

WRITTEN QUESTION P-2329/06  
by Adam Gierek (PSE)  
to the Commission

Subject: Interpretation of patent law

According to the Commission's latest proposal concerning the European Patent Litigation Agreement (EPLA), there will be nothing to prevent staff of the European Patent Office (EPO), including members of the Boards of Appeal (BoAs), from becoming judges of the European Patent Judiciary (EPJ).

This derives from the statute of the European Patent Court (Articles 2b and 6.1).

It is well known that, although the European Patent Convention (EPC) of 1973 rules out the possibility of patenting computer programmes and business methods (Article 52(2)(c)), the current practice of the EPO runs counter to this.

The aim of the EPLA is to harmonize the interpretation of the provisions of the EPC in states which are signatories to the agreement. However, it may be the case that the EPJ's interpretation with regard to the patentability of software is not in line with the criteria for patentability laid down by the EPC.

In the light of the above, does the Commission agree with the view that judges from the European Patent Court should not be recruited from among staff of the European Patent Office?