

Jurisdictional system for patent disputes

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The European Parliament adopted by 483 votes to 161, with 38 abstentions, a resolution on a jurisdictional system for patent disputes.

The resolution notes that the fragmented market for patents and disparities in law enforcement hamper innovation and progress in the internal market, complicate the use of the patent system, are costly and prevent the effective protection of patent rights, particularly those of SMEs.

Parliament calls for **the establishment of the Unified Patent Litigation System** and encourages Member States to conclude the negotiations and to ratify the international agreement between these Member States creating a Unified Patent Court without undue delays. It encourages Spain and Italy to consider joining in the enhanced cooperation procedure. The Court of Justice, as guardian of Union law, must ensure uniformity of the Union legal order and the primacy of European law in this context.

Parliament stresses that the Unified Patent Court's priority should be to **enhance legal certainty and to improve the enforcement of patents while striking a fair balance between the interests of right holders and parties concerned**. It also stresses the need for a **cost-efficient** litigation system which is financed in such a way as to secure access to justice for all patent holders, particularly for SMEs, individuals and not-for-profit organisations.

On a general level, the resolution highlights that:

- the Contracting Member States can **only be Member States of the European Union**;
- the Agreement should come into force when a **minimum of thirteen Contracting Member States**, including the three Member States in which the highest number of European patents was in force in the year preceding the year in which the Diplomatic Conference for the signature of the Agreement takes place, have ratified the Agreement;
- the Court should be a **Court common to the Contracting Member States** and subject to the same obligations as any national court with regard to compliance with Union law; thus, for example, the Court shall cooperate with the Court of Justice by applying Article 267 TFEU;
- the Court should act in line with the body of Union law and **respect its primacy**.

Parliament includes a series of recommendations on:

1. Structure of the Patent Litigation System: an efficient court and litigation system needs to be **decentralised**. The litigation system of the Court should consist of a first instance ('Court of First Instance') and an instance for appeal ('Court of Appeal'); in order to avoid inefficiencies and lengthy proceedings, no further instances should be added.

2. Composition of the Court and qualification of the Judges: stressing that the efficiency of the litigation system depends most of all on the **quality and experience of the judges**, Members consider that they should ensure the highest standards of competence and proven capacity in the field of patent litigation and antitrust law. This qualification should be proven inter alia by relevant work experience and professional training. The composition of the Court of Appeal and the Court of First Instance should be multinational.

3. Procedural issues: one set of procedural rules should be applicable to proceedings before all divisions and instances of the Court. The language of proceedings before any local or regional division should be

the official language of the Contracting Member State hosting the division or the official language designated by the Contracting Member States sharing a regional division. The Court should have the power to grant preliminary injunctions to prevent any impending infringement and to forbid the continuation of the alleged infringement. Such power must, however, not lead to inequitable forum shopping.

4. Jurisdiction and effect of the Court decisions: the Court should have exclusive jurisdiction in respect of European patents with unitary effect and European patents designating one or more Contracting Member States. The plaintiff should bring the action **before the local division** hosted by a Contracting Member State where the infringement has occurred or may occur, or where the defendant is domiciled or established, or to the regional division in which this Contracting Member State participates.

In the event of a **counterclaim for revocation**, the local or regional division should have the discretion to proceed with the infringement proceeding independently of whether the division proceeds as well with the counterclaim or whether it refers the counterclaim to the central division. Decisions of all divisions of the Court of First Instance as well as decisions of the Court of Appeal should be **enforceable** in any Contracting Member State without the need for a declaration of enforceability.

5. Substantive law: Members stress that: (i) a European Patent with unitary effect should confer on its proprietor the right to prevent direct and indirect use of the invention by any third party not having the proprietor's consent in the territories of the Contracting Member States; (ii) that the proprietor should be entitled to compensation for damages in case of an unlawful use of the invention and that; (iii) the proprietor should be entitled to recover either the profit lost due to the infringement and other losses, an appropriate licence fee or the profit resulting from the unlawful use of the invention.