

ECJ Decisions Signal End to Cross-Border Jurisdiction in European Patent Infringement Actions

Corinne Elisabeth Atton

Wilmer Cutler Pickering Hale and Dorr LLP

WILMERHALE 

FOR WEB POSTING ONLY
NOT FOR PRINT CIRCULATION



ECJ Decisions Signal End to Cross-Border Jurisdiction in European Patent Infringement Actions

Corinne Elisabeth Atton

ABSTRACT

This article examines the complexities surrounding the enforcement of European patent rights. Setting out the framework of European patents and the rules for cross-border dispute jurisdiction, this Article comments, first, on the inconsistent approaches taken by the various national courts to date; second, on two significant recent rulings of the European Court of Justice. Then, introducing the frustrated proposals for a unified European Community Patent and a centralized European Patent Litigation Agreement, this article concludes that the debate over harmonization is unlikely to be resolved in the foreseeable future.

INTRODUCTION

With no single patent effective throughout all contracting states of either the EU or European Patent Convention (EPC),¹ enforcement of patents in Europe is the domain of national courts; as such, differences in practice, procedure, evidence and judicial expertise result in uncertainty causing litigation costs to be high, parallel proceedings commonplace and forum shopping prevalent.

The allocation of jurisdiction, whilst governed by a framework of European Community (EC) legislation, has been interpreted inconsistently amongst the various EU Member States. Some, such as the Dutch courts, have willingly seized cross-border European Patent (EP) disputes. Others, such as the English courts, have in large part declined. Two significant decisions of the European Court of Justice (ECJ) have now provided much needed clarification. Ruling first, that the validity of a patent must always be tried in the national court of registration, regardless of when and where it was put in issue. Second, that jurisdiction cannot be found against defendants alleged to have infringed other National EPs. These decisions firmly uphold the sovereignty of the national courts. With proposals for both a Community Patent and a European Patent Litigation Agreement (EPLA) on the table, it remains to be seen whether they will renew support for harmonisation.

EUROPEAN PATENT FRAMEWORK

A patent is a national monopoly right, granted in respect of an invention. Acquired by registration, it excludes third party use of that invention, without consent. A patent can be obtained within the EU by two alternative routes. First, by an application for a national patent, direct to the relevant National patent office, the examination of which, is governed by national patent law. Second, by an application for a EP, either to the European Patent Office (EPO), or via the World Intellectual Property Organisation (WIPO), the examination of which, by the EPO, is governed by the EPC.

The EPC is a multilateral treaty, establishing a common system and framework of substantive law across each of its contracting states. These states include all Member States of EU with the exception of Malta and seven additional non-EU states, including Switzerland. Five additional non-EU states, including Croatia, have then signed extension (co-operation) agreements with the EPO, allowing a EP to extend to them, on payment of additional fees. On grant, a EP then becomes a bundle of independent, initially identical, nationally enforceable patents in all designated contracting states. These National EPs then have the effect of and are subject to the same rights, remedies and conditions as, a nationally granted patent.²

Whether examined nationally or by the EPO, a patent granted within the EU, therefore confers national rights and is subject to national law. National courts have jurisdiction to decide issues of validity and infringement and have, in

COPYRIGHT © 2006 BY
THE JOURNAL OF BIOLAW & BUSINESS



WWW.BIOLAWBUSINESS.COM

Corinne Elisabeth Atton is an associate in the Intellectual Property and Litigation Departments at Wilmer Cutler Pickering Hale and Dorr LLP. Ms. Atton received a BSc Honours degree in Human Genetics from University College, London, before completing a Postgraduate Diploma in Law and the Bar Vocational Course at BPP Law School, London. Ms. Atton is a member of Lincoln's Inn, London and in 2003, qualified to practice as a Barrister in England and Wales.

