

Tuesday 11 December 2012

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2011)0093**Position of the European Parliament adopted at first reading on 11 December 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection**

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 1257/2012.)

P7_TA(2012)0475

Unitary patent protection ***European Parliament legislative resolution of 11 December 2012 on the proposal for a Council regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (COM(2011)0216 — C7-0145/2011 — 2011/0094(CNS))****(Special legislative procedure — consultation)**

(2015/C 434/27)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2011)0216),
 - having regard to the second paragraph of Article 118 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0145/2011),
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Spanish Congress of Deputies and the Spanish Senate and by the Italian Chamber of Deputies, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0002/2012),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

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4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 6

Text proposed by the Commission

- (6) Since the European Patent Office is responsible for the grant of European patents, the translation arrangements for the European patent with unitary effect should be built on the current procedure in the European Patent Office. Those arrangements should aim at achieving the necessary balance between the interests of economic operators and the public interest in terms of the cost of proceedings and the availability of technical information.

Amendment

- (6) Since the European Patent Office is responsible for the grant of European patents, the translation arrangements for the European patent with unitary effect should be built on the current procedure in the European Patent Office. Those arrangements should aim at achieving the necessary balance between the interests of economic operators, **in particular small and medium-sized enterprises**, and the public interest in terms of the cost of proceedings and the availability of technical information.

Amendment 2

Proposal for a regulation

Recital 9

Text proposed by the Commission

- (9) In order to facilitate access to European patents with unitary effect, in particular for small and *medium-size* enterprises, applicants who do not have a language in common with one of the official languages of the European Patent Office should be able to file their patent applications at the European Patent Office in any other official language of the Union. As a complementary measure, **for applicants** obtaining European patents with unitary effect and having their residence or principal place of business within a Member State of the Union which has as an official language a language other than one of the official languages of the European Patent Office, a system of additional reimbursements of the costs related to the translation from that language into the language of the proceedings of the European Patent Office, beyond what is currently already in place at the European Patent Office, should be administered by the European Patent Office in accordance with **Article 12** of Regulation xx/xx [**substantive provisions**].

Amendment

- (9) In order to facilitate access to European patents with unitary effect, in particular for small and *medium-sized* enterprises, applicants who do not have a language in common with one of the official languages of the European Patent Office should be able to file their patent applications at the European Patent Office in any other official language of the Union. As a complementary measure, **small and medium-sized enterprises, natural persons and non-profit organisations** obtaining European patents with unitary effect and having their residence or principal place of business within a Member State of the Union which has as an official language a language other than one of the official languages of the European Patent Office **should benefit from** a system of additional reimbursements of the costs related to the translation from that language into the language of the proceedings of the European Patent Office, beyond what is currently already in place at the European Patent Office. **The system of additional reimbursements** should be administered by the European Patent Office in accordance with **Article 9** of Regulation (EU) No [...]/2012 of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection.

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Amendment 3
Proposal for a regulation
Recital 9 a (new)

Text proposed by the Commission

Amendment

- (9a) ***The modalities and the level of reimbursement of the additional translation costs should be conceived in a way which, in principle, ensures full compensation of the translation costs; a ceiling per page is necessary in order to reflect the normal average market price for translation and to avoid abuse.***

Amendment 4
Proposal for a regulation
Recital 10

Text proposed by the Commission

Amendment

- (10) In order to promote the availability of patent information and the dissemination of technological knowledge, machine translations of patent applications and specifications into all official languages of the Union should be available as soon as possible. Machine translations are being developed by the European Patent Office and are a very important tool seeking to improve access to patent information and to disseminate widely the technological knowledge. The timely availability of high quality machine translations of European patent applications and specifications into all official languages of the Union would benefit all the users of the European patent system. Machine translations are a key feature of European Union policy. Such machine translations should serve for information purposes only and should not have any legal effect.
- (10) In order to promote the availability of patent information and the dissemination of technological knowledge, machine translations of patent applications and specifications into all official languages of the Union should be available as soon as possible. Machine translations are being developed by the European Patent Office and are a very important tool seeking to improve access to patent information and to disseminate widely the technological knowledge. The timely availability of high quality machine translations of European patent applications and specifications into all official languages of the Union would benefit all the users of the European patent system. Machine translations are a key feature of European Union policy. Such machine translations should serve for information purposes only and should not have any legal effect. ***They should be made available online and free of charge on publication of the patent application and of the granted patent.***

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Amendment 5
Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission

Amendment

- (11a) *After the end of the transitional period, the European Patent Office should continue to publish an additional translation into English of the specification of the European patent provided voluntarily by the applicant. This would provide further international publicity and limit the possibility of an infringer arguing that it had acted in good faith.*

Amendment 6
Proposal for a regulation
Article 1

Text proposed by the Commission

Amendment

This Regulation implements the enhanced cooperation in the area of the creation of unitary patent protection authorised by Council Decision No 2011/167/EU with regard to the applicable translation arrangements.

