D YOUNG & CO

PATENT NEWSLETTER

December 2007

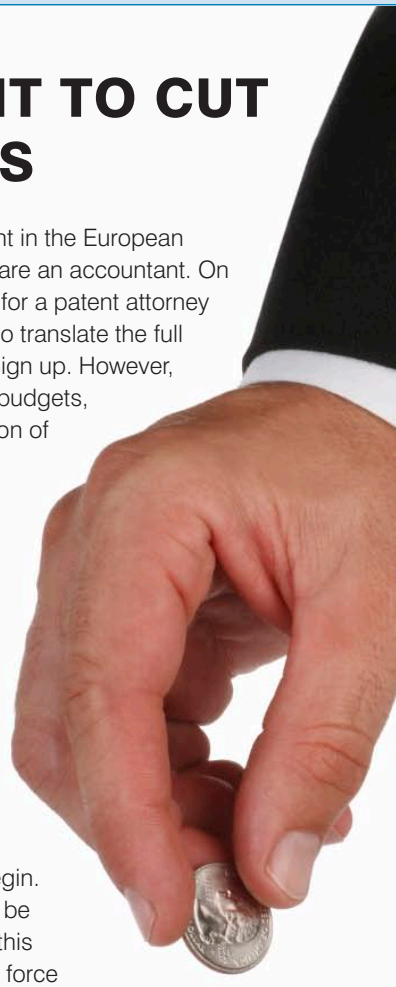
EDITORIAL

Well, here we are with the second D Young & Co patent newsletter. I hope that we have provided some interesting reading, helped by a further impending change in European patent practice. I would like to thank those of you who commented on the first newsletter, especially as the comments we received were positive. Please do let us know if you have any feedback and/or suggestions for topics for us to cover. We want the newsletter to be informative, and to be something that you look forward to receiving.

This time we are looking at the London Agreement. It is still early days, and details are still emerging. Also, with the recent penchant for challenging changes in patent law and practice, there is a risk in counting chickens before they hatch. However, assuming that the London Agreement does come into effect in the early part of 2008 as is currently expected, this will represent a significant improvement in the European patent system for the users of the system, and will result in significant cost savings. Of course, whenever there is a change there can be down sides, and, unfortunately, it is to be expected that patent attorney firms around Europe will be consulting with their accountants at the moment. Still, who was it who said "The needs of the many, outweigh the needs of the few…"

We wish you all the best for 2008.

