



Procedure file

Basic information		
INL - Legislative initiative procedure	2011/2176(INL)	Procedure completed
Jurisdictional system for patent disputes		
Subject 3.50.16 Industrial property, European patent, Community patent, design and pattern 7.40.02 Judicial cooperation in civil and commercial matters 8.50 EU law		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs		24/05/2011
		PPE LEHNE Klaus-Heiner	
	Committee for opinion	Rapporteur for opinion	Appointed
	ITRE Industry, Research and Energy		01/09/2011
		PPE MÉSZÁROS Alajos	
	AFCO Constitutional Affairs		28/09/2011
		S&D REGNER Evelyn	
Council of the European Union	Council configuration	Meeting	Date
	Competitiveness (Internal Market, Industry, Research and Space)	3169	30/05/2012
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel	

Key events			
15/09/2011	Committee referral announced in Parliament		
20/12/2011	Vote in committee		
10/01/2012	Committee report tabled for plenary	A7-0009/2012	Summary
30/05/2012	Debate in Council	3169	Summary
11/12/2012	Results of vote in Parliament		
11/12/2012	Debate in Parliament		
11/12/2012	Decision by Parliament	T7-0476/2012	Summary

Technical information	
Procedure reference	2011/2176(INL)
Procedure type	INL - Legislative initiative procedure
Procedure subtype	Request for legislative proposal
Legal basis	Rules of Procedure EP 47
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/06168

Documentation gateway					
Committee draft report		PE472.331	23/09/2011	EP	
Amendments tabled in committee		PE475.785	27/10/2011	EP	
Committee opinion	ITRE	PE472.079	24/11/2011	EP	
Committee opinion	AFCO	PE473.880	15/12/2011	EP	
Committee report tabled for plenary, single reading		A7-0009/2012	10/01/2012	EP	Summary
Text adopted by Parliament, single reading		T7-0476/2012	11/12/2012	EP	Summary
Commission response to text adopted in plenary		SP(2013)175	13/05/2013	EC	

Jurisdictional system for patent disputes

The Committee on Legal Affairs adopted the own-initiative report drafted by Klaus-Heiner LEHNE (EPP, DE) on jurisdictional system for patent disputes.

Members call for the establishment of the Unified Patent Litigation System and encourage Member States to conclude the negotiations and to ratify the international agreement between these Member States creating a Unified Patent Court without undue delays. They encourage Spain and Italy to consider joining in the enhanced cooperation procedure.

The committee stresses that the Unified Patent Courts priority should be to enhance legal certainty and to improve the enforcement of patents while striking a fair balance between the interests of right holders and parties concerned. It also stresses the need for a cost-efficient litigation system which is financed in such a way as to secure access to justice for all patent holders, particularly for SMEs, individuals and not-for-profit organisations.

On a general level, the report highlights that:

- the Contracting Member States can only be Member States of the European Union;
- the Agreement should come into force when a minimum of thirteen Contracting Member States, including the three Member States in which the highest number of European patents was in force in the year preceding the year in which the Diplomatic Conference for the signature of the Agreement takes place, have ratified the Agreement;
- the Court should be a Court common to the Contracting Member States and subject to the same obligations as any national court with regard to compliance with Union law; thus, for example, the Court shall cooperate with the Court of Justice by applying Article 267 TFEU;
- the Court should act in line with the body of Union law and respect its primacy.

The report includes a series of recommendations on:

- Structure of the Patent Litigation System: an efficient court and litigation system needs to be decentralised.
- Composition of the Court and qualification of the Judges: stressing that the efficiency of the litigation system depends most of all on the quality and experience of the judges, Members consider that they should ensure the highest standards of competence and proven capacity in the field of patent litigation and antitrust law. This qualification should be proven *inter alia* by relevant work experience and professional training.
- Procedural issues: Members consider that one set of procedural rules should be applicable to proceedings before all divisions and instances of the Court. The language of proceedings before any local or regional division should be the official language of the Contracting Member State hosting the division or the official language designated by the Contracting Member States sharing a regional division. Lastly, the Court should have the power to grant preliminary injunctions to prevent any impending infringement and to forbid the continuation of the alleged infringement.

- Jurisdiction and effect of the Court decisions: the Court should have exclusive jurisdiction in respect of European patents with unitary effect and European patents designating one or more Contracting Member States. In the event of a counterclaim for revocation, the local or regional division should have the discretion to proceed with the infringement proceeding independently of whether the division proceeds as well with the counterclaim or whether it refers the counterclaim to the central division. Decisions of all divisions of the Court of First Instance as well as decisions of the Court of Appeal should be enforceable in any Contracting Member State without the need for a declaration of enforceability.
- Substantive law: Members stress that: (i) a European Patent with unitary effect should confer on its proprietor the right to prevent direct and indirect use of the invention by any third party not having the proprietors consent in the territories of the Contracting Member States; (ii) that the proprietor should be entitled to compensation for damages in case of an unlawful use of the invention and that; (iii) the proprietor should be entitled to recover either the profit lost due to the infringement and other losses, an appropriate licence fee or the profit resulting from the unlawful use of the invention.

