



**COUNCIL OF
THE EUROPEAN UNION**

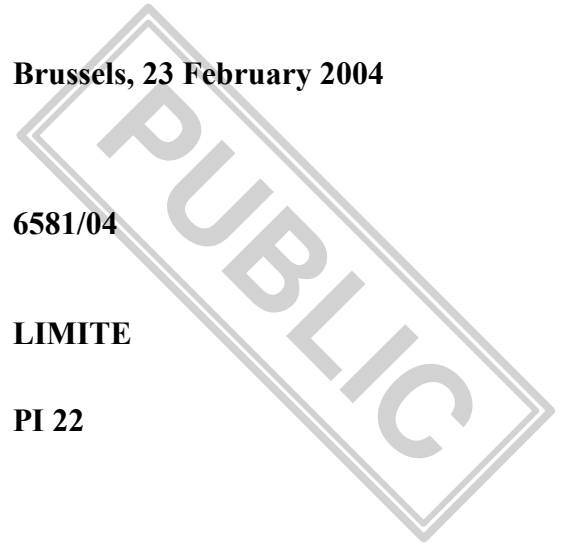
Brussels, 23 February 2004

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LIMITE

PI 22



WORKING DOCUMENT

from : Presidency

to : Permanent Representatives Committee (Part 1)

No. prev. doc. : 15086/03 PI 122 + COR 1(en)

No. Cion prop. : 10786/00 PI 49

Subject : Preparation of the Competitiveness Council on 11 March 2004
- Proposal for a Council Regulation on the Community patent

Delegations will find attached a Presidency Working Document for discussion in the Permanent Representatives Committee on 25 February 2004. Changes in relation to 15086/03 are indicated.

In preparing the document, the Presidency has drawn inter alia on the text which was submitted to the November 2003 Council, as well as on some of the texts discussed at that meeting. By bracketing parts of the text, the Presidency is simply signalling its belief that, if there is to be a solution, it has to lie in one or other combination of these provisions.

Compulsory translations of the Community patent

1. When the patent is granted, the applicant shall file a translation of all the claims into all the official languages of the Community, unless all Member States which have a given language as their official language or one of their official languages agree to dispense with a translation into that language. The translation shall be filed, at the choice of the applicant, either directly with the Office or via the national patent office of a Member State which makes such provision and which has as its official language or one of its official languages the language of the translation.

Where the translation is filed directly with the Office, the Office shall immediately make it available to the national patent offices of the Member States and to the public by publishing it on its Internet database.

Where the translation is filed via a national patent office, that office shall immediately transmit the translation to the Office, which shall make it available to the national patent offices of the other Member States and to the public by publishing it on its Internet database.

2. The decision of one or more Member States referred to in paragraph 1 to dispense with a translation must be communicated to the Commission in a statement, which it shall publish in the *Official Journal of the European Union*.
3. For the purposes of paragraph 1, if the translations into Community languages other than those required for the granting of the patent under the provisions of the Munich Convention are produced and filed at the Office within a maximum of [nine] [twelve] months¹ of the granting of the patent, under conditions specified by the implementing rules, the holder of the patent may exploit the rights conferred by that patent as from the date of publication of the notice of granting of the patent.

¹ The proposals for amendments to the European Patent Convention should also include a proposal to increase the period provided for in Article 99(1) of the Convention for filing notice of opposition from nine months to **[twelve] [fifteen] months.**

4. If the translations provided for in this Article are not filed within the deadline laid down in paragraph 3, the Community patent shall be deemed to be void ab initio.

[Article 24c

Effects of inaccurate translations

1. Notwithstanding paragraph 3a of Article 44, an alleged infringer, who in good faith is using or has made effective and serious preparations for using the invention the use of which would not constitute infringement of the patent under the translation referred to in Articles 24a or Article 58 but constitutes infringement according to the language in which the patent was granted, may, in the Member State in the official language of which the inaccurate translation is provided, continue, subject to payment of adequate compensation, the use in question for business purposes within the territory of the Member State concerned, for [two years][thirty months] from the moment at which a corrected translation has either been notified to him or made available to the public in accordance with the said Articles. This right may not be transferred. Article 10 is not applicable.
- [2. Where the alleged infringer proves that the inaccuracy of the translation referred to in paragraph 1 happens as a consequence of a misleading intention on behalf of the patent proprietor, the period of [two years] [thirty months] indicated in paragraph 1 shall be doubled.]
3. Where the Member State referred to in paragraph 1 has two or more official languages which are also official languages of the Community, paragraphs 1 and 2 shall apply to the alleged infringer for the official language of his choice.]

[Article 24d

Status of the translations

The translations referred to in Articles 24a and 58, which have been carried out by a person authorized under the law of a Member State shall be deemed in the Community to be in conformity with the original, until proved to the contrary. The presumption can at any time be refuted through a presentation of the original text.

Article 62

Report on the implementation of this Regulation

Not later than five years from the date on which the first patent designating the Community is granted, the Commission shall present to the Council a report on the operation of the Community patent system and where necessary make appropriate proposals for amending this Regulation. The assessment shall cover quality and consistency, the deadlines required for decisions, the time limit for the filing of translations of claims and the costs incurred by inventors. Subsequent reports on the operation of the Community patent system shall be presented by the Commission every five years.