

Questions On EU-EPLA (part1)

Q1: Legal base in the EU treaties for an EU patent court

The Council is currently discussing a proposal to create a specialized patent court inside the framework of the Treaties of the European Union. Which article of the Treaty constitutes the legal base for installing such specialized patent court?

Q2: Results of the consultation on the Future of Patent Policy in Europe

Last 16 January 2006, the Commission launched a consultation on the Future of Patent Policy in Europe.

1. Why does the Commission is not publishing the contributions of stakeholders of this consultation on its website?
2. When does the Commission intends to do so?

Q3: Results of the consultation on the Future of Patent Policy in Europe

Last 16 January 2006, the Commission launched a consultation on the Future of Patent Policy in Europe. The Commission has received the Worst Lobbying Award 2006 for pouring patent-holding SMEs in the results of the consultation on the "Future of Patent Policy in Europe", and such after the official closing deadline of 2nd of April 2006. The results of the consultation and the interpretation made by the Commission of those results should be scrutinized, which right now is impossible for external parties since the Commission has not yet published the contributions of stakeholders.

1. Has the Council investigated this issue?
2. Is the Council using such consultation as a basis to discuss the creation of a specialized patent court in Europe?

Q4: Epilady case and basis for creating an EU patent court

The Council is currently discussing a proposal to create an specialized patent court inside the framework of the Treaties of the European Union. One of the often mentioned case for creating such

system is the Epilady case. Nevertheless, this case is pretty old (1990).

Q1: Can the Council list the cases (name+date) where the same European Patent was litigated in different Member States and led to different decisions:

- a. for two different member states
- b. for three different member states
- c. for more than three different member states

Q2: Which percentage of the total number of cases involves cross-border litigation?

Q3: Does the Council consider the number of cases leading to different interpretations sufficient enough to create a central court for validity cases?

Q5: Creation of a specialized patent central court and software patents

The Council is currently discussing a proposal to create an specialized patent court inside the framework of the Treaties of the European Union. Although the Commission said that the main purpose was not to legalise software patents by the back door, such European patents are still granted by the European Patent Office.

Can the Council explain in detail how a specialized patent court would be forbidden to adopt the same extreme interpretations made by the EPO TBA of the article 52.2-3 EPC?

Q6: American experience with specialized patent courts

Twenty five years ago, in 1982, the American Congress created the CAFC (Court of Appeals for the Federal Circuit) in order to have specialized patent courts.

Learning from the American experience, can the Presidency list the disadvantages of such courts?

Q7: Discussions in the Council on a central court for validating patents delivered by the European Patent Office

Last 12 October 2007, the European Parliament adopted a resolution on patent policy, mentioning the following:

"Reminds the Commission that all legislative proposals should be accompanied by an in-depth impact analysis related to patent quality, governance of the patent system, judicial independence and litigation costs;"

Since then, the German and Portuguese presidencies have organised a series of meetings in order to discuss the possibility to create a specialized patent court for patents granted by the European Patent Office.

When the Council and the Commission intends to conduct such in-depth impact analysis related to patent quality, governance of the patent system, judicial independence and litigation costs?

Q8: Council: Technical Judges in EU patent courts

The Council is currently discussing a proposal to create a specialized patent court inside the framework of the Treaties of the European Union. A document (13878/07) put forward by the German delegation introduced the idea to have 'technical judges' which was overtaken by the latest document (14492/07) of the Portuguese Presidency.

1. What is the definition of a 'technical judge'? Is the Council aware of a definition or established practice regarding technical judges?
2. Are those technical judges "persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office" (Article 225a TEC)?
3. Does the Council consider a European Patent Attorney as a person whose independence is beyond doubt?

Q9: Council: Discussions in the Council on a central court for validating patents delivered by the European Patent Office

The Council is currently discussing a proposal to create a specialized patent court inside the framework of the Treaties of the European Union.

Can the Council elaborate whether decisions of such specialized patent court would be legally binding for the European Patent Office, which is not part of the EU institutional framework?

Q10: Link between the EU-EPLA court and the ECJ

The Council is currently discussing a proposal to create a specialized patent court inside the framework of the Treaties of the European Union.

In the United States, defendants and plaintiffs has the right to appeal decisions of the specialized patent court CAFC at the Supreme Court, via a Certiorari petition right [1].

In the case of a european specialized patent court, does parties in dispute would have the right to appeal

on points of patent law to the ECJ via such petition mechanism?

[1] <http://en.wikipedia.org/wiki/Certiorari>