Cite as: Corinne Elisabeth Atton, *ECJ Decisions Signal End to Cross-Border Jurisdiction in European Patent Infringement Actions*. J. BIOLAW & BUS., Vol. 9, No. 4, 2006.

large part, declined to determine such issues in relation to patents granted by other Member (or contracting) States. In the absence of a common court system, patents therefore have to be enforced, *prima facie*, on a state-by-state basis. This has the result that where infringement is alleged across multiple states, a patent owner has to commence proceedings in each of these states or alternatively, “forum shop” (the practice of commencing an action in a particular state on the perceived basis that it will be more favourable). This may and often does, result in simultaneous, parallel patent actions in numerous contracting states, with the evident risk as to expense and inconsistency of outcome.

CROSS BORDER JURISDICTION IN EUROPE

An added complication in this framework is provided by the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention),³ now superseded by Council Regulation (EC) No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels Regulation).⁴ The Brussels Convention and Brussels Regulation set out rules that allocate jurisdiction against EU defendants, between the various national courts. In summary, these rules state as follows:

- In general, a defendant must be sued in its state of domicile;⁵
- If one of multiple defendants domiciled in various states, a defendant may be sued in any of these states, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments;⁶
- The courts of the state of grant or registration of a patent (including a European patent⁷) have exclusive jurisdiction over proceedings concerning its registration or validity;⁸
- Where a court of one state has exclusive jurisdiction over a claim, the courts of other states must decline jurisdiction of subsequent claims, principally concerned with the same subject matter;⁹
- Where a proceeding involving the same cause of action, between the same parties, is subsequently brought in a court of another state, the second court must stay its proceedings, pending the establishment of the jurisdiction of the first. If established, the second court must then decline jurisdiction;¹⁰
- Where a related action (so closely connected that it is expedient to hear and determine the actions together to avoid the risk of irreconcilable judgments) is pending in a court of one state, a court of a subsequent state may stay its proceedings.¹¹

Calls for a more satisfactory or alternative solution, to the issue of cross-border jurisdiction in EP actions are by no means new. Proposals for a single Community Patent have been debated for over thirty years.

EUROPEAN PATENT ACTIONS: CROSS-BORDER INJUNCTIONS AND “TORPEDOES”

The Brussels Convention and Brussels Regulation do not deal specifically, with the issue of cross-border relief. This has contributed to a divergence in the approaches taken by various national EU courts.¹² Since the early 1990s, the Dutch and German courts, have taken the lead as “one-stop-shops” for cross-border (or pan-European) injunctions restraining the infringement of various National EPs across multiple States. Claiming jurisdiction by virtue of both a broad interpretation of the Brussels Convention and the EPC, this approach has then prevented other national courts from adjudicating on the same issue. The premise of these decisions was effectively, that the multi-jurisdictional infringement of parallel National EPs by various defendants, constituted in fact, the infringement of a single EP, the scope of which should, according to Article 69 EPC (Extent of Protection), be determined uniformly. This, it was claimed, constituted sufficient connection for the test (expediency to hear and determine the proceedings together—Article 6(1)) set out under the Brussels Convention to apply.

After a high point in the mid-1990s,¹³ this “one-stop-shop” practice has since, been repeatedly limited. By the end of the decade, by way of example, the Dutch courts had effectively reduced the practice to the “spider in the web” doctrine.¹⁴ The approach

here was that jurisdiction could only be seized firstly, where the various defendants belonged to the same corporate group; and second, where the principal of that group, was domiciled in the Netherlands. In essence, the test of connectivity was therefore effectively switched from the subject matter of the dispute (a EP no longer being considered “one” but a bundle of National EPs), to the identity of the particular defendants. Although these decisions have been criticised, they have afforded EP owners the advantage of avoiding multiple enforcement actions relating to the same or similar infringing activities, against multiple (connected or otherwise) defendants, in multiple jurisdictions.

