

AIPPI Q165

Optional Protocol to the EPC with regard to Litigation concerning European Patents

Protocole facultative à la CBE pour les litiges concernant les brevets européens

Fakultatives Protokoll zum EPÜ bezüglich Streitigkeiten über europäische Patente

Second Questionnaire (April 2002)

1. First and second instance judges

Q: *Should judges be appointed for the first and second instance simultaneously?*

- *Never*
- *as an exceptional and transitory measure, if there is need*
- *no objection*

In principle, never; might only be unavoidable in a start-up situation (of course, a judge having heard a case in the first instance should never be allowed to play a role in the appeal phase).

2. Jurisdiction

In view of the free choice of jurisdiction by the plaintiff under the Brussels Convention or the EU Regulation 44/2001 (defendant's seat and place of infringement),

a) Q: *Should there be the possibility for an assignment of cases by the Central Division from one regional division to another regional division against the will of the parties ? (e.g. for the purpose of even case load between the regional divisions?)*

NO

b) Q: *Should the first instance check ex officio its territorial jurisdiction*

- *Only on the basis of the statements of the case and without challenge by the defendant?*

- *Or only when the plaintiff asks for a default judgement?*

YES only then

3. Panels

(Here the groups may choose several alternatives)

Q: Which kind of court (panel) should be preferred

a) an existing purely national panel (3 judges)
NO

b) a 5 judge panel consisting of the judges of an existing local court plus one foreign legal and one technical judge
NO

c) a 3 judge court consisting of one local judge plus one foreign legal and one technical judge ?
YES

d) should the parties be able to choose the kind of panel when filing suit?
NO

e) should the court be able to decide between 3 or five judges in each case dependent on its importance?
NO

4. Languages

(Here the groups may also choose several alternatives).

For the language regime one of the proposals is to each country decide on the language of proceedings.

Q: How should this choice be practiced

a) choice only from the three EPO languages?
YES

b) possibility also to choose the local language which is not one of the EPO languages?

NO

c) English can always be chosen as a fall back language if both parties and the court agree

YES

d) *Should simultaneous translation become part of the oral proceeding in the future court system (Parties plead in a language of their choice and pleading will be translated into court language)?*

NO, unless parties agree otherwise

5. Type of appeal

Q: a) *Should the second instance allow for a de novo trial or should there only be a legal review?*

De Novo Trial

Q: b) *Should there be the possibility of an expert opinion in the second instance?*

- **Always in case of difficult technology: not always (tailor-made)**
- **In exceptional cases (e.g. if there was none in the first instance): not only in exceptional cases (tailor-made)**

Please send your answer to this Questionnaire

before May 24, 2002

to the General Secretariat by e-mail to mail@aippi.org.