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# Tech-tonic

Technology industry patent law e.bulletin



## Introduction

This is the first issue of Tech-tonic, Taylor Wessing's technology industry patent law bulletin. This legal bulletin will address patent law issues relevant to the high tech, telecoms and financial services sectors. In this first issue we look at some recent patent challenges in the telecoms sector, which consider issues arising from the conflict between patents and standards. While standards allow the wide adoption of new technologies, implementation of a standard very often requires the use of a technology or technologies protected by one or more patents. There is accordingly potential for there to be a conflict between the rights of the patent owners and implementation of the standard. The more patents a company has notified under a standard, the better is its bargaining position. Over-declaration can extract significant commercial advantage. What can a company do, who believes that it is unfairly disadvantaged by another company's over-declaration?

Other issues discussed include:

- Refusal to licence IPRs post Microsoft
- Exploiting the lack of harmonisation of patent law and procedure in Europe
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- IPRs and the draft UNCITRAL legislative guide to secured transactions
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## They say you've got to have standards. Are they really essential?

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*(Nokia v Interdigital [2006] EWCA Civ 1618). (Nokia v Interdigital [2007] EWHC 3077 (Pat))*

### Patents and standards

Standards allow the wide adoption of new technologies. However, where implementation of a standard requires the use of a technology or technologies protected by one or more patents, there is potential for there to be a conflict between the rights of the patent owners and implementation of the standard.

To encourage wide adoption of standards most standard setting bodies (SSBs) have implemented patent policies. A detailed discussion of these policies goes beyond the scope of this article. In summary, many SSBs require companies involved in the standard making process to disclose information on relevant patents and applications, and often require the owners of any relevant (essential) patents and applications to agree to specific licence conditions. Where different companies or individuals own a number of patents relevant to the technology, a pooling of patents often occurs.

Complex negotiations for licences under notified patents take place and broadly the more a party has notified the more it can extract from others. Over-declarers of patents can gain a significant negotiating advantage.

### The problem

A standards body is setting a standard for the next great idea. Your company has patents, good patents that may be relevant to the technology. You look at the proposed standard and, yes, your patents must be essential for that technology. So you declare your patents as essential to the standard. Another company declares its patents as also essential for the new technology. You believe your patents are essential but are theirs?

It's all very well paying licence fees on FRAND (fair, reasonable and non-discriminatory) terms for essential technology you need to licence in, but what if in the end, when the standard is set, those other patents you're stuck with licensing in don't look all that hot to you? What can you do?

### The solution

Well, you could do what Nokia did. When they didn't like the look of some of Interdigital's patents which were declared as essential to the 3G mobile phone standard they trotted off to the UK Patents Court and cried foul. They asked the court to declare that certain of Interdigital's patents were not essential to the standard. Nokia argued that it was possible to comply with the standard without using the inventions covered by some of Interdigital's patents. If that was so, Nokia (or anyone else) shouldn't be obliged to obtain licences.

Interdigital disagreed. They argued that it was not for the UK Court to decide if interdigital's patents were essential to the relevant standard or not, and that Nokia could apply under the Patents Act 1977 for a declaration of non-infringement. The UK courts (High Court and Court of Appeal) disagreed. The courts had sympathy with Nokia's situation. They stated that a declaration of non-infringement was something altogether different. So what was decided?

### The case

Nokia applied under the court's inherent jurisdiction for a declaration that a number of Interdigital's patents did not cover what was essential to use to comply with the internationally agreed 3G standard for mobile phones. The standards organisation here was ETSI (the European Telecommunications Standards Institute). ETSI's IPR Policy defined the nature of an essential right (paragraph 15 of the Policy). The court could, as an exercise, compare the patent claims with the 3G standard in order to decide the question.

The UK Courts decided that:

- the UK court did have jurisdiction to consider Nokia's request for a declaration because Nokia had a real commercial interest in a decision of the kind sought – manufacturing 3G telephones that must comply with the standard was a sufficient commercial interest;

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- the fact that standards are global does not stop a single national court from exercising jurisdiction in the matter before it;
- the decision would be a decision for England and Wales only, though the Court of Appeal pointed out that there could be commercial repercussions in Europe where the principles of determination of the scope of patents are increasingly converging;
- although there was a worldwide question, there could be a national answer, which could be of assistance in a real commercial dispute;
- some of Interdigital's patents were non-essential to the standard.

## The future

Complex negotiations for licences under notified patents take place and generally the more a party has notified the more it can extract from others. Over-declarers of patents can gain a significant negotiating advantage and it can be particularly so for companies like Interdigital who as a non-manufacturer do not need cross-licences. Over-declaration can distort competition in the market since it can distort the perception of licence fees due and as such can fall foul of competition law. Over-declarations unjustifiably being maintained could be an abuse of monopoly under Article 82 of the Treaty of Rome.

This case shows that there is now the possibility for companies in Nokia's position to challenge the essentiality of another company's patent notifications. The UK courts' decision in Nokia does give a bargaining chip for companies feeling caught over a barrel and wishing to avoid paying licence fees for non-essential patents. It remains to be seen how many other companies see fit to try the same thing.

*Kathleen Fox Murphy*

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## Qualcomm vs. Nokia: Who owns the mobile communication standards? First litigation results in Germany [Back to contents](#)

### The dispute

Qualcomm develops and implements mobile digital communication technologies. It owns a comprehensive patent portfolio in this area having notified 5080 patents to the European Telecommunication Standard Institute (ETSI) as "essential" for certain mobile communication technology standards. Some of the patents declared cover the second generation ("2G patents") GSM-technology and GSM based developments such as GPRS and EDGE, and others relate to the third generation ("3G patents") mobile communication technology known as Wideband Code Division Multiple Access (WCDMA or UTMS).

Nokia is the world market leader in the field of mobile telephones. It sells and markets mobile telephones that are not only based on the conventional GSM standard but also on one or more of the GPRS, EDGE and/or WCDMA standards.

Nokia and Qualcomm have been in license relationships since 1992. However, in 2007, this relationship turned into a dispute about Qualcomm's royalty rates and intellectual property rights leading to a series of patent disputes across Europe; in Germany, the Netherlands, Italy and the UK.

The European actions of both parties can be divided into two categories based on technology and category of patents:

- **The 2G litigation:** This first type of action was initiated by Qualcomm against Nokia claiming infringement of certain patents that cover 2G technology. These actions were filed with the UK High Court (May 24, 2006), the Regional Court (*Landgericht*) Düsseldorf (August 9, 2006) and the Tribunale Di Milano (October 16, 2006).
- **The 3G litigation:** This second type of action was initiated by Nokia against Qualcomm seeking a declaration that certain chips and chipsets acquired by Nokia from Texas Instruments and used in Nokia mobile telephones do not infringe any 3G patents of Qualcomm. These actions were filed with the Regional Court Mannheim (Germany) and the District Court in The Hague (Netherlands).