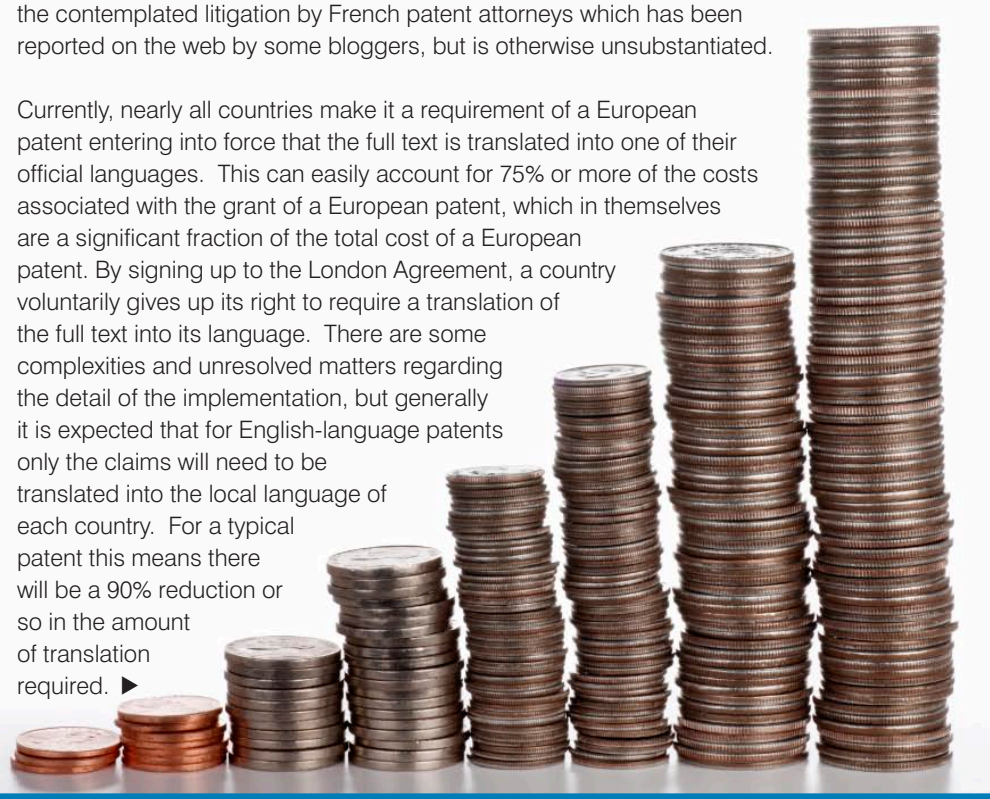
LONDON AGREEMENT TO CUT TRANSLATION COSTS



The London Agreement is the most exciting development in the European patent system since its inception in 1978, at least if you are an accountant. On paper the London Agreement is not very exciting - even for a patent attorney - it just means everything stays the same, but the need to translate the full text of the patent at grant is removed for countries that sign up. However, as those of you will know who have put together patent budgets, these translation costs account for a significant proportion of total expenditure.

In our October newsletter we reported the news that the French Government was voting on whether to adopt the London Agreement. Nine countries had already ratified the Agreement and France was the last country required to do so for the Agreement to enter into force. To the consternation and unbridled joy of those of us who had waited years for this moment, France completed the process of adopting the Agreement into French law on 9 October 2007. We are now waiting for France formally to deposit its instrument of ratification with the German Government so that the countdown to the London Agreement can begin. Under the small print of the Agreement, in Article 6(2) to be precise, it will enter into force three to four months after this date. The Agreement is therefore expected to enter into force some time in the spring of 2008 assuming there are no hitches, such as the contemplated litigation by French patent attorneys which has been reported on the web by some bloggers, but is otherwise unsubstantiated.

Currently, nearly all countries make it a requirement of a European patent entering into force that the full text is translated into one of their official languages. This can easily account for 75% or more of the costs associated with the grant of a European patent, which in themselves are a significant fraction of the total cost of a European patent. By signing up to the London Agreement, a country voluntarily gives up its right to require a translation of the full text into its language. There are some complexities and unresolved matters regarding the detail of the implementation, but generally it is expected that for English-language patents only the claims will need to be translated into the local language of each country. For a typical patent this means there will be a 90% reduction or so in the amount of translation required. ▶



Nine countries have already ratified the Agreement, with France making ten (out of a possible 32). The founder member countries are shown on the map [below right]. At present we know the Agreement will apply to the United Kingdom, France, Germany, the Netherlands, Switzerland, Iceland, Latvia, Lichtenstein, Monaco and Slovenia. We also expect Sweden and Denmark will formally ratify the Agreement in time for its commencement, or soon after, since their parliaments have already approved the necessary legislation. It can be expected that further countries will join during 2008 either before or shortly after the Agreement enters into force. However, two countries which are often of interest, but which are not expected to join for political reasons are Italy and Spain. The authorities in these two countries, especially Spain, feel disadvantaged that their languages, unlike English, French and German, are not procedural languages of the European Patent Office, so are likely to be reluctant to give up further rights over use of their languages in patent matters.

Although the London Agreement will at the outset apply to only around a third of the member states of the European Patent Organisation, many of the key states have already joined up. The expected founder members collectively generate more than 60% of the total GDP (Gross Domestic Product) of the 32 member states and are home to over half the population. Looking through our own internal statistics, we see that about 60% of all patents validated by our clients in the last few years have been in founder member countries. Importantly, Germany, United Kingdom and the Netherlands which are the jurisdictions of choice for most European patent litigation have joined.

