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2009 - 2014

Committee on Legal Affairs

2011/2176(INI)

27.10.2011

AMENDMENTS

1 - 25

Draft report
Klaus-Heiner Lehne
(PE472.331v01-00)

Jurisdictional system for patent disputes
(2011/2176(INI))

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Amendment 1
Rolandas Paksas

Motion for a resolution
Paragraph 1

Motion for a resolution

1. Calls for the establishment of the Unified Patent Litigation System, as a fragmented market for patents and disparities in law enforcement *hampers* innovation and progress in the internal market;

Amendment

1. Calls for the establishment of the Unified Patent Litigation System, as a 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;***

Or. lt

Amendment 2
Ramon Tremosa i Balcells

Motion for a resolution
Paragraph 2

Motion for a resolution

2. Encourages Member States to conclude the negotiations and to ratify the agreement without undue *delays*;

Amendment

2. Encourages Member States to conclude the negotiations and to ratify the agreement without undue *delay*; ***calls upon Spain and Italy to join in the enhanced cooperation procedure;***

Or. en

Amendment 3
Eva Lichtenberger, Christian Engström

Motion for a resolution
Paragraph 3

Motion for a resolution

3. Insists that 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;

Amendment

3. Insists that 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; ***urges, therefore, that steps be taken to verify whether an international agreement to which the Union is not a party can confer on the Court of Justice an obligation to hear questions referred for a preliminary ruling, as stated in the draft Agreement on the Unified Patent Court;***

Or. en

Amendment 4

Antonio López-Istúriz White, Antonio Masip Hidalgo, Luis de Grandes Pascual

Motion for a resolution

Paragraph 6

Motion for a resolution

6. Acknowledges that the establishment of a coherent patent litigation system in the Member States taking part in the enhanced cooperation should be accomplished by an international agreement ('the Agreement') between these Member States ('Contracting Member States') creating a Unified Patent Court ('the Court');

Amendment

6. Acknowledges that the establishment of a coherent patent litigation system in the Member States taking part in the enhanced cooperation should be accomplished by an international agreement ('the Agreement') between these Member States ('Contracting Member States') creating a Unified Patent Court ('the Court'); ***nevertheless expresses doubt, in the light of various texts, such as Opinion 1/09 of the European Court of Justice, as to whether that international agreement is compatible with the TFEU;***

Or. es

Amendment 5

Sari Essayah

Motion for a resolution
Paragraph 6 a (new)

Motion for a resolution

Amendment

6a. 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, and also for small and medium-sized enterprises;

Or. en

Amendment 6
Cecilia Wikström

Motion for a resolution
Paragraph 5 a (new)

Motion for a resolution

Amendment

5a. Stresses that the legal costs must not be so high that they risk hindering access to justice, particularly for SMEs, individuals and not-for-profit organisations;

Or. sv

Amendment 7
Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution
Paragraph 7 – point ii

Motion for a resolution

Amendment

(ii) the Agreement should come into force when ***a minimum of nine*** 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***

(ii) the Agreement should come into force when ***all the*** Contracting Member States have ratified the Agreement and when Regulation XXX of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent

signature of the Agreement takes place,
have ratified the Agreement and when
Regulation XXX of the European
Parliament and of the Council
implementing enhanced cooperation in the
area of the creation of unitary patent
protection and Council Regulation XXX
implementing enhanced cooperation in the
area of the creation of unitary patent
protection with regard to the applicable
translation arrangements are in force;

protection and Council Regulation XXX
implementing enhanced cooperation in the
area of the creation of unitary patent
protection with regard to the applicable
translation arrangements are in force;

Or. es

Amendment 8

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution Paragraph 7 – point iii

Motion for a resolution

(iii) 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***;

Amendment

(iii) 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, ***in line
with Opinion 1/09 of the Court of Justice
of the European Union, national courts
should have jurisdiction to hear actions
based on EU law and be able to refer
questions for a preliminary ruling***;

Or. es

Amendment 9 Rolandas Paksas

Motion for a resolution Paragraph 7 – point iii

Motion for a resolution

(iii) the Court should be a Court common

Amendment

(iii) 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*;

to the Contracting Member States and subject to the same obligations as any national court with regard to compliance with Union law; thus the Court *would become, in the area in which it has exclusive powers, the sole judicial interlocutor of* the Court of Justice *by way of a preliminary referral procedure concerning the interpretation and application of Union law, and would be responsible, in the exercise of that power, for guaranteeing the full application of Union law and the judicial protection of the rights conferred on citizens by that law*;

Or. It

Amendment 10

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution

Paragraph 7 – point iv

Motion for a resolution

(iv) the Court should act in line with the body of Union law and respect its primacy; *in the event that the Court of Appeal infringes Union law, Contracting Member States should be jointly liable for damages incurred by the parties to the respective procedure; infringement proceedings pursuant to Articles 258, 259 and 260 TFEU against all Contracting Member States should apply*;

Amendment

(iv) the Court should act in line with the body of Union law and respect its primacy, *as set out in the* TFEU;