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### Proceedings in Germany

#### The 2G litigation

Qualcomm started infringement proceedings against Nokia Cooperation at the Regional Court (*Landgericht*) Düsseldorf based on the patents EP 0 629 324 and EP 0 695 482 on August 9, 2006. Both patents relate to the 2G-Technology. As a defence Nokia filed nullity proceedings against Qualcomm for invalidity of both these patents at the Federal Patents Court in Munich on January 11, 2007. In the meantime, Qualcomm's infringement action in Düsseldorf has been stayed, apparently because the judges of the Düsseldorf court think it likely that the Qualcomm patents will be invalidated by the Federal Patent Court in the course of the nullity proceedings filed by Nokia.

#### The 3G litigation

In another action, filed by Nokia against Qualcomm at the Regional Court Mannheim on March 16, 2007, Nokia asked the court to declare that they acquired certain chips and chipsets free of any 3G patent rights of Qualcomm. In an auxiliary claim, Nokia sought a declaration that certain Nokia mobile telephones do not infringe certain 3G Qualcomm patents.

The background of this litigation is as follows: In December 2000, Qualcomm concluded an agreement with Texas Instruments (TI) in which the parties agreed not to act against each other with respect to the production and sale of chips and chipsets based on their respective 3G patents ("cross-license"). In 2001 Qualcomm granted a license to Nokia with respect to its 3G patents. The term of the license expired on April 9, 2007. Nokia refused the renewal of this license that Qualcomm had offered but bought 3G chips and chipsets from TI for the use in Nokia mobile telephones.

Nokia argued that Qualcomm's patent rights in the chips and chipsets they are buying from TI are exhausted. The chips and chipsets have been put on the European market by TI with the consent of Qualcomm and, accordingly, Qualcomm's patent rights in the relevant chips and chipsets are exhausted. Nokia concluded that its production and sale of mobile telephones with integrated TI chips and chipsets do not infringe Qualcomm's 3G patents.

On October 23, 2007 the Regional Court Mannheim dismissed Nokia's action for lack of admissibility noting that Nokia lacked "legal interest" in pursuing such claims. The main claim was dismissed because German courts are not allowed to decide about general and non-specific questions of law. The decision whether certain chips and chipsets are free of any Qualcomm patent rights was not related to any specific (potentially infringing) activities of Nokia and thus considered to be too general and non-specific. The auxiliary request was considered to be sufficiently concrete but initiated without proper reason, since Qualcomm had never threatened Nokia with any kind of action based on its 3G patents.

Nokia has filed an appeal against the decision of the Mannheim court. The grounds are not public, but it is expected that Nokia will argue against the inadmissibility of its action and try to persuade the Court of Appeal to refer the action back to the first instance court for a decision on the merits. Taking into account the general principle in German civil procedure that German courts are not permitted to give decisions on general questions of law it would be surprising if Nokia's appeal was successful.

The preliminary results of Nokia's German 3G action are in line with the results in the [Netherlands](#).

Parallel to the Mannheim proceedings, Nokia filed a similar action with the District Court in The Hague. Nokia sought declarations that the 3G patents of Qualcomm are exhausted with respect to the TI chipsets placed on the market in the Netherlands and in the EU member states. The court dismissed the claims. The court ruled first that it only accepts jurisdiction for the Netherlands and not with respect to any other European Country. Second, the court concluded in line with the German decision that Nokia's claims were non-specific and too vague in failing to adequately specify examples of possible exhaustion related to specific Qualcomm patents used by specific Nokia products.

### Conclusion

**The 2G litigation:** The intermediate results in Germany with regard to the Qualcomm 2G patents seem to be in line with the most recent decision in the UK where the High Court found the most relevant 2G patents of Qualcomm invalid. Even though there is no invalidity decision of the German Federal Patent Court with regard to those patents yet, the German infringement court in Düsseldorf decided that such an invalidity decision is likely and stayed the corresponding infringement action for the time being.

**The 3G litigation:** Both courts, the German and the Dutch court dismissed Nokia's attempt to clarify the legal situation with respect to the 3G patents of Qualcomm for procedural reasons as inadmissible. These decisions do not say anything about the patent situation with respect to the 3G patents but only demonstrate the difficulties that potential defendants face in continental Europe if they try to be proactive and to clarify the legal situation before being threatened or sued by the patentee.

*Christoph de Coster and Maria Held*

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## Refusal to license IPRs post *Microsoft*: When is it an abuse? [Back to contents](#)

### Background

In the *Microsoft* case (T-201/04), the European Court of First Instance revisited the question of when a refusal to license intellectual property rights or disclose trade secrets can constitute an abuse of a dominant position under Article 82 EC Treaty.

Microsoft appealed a decision of the European Commission in 2004, in which:

- Microsoft had refused to supply interoperability information governing the interface between operating systems running on client PCs and operating systems running on work group servers;
- this information was essential for competitors of Microsoft producing work group server operating systems so that their competing systems could function effectively with individual PCs which predominantly use Microsoft Windows; and
- without this interoperability information, competitors were effectively crippled in their ability to provide products which could compete with those of Microsoft.

The Commission concluded that Microsoft was pursuing a general strategy aimed at deliberately excluding competitors from the market for work group server operating systems, and its refusal to licence interoperability information constituted an abuse of its dominant position on the client PC operating systems market.

### When is a refusal to license an abuse of dominance?

In general, companies holding intellectual property or trade secrets may choose to do business with whomever they wish, and license their rights or disclose that information accordingly.

A problem arises when a company occupying a dominant position refuses to license its intellectual property or disclose trade secrets. In some circumstances, such a refusal can amount to an abuse under Article 82.

The case law prior to *Microsoft* set out four strict criteria, according to which a refusal to license intellectual property rights is abusive if:

- the product concerned is **indispensable** for carrying on a particular business;
- the refusal is liable to **exclude all competition** on a secondary market;
- the refusal **prevents the emergence of a new product** for which there is potential consumer demand; and
- the refusal **cannot objectively be justified**.

Following *Microsoft*, those four criteria still constitute the test, but their scope has been clarified and flexed.

The previous case law on the distinction between the existence and the exercise and the exercise of an intellectual property rights remains unchanged. *Microsoft* has provided clarification on when the rights of society as a whole trump those of the intellectual property holder.