An alternative approach has been developed by litigants, using the Belgian (more particularly the Brussels) and Italian courts, the “torpedo”. These courts were widely regarded as proceeding slowly. By commencing proceedings for a cross-border declaration of non-infringement, in either court, a party was able to utilise the provisions of the Brussels Convention to effectively “freeze” the infringement issue. This had the added advantage, where relevant, of affording the party time to challenge the validity of the EP before the EPO (providing such action was commenced before the expiry of the nine-month post-grant Opposition

period), or in national revocation actions. The legal basis for such actions, was similar to that required for a cross-border injunction, but had the opposite effect. In fact, the Brussels Convention was being used to obtain a result opposite to that for which it had been intended. As a result, jurisdictional pre-emption became an important weapon. However, following the same direction as the cross-border injunction cases, since 2000, this practice has been increasingly restrained, particularly where the approach has been employed solely, as a pre-emptive procedural device.¹⁵

REQUESTS FOR CLARIFICATION FROM THE ECJ

The Treaty Establishing the European Economic Community (EC Treaty),¹⁶ provides a mechanism by which EU Member State courts, may seek a preliminary reference, for guidance on any aspect of the interpretation of EC law (including the Brussels Convention), from the ECJ. This mechanism aims to ensure the uniform interpretation and application of EC law throughout the Community. The decision on such a reference, is known as a preliminary ruling and is a final, reasoned judgment, binding on all EU national courts.¹⁷

In 2002 and 2003, the German and Dutch courts, respectively, issued references arising from National EP proceedings, requesting clarification on the basis and application of cross border jurisdiction (under the Brussels Convention). The references raised separate issues. The first, sought clarification of the extent to which the validity of a National EP could be adjudicated upon in the court of a Member State, other than the state in which the patent was registered (Article 16(4)). The second, sought clarification first, of whether the test of “*closely connected*” set out in the Brussels Convention (Article 6(1)) was satisfied where a EP was allegedly being simultaneously infringed in multiple Member States; and if not, what were the necessary requirements. The reference asked in particular, whether the following factors were relevant: first, whether the defendants belonged to the same corporate group; second, whether they were acting together as part of a common policy (and if so, was the origin of that policy relevant); and finally, whether the alleged infringing acts were the same or virtually the same.

GAT v LuK

The first reference arose from proceedings between two German companies, *Gesellschaft für Antriebstechnik mbH & Co. KG (GAT)* and *Lamellen und Kupplungsbau Beteiligungs KG (LuK)*. *GAT* and *LuK* were competitors in the motor vehicle technology market. *LuK* claimed, that by offering to supply a German motor vehicle manufacturer, with particular mechanical damper springs, *GAT* had infringed two of its French National EPs. *GAT* commenced pre-emptive proceedings in the Düsseldorf Regional Court, seeking a declaration of non-infringement and challenging the validity of the patent.¹⁸ The court accepted jurisdiction

and upheld validity. *GAT* appealed to the Düsseldorf Higher Regional Court, who prior to seizing jurisdiction, elected to stay the proceedings and issue a reference to the ECJ.

In considering the issue, the ECJ reviewed first, the wording of the relevant Article of the Brussels Convention; second, the object of the Convention; and then finally, the position and effect of the Article within its framework. Deciding that the wording alone was not conclusive, the court noted the intention of the Brussels Convention to uniformly allocate jurisdiction to the courts most closely linked to the action, both in fact and law. In other words, those courts considered best positioned to adjudicate. The court paid particular attention to the specialist nature of patents, the existence within various Member States of “a system of specific judicial protection”, including “specialised courts”¹⁹ and to the fact that the issue of patents “necessitates the involvement of national administrative authorities”.²⁰ It further noted, that in practice, validity is often raised as a defence, a counterclaim or in an action for a declaration for non-infringement: the aim in each case, being to retroactively deny the rights of the patent owner. For this reason, the exclusive and mandatory jurisdiction set out in the Brussels Convention should apply “whatever the form of proceedings in which the issue of a patent’s validity is raised, be it by way of an action or a plea in objection, at the time the case is brought or at a later stage in the proceedings”.²¹ To hold otherwise, would permit indirect decisions on validity, that would “undermine the binding nature”²² of the rules; “multiplying the heads of jurisdiction” undermining “predictability” and the “principle of legal certainty”,²³ and finally “multiplying the risk of conflicting decisions”: a possibility the Brussels Convention “seeks specifically to avoid.”²⁴

