



e-News

No.16

January 2011

International Association for the Protection of Intellectual Property
AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

New Year greeting

Yoon Bae Kim, President of AIPPI

Dear AIPPI Fellow members

I would like to take this opportunity to express my sincere wishes to all AIPPI members for prosperity, good health and the best of luck in the upcoming New Year.

I am proud to announce that the 42nd AIPPI World Intellectual Property Congress in Paris was a huge success with the highest number of participants since the 35th Tokyo Congress in 1992. The Paris Congress offered valuable opportunities for AIPPI members to discuss their concerns about intellectual property ('IP'), to exchange opinions on the harmonization of IP protection worldwide and to bring mutual understanding on IP issues across national borders.

As a new President of AIPPI, I will be working to improve and to promote the protection of intellectual property on a national and an international basis, and to enhance the efficiency and effectiveness of AIPPI. In order to achieve these goals, I would like to offer several proposals.

Firstly, during the Paris Congress, many suggested that the Congress should be held annually, in order to meet demands from members and to deal with outstanding issues in a more efficient manner. During my presidency, AIPPI will evaluate the possibility of holding conferences on a yearly basis, like the Licensing Executive Society International and the Asian Patent Attorney Association, so that we can address high priority issues and resolve them promptly.

Secondly, the language issue was addressed but not resolved in the last Congress. My aim is to have AIPPI consider and deliver the most effective solution yet to this issue, in order bring satisfaction to the majority of AIPPI members.

Thirdly, I will encourage national groups to consider hosting meetings with groups of closely linked nationals, in order to promote networking activities. For example, the success of the North-East Asia trilateral meeting among China, Japan and Korea is a great example of how AIPPI National Groups can meet and demonstrate ways of addressing and resolving conflicts in IP practice and policy. I will encourage and support all other national groups, where it might be feasible, to engage in such activities.

Additionally, in the next few years, two major IP events will be hosted in Asia: the ExCo/Forum 2011 in Hyderabad, and the 43rd World IP Congress 2012 in Incheon. The rapidly growing industry in Hyderabad has been focused on advanced life science and IT enterprises, and the use of IP protection in these sectors has grown rapidly. Therefore, I believe that the importance of IP protection throughout the Asian region can be strongly emphasized through the Forum and ExCo 2011 meeting in Hyderabad, as it offers a perfect opportunity in an IP rich environment to provide education and critical dialogues on IP issues both locally and internationally. Similarly, when AIPPI-Korea will host the 43rd World IP Congress in Incheon, Korea during 2012, collaboration with the local governments and cooperation from other GOs and NGOs will be strongly encouraged. Throughout the event, AIPPI-Korea will aim to provide a variety of activities such as an IP festival to educate people on a national and international level about the value of IP, its acquisition and enforcement. These two consecutive international IP events in Asia will offer AIPPI a unique opportunity to educate and promote the value of IP in fast growing industry sectors that hold the key to local success in global markets.

Finally, I have entered the office as President with the observation that the effects of the global recession have been detrimental to the world's economy, and the impact has been great in the IP sector. However, I believe that governments, industry and organizations, especially AIPPI, cannot cut efforts to foster the protection of IP. It is one of the important promoters of innovation, protectors against piracy and counterfeiting, sources of income, and a vehicle to create new potential in jobs and industrial growth. During my presidency, I will act to ensure that AIPPI will contribute endlessly to provide diverse channels of opportunities for its members and to achieve harmonization of IP protection worldwide. I also have developed a greater appreciation for the need for close communication between the officers, national groups and members of AIPPI, and I will be exploring ways to enhance such communication, through a review of policies and practices at and between meetings. I believe that with such closer communication, AIPPI will have success in the future, based upon a solid network of active members, so that AIPPI can remain as the world's most prestigious IP organization.

[Top](#)
[Back](#)



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

Resolutions adopted in Paris

Report by Thierry Calame, Reporter General of AIPPI

Q204P dealt with Liability for contributory infringement of IPRs. This topic was first debated in Boston in 2008. At that time the ExCo adopted a first Resolution, but felt that certain aspects of patent infringement needed further investigation. These were the focus of the continuing work which had been prepared for the Paris Congress and which is now the core of the second Resolution. Following up on the Boston Resolution, the Paris Resolution defines contributory patent infringement as indirect infringement consisting in the supply of means suitable for committing an act that is a direct patent infringement. The Resolution stresses that the supply or offering of means should only qualify as contributory infringement if (i) the means supplied or offered are suitable for committing an act that is a direct patent infringement; (ii) the person offering or supplying such means knows, or it is obvious in the circumstances, that these means are suitable and intended for putting the invention into effect; and (iii) such means relate to a substantial element of the invention. In the event that the means offered or supplied are staple commercial products, the offering or supplying of such means does not constitute a contributory patent infringement, except when the person supplying or offering such means induces the person supplied to commit infringement. The Resolution also addresses cross-border aspects. Specifically, AIPPI resolved that it need not be a requirement for contributory patent infringement that the intended use of the means offered or supplied would take place in the country where means are supplied or offered.

Q213 dealt with the inventive step requirement. The patentability criterion of inventive step has become the focus of attention on many levels. The European Patent Office's initiative to 'raise the bar' or the U.S. Supreme Court decision in *KSR v. Teleflex* are only two examples of recent attempts to revisit the inventive step requirement. The topic is too broad to be covered in one Resolution. Therefore, AIPPI decided to deal with this question in consecutive years. The Paris Resolution considers the role of the skilled person in the context of the inventive step requirement regarding patent validity and infringement. The Resolution states that the skilled man should have at least the following characteristics: (i) This person possesses the general common knowledge as well as knowledge in the field to which the invention relates to; (ii) This person possesses the skills that are expected from the average person in the field to which the invention relates to; (iii) This person is able to perform routine experimentation and research and can be expected to obtain predictable solutions as compared to the prior art. AIPPI further resolved that the relevant point of time for the assessment of the skilled person should be the priority date or other relevant date under applicable law for the purposes of assessing patentability. The Resolution recognises that, in general, the person skilled in the art is an individual person, but he may also correspond to a team of people from different disciplines depending on the technical field and the complexity of the invention, provided that would have been a common practice in the technical field of the invention at the relevant time.