It is important to appreciate that all dominant companies owe a special responsibility not to distort competition. What is otherwise lawful may become unlawful when undertaken by a dominant company. This is the cornerstone of the *Microsoft* decision as well as previous case law on refusals to licence.

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### Indispensability

In *Microsoft*, it was noted that several competitor work group operating systems were already present on the market, and that methods were already available on the market that enabled a high level of interoperability between Windows client and server operating systems and its competitors' operating systems. In these circumstances, how could the interoperability information be indispensable?

The Court insisted that the fact that some competitors existed on the market was not sufficient – the evidence demonstrated the importance of interoperability in customers' purchasing decisions. What was required was that competitors' work group server operating systems must be able to interoperate with the Windows domain architecture on an **'equal footing'** with Windows systems in order to **remain viably on the market**.

Previously the European Courts had applied the refusal to licence criteria to patents, copyright, design rights and trademarks. In *Microsoft* the court extended the doctrine to include trade secrets.

### Elimination of competition on a secondary market

It was not necessary to show that the refusal to provide interoperability information was likely to eliminate all competition, in the sense of a high probability of elimination.

In the Court's view, the Commission did not have to wait until there was no, or almost no, competition left on the market before it made a decision about elimination: that would undermine the purpose of Article 82. Instead, the Commission had been right to consider whether there was a **risk** of elimination of all effective competition.

### Emergence of a new product

It is not sufficient that new products that may be prevented from emerging. Those new products must be on a secondary market. Microsoft was using its dominance on the operating systems market to leverage its position on the secondary market for work group services. It is implicit from the decision that a refusal to licence on the market in which the business is dominant may not amount to an infringement of the competition rules. The Court's decision results in a slight slackening of the previous criteria. In short, there must be the elimination of effective competition. It is not necessary to wait until competition becomes toothless.

The Court looked at the 'new product' criterion in the context of damage to the interests of consumers. Consumers' interests would not just be damaged only in cases where the emergences of new products were prevented; they could also be damaged where **technical development** was prevented from emerging.

In addition, there is apparently no need for a specific new product or development to be in view. It was enough, given there was a demand from consumers for competing products, that the disclosure of interoperability information would give Microsoft's competitors the **capability** to create better products that could compete more effectively on the market.

### Objective justification

Finally, the *Microsoft* case makes clear that it will not be an objective justification simply to point to the valuable technology and intellectual property rights of the dominant enterprise. This is hardly surprising. If the Court had upheld Microsoft's arguments it would have meant that a refusal to licence would rarely, if ever, amount to an infringement of the competition rules. The Court left open what might amount to an objective justification. It would seem that there may be an objective justification. It would seem that there might be an objective justification only where the dominant enterprise would otherwise be deprived of the very existence of the intellectual property right.

### A new test?

*Microsoft* would appear to have broadened the scope of abusive refusals to license by revisiting the indispensability, elimination and new product criteria. If so, then dominant companies holding intellectual property rights may need to reflect on their licensing policies in light of that decision. Indeed, striking a balance between what must and need not be disclosed to competitors will prove challenging – after all, a company with a dominant market presence will hardly want to disclose more than it is required by law to do so.

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For the moment at least, the pendulum appears to have swung slightly in favour of smaller competitors. The Court applied a resolutely economic approach in a case where Microsoft had an overwhelmingly dominant position. It will be interesting to observe the approach of the Commission when it next considers a refusal to license where the circumstances are more finely balanced.

*Martin Baker and Stephen Whitfield*

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## Patent reform in Europe: Losing sight of the goal? [Back to contents](#)

### Introduction

The reform of the patent system within Europe has now been discussed for almost four decades and is beginning to assume the status of a Viking saga or Homeric epic. Following the publication last year of an opinion from the legal service of the European Parliament suggesting that member states were not free to enter into the European Patent Litigation Agreement (EPLA) without breaching certain obligations under the EC Treaty and other EU legislation,<sup>1</sup> there was a concern within Europe that a chance for reform had once again been lost.

However, the Commission, spurred on by Commissioner McCreevey, has continued to make the reform of the patent system a priority and, during 2007/08, has found willing allies in the Portuguese and Slovenian presidencies. These tenures have been notable for a flurry of non-papers, proposals and an injection of significant impetus into driving forward negotiations on both the Community patent and also the single patent jurisdiction. The current proposals for an EU patent jurisdiction were published as council document 5954/08, and focus on the main features of the proposed new system in part 1 and remedies in part 2. This article will focus mainly on part 1 of this paper.

At the end of 2007, and prior to the publication of the latest proposals, a meeting of the UK AIPPI<sup>2</sup> was held in which representatives of industry stakeholders in the European patent system gave a stark message that they would only support an alternative patent system for Europe if it presented clear advantages over the current system. One speaker, a representative of a major UK-based multinational pharmaceutical company, went as far as to state that the concerns within his organisation had led it to alter its patent-filing strategies. Namely, it is not using the current European patent system to the extent it had previously because it is concerned about the possibility that a new enforcement regime might apply to patents filed via this system. Instead, this company is now filing more national patents within Europe.

This bizarre situation has come about because of the existence of two methods of prosecuting patents within Europe and the proposals now afoot to introduce:

- (a) a third route to obtain patent rights across Europe, i.e. the Community patent; and
- (b) a new method of litigating patent within Europe in a single tribunal, i.e. there would be no reason to litigate a patent in all countries in Europe in order fully to enforce it against infringers.

It is presumed that the new single jurisdiction would allow litigants to sue on both Community patents and European patents (subject to any transitional period), but not national patents.

The current system theoretically requires a patentee to enforce its patent in all jurisdictions around Europe in which it is valid. In practice, this does not happen, and most significant parallel litigation only occurs in the main patent jurisdictions of Germany, the Netherlands and the UK. It is only rarely that multi-jurisdictional patent litigation truly

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<sup>1</sup> Primarily because the matters governed by the EPLA were within the exclusive competence of the Community

<sup>2</sup> The International Association for the Protection of Intellectual Property

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takes in many member states around Europe. Nevertheless, judges, politicians and users of the current system have noted that it cannot be helpful for patentees to obtain inconsistent judgments in different member state patents courts around Europe. This is a possibility exacerbated by the lack of any single harmonising legal instrument for patent law in Europe.

Whilst the common sense principles behind the introduction of a single jurisdiction cannot be doubted, the key to the success of any such system lies in the confidence that users would have in the system. Without such confidence, the system would become nothing more than a white elephant.

