

EU Votes To Implement Unified Patent System

By **Django Gold**

Law360, New York (December 11, 2012, 4:38 PM ET) -- The European Union on Tuesday approved laws establishing a unitary patent that will allow individual EU member states to obtain patents through a centralized system, a move Europe's regulators say will spur innovation across the continent.

European Parliament passed through two draft regulations that when adopted will allow 25 of the EU's 27 member states — with only Italy and Spain "outside the new regime" — to apply for unitary patents through the European Patent Office, a move heralded by that agency as an important step to boosting Europe's position as a hub for innovation and investment.

"The European Union is to be congratulated on this decision, which clears the way for the completion of the European patent system with a unitary patent and a Unified Patent Court, which we have been waiting for in Europe for 40 years," EPO President Benoit Battistelli said in a statement on Tuesday, pointing to the reduced costs of the centralized system.

"The vision of the founding fathers of the EPO to equip the European economy with a truly supranational patent system can now become a reality, strengthening Europe's competitiveness," Battistelli said.

Parliament said in its own release that its members had conducted three separate voting sessions in which they approved the "EU patent package," consisting of the unitary patent, the applicable language regime for the new system and the establishment of a unified patent court, which according to the EPO will have jurisdiction over infringement and validity disputes. This court will have seats in Luxembourg and Paris, as determined at the European Council earlier this year.

Parliament on Tuesday lauded the unitary patent system as both cheaper and more efficient than those systems currently in place, claiming that with the new system in place, an EU patent may cost around \$6,000, compared with a current average of almost \$50,000.

Parliament noted that the unitary patent, which when adopted will co-exist with Europe's various other patent systems, has been a long time coming since its initial proposal more than 30 years ago.

"The path towards the introduction of the EU patent was long and troubled, but ultimately it has been worth the effort," Parliament member Bernhard Rapkay of Germany said in Tuesday's statement.

"Today's vote is good news for EU economy and especially for European small and medium enterprises."

When reached for comment on Tuesday, intellectual property attorney John B. Pegram, a senior principal in Fish & Richardson PC's New York office, said that adoption of the unitary patent would raise significant issues related to the costs for patent holders.

"The real question will be what the annuities will be under the unitary patent. Most companies do not seek national patents in all of Europe," Pegram said. "Companies will be comparing the costs of their existing practice of having three to five patents in Europe with those resulting from the unified patent."

Pegram also noted that the unitary patent option would eliminate a patent holder's ability to cease maintaining patent rights in any given country, especially toward the end of a patent's life, when annuity rates increase. "Under the unitary patent, it's all or nothing," he said.

The EPO said on Tuesday that parties may file requests for unitary patents after the legal provisions covering the patent and its overseeing court have entered into force. The EPO said it expects to validate the first unitary patent in 2014.

--Editing by Katherine Rautenberg.

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