Q214 looked at the protection given to trademark owners against dilution of their marks. Dilution may arise from the impairment or reduction of the distinctiveness of the mark (known as blurring) or from harm to a mark's reputation (known as tarnishment). The Resolution states that trademarks having recognition or fame among a significant part of the relevant public should be eligible for protection against dilution irrespective of the identity, similarity or dissimilarity of goods and services. In determining such recognition or fame, all relevant factors will be taken into account, e.g. the intensity, geographical extent and duration of the use of the trademark, the amount of sales under the trademark, the size of the investment made by the undertaking in advertising and/or promoting the trademark and the market share held by the trademark. The relevant public in determining the recognition or fame of a mark is dependent on the goods and services in question, i.e. the public concerned by the products or services covered by the trademark, which can be a limited product market ("niche"). AIPPI resolved that distinctiveness should also be a requirement and that it can be either inherent or acquired through extensive use and promotion. Eligibility for dilution protection should, however, not require use of the mark in the country in question or registration or a pending application for registration of the mark in the country in question. Additionally, the AIPPI delegates were of the opinion that there should not be a registry of marks that are eligible for dilution protection. The Resolution further states that a "mental association" or "link" between the mark and the challenged mark or other sign should be a necessary requirement. Importantly, AIPPI resolved – irrespective of the recent Intel decision of the ECJ - that an actual or potential change in the economic behaviour of the relevant public may be among the factors to consider, but should not be a separate requirement. Finally, the Resolution suggests that dilution of a mark should be a ground for opposition, cancellation, nullification or revocation of registration, to the extent such procedures are available in a country; and should, in actions before courts or other competent authorities, be subject to remedies, including but not limited to injunction and damages.

Q215 dealt with the protection of trade secrets through IPR and unfair competition law. AIPPI had previously studied selected aspects of trade secrets, but had not yet studied the protection of trade secrets. AIPPI resolved that every country should adopt the conditions of protection of "undisclosed information", as presented in Art. 39.2 of the TRIPS Agreement, for establishing protection of trade secrets, preferably under statutory provisions of their domestic law or through direct application of TRIPS Agreement. The Resolution states that the acts of violation of "undisclosed information" according to Art 39.2 of the TRIPS Agreement should give rise to legal and equitable remedies when sought by the person in lawful control of such information. In addition, every country should provide injunctive remedies (including preliminary injunctive relief and/or ex parte measures e.g. to preserve evidence) for the threatened or actual violation of trade secrets (subject to appropriate safeguards including the protection of confidential information). According to the Resolution every country should equally adopt provisions to provide effective and substantial means of protecting confidentiality of alleged trade secrets of any party during proceedings and of proven trade secrets after proceedings. The Resolution also stresses that trade secrets can be the subject of license agreements.

Finally, the last Working Question **Q216** dealt with Exceptions to Copyright Protection and the Permitted Uses of Copyright Works in the Hi-Tech and Digital Sectors. With the exception of the protection of software and databases by copyright, AIPPI had not previously studied substantive issues of copyright law. The lively discussions in the Working Committee in Paris, however, confirmed that the members of AIPPI are equally interested in questions of copyright law. Initially, the Question was to

focus on exceptions and limitations in the context of Internet Service Providers (ISPs), search engines, social networking sites such as Facebook and Twitter, format shifting, orphan works as well as the fair use and private use exemptions. During the preparatory work, however, it became clear that the Question is too broad to be covered by one Resolution. The topic is, therefore, dealt with in a two year-cycle. The Resolution adopted in Paris deals with ISPs, format shifting and orphan works; the other issues will be studied in Hyderabad later this year. In its Paris Resolution AIPPI resolved that copyright law should provide for efficient enforcement against infringing activities in the Internet and should not in general exempt these infringing activities from liability by way of compulsory licenses, mandatory levies or expansive exceptions to copyright protection. Rather, to the extent limitations and exceptions to copyright protection are implemented into national laws, the Resolution calls upon the national legislators to follow the guiding principle that such limitations and exceptions must be restricted to certain special cases, not conflict with a normal exploitation of the copyright work and not unreasonably prejudice the legitimate interests of the author (known as the Three Step-Test). With regard to ISPs, the Resolution states that national rules pertaining to ISP liability should provide for harmonised guiding principles: (i) In general, there should be no obligation on ISPs to monitor for infringing activity; (ii) host providers storing third party content should in general have a fair and reasonable duty to remove and prevent further uploading of specific infringing content, where such host providers are furnished by the relevant rights holder with prima facie evidence of an infringement; (iii) access providers should in general have a fair and reasonable duty to block access to copyright infringing material, where such access providers are furnished by the relevant rights holder with prima facie evidence of infringement; (iv) an ISP willfully facilitating, enabling, cooperating with or contributing to infringing activity should be held accountable for the underlying infringement as if the ISP was the underlying infringer; (v) ISPs may rely on a limitation or exception to copyright protection in the case of transient, temporary or ephemeral reproductions of copyright works, if such activity is an integral and necessary part of the technical means that facilitate the transmission, reception or transiting of traffic on networks (such as the Internet) or is solely supportive of a lawful use, provided that the technical means are content neutral and have no economic significance. The Resolution further recognises that format shifting should be available for commercial business models by way of licence only. For private and non-commercial uses, limitations or exceptions to copyright protection may be provided in cases where the limitation or exception in question meets the Three-Step Test. Finally, the Resolution calls upon national legislators to provide for internationally harmonised and dedicated rules enabling both private, non-commercial and commercial users to reproduce and use orphan works, in particular, in situations where it is not reasonable to assume that the term of protection for a work has expired. National laws should require a diligent inquiry so as to ascertain the relevant right holder's identity. Further, the right holder should be guaranteed a fair remuneration for the use of the work and retain the option to re-claim the work for his further exclusive exploitation. The user's continued bona fide reproduction and use of the copyright work should be reasonably protected.

All Resolutions which were adopted in Paris are again the result of very thorough work conducted by the Working Committees. This would not have been possible without the significant participation of the National and Regional Groups who had sent in their reports prior to the Paris Congress. The members of the Working Committee and the Groups are to be commended for their most valuable contribution to the scientific work of our Association.