1. This Regulation implements the enhanced cooperation in the area of the creation of unitary patent protection authorised by Council Decision 2011/167/EU with regard to the applicable translation arrangements. ***It regulates the translation arrangements applicable to European patents to the extent that they have unitary effect.***

1a. *This Regulation is without prejudice to the rules governing the languages of the institutions of the Union established in accordance with Article 342 of the Treaty on the Functioning of the European Union and to Council Regulation No 1/1958.*

1b. *This Regulation is based on the linguistic regime of the European Patent Office and should not be regarded as creating a specific linguistic regime for the Union, or as creating a precedent for a limited language regime in any future legal instrument of the Union.*

Amendment 7
Proposal for a regulation
Article 3 — paragraph 2 a (new)

Text proposed by the Commission

Amendment

- 2a. *Once available, the machine translations of patent applications and specifications into all languages of the Union as referred to in Article 6(3) shall be made available online and free of charge on publication of the patent application and of the granted patent.*

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Amendment 8**Proposal for a regulation****Article 3 — paragraph 2 b (new)**

Text proposed by the Commission

Amendment

2b. *After the end of the transitional period referred to in Article 6 and in accordance with Article 9 of Regulation (EU) No [...]/2012] of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection, the participating Member States shall, pursuant to Article 143 of the EPC, give the European Patent Office the task of publishing an additional full translation of the specification into English, if such additional translation has been provided voluntarily by the applicant. Such translation shall not be carried out by automated means.*

Amendment 9**Proposal for a regulation****Article 4 — paragraph 1**

Text proposed by the Commission

Amendment

1. In the case of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the patent into an official language of the participating Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled.

1. In the case of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the patent into an official language of the participating Member State in which either the alleged infringement took place or in which the alleged infringer is domiciled. **Such translation shall not be carried out by automated means.**

Amendment 10**Proposal for a regulation****Article 4 — paragraph 2**

Text proposed by the Commission

Amendment

2. In the case of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide in the course of legal proceedings, at the request of a court competent in the territories of the participating Member States for disputes concerning European patents with unitary effect, a full translation of the patent into the language of the proceedings of that court.

2. In the case of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide in the course of legal proceedings, at the request of a court competent in the territories of the participating Member States for disputes concerning European patents with unitary effect, a full translation of the patent into the language of the proceedings of that court. **Such translation shall not be carried out by automated means.**

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Amendment 11

Proposal for a regulation

Article 4 — paragraph 4

Text proposed by the Commission

4. In the case of a dispute concerning a claim for damages, the court hearing the dispute shall take into consideration **that** the alleged infringer **may have** acted without knowing or having reasonable grounds to know that he was infringing the patent before having been provided with the translation referred to in paragraph 1.

Amendment

4. In the case of a dispute concerning a claim for damages, the court hearing the dispute shall take into consideration **whether, in particular if it is a small or medium-sized enterprise, a natural person, a non-profit organisation, a university or a public research organisation,** the alleged infringer **has** acted without knowing or having reasonable grounds to know that he was infringing the patent before having been provided with the translation referred to in paragraph 1.

Amendments 12 and 13

Proposal for a regulation

Article 5

Text proposed by the Commission

Given the fact that European patent applications may be filed in any language under Article 14(2) of the EPC, in accordance with **Article 12** of Regulation **xx/xx [substantive provisions]**, the participating Member States, shall give, within the meaning of Article 143 of the EPC, the European Patent Office the task of administering a compensation scheme of reimbursing all translation costs up to a ceiling, from the fees referred to in **Article 13** of that Regulation, for applicants filing patent applications at the European Patent Office in one of the official languages of the Union that is not an official language of the European Patent Office.

Amendment

1. Given the fact that European patent applications may be filed in any language under Article 14(2) of the EPC, in accordance with **Article 9** of Regulation (EU) No [.../2012] **of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection**, the participating Member States, shall give, within the meaning of Article 143 of the EPC, the European Patent Office the task of administering a compensation scheme of reimbursing all translation costs up to a ceiling, from the fees referred to in **Article 10** of that Regulation, for applicants filing patent applications at the European Patent Office in one of the official languages of the Union that is not an official language of the European Patent Office.

1a. *The compensation scheme referred to in paragraph 1 shall be funded through the fees referred to in Article 10 of Regulation (EU) No [.../2012] of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection and shall be available only for small and medium-sized enterprises, natural persons, non profit organisations, universities and public research organisations having their residence or principal place of business within a Member State of the Union.*

1b. *The compensation scheme referred to in paragraph 1 shall ensure full reimbursement of the translation costs up to a ceiling set in such a way as to reflect the average market price for translations and to avoid abuse.*

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Amendment 14**Proposal for a regulation****Article 6 — paragraph 1 — subparagraph 1 a (new)**

Text proposed by the Commission

Amendment

*Such translations shall not be carried out by automated means.***Amendment 15****Proposal for a regulation****Article 7 — paragraph 2**

Text proposed by the Commission

Amendment

2. It shall apply from *[a specific date will be set and it will coincide with the date of application of Regulation xx/xx on the implementation of enhanced cooperation in the area of the creation of unitary patent protection]*.

2. It shall apply from **1 January 2014 or from the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later.**