Roche v Primus

The second reference arose from proceedings between *Roche Nederland BV* (and nine members of its corporate group, established respectively, in the U.S., Belgium, Germany, France, the U.K., Switzerland, Austria and Sweden) (*Roche*) and *Drs Frederick James Primus and Milton David Goldenberg*²⁵ (collectively, *Primus*). *Primus*, domiciled in the U.S., were the co-owners of a EP relating to first, a method of immunometric analysis used to determine the presence of carcinoembryonic antigens (CEA) in serum; and second, to an immuno-assay kit used to treat such antigens. They claimed, commencing summary proceedings, that by marketing a CEA immuno-assay kit within the jurisdiction of the Dutch court and within various other EU state jurisdictions, *Roche* had infringed its National EPs. The nine “foreign” *Roche* companies responded by contesting jurisdiction. The court accepted jurisdiction, but dismissed the claim of infringement. On appeal, the Regional Court of Appeal, again accepted jurisdiction, but reversed the finding of infringement, awarding an injunction and substantial damages. *Roche* appealed to the Supreme Court, which issued a reference to the ECJ.

The ECJ reviewed the wording of the relevant Article and

concluded that in order for decisions to be “irreconcilable” even in the broad sense of being “contradictory”,²⁶ “it is not sufficient that there be a divergence in the outcome of the dispute...divergence must also arise in the context of the same situation of law and fact”.²⁷ This could not occur “in the case of European patent infringement proceedings involving a number of companies established in various Contracting States in respect of acts committed in one or more of those States”.²⁸ First, the factual context would not be the same: “the existence of the same situation of fact cannot be inferred [where] the defendants are different and the infringements...committed in different Contracting States, are not the same”.²⁹ Second, the legal context would not be the same: the EPC states that EPs continue “to be governed by the national law of each of the Contracting States for which [they have] been granted. In particular...infringement...must be examined in the light of the relevant national law”. “[W]here infringement proceedings are brought...in different Contracting States in respect of a European patent granted in each of those States...in respect of acts alleged committed in their territory, any divergences between the decisions given...would [therefore] not arise in the context of the same legal situation”.³⁰ The court held, that this finding is furthermore no different “where defendant companies, which belong to the same group, have acted in an identical or similar manner in accordance with a common policy, elaborated by one of them”.³¹ Whilst the factual situation here may be the same, the legal situation would not alter.

The court added, that whilst “at first sight considerations of procedural economy may appear to militate in favour of consolidating such actions before one court...the advantages for the sound administration of justice...would be limited”.³² Allowing national courts to seize jurisdiction “solely on the factual criteria...would lead to a multiplication of the potential heads of jurisdiction”.³³ This would “undermine the predictability of the rules...and consequently...undermine the principle of legal certainty, which is the basis of the Convention...the damage would be even more serious if the...defendant [were given] a wide choice, thereby encouraging the practice of forum shopping which the Convention seeks to avoid and which the Court...[has] specifically sought to prevent”.³⁴ To require a court to first “adjudicate on the substance of the case before it could establish its jurisdiction...could give rise to additional costs and could prolong procedural time-limits...a fresh action [may] then have to be brought before a court of another State”.³⁵ In any event, following the GAT decision, if the validity of the patent were to be put in issue, “the consolidation of the patent infringement actions before [one] court could not prevent at least a partial fragmentation” of these proceedings.³⁶

In January 2006, the European Commission launched a public consultation “on how future action in patent policy to create an EU-wide system of protection can best take account of the stakeholder’s needs”

Post-GAT and Roche

The *GAT* and *Roche* decisions significantly restrict cross-border jurisdiction for validity and infringement in EP cases. Affirming that the validity and infringement of a National EP is a matter of national law, the decisions end the attempt by some courts to offer themselves as “one-stop-shops” and condemn parties to litigate (potentially validity and infringement separately) on a state-by-state basis. This will frustrate patent owners preferring a single centralised proceeding.

