Intellectual Property Lawyers' Association

Comments on Commission's communication dated 3 April 2007

The following comments are submitted on behalf of the Intellectual Property Lawyers' Association ("IPLA"). IPLA acts as a representative body for law firms in England and Wales with intellectual property practices who wish to lobby for improvements to IP law. Over 50 firms are members of IPLA, and the vast majority of enforcement litigation and transactional work relating to intellectual property rights in England and Wales is conducted by these member firms. The international nature of IP means that member firms are also familiar with laws and procedures in many other countries, especially the main European jurisdictions as well as the United States of America.

Member firms act for a wide range of clients, from major multi-national groups of companies to SMEs and technology start-up companies, as well as universities and private inventors and investors. As a group, we accordingly have a significant experience of how existing IP systems work and knowledge of the views of a wide range of clients who may individually only have limited experience of IP litigation.

The Commission proposes fusing the Community Patent and the EPLA proposals, creating a single court system with competence for litigation on European patents and future Community patents.

In our opinion, the Community patent proposals and the EPLA are not best integrated and the EPLA as originally conceived remains the most promising way forward. Whilst some of the detail of the EPLA remains to be settled (in particular the transitional arrangements), it is a fully thought-through litigation system, developed in consultation with users and practitioners. The Commission's proposal, however, is skeletal at best and does not deal with the controversial issues such as languages, judges and the competence of the ECJ.

We maintain that progress would be best made on the EPLA outside the ambit of the Community. This would retain one of the main advantages of the EPLA, namely that it can be adopted rapidly. As the system is optional, those member states in favour can proceed immediately with implementing the system.

Whilst the Commission's support of the EPLA, would be welcome, individual countries could proceed with adoption of the EPLA as they choose. Other countries can join the

system once it is up and running successfully. If Community agendas are introduced at the outset, the EPLA will just meet similar problems to those which have hindered the adoption of the Community patent. This is all too apparent from the events preceding the Commission's communication.

We are not convinced that the involvement of the Community is required in the EPLA. The communication suggests that there are issues that arise out of the Enforcement of Intellectual Property Rights Directive (2004/48/EC) and the Brussels Regulation (44/2001). We see no reason why these provisions are inconsistent with the ELPA or should prevent progress towards the EPLA. However, if the Commission considers otherwise, we would suggest that the simplest way forward would be simply to amend these provisions so as expressly to exclude the EPLA from their ambit.

We note that the Commission is concerned that if the Community patent becomes a reality, this will lead to duplication of EU-wide patent courts. However, our view is that this issue can and should be addressed if and when that Community patent comes into existence and should not be used as a reason to block progress on the EPLA.

We understand that the Commission remains of the opinion that the creation of a single Community patent continues to be a key objective for Europe. We would urge the Commission to recognise that the success of the Community patent will depend on its attractiveness to industry. Industry requires quality, affordability and legal certainty from the Community patent system. If the system does not provide this, then it will not be used.