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MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission

pursuant to Rule 103(2) of the Rules of Procedure

by Thomas Wise

on behalf of the IND/DEM Group

on future European patent policy

European Parliament resolution on future European patent policy

The European Parliament,

- having regard to Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions,
 - having regard to its decision of 6 July 2005 to reject the Council's common position on a proposed directive on the patentability of computer-implemented inventions ('software patent directive', 2002/0047/COD),
 - having regard to its resolution of 26 October 2005 on patents for biotechnological inventions,
 - having regard to the Commission's consultation concerning the future of the patent system in Europe,
 - having regard to Rule 103(2) of its Rules of Procedure,
1. Expresses its commitment to achieving a balance between the interests of patent-holders and the broader public interest in innovation and competitive markets;
 2. Notes that over the last seven years the number of patent applications filed at the European Patent Office (EPO) per year has increased by about 60%, which number gives cause for concern over an extension of the scope of patentable subject-matter, lower quality standards, the creation of patent thickets, and an increased strategic use of patents as a substitute for actual innovation;
 3. Encourages Member States to ratify the London Agreement on the Application of Article 65 of the European Patent Convention as a means of optimising the European patent system in the short term;
 4. Considers that the patent-related needs of small and medium-sized enterprises (SMEs) are not served by cost reduction alone but by cost reduction as part of a holistic strategy that also increases patent quality and reduces the risk of inadvertent infringement as well as the costs that can result from infringement allegations;
 5. Believes that the creation of a European Patent Judiciary (EPJ) and a European Patent Court (EPCt) pursuant to the European Patent Litigation Agreement (EPLA) would call into question the commitment of its contracting states to independent judicial control over the patent system;
 6. Views as undemocratic the fact that the EPJ's Administrative Committee, which would consist of unelected delegates from national ministries, would have legislative authority over the EPCt's Rules of Procedure according to Article 17(2)a and Article 87 of the draft EPLA;

7. Notes with concern that the intergovernmental working party mandated with the drafting of the EPLA has to date not presented an official proposal for the EPCT's envisioned Rules of Procedure;
8. Considers that the appointment and periodic reappointment of the EPCT's judges by the EPJ's Administrative Committee would compromise judicial independence from the executive branch, as the departments of national ministries in charge of patent policy would dispatch officials to the EPJ's Administrative Committee, which would govern the EPCT, as well as to the European Patent Organisation's Administrative Council, which governs the EPO;
9. Expresses concern about the fact that Articles 2(b) and 6(1) of the draft Statute of the EPCT would allow members of the EPO's Boards of Appeal to serve, subsequently or even simultaneously, as judges at the EPCT;
10. Believes that the competitive environment in Europe's high-tech markets and Europe's domestic high-tech industry, which mostly consists of SMEs, would be adversely affected by rulings of the EPCT along the lines of EPO Board of Appeal decision T 0424/03 - 3.5.01 of 23 February 2006 to uphold a patent on data formats on the grounds that a 'computer-readable medium is a technical product and, thus, has technical character';
11. Is concerned that the EPLA would only reduce litigation costs in a small number of cases in which multi-jurisdictional litigation takes place today, while increasing the average cost of most patent lawsuits and thereby exposing SMEs to greater risks (according to the EPO's EPLA-related impact assessment, the overall cost of small to medium-scale litigation would be in the range between € 97 000 and € 415 000 for the first instance alone);
12. Calls on the Commission, if it were to represent the European Community in future negotiations on the EPLA, to heed and address the concerns expressed by this resolution (and in particular, by Paragraphs 5 to 11);
13. Requests the Commission to clarify the procedural role of the European Parliament in connection with the possible conclusion of the EPLA;
14. Instructs its President to forward this resolution to the Council, the Commission and the Governments and Parliaments of the Member States.