PROPOSAL FOR UNIFICATION: THE COMMUNITY PATENT

Calls for a more satisfactory or alternative solution, to the issue of cross-border jurisdiction in EP actions are by no means new. Proposals for a single Community Patent have been debated for over thirty years. In December 1975, nine Member States of the European Economic Community (EEC) signed the Convention for the European Patent for the Common Market (the Community Patent Convention or CPC). The CPC failed however, to gain sufficient support and never entered into force. In December 1989, a further resuscitation attempt was made. The Agreement Relating to

Community Patents³⁷ amended the CPC and included a Protocol on the Settlement of Litigation concerning the Infringement and Validity of Community Patents. This again however, failed to obtain the required ratification. In August 2000, the European Commission,

champions of the Community Patent for over ten years, tried again, presenting a draft EC Regulation, entitled Proposal for a Council Regulation on the Community Patent.³⁸ Discussions initially made progress and in March 2003, a political agreement was reached on general principles. By March 2004 however, the Proposal was at a standstill, a result in part, of a failure to agree on the issue of translation. A compromise proposal put forward by the EC Presidency also met with failure. With negotiations now remaining in deadlock, it is unlikely that any progress will be made on the Community Patent in the foreseeable future.

In January 2006, the European Commission launched a public consultation “on how future action in patent policy to create an EU-wide system of protection can best take account of the stakeholder’s needs”.³⁹ The Community Patent was yet again put forward for discussion (in addition to the EPLA), Mr McCreevy, the EU Commissioner for the Internal Market and Services, in February 2006, confirming “one last push” for the Proposal.⁴⁰ By June 2006 however, Mr McCreevy was forced to admit that it remained “blocked” in the European Council.⁴¹ Additional concerns identified in the consultation included a failure to provide for comprehensive judicial competence over issues such as

ownership, the interpretation of licences and exhaustion of rights—issues commonly arising in patent litigation—and the level of competence and experience of members of the proposed European Patent Court.⁴²

PROPOSAL FOR CENTRALIZATION: THE EPLA

Frustrated by the continuing stalemate on negotiations for the Community Patent, in June 1999, the European Patent Organisation (EP Organisation) established a Working Party on Litigation. In October 2000, the Working Party was tasked with drafting an optional protocol to the EPC, committing contracting states if they so elected, to “an integrated judicial system” with jurisdiction over validity and infringement, binding across all contracting states.⁴³ Convinced of “an urgent need to remedy the shortcomings of the present system” and establish a “workable litigation scheme for European patents”, the Working Party wished to create “a level playing field for businesses in Europe”, to confirm its status as “one of the world’s most competitive and dynamic knowledge-based economies”.⁴⁴

The protocol aims to provide for a new international organisation known as the European Patent Judiciary (EPJ). This, in turn, comprises a European Patent Court (consisting of a Court of First Instance (both Central and Regional Divisions); a Court of Appeal; and a Registry) and an Administrative Committee, composed of state representatives, with various legislative and administrative functions.⁴⁵ In November 2003, the Working Party agreed the texts of a Draft Agreement on the Establishment of a European Patent Litigation System (the EPLA) and a Draft Statute of the European Patent Court. The Working Party announced that these constituted “a suitable basis for convening a Diplomatic Conference to adopt the new court system”,⁴⁶ but warned that that the establishment of such a system would be delayed owing to the competing EC proposal, for a Community Patent.⁴⁷


The substantive law of the EPLA essentially derives from the CPC (as amended).⁴⁸ Further proposals include a language regime based on the three official languages of the EP Organisation;⁴⁹ international panels comprised of legally and technically qualified judges of multiple jurisdictions; the operation of the European Patent Court “in accordance with uniform rules of procedure including extensive powers...to order measures and impose securities, sanctions and fines...and to order provisional and protective measures”;⁵⁰ the retention by national courts, of jurisdiction over various provisional and protective measures, such as the power to order the provisional seizure of goods as secu-

rity for damages or costs; and finally, the ability of the European Patent Court to issue preliminary references to the ECJ.

