

Single-patent legislation hits another roadblock

Parliament postpones vote over revisions to reform agreement.

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Patent-reform legislation has stalled once again in the European Union (EU) after members of the EU Parliament balked at last-minute revisions to a deal struck with member states in December 2011.

Most of the details of the proposed unified patent system were agreed in March 2011 by 25 EU states, with Spain and Italy not joining in. The proposal then stalled amid wrangling over the location of the patent court, which will resolve disputes. But last Friday, Herman Van Rompuy, president of the European Council, announced that a typically European solution had been reached, with the three major players in the debate carving up the court among themselves. The central court would be in Paris, France; a court dealing with chemistry and pharmaceutical patents would be in London, UK; and mechanical-engineering patents would be covered in Munich, Germany. Parliament was scheduled to vote on the proposal on Wednesday.

Yesterday, however, Parliament postponed the vote, saying that another agreement made by ministers last week to reduce the role of the European Court of Justice in patent disputes would “emasculate” the reform proposal. Bernhard Rapkay, one of the Members of the European Parliament overseeing the passage of the legislation, said that the proposed changes broke last year’s agreement that the law would be approved as it stood. The fate of the reform is now unclear.

Industry and many researchers have been demanding a unified patent system for years, saying that the greater costs and complexity of obtaining patents in Europe versus in the United States or Japan are blocking innovation. A unified patent system would allow inventors to acquire one patent that covers most European states, instead of applying to each country separately.

Layers of doubt

Even before Parliament made this surprise move, some patent experts were warning that the new arrangement would benefit only large, multinational companies, with academic researchers and small companies left facing a system even more layered and complicated than the present one.

Under the present system, each of Europe’s nations has its own national patent system, meaning that applications must be submitted to each country separately. This makes gaining a patent that covers Europe much more complex and expensive than taking out a patent in the United States or Japan.

The European Patent Office (EPO), which arose in the late 1970s with the European Patent Convention, is a second layer, offering a central point at which patent applications for up to 40 European countries can be filed. But the EPO then turns these patent applications into applications in each individual country.

The unified EU patent would offer a third option, where a single patent would be valid in all 25 countries taking part.

Marco Giarratana, who studies management and technology at Bocconi University in Milan, Italy, says that the two major advantages of the proposed system are the possibility of reducing the cost of Europe-wide patents, and the creation of a central court for resolving legal problems. Giarratana hopes the new system will cost less and take less time, so that that people are encouraged to use it in preference to the other two.

But there are concerns over the costs of obtaining and renewing a single patent under the proposed system. Proposed details of the annual renewal costs have not been made available, but Bruno van Pottelsberghe, an expert on innovation and intellectual property (IP) at the Free University of Brussels in Belgium, says that there are suspicions that these costs will be “very expensive”. Although companies that already seek patents in every European country may save money overall on such fees, academic scientists generally cannot support such high costs, he points out, and are likely to stick with their national patent systems.

“If the unitary patent is very expensive, we can predict nobody will use it except for large pharma companies,” he says.

Justine Pila, who specializes in IP law at the University of Oxford, UK, agrees that large companies are most likely to find the unified patent system useful and cheaper. "By contrast, individual scientists and [small and medium-sized enterprises] are less likely to find it useful, as they are less likely to need or want protection in more than a handful of countries, and are less likely to be able to bear the system's costs," she says.

Pila also believes that it is unlikely that a third layer will reduce the fragmentation and complexity of European patent arrangements. "Certainly if its aim is to increase jobs for lawyers, it will succeed," she says.

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