Or. es

Amendment 11

Dimitar Stoyanov, Slavi Binev

Motion for a resolution

Paragraph 8 – point ii

Motion for a resolution

(ii) a decentralised first instance should consist, in addition to a central division, also of local and regional divisions;

Amendment

(ii) a decentralised first instance should consist, in addition to a central division, also of local and regional divisions; ***there should be at least one local division in each Contracting Member State;***

Or. bg

Amendment 12
Cecilia Wikström

Motion for a resolution
Paragraph 10 – point i

Motion for a resolution

(i) acknowledges that the composition of the Court of Appeal and the Court of First Instance should be multinational; considers ***that the composition must be adapted to*** the existing court structures; proposes, therefore, that the composition of the local divisions should become multinational after a transitional period of five years, while it has to be ensured that the standard of quality and efficiency of the existing structures is not reduced; considers that the period of five years should be used for intensive training and preparation for the judges;

Amendment

(i) acknowledges that the composition of the Court of Appeal and the Court of First Instance should be multinational; considers ***as regards their composition that account should be taken of*** the existing court structures, ***while bearing in mind that the overriding objective is to ensure that the new court is genuinely unified;*** proposes, therefore, that the composition of the local divisions should become multinational ***as soon as possible but that reasoned exceptions to this general principle may be made after approval from the Administrative Committee during a*** transitional period of ***no more than*** five years, while it has to be ensured that the standard of quality and efficiency of the existing structures is not reduced; considers that the period of five years should be used for intensive training and preparation for the judges;

Or. sv

Amendment 13

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution

Paragraph 10 – point i

Motion for a resolution

(i) acknowledges that the composition of the Court of Appeal and the Court of First Instance should be multinational; ***considers that the composition must be adapted to the existing court structures; proposes, therefore, that the composition of the local divisions should become multinational after a transitional period of five years, while it has to be ensured that the standard of quality and efficiency of the existing structures is not reduced; considers that the period of five years should be used for intensive training and preparation for the judges;***

Amendment

(i) acknowledges that the composition of the Court of Appeal and the Court of First Instance should be multinational ***from the outset, and that the entry into force of the Agreement must allow sufficient time for the implementation of the system;***

Or. es

Amendment 14

Sajjad Karim

Motion for a resolution

Paragraph 10 – point i

Motion for a resolution

(i) acknowledges that the composition of the Court of Appeal and the Court of First Instance should be multinational; considers that the composition must be adapted to the existing court structures; proposes, therefore, that the composition of the local divisions should become multinational after a transitional period of ***five*** years, while it has to be ensured that the standard of quality and efficiency of the existing structures is not reduced; considers that the period of ***five*** years should be used for intensive training and preparation for the

Amendment

(i) acknowledges that the composition of the Court of Appeal and the Court of First Instance should be multinational; considers that the composition must be adapted to the existing court structures; proposes, therefore, that the composition of the local divisions should become multinational after a transitional period of ***three*** years, while it has to be ensured that the standard of quality and efficiency of the existing structures is not reduced; considers that the period of ***three*** years should be used for intensive training and preparation for the

judges;

judges;

Or. en

Amendment 15

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution

Paragraph 10 – point ii

Motion for a resolution

(ii) believes that the Court should be composed of both legally qualified and technically qualified judges; the judges 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; legally qualified judges should ***possess the qualifications required for judicial offices in a Contracting Member State***; technically qualified judges should have a university degree and expertise in a field of technology as well as knowledge of civil and civil procedural law;

Amendment

(ii) believes that the Court should be composed of both legally qualified and technically qualified judges; the judges 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; legally qualified judges should ***be national judges***; technically qualified judges should have a university degree and expertise in a field of technology as well as knowledge of civil and civil procedural law;

Or. es

Amendment 16

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution

Paragraph 11 – point ii

Motion for a resolution

(ii) the proceedings before the Court, consisting of a written, interim and oral procedure, ***should be dealt with by the Court in a flexible manner*** taking into account the objectives of speed and

Amendment

(ii) the proceedings before the Court, consisting of a written, interim and oral procedure, ***shall incorporate the appropriate elements of flexibility***, taking into account the objectives of speed and

efficiency of proceedings;

efficiency of proceedings;

Or. es

Amendment 17

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution

Paragraph 11 – point iii

Motion for a resolution

(iii) 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 parties should be free to chose the language in which the patent was granted as language of proceedings subject to the approval of the competent division; the language of proceedings before the central division should be the language in which the patent concerned was granted; the language of proceedings before the Court of Appeal should be the language of proceedings before the Court of First Instance;

Amendment

(iii) 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 parties should be free to chose the language in which the patent was granted as *the* language of proceedings subject to the approval of the competent division; the language of proceedings before the central division should be the language in which the patent concerned was granted; the language of proceedings before the Court of Appeal should be the language of proceedings before the Court of First Instance; ***at the duly justified request of one of the parties in the main proceedings, and after hearing the other parties, the court may decide that the language of proceedings shall be English; within a reasonable period of time, the language of the proceedings should always be English;***

