

European Unitary Patent. Poland to follow Spain and Italy?

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The Polish Presidency put a lot of effort into the proposed regulation on unitary patent protection, the translation arrangements, and the court system for patent litigation. However, due to the lack of a common agreement among member states on the location of the central patent court, the signing ceremony of the uniform patent system scheduled for December 2011 in Warsaw was cancelled. Recently, just one month ago, the European Parliament postponed its First Reading and the vote on the creation of a unitary patent protection system to an "indefinite time" in the future. In the light of the recent strong criticism of the unitary patent system in Poland, one could ask whether the Polish government may subsequently opt for "compromise" agreements, or whether it will join with the positions presented by Spain and Italy. Many interest groups in Poland have recently criticized the proposed regulations on unitary patent protection and have called on the government to withdraw its support for them. This initiative has officially been taken by members of the Polish Chamber of Patent Attorneys, but it seems that it has also found many enthusiasts among economists, scholars and politicians, including members of the Polish Parliamentary Commission of Innovation and New Technologies.

The Polish Chamber of Patent Attorneys claims that the European regulations favour companies from the United States, Asia and large European corporations. Therefore, given the fact that Polish industry is still developing, adopting a unitary patent system could kill off innovation in Poland. Some scholars claim that according to the proposed regulations, the number of patents valid in Poland would increase by an additional 60,000 annually. Since these patents would be written either in English, French or German, Polish entrepreneurs would be responsible for their translation in order to check whether they are not committing any infringement. Some experts argue that, according to the proposed regulations, procedural legal instruments directed against alleged infringers such as preliminary injunctions, orders for the destruction of goods, or the blocking of bank accounts, are similar, or even more dangerous for many entrepreneurs than the regulations of the ACTA-Agreement. The Polish Ministry of Economy claims that the proposed unitary patent system with a centralized patent court is an efficient and cost-effective system which meets the needs of many companies. The proposed system would enable Polish companies to obtain patent protection in 25 member states by significantly reducing (by up to 80%) the financial costs of obtaining a patent abroad. In contrast, the opponents of a unitary patent system argue that potential defenses against patent trolls or the conducting of any patent enforcement procedures in a foreign country (with proceedings in a foreign language) would definitely increase the legal costs for small and medium-sized Polish businesses.

To conclude, one could speculate that due to the negative buzz created by the controversy surrounding the ACTA-Agreement, the Polish government may, in the future, withdraw its support for the concept of a European unitary patent system, just as it did with the ACTA-Agreement in response to massive public demonstrations. Many scholars, economists, patent practitioners and - above all - patent attorneys, are trying to convince the Polish government that the proposed regulations which were negotiated during the Polish Presidency would have a negative impact on Polish industry and hinder the development of Poland's economy as a whole.