriges Patentbyråers Förening, SEPAF
11. Svenska Patentombudsföreningen, SPOF
12. Patent- och registreringsverket, PRV
13. Patentbesvärsrätten, PBR
14. Stockholms tingsrätt
15. Svea hovrätt
16. Kommerskollegium
17. Verket för innovationssystem, VINNOVA
18. Vetenskapsrådet
19. Näringslivets regelnämnd
20. Språkrådet
21. Innovationsbron AB

COUNCIL OF
THE EUROPEAN UNION

Brussels, 28 April 2008

Interinstitutional File:
2000/0177 (CNS)

8928/08

PI 22

WORKING DOCUMENT

from:	Presidency
to:	Working Party on Intellectual Property (Patents)
No. prev. doc. :	6985/08 PI 9
No. Cion prop. :	10786/08 PI 49
Subject :	Towards a Community patent - Translation arrangements and distribution of fees

Delegations will find attached a Presidency working document on translation arrangements and distribution of fees relating to the Community patent for discussion at the Intellectual Property (Patents) Working Party meeting on 15 May 2008.

TOWARDS A COMMUNITY PATENT

The Community patent is a fundamental, but still missing element of the EU's industrial property system. Together with the development of a patent jurisdiction for the Community, the creation of the Community patent title would provide users with an optimal patent system to encourage innovation and improve the competitiveness of the European economy.

A cost effective, legally secure Community patent would in particular benefit SMEs and would be complementary to the Small Business Act for Europe. Indeed, in the context of consultations in the run-up to the Small Business Act, representatives of small business stressed the need for a Community patent. This would make access to the patent system easier, less costly and less risky for SMEs.

At the same time a unitary title providing equal protection throughout the entire territory of the EU would enhance and render more effective the fight against counterfeiting and the copying of patented products produced by European companies. A complete geographical protection without any loopholes would help to prevent the entry of counterfeit products into the European Single Market. An EU-wide scope of application would facilitate their seizure by customs authorities at all external borders of the EU and their removal from the market wherever they enter distribution channels.

Given the importance of the Community patent the Presidency considers that it should be possible to find effective solutions for overcoming the remaining stumbling blocks. Outstanding issues that need to be addressed concern, in particular, the translation arrangements and the distribution of revenue from annual fees paid to maintain the Community patent in force. A multilingual character of the Community patent and practical arrangements providing translations at a very early stage of proceedings would facilitate access to the patent system in particular for SMEs. A table illustrating how the envisaged criteria for the distribution of fee income could work is presented in the Annex.

I. TRANSLATION ARRANGEMENTS

At the Council working party of 12 March 2008 the Presidency explored how to improve the translation arrangements with a view to reducing costs of the Community patent while also improving legal certainty, and in particular for the benefit of SMEs. This discussion took place on the basis of its Working Document 6985/08 dated 28 February 2008

Two possible options were considered for translation arrangements. The Presidency notes that there was little support for Option 1 providing for a "flexible" Community patent. By contrast, a significant number of Member States lent their support to Option 2 providing for a Community patent with translation performed by a central service and stressed the need for ensuring a good quality of such translations.

On the basis of discussions in the Council Working Group, and taking into account previous work, the Presidency would suggest the following package concerning the translation arrangements. The threefold objective of this package is:

1. to provide for maximum reduction of complexity and costs for companies, in the interest particularly of SMEs;
2. to foster the dissemination of patent information and technical knowledge in general in all Community languages, and
3. to ensure a fair balance between reduction of costs for patent holders and applicants on the one hand and the legitimate interests of third parties in case of legal disputes on the other hand.

Accordingly translation arrangements need to be addressed concerning three different aspects:

- the filing of the application,
- the publication of the application and grant of the patent,
- the case of legal disputes between the patent holder or applicant and third parties.

1. THE FILING OF THE PATENT APPLICATION

Patent applications would have to be filed with the from Member States who do not have a language in common with one of the European Patent Office (EPO) in one of its three working languages. However, in order to facilitate access to the patent system for SMEs in those Member States who do not have a language in common with one of the EPO's languages, applicants should be entitled to file applications in their own language with their national office. The national office would than take care of the translation of the application into one of the EPO languages designated by the applicant as language of proceedings. National offices would be reimbursed for theses costs by the Community patent system (mutualisation of the costs) as already envisaged in the Common Political Approach in 2003.

2. THE AVAILABILITY OF TRANSLATIONS ONCE THE APPLICATION IS PUBLISHED AND ONCE THE PATENT IS GRANTED

The patent would be granted in the language of proceedings and would be valid in the entire territory of the Community without the patent holder having to provide any translations. This would make the procedure very simple and would result in significant cost savings for the applicant. Moreover, since there would be no link between translation and territorial scope it would avoid the patentee needing to make difficult decisions on the geographical coverage required in the future.

However, as foreseen in Option 2 in Working Document 6989/08, translations would be available to interested parties via a central service in all Community languages. The central service would make use of automated technical translation, such as that done at the EPO. The system developed there currently functions with certain language pairs and would be extended to include all Community languages before the Community patent comes into operation. Some additional human support may, however, be necessary for certain language pairs during this transitional period. These translations would be made available for information purposes only and would not have any legal effect.

