



EXCO/CL06/RES/2

Main Implementation Requirement for the "London Agreement"

FICPI, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession throughout the world, assembled at its Executive Committee from 4 to 7 December 2006 in Santiago, Chile, passed the following Resolution:

Observing that the "London Agreement" (on the application of Article 65 of the Convention on the Grant of European Patents) provides that a plaintiff in infringement proceedings is only obliged to supply "at the request of the competent court or quasi judicial authority in the course of legal proceedings, a full translation into an official language of the State" (Article 2 (b) of the "London Agreement")

Recognising that the EPC was enacted to ensure a fair balance between patent owners and third parties and that Article 65 has contributed to this by compensating for the fact that proceedings in the EPO may be conducted in only three languages

Expressing concern that a court of a given EPC Member State could grant a preliminary injunction or measures for preserving evidence on the basis of translations even if filed belatedly according to the "London Agreement"

Further noting that such a practice would be unfair to a defendant who is not otherwise obliged to understand the language in which the European patent was granted

Urges that any EPC Member State in which the "London Agreement" is to take effect should

- provide legislation to grant a measure of protection to defendants who are not otherwise obliged to understand the language in which the European patent was granted and which is not an official language of the EPC Member State concerned,
- especially legislation to exclude interim measures such as measures for preserving evidence and preliminary injunctions in cases where a translation into the local language was filed belatedly, e.g., not until the time when the patentee sues a third party or at the request of the infringement court,
- and the court shall be obliged to take into account the timing of the translation and any intermediate user rights in deciding what relief, if any, is appropriate.