## The current proposals

The key features of the current proposal for a single EU Patents Court are that:

- each member state has the right to set up its own division, which is formed or dominated by local judges;
- infringement and validity issues could be tried separately with different competencies of national and central chambers;
- to ensure that consistency is introduced into the manner in which the new court applies patent law and tries patent cases, a central framework is to be set up to train judges to sit in the new court;
- the default position is that the language of the proceedings should be the official language of the member state in question (or any language designated as such). The parties can agree a language regime at first instance, subject to the approval of the court. Any veto of the proposed language regime would result in the case being referred to the central chamber, where the language of the proceedings should be the language in which the patent was granted;
- the proposed rules of procedure and remedies available are currently not mapped out with any great detail, although it is expected that in this regard, the final proposal will draw heavily on Directive 2004/48/ EC on the enforcement of intellectual property rights and on the preparatory work carried out in anticipation that the EPLA might have come into being. In this regard, the relevant documents would include: the latest draft EPLA (the most recent version can be found on the European Patent Office website<sup>3</sup>); the draft statute of the European Patent Court; and the Second Venice Resolution of the European Patent Judges, setting out possible rules of procedure of a European Patent Court (November 4, 2006).

## Are these proposals an improvement?

Immediately, one can gauge that there would be reservations surrounding the acceptance of a single patent litigation regime based on the above proposal. In particular:

### A single jurisdiction?

The proposals do not represent a step forward to a unified European patent jurisdiction. Rather, the proposals seek to maintain the right of each member state to establish a chamber of the court that is, largely, staffed by judges drawn from that member state.

### A split jurisdiction?

The proposals currently suggest that there should be a split in the jurisdiction for the national and central chambers of the new court, with only the central chamber being competent to hear validity disputes. This proposal raises further concerns that such a concept:

- (a) is alien to most European jurisdictions;
- (b) is born out of a lack of confidence in the predictability of litigating the validity of a patent at a national level in the new court, which, in turn, hardly inspires confidence in such predictability amongst potential users; and
- (c) a proposal to try a validity action brought by a claimant in a different manner to a counterclaim for invalidity raised by a defendant further, and unnecessarily, complicates the current proposal.

<sup>3</sup> <http://www.epo.org/patents/law/legislative-initiatives/epla.html>

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### A simple language regime?

The flexibility in the language regime suggested leaves much to the discretion of the court and the desires of the parties. It also potentially increases the cost of litigating under the suggested system. It also creates uncertainty for litigants and could result in the infringement and validity portions of actions being litigated in different languages. Clearly, this is not efficient as regards selection of legal counsel, or the selection of the personnel within the company to deal with the dispute.

### What is the law?

The current proposals do not prescribe any substantive law that would exclusively govern disputes before a single European patent tribunal. Given the concerns raised above, relating to the potential for forum shopping and strategic litigation, that bifurcation of infringement and validity coupled with mixed competencies of national and central chambers would create, key to the success of the new single jurisdiction will be the uniform application of a single European patent law and related jurisprudence. Without this, the proposed European single jurisdiction will be no better than the current system, where certain interpretative differences are thought to exist between the patent courts of different member states.

## Conclusion

Although the Portuguese and Slovenian presidencies are to be congratulated in continuing to progress towards the goal of a single jurisdiction in which to hear patent disputes in Europe, it is clear that industry is becoming concerned that the legislators are losing sight of the original aims of this project. The current proposals do not meet the requisite standards of certainty, convenience and cost to present much, if any, improvement over the current system. Clearly, this is not what European industry requires.

Therefore, the likelihood of the current proposals, both coming into effect and gaining widespread acceptance, have to be doubted. The French presidency has made reaching agreement on both the Community patent and the single jurisdiction as being of the utmost importance during its presidency in the second half of 2008. It is hoped that the above concerns are given due consideration during the further negotiations that will take place this year in order to avoid the new systems becoming an embarrassing white elephant lacking willing users.

*Gareth Morgan*

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## Litigating patents in Europe – The DSS experience [Back to contents](#)

The recent litigation throughout Europe between Document Security Systems, Inc. ("**DSS**") and the European Central Bank ("**ECB**") is informative for companies with interests in technology in a number of respects. In particular, it is a helpful reminder to those contemplating multi-jurisdictional patent litigation of the importance of adopting the right strategy in relation to the proceedings.

### The proceedings

DSS is the owner of a European Patent relating to producing documents (particularly banknotes) that cannot be copied by scanning-type copying devices. Alleging infringing production of Euro banknotes, it sued the ECB initially in the European Court of First Instance ("**CFI**").

Meanwhile, the ECB applied to revoke the DSS patent in a number of jurisdictions including the UK, France, Germany and the Netherlands, alleging lack of novelty, obviousness and added matter.

Although, patent law throughout Europe has a common basis in the EPC, the patent was revoked in two jurisdictions (UK, decision recently upheld on appeal, and France) but maintained in two others (Germany and the Netherlands). The obviousness arguments failed in all four jurisdictions. The successful argument in the UK and France was added matter.

### Why are these proceedings of interest?

The cases highlight that it cannot be assumed that the courts of one European jurisdiction will reach the same conclusion as another, even though in effect they are considering the same patent and applying the same legal principles.

In the judgment of the English Court of Appeal, Jacob LJ noted, not for the first time, that it was not satisfactory that there was no "one-stop-shop" for patents for those whose business is Europe-wide. At present, once a European patent has been granted and the nine-month opposition period has expired, issues of validity must be dealt with one-by-one in the separate national courts. There is no centralised infringement procedure at all. This is why conflicting decisions are possible.

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Furthermore, Kitchin J noted at first instance that it was also not satisfactory generally for infringement and validity issues to be decided separately. He mentioned this having been made aware of the "radically different" positions adopted by DSS in relation to claim construction in the English validity proceedings and in the infringement proceedings it had brought before the CFI. Because the issues of validity and infringement were not being decided in the same jurisdiction, DSS was able to adopt different positions without damaging its case in relation to either issue.

This separation of the consideration of issues can be a key factor in choosing which jurisdiction is the most appropriate in which to commence proceedings. In the English courts, for example, validity and infringement are decided together in the same trial. In Germany, however, they are separate and, indeed, where opposition proceedings are ongoing in the European Patent Office, it is not possible to commence separate validity proceedings in Germany.

In these circumstances, all else being equal, it can be seen that there are obvious benefits to commencing infringement proceedings in the German Courts and, conversely, revocation proceedings in the English Courts.