Jurisdictional system for patent disputes

Ministers addressed the last outstanding issue in the draft agreement for the creation of a Unified Patent Court, with a view to finalising the "patent package" without delay, with a view to the European Council reaching a successful decision on the matter at its meeting on 28-29 June 2012.

The debate showed that further work was needed to reach consensus on the location of the Central Division of the Court of First instance for the future unitary patent jurisdiction.

The debate followed the statement issued by the Heads of State or Government of the EU Member States participating in enhanced cooperation on the creation of unitary patent protection in which they made a commitment to reach a final agreement on the last outstanding issue in the patent package in June 2012 at the latest.

In December 2011 the Council and the Parliament reached a provisional agreement on the two draft regulations implementing enhanced cooperation in the area of unitary patent protection (see also [COD/2011/0093](#) and [CNS/2011/0094](#)).

With regard to the third pillar of the patent system, the creation of a Unified Patent Court that would judge patent litigation cases, final agreement on the seat of the Court is still pending.

Jurisdictional system for patent disputes

The European Parliament adopted by 483 votes to 161, with 38 abstentions, a resolution on a jurisdictional system for patent disputes.

The resolution notes that the fragmented market for patents and disparities in law enforcement hamper innovation and progress in the internal market, complicate the use of the patent system, are costly and prevent the effective protection of patent rights, particularly those of SMEs.

Parliament calls for the establishment of the Unified Patent Litigation System and encourages Member States to conclude the negotiations and to ratify the international agreement between these Member States creating a Unified Patent Court without undue delays. It encourages Spain and Italy to consider joining in the enhanced cooperation procedure. The Court of Justice, as guardian of Union law, must ensure uniformity of the Union legal order and the primacy of European law in this context.

Parliament stresses that the Unified Patent Courts priority should be to enhance legal certainty and to improve the enforcement of patents while striking a fair balance between the interests of right holders and parties concerned. It also stresses the need for a cost-efficient litigation system which is financed in such a way as to secure access to justice for all patent holders, particularly for SMEs, individuals and not-for-profit organisations.

On a general level, the resolution highlights that:

- the Contracting Member States can only be Member States of the European Union;
- the Agreement should come into force when a minimum of thirteen Contracting Member States, including the three Member States in which the highest number of European patents was in force in the year preceding the year in which the Diplomatic Conference for the signature of the Agreement takes place, have ratified the Agreement;
- the Court should be a Court common to the Contracting Member States and subject to the same obligations as any national court with regard to compliance with Union law; thus, for example, the Court shall cooperate with the Court of Justice by applying Article 267 TFEU;
- the Court should act in line with the body of Union law and respect its primacy.

Parliament includes a series of recommendations on:

1. Structure of the Patent Litigation System: an efficient court and litigation system needs to be decentralised. The litigation system of the Court should consist of a first instance (Court of First Instance) and an instance for appeal (Court of Appeal); in order to avoid inefficiencies and lengthy proceedings, no further instances should be added.

2. Composition of the Court and qualification of the Judges: stressing that the efficiency of the litigation system depends most of all on the quality and experience of the judges, Members consider that they should ensure the highest standards of competence and proven capacity in the field of patent litigation and antitrust law. This qualification should be proven *inter alia* by relevant work experience and professional training. The composition of the Court of Appeal and the Court of First Instance should be multinational.

3. Procedural issues: one set of procedural rules should be applicable to proceedings before all divisions and instances of the Court. The language of proceedings before any local or regional division should be the official language of the Contracting Member State hosting the division or the official language designated by the Contracting Member States sharing a regional division. The Court should have the power to grant preliminary injunctions to prevent any impending infringement and to forbid the continuation of the alleged infringement. Such power must, however, not lead to inequitable forum shopping.

4. Jurisdiction and effect of the Court decisions: the Court should have exclusive jurisdiction in respect of European patents with unitary effect and European patents designating one or more Contracting Member States. The plaintiff should bring the action before the local division hosted by a Contracting Member State where the infringement has occurred or may occur, or where the defendant is domiciled or established, or to the regional division in which this Contracting Member State participates.

In the event of a counterclaim for revocation, the local or regional division should have the discretion to proceed with the infringement proceeding independently of whether the division proceeds as well with the counterclaim or whether it refers the counterclaim to the central division. Decisions of all divisions of the Court of First Instance as well as decisions of the Court of Appeal should be enforceable in any Contracting Member State without the need for a declaration of enforceability.

5. Substantive law: Members stress that: (i) a European Patent with unitary effect should confer on its proprietor the right to prevent direct and indirect use of the invention by any third party not having the proprietors consent in the territories of the Contracting Member States; (ii) that the proprietor should be entitled to compensation for damages in case of an unlawful use of the invention and that; (iii) the proprietor should be entitled to recover either the profit lost due to the infringement and other losses, an appropriate licence fee or the profit resulting from the unlawful use of the invention.