In October 2005, interest in the EPLA was renewed when a Resolution in its favour was signed by twenty-four Intellectual Property specialist judges from ten EU Member States, including Great Britain and Germany, at the Judge’s Forum in Venice. The Resolution considered “a Diplomatic conference with a view to implementing proposals broadly along the lines of those of the Working Party for a European Patent Litigation Agreement” a practical way forward.⁵¹ A further breakthrough was made in July 2006, when Mr McCreevy acknowledged that that the EPLA was “a promising route towards [a] more unitary jurisdiction”.⁵² Previously unenthusiastic about the competing proposal, the European Commission therefore appears to have made a u-turn, if only to consider it as a potential stopgap measure.

SUMMARY

Despite this support and the impetus provided by *GAT* and *Roche*, it seems unlikely that the EU will have a truly unitary or centralised patent litigation system in the near future. While the EPLA, building upon the present role of the EP Organisation, may be preferable to the complexities of a Community Patent system, until such proposals can be shown to be capable of workable, inexpensive litigation, resulting in consistent and well-reasoned judgments, they are likely to be viewed with caution. Even if enacted, some patent owners may remain fearful of an “eggs in one basket” approach, preferring to pursue national patents, deriving confidence from the tried and tested status quo.

In the meanwhile, tactical elections will continue. Patent owners will still consider the jurisdiction most preferable to commence proceedings. Whether this election is made on the basis of the importance of the market; the presence of a specialist court system; procedure; timing or expense, the practice of strategic forum selection is therefore set to continue. Following *GAT*, alleged infringers may in turn, raise validity when faced with proceedings for infringement of a “foreign” National EP. This shall result at least, in the transfer of this issue to the relevant national court of registration, possibly leading to a request for a stay of the infringement proceedings. In the alternative, the court first seized, may simply elect to transfer the whole of the proceedings to that national court. In either event, proceedings shall be disrupted and the inconsistency in approach taken by the national courts is likely to result in further complexity and delay. 

ENDNOTES

1. Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973 (www.european-patent-office.org/legal/epc/ema1.html)
2. Articles 2(2), 64(1) and (3) EPC
3. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters
4. Council Regulation (EC) No. 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial

Matters

5. Article 2 Brussels Convention; Article 2 Brussels Regulation
6. Article 6(1) Brussels Convention and Cases *C-189/87 Kalfelis* [1988] ECR 5565, paragraph 12 and *C-51/97 Réunion Européenne and Others* [1998] ECR-I-6511, paragraph 48; Article 6(1) Brussels Regulation
7. Annex Vd of the Protocol annexed to the Brussels Convention
8. Articles 16(4) and 22 Brussels Convention; Articles 22(4) Brussels Regulation