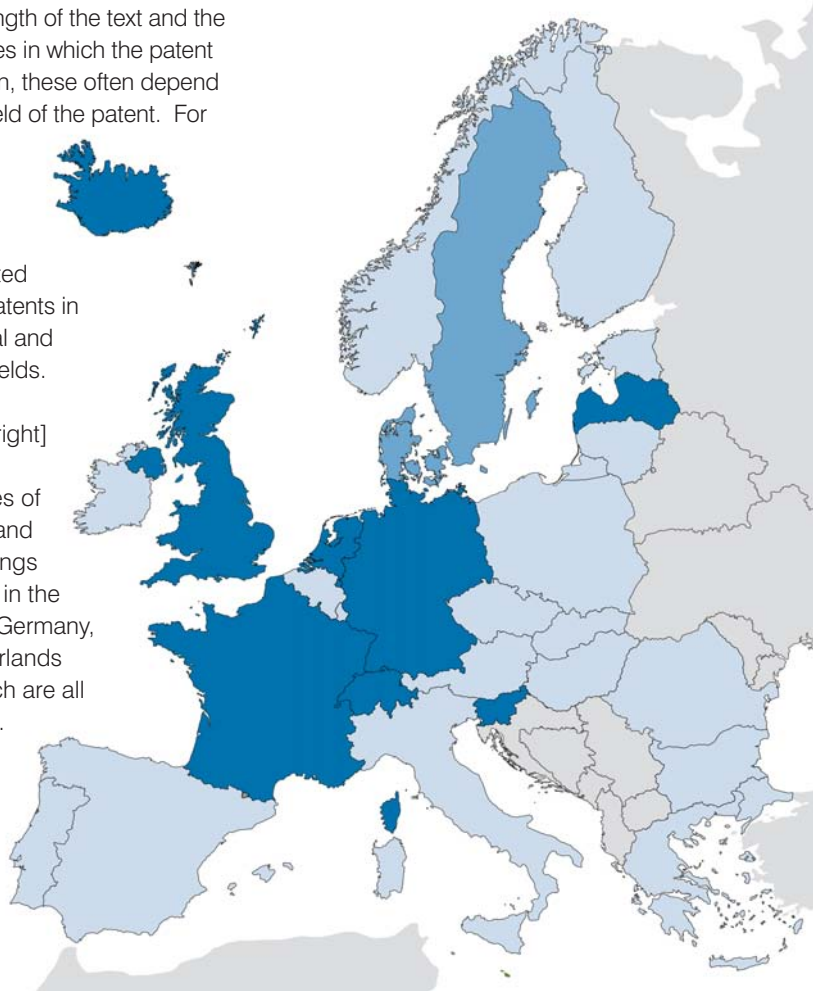
On the subject of litigation, it should be noted that under Article 2 the full text of the patent will still need to be translated before a patent is litigated in any particular country. In other words, the waiver on the translation requirement given by joining the London Agreement is only in respect of the patent entering into force in the country and does not extend to any subsequent enforcement. Arguably under Article 2(a) of the Agreement a threat of infringement of a European patent may also impose a duty on the patentee to provide the threatened party with a full translation of the text, possibly into every European official language where the European patent is in force. Case law can be expected to clarify the position here. The London Agreement might therefore necessitate a change in behaviour of some patent holders. For example, if a party receives a threatening letter alleging infringement of a European patent that has been validated under the London Agreement, potentially this could trigger a liability in translation costs for the patent holder if the threatened party writes back requesting translations of the full text of the European patent.

Turning back to the potential cost savings, the amount in each case will depend primarily on the length of the text and the number of countries in which the patent is validated. In turn, these often depend on the technical field of the patent. For example, patents in the electronics and mechanical fields tend to be shorter and validated less widely than patents in the pharmaceutical and biotechnological fields.

The table [above right] gives an example case with 35 pages of non-type-set text and 10 pages of drawings which is validated in the United Kingdom, Germany, France, the Netherlands and Sweden, which are all founder members. This might be a typical case in the electronics field based on its length and the validation countries. As stated in the table, the overall cost saving is dramatic, at around 70% in total and for each country where a full translation is no longer required.

