



Committee on Legal Affairs

12.6.2015

Subject: *Report of the delegation of the Committee on Legal Affairs to Germany (Munich, 4-5 May 2015)*

Summary

A delegation of the JURI Committee visited Munich from 4 to 5 May 2015 on invitation of the president of the European Patent Office. It was led by Mr Pavel Svoboda (EPP, Chairman of the Committee) and included Ms. Constance Le Grip and Angelika Niebler (both PPE).

The delegation held two half days of intensive meetings in the premises of the EPO with Mr Benoît Battistelli, President, Mr Raimund Lutz, Vice-President Legal/International Affairs, Mr. Gilles Requena, Head of the President's Office, Theon van Dijk, Chief economist, Ms. Margot Fröhlinger Principal Director Patent law and Multilateral Affairs, Georg Artelsmair, Director, European Coordination, Ms Heli Pihlajamaa, Director Patent Law, Mr Achim Müller, case examiner, Sylvie Strobel, lawyer and Mr. Gerard Owens, Administrator for International Organisations. The Delegation discussed the state of play of implementation of the new unitary patent, ethical questions of patentability, as well as technical issues deriving from the new challenges after the agreement on a European unitary Patent and in view of ongoing negotiations on international trade partnership agreements.

The delegation allowed establishing and strengthening of contacts with this international Organisation, vital for the EU economy and businesses. The visit proved that both the European Union as well as the European Patent Organisation are well prepared for the introduction of the Unitary Patent. An In-Depth analysis "The European Patent Office –state of play" (PE 519.208) of Policy Department C Citizens Rights and Constitutional Affairs was published for the occasion of that delegation, containing background information on the economic importance and nature of patents, and of the new Unitary patent.

Details

4 May

The delegation was welcomed by Mr Raimund Lutz, Vice President DG5, Legal/International Affairs as representing the Legal affairs committee of the EP, which had always been “a reliable partner for the introduction of the new Unitary Patent system”

Mrs. **Margot Fröhlinger**, Principal Director, PD 5.2. Patent Law and Multilateral Affairs, gave an introduction to the European Patent Organisation, the office and the European patent system. She reported on the state of implementation of the Unitary Patent, the judgement of the Court of Justice on the Spanish actions against the two regulations was in fact awaited for the next day in Luxembourg. The regulation on the translation arrangements had led to the refusal of the EU enhanced cooperation by Italy and Spain

The speaker expanded on the question of costs, expressing the wish that after granting of an EU patent there will not be any validation by European national patent offices (= cost save) and no renewal fees to national offices (= cost save), but one fee for the EU unitary patent and one renewal fee to EPO (which the EPO will share with national offices, a precondition for the Council's acceptance in the negotiations). The new fee structure could be decided already in 2015.

She also gave an overview of the state of the creation of the Unified Patent Court. The Court is expected to start working in the second half of 2016. The EPO will have finished the implementation of the unitary patent before this date.

The nature of the Unified Patent Court is hybrid: it is an international court established by an international agreement by an international organisation. At the same time it is considered to be a court common of the 25 participating States with the same rights and obligations as all the other national courts in its relation with the ECJ.

On a question by the Chair, the speaker replied that judges at the UPC were not nominated by the member states. A preparatory committee will publish vacancies to which candidates can apply. Applications will be scrutinised by an advisory committee. There will be around 40 judges in a first phase.

The following speaker, Mr. **Georg Artelsmair** gave an introduction into the machine translation services. The tool is PatentTranslate and provides machine translations of 28 languages spoken in the 38 participating states of the EPO, but also for Chinese, Japanese and Korean. Machine translation is provided for free to the public in cooperation with Google Inc. – Answering questions by the Chair Pavel Svoboda, the speaker saw no serious data protection issue, as EPO only provided already published documents to the company in order to “train” the application.

Mr. Svoboda remarked that a digital single market without multilingualism was a myth. The EPO initiative on machine translation was therefore highly important. He also asked whether the EPO has encountered copyright problems in machine translations.

Mr. Artelsmair confirmed that the memorandum of understanding with Google Inc. included the clarification that documents were free of copyright and that the EPO had the right of use. Translation costs amount to EUR 9 Million and the translation agreement was concluded over 5 year. On a question by Ms. Niebler, he explained that, nevertheless, the agreement with Google was not exclusive and the EPO was open to other companies offering machine translations of quality.

5 May

Due to the fact that it became known during the morning session that the two claims against the two EU regulations by the Kingdom of Spain were refuted by the ECJ, the meeting became even more topical, making it also probable that also Italy would join the EU regulations.