## Pursuing the right strategy

This latter point shows that in spite of the potential for inconsistency between the jurisdictions, litigating in Europe is fortunately not entirely unpredictable. Thinking carefully about strategy before commencing proceedings can help to achieve a party's commercial aims while keeping potential surprises to a minimum.

Assuming both parties are pan-European in their businesses, there will probably be a choice of jurisdictions in which it is possible to take action against the other party. The parties should consider carefully what it is that they wish to achieve commercially and how an action in one or more of the jurisdictions available can help achieve this.

The following points are worth bearing in mind:

### Patentees

- is the aim to stop the infringer infringing or to extract damages from them or both?
- in any event, which jurisdictions are most important in terms of manufacturing, sales, etc?
- is a quick decision necessary and what will the value be of that decision as a precedent elsewhere in Europe? How detailed will the court's analysis be and how much will it cost?
- is it likely or even possible that a counterclaim for revocation will result from commencing infringement proceedings? If so, will the proceedings be joined or heard separately? How will this affect the scope of the arguments that can be made?
- does the patent have any weaknesses from the validity perspective and can they be corrected without significantly reducing the scope of the patent to catch infringers? Bear in mind that patents can now be limited centrally (at the EPO), even after grant.

### Applicants for revocation/declaration of non-infringement

- in which jurisdictions is it important to remove the patent or obtain a declaration that planned activities do not infringe?
- has the EPO opposition period (nine months from the date of grant) expired and has anyone else opposed the patent?
- is it possible to attack the validity of the patent while opposition proceedings are ongoing?
- is a quick decision necessary and what will the value be of that decision as a precedent elsewhere in Europe? How detailed will the court's analysis be and how much will it cost?
- consider all possible attacks on the patent, including added matter and insufficiency. Consider how successful those attacks typically are in the jurisdictions of interest.

## Conclusion

Although a truly harmonised European patent system would be beneficial, at present there remains the potential for different decisions to be reached in different jurisdictions. It is impractical to take action in every jurisdiction. However, with careful consideration of what it is they wish to achieve and how the court practice varies between jurisdictions, litigants can devise a strategy that is more likely to be successful.

# Software patents possible in the UK following HC decision in Astron [Back to](#)

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Until recently, it was the standard practice of the UK Intellectual Property Office (UKIPO) to reject all claims for computer programs on the grounds that such claims would be excluded from patentability under Article 52 of the European Patent Convention (EPC).

However, in the recent High Court case *Astron Clinica & Ors* [2008] EWHC 85 (Pat), Kitchin J has ruled that the UKIPO's application of the EPC was wrong in this respect.

On 7 February 2008, the UK Intellectual Property Office (UKIPO) released a Practice Note to the effect that it would no longer object to claims solely on the basis that they claim computer programs.

## Commercial implications of the decision

If a patent claims protection for a computer program, the patent proprietor can sue providers of competitor programs for direct infringement of its patents under section 60(1) of the Patents Act 1977: patentees will no longer have to rely upon system or method claims which merely include a computer program element, and hence will not have to rely upon the contributory infringement provisions in section 60(2) of the Act to enforce their patents against software providers.

This means that patent proprietors will not face the burden of proving that the providers of infringing programs knew (or that it would have been obvious for a reasonable person to know) that the infringing programs could be used and were intended to be used to infringe the patent. Also, it means that protection of the patent will cover sales of computer programs in the United Kingdom even where those computer programs are intended for use abroad.

## The Law

### The Article 52 exclusion

Article 52(2) and (3) EPC provides that a computer program as such is not a patentable invention. The equivalent provision in English law is section 1(2) of the Patents Act 1977.

Recently, what constitutes a computer program as such has been the subject of a widely-publicised Court of Appeal judgment in *Aerotel v Telco, Macrossan's Application* [2006] EWCA Civ 1371, in which a four-step test for patentability was proposed.

### The test in *Aerotel/Macrossan*

The approach set out in *Aerotel/Macrossan*, and followed in *Astron*, is as follows:

1. properly construe the patent claim;
2. identify the actual contribution of that claim;
3. ask whether the contribution falls solely within the excluded matter – if so, then the invention is unpatentable; and finally
4. check whether the contribution is technical in nature - if not, then the invention is unpatentable.

### The UKIPO's interpretation of *Aerotel/Macrossan*

In November 2006 the UKIPO issued a Practice Note announcing changes to their assessment of patentability in light of the *Aerotel/Macrossan* judgment. Significantly, the Note said that the question of whether claims for a computer program (or a program on a carrier) were allowable had been "left open" by the Court of Appeal. The UKIPO reasoned that if a claim, properly construed, did not go beyond a computer program then the contribution of that claim was unlikely to go beyond a computer program, and hence that few claims to computer programs in themselves would pass the third step in the *Aerotel/Macrossan* test, as set out above.

In other words, the UKIPO reasoned that if a **claim** is limited to excluded subject matter, such as a computer program, then the **actual contribution** of that claim would also be limited to excluded subject matter and as such the claim would be unpatentable. The UKIPO relied upon this reasoning to object to any claims to a computer program or to a program on a carrier.

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### Kitchin J's judgment in *Astron*

In his judgment, Kitchin J referred to the UKIPO's policy of rejecting claims to computer programs. He then highlighted the inconsistency of this approach with that followed by the EPO, which also applies the EPC when considering patents but will allow claims to computer programs if those programs, when running, can bring about technical effects which go beyond the normal physical interactions between program and computer.

Regarding the commercial implications of the UKIPO's approach, the judge pointed out that patentees "*all exploit their inventions by selling computer programs stored on a computer readable medium or by Internet download and competitors can, of course, do the same.*" However, without computer program claims, i.e. if patentees must rely upon system or method claims which merely include a computer program element or can be implemented using a computer program, then those patentees "*can only protect their inventions by invoking the contributory infringement provisions of section 60(2) of the Patents Act 1977... What is worse, those provisions give no protection against the production and sale of programs in the United Kingdom if they are intended for use abroad.*"

After setting out the facts regarding the patent claims in issue in *Astron*, the judge provided a comprehensive summary of the law on exclusion from patentability under Article 52(2) and (3), culminating in a description of the test in *Aerotel/Macrossan*. In considering the UKIPO's approach of rejecting claims to computer programs on the basis of *Aerotel/Macrossan*, the judge raised four material points:

- the question of whether claims to a computer program (or a program on a carrier) were allowable had not arisen during *Aerotel/Macrossan*;
- there was nothing in *Aerotel/Macrossan* to suggest that all claims to computer programs are necessarily excluded;
- it is highly undesirable for the provisions of the EPC to be construed differently in the EPO and in the national courts of a contracting state; and
- perhaps most significantly, identification of the contribution of a claim, i.e. the application of step (ii) of the test in *Aerotel/Macrossan*, will be the same irrespective of whether the invention is claimed in the form of a programmed computer, or in the form of a method involving that programmed computer, or in the form of the program itself. Analysis of the contribution of a claim must be carried out as a matter of substance, not form. Even where the claim properly construed is limited to a computer program, the actual contribution of that claim must be assessed by reference to the process that it will cause a computer to perform.