[Top](#)
[Back](#)



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

The 58th APAA Council Meeting, October 16-19, 2010

Yoon Bae Kim, President of AIPPI

The Asian Patent Attorney Association (APAA) holds a Council Meeting every year and a General Assembly once every three years at various locations within the Asian Region. The 58th APAA Council Meeting was held at the International Convention Center (ICC) in Jeju, the Republic of Korea, from October 16 to 19, 2010. Approximately 1,450 IP experts and their accompanying persons, including observers from 18 countries and 12 organizations from around the world, attended the meeting. In principle, APAA's meeting is open only to members from the Asian region but, as an exception, practitioners from other regions, including Europe, America, and the Middle East, have been admitted as observers.

There are three main programs during the APAA Council Meeting: Councillor's meeting; Workshops; and, Committee meetings.

Six scientific committees, each having two co-chairs and consisting of one to three committee members from each Recognized (National) Group (currently, APAA has 18 Recognized Groups), provided reports to the conference. In turn, the Committees invited the Recognized Groups to present country reports, which it summarised and reported on during the Councillor's meeting.

On the first day, meetings were held of the Bids; Statutes Revision; Membership; Special Project Committees; and, of the Website and Workshop Groups.

On the second day, meetings were held of the Scientific Works; Anti-Counterfeiting; Copyright; Designs; Emerging IP Rights; Patents; and, Trademarks Committees

On the last day of the Council Meeting, workshops were held on following topics: i) Co-relationship Between Protection of Trade Names, Trade Marks and Domain Names; and, ii) Patent Trolls and Trade Mark Bullies.

About 10 to 20 observers attended each Committee meeting and most attendees joined the Opening Ceremony & Reception, Culture Night event (2nd day), Excursion (3rd day), and Gala dinner (4th night).

In addition to the detailed discussions of scientific and academic issues, the APAA meeting gave high priority to providing networking opportunities among participants. Thanks largely to its isolated location of Jeju Island, participants stayed in the proximity of the International Convention Center area, thereby creating more opportunities for attendees to focus on networking and exchanging views with each other.

The meeting contained well-organized programs and excellent social events, including a President's Luncheon, which was attended by APAA officers and officers of Recognized Groups, including LES International; FICPI; ICC; ASEAN; WIPO; OHIM and AIPLA. At the Luncheon, I was given the opportunity to briefly introduce AIPPI and to describe its future events that are planned for the Asian region, such as the Hyderabad ExCo/Forum in 2011 and the 43rd World Congress in Incheon during 2012.

I explained that AIPPI's hosting of two major IP events in the Asian region will offer a great opportunity to introduce AIPPI members to the region's exploding growth of industry, its rapid development of IP law and practice, and its promising future in the sector.

I believe that exchanging delegations and sending guest speakers to APAA's upcoming events in the next two years will build amicable relationships and promote the future events of AIPPI. AIPPI may consider inviting the President of APAA to the Opening Ceremony of the 2011 Forum/ ExCo in Hyderabad to give a short speech.

[Top](#)
[Back](#)



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

AIPLA Annual Meeting in Washington, DC, October 21-23, 2010

John Bochnovic, Vice President of AIPPI

At the invitation of the AIPLA, the AIPPI was represented at the AIPLA Annual Meeting in October 2010 by John Bochnovic, newly elected as Vice-President of AIPPI at the Paris Congress earlier in October. The annual meeting of the AIPLA traditionally held in October in Washington brings together the US IP community from private practice and industry, senior management of the USPTO and the judiciary, particularly from the United States Court of Appeals for the Federal Circuit (CAFC). The program had a broad cross section of current IP topics for discussion as well as an annual review of jurisprudence and developments.

The October 21 luncheon featured David Kappos, Undersecretary of Commerce for Intellectual Property and Director of the USPTO, who provided a most informative update on recent activities within the USPTO, following which attendees were entertained by a frank question and answer session held by the AIPLA's Executive Director, Q. Todd Dickenson.

The October 22 luncheon featured the Honourable Arthur J. Gajarsa, of the CAFC, who provided interesting and timely comments about recently-decided cases.

Under its outgoing president, Alan Kasper, as well as its new in-coming president, David Hill, AIPLA has become more active in extending the membership and role of the organisation beyond its traditional base in the United States. In this respect, the AIPPI looks ahead to on going cooperation with the AIPLA in furthering the advancement of intellectual property protection throughout the world.

[Top](#)
[Back](#)



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

5th International Cultural and Creative Industry Expo, November 17-19, 2010

Yoon Bae Kim, President of AIPPI

The 5th China (Beijing) International Cultural and Creative Industry Expo (ICCIE) was held in Beijing, China from November 17 to 19, 2010. I was invited to attend this event on behalf of AIPPI as one of the speakers.

Although the event was scheduled to open on November 18, I was invited to attend the Opening Ceremony at the Great Hall of the People on November 17. I joined a group of renowned VIP guests from all over the world and appreciated this exceptional opportunity to promote AIPPI.

On the next day, at the main forum held at the Beijing International Hotel, I gave a welcoming address. My speech began with praise for the long history of Chinese Civilization and Beijing's significance as its birthplace. I pointed out that more than two thirds of the world's IP is being created in Northeast Asia and that China is playing a key role in the region. Even though it has only been 25 years since IP rights were first protected in China, the number of patent applications filed in China places it among the top three countries in the world, and the number of applications continues to rise rapidly. At the end of my speech, I expressed the wish that Beijing would become a center of global creativity and would keep the protection of intellectual property as a primary focus of its economic strategy.

After visiting CCTV (Chinese Central Television) Cable 8 Culture Creative Center in the former Beijing Cable Factory and Qianmen Traditional Cultural Area, I attended a two hour closed session with Patrick Mok, Consultant of the Centre Asian Studies of the University of Hong Kong. Other guests included Lala de Heinzelin, Senior Consultant of Department of Creative Industry within the United Nations Conference on Trade and Development; Miklos Banhidi, Member of the World Leisure Organization's Board of Directors USA; and, Paul Andreu, renowned French architect who designed the National Grand Theater of China and the Airport Roissy Charles de Gaulle in Paris. The main themes discussed during the session included the modernization of cities and how to protect and make use of historical and cultural buildings in the process of urban development.

On November 19, I visited exhibitions and the ICCIE's major project presentation, followed by a special Singing Ceremony in the Hotel New Otani Chang Fu Gong.

