Basic information

2000/0177(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure lapsed or withdrawn
Industrial property: Community patent **Subject** 3.50.16 Industrial property, European patent, Community patent, design and pattern	

Key players

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2336	2001-03-12
Competitiveness (Internal Market, Industry, Research and Space)	2371	2001-09-27
Competitiveness (Internal Market, Industry, Research and Space)	2945	2009-05-28
Competitiveness (Internal Market, Industry, Research and Space)	2412	2002-03-01
Competitiveness (Internal Market, Industry, Research and Space)	2403	2001-12-20
Competitiveness (Internal Market, Industry, Research and Space)	2351	2001-05-30
Competitiveness (Internal Market, Industry, Research and Space)	2490	2003-03-03
Competitiveness (Internal Market, Industry, Research and Space)	3049	2010-11-25
Competitiveness (Internal Market, Industry, Research and Space)	2583	2004-05-17
Competitiveness (Internal Market, Industry, Research and Space)	3057	2010-12-10
Competitiveness (Internal Market, Industry, Research and Space)	2389	2001-11-26
Competitiveness (Internal Market, Industry, Research and Space)	2289	2000-09-28
Competitiveness (Internal Market, Industry, Research and Space)	2467	2002-11-26
Competitiveness (Internal Market, Industry, Research and Space)	2982	2009-12-03

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

Key events

Date	Event	Reference	Summary
01/08/2000	Legislative proposal published	COM(2000)0412	Summary
28/09/2000	Debate in Council		
02/10/2000	Committee referral announced in Parliament, 1st reading		
30/11/2000	Debate in Council		

12/03/2001	Debate in Council		Summary
30/05/2001	Debate in Council		Summary
27/09/2001	Debate in Council		Summary
26/11/2001	Debate in Council		
20/12/2001	Debate in Council		Summary
19/02/2002	Vote in committee, 1st reading		Summary
19/02/2002	Committee report tabled for plenary, 1st reading	A5-0059/2002	
01/03/2002	Debate in Council		
09/04/2002	Debate in Parliament		
10/04/2002	Decision by Parliament, 1st reading	T5-0163/2002	Summary
26/11/2002	Resolution/conclusions adopted by Council		Summary
17/05/2004	Debate in Council		Summary
28/05/2009	Debate in Council		Summary
02/12/2009	Additional information		Summary
03/12/2009	Resolution/conclusions adopted by Council		Summary
25/11/2010	Debate in Council		Summary
10/12/2010	Debate in Council		Summary
26/04/2012	Proposal withdrawn by Commission		Summary

Technical information

Procedure reference	2000/0177(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the European Union TFEU 118-p1
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	JURI/5/13528

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0059/2002	19/02/2002	
Text adopted by Parliament, 1st reading/single reading		T5-0163/2002 OJ C 127 29.05.2003, p. 0162-0519 E	10/04/2002	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2000)0412 OJ C 337 28.11.2000, p. 0278 E	01/08/2000	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0411/2001 OJ C 155 29.05.2001, p. 0080	29/03/2001	

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Industrial property: Community patent

2000/0177(COD) - 12/03/2001

The Council held a debate on the proposal for a Regulation on the Community Patent, including the relationship between this proposal and the European Patent Convention (EPC), and on the appropriateness of taking steps in order to keep the door open for possible Community accession to the EPC. Several delegations stressed the need to examine thoroughly all aspects of the proposal, giving due consideration to all options, before taking any decision in this respect. The Council will revert to this issue, considered to be a high priority by the Swedish Presidency, at its next meeting on 5 June 2001.

Industrial property: Community patent

2000/0177(COD) - 20/12/2001

In accordance with mandate given by the Laeken European Council, the Council continued its examination of the main problems still to be resolved concerning the introduction of the Community patent, focusing in particular on the language arrangements for the future system, the role to be played by the national patent offices vis-à-vis the European Patent Office (EPO) and the judicial system. Even though the Council did not succeed in reaching unanimous agreement on the key questions, the great majority of delegations agreed to continue discussions on the basis of a compromise proposal presented by the Belgian Presidency. The Spanish delegation indicated that it intended to continue working actively on this basis during its Presidency.

Industrial property: Community patent

2000/0177(COD) - 25/11/2010

In public deliberation, and at the request of the Netherlands and Swedish delegations, the Commission expressed its opinion on the possibility of **initiating an enhanced cooperation procedure** on a future EU patent system.