In conclusion, the judge held that claims to computer programs are not necessarily excluded from patentability by Article 52 and hence that the UKIPO's approach was flawed. However, he added that such claims must be drawn to reflect the features of the invention that would ensure the patentability of the method that the program is intended to carry out when it is run.

Kitchin J's conclusions in *Astron* are now reflected in the UKIPO's Practice Note of 7 February 2008. The UKIPO are not appealing the judgment.

### **Matthew Jones**

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## Changes to US patent examination practice [Back to contents](#)

New rules (the "**Rules**") concerning examination practices in the USPTO were due to have come into force at the beginning of November last year. However, the Rules were the subject of a complaint by GlaxoSmithKline against the Director of the USPTO, seeking an injunction against their implementation and a declaration that they were vague and outside the scope of the USPTO's powers.

The US Court has recently given summary judgment in favour of GSK, concluding that the Rules were substantive in nature and therefore exceeded the scope of the USPTO's rulemaking authority under US patent law.

The changes would have limited the number of claims that the USPTO would generally consider in a single application – five independent claims and 25 claims in total (the "**5/25 rule**"). It would be open to applicants to try to circumvent these limits but such measures would involve the expensive preparation of an analysis of the filed claims and the prior art by the applicant (an Examination Support Document, or **ESD**), or would require the filing of divisional applications.

The rule changes would also have required applicants to identify "related" patents and applications to determine the degree of similarity or overlap between them. The 5/25 rule would be applied to related applications as a group, so that applicants might have no choice but to prepare an ESD in order to maintain all the claims.

Finally, it was proposed that there should be a restriction on the number of continuation applications (by which improvements may be added to the claimed invention) that may be filed (the "**2+1 rule**").

The Court found that the 2+1 rule, the 5/25 rule and the ESD requirements constituted a drastic departure from the terms of the Patent Act as they were presently understood. In particular it noted that the Rules might prevent the examination of otherwise meritorious applications. As a result they manifestly changed the existing law and altered applicants' rights. Therefore they were substantive rules.

For patentees, particularly those who tend to file broad applications at an early stage, which are then refined through continuation applications in order better to specify the invention(s) as the development of a commercial product unfolds, the judgment is a welcome one.

*Edward Vickers*

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## The Patent Prosecution Highway - Streamlining patent prosecution and reducing costs [Back to contents](#)

In the global economy many companies and some individual applicants have an increased need to acquire patent protection for the same invention in a variety of different countries. This often requires separate patent applications to many different national intellectual property offices, each considering the patent application independently of the others.

The Patent Prosecution Highway (PPH) is a set of initiatives for providing accelerated patent prosecution procedures by sharing information between participating patent offices. Participating patent offices benefit from and exploit relevant work previously done by another participating patent office with the goal of reducing examination workload, avoiding duplication of effort, improving patent quality and speeding up the patent prosecution process. Details of the existing and proposed PPH projects can be found in Table 1.

The Patent Prosecution Highway allows patent applicants who have received an examination report from one of the participating national intellectual property offices, which finds that at least one claim in the application is patentable, to request accelerated examination of a corresponding patent application filed in another participating country. Patent

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applicants are required to submit search and examination reports prepared by the other patent office in order to qualify for accelerated treatment.

In the UK the development of work sharing arrangements between the UK Intellectual Property Office (UK-IPO) and other national patent offices is a key recommendation of the Gowers Review of Intellectual Property. This led to PPH pilot agreements being signed with the Japanese Patent Office (JPO) in July 2008 and the US Patent and Trade Mark Office (USPTO) in September 2008. The pilot agreements were initially signed for one year and it was anticipated that they would build upon the initial success of the PPH piloted by the USPTO and the JPO. In March this year the UKIPO announced that the initial PPH project has been a success and that the scope of the PPH pilot agreements with the USPTO and the JPO is to be extended.

To date, the PPH pilot at the UK-IPO has only considered requests for accelerated examination relating to applications that were initially filed and examined at either the JPO or the USPTO. The UKIPO in its announcement in March has said that the pilot scheme is now being extended to cover examination reports issued by the JPO and USPTO that arise from an international application.

Under the new extended procedure, once the international application has been examined at either the JPO or the USPTO the applicant will be able to request accelerated examination at the UK-IPO. The agreement also allows accelerated examination at the JPO and the USPTO when the UK-IPO conducts an examination of an international application before it is examined at the JPO or USPTO.

The European Patent Office (EPO) has also recently announced that as part of its existing (since 1983) trilateral cooperation arrangement with the USPTO and the JPO it will participate in a pilot PPH scheme with the USPTO. This follows the announcement in January 2008 of the permanent implementation of the PPH between the JPO and the USPTO. The USPTO and JPO PPH had been piloted since July 2006. Up to now the EPO has resisted participating in the PPH project on account of concerns that its reputation for patent quality might be compromised.

The EPO and the USPTO have agreed to conduct a bilateral, PPH comparable pilot program, in which European applicants can participate on the basis of an EPO Extended European Search report. The pilot scheme is scheduled to start in September 2008. The details of the scheme have yet to be announced. The JPO is also considering participating in a scheme with the EPO.

Table 1: PPH projects (March 2008)

Participating patent offices	Status of project
CIPO - USPTO	This pilot program commenced on January 28, 2008, for a period of one year ending on January 28, 2009
JPO - USPTO	The pilot program started in July 2006. The trial period was originally scheduled to last for one year, until July 3, 2007, but was extended until January 3, 2008. The program has been implemented on a full-time basis since January 4, 2008
JPO - KIPO	The pilot program started in April 2007
JPO - UK-IPO	The pilot program started on July 1, 2007 and is scheduled to last one year. Its scope was extended to cover international applications in March 2008
JPO - GPTO	A pilot program will be implemented in March 2008
KIPO - USPTO	The pilot program began on January 28, 2008, for a period of one year ending on January 28, 2009
UK-IPO - USPTO	The pilot program started on 4 September 2007, and is scheduled to last one year. Its scope was extended to cover international applications in March 2008
EPO - USPTO	The pilot program is scheduled for implementation in September 2008

*Helen Cline*

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# EPC 2000 in practice

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## Introduction

The European Patent Convention 2000 ("EPC 2000"), which came into force on 13 December 2007, made extensive amendments to the EPC. EPC 2000 is in force in all contracting states of the EPC, currently 34, following the accession of Croatia and Norway on 1 January 2008.

