

20 Unitary patent protection systems in Europe

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The single European market formed by the ever expanding European Union is one of the strategic markets for Japan, while its member states are also important as states with which patent applications are filed. However, Japanese applicants do not sufficiently understand the details of the recent trend towards establishing a new intellectual property system in Europe, particularly developments concerning the unitary patent protection system, partly due to the considerable uncertainty of the outcome of future discussions. At present, discussions on the Community-level patent protection system (Community patent) and discussions aimed at reducing the translation costs based on the EPC (London Agreement) and unifying the judicial procedure (European Patent Litigation Agreement (EPLA)) are conducted in parallel. This paper reports the results of examination with regard to the strategies by which the EU member states and European companies are involved in a series of discussions, and the way in which Japanese applicants should observe these developments towards the establishment of a new system.

I Introduction

In Europe, there is strong demand for a unitary patent protection system in which applicants may acquire patents in multiple states by taking the same procedure, while the same procedure and determination standards are also applied in courts in enforcing those patents. This is due to three main reasons.

The first reason is the single market strategy upheld by the EU. The strategy intended to enhance EU's industrial development and external competitiveness by allowing free movement of people, goods, capital, and services within the EU. However, intellectual property rights (IPRs) are treated as an exception to the principle of free movement. At present, where granting and enforcement of patent rights are based on principles of territoriality and patents exist in the respective member states based on their respective national laws, movement of goods and services would inevitably be restricted even under the single market concept. In light of the idea to establish a single Europe by eliminating borders between the member states, a unitary patent protection would be an essential system.

The second reason is the current high costs of European patents. The European Patent Convention (hereinafter referred to as the EPC) realizes unified examination of patent applications by the European Patent Office (hereinafter referred to as the EPO), but the procedures after the granting of the patent are left to the national laws of the respective states. Article 65 of the EPC allows a contracting state to have the applicant submit a translation of the patent claims

and the entire specification in a specified official language as a requirement for a European patent granted by the EPO to remain effective in respective designated states. Due to this requirement for translation, the European patent is extremely costly compared to U.S. and Japanese patents, and such high costs of European patents have been indicated as impeding R&D in Europe, and furthermore, industrial development in Europe.

The third reason is the issue of differences in the judicial systems and court decisions among EPC contracting states. European patents, with procedures that are indeed centralized in the patent granting phase, become a collection of national patents, often referred to as a "bundle of patents," after the granting phase. Therefore, when filing a patent infringement action with a court, if an act of infringement has been conducted in multiple states, the patentee must file actions in those respective states. There is no guarantee that all of these courts will render the same decisions, and this is detrimental to both the patentee and accused infringer in terms of the difficulty to foresee the outcome of the trials. Furthermore, the fact that the patentee must file multiple actions in the respective states is a major problem in terms of judicial costs and access to justice.

Against such a background, the unitary patent protection system that is currently sought in Europe must satisfy three requirements: (i) low cost; (ii) effectiveness throughout Europe; and (iii) consolidation of procedures in the litigation phase. In order to realize a system that satisfies these requirements, Community level discussions are under way for establishing a

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Community patent system in the Community framework and intergovernmental level discussions are also made for improving European patents.

II Community patent

1 Background

The idea of the Community patent itself is not new, but has been discussed since the 1960s. In 1969, an expert committee consisting of member states of the then European Economic Community (EEC) indicated the basic concepts for two conventions. One developed into EPC, and was adopted at a diplomatic meeting in Munich in 1973. The other served as the basic model of the Community Patent Convention (Luxemburg Convention) and was signed in 1975.

However, the Luxemburg Convention obligated the applicant to translate both the claims and the entire specification into all official languages of the Community. Since this would impose an extremely large monetary burden on the applicant, the Convention has only been ratified by a limited number of member states, and has yet to enter into force. As a lesson from this, a system based on Community law was considered as a possible way of unifying the patent system at the Community level. In 1997, the European Commission announced the "Green Paper on the Community patent and the patent system in Europe (hereinafter referred to as the Green Paper)." After hearing opinions on the Green Paper, the European Commission submitted the "Proposal for a COUNCIL REGULATION on the Community patent" in 2000. After consulting the European Parliament, the forum of discussion was moved to the Council of the European Union.

