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Let's fall in love – with the German language
Gottfried Schüll, COHAUSZ & FLORACK

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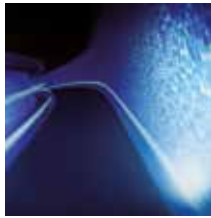
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Germany

Let's fall in love – with the German language

By **Gottfried Schüll**, COHAUSZ & FLORACK

Integration within the European Union is designed to make life easier for member states and to ensure a common basis and rule of law for everyone in those member states. It affects many aspects of society, including jurisprudence in general and patent law in particular. The proposed Unified Patent Court (UPC) will play an important role in the increased alignment of pan-European patent issues and will be common to all contracting member states, making it an integral part of their judicial systems. With central courts located in Paris, London and Munich, the UPC will have exclusive competence in respect of European patents and European patents with unitary effect. It will be responsible for infringement cases and revocation proceedings relating to European patents in the territories of participating member states and its rulings will be directly applicable throughout the respective territories.

Choosing the right language

While the central courts will carry out proceedings in English, French or German, the regional and local courts can choose their local language or other language combinations. For example, the regional court based in Stockholm plans to use English, despite the fact that English is not an official language in any Scandinavian country. In Germany, as yet no decision has been made regarding the official language or languages to be used by the courts in Dusseldorf, Hamburg, Mannheim and Munich. This issue is particularly important as it will have a decisive effect on the quality of proceedings and ultimately of judgments. The decision rests on the question of

whether court proceedings should be held in a language that is not the mother tongue of most participants (as is the case in Stockholm) or in a language with which all parties feel comfortable.

On the face of it, holding proceedings in English as well as German has the advantage of removing the need to translate certain documents. As English is widely spoken, people from many countries will be able to converse on a level playing field without language barriers. The need for simultaneous interpreters will largely disappear and solicitors from English-speaking countries will be able to carry out proceedings in non-English-speaking countries without major difficulty.

However, using only German in the local German court has particular advantages that far outweigh those of also using English for local court proceedings. Using two or more languages will always be a compromise and could even be dangerous, as only rarely will a party have an equal command of both languages. Even then, it may be that not all of the parties involved speak both languages equally well. It would cause major issues if a solicitor spoke fluent English and understood all intricacies of the language, but the judge did not have similar proficiency in English. Only when using the local language can the court be sure that everyone involved has an equal command of the relevant language. Any language barriers could easily lead to confusing interpretations, misunderstandings and ultimately unfortunate results or judgments.

Speaking a language always involves more than merely knowing the right vocabulary. A language is embedded in its own culture and, as such, involves many other aspects in

addition to the actual words and grammar. Language is a form of communication that is supplemented by other means of communication, which in turn affect and are affected by language itself. In essence, communication is both verbal and non-verbal. Verbal communication includes what is said (ie, the content of the message and the words used), as well as how it is said (ie, the tone of voice, the speed at which something is said, emphasis and pauses). Non-verbal communication defines your body language and the signals that you send out to the outside world (ie, eye movements, facial expressions, posture, movements, touch and spatial distance).

Communication is a complex matter and involves so many different aspects that it quickly becomes clear that people can express themselves properly only in their own mother tongue. Add to this the fact that patent law is a particularly complex area and it is easy to see how using a different language will pose more problems than solutions. In court, the spoken word plays an important role and a correct or incorrect word can be decisive. However, the same can also be said of unspoken communication, which depends on the language, society and environment. The difference between victory and defeat can boil down to nuances in rhetoric – and only in a person's own native tongue can he or she master them to the full.

Why German is the right choice for German courts

At present, German judges play an active role in proceedings and like to get involved in order to ensure that things progress smoothly and correctly. They will often enter into dialogue with solicitors in order to get to the bottom of specific aspects so as to shed light on the matter. This can involve not only technical aspects, but also different meanings of a word that could be interpreted in a variety of different ways. Such intricacies are of vital importance and cannot be addressed in quite the same way if the judge and solicitor are not speaking in their native language(s). It is obvious that the quality of proceedings will suffer if courts are expected to use English as the official language, as much of the trust

Contributing profiles



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Gottfried Schüll is a prominent and highly renowned patent litigator. He has handled various high-profile cases for global clients, both as lead counsel and as part of an international legal counsel team. The Dusseldorf Appeals Court has appointed him as an independent court expert. Based on his degree in physics from RWTH Aachen University, Mr Schüll handles cases related to various sophisticated technologies.

between the different parties in court is rooted in the German language.

The German courts, in particular, have developed outstanding capabilities over many decades, which are embedded exclusively in the German language and culture. It would be impossible to transfer such in-depth competencies to another language without losing some of the subtleties that have developed over the years. Further, proceedings would not progress as fluently as they do at present if they were held in English, as the language barrier would be a hindrance – even if all the parties involved spoke good English. This difficulty can often be seen at the European Patent Office and the European Court of Justice, where proceedings are held in different languages and often cannot proceed smoothly due to the time lag caused by simultaneous interpretation. Although the work of simultaneous interpreters is held

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in high regard, it is simply impossible to hold a dialogue at the same speed and of the same quality with another person having to interpret the speech. Even when proceedings are held in English, the reactions and responses often demonstrate that the person being questioned did not fully understand the question or interpreted it incorrectly. Such problems can be avoided only if all the parties involved can communicate in their own mother tongues.

Although the process of having to translate all necessary documents into German and back again can be burdensome in terms of both time and money, the final results will more than make up for this. In contrast to simultaneous interpretation, the translation of written documents need not be immediate, which is why the quality of translations will almost always be better. Written translations will also be able to spot more intricacies and ‘read between the lines’, so as to provide the respective documents in the target language with both the correct vocabulary and the right tone.

The German jurisprudence in the area of patents is simple and cost effective. German judges are particularly well versed in the specific field of patent law and generally provide comprehensible legal decisions – provided that they can use the German language. In total, 60% of EU proceedings are carried out in Germany, which emphasises the good reputation and quality of German patent proceedings. However, these are at risk if a decision is made to allow or even force

proceedings to be carried out in English. In fact, using any language other than German in the German courts would almost certainly have a negative effect on how proceedings progress, and would undermine the complex yet highly effective system that has been built up over generations and today is the basis for first-class patent litigation.

In the complicated and intricate world of patent law, it is often the little things that count and the nuances that make a difference. In such a complex environment, merely knowing the vocabulary will not suffice; a person must actually feel the language. Therefore, to recognise the high quality of patent litigation in Germany and to guarantee such high quality for the future, it is time to fall in love with the German language. **iam**

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