The objectives of EPC 2000 were to bring the EPC into line with the TRIPS Agreement and the Patent Law Treaty 2000, to amend the EPC so that it reflected the working practice of the European Patent Office ("EPO") and also to enable the EPC to be amended more readily in future. The amendments introduced by EPC 2000 affect a wide range of issues and vary from substantive changes to patent law and significant procedural developments to relatively minor procedural amendments. Some of the key changes are described below and their practical implications for patent owners and applicants assessed.

## Post-grant amendment

One of the most significant changes introduced by EPC 2000 is the new "central limitation procedure". Previously, if a patent owner wished to amend a European patent after it had been granted and any opposition proceedings completed (for example, in order to overcome a piece of prior art that had come to light after grant, the European patent had to be amended by making requests for amendment in each individual country. Under EPC 2000, however, a patent owner can file a single request at the EPO to amend the patent, resulting in the amendment of the patent in all designated states. This should save both time and expense to patentees wishing to amend their patents.

The request for amendment must limit the claims of the patent: amendments which do not limit the scope of the claims are not permitted. The Examining Division examines the requested amendment only for issues of added matter, claim broadening and clarity, but will not reconsider the novelty and inventive step of the claims. If these criteria are satisfied, the Examining Division is required to allow the limitation: it has no discretion to refuse. This is less restrictive than the approach previously taken in some national jurisdictions. For example, in the UK, issues of good faith and delay could have been taken into account when considering amendment.

## Infringement by equivalents

A common issue in patent infringement proceedings is whether a patent is infringed by a product or process which does not fall within the literal meaning of the claims of the patent, but is "equivalent" to what is claimed on a literal reading. European jurisdictions have adopted different approaches to this issue of "equivalents", with the result that there can be divergent findings on the infringement of the same European patent in relation to the same allegedly infringing product or process in different jurisdictions. To address this issue, EPC 2000 has introduced a new Article 2 of the Protocol on Interpretation of Article 69 EPC which provides:

*"For the purpose of determining the extent of protection conferred by a European patent, due account shall be taken of any element which is equivalent to an element specified in the claims."*

The aim of the amendment appears to have been to harmonise the approach to infringement across Europe. This is to be welcomed as it should give greater certainty to patent owners and potential infringers alike. However, it remains to be seen whether this amendment will have any effect, in practice. The national courts of some contracting states already consider the issue of "equivalents" in determining infringement and EPC 2000 provides no definition of the term and there may be latitude in what is required by "due account". It is possible, therefore, that the amendments introduced by EPC 2000 will have no effect and that divergent decisions across Europe on infringement will continue.

## Ease of filing and prosecution

Under EPC 2000, it is no longer necessary to file a description, drawings and claims to obtain a filing date for a European patent: an applicant can simply refer to an earlier application filed in another country and request that the description, drawings and claims be the same, provided that a certified copy of the earlier application is filed within two months. This should help to reduce the costs incurred in preparing a patent application. A further change that will be of particular importance to foreign applicants is that a European patent application may now be filed in any language: a certified English, French or German translation should be provided within two months of filing.

Also, the provisions on further processing have been amended so that, if certain deadlines are missed, the applicant has the opportunity to rectify the error, whereas previously the application would have lapsed. While some deadlines

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remain strict and an applicant should never rely on being able to miss a deadline, the application process has, on the whole, become significantly more flexible and "user-friendly".

## Privilege

EPC 2000 introduces the concept of privilege to communications between European Patent Attorneys and their clients. While patent agent privilege was previously recognised under the national laws of certain contracting states, for example, the UK, it is not recognised in others. In the US, privilege can be recognised for non-US patent attorneys, but only where the privilege exists in the attorney's own jurisdiction. The lack of privilege in certain European jurisdictions therefore risked the disclosure of patent agent communications relating to European patents in US litigation proceedings. EPC 2000 should reduce the risk of such disclosure. This is of potentially great significance to owners of European patents who are conducting litigation of equivalent US patents, although the precise scope of the privilege remains to be determined.

## Summary

EPC 2000 introduces a wide range of substantive and procedural changes to European patent law. The procedures for filing and post-grant amendment are simplified and a greater degree of flexibility in prosecution has been introduced. The substantive legal changes aim to clarify and harmonise patent law across Europe and should thereby increase legal certainty. However, it remains to be seen whether the changes regarding the scope of protection of patents will have their intended effect.

*Yohan Liyanage*

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## London Agreement – What does it mean to you? [Back to contents](#)

The patent system in Europe comprises both a regime of national patent protection accessed via applications to patent offices of each individual member state and overlaid over this is a system of (potentially) Europe wide protection administered by the European Patent Office (EPO), based in Munich. The EPO administered system is governed by the rules of the European Patent Convention (EPC) to which more than 30 states are now members (including some states such as Switzerland that are not members of the European Community). A patent applicant is able to designate in which EPC contracting states it desires its European Patent to go to grant. Following grant, the EPC then requires a translation of the patent into the official language of each designated EPC contracting state in order for the patent to enter into force in that contracting state. Following grant, the European Patent then becomes, in the main, a bundle of national patent rights that must be enforced in the national courts of each individual contracting state.

Although the advantages of multi-jurisdictional coverage via a single patent application filed at the EPO under the EPC are obvious, such protection under this regime is costly when compared to other jurisdictions worldwide. If the average European Patent application (taken to grant in seven EPC contracting states) is compared to an application in the US and Japan, then it is estimated to be five and three times more expensive respectively. A significant proportion (about a third) of the costs of such an average European Patent are estimated to be due to translation costs.

A number of initiatives have been proposed in order to address such cost disparities. Amongst these is the London Agreement. This agreement modifies the EPC system for applying for European Patents. The agreement permits participating states to forego the right to have the entire European Patent translated into its own official language, selecting one of the official languages of the EPO instead (these being English, French or German). Under the London Agreement, the requirement to translate the claims of granted European patents into all three EPO official languages remains.

