

Single EU patent filing cost to fall from 2014 on

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After 40 years of debate and diplomacy, a historic agreement to establish a single, harmonised European patent system has been achieved.

The compromise deal was voted through on Tuesday 10 December by a large cross-party majority of members of the European Parliament (MEPS), after the Council approved the plan on Monday.

Some formalities remain, but the path is clear for the system to come into effect on 1 January 2014. The promise from the European commission is that as a result the cost of filing a patent will fall 87% from Euro 36,000 today to Euro 4,725.

Both MEPs and the commission have positioned the deal as an important plank in the single European market and as a sign of their commitment to help small technology-based companies. This was perhaps best-expressed by Cecilia Wikström MEP, of Sweden's Folkpartiet who said: 'Instead of paying millions to patent attorneys, to translators and in administrative fees, Europe's small and medium-sized enterprises will instead be able to use the money to develop their products.'

The reduction in costs will come as a result of a new language regime and a unified legal structure. At present, a patent granted by the European Patent Office in Munich must be translated into the language of every country in which it is to be registered. From 2014, patents in English, French or German, will automatically be valid in all the 25 countries that have signed up to the system. The commission will bear the costs of translating patents from other EU languages into English, French or German on behalf of SMEs (small and medium enterprises), universities and publicly-funded research institutes.

Meanwhile, the unified legal system will make it easier and cheaper to defend or contest pRSC atents. Under the current law this must be done country by country, but when the single patent comes into force all cases will go to the Court of First Instance ('Tribunal d'instance') in Paris, France. This will have subsidiary courts in London and Munich specialising in patents involving chemistry and life sciences, and engineering and physical sciences respectively.

The court was separated into three seats to satisfy the competing claims of the French, UK and German governments. However, this has the virtue of building on and maintaining existing expertise according to German MEP Klaus-Heiner Lehne, chair of the legal committee that worked on the structure of the unified patent court.

Although all appeals will be heard by the Court of Justice of the EU, the single patent will not be an EU system because Spain and Italy declined to join following a terminal disagreement on the three language regime. Instead, the new patent is to be set up under 'enhanced co-operation', a legislative pathway used when agreement falls just shy of unanimity.

In a related development on Tuesday, the Advocate General of the Court of Justice, Yves Bot, issued his opinion on a challenge by Italy and Spain to the use of enhanced co-operation, concluding that their objections have no legal basis.

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