9. Article 19 Brussels Convention; Article 25 Brussels Regulation
10. Article 21 Brussels Convention; Article 27 Brussels Regulation
11. Article 22 Brussels Convention; Article 28 Brussels Regulation
12. Compare, for example, the decisions of the Dutch court, with those of the English court in *Coin Controls Limited v Suzo International (UK) Limited and others* (1997) E.S.R. 660 and *Fort Dodge Animal Health Limited and Others v Akzo Nobel NV and Others* (1998) E.S.R. 222.
13. See by way of example, *De Boer Staalrichtingen v Cewaco* (BIE 1992, 78)
14. *Expandable Grafts v Boston Scientific* (NJ Kort 1998, 58)
15. See *Glaxo-Wellcome v Hoffman La Roche, Nr. 20, Hof Van Beroep te Brussel, 20 Februari 2001*; *BL Machine Automatische v Windmoller, 19 December 2003* (Italian Supreme Court) (Managing Intellectual Property; Supplement - Italy Special Focus 2005; Patent Litigation in the Post-Torpedo Era); *Dijkstra Plastics BV v Saier Verpackungstechnik GmbH & Co KG, Tribunal de Grande Instance Paris, November 5, 2003* (News Section: National Reports: [2004] E.I.P.R. N-151)
16. Treaty Establishing the European Economic Community (Rome, 25 March 1957) (as amended)
17. Case 66/80 *International Chemical Corporation SpA v Amministrazione delle Finanze dello Stato* [1981] ECR 1191, [2083] 2 CMLR 593, ECJ
18. Case C-4/03 - *GAT Gesellschaft Fur Antriebstechnik MBH & Co KG v Lamellen und Kupplungsbau Beteiligungs KG* (2006) LTLEU 13/7/2006
19. GAT at paragraph 22
20. GAT at paragraph 23
21. GAT at paragraph 25
22. GAT at paragraph 26
23. GAT at paragraph 28
24. GAT at paragraph 29
25. Case C-539/03 - *Roche Nederland BV and Others v (1) Dr Frederick James Primus; (2) Dr Milton David Goldenberg* (2006) LTLEU 13/7/2006
26. *Roche*, paragraph 25
27. *Roche*, paragraph 26
28. *Roche*, paragraph 27
29. *Roche*, paragraph 27
30. *Roche*, paragraphs 29 to 31
31. *Roche*, paragraph 34
32. *Roche*, paragraph 36
33. *Roche*, paragraph 37
34. *Roche*, paragraphs 37 and 38
35. *Roche*, paragraph 39
36. *Roche*, paragraph 40
37. 89/695/EEC. Luxembourg, 15 December 1989. Official Journal L 401, 30/12/1989 P. 0001 – 0027.
38. Brussels, 1.8.2000. COM(2000) 412 final. 2000/0177 (CNS)
39. Internal Market: Commission asks industry and other stakeholders for their views on future patent policy; IP/06/38; Brussels, 16 January 2006 and The Consultation on Future Patent Policy in Europe Position Paper WGEPL/0601; Revised: 2006/03/13
40. Charlie McCreevy; European Commissioner for Internal Market and Services; Priorities for the Internal Market European Economic and Social Committee; Brussels, 21 February 2006; Ref: SPEECH/06/115 Date: 22/02/2006
41. Charlie McCreevy; European Commissioner for Internal Market and Services; The Commission's work programme for 2007; European Parliament Committee on Legal Affairs (JURI); Brussels, 21 June 2006; Ref: SPEECH/06/400 Date: 22/06/2006
42. Future Patent Policy in Europe; Public Hearing – 12 July 2006; European Commission; Preliminary findings: issues for debate; (http://ec.europa.eu/internal_market/indprop/docs/patent/hearing/preliminary_findings_en.pdf.)
43. <http://patlaw-reform.european-patent-office.org/eplal/>
44. Assessment of the impact of the European patent litigation agreement (EPLA) on litigation of European patents; European Patent Office acting as secretariat of the Working Party on Litigation; February 2006; http://www.european-patent-office.org/epo/eplal/pdf/impact_assessment_2006_02_v1.pdf
45. European Patent Litigation Agreement; Introductory Remarks; <http://www.european-patent-office.org/epo/eplal/pdf/intro.pdf>
46. See 44 above
47. See 45 above
48. See 44 above
49. See 45 above
50. See 44 above
51. Resolution Passed by the Named Judges Specialising in Patent Law at the Judges' Forum Held in San Servolo, Venice – October 14-16, 2005 ([http://www.eplaw.org/Downloads/Venice %20Resolution.pdf](http://www.eplaw.org/Downloads/Venice%20Resolution.pdf))
52. Charlie McCreevy; European Commissioner for Internal Market and Services; Closing remarks at public hearing on future patent policy; Public Discussion on Future Patent Policy in Europe; Brussels, 12 July 2006; Ref: SPEECH/06/453 Date: 12/07/2006. This support was reinforced by Mr McCreevy in a speech made to the Informal ECOFIN Council on September 8, 2006: "What industry wants is a one-stop-shop....I believe the time has come to make a concerted push to improve the patent system in Europe.... It is clear from the [2006] consultation that stakeholders reject the current Community Patent deal on the table... industry calls for the Community's involvement in the European Patent Litigation Agreement (EPLA).... I believe this is a goal worth pursuing" (Charlie McCreevy; European Commissioner for Internal Market and Services; IPR – Next Steps; Informal ECOFIN Council – IPR Conference; Helsinki, 8 September 2006; Ref: SPEECH/06/485 Date: 08/09/2006)



The Journal of BioLaw & Business®

Voice: 888.732.6732

Telefax: 973.627.5872

E-mail: orders_biolaw@fulcoinc.com

Web: www.biolawbusiness.com