An automated translation system would involve the creation of databases of electronic dictionaries of technical terms directly linked to the International Patent Classification system. This would ensure a highly precise translation of technical vocabulary, avoiding ambiguities where the same word has a different meaning according to the field of technology. Efforts would also be made to improve the non-technical aspects of translations. The creation of these databases could benefit the European patent system as a whole. Not only would they improve the provision of information to the public at large and the dissemination of technological knowledge in all Community languages, but they could also be used by national offices and the EPO for searching prior art in different languages.

Such automated translations would be available for the entire patent specification, including the claims. This would significantly improve patent information, since in order to properly understand the claims it is normally necessary to read also patent specification. Furthermore, translation of the patent by a central service would ensure consistency between translations, particularly on technical vocabulary, and contribute to their informative value for third parties. Finally, one other important advantage would be that translations would be available at the time of the publication of the application. Currently, patent translations are hardly ever consulted. One reason for this is that they are only available several months after the patent is granted. This could be years after the publication of the application. This is too late to be of benefit for companies or researchers working in rapidly-advancing high technology fields.

The creation of such an automated translation system, and in particular, of technical terminology databases, could be supported by Community funding to the extent necessary, given the advantage for the patent system and its beneficial effect to the promotion of innovation in the Europe. Furthermore, a financial incentive could be provided to those Member States who participate in the setting up of the system, in particular, the electronic dictionaries for their respective languages.

3. FULL TRANSLATIONS OF THE PATENT OR THE APPLICATION IN CASE OF DISPUTE

Only a small number of patents are the subject of a legal dispute between the patent holder or the applicant with a third party, whether settled out of court or resulting in court action. Indeed, available data demonstrate that less than 1% of patents are actually litigated. In case of legal disputes, where the patent holder claims that his patent is infringed, the legitimate interest of the defendant requires that the patent holder, if requested, provides a full translation of the patent and of supporting documentation in the language of the Member State where the other party is domiciled or where the alleged infringement took place.

This is not limited to court proceedings but also applies to any legal dispute settled out of court. Costs for these translations have to be borne by the patent holder or the applicant. However, these costs could be reduced as a machine translation would already be available and only revision and approval by a translator would be necessary in order to ensure accuracy. National patent offices, for example, could offer such services and provide specialised, rapid, cost-effective translations to patent holders and applicants. This would facilitate the enforcement of patents, particularly for SMEs, while safeguarding legitimate interests of third parties.

II. DISTRIBUTION OF FEES

A second question to consider is the distribution of revenue received from the renewal fees for the Community Patent.

The Competitiveness Council studied this question in the context of adoption of the Common Political Approach on the Community Patent of 3 March 2003.

Regarding the question of renewal fees, this approach comprised several different elements:

1. The renewal fees should be equivalent to the fees paid on an average European Patent, i.e. one which covers currently about 5 to 6 Member States. In this way, the renewal fees for a Community Patent offering protection over all the EU territory would be lower than for a current European Patent with protection in less than a quarter of Member States.
2. The fees would be directly payable to the European Patent Office (EPO), which would be responsible for granting the Community Patent. The EPO would keep 50% of renewal fees to cover its costs of processing the Community Patent.
3. The remaining 50% of renewal fees would be distributed to National Patent Offices (NPOs) of Member States. A distribution key would define the distribution of these fees.

In the common political approach of 2003, it was agreed that the distribution key should be based on a basket of fair, equitable and relevant criteria, which should reflect patent activities and the size of the market. They should also apply a balancing factor to be applied where Member States currently have a disproportionately low level of patent activities.

The Presidency therefore proposes the following procedure:

- The Council should agree, as part of the package concerning the Community Patent, on the relevant criteria for the level of renewal fees and for the allocation of the 50% share being distributed among NPOs. A Select Committee of the EPO Administrative Council comprising representatives from the European Community and all EU Member States would be established. This committee shall, once the Community patent enters into force, implement these criteria and fix both the level of the renewal fees and the precise distribution key for their allocation.
- The Select Committee shall periodically review its decisions, taking into account economic development and changes in patenting activity.

The distribution of fees should be based on an appropriate mix of different economic criteria such as market size (population), and the evolution of patent activity in Member States. Some of these elements were already included as criteria when the Luxembourg Agreement relating to Community Patents was adopted in 1989. Although the current partition of fees and level of patent activity has to be taken as a starting point, the distribution will change over time taking into account the fact that patent activity in those Member States that currently have the lowest levels is expected to increase. Moreover, the current repartition of renewal fees in Member States reflects the limited geographical coverage of patents given that the bulk of European patents cover a limited number of Member States.

Considering that the future Community patent will cover the entire EU territory, the repartition of fees should be balanced towards Member States which currently have the lowest levels of validations. In addition to this balancing factor, these criteria could include variables concerning the stimulation and promotion of innovation.

Furthermore, a premium could be foreseen in order to facilitate the use of the future Community patent by companies from those Member States not having an official language in common with one of the EPO languages; their national offices could receive the financial means to provide more support to such companies. This need arises in particular in relation to SMEs both with respect to the filing of patent applications and subsequent patent prosecution before the EPO.

In this respect Member States not having an official language in common with one of the three EPO languages will receive a lump sum and an amount related to a population criterion and the market size. All Member States will receive two different premiums related to an inverse ranking in terms of patenting activity. The first one will refer to the numbers of first filings per capita, whereas the second one will be based upon the number of European patents granted per one million inhabitants. The remainder shall be distributed in accordance with the pro rata of the Member State in relation to all 27 Member States.