Discussions toward adopting the proposed Regulation faced considerable difficulty, but the Council of the European Union managed to agree on a political approach on the Community patent on March 3, 2003. The entry into force of the proposal for a Council Regulation on the Community patent was expected to be near at hand with this success, but mainly language-related problems continued to remain unsolved, and the system has yet to be established even today. Meanwhile, the European Council adopted the Lisbon strategy in March 2000. This strategy had affirmed to realize the Community patent system by the end of 2001 at the latest.

2 Outline of the Community patent

(1) Legal basis

This proposal for a Regulation on the

Community patent was drafted with the aim to create a unitary industrial property right, the Community patent. The legal basis for the proposed Regulation is Article 308 of the EC Treaty, similar to the Community trademark system and the Community design system.

The proposed Regulation assumes that the Community patent will coexist with the EPC, and clearly specifies that the Community will accede to the EPC, an application for a Community patent will be a European patent application in which the territory of the Community is designated, and the Community patent will be granted by the EPO.

(2) Language regime

The applicant has to present a complete application document in one of the three official languages of the EPO (English, German, French) as well as, a translation of the claims into the two other EPO languages. However, where the applicant files the application in a non-EPO language and provides a translation into one of the EPO languages, the cost of that translation will be borne by the system.

For reasons of legal certainty in connection with actions or claims for damages, non-discrimination and dissemination of patented technology, the applicant must, upon the grant of the patent, file a translation of all claims into all official Community languages (except if a member state renounces the translation into its official language). The translations will be filed with the EPO and the costs borne by the applicant.

(3) Judicial system

Under the Community patent system, the Community Patent Court is established attached to the Court of First Instance (hereinafter referred to as the "CFI") based on Article 225a of the EC Treaty. The Community Patent Court will have exclusive jurisdiction in actions and claims of invalidity or infringement proceedings, of actions of a declaration of non-infringement, of proceedings relating to the use of the patent or to the right based on prior use of the patent, or counterclaims for invalidity/limitation or requests for declaration of lapse. The Community Patent Court is composed of a central chamber and one or more regional chambers. If the number of cases introduced before the central chamber in one calendar year exceeds 150 proceedings, a regional chamber can be established in the member state in which the greatest number of parties involved in litigation were domiciled.

The chambers of the Community Patent Court will sit in sections of three judges. The judges will be appointed by a unanimous decision of the Council for a fixed term. The candidates for appointment must have an established high level

of legal expertise in patent law.

The Community Patent Court will conduct the proceedings in the official language of the member state where the defendant is domiciled, or in one of them to be chosen by the defendant, where in a member state there are two or more official languages. At the request of the parties and with the consent of the Community Patent Court, any official EU language can be chosen as language of proceedings. The Community Patent Court may, in accordance with the rules of procedure, hear parties in person and witnesses in an EU official language other than the language of proceedings. In that case translations and interpretation into the language of the proceedings from another official EU language should be provided.

An appeal against a decision of the Community Patent Court may be brought before the CFI within two months of the notification of the decision appealed against. The CFI cannot refer a case back to the Community Patent Court except in exceptional circumstances. However, a review may be conducted by the ECJ on the application of the First Advocate General of the CFI in cases where there is a serious risk for the unity and consistency of Community law.

The Community Patent Court shall be established by 2010 at the latest. Each member state shall designate a limited number of national courts to have jurisdiction in the actions and claims mentioned above until that time.

(4) Role of national patent offices

The EPO will play a central role in the administration of Community patents and will alone be responsible for examination of applications and the grant of Community patents. All national patent offices will have an important role to play, *inter alia* advising potential applicants for Community patents, receiving applications and forwarding them to the EPO, disseminating patent information, and advising SMEs.

Applications for Community patents can be filed with the national patent office of a member state in its working language(s). Applicants will remain free to present their patent applications directly to the EPO. They may also request that their applications be fully processed by the EPO.

On behalf of the EPO and at the request of the applicant, national patent offices of member states having an official language other than the three official languages of the EPO may carry out any task up to and including novelty searches in their respective language(s). In addition, national patent offices of member states having as their official language one of the three EPO languages, which have experience of cooperation with the EPO and which need to maintain a critical mass may, if they so wish, carry out search work on

behalf of the EPO.

(5) Distribution of fees

National patent offices will be compensated for the activities they undertake in respect of Community patents. Renewal fees for Community patents will be payable to the EPO. The EPO will keep 50 percent to cover its costs, including the costs of searches carried out by national patent offices. The remaining 50 percent will be distributed among the national patent offices of the Community member states in accordance with a distribution key, which will be decided by the Council of the European Union. The distribution key will be decided according to the patent activities and the size of the market.

