Industrial property: Community patent

2000/0177(COD) - 01/08/2000 - Legislative proposal

PURPOSE: to propose a Council Regulation on the Community Patent CONTENT: The idea of the Community patent dates back to the 1960s. Most recently, the Commission adopted, on 5 February 1999, a Communication on the follow-up to the Green Paper on the Community patent and the patent system in Europe (COM (1999)42 final). The aim of this Communication was to announce the various measures and new initiatives which the Commission was planning to take or propose in order to make the patent system attractive for promoting innovation in Europe. The initiative concerning the Community patent was announced and sketched out in broad outline in the Commission Communication dated 5 February 1999. This proposal incorporates most of that broad outline. This proposal for a Regulation is aimed at creating a new unitary industrial property right, the Community patent. It is essential for eliminating the distortion of competition which may result from the territorial nature of national protection rights. It is also one of the most suitable means of ensuring the free movement of goods protected by patents. Furthermore, the creation of the Community patent will enable undertakings to adapt their production and distribution activities to the European dimension. It is considered to be an essential tool in succeeding in transforming research results and the new technological and scientific know-how into industrial and commercial success stories - and thereby put an end to the 'European paradox' in innovation - while at the same time stimulating private R&D investment, which is currently at a very low level in the European Union compared with the United States and Japan. The main thrust of the proposal is the creation of a 'symbiosis' between two systems: that of the Regulation on the Community patent, a European Community instrument, and that of the Munich Convention, a classic international instrument. The Community patent system will coexist with the national and European patent systems. Inventors will remain free to choose the type of patent production best suited to their needs. As already announced in the Communication of 5 February 1999, the legal basis of the proposal for a Regulation is Article 308 of the EC Treaty. Use of this legal base is in accordance with what has been done in relation to the Community trade mark and Community designs. The form chosen for the instrment- the Regulation- is warranted by a number of considerations. The Member States cannot be left with any discretion either to determine the Community law applicable to the Community patent or to decide on the effects and administration of the patent once it has been granted. The unity of the patent could not be guaranteed by less 'binding' measures. The main features of the proposed Community patent are the following: - Unitary and autonomous nature of the Community patent; - Law applicable to the Community patent. Here, the Regulation does not set out to depart substantially from the principles embodied in national patent law already in force in the Member States; - Affordable cost of the Community patent. This proposal is aimed at making the Community patent more affordable and moreattractive than the present European patent; - Legal certainty of the Community patent in terms of the judicial system. This relates to litigation between private parties and only a centralised Community court can guarantee without fail unity of law and consistent case law; - Division of responsibilities within the centralised Community court. A new court would have jurisdiction in certain situations where jurisdiction would normally have been vested in the Court of First Instance.