

# EUROPEAN PARLIAMENT

2004



2009

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*Session document*

## MOTION FOR A RESOLUTION

further to the Commission Statement

pursuant to Rule 103 paragraph 2 of the Rules of Procedure

by Maria Berger and Michel Rocard

**on behalf of the PES Group**

**by Eva Lichtenberger**

**on behalf of Greens/EFA**

**by Daniel Stroz on behalf of GUE/NGL**

on **◀the European Commission's Statement on European Patent future▶**

## European Parliament resolution on ◀European Patent future▶

### The European Parliament,

- having regard to the European Commission's 1997 green book on innovation
  - having regard to directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions
  - having regard to its decision of July 6, **2005**, to reject the Council's common position on a proposed directive on the patentability of computer-implemented inventions ("software patent directive", 2002/0047/COD)
  - having regard to its resolution of October 26, 2005, on the patentability of biotechnological inventions
  - having regard to the European Commission's consultation concerning the future of the patent system in Europe, launched on January 9, 2006, and the related hearing held on July 12, 2006
  - having regard to Rule 103 of its Rules of Procedure
1. Expresses its commitment to achieving a balance between the interests of patent holders and the broader public interest in innovation and competitive markets;
  2. Notes that the number of patent applications filed at the European Patent Office (EPO) per year has over the last seven years increased by about 60%, which number is not attributable to a corresponding increase of innovative activity, therefore giving cause for concern over an extension of the scope of patentable subject-matter, lower quality standards, the creation of patent thickets, and an increased strategic use of patents as a substitute for actual innovation;
  3. Encourages Member States to consider, taking into account the specific circumstances in each country, the ratification of the London Agreement on the Application of Article 65 of the European Patent Convention as a means of optimizing the European patent system in the short term and gradually coming closer to an agreement on the language regime for a future Community patent in the long term;
  4. Considers that the patent-related needs of small and medium-sized enterprises (SMEs) are not served by cost reduction alone but by cost reduction as part of a holistic strategy that also increases patent quality and reduces the risk of inadvertent infringement as well as the costs that can result from infringement allegations;
  5. Believes that the creation of a non-EU European Patent Judiciary (EPJ) and a non-EU European Patent Court (EPCt) pursuant to the European Patent Litigation Agreement (EPLA)

would call into question the commitment of its contracting states (that are also Member States) to the Community courts and the Single Market;

6. Insists that only a Community framework creates the conditions for effective, democratic control over Europe's patent law at the international level;

7. Views as undemocratic the fact that the EPJ's Administrative Committee, which would consist of unelected delegates from national ministries, would have legislative authority on the EPCT's Rules of Procedure according to article 17(2)a and article 87 of the draft EPLA;

8. Notes with concern that the intergovernmental working party mandated with the drafting of the EPLA has to date not presented an official proposal for the EPCT's envisioned Rules of Procedure;

9. Considers that the appointment and periodic reappointment of the EPCT's judges by the EPJ's Administrative Committee would compromise judicial independence from the executive branch, as the departments of national ministries in charge of patent policy would dispatch officials to the EPJ's Administrative Committee, which would govern the EPCT, as well as to the European Patent Organisation's Administrative Council, which governs the EPO;

10. Expresses concern about the fact that articles 2(b) and 6(1) of the draft statute of the EPCT would allow members of the EPO's Boards of Appeal to serve, subsequently or even simultaneously, as judges of the EPCT;

11. Believes Europe's economic interests, and in particular Europe's SMEs, are not served by certain recent decisions of the EPO's Boards of Appeal in favor of an extremely broad scope of patentable subject-matter, such as decision T 0424/03 - 3.5.01 of 23 February 2006 to uphold a patent on data formats; is concerned that the EPLA could entrench case law that is inconsistent with the positions on substantive patent law expressed by parliamentary majorities on different occasions;

12. Is concerned that the EPLA would only reduce litigation costs in a small number of cases in which multi-jurisdictional litigation takes place today, while increasing the average cost of most patent lawsuits and thereby exposing SMEs to greater risks (according to the EPO's EPLA-related impact assessment, the overall cost of a small to medium-scale litigation would be in the range from €97,000 to €415,000, for the first instance alone);

13. Requests the Commission to ask the European Court of Justice for an opinion on the EU-related aspects of the possible conclusion of the EPLA by Member States in the light of overlaps of the EPLA with the *acquis communautaire* and to clarify the procedural role of the European Parliament in connection with the possible conclusion of the EPLA;

14. Instructs its President to forward this resolution to the Council and the Commission and to the governments and parliaments of the Member States.