Meeting with SIPO Commissioner Tian Lipu and AIPPI Chinese Group in Beijing

On November 17, I had a meeting with Tian Lipu, Commissioner of the State Intellectual Property Office (SIPO) and President of the Chinese Group of AIPPI in Beijing. At the meeting, officers of the AIPPI Chinese Group attended, including two Vice-Presidents, Mr. Hao Ma and Mr. Perry Wu Yang; and, a Secretary-General, Mr. Yi Li., along with a Deputy Director-General of SIPO, Mr. Wang Xiaohui.

Commissioner Tian and I exchanged opinions on IPR-related topics of mutual interest. Commissioner Tian pointed out that IPR legislation was first promulgated in China a short 25 years ago, but since then had developed rapidly due in part to the assistance and support provided by the international communities, including AIPPI. Commissioner Tian expressed the hope that SIPO and AIPPI could deepen their understanding of each other and expand common ground in the IPR sector, by enhancing cooperation between AIPPI and its Chinese Group.

In the meeting, I observed that China had in recent years made outstanding achievements in the protection of intellectual property and that I would further promote cooperation between the Chinese Group of AIPPI and other national groups of AIPPI, and would further support China in playing a more important role in international IPR-related affairs.

[Top](#)
[Back](#)



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

The Secretary General Team visits Hyderabad

Laurent Thibon, Deputy Secretary General

Hyderabad is the destination of the next AIPPI event: the Forum and Executive Committee Meeting 2011. Hyderabad, with a population of more than 6 million people, is the sixth largest city of India. It is the capital of the Andhra Pradesh State, an old historical city and at the same time a very modern and fast growing new Indian city. Its location renders it easily accessible from all parts of India and a large number of international airports. The Convention Center and the hotels selected for the AIPPI Forum & ExCo are located in the new sector of Hyderabad.

The AIPPI Forum will take place in October 2011 from Friday 14 to Saturday 15. The ExCo will start the following day and end on Tuesday 18 October 2011. Stephan Freischem (Secretary General), Laurent Thibon (Deputy Secretary General), Karen Abraham (Assistant Secretary General) and Cinzia Petruzzello (General Secretariat) went to Hyderabad in November this year for a three day visit.

Two days of this visit were dedicated to the preparation of the Forum and ExCo meeting. The Hyderabad Organizing Committee involves more than 20 members of the Indian Group coming from all parts of India. It was also the occasion to inspect the various venues for the different events of next year's meetings: the recently built Convention Center; new hotels which will be recommended to the attendees of the Forum and to the delegates of the Executive Committee, and various historical sites for the social evenings.

Additionally, the Indian Group organized a one day Seminar on Current Concepts of Intellectual Property Rights in Hyderabad, with the support of the Federation of Andhra Pradesh Chambers of Commerce and Industry. IP Experts from all parts of India and Members of the Bureau of AIPPI provided valuable information to nearly one hundred participants on various aspects of recent IP developments in India and abroad. The Seminar was very helpful in promoting next year's event to Indian professionals in the region. This Seminar ended for the Secretary General Team with an informal diner at the invitation of the Board of the Federation of Andhra Pradesh Chambers of Commerce and Industry.

The Organizing Committee of Hyderabad 2011 is working to give you a wonderful experience at the first AIPPI international meeting to be held in India.

See you in Hyderabad.

[Top](#)
[Back](#)



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

New judge in charge of Patents County Court in London explains how the new streamlined procedures will be working in practice.

Ashley Roughton, UK Group Reporter

The AIPPI UK Group held an evening speaking event in London on the 17th November 2010, which was attended by 160 members and others interested to hear a talk and answers to questions by the new judge of the Patents County Court, His Honour Judge Birss Q.C. Judge Birss has been in office since the 1st of October 2010 and has already issued a number of decisions (see link: <http://www.bailii.org>) to indicate how the new streamlined procedures will work in practice. An article explaining the changes in the court rules appeared in the last edition of e-News (No. 15). The following new points of interest came out of the event:

1. The important principle to be remembered is that the cost-saving and streamlining measures (limiting disclosure, length of trial and so on) come as an entire package so that, if one part of the package is not available for whatever reason, then that would make the Patents County Court unsuitable.
2. It is equally important to ensure that those who cannot not usually afford to go to court are able to do so, even if with fewer of the traditional tools of litigation. Access to justice is a key objective. This is crucial to enable small and medium sized enterprises (SMEs) to innovate, knowing that they have a relatively inexpensive recourse to a judge and his or her court in cases of patent infringement.
3. Whilst the court will not limit how much a party spends on its own case, it will limit the amount which it can recover from its opponent in the event that it wins its case. Thus the 'loser pays' principle is limited in its scope. This will enable better litigation planning.
4. Between commencement of proceedings and trial (after the parties have served their respective statements of case), there will be one case management conference with the judge at which he or she will give all directions needed for preparation of the case for trial, including directions in relation to any evidence needed in addition to that covered in the parties' statements of case. Directions for additional evidence will be exceptional, the objective being for parties to state their case and identify evidence in support, including argument in support, in their statements of case. Thus, the statements of case are key. Any other interim applications with the court will be exceptional and, if necessary, they are likely to be made by telephone.
5. At the case management conference, the judge will fix a trial date.
6. No trial will be allowed to last for more than two days.

[Top](#)
[Back](#)



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

Unitary Patent for Europe by the way of "enhanced cooperation": an update

Prof. Dr. Christian Osterrieth, Rechtsanwalt, Reimann Osterrieth Köhler Haft, Düsseldorf, Germany

After the failures of various attempts to establish a unitary patent system in Europe - the first attempt, the Luxembourg convention on the Community patent of 1975 never entered into force - in August 2000, the European Commission proposed a regulation for a Community Patent.

Notwithstanding 10 years of negotiations, the conclusion appeared to be that agreement can not be reached on a joint approach of all EU Member States. In November 2010, EU Member States again failed to agree on the creation of an EU-Patent, although substantial compromises had been achieved. The obstacle was the translation issue: Spain and Italy rejected the proposed rules, based on the proposed use of the three official languages in the European Patent Office (EPO), and highlighted their discriminatory nature.

