

COMPAT
A Dream Come True, or our worst nightmare?

One Patentee's Personal View

As an inventor with a commercially successful product, who has experienced infringement, I have keenly supported the idea of a single community patent covering the European Community as a whole. My understanding was that it would put an end to the expense of regional patents, chasing infringers all over Europe and repeated litigations (with potential for differing results). Now, it seems, after 30 or so years of discussion, the Community Patent is about to become a reality.

To me it was simply common sense that, as in the USA, we should have a single patent to provide a low cost alternative to a bundle of regional patents. If we are ever to compete successfully with the US, then indeed, COMPAT would appear to be essential and who wouldn't welcome it?

The current European system of multi-region patents is very expensive, particularly for SMEs and private inventors like me. So, in order to keep costs down I, like many others, only apply for patents in commercially strategic European markets. None the less, I have found that this approach is an efficient way of effectively protecting the whole of the European Community, as it is rare for a competitor to set up manufacture just to exploit the remainder.

I may be being naïve but I thought that the objective of COMPAT was to support and protect European innovation by providing inventors with a more efficient and cost effective patent for the whole of the EC, i.e. a sensible, good value product. However, to me, it seems as if common sense has flown out of the window and policy makers have become side tracked by politics and power games.

Not being a patent agent or IP lawyer, my understanding and knowledge of the proposals for COMPAT are undoubtedly limited but, from my perspective, there are a number of issues that are concerning.

Firstly, it is proposed that patent claims shall be translated in to all 17 EU languages and this number will, of course, increase as more States join. This will inevitably cost the patentee far more than acquiring a handful of strategic European patents. Whilst, in an ideal world, it might be nice for the claims of all patents to be available to everyone to read in their own language, in reality, how often will this be necessary? Most people speak at least one of the major EU languages, patent litigation is concentrated in a few major market areas and most patents are never litigated, and so surely it would be more cost effective and adequate standard practice for claims to be translated into just the major languages with further translations to be provided if and when the need arises. In addition, I fear that the translation in to 17 or more languages will open the flood gates to disputes over questions of linguistic interpretation. I can see lawyers rubbing their hands with glee at the prospect!

Secondly, until we have a single European court, infringement litigation is to be held in the defendant's territory. So (for example only and without any prejudice) if, let's say, a Latvian company infringes my patent in the UK, I would have to sue him in

Latvia and what is more, the proceedings would be in Latvian in front of a Latvian judge. This would be the case even if my patent was only being exploited and infringed in the UK. Whilst I am sure Latvia is a beautiful country, I would rather not have to go there in order to litigate.

I have aired my concerns to an eminent patent professional who has assured me that, in reality, the proceedings would most likely be in English, since most people do speak it. However, in my cynical view, I think that infringers are likely to take every tactical advantage that they can, so that they would insist on proceedings in their own language in order to make life as difficult and expensive for the patentee as possible.

However, what is more worrying is that, since most patent litigation has historically taken place in the major markets, the Latvian judge may have had only limited experience of patent disputes and Latvia's rules may be different to ours. So, all in all and with apologies to any Latvian readers, I would not be very happy at this prospect.

COMPAT means putting all of one's European eggs in a single basket. Personally, as an inventor whose income depends on IPR, I would prefer not to take that risk. I have heard rumours that, in order to kick start COMPAT, choice of process may be denied. I sincerely hope this is not so.

The system that we currently have may not be perfect but if we are to change it must be for something better. If I have misunderstood the proposals or I lack some significant detail, I am happy to be corrected but, from where I stand, COMPAT, as currently proposed, will create more problems than it solves. If this is intended as the inventor's dream come true, then I think this inventor will have to dream on.

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