

# Questions On EU EPLA (part2)

## **Q11: 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.

1. When the Council and the Commission intends to conduct such in-depth impact analysis discussing such proposal?
2. Before or after agreeing on a proposal?

## **Q12: Specialized patent courts in the United States and Germany**

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

Two countries, Germany and United States, has such specialized patent courts.

About the specialized patent courts in Germany, here is what a german patent attorney said [1]:

"We have exactly the same problem in Germany where the Senates of the Federal Patent Court should refer basic questions to the BGH but do not do this."

The experience in the United States with recent decisions of the Supreme Court which has overturned rulings of the CAFC shows that it is important to have an independent court reviewing the decisions of specialized patent courts.

How does the Presidency intends to avoid the problem mentioned in [1]?

[1] [http://www.sslug.dk/emailarkiv/patentdirektiv/2002\\_05/msg00038.html](http://www.sslug.dk/emailarkiv/patentdirektiv/2002_05/msg00038.html)

## **Q13: Cost analysis for SMEs in case of patent litigation**

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

Right now, patent litigation in court is unaffordable for most small companies, and a raise in patent litigation costs would force small players to make an out-of-court settlement.

1. How would the proposal of the Portuguese Presidency would change this in the case of multiple instances (one national and one central)?
2. Does the Council has in hands a cost analysis prediction, preferably made by an independent third-party?

## **Q14: Cost analysis for SMEs in case of patent litigation and seperation of invalidity and infringement proceedings**

The Council is currently discussing a proposal to create a specialized patent court inside the framework of the Treaties of the European Union. A paper from the German delegation proposes to seperate invalidity and infringement proceedings in two different circuits.

1. Is this proposal an opportunity for patent lawyers to charge their customers twice?
2. How would this proposal impacts on the total cost of litigation for SMEs?

## **Q15: EU-EPLA**

The Council and the Commission are discussing a proposal for a common European Patent Court but did not consider the input from the European Parliament yet. Given the current governance problems in the patent systems worldwide and an technocratic rule bound to patent business that tends to ignore democratic institutions it is questionable if it is deemed positive to grant extensive competences to patent professionals, also called "technical experts".

- a) When will the Council consult Parliament?
- b) Will the proposals be made under codecision?
- c) How will the Council ensure that the new court does not circumvent the European legislators competences in terms of possible expansive interpretation of substantive patent law?

## **Q16: Judge academy**

The EU-EPLA proposal as discussed by the Council features the proposal of a Judge academy. Judges would require training and internships.

How will the Council ensure independence of the judges from patent institutions and the business interests underlying patenting given that patent professionals are no neutral stakeholders and cannot take into account the wide variety of political, ethical and economical issues underlying patenting?

## **Q17: EU-EPLA and software patents**

The former lobbyist of the European Patent Office in Brussels, Mr. Davi Sant is quoted as follows: "The acrimonious debate over the proposed directive on computer-implemented inventions might never have arisen if the patent litigation system in Europe had been unified, thereby eliminating the

possibility of disparate national rulings on the same patent matter."

1. Can the Council safeguard that the new Court will not follow the current interpretation of the EPO regarding software-implemented inventions in respect of the EPC 52 which has received no majority in the European Parliament?
2. Which checks and balances are provided to avoid a technocratic takeover of the controversial legislative procedures underlying substantive patent law?
3. Does the Council share the vision that disparity of national interpretation calls for legislative clarifications rather than a centralization of the Judiciary?

## **Q18: Denationalisation of national patent courts**

The European Union plans to denationalize the national patent courts. The working paper of the PT presidency features the painting of judges from many European member states as incompetent in patent law, so that they require academy and internships.

1. Which nation is competent in patent law?
2. Which nation needs such education?

## **Q19: Parliament competence in Substantive patent law: or put the fox in charge of the henhouse**

The Council and the Commission are aware that the Technical Boards of Appeal of the EPO established rulings that extended a patentability to Computer Programs despite a clear exclusion from patentability in the EPC. Right now, there is no way for the European Parliament to stop that abuse of competences. No European Parliament ever authorized the subject matter extension. The Commission refuses to propose a directive to ban software patents in Europe.

1. Why should the European Institutions empower a new European Patent Court to get full interpretation authority over the validity of European Patents within its member states when Parliament has no powers to correct abuse?
2. Why shall persons that are closely tied to the patent institutions get any say over European substantive patent law and the court be advised and trained by people from the patent business?

## **Q20: Commission: Patent Quality debate**

The "Putting knowledge into practice" report (INI/2006/2274) adopted by Parliament in May 2007 "calls on the Commission and the Member States to propose, in the context of the new Community patent, a procedure for eliminating trivial patents and sleeping patents;"

1. Is the Commission aware of any means to measure patent quality?
2. What steps attempts the Commission to take in order to satisfy the request for patent quality promotion?

## **Q21: Harmonisation of Substantive Patent Law**

While the European Patent Convention provides a minimal framework for substantive patent law which is not fully implemented under the *acquis communautaire* yet significant differences between the patent laws of the member states exist which are an obstacle to the single market.

Is the Commission aware of a comparative study of national substantive patent law of EU member states in order to identify harmonization needs?