(6) Review clause

Five years after the grant of the first Community patent, the European Commission will present a report to the Council of the European Union on the functioning of all aspects of the Community patent and, where necessary, make appropriate proposals. The assessment will cover the issues of quality, coherence, and time required for decisions and cost to the inventors. Further reviews should be made periodically.

3 Remaining points at issue

The issues that remain to be discussed include the time limit for submitting the translation and the effects of (inaccurate) translation.

The common political approach requires submission of the translation "upon the grant of the patent," but this means "within a reasonable time from the date of grant of the patent." During this period, the granted patent will be valid irrespective of the availability of the translation. Also, the Community patent application may be converted into a European patent during this period.

There is an argument over how long this "reasonable period" is. Generally, if this period is long, the applicant will have sufficient time to examine whether or not the right ultimately needs to be a Community patent, by watching the trend of the technical field in which the patented invention pertains. If the applicant does not want the right to be established as a Community patent, he/she may convert it to an ordinary European patent. Germany insists that a reasonable period would be two years.

The effects of the translation were taken up as a major issue on the agenda by the Council of the European Union in the first half of 2004. When the translation is inaccurate, a person who performed an act by recognizing that the act is not an infringement based on the translation

could be sued as an accused infringer. It would be necessary to provide certain relief in such a case. The presidency (Ireland) indicated a compromise scheme. According to this scheme, in an infringement case related to a Community patent, the Community Patent Court will take into account any discrepancies which arise between the text of the patent as granted and the translation filed in the official language relied on by the alleged infringer, and if there are discrepancies, the court will take into account whether the discrepancies between the translation and the text of the patent as granted had a significant effect on the alleged infringer's activity. Also, the courts, on the basis of their findings, may mitigate the award of compensation or damages and may in addition, allow the alleged infringer to continue use of the invention within the member state (in which the infringement occurred) for a period of up to two years on payment of reasonable compensation to the right holder.

The debate over this period became heated over whether to make the period two years as in the compromise scheme or 30 months. Furthermore, discussions were made on extending (doubling) the period when the inaccurate translation was intended to be misunderstood. The point of conflict was the trade-off between an increase in legal certainty and an increase in translation costs caused by preventing inaccurate translation. Germany opposed having translation costs increase due to excessively endeavoring to achieve accurate translations, while Spain insisted on prioritizing legal certainty.

III Developments on the intergovernmental level

In the intergovernmental conference held in Paris on June 24 and 25, 1999, the member states of the European Patent Organisation adopted mandates for two working parties. One was on reducing the translation costs of European patents based on Article 65 of the EPC, and the other was on harmonization of European patent litigation.

The former was adopted as the Agreement on the application of Article 65 of the Convention on the Grant of European Patents (London Agreement) in the intergovernmental meeting in London on October 17, 2000. The latter is still under discussion as the European Patent Litigation Agreement (EPLA).

1 London Agreement

The London Agreement is aimed at reducing the translation costs of European patents. Under

the current EPC, the applicant needs to translate the entire text of claims and the specification in the official language of the designated state after the patent has been granted. The London Agreement intends to reduce this translation cost by 50%.

According to the London Agreement, any state having an official language in common with one of the official languages of the EPO must not require translation of the entire specification into the official language of the state based on Article 65 of the EPC. Meanwhile, any state having no official language in common with one of the official languages of the EPO must not require translation of the entire specification into the official language of the state based on Article 65 of the EPC, if the applicant has designated at least one of the official languages of the EPO and the European patent has been granted in that language (or translated into that language). However, the state having no official language in common with one of the official languages of the EPO of the previous sentence will continue to have the right to require that a translation of the claims into one of their official languages be supplied.

For example, let us suppose that an applicant files a European patent application in English by designating the United Kingdom, France, and the Netherlands. While there is no need for translation with respect to designation of the United Kingdom, there will also be no need to translate the entire specification into French with respect to designation of France, because French is one of the EPO's procedural languages (the claims are already translated into French at the EPO's examination phase). With respect to the designation of the Netherlands, the claims need to be translated into Dutch, but if the Netherlands has prescribed use of English among the EPO's procedural languages, there will be no need to translate the specification. On the other hand, if it has prescribed the use of German or French, the specification must be translated into German or French. Therefore, if states having no official language in common with one of the official languages of the EPO all prescribe the use of English (though this would be very unlikely), applicants such as Japanese companies that often file European patent applications in English would only have to translate the claims into the official languages of the designated states.

