

Minutes Cour de Cassation Conference on EPLA in Paris

On October 2, 2006 the president of the French Supreme Court had invited for a conference on EPLA which was attended by several speakers;

Judges **Pumfrey**, **Lutz** (president of German Federal Patent Court), Mme **Pezard** (Court of Appeals of Paris), **Thierry Sueur** (**Air Liquide** and representative of **Unice**, **Pierre Veron**, **Derambure** (French Patent Attorneys Association), **Temmink** (representing Mr. Stoll of the Commission).

The topic was the present status and the prospects for completing EPLA and **how**.

Sueur

It can be expected that this day will hopefully never be forgotten in the history of EPLA.

- The silence and the hesitation of France is very regrettable. It is regrettable that France could not be “read” over many years, now, when the London Protocol will be ratified one can hope that there will now be a new picture of France.
 - Industry has no interest in a system with 31 different judges and 22 languages
 - EPLA is to be considered as paving the way also for the Community patent.
 - The big mistake which the United States made when creating a very successful central court of appeal that they did not at the same time create specialised courts for patent infringement in the first instance.
 - three languages must be the maximum in Europe.
 - technical judges
 - the court should not have any connections with the EPO (which will not allow to take technical judges from the Boards of Appeal).
 - one must be very vigilant that there will not be a “community EPLA”
 - We have now the moment of opportunities and should not delay the entry into force of EPLA.
- Europe needs an efficient system with the best judges in Europe in the courts.

Lutz

- emphasized that a discussion about EPLA with the Commission cannot lead to a modification of the core criteria which are
 - voluntary accession of 5 and 6 countries at the beginning
 - the 3 working languages of the European patent office in the courts
 - technical judges which would make court experts in the first instance superfluous
 - he also proposed a sort of legal revision instead of community jurisdiction (very few cases should go up to ECJ)
 - analysing the present situation: with the EPO we have a very comfortable highway
 - we have already 75 % achieved in Europe with the EPO and need only another 25 %
 - EPLA is clearly the best system with its central appeal court and decentralized first instance.
 - technical judge should be chosen for the technology of each patent (highly specialized)
 - Industry and the economy want and need the present EPLA text without any dilution
 - basic structure of the present text should not be modified
 - There is a great question mark with respect to a mandate of the Commission
 - In the future the Community patent might be proposed as an alternative for users, however there should never be exclusivity.

Véron

EPLA is lacking a rule on the jurisdiction of civil law for particular situations like infringement proceedings which are based on violations of license agreement.

He offered Paris has the seat for a Court of Appeal.

Pumfrey

He spoke French and insisted on a rapid implementation of the system indicating that judges will discuss procedural rules in Venice.

- The community patent is dead
- The most important points of EPLA are
 - Judges

- Speed
- Quality and experience of judges
- Costs which are much less than in the UK
- A carefully drafted procedure as it will be discussed in Venice
- There must be a separation of powers between the EPO and the courts
- One must hope that patent cases go very seldom to the ECJ
- One could also consider a modification of regulation 44/2001

Temmink

He pretended that Stoll has urgent business at home and that he allegedly talked to him the same morning.

He repeated more or less the contents of the speech of McCreevy of September 28, 2006.

It was interesting that he now also proposed a decentralized court system for the community patent which the Commission will bring back on the table in November.

The Commission is now in favour of EPLA, but sees a number of administrative and organisation questions. They will make a request for a mandate during the German presidency, but he left it open what they will do with mandate.

Derambure (and some other attendants from the French bar)

They regretted the fact that only 6 % of European Patents are filed in the French language and therefore feared that the French language will practically disappear after the ratification of the London Protocol.

Madame Pezard

She was very positive to the EPLA court system and did not lose a word about the alleged **constitutional problem** of France with respect to EPLA. She only mentioned that the question of **incidental decisions** should be discussed.

So the only point seems to be whether a nullity request would have effect *erga omnes* (she did not explain this in details).

Canivet

It was obvious from the words of the president that there is presently a dispute between the French justice department and the judges. He regretted that no representative of the ministry was present although they had been invited. He also mentioned that some of the views of the ministry on EPLA are not shared by the judges.

- One could consider a nullity decision for certain countries for which an infringement is being alleged.
- An important point is damages, and he could also think of punitive damages
- There will be a period to 7 years where one can choose between EPLA and the national courts which is sufficient as things are now.
- Important is the predictability of decisions which can only come from experienced courts

President Pompidou (EPO)

He repeated the summary of the paper of the EPO in the working party, in particular the success story of EPO with 200.000 applications pro year.