

Patents in Europe are going to become less expensive

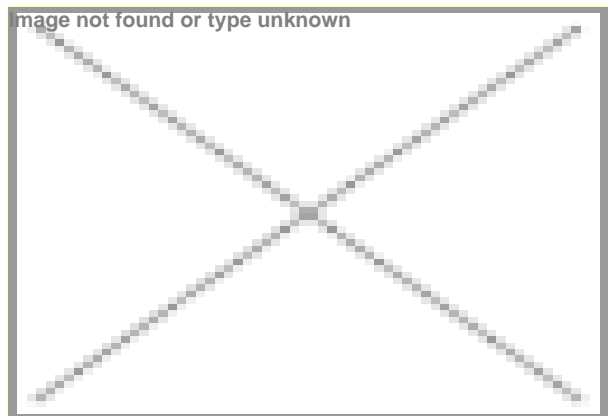
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The authors are spotted with their team members.

After ratification by France, one of the three key states for the Agreement's entry into force, the London Agreement can now come into effect as early as the first half of 2008

The London Agreement will be a major step towards cheaper European patents as patent holders will be spared the high costs relating to the translation of European patents

One of the major considerations for any biotech or pharmaceutical company building up a position in Europe are the costs of validating the European patent in the various contracting states of the European Patent Convention (EPC). While the costs of prosecution, i.e. handling the European patent application and pushing it through to grant at the European Patent Office (EPO) are acceptable, the costs for the subsequent validation phase can be considerably higher, mainly due to the enormous costs for doing translations.

After grant, a European patent is only in effect in those states in which it has been validated. Most of the EPC contracting states require that for validating the patent in their territory, the patent needs to be translated in the respective official language of that particular state (e.g. Italian, Spanish, German, English, Greek etc.). For validating the patent in all 32 EPC contracting states, a translation in 22 official languages is still necessary, which can cause costs of several 10000 Euros.

In order to reduce these high translation costs, the "London Agreement" was made in the year 2000. According to this agreement, each EPC contracting state, which has one of the official languages of the EPO (German, English, French) as its own official language waives the translation requirement altogether. That means that if the patent is written in English, it does not have to be translated into German and French in states that have German or French as their official language.

Any EPC contracting state which is a party to the "London Agreement" and has neither German, nor French, nor English as its official language, has to select one of these languages and accept a translation in this selected language, rather than requiring a full translation in its own national language. However, such states can still require to have a translation of the patent claims made in the national language. As an example, if Sweden selects English and the patent was written in English, no translation of the specification is required anymore; only the claims need to be translated in the Swedish language.

All states which are a party of the London Agreement still retain the right to request a complete translation of the patent in case a legal dispute arises, e.g. national infringement proceedings etc.

The London Agreement has not entered into force yet, because France had not ratified the agreement. However, on October 9, 2007, the French senate has ratified the London Agreement, so that the ratification document can now be deposited with the German government in Berlin, as required by Article 3 of the Agreement. One can expect that this formal act is being done very soon. According to Article 6 of the London Agreement, the Agreement enters into force on the first day of the fourth month after deposition of the last ratification document. At the time of writing this article, this date can still not exactly be given, but it can be expected that the Agreement will probably enter into force in the course of 2008.

Obviously, this will have an enormous impact on reducing the costs of a European patent, since the costs for translations are cut down to a large extent. For companies active in rapidly evolving and highly competitive fields of technology, such as the life sciences sector and especially biotech, this should be a real incentive to think about having more patent applications in Europe. We have described the various options on how to do that in the October 2007 issue of BioSpectrum.

The Agreement will be applicable to all European patents, which will be granted after the Agreement has entered into force.

In our law firm, we have taken steps to delay the prosecution of European patent applications that are close to grant, so that they will fall under the London Agreement in 2008.

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