The London Agreement also provides for translations in the case of disputes, such as infringement litigation. The patent owner must supply, at the request of an alleged infringer, a full translation into one of the official languages of the state in which the alleged infringement took place. The patentee must also supply, at the request of the competent court, a full translation into one of

the official languages of the state concerned. In this case, the translation costs will be borne by the patentee.

At the intergovernmental conference in London, the agreement was signed by 10 EPC contracting states (Denmark, France, Germany, Liechtenstein, Luxemburg, Monaco, the Netherlands, Sweden, Switzerland, and the United Kingdom). This agreement needs to be ratified by eight signatory states including the three states in which the most European patents took effect in 1999 (France, Germany, and the United Kingdom) in order to enter into force. In other words, it does not require ratification/accession by all contracting states of the EPC. This is an extremely realistic and highly cost-saving system for inventions for which it would be sufficient to designate states having one of the official languages of the EPO as their official language.

This agreement is more favorably received by industry compared to the language regime of the Community patent. The Federation of German Industries (BDI) and the Movement of French Enterprises (MEDEF) indicated in their joint statement that the London Agreement is crucial for a more competitive European patent. The agreement is a great achievement of the European Patent Organisation and it should enter into force as soon as possible. They also indicated that this will not only help European industry to obtain affordable protection for technical inventions, but it will also contribute favorably to the debate on the establishment of a Community patent. They concluded by appealing to all contracting states to ratify the London Agreement as soon as possible.

However, the responses of practitioners were not necessarily favorable. According to the hearing survey conducted by the author, the French bar association is strongly against the London Agreement. The first reason is that the date, based on which damages are found in infringement litigation, is not clear. The second reason is that the Agreement could threaten the position of the French language in the European patent system and have considerable impact on fees agents can charge their clients. While concrete procedure toward ratification is under way in Germany and the United Kingdom, ratification by France is considered to be the key for the entry into force of the London Agreement.

2 European Patent Litigation Agreement (EPLA)

At the EPLA working party meeting in 2003, discussions were made on two proposals. The first proposal was to establish the European Patent Court composed of the Court of First

Instance, comprising a central chamber and multiple regional chambers, and the Court of Appeal, and to confer to it jurisdiction over infringement and application for revocation of European patents. The second proposal was to allow national courts handling cases on patent infringement or validity to seek non-binding opinion from the European Patent Appeal Court. As a result, a Draft Agreement on the Establishment of a European Patent Litigation System and a Draft Statute of the European Patent Court were agreed upon by the working party.

The European Patent Court will comprise the Court of First Instance and the Court of Appeal. Furthermore, the Court of First Instance will comprise the central chamber and multiple regional chambers. Regional chambers will be set up in the EPLA contracting states, and existing national courts including their know-how will be utilized. However, litigation procedures will be unified amongst the regional chambers. The regional chambers of the Court of First Instance will have territorial competence. A regional chamber will be set up by a contracting state or by a group of contracting states. When a regional chamber handles more than 100 cases in a year, another regional chamber may be established. The headquarters of the Court of First Instance and the location of the Court of Appeal are undecided.

The European Patent Court has jurisdiction in respect to any action for actual or threatened infringement or for a declaration of non-infringement of a patent, any action or counterclaim for revocation of a patent, and any action for damages or compensation.

After a transitional period of seven years, the court in a contracting state where the accused infringer is domiciled, or the court agreed upon by the parties will have exclusive jurisdiction on the revocation and infringement of the patent. Even if the accused infringer is not domiciled in that state, the court of a contracting state in which the infringement occurred will have non-exclusive jurisdiction on an action for infringement.

Allocation of cases to the central chamber or regional chambers of the Court of First Instance will be in accordance with the Brussels and Lugano Conventions and the Brussels Regulation. When no regional chamber has jurisdiction, the central chamber handles the case. An action for revocation of a patent, which is not a counterclaim, must be filed with the central chamber.

The European Patent Court may seek preliminary rulings of the European Court of Justice (ECJ) with regard to the application of Community law. These rulings bind the European Patent Court as long as the decision takes effect

in a member state of the European Union.

Decisions of the European Patent Court that contracting states designate as their national court will be directly enforceable in all contracting states without any recognition procedure.