	BEFORE	AFTER	SAVINGS
GERMANY	€3,700	€1,000	73%
FRANCE	€4,200	€1,100	74%
UK	€200	€200	0%
NETHERLANDS	€4,500	€1,300	71%
SWEDEN	€6,700	€1,800	73%
TOTAL	**€19,300**	**€5,400**	**72%**

Historically, most electronics and telecommunications companies have not routinely validated in the Netherlands and Sweden for cost reasons, despite the fact that Philips and Ericsson are headquartered there. The London Agreement will therefore prompt many companies to consider extending their standard validation patterns. If the same example case were validated in all 32 EPC states, then the total percentage cost saving is much less significant, for the simple reason that most countries have not yet joined. The comparable numbers here for our 35 page example



case are Euro 85,000 and 70,000, i.e. a saving of around a fifth. If a much longer text is assumed of say 100 pages, as might be typical for a pharmaceutical patent, the "before and after" costs are an eye-watering Euro 200,000 and 150,000, which amounts to a saving of around 25%. It can be expected that further countries will join during 2008 providing greater savings.

	POPULATION [MILLIONS]	GDP [BILLION $]
AUSTRIA	8.20	284.1
BELGIUM	10.40	342.5
BULGARIA	7.32	79.1
CYPRUS	0.80	22.6
CZECH REPUBLIC	10.23	225.5
DENMARK	5.47	202.1
ESTONIA	1.32	26.9
FINLAND	5.24	175.2
FRANCE	63.71	1,902.0
GERMANY	82.40	2,632.0
GREECE	10.70	256.5
HUNGARY	9.96	175.0
ICELAND	0.30	11.4
IRELAND	4.11	180.9
ITALY	58.15	1,756.0
LATVIA	2.26	36.5
LITHUANIA	3.58	54.9
LUXEMBOURG	0.48	33.9
MONACO	0.03	1.0
NETHERLANDS	16.57	529.6
POLAND	38.52	554.5
PORTUGAL	10.64	210.1
ROMANIA	22.28	202.2
SLOVAK REPUBLIC	5.45	99.2
SLOVENIA	2.01	47.0
SPAIN	40.45	1,109.0
SWEDEN	9.03	290.1
SWITZERLAND/ LIECHTENSTEIN	7.55	255.5
TURKEY	71.16	640.4
UNITED KINGDOM	60.78	1,928.0

LONDON AGREEMENT STATES

EXPECTED LONDON AGREEMENT STATES

NON-LONDON AGREEMENT STATES

Estimates courtesy of CIA World Factbook (https://www.cia.gov).

We will keep you informed of developments in this key area in future newsletters.

4-5 FEBRUARY 2008 INTELLECTUAL PROPERTY IN THE PHARMACEUTICAL INDUSTRY

Zöe Clyde-Watson is coordinating and chairing a 2-day course early next year entitled "Intellectual Property in the Pharmaceutical Industry". The event is being run by Management Forum, a company that organise specialised courses for professionals working in all areas of the biotech and pharmaceutical industry. The course is scheduled to take place on 4th and 5th February 2008 at the Rembrandt Hotel in London.

