



EUROPEAN PARLIAMENT

2009 - 2014

---

*Committee on Constitutional Affairs*

---

**2011/2176(INI)**

15.12.2011

## **OPINION**

of the Committee on Constitutional Affairs

for the Committee on Legal Affairs

on a jurisdictional system for patent disputes  
(2011/2176(INI))

Rapporteur: Evelyn Regner

PA\_NonLeg

## SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Agrees that effective unitary patent protection in Europe would contribute to the objective of growth through innovation and would thus help European business, particularly small and medium-sized enterprises, to face the economic crisis and global competition;
2. Acknowledges that effective unitary patent protection can only be ensured through a properly functioning specialised patent litigation system; believes that such a system must respect the primacy of Union law;
3. Notes that, following the delivery of Opinion 1/09 of 8 March 2011 of the Court of Justice, it was by means of an international agreement that the Member States involved, participating in enhanced cooperation, committed themselves to the creation of a Unified Patent Court which would be part of the judicial systems of the contracting Member States;
4. Highlights, in this context, the substantial difference between ordinary international agreements and the founding treaties of the European Union, the latter having established a new legal order, possessing its own institutions, for the benefit of which the States have limited their sovereign rights in ever wider fields, to which not only Member States but also their nationals are subject, with the guardians of that legal order being the Court of Justice of the European Union and the ordinary courts and tribunals of the Member States;
5. Is of the opinion that a Unified Patent Court can be created by means of an international agreement; stresses, however, that the Unified Patent Court must respect Union law; believes that this respect for the primacy and proper application of Union law should be ensured inter alia by providing for the possibility of requesting preliminary rulings from the Court of Justice of the European Union in accordance with Article 267 of the TFEU; believes, furthermore, that it is necessary to ensure that any decision of the Unified Patent Court which infringes European Union law may give rise to some form of financial liability on the part of one or more Member States;
6. Notes that the draft agreement could come into force when a minimum of nine contracting Member States have ratified it; considers that such a situation could lead to the emergence of 'enhanced cooperation' within enhanced cooperation;

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	15.12.2011
<b>Result of final vote</b>	+: 19 -: 1 0: 0
<b>Members present for the final vote</b>	Andrew Henry William Brons, Carlo Casini, Andrew Duff, Ashley Fox, Giuseppe Gargani, Matthias Groote, Roberto Gualtieri, Enrique Guerrero Salom, Zita Gurmai, Gerald Häfner, Stanimir Ilchev, Constance Le Grip, Morten Messerschmidt, Algirdas Saudargas, Søren Bo Søndergaard, Rafał Trzaskowski
<b>Substitute(s) present for the final vote</b>	John Stuart Agnew, Elmar Brok, Sylvie Guillaume, Evelyn Regner, Alexandra Thein, Rainer Wieland