In view of an urgent need to create a less costly patent system in Europe and, taking into consideration that the costs for translations are by far the most significant cost factor, the failure to achieve unanimity on this important issue raises serious concerns. Something must be done to bring costs for patent applications down, but reduction of costs is not all. The principal goal of the European Union is not to reduce costs but to create a unified or, at least, a harmonised legal framework within the "single market" territory of the EU Member States.

How can these two goals be reconciled? Currently, the answer appears to be in what is called "enhanced cooperation". According to the functioning of the EU under the Lisbon Treaty, enhanced cooperation allows for nine or more Member States to move forward in a particular area as an "ultima-ratio" if no agreement can be reached by the entire EU. Other Member States can opt to join at any stage before or after such enhanced cooperation has been launched.

On December 14, 2010, the European Commission presented a proposal which opened the way for such "enhanced cooperation" to create unitary patent protection. This option would allow certain participating Member States to agree upon and to establish such a patent which would be mutually valid and recognised, although only amongst the individual Member State participants.

The Commission's proposal is based on a request from 12 Member States (Denmark, Estonia, Finland, France, Germany, Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Sweden and the United Kingdom).

It appears that the newly introduced vehicle of "enhanced cooperation" has already been used in one legal sector, but one which has no impact on competition or IP Law. Against the backdrop of the primary goal of EU Law, to provide authority for the creation of common rules for a common market, the application of the rules of the Treaty which govern "enhanced cooperation" to create a legal system for patents which is not applicable in all Member States, appears somewhat strange.

It may lead to a reduction of costs but will not lead to a patent system actively supported by all Member States. In view of the undisputed importance of a European patent system for competition and innovation, in particular, for European companies, the idea of "enhanced cooperation" leading to a split regime of patents within the European Union can only be regarded as an unsatisfactory compromise, but never as a final resolution. Therefore, negotiations with Italy and Spain should go on. A common approach must be achieved to avoid a situation where, in the future, the European patent system will become the first area where different legal regimes in IP matters are created within the European Union. The latter would not only work against the creation of a Common Market but would also contravene the European idea of harmonised law.

[Top](#)
[Back](#)



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

EU Patent and the EEUPC Agreement: What can still happen?

Jochen Pagenberg^[1], Attorney at Law, Bardehle Pagenberg GbR

The last three months were characterized by ever-changing news about the progress, or better non-progress, of the future legal order in patent law in Europe. It is, therefore, not easy to give a consistent report of the developments, and it is even less easy to predict any result, since so far nothing is definite and more time will be needed before even one of the two pillars, the EU patent or the EEUPC, is embedded in solid ground. The EU patent has again a new name, since it will not cover the whole EU anymore, and the litigation system remains uncertain until the ECJ issues its opinion. And, since both the patent and litigations systems are bundled together, both will share a common fate at the end. The following is, therefore, only an attempt to describe the *status quo* after the partly contradictory news from Brussels.

1. The Patent Court System

Uncertainty with the Patent Court System arose after the unofficial publication of the Recommendations of the Advocates General in the Opinion Procedure pending before the European Court of Justice. Reference is made here to the report of the hearing before the ECJ. ^[2] One could have anticipated a difficult discussion among the 27 judges on the various problems, but certainly would not have expected a verdict of *incompatibility* with the Treaty based on several grounds.

Two points stand out among the multitude of legal questions discussed by the Advocates General.

(a) *Lack of guarantee against infringements of the EU legal order.*

The first point is the statement of incompatibility for which a lack of ECJ competence and control in the future patent court system has been given as a main argument. The AGs found that the present draft proposal for the EEUPC in Article 14 *bis*, par. 1 b) is lacking sufficient remedies for a possible infringement of Union law by the Patent Court and adequate protection of the autonomy of the Union's legal system. The opinion reads as follows on this point:

82. In its current wording, article 14 bis, paragraph 1 b) of the draft agreement therefore risks creating the impression that the future P(atent) C(ourt) will not be required to take into account, in its judgments, either the treaties or the fundamental rights and general principles of Union law, or even the relevant directives on the matter...

One could not rule out the possibility according to the Advocates General (AGs) that

86...the future Patent Court will ignore some of the principles and provisions of Union law mentioned above or that it will not take them into account sufficiently when resolving disputes between individuals concerning patents...

This is a remark that patent judges with decades of experience in European law - some of them sitting in the highest courts in their respective countries - will not have read with much enthusiasm^[3].

And the AGs added:

87...[The Agreement] should include the obligation to comply with all case law of the European Court of Justice, and not just the obligation to follow the preliminary judgments pronounced under article 48 of the agreement contemplated, following reference of a preliminary question from the PC itself for a ruling.

93. Given that Union law and the case law of the Union courts will only be compulsory for the future PC through the agreement contemplated, the provisions thereof must be totally lacking in any ambiguity with regard to the scope of the PC's obligation to observe Union law. That is not the case with the current state of the draft agreement.

The proposal then discussed by the AGs would create even more disharmony if adopted by the ECJ, not only among future patent judges, but also among most member states, industry and practitioners. The options of the AGs are farreaching:

113. As pointed out by France in particular, a choice of different options would be available in order to guarantee the correct and uniform application of Union law in disputes falling under the competence of the future PC. Consequently, one could consider submitting judgments of the PC Court of Appeal to the control of the European Court of Justice, pursuant to article 262 TFEU. This control could be exercised in different ways: by an appeal on points of law (open to parties to the dispute before the PC Court of Appeal), by an appeal in the interests of the law (open to the Commission and/or to the Member States and/or to the EPO, along the lines of the former article 68, paragraph 3, EC) or even by a re-examination mechanism (along the lines of the provisions of article 256, paragraphs 2 and 3, TFEU)

What results from these remarks, if adopted by the Court, would be an involvement beyond a preliminary reference procedure, which most member states, the Commission's Expert Group of judges and litigators, and the Commission itself had proclaimed as "the maximum" that could be tolerated if one does not want to endanger the efficiency, practicability and above all predictability of the EEUPC's procedure.

(b) *The way-out in case of dead-lock: EPLA*

Of notable interest are recitals 58, 60 and 63 of the Opinion, of which excerpts are reproduced here as well.