. es

Amendment 18

Ramon Tremosa i Balcells

Motion for a resolution

Paragraph 11 – point iii

Motion for a resolution

(iii) 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 parties should be free to chose the language in which the patent was granted as language of proceedings subject to the approval of the competent division; the language of proceedings before the central division should be the language in which the patent concerned was granted; the language of proceedings before the Court of Appeal should be the language of proceedings before the Court of First Instance;

Amendment

(iii) the language of proceedings before any local or regional division should be ***an*** official ***or co-official*** language of the Member State hosting the division or the official language designated by the Contracting Member States sharing a regional division; the parties should be free to chose the language in which the patent was granted as language of proceedings subject to the approval of the competent division; the language of proceedings before the central division should be the language in which the patent concerned was granted; the language of proceedings before the Court of Appeal should be the language of proceedings before the Court of First Instance;

Or. en

Amendment 19
Cecilia Wikström

Motion for a resolution
Paragraph 11 – point v

Motion for a resolution

(v) the parties should be represented ***only*** by lawyers authorised to practise before a court of a Contracting Member State; ***the representatives of the parties might be assisted by patent attorneys who should be allowed to speak at hearings before the Court;***

Amendment

(v) the parties should be represented only by lawyers authorised to practise before a court of a Contracting Member State ***and/or by European Patent lawyers who are entitled to appear before the European Patent Office;***

Or. sv

Amendment 20
Dimitar Stoyanov, Slavi Binev

Motion for a resolution
Paragraph 11 – point v

Motion for a resolution

(v) the parties should be represented only by lawyers authorised to practise before a court ***of a*** Contracting Member ***State***; the representatives of the parties might be assisted by patent attorneys who should be allowed to speak at hearings before the Court;

Amendment

(v) the parties should be represented only by lawyers authorised to practise before a court ***in any of the*** Contracting Member ***States***; the representatives of the parties might be assisted by patent attorneys who should be allowed to speak at hearings before the Court;

Or. bg

Amendment 21
Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution
Paragraph 12 – point i

Motion for a resolution

(i) the Court should have exclusive jurisdiction in respect of European patents with unitary effect and European patents designating one or more Contracting Member States;

Amendment

(i) the Court should have exclusive jurisdiction in respect of European patents with unitary effect and European patents designating one or more Contracting Member States; ***this will necessitate the amendment of Regulation (EC) No 44/2001¹***;

Or. es

Amendment 22
Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution
Paragraph 12 – point ii

Motion for a resolution

(ii) the plaintiff should bring the action

Amendment

(ii) the plaintiff should bring the action

¹ *OJ L 307, 24.11.2001, p. 28*

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 to the regional division in which this Contracting Member State participates; if the Contracting Member State concerned does not host a local division and does not participate in a regional division, the plaintiff shall bring the action before the central division; the parties should be free to agree before which division of the Court of First Instance (local, regional or central) an action may be brought;

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; if the Contracting Member State concerned does not host a local division and does not participate in a regional division, the plaintiff shall bring the action before the central division; the parties should be free to agree before which division of the Court of First Instance (local, regional or central) an action may be brought;

Or. es

Amendment 23

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution Paragraph 12 – point iii

Motion for a resolution

(iii) in case 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;***

Amendment

(iii) in case of a counterclaim for revocation, the local or regional division should have the discretion to proceed with the infringement proceeding ***and shall also take cognizance of*** the counterclaim;

Or. es

Amendment 24

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution Paragraph 12 – point vi

Motion for a resolution

(vi) the relationship between the Agreement and Regulation (EC) No 44/2001 should be clarified in the Agreement*;

Amendment

(vi) the relationship between the Agreement and Regulation (EC) No 44/2001¹ should be clarified in the Agreement; ***it should be borne in mind that owing to the primacy of EU law and since the EU has sole competence for such matters, all these rules must be introduced by way of Regulation (EC) No 44/2001;***

Or. es

Amendment 25

Antonio López-Istúriz White, Luis de Grandes Pascual, Antonio Masip Hidalgo

Motion for a resolution

Paragraph 13

Motion for a resolution

13. Is of the opinion that the Court should base its decisions on Union law, the Agreement, the European Patent Convention (EPC) and national law having been adopted in accordance with the EPC, provisions of international agreements applicable to patents and binding on all the Contracting Member States and national law of the Contracting Member States in the light of Union law to be implemented;

Amendment

13. Is of the opinion that the Court should base its decisions on Union law ***in all the applicable fields***, the Agreement, the European Patent Convention (EPC) and national law having been adopted in accordance with the EPC, provisions of international agreements applicable to patents and binding on all the Contracting Member States and national law of the Contracting Member States in the light of Union law to be implemented, ***and that for all matters for which the Member States are competent, this list should be clarified and applicability criteria established in order to ensure the legal certainty and predictability of the actions of the courts;***

Or. es

¹ Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I)