Achim Müller, Case Examiner, gave an insight into the day –to day job of a case examiner at the EPO, which consisted in an interesting mix of technical, legal and language skills. He provided concrete examples on how applications are handled, researched and examined. The usual timelines are for the search report & opinion approximately 6 months. In case of request of examination by the applicant, examination may take up to 2 years.

Mrs. **Heli Pihlajamaa** (Director) gave an introduction on the patentability of biotechnological and CII (computer implemented inventions). Worldwide patentability of CII is coming to generalised harmonised practice.

Regarding biotechnological inventions, the speaker stressed that there was no patentability of inventions contrary to the *ordre public*. She also gave an overview of the patentability of plants and plant varieties.

Mrs Pihlajamaa concluded that the EPO was well aware of ethical, economical and societal aspects related to biotechnology and that it always paid attention to these issues within the existing legal framework.

The following speaker, **Gerard Owens** gave an overview on patents and climate change mitigation technologies.

Mrs Niebler remarked that it would be of great relevance for the EP impact assessment board to be able to use EPO data for its impact assessments.

Mrs. **Sylvie Strobel** elaborated on substantive patent law harmonisation and patent related TTIP negotiations. She focussed on the grace period, the inclusion of which will be requested by the US and Japan and on which there was still no common position in Europe. She stressed that the TTIP opinion of JURI had been very important, especially points a, n and m. Finally she made a plea for pushing those points through in the INTA report.

During the course of the morning session, the delegation was welcomed by the EPO's president, Mr. **Benoît Battistelli**.

Mr. Battistelli commented on the two very recent ECJ rulings on the two Spanish cases. He called the EPO a European success story. High quality standard was one of EPO's biggest assets and part of the European soft power. He made a commitment to not raising fees, even under the new regime, because if costs were too high, SMEs could not access patent protection. There was now more access to Asian prior art, thanks to EPO's search tools, which made it also possible to overcome the language barrier, e. g. with the Chinese market. He pointed out that EPO had stabilised global number of staff, and the post structure was shifted to more and more patent examiners, a measure which had created social tension. To the question of Mrs. Niebler concerning a concrete the time frame for social dialogue, the President answered that trade unions in the EPO, which followed the French model, were very active. but an agreement regarding the social dialogue during the summer was at hand.

Ms Niebler stated that she would appreciate a visit by President Battistelli to the European Parliament, as conveying the European success stories was always of importance.

Mrs. Le Grip stressed the huge importance of the unitary patent for EUs citizens, especially after the good news from the same morning, as the last legal hurdles towards a truly European patent were removed by the Court.

The Chair, Mr. Svoboda reiterated his invitation to President Battistelli to visit the EP in Brussels - a visit which could, after that day's ruling of the ECJ and the current discussions in the framework of TTIP negotiations, prove to be even more necessary.

The delegation visit was concluded by a lunch on the invitation of the President.



13/5/2015

COMMITTEE ON LEGAL AFFAIRS
Delegation to the European Patent Office, Munich

4 – 5 May 2015

PROGRAMME

Monday, 4 May 2015

- 16.30** Arrival at the EPO, European Patent Office, Bob-van-Bentham-Platz 1, 80469 Munich
- 16.30 - 16.45** Welcome by Mr Raimund Lutz, Vice President DG5, Legal/International Affairs
- 16.45 - 17.15** An introduction to the EPO and the European patent system (Margot Fröhlinger, Principal Director Patent law and Multilateral Affairs,
- 17.15 - 17.45** Unitary patent: state of play of implementation (Margot Fröhlinger)
- 17.45 – 18.15** Questions and Answers
- 18.15 – 18.45** Machine translation services -PatentTranslate (Georg Artelsmair, Director D 5.1.1 European cooperation)
- 18.45 – 19.00** Questions and Answers
- 19.00 – 19.15** Visit of the main building of EPO, Bob-van-Bentham-Platz
- 19.30 h** Dinner on invitation of Mr Lutz in “Spatenbräu am Opernhaus”

Tuesday, 5 May 2015

- 09.30 - 10.00** Demonstration of the search programme Espacenet and practical explanation of the daily work of an examiner, Achim Müller case examiner

- 10.00 - 10.30** Patentability of biotech and CII inventions: legal basis and practice, Ms Heli Pihlajamaa, Director, D 5.2.1 Patent Law
- 10.30 - 11.00** Patents and climate change mitigation technologies, Gerard Owens, Administrator, D 5.2.4 International Organisations
- 11.00 - 11.15** Coffee break
- 11.15 - 12.00** Substantive patent law harmonisation and patent related TTIP negotiations and Q/A, Sylvie Strobel, lawyer
- 12.00 – 13.00** President meeting with the MEPs
- 13.00 - 14.30** Lunch in “Le Fleuron” on invitation of the President Benoît Battistelli

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