

PATENT SYSTEM FOR EUROPE

Intellectual Property Rights in Portugal:
The Gateway to Innovation

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IPRs and COMPETITIVENESS

- The improvement of IPR issues in Europe is a key element of the renewed Lisbon Strategy for growth and jobs
- Strong correlation between the use of IPRs and country high innovation performance
- Absence of common uniform patent system impacts the competitiveness of European companies

PATENT ISSUES IN EUROPE

- No uniform Litigation system
 - Uniform procedure to get European Patents (grant)
 - Multiple litigations (post-grant phase)
 - High costs
 - Consistency
 - Cross border litigation and forum shopping
- Many languages
 - Potentially translations in 22 languages if validation of the European Patent in 31 countries
- Cost of getting patents (in particular translation costs)

A SINGLE MARKET FOR PATENTS ?

- **THE COMMUNITY PATENT PROPOSAL**

(aka EC patent/ComPat/European Community Patent)

- Should not be confused with European Patents which are granted under the Convention on the Grant of European Patent (EPC) and are not community wide patent

- Should allow individuals or companies to obtain a unitary title

- Thus fulfilling the key principle of the Internal market that the same market conditions should exist wherever in Europe

- Council Political Agreement on the ComPatent Regulation - March 2003

- 2005 – today Stalemate – ComPat remain blocked in the Council

(Rejection of the Council's common political approach - unsatisfactory language regime and inadequate jurisdictional arrangements)

http://ec.europa.eu/internal_market/indprop/patent/index_en.htm#patent

OTHERS STEPS TO IMPROVE INNOVATION IN EUROPE

Not yet a single patent on the point of enforcement

(enforcement of European Patents is governed by national law and only national authorities deal with dispute arising from a European Patent)

- **EPLA** (European Patent Litigation Agreement)

About Patent Litigation

- **LONDON PROTOCOL ON TRANSLATION**

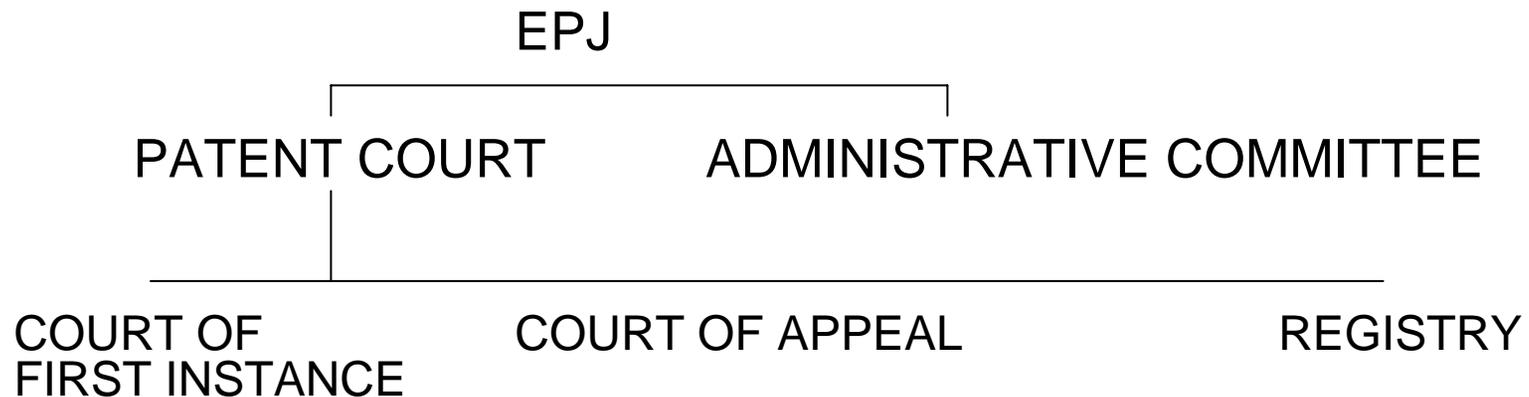
About Cost of obtaining Patents

(access to patents)

LITIGATION FIX

EPLA

- Optional Protocol to the European Patent Convention (EPC) which would commit its Contracting States to
- An Integrated Judicial System for patent disputes (incl. uniform rules procedure and common appeal court)



TRANSLATION FIX LONDON PROTOCOL

- Participating States will give up their right to translation (Art. 65 EPC)
- System for validation:
 - in countries with EN, FR, DE > no translation
 - in countries without EN, FR, DE:
 - only translation of claims (v. description)
 - translation of description required only where the EPO language prescribed by that country is not available
- System for litigation:
 - option to require full translation at the request of the alleged infringer or of the court

PATENT POLICY

- EC broad consultation on the future patent policy in Europe (Jan 2006)
 - More than 2500 replies
 - Need for a simpler and more cost effective patent system which maintains a high standard of quality
- Public Hearing on Future Patent Policy in Europe (July 2006)
http://ec.europa.eu/internal_market/indprop/patent/consultation_en.htm
- Competitiveness European Council Dec. 2006
- European Commissioner Mc Creevy for Internal Market and Services speech (Dec. 2006)
<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/786&format=HTML&aged=1&language=EN&guiLanguage=en>
- Legal Opinion to EU Parliament 2007 (EPLA)

MEANS TO IMPROVE CURRENT SYSTEM

- 1 Jurisdictional features for Litigation system
 - Efficient and Cost Effective Jurisdiction (specialised patent courts with legally and technically qualified judges)
 - Legal Proximity (limited first instances) with a central Appeal Court (uniformity of interpretation)

- 2 Horizontal initiatives (Non Jurisdictional measures)
 - Quality of patents (Importance of rigorous examination, prior art search and strict application of patentability criteria + average time for granting or refusing a European Patent)
 - Support for SMEs
 - Patent litigation insurance ?

- 3 Community Patent to be pursued in parallel

CONCLUDING REMARKS ON IPRS

- All forms of IP (copyright, trademarks, industrial design, patents) are invaluable commercial assets that bring profitability and give European business a competitive edge
- Pragmatic Approach for the European Patent System is needed
- Future Releases 2007
 - EC Communication on a patent strategy for Europe
 - EC IPR Strategy Communication

THANK YOU

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