The collegial body of the court will be composed of three judges from different states. Two will be judges specializing in law and at least one judge must have a technical background (technically qualified judge; however, he/she must not only have expert knowledge of technology, but also have reasonable practical experience under patent law). The judges for the Court of First Instance will be appointed from a list of an international pool of judges. One of the legally qualified judges will serve as the rapporteur and the other will serve as the chairman. When a contracting state requires establishment of a regional chamber, it must nominate two judges. The nominated judges are allowed to continue to serve as judges in the national courts of the contracting state.

The language to be used in the European Patent Court is stipulated as below.

(i) Before the central chamber of the Court of First Instance, the language of the proceedings will be the language used in the EPO procedure.

(ii) Before a regional chamber in a contracting state that uses one of the EPO's procedural languages as its official language, the proceedings will be conducted in said official language.

(iii) Before a regional chamber in a contracting state that uses multiple procedural languages of the EPO or that uses none of the EPO's procedural languages as its official language, the proceedings will be the EPO's procedural language designated by the contracting state.

(iv) Before the Court of Appeal, the language of the proceedings will always be the language of the first-instance proceedings

(v) If the parties agree, the court may allow the use of another language during all or part of the proceedings.

After that, the EPLA working party held further discussions on the individual concerns that had been mentioned. For example, in respect to the effect of invalidity decisions, there was a conflict between those favoring an *erga omnes* effect of invalidity for all states in the case of a counteraction by the defendant in an infringement proceeding, and those stating that it should be left to the choice of the parties. After the discussion the majority of delegations seemed to support the more flexible approach (i.e., the latter approach).

The working party also discussed problems concerning the future of the EPLA. User organizations, (AIPPI, ICC and UNICE) had strongly supported the adoption of the EPLA,

stating that an improved European litigation system should be created for the existence of 600,000 EPC patents also. However, the European Commission presently takes the opposite stance to the intergovernmental conference, which is trying to adopt the EPLA, because the outcome of the Community patent is uncertain. The largest barrier for the EPLA would be the issue of the powers under the EU law of the EU member states promoting the EPLA.

This is known as the AETR doctrine. In an action filed by the European Council against the Council of European Union's decision on the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR), the ECJ held that the EU member states must not enter negotiations with non-EU states and organizations for formulating new rules that would affect Community laws and regulations or would change their scope.

In the EU, jurisdiction on civil and commercial matters including intellectual property rights is stipulated in the Brussels Regulation. Since the EPLA establishes the European Patent Court and confers jurisdiction to the court, it obviously affects the Brussels Regulation. Moreover, the states participating in the EPLA negotiation are not only EU member states, but also include non-EU states (e.g., Switzerland). Therefore, the EU member states would have no powers to institutionalize the EPLA based on the AETR doctrine.

Another solution that is currently considered is to apply enhanced cooperation. This rule was introduced by the Amsterdam Treaty, and the limitation on its application was further eased by the Treaty of Nice. However, it is yet to be applied. Community law can be legislated through the approaches of member states, but the understanding and cooperation of the European Commission is indispensable for it.

IV Conclusion

The discussions on the Community patent and the discussions on intergovernmental level on translation and the judicial system are made more or less in parallel. Currently discussions on the Community patent are made by the Council of the European Union, which is composed of ministerial-level members of the EU member states. Therefore, many states also participate in the intergovernmental discussions on improvement of the EPC. While having the same objective of realizing unitary patent protection in Europe, in what ways do these two approaches differ?

1 Expectations and concerns for the Community patent

The Community patent has been consistently advocated to coexist with the existing patent systems in Europe (i.e., the national patent and the European patent). Applicants will have access to a third option in addition to the national patent and the European patent, and the Economic Commission for Europe, which is an advisory body of the European Commission, has indicated a positive opinion for this aspect. However, so far as the discussions to date are concerned, the Community patent would not be expected to provide a third option. In the trial calculation by the European Commission in 2003, the Community patent is estimated to achieve an approximate 50% reduction in translation costs compared to those required for a typical European patent. Despite this fact, both the discussions by the Council of the European Union and comments by economic organizations such as UNICE find this cost reduction to be insufficient and require further reductions to the translation costs. It is questionable why the Community patent is not regarded as “better than nothing” when it allows unitary patent protection at lower costs than the current systems.