The request follows a letter sent by several Member States asking the Commission to consider the feasibility of proposing enhanced cooperation in this area, should it receive a request to propose such cooperation in the near future.

Several Member States expressed views on this issue and the Council legal service provided an explanation of the compatibility of this kind of enhanced cooperation with the EU treaty, as well as the procedural steps to initiate it.

The Presidency announced that this topic would be added to the agenda for the next Competitiveness Council meeting scheduled for 10 December 2010.

Industrial property: Community patent

2000/0177(COD) - 17/05/2004

The Council did not reach agreement by unanimity, as required, on the Presidency's compromise proposal for a Council Regulation on the Community patent. Germany, France, Spain and Portugal

voted against and Italy abstained. Noting that all conceivable compromise solutions for the only outstanding issue, which concerns the translation of patent claims, had been tried, the Presidency

stated its intention to refer this matter to the President of the European Council.

Industrial property: Community patent

2000/0177(COD) - 26/11/2002

The Council has examined the status of the proposed Community Patent Regulation, in accordance with the outcome of the Council meeting the 21 May 2002 during the Spanish Presidency, focusing on the jurisdictional arrangements for the Community Patent. The Council noted that progress has been made on both the underlying general principles for the jurisdictional arrangements as well as on the structure of the Community Patent Court and the more technical - but essential - legal issues involved. Therefore the Permanent Representatives Committee should pursue work actively on and give high priority to finalising an agreement on the key elements of the jurisdictional system for the Community Patent and prepare an overall political agreement at the Council on the Community Patent as a whole. The Council will make all efforts to adopt this political agreement in good time before the European Council in Spring 2003.

Industrial property: Community patent

2000/0177(COD) - 10/04/2002 - Text adopted by Parliament, 1st reading/single reading

The European Parliament voted 256 to 187 with 95 abstentions in favour of a resolution approving the Commission's proposal for a regulation to create a Community patent, together with a number of non-binding amendments. Ahead of the Council meeting in May, which is expected to reach the unanimous agreement required to adopt the draft regulation, the amendments express Ana Isabel PALACIO DEL VALLE LERSUNDI's (EPP-ED, E) views on a series of issues which are essential for the adoption and proper functioning of this regulation. The key points are the language arrangements, the role of national patent offices vis-Ó-vis the European Patent Office (an existing non-EU body to which the Community would accede in its own right) and the judicial system. (Please refer to the summary dated 19/02/02).

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.

Industrial property: Community patent

2000/0177(COD) - 28/05/2009

The Council took note of a Presidency report on ongoing negotiations aimed at establishing a Community patent and a unified patent litigation system.

With regard to the Community patent, in the first half of 2009 discussions in the Council preparatory bodies concentrated on possible cooperation arrangements between patent offices in Europe, based on enhanced partnerships, and on the economic benefits of a Community patent, on the basis of an expert study highlighting the potential of a future Community patent to foster innovation, in particular by SMEs and universities.

As regards the unified patent litigation system, discussions focused on a draft Agreement and the draft statute of the future court. EU delegations made progress in understanding how the envisaged court system would work. Important areas addressed and further developed include: the composition of the panels of judges, the implementation and operation of the envisaged Agreement, the role of the European Court of Justice (ECJ) in the interpretation of Community law and transitional arrangements. The analysis of economic aspects was carried out on the basis of an expert study highlighting the cost-saving benefits to business of a unified patent system.

In this regard, the Council agreed in principle to request the ECJ for an opinion on whether the envisaged Agreement, to be concluded between the Community, its Member states and other contracting parties to the European Patent Convention, is compatible with the EC Treaty.

Following the conclusions of the Council of December 2006 and of the 2007 Spring European Council, the Commission presented a communication entitled "Enhancing the patent system in Europe" (8302/07) in April 2007. Progress reports were presented to the Council in November 2007 (15162/07), May 2008 (9473/08) and December 2008 (16006/08).