58...*Union law is not in principle opposed to an international agreement providing for its own judicial system [4]...*

60. *We should first point out that it is not the competences of the future PC concerning the European patent that pose a problem here: ...the Member States are therefore free to assign them to an international body, created by mutual consent and having the vocation of being "their" common court.... The future Community patent is more delicate.*

63...*Disputes between individuals do not fall within the competence of the European Court of Justice...any competence not assigned to the Union in the treaties belongs to the Member States.*

Scholars and practitioners have interpreted these remarks as an official rehabilitation of the EPLA Working Party which, during the discussions on EPLA between 2000 and 2006, had been accused by the EU Commission at that time of having no right and competence to negotiate the EPLA Agreement without the authorization of the ECJ[5]. Now the AGs take exactly the opposite view, it will be interesting to see whether the Court will share the opinion of the Advocates General on this point.

Since, as we will see hereafter, unanimity among the 27 member states was wrongly proclaimed a year ago after the Council Conclusions of 4 December 2009, the EPLA would be an option which does not depend on the compliance with the EU legal order and, thus, also would not need unanimity in the Council. Indeed, the EPLA is consistent with the new approach of the Commission. Rather than striving for the maximum in numbers of member states with less attention on quality of the outcome, it searches in the future for the maximum of quality with a smaller number of member states which can be combined into a "coalition of the willing," within which agreement will probably be less difficult to achieve than among 27 countries, of which only a few have an interest in a patent system.

2. Failure of the language proposal of the EU Patent

A second negative surprise, in particular for the Belgium Presidency as well as the Commission, was the failure to reach unanimity among the 27 countries on the language proposal for the EU Patent. Indeed, the Commissioner responsible for the Internal Market, Michel Barnier, had still stated in March 2010 that he hoped to be "the last Commissioner who tries to finalise a deal on the European patent." Also, in the first week of November 2010, which started with a conference organized by the Belgium Presidency devoted to discussions on a number of topics of patent law, the Presidency had still hoped that its proposal for solving the deadlock over the language question would be a reasonable solution. The compromise proposal of the Belgian Presidency was based on the three language practice of the EPO as the final language regime for the EU patent, coupled with a 15 year transitional period with a more liberal standard.

However, the Spanish representative already announced at the November conference that Spain would not agree and requested adding Spanish as an additional official language, or as an alternative, a one-language regime with English as the only language. Italy also requested Italian to become a permanent official language. Both alternatives were rejected by the other member states with the main argument that the EPO would be unable to take any additional working language on board. Faced with these difficulties, the Belgium Presidency had to conclude on November 11, 2010 that "there will never be unanimity on the EU Patent."

Disappointment that a positive outcome was only short by two votes was expressed by a number of voices within and outside the Competitive Council. However, some questioned whether, if Spain and Italy had not taken the initiative, others would have stood up to oppose the proposal that was on the table. Commissioner Barnier summarized his feelings with the following remarks:

The absence of a European patent hinders our competitiveness, hinders European innovation, research and development. In the midst of the economic crisis, it is not the right signal...The current system for obtaining patents throughout the EU was too expensive, costing ten times more than in the United States.

The last remark may be questioned, since the figures compared are only the bare filing fees and, therefore, do not reflect the real burden on patentees for an average case when examining the filing practice of industry with regard to EP patents. They clearly ignore the costs of further prosecution, not to speak of the expense of later enforcement for which a comparison between the US and continental Europe would give a different picture. Successful inventions need effective and affordable enforcement systems. Thus, combining a system having more affordable *filing fees* with an *unaffordable enforcement system* is wasted money and overlooks the real needs of users, in particular, small and medium businesses

The reaction of the Commission and a number of member states was to abandon the perhaps overly ambitious approach for a 27 country granting system and to pursue another avenue. That approach was one which had already been proposed by practitioners a few years earlier, also in the context of the work for EPLA. It was to start with a smaller "coalition of the willing" and to use the possibility of *enhanced cooperation* for which only nine member states are necessary to join at the beginning and for which it may be easier to agree on a common concept. Upon invitation by the Commission, at first 10 countries had signed a letter to Commissioner Barnier[6], requesting the start of the procedure of *enhanced cooperation*. Other countries announced that they may join later, some of them however under certain conditions, e.g. after the opinion of the ECJ for the court system will have become known[7]. Together with the request for *enhanced cooperation*, the Commission changed the name of the "smaller" patent from EU Patent to *Unitary Patent*.

At the Competitive Council meeting on December 10, 2010, the official press release[8] of the Commission proclaimed that

A large majority of delegations considered that an enhanced cooperation...is the only option for moving ahead on the creation of a unified EU patent system.

These member states asked the Commission to present a formal proposal for initiating an *enhanced cooperation*. During the same session, the Italian and Spanish delegations strongly opposed – also - the idea of initiating an *enhanced cooperation*. The two countries expressed the opinion that "the requirements for engaging in that process are not currently met."

The conditions for *enhanced cooperation* can be summarized as follows:

1. It should be used only as a *last resort* if unanimity cannot be reached.
2. There must be *at least 9 countries* wishing to participate.
3. The Commission must accept the request and then send it to the Council with a *proposal for authorisation*.
4. The Council must give authorisation by a *qualified majority* after obtaining the *consent of the European Parliament*.
5. After authorisation of the cooperation, all members of the Council may participate in its deliberations, but *only participating countries* are allowed to vote.

6. *Enhanced cooperation* is open at any time to member states wishing to join in.

In its submission of the "Proposal for a council decision authorising *enhanced cooperation*..." [9] the Commission mentioned that the group in support now counts 12 member states that have submitted their request for *enhanced cooperation* [10] and that 13 further states are contemplating to join. Italy and Spain in the meantime had sent a formal letter under a common letterhead of both *Berlusconi* and *Zapatero* to Commission President *Barroso* alleging that *enhanced cooperation* by the member states is incompatible with the principles and functioning of the internal market [11].

The Commission has also announced that the practicalities of the proposed granting procedure for the Unitary Patent and the EP Patents would be modified. It was foreseen that applicants can apply for EP patents as today, and their applications will be examined by the EPO. Only shortly before grant, the applicants would have to make a choice as to whether they wish to obtain (1) a bundle of patents for all designated states or (2) a unitary patent for the countries which have joined "the club" and a smaller bundle of patents for the rest [12]. Applicants in the EU whose language is not English, French or German would have the option to file applications in any other official language of the European Union. The costs for translation into one of the three official languages of the EPO would be eligible for compensation.