The Community patent aims at strengthening Europe’s competitiveness to match the level of the United States and Japan. If the Community patent is to be realized at sufficiently low costs, applicants, rather than utilizing the Community patent selectively, are expected to file all of their applications as Community patent applications. Such a filing strategy would be particularly important for large companies. This is because the European internal market can be considered as a single state, economically.

Therefore, in introducing a new system for protecting patents, comparison should not be made with the existing systems in Europe, but with the systems of the United States and Japan. If so, a cost reduction of about 50% would still be insufficient.

However, it would be considerably difficult to achieve further cost reduction in the Community framework. By expanding now five times, the EU has become a giant, supranational body consisting of 25 member states and 450 million citizens in May 2004. The EU adheres to its basic principle to treat all official languages of the member states as EU’s official languages, and the number of official languages is currently 20. The reason that the reduction of translation costs of the Community patent is making little headway is due to this equal treatment of official languages of the member states.

The objective regarding the translation costs would more or less be achieved if it will become

sufficient to translate the claims and the specification into one of the current procedural languages of the EPO and the claims into the other two languages, as suggested in the original proposal for the Regulation on the Community patent. However, it seems quite impossible to realize this system as Community law by gaining the consent of the respective member states, particularly states whose official languages are Latin languages and states that have newly joined the EU.

Considering such restriction of Community law, the approach to achieve reduction of translation costs (London Agreement) and unification of the judicial system (EPLA) by utilizing the EPC, which has already made considerable success at intergovernmental level, rather than leaving everything to the Community patent, would also be a very realistic option for the EU member states. Furthermore, such an option may be more appealing for some member states for advantageously promoting industrial policy by hearing the opinions of industry in those states, rather than the Community patent system, which would principally be operated by the European Commission.

2 Future outlook

As discussed above, discussions on a unitary patent protection system in Europe are under way in two frameworks: the Community level and the intergovernmental level of EPC member states. Since the subjects of the respective discussions are the Community patent that will (that may) be created in the future and the European patent, which already has a history of 30 years, having these two systems not complement, but compete with each other obviously would not benefit the European states. In spite of this, the discussions on these two systems are deadlocked, particularly with regard to the judicial system: the Community patent not being able to make progress due to the requirement for unanimous approval of the European Commission, and the EPLA not being able to make advances without gaining cooperation of the European Commission.

As these discussions have gone beyond discussions on patent systems and developed into discussions with very strong political implications, it is extremely difficult to predict the final outcome. The possible outcomes can be theoretically derived as follows: (i) the Community patent will be established by overcoming the language regime issue; (ii) the Community patent becomes abandoned and the EPLA will be established; and (iii) the European Commission makes a certain compromise and a new system will be established by fusing the

Community patent and the EPLA.

However, all of these cases are expected to involve different difficulties. As for (i), a single-language regime of only English can be assumed as a concrete solution, but it would be impossible to gain the approval of certain states such as Italy and Spain.

With regard to (ii), it seems unlikely in light of the past developments that the European Commission would directly abandon the proposed Regulation on the Community patent. If so, the EU would be pressed to achieve a realistic compromise with the EPLA side. The EPLA side would have no reason to reject cooperation of the European Commission either, as long as the legal problem remains. Then the case in (iii) could become realistic.

3 Measures to be taken by Japanese applicants

Lastly, the points to note when Japanese applicants file patent applications in Europe in such a situation are mentioned below. European patents filed from Japan account for about 16% of all European patents. It is likely that specific industry and company strategies are devised with regard to the choice of designated states in filing European patent applications, but those strategies will come under pressure for review if a unitary patent protection system is introduced. Considering that the recent discussions on unitary patent protection system eye a single European market, vertical choice of designated states based on the place of production and place of consumption would not necessarily be appropriate. In addition, it would be necessary to evaluate the potential of investment by international companies and economic development in the states of central and eastern Europe that are new EU member states. At least, large European companies are expressing their opinions through industrial associations on the perspective of a single Europe, on the premise of breaking away from state-by-state patent acquisition strategy in Europe.

If the Community patent is to be introduced, it would be a mistake to consider it as a new option added to conventional systems. It will depend on the costs of the new system to be introduced, but if it is used together with the conventional systems, the jurisdiction would be likely to differ by right upon enforcement, so careful decisions would be required when protecting technology in a certain technical field by multiple patents. In any case, Japanese applicants also need to closely watch the future developments of the discussions.