Industrial property: Community patent

2000/0177(COD) - 30/05/2001

The Council agreed on the following common guidelines for the continued work on the Community patent: - a central role is to be played by the European Patent Office in the grant and administration of Community patents. This would require amendment of the European Patent Convention. - National patent offices should have an important role, bearing in mind contacts with local languages. This would include advising potential applicants for Community patents and transmitting them to the European Patent Office and disseminating information. The nature of other activities should be further considered, taking account of the need to guarantee the quality and uniformity of the Community patent. Applicants should be free to have their applications fully processed by the European Patent Office. - costs need to be kept competitive. - as regards languages, the Community patent system should be based on general principles including that of non-discrimination. Possibilities for limiting translation costs should be explored. - a certain percentage of income from annual renewal fees for the Community patent should be distributed among Member States/national patent office. - jurisdictional arrangements for the Community patent should be set up in accordance with the framework of Articles 225a and 229a of the EC Treaty as adopted at Nice.

Industrial property: Community patent

2000/0177(COD) - 03/12/2009

The Council held a debate on an enhanced patent system in Europe and adopted **conclusions** on the main features of the future patent system based on two main pillars comprising:

- **the creation of a unified patent litigation system** that would have exclusive jurisdiction in respect of civil litigation related to the infringements and validity of EU and European patents, and would consist of a court of first instance (with a central division and local and regional divisions), and a court of appeal;
- **the creation of an EU patent as a unitary legal instrument for granting patents valid in the EU as a whole**. In a public session the Council also agreed on a general approach (i.e. an agreement in principle pending the opinion of the European Parliament) on a draft regulation establishing the EU patent.

Recalling that enhancing the patent system in Europe is a necessary prerequisite for boosting growth through innovation and for helping European business, in particular SMEs, face the economic crisis and international competition, the Council considers that such an enhanced patent system is a vital element of the Internal Market and that it should be based on two pillars, i.e. the creation of a European Union patent ("EU patent") and the setting up of an integrated specialised and unified jurisdiction for patent related disputes thus improving the enforcement of patents and enhancing legal certainty.

The Council conclusions concern the main features of the **European and EU Patents Court**. This should have exclusive jurisdiction in respect of civil litigation related to the infringement and validity of EU patents and European patents. The EEUPC should comprise a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance should comprise a central division as well as local and regional divisions. The European Court of Justice shall ensure the principle of primacy of EU law and its uniform interpretation.

The Council considers that these conclusions should form part of the overall final agreement on a package of measures for an Enhanced Patent System in Europe comprising the creation of a European and EU Patents Court (EEUPC), an EU patent, including the separate regulation on the translation arrangements, an Enhanced Partnership between the European Patent Office and central industrial property offices of Member States and, to the extent necessary, amendments to the European Patent Convention.

Industrial property: Community patent

2000/0177(COD) - 03/03/2003

The Council reached agreement on a common political approach regarding the Community Patent.

The agreed text covers de main principles and features of the jurisdictional system for the Community Patent, the language regime, costs, the role of national patent offices and the distribution of fees.

1) The jurisdictional system of the Community Patent will be based on the principles of a unitary

Court for the Community Patent, securing uniformity of the jurisprudence, high quality of working, proximity to the users and potential users and low operating cost. The Court of Justice shall have exclusive jurisdiction in actions and claims of invalidity or infringement proceedings, of actions of a declaration of non-infringement, of proceedings relating to the use of the patent or to the right based on prior use of the patent, or requests for limitation, counterclaims for invalidity or applications for declaration of lapse, including requests for provisional measures. The Community patent may also be the subject of proceedings or claims for damages.

The litigation of Community Patents shall at first instance take place before a judicial panel established by a Council decision according to Article 225a of the EC Treaty. The appeal shall lie with the Court of First Instance of the European Communities (CFI). This judicial panel, called Community Patent Court (CPC), shall be attached to the CFI and shall be established at the latest by 2010.

2) The language regime must meet the objectives of affordability, cost-efficiency, legal certainty and

non-discrimination. The language regime for the Community Patent will, up to grant, be the same as the one provided for in the European Patent Convention. This means that the applicant has to present a complete application document in one of the three official languages of the EPO as well as, at the time of grant of the patent, a translation of the claims into the two other EPO languages. The level of procedural fees for processing an application for a Community Patent will be the same regardless of where the application is filed and where the novelty search is carried out (EPO or national patent office). The level of fees will be related to costs for handling the Community Patent and must not lead to any indirect subsidy of national patent offices.