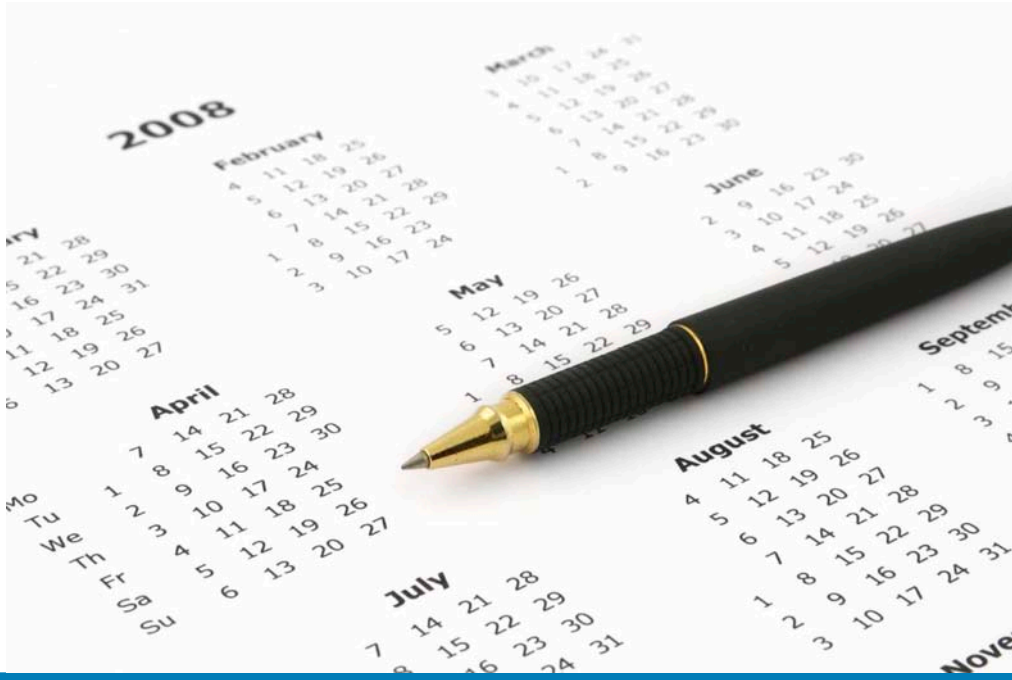
Topics on the agenda include Supplementary Protection Certificates, Data & Market Exclusivity, Strategy/IP Management, Licensing, EU & US Pharmaceutical Case Law Updates, Competition Law in the Pharmaceutical Industry, Experimental Use Provisions, European Patent Litigation Strategies, and Polymorphs & Stereochemistry.

Kirk Gallagher, also from D Young & Co, will be presenting the session on Supplementary Protection Certificates. Other speakers include a UK barrister, UK Intellectual Property solicitors (including participants from Bird & Bird, Taylor Wessing and SJ Berwin), along with representatives from the Pharmaceutical Industry and the European Patent Office. The course is aimed at people working in the biotech and pharmaceutical fields, particularly intellectual property managers, business development managers, and both in-house and private practice patent attorneys.

29-30 JANUARY 2008 BIOTECH AND PHARMACEUTICAL PATENTING FORUM 2008

Charles Harding will be chairing the 16th annual "Biotech and Pharmaceutical Patenting Forum 2008" organised by IBC, which is due to take place in Munich on 29-30th January 2008. Bringing together international private practice lawyers, in-house counsels and specialists responsible for patents, the conference aims to provide a platform to discuss the practical realities of topical patent issues in the biotech and pharmaceutical industry. The conference will be preceded by an afternoon master class on 28th January 2008 which will focus on European and US patent rules and procedures.

FOR FURTHER INFORMATION REGARDING D YOUNG & CO SEMINARS, CONFERENCES AND EVENTS PLEASE VISIT OUR WEBSITE WWW.DYOUNG.COM



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EUROPEAN UNION JOINS INTERNATIONAL DESIGN SYSTEM

From 1st January 2008, it will be possible for any European individual or company to file an International registered design application now that the European Union (EU) has joined the "Hague Agreement" administered by the World Intellectual Property Organisation (WIPO).

The possibility will, initially, probably be of limited practical interest to most European companies because there is already a significant overlap between the country coverage of the Hague Agreement and the 27 EU countries that can already be protected by means of a European registered design application. The additional countries of the Hague Agreement are mainly minor ones or else have not signed up to the latest version of the Hague Agreement that would enable them to be designated in the International application.

The major additional countries of the Hague Agreement include the non-EU countries of Singapore, Switzerland and Turkey. Further additional countries include the minor "European" countries of Albania, Armenia, Croatia, Georgia, Iceland, Moldova, Macedonia and Ukraine.

Thus, a European company, such as a pharmaceutical company that is interested in obtaining increased country coverage at not much of an increase in cost compared with filing just a European registered design application, might wish to switch to filing an International registered design application designating the EU and some or all of the additional countries mentioned above.

The resulting International registered design will benefit from the simplicity of central administration by WIPO and will be equivalent to a European registered design and a bundle of national registered designs in the designated additional countries. The renewal fees can be paid centrally every five years to WIPO and administrative acts such as recording a change of ownership can also be performed centrally at WIPO.

The system should become more attractive to European companies as time goes by and more of the existing signatories to the Hague Agreement sign up to the latest version to enable them to be designated in the International application, and as new countries sign up for the first time.

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