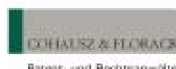
Intellectual Asset Management

International Report



Cheaper patents for all as France ratifies London Agreement

Cohausz & Florack - Germany
Gottfried Schüll

13 Feb 2008

EPC language requirements
The London Agreement

The **London Agreement** is due to come into force in a matter of months after France deposited the instrument of ratification with the German Ministry of Justice on 29th January.

The agreement, which will enter into force on 1st May - the first day of the fourth month following the deposit of the instrument - will make patenting in Europe about 30% cheaper by reducing post-grant translation costs.

Under the agreement, which was adopted on 17th October 2000, key **European Patent Convention** (EPC) contracting states agreed largely or entirely to waive the requirement for translations of granted European patents in their national language.

EPC language requirements

A European patent, once granted, is meant to confer on its owner the same rights as a national patent in the respective designated states of the EPC. Before that can happen, however, some language requirements must be met. The applicant must present the patent specification in one of the official languages of the **European Patent Office** (EPO) (ie, English, French or German), as well as a translation of the patent claims in the other two EPO languages. This is usually a minor nuisance, since a good number of patent applications are in one of these languages anyway and the claims make up only a small part of the text. However, Article 65 of the EPC permits each state to prescribe a translation of the patent's full text into one of its official languages. There is hardly one among the 34 signatory states that has not made use of this right.

The result is that a patent owner seeking protection in all states needs to shoulder the costs

of translation into more than 20 languages. This tends to head the list of patent expenses, already a burden for small enterprises strapped for cash. The fact that these translations rarely do more than collect dust makes the situation particularly frustrating. The translated document, usually published years after the original patent application, retains little informative value and is not even legally binding, since in case of doubt during litigation the original version is drawn on.

The London Agreement

The London Agreement, originally signed by Denmark, France, Germany, Liechtenstein, Luxembourg, Monaco, Netherlands, Sweden, Switzerland and the United Kingdom in 2000, set out to curb the number of translations. Under the agreement, states with an official language in common with the EPO waive any translation requirement under Article 65 of the EPC. States with no official language in common may require a translation of the claims only into their own official language and a translation of the patent specification in an official EPO language of their choice. Thus, the full text need only be translated twice at most. For most patent proprietors, this is already a significant financial relief.

In a slow process that has taken years, Monaco, Germany, the United Kingdom, Switzerland, Netherlands, Luxembourg and Liechtenstein deposited their instruments of ratification while Slovenia, Iceland, Croatia and Latvia did the same with their instruments of accession to the EPC. The agreement also gained parliamentary approval in Denmark and Sweden, with the date of depositing pending at the discretion of the respective government.

For some time all that remained for the agreement to enter into force was ratification by France. The ratification act was finally completed by adoption in the French Senate on 9th October 2007.

As of 29th January 2008, the instrument of ratification has been deposited in Berlin, with the agreement set to enter into force on 1st May 2008.

Although the current roster of states consists largely of those with either an EPO official language or lax translation requirements to begin with, many hope that the agreement will serve as a catalyst for other states to follow suit.

For further information please contact:

Gottfried Schüll
Cohausz & Florack
www.cohausz-florack.de
Email: gschuell@cohausz-florack.de
Tel: +49 211 90 49 00

© Copyright 2003-2009 **Globe White Page Ltd**