3) Role of the national patent offices (NPO): the European Patent Office (EPO) will play a central role in the administration of Community Patents and will alone be responsible for examination of applications and the grant of Community Patents. All national patent offices will have an important role to play in advising potential applicants for Community Patents, receiving applications and forwarding them to the EPO, disseminating patent information and advising SMEs. Applications for Community Patents can be filed with the National Patent Office of a Member State in its working language(s). Applicants will remain free to present their patent applications directly to the EPO. They may also request that their applications be fully processed by the EPO. The relationship between NPOs and the EPO will be based on partnership agreements, containing inter alia common criteria for quality assurance. These criteria (covering documentation, staff training and qualifications and working tools) would aim to guarantee a comparable quality and uniformity of the Community Patent.

4) Distribution of fees : NPOs will be compensated for the activities in respect of Community Patents. Renewal fees for Community Patents will be payable to the EPO, which will keep 50% to cover its costs, including the costs of searches carried out by NPOs. The remaining 50% will be distributed among the NPOs of the Community Member States in accordance with a distribution key, which will be decided by the Council.

5) Review clause : five years after the grant of the first Community Patent, the Commission will present a report to the Council on the functioning of all aspects of the Community Patent and, where necessary, make appropriate proposals. The assessment will cover the issues of quality, coherence and time required for decisions and cost to the inventors. The Commission may propose recommendations for further changes of the jurisdictional system. Further reviews should be made periodically.

Lastly, for clarification, the Council states that the words "upon the grant of the patent" mean within a reasonable time from the date of grant of the patent. During this time, the granted patent shall be valid irrespective of availability of translations of all claims into all official Community languages. The Council notes that the German delegation considers that a reasonable time would be within two years from the date of the grant of the patent.

Industrial property: Community patent

2000/0177(COD) - 10/12/2010

The Council **exchanged views** on the way forward for the future establishment of a single EU patent system and, in particular, the possibility of initiating **enhanced cooperation between several Member States**.

A large majority of delegations asked the Commission to present a formal proposal for initiating enhanced cooperation. The Commission announced the submission of such a proposal on 14 December 2010.

The majority of delegations considered that **enhanced cooperation, as provided for in the EU treaty, is the only option for making progress on the creation of a unified EU patent system**.

The Italian and Spanish delegations strongly opposed the idea of initiating enhanced cooperation on the basis that the requirements for engaging in that process have not yet been met.

The Hungarian delegation, which will be holding EU Presidency from January 2011, expressed its commitment to taking the work forward with a view to achieving an agreement on this issue as soon as possible.

Following ministerial discussions on 11 October and 10 and 25 November, the Belgian Presidency concluded that it is not possible to reach the required unanimity on a language regime for creating a EU patent system. Therefore a number of delegations expressed their interest in moving ahead on the basis of an enhanced cooperation.

The procedural steps to initiate enhanced cooperation in the area of unitary patent protection can be listed as follows:

- it is to be used only as a last resort after verifying the impossibility of reaching unanimity;
- an application submitted to the Commission by Member States wishing to pursue among themselves an initiative blocked at the level of the Union; there must be at least nine countries wishing to participate;
- the Commission assesses whether the request should be accepted. After acceptance, it sends the Council a proposal for authorisation. This proposal must define the framework in which the enhanced cooperation would be carried out;
- the Council grants authorisation by qualified majority, after obtaining the consent of the European Parliament;
- once the cooperation has been authorised, all members of the Council may participate in its deliberations, but only the participating countries take part in the votes;
- enhanced cooperation is open at any time to member states wishing to join in.

Industrial property: Community patent

2000/0177(COD) - 27/09/2001

The Council noted a progress report by the Presidency and held a wide-ranging exchange of views on the outstanding problems concerning the creation of a Community patent. Having noted the principal difficulties of the various delegations with the common approach which it was proposing, the Presidency said that it would do everything possible to draw up a compromise text that all delegations could accept, in order to reach agreement by the end of the year. The Permanent Representatives Committee was invited to press ahead with work on all aspects of the creation of the Community patent. The President of the Council pointed out that all delegations had insisted on the need for the Community patent to be credible. As regards developments to date, the Lisbon European Council's conclusions, subsequently confirmed by the Feira and Stockholm European Councils, requested that a Community patent including the utility model be available by the end of 2001 at the latest.