To summarize the present situation:

1) *European and EU Patent Court:*

A decision by the Court on the patent litigation system, which is expected around February 2011, will determine the compatibility of the present EEUPC proposal with the EU Treaty. The decisive point will be the role of the ECJ within the patent litigation system. If more involvement of the Court will be requested than is foreseen in the present proposal for the EEUPC, this will most likely be the end of the entire project. If the Court, on the other hand, approves the view of the AGs on the independence of an international court system like EPLA, this could proceed on the basis of a second "coalition of the willing" for the litigation system, so that the work on EPLA could continue. If the best and most flexible solution is adopted, one can expect that soon a greater number of countries will join. Countries which have so far opposed EPLA will have to reconsider whether they prefer to stay outside a common litigation system.

2) *Enhanced cooperation for a Unitary Patent*

The Council needs a qualified majority to approve the project of *enhanced cooperation*, and it needs the consent of the European Parliament. Although the possible negative votes of Spain and Italy may not hinder the adoption of the *enhanced cooperation* approach, it is possible that the two countries will challenge the further proceeding before the Court with the allegation that the conditions of Article 326 *et seq.* TFEU are not met. Even without such an additional court proceeding the negotiations on the proposed text of the enhancement proceeding of 14 December 2010 will take time.

Since extended discussions on new problems will certainly not promote the enthusiasm of users, one should not try the most complicated route, but should choose a realistic solution with those countries that are willing to cooperate. It appears that the majority of the members of the group that have opted for *enhanced cooperation* are the same countries who had worked together in the Subgroup of the EPLA Working Party. It may not be wise now to put too much pressure on the remaining countries to join the group, since it might render the discussions unnecessarily complicated and reduce the chances for an optimal solution. The goal of the group should be to frame a solution that is attractive enough so that a large number of the remaining countries will later want to join..

References

1. Dr. iur., Attorney-at-Law, Munich/Paris; President, European Patent Lawyers Association
2. *Pagenberg*, The ECJ on the Draft Agreement for a European Community Patent Court – Hearing of May 18, 2010, 41 IIC 695 (2010)
3. Cf in contrast Ullrich, The Development of a System of Industrial Property Protection in the European Union: The Role of the Court of Justice, in: Eger, Ökonomische Analyse des Europarechts (Abstract in English), who, on p. 33 *et seq.*, takes a more balanced view, cf. <http://ssrn.com/abstract=1688319>. He emphasizes the leading role of the EEUPC due to its high qualification and the particular – also technical – experience of the judges which justify its comprehensive and, in the end, exclusive competence for infringement and revocation cases also for EU patents, so that one should not compare the patent court system with EU jurisdiction in other fields of IP law.
4. The Opinion refers to the ECJ decision *1/91 of 14 December 1991 (ECR. p. I-6079) point 40.*
5. This view is apparently still shared by France which also supports officially the idea to implement the ECJ as a third instance within the European patent litigation system. The overwhelming majority of member states as well as the Commission regard this as an unacceptable condition.
6. France, Germany, Estonia, Denmark, Finland, Lithuania, Luxembourg, the Netherlands, Slovenia and Sweden
7. In a letter of 8 December the Parliamentary Secretary of the UK Department of Business Innovation and Skills, Baroness Wilcox, in a letter to Commissioner Barnier announced her sympathy for the project of enhanced cooperation, but under the condition that the project would comply with the Conclusion reached on 4 December 2009 and the translation arrangements proposed by the Belgian Presidency. She also expressed reservations in case the ECJ "requires additional jurisdiction not presently available under the Treaty" .
8. Council Press Release No. 17668/10.
9. Proposal for a COUNCIL DECISION authorising enhanced cooperation in the area of the creation of unitary patent protection COM (2010) 790 final of 14 December 2010.
10. Denmark, Estonia, Finland, France, Germany, Lithuania, Luxembourg, the Netherlands, Poland, Slovenia, Sweden and United Kingdom
11. This common letter destroyed the rumours circulating due to a press announcement on 9 December in Brussels that Spain will give up its opposition against *enhanced cooperation* and Italy would be "isolated" among the member states. No information of the result of the Council Meeting has been published during the last two weeks of 2010.

12. The understanding so far was, as discussed also during the hearing before the ECJ that a special section within the EPO would be in charge of EU patents

[Top](#)
[Back](#)



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

Argentinean PTO backtracks and repeals recently imposed time restrictions for filing voluntary divisional patent applications

Gastón Richelet, Argentinean Group Reporter

On November 26, 2010 Resolution 198 issued by the PTO on November 19, 2010 was published in the Official Gazette.

By means of said Resolution, which text is reduced to just one Article, the PTO repeals Articles 1 and 3 of the recently issued Resolution 147 by which new time restrictions were imposed for filing voluntary divisional patent applications.

Resolution 147 had been heavily criticized by practitioners and IP organizations as imposing additional restrictions for the filing of voluntary divisional applications not found in the Patent Law or in its Regulations.^[1]

Based on this new Resolution the old practice for filing voluntary divisional applications is formally now declared again in force. Applicants will continue to have the chance of filing voluntary divisional applications at any time while the corresponding parent case is still pending.

However, Resolution 198 leaves in force Article 5 of Resolution 147 which addresses the case of the filing of successive divisional applications.

In that regard, in said Article it is established that, for a divisional application C having its origin in a divisional application B which in turn has been carved out from application A to proceed, both applications A and B, and not only divisional application B need to be pending at the time divisional application C is filed.

The position of some practitioners is that this requirement or restriction is nowhere to be found in the Patent Law or in its Regulations, and that therefore, the filing of successive divisional applications as described above should be allowed.

Should any further developments occur in this connection the Group will report.

References

1. A similar law restricting divisional applications in order to reduce perceived abuses and resulting backlogs recently was added to the EPC (<http://www.epo.org/patents/law/legal-texts/InformationEPO/archiveinfo/20090820.html>) and has received similar criticism.

[Top](#)
[Back](#)



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

Yemen: A New Law on Trademarks and Geographical Indications
Zeina Salameh, Saba & Co. IP, Lebanon

The Yemeni General Department for Intellectual Property Protection of the Ministry of Industry and Trade issued on November 22, 2010 Law no. 23 regarding trademarks and geographical indications. This law will come into force on February 23, 2011.

