

AIPLA

AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION

2001 JEFFERSON DAVIS HIGHWAY ■ SUITE 203 ■ ARLINGTON, Virginia 22202

March 28, 2006

Mr Erik Nooteboom
Head of Unit
Industrial Property Unit
Internal Market and Services Directorate General
European Commission

Dear Erik,

The American Intellectual Property Law Association (AIPLA) is pleased to offer the following general comments to the European Commission in response to its Questionnaire on "The Patent System in Europe."

AIPLA is a national bar association of nearly 16,000 members engaged in private and corporate practice, in government service, and in the academic community. AIPLA represents a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright and unfair competition law, as well as other fields of law affecting intellectual property. Our members are involved in patent procurement and patent litigation throughout the world and quite extensively in Europe.

US applicants account for approximately 25% of the applications filed within the European Patent Office. Approximately one-third of the patent applications filed by US applicants in the United States Patent and Trademark Office have a corresponding filing in the EPO. US applicants also file cases nationally within individual European countries and are involved with the enforcement of their patents within Europe. Accordingly, patents in Europe are very important to US applicants, who are, therefore, extremely interested in the development of the European Patent System.

Like our European counterparts, US applicants are interested in a high quality, efficient, and timely patent process at the lowest cost possible. They are also interested in reliable, uniform, and easily accessible enforcement procedures.

While we believe that a cost effective Community Patent is in the best interest of all applicants seeking patents in the European Community, we are concerned that the proposed obligation for applicants to file a translation of the claims in all official Community languages at the time of the grant of the patent will not achieve this vision. Accordingly, AIPLA is hopeful that the London Protocol will be ratified this year. This Protocol, together with the current EPO system, should provide a cost-effective patent regime for the present while the Community Patent is further developed and refined.

With respect to enforcement, AIPLA believes that a reliable, predictable, rapid, and inexpensive judicial system for patent litigation in Europe must be adopted and implemented.

National, European, and Community patents should be dealt with under a single judicial system, with uniform procedural rules, for both infringement and validity. We believe that the adoption of a comprehensive, unitary judicial system for all patents within Europe is essential to enhance consistency and efficiency in the enforcement of patents within the Community at large and among the individual EPC member states in the Community.

AIPLA believes that the European Patent Litigation Agreement (EPLA) provides such an appropriate framework for resolving patent disputes and, importantly, one that could be adopted in the near term. It is designed to meet the needs of applicants for legal certainty and consistency, providing uniform procedural rules while avoiding the harmful effects of the current divergent national proceedings. It provides a language regime that allows judges and parties of different nationalities to communicate directly, without requiring unrealistic language skills among judges or extensive translations. It would permit the language of the proceedings in the European Patent Courts to be the language of the litigated European Patent. It would also permit judges in both the first and second instance to have solid experience as specialized patent judges, encouraging reliable and speedy litigation.

We therefore encourage the European Commission to give favorable consideration to the current draft of the EPLA as a basis for a uniform litigation system. To the extent the language issue can be addressed, it could also enhance further work on the Community Patent.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Kirk". The signature is fluid and cursive, with the first and last names being clearly legible.

Michael Kirk
Executive Director