The London Agreement has been entered into by 13 EPC states, and came into force on 1 May 2008, although in Switzerland, Liechtenstein and the UK it has been possible to apply this regime to patents whose mention of grant is published after 1 February 2008. Although to date only a minority of EPC contracting states have to date agreed to enter into the London Agreement, the anticipated cost savings are expected to be significant with savings on translation costs for "typical" European patents being in the region of 45%. Obviously, the greater the number of

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EPC contracting states that participate in the London Agreement, the greater will be the cost saving associated with obtaining a patent grant across those EPC contracting states. There is also the hope that as more countries contract into the London Agreement, patentees will be encouraged to take patents to grant in more EPC contracting states, increasing the coverage of the average European patent right.

A number of the provisions of the London Agreement are optional. However, it is envisaged that most, if not all, participating states will upon implementation require the option of the patentee producing both a translation of the claims of European patents on grant and the litigation translation.

In practical terms, what the London Agreement means for patentees is that on 1 May 2008:

- in France, Germany, Liechtenstein, Luxembourg, Monaco, Switzerland, United Kingdom only the claims of European patents will be publicly available in those countries official languages if the patent is granted in a different EPO official language; and
- in Denmark, Croatia, Iceland and the Netherlands, translations of granted European patents will be required in English, with claims also translated into those countries' official languages. The EPO has also suggested that the lack of any election of an official EPO language into which European patents should be translated means that in Latvia and Slovenia, the claims should be translated into the official language of those countries, but no translations of European patents need be provided. It will be of interest to gauge whether this is a correct interpretation of Article 1(2) of the London Agreement, as that Article provides that the translation requirements under the EPC only be dispensed where a European patent has been granted in the official language of the EPO prescribed by that state, or translated into that language. Without such an election it is not clear whether the state in question has waived any translation requirement under Article 65 EPC.

In summary, the London Agreement will lead to typically broader patent coverage and cheaper European Patents within Europe; its enactment is to be welcomed therefore as one of the most significant developments in the prosecution of European patents since the EPC itself was introduced in 1973.

*Gareth Morgan*

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## UNCITRAL: Time to pay attention! [Back to contents](#)

The United Nations Commission on International Trade-Related Laws (UNCITRAL) was set up in 1966 with the purpose of modernising and improving international trade laws to promote international trade. One way that UNCITRAL now intends to achieve this aim is to make it easier for businesses to charge assets as security to raise finance. However a new development which has only recently caught up with the IP industry is that UNCITRAL intends to include non-tangible assets (including IP rights, licences and royalty payments) as chargeable assets. A review of the draft UNCITRAL Legislative Guide to Secured Transactions (the 'Guide') reveals some serious concerns for IP rights and IP right owners.

UNCITRAL's proposal and its impact on IP rights went unnoticed by those in the IP industry for many years. UNCITRAL started work on this proposal in 2000 and at a meeting of national Patent and Trade Mark Offices in October 2005 no one had heard of the proposal from UNCITRAL and how this could affect IP rights.

A working group has now been set up to represent IP rights owners and voice concerns about the effect the Guide has on IP rights. In 2007, this working group successfully managed to clarify some terminology in the Guide such as ensuring that standard IP assignments and licences are not retention of title devices that can become security rights and that IP licences with contractual performance terms are not receivables and will be treated in accordance with normal IP rules.

However, there are some further, more cumbersome issues in the Guide which still need to be addressed. Inconsistencies between securitisation rules and IP provisions still remain in relation to specific IP terminology and national and international IP laws. UNCITRAL have agreed to address these issues in an Annex to the Guide and this is due to be finalised by the end of 2008.

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The issues that need to be addressed in the Annex are set out below.

- the Guide removes the control an IP owner has over a licensee to use the royalty income he obtains from his sub-licensee as security to raise finance. This is notwithstanding an express term in a head licence that a licensee cannot use royalty income as security for finance. The Guide proposes that the lender acquire the licence automatically as a 'receivable';
- the Guide intends to ignore express contractual provisions for the choice of applicable law and, where a dispute arises, dictates that the law of the country of the licensee will apply. This could be very impractical as the licensee could be located in a country where litigation is very slow and/or expensive;
- the Guide proposes establishing a registry in each country to maintain a record of charges made against IP rights. This raises a host of potential problems. This registry is not intended to be linked to existing national IP registries and there is no provision for conflicts that may arise between the registries. Searching the registry will be done by the name of the party granting the charges over the IP right and not by IP right itself (i.e. the trade mark or patent number) so, without knowing who granted the charge, it will be impossible to tell if a particular IP right is encumbered or not. And most worryingly, this registry system is not intended to be mandatory and so won't be a reliable resource;
- under the provisions of the Guide, if a licensee defaults on a security agreement, then the lender can "take control" of the asset charged as security. This asset could be the IP licence or goods made using the IP rights. The lender can then re-licence the IP rights or dispose of the goods irrespective of the obligations set out in the licence. This means that a secured lender can resell the goods, re-license the IP rights and collect all the royalties from the sub licensees and there is nothing the IP owner can do about it.

*Anna-Louise Glancy*

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# News from the European Patents Group

## News

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**Patents and financial services: Am I bothered?** The Patents Group recently held this workshop. The programme included presentations from the UKIPO, industry representatives European and US attorneys. Topics covered included discussion of why financial services companies need patents and the practical issues that patents raise for financial services companies.

We are offering to run this workshop for companies. If you would like a copy of the programme or if you would like to arrange a date for us to visit your company please contact [Rachel Pomeroy](#).

[Patents & Standards in the Communications Industry](#): Partner James Marshall chaired sessions at this C5 conference in London

[IPR in Financial Services](#): Partner Gary Moss chaired a session at this C5 conference in London

**Global Intellectual Property Index**: In May 2008, Taylor Wessing, in partnership with Managing Intellectual Property Magazine, is launching the Global Intellectual Property Index. This important piece of research will identify the best and worst jurisdictions to obtain, exploit, enforce and attack particular types of intellectual property. It will be compiled using the responses from a questionnaire, together with a number of independent factors.

For further details of the Global Intellectual Property Index and the methodology used to create it, please visit: [www.taylorwessing.com/ipindex](http://www.taylorwessing.com/ipindex)

If you have any questions about the survey please contact [Sharon Philbey](#).

**Litigating Patents in Europe - Navigating the minefield**: It is well recognised that arrangements for determining European-wide patent disputes is unsatisfactory. The Patents Group has published this useful guide to patent litigation in Europe. The guide reviews the many issues for potential litigants and identifies the key factors to be considered by litigants when considering their European patent litigation strategy. If you would like a copy of this publication please email [Rachel Pomeroy](#). If you would prefer to have the guide in hard copy please let us know in your email.

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