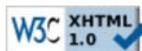
According to the Ministry of Industry and Trade, this law was drafted in response to the changing economic variables on the local, regional and international level. The continued attention to improving intellectual property protection is integral to the country's joining the World Trade Organization, expanding its involvement in the Gulf Cooperation Council, as well as providing an environment that encourages investments, trade, technology transfer and innovation.

The most important features of this law are listed below:

- The opposition period has been shortened from six to three months from the publication date (Article 14)
- The new law recognizes famous marks even in the absence of registration (Article 6)
- The new law introduces severe penalties against violators (Articles 41 to 60)
- The grace period for late renewal is extended to 12 months instead of three months as per the provisions of the previous law (Article 17)
- The new law introduces clear provisions regarding the recordal of assignments and licenses (Articles 25 to 29)
- The new law introduces clear provisions on the protection of geographical indications and the circumstances a registration of a trademark bearing a geographical indication is admissible (Articles 32 to 40)

Source: Saba & Co. IP, Head Office, Lebanon

[Top](#)
[Back](#)



International Association for the Protection of Intellectual Property

AIPPI General Secretariat | Toedistrasse 16 | CH-8027 Zurich
Tel. +41 44 280 58 80 | Fax +41 44 280 58 85
enews@aippi.org | www.aippi.org

Summary of the major IP developments in 2010

Saba & Co. IP, Head Office, Lebanon

This year the countries of the Middle East/North Africa (MENA) region witnessed many developments that have affected the scope of the Intellectual Property protection and enforcement framework, including the adoption of border protection measures and the introduction of new intellectual property laws. These major developments are expected to change the way business entities and administrative bodies handle intellectual property issues in the region.

ARIPO

A new protocol on the protection of indigenous knowledge, culture and folklore (the Swankopmund Protocol) was adopted on August 9, 2010.

Bahrain

Regulations implementing the industrial design law in Bahrain, law no. 6 issued on April 29, 2006, came into force in the country on February 26, 2010. The most important feature of the new regulations is the introduction for the first time of an annuity system. Maintenance fees will be due annually on the anniversary of the date of publication of the design. Other notable features of the new design regulations are:

1. The protection period is 10 years from filing date. An additional term of 5 years is possible upon payment of renewal fees.
2. Applications are examined as to form, novelty and industrial applicability.
3. Multiple-figure applications are admissible with up to 50 figures per application.

Egypt

According to an official notification issued by the Egyptian Patent Office on February 1, 2010, the 30-month time limit for entering the national phase under PCT Chapters I and II may be extended for an additional 3-month period upon submission of a written request and payment of a substantial surcharge for late entry.

Iraq

The Iraqi Trademark Office is reviewing files for registrations between 1 and 22999 to make sure that the records are in order. In case of any missing documents, owners will be asked to complete the requirements by no later than December 7, 2010 (for reg. between 1 and 16090) and March 20, 2011 (for reg. between 16091 and 22999).

Jordan

The Jordanian government has recently approved a new and stringent cyber crime law. Jordan's "Information Systems Crime Law of 2010" contains 18 articles dealing with a broad spectrum of cyber crime.

Articles in the law have defined acts of cyber crime across the whole continuum, dealing with minor offenses such as unauthorized access to computer material, to more serious crimes such as identity and credit card fraud.

The Jordanian government has recently introduced a new Public Prosecution Law (Law no. 11 of 2010). According to the provisions of this Law, crimes committed in breach of Trademark Law no. 33 of 1952 and Copyright Law no. 22 of 1992 will be referred to a Central Public Prosecutor.

Kuwait

Examination of pending patent applications is expected to start in Kuwait in the near future. The Kuwaiti Patent Office is now completing the files of all pending applications.

Libya

A new trademark law was introduced in Libya after being ratified by the Libyan Parliament. This law was published in the Local Gazette on August 21, 2010 and is effective as of that date. This law replaces Law no. 40 of 1956 on the Protection of Trademarks.

Oman

The Omani Trademark Office has updated its trademark classification system from Nice's 8th edition to Nice's 9th Edition.

Two years after the issuance of the regulations implementing the Industrial Design Law (Chapter III of the Omani Industrial Property Law no. 67/2008), the Omani Patent Office is accepting design applications for the first time. However, it is important to note that although it is possible to file an application, the Omani Intellectual Property Department is yet to disclose specific formalities regarding examination, publication, registration and renewal.

Qatar

By virtue of Decree no.16/2010, Qatar has enacted the new e-Transactions and e-Commerce Law. This law is the first complete and comprehensive law in Qatar that establishes rules and regulations concerning e-business, as well as the penalties for violations of such provisions.

Saudi Arabia

Saudi Arabia was removed from the USTR watch list.

Sudan

New border measures on the recordal of trademarks were introduced. After completing the recordal, the trademark will be placed on watch, and products bearing this trademark or a similar mark will be monitored and inspected ex-officio. Products suspected of being counterfeit will be seized. The rights owner as well as the importer will be immediately notified. Recordation is valid for one year, and is renewable for like periods.

Syria

The Standing Committee on Well-Known Trademarks was established pursuant to Presidential Resolution no. 47/2009 and Ministerial Resolution no. 2167/2009 to look into objections against registered trademarks which constitute a reproduction, an imitation, or a translation, liable to create confusion, of marks that are considered by the competent authority of Syria to be well-known. Objections can be raised by owners of well-known trademarks against identical or similar trademark registrations with identical or similar goods or services, as well as identical or similar trademark registrations with dissimilar goods or services, regardless of whether or not the well-known mark is registered in Syria.

Yemen

The Ministry of Industry and Trade in Yemen issued Ministerial Decree no. 271/2010 on October 31, 2010, which defines the framework of the patent system in the country. This setup has been on hold ever since the introduction of the implementing regulations of the Intellectual Property Law no. 19 in 2007. As a result of this Decree, the Patent Office is now receiving new applications and starting the related publication and issuance of letters patent.

The Yemeni General Department for Intellectual Property Protection of the Ministry of Industry and Trade issued on November 22, 2010 Law no. 23 regarding trademarks and geographical indications. This law will come into force on February 23, 2011.

[Top](#)
[Back](#)

