



# FICPI INFORMATION DOCUMENT

## 11 OCTOBER 2013

### CET INFORMATION DOCUMENT

<p>TITLE: <b><i>FICPI meeting with the Court of Justice of the European Union, Luxembourg, 1 July 2013</i></b></p> <p>DRAWN UP BY: <i>Commission d'Etude et de Travail (CET) Work &amp; Study Commission</i> <i>Antonio Pizzoli, Chair of CET 4</i></p> <p>PURPOSE: For information and publication in the library section of FICPI's website</p>	
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#### FICPI

Bastiaan Koster  
Eric Le Forestier  
Daniel Alge  
Elia Sugrañes  
Antonio Pizzoli

#### Court of Justice

Judge Nicholas Forwood (President of Chambers)  
Judge Franklin Dehousse (President of Chambers)

1. Bastiaan Koster introduced the FICPI delegation and made a brief presentation of the activities of FICPI, including the FICPI Symposium, the Colloquium on Privilege and the future Forum in Sorrento.
2. Mr. Forwood mentioned that he was happy to read the Cartagena Resolution on the proposal of FICPI to establish a specialized Trade Mark and Design Tribunal at the General Court of the CJEU. He also expressed his interest in the background of this resolution.
3. Daniel Alge explained that more than one third of the cases at the CJEU are trademark cases and that the proposal is inspired by good example of the Civil Service Tribunal. FICPI always promoted specialized IP Courts and there was a very positive feedback from the FICPI delegates at the ExCo in Cartagena.
4. Mr. Forwood agreed that workload problems and the evolution of the case law indicate the need of specialized judges. Also the Agreement on the UPC shows that member states are realizing that IP requires specialized judges.
5. Daniel Alge summarized the details on the situation of the UPC with regard to judges.
6. With reference to the Cartagena Resolution, Mr. Forwood said that from his personal point of view the appeals should go the Court of Justice, not to the General Court and that the right moment to propose this project is during the current Lithuanian presidency of the Council of the European Union. He suggested also that FICPI should try to sensitize national authorities for this project. There was a similar project in 1999/2000, which was however abandoned due to the EU enlargement. There is also the perspective of a possible further (fifth) instance and the relevant costs. A possible solution could be to have court fees, which could also ease the project as several countries are against the appointment of further judges because of their costs.
7. Daniel Alge observed that the CJEU would handle trademark cases anyway, however the aim of the project is to increase the efficiency of the court. Of course, the potential additional instance could pose a problem. At any rate, it is important, also for improving the efficiency, that trademark attorneys are allowed to represent their client in all instances.
8. As the meeting reverted to the unitary patent package, Antonio Pizzoli summarized the Italian position on this matter.
9. Mr. Forwood said that he has no information on the timing of the two new actions filed by Spain against the enhanced cooperation. He also asked for more information on the question



- of privilege.
10. Eric Le Forestier answered that privilege is essential to allow frank communications between patent attorneys and their clients, also outside the EU, as also emerged during the discussions at the Colloquium in Paris.
  11. Daniel Alge added that there are fears that lawyers might try to keep patent attorneys out of the Unified Patent Court system by claiming that their clients enjoy privilege while patent attorneys' clients do not.
  12. Mr. Forwood pointed out that the Akzo case shows that privilege has to be regulated by legislation.
  13. Bastian Koster offered to send the presentations of the last Colloquium.
  14. Mr. Forwood asked for information about the revision of the EU trademark system.
  15. Elia Sugrañes answered that the interested parties were surprised to see that the Max Planck Institute supported the L'Oreal decision. She also proposed to provide some informal papers of FICPI to Mr. Forwood on this matter. The profession is worried that the European Commission could go away from the L'Oreal case, with practical consequences. Another decision from the CJEU is needed to solve the uncertainties created by the IP Translator case.
  16. Mr. Forwood gratefully accepted to receive the papers, also because a colleague will attend a judges' meeting in OHIM in September 2013.
  17. After lunch, Mr. Dehousse presented the enclosed paper "The Reform of the EU Courts". He also explained that the proposal of having twelve additional judges failed in 2000/2003 and most of the people do not know what it is happening at the CJEU, so that also a pedagogic effort is needed. There are a relatively low number of cases (around 1300) each year, with a high cost per case. It is noted that there are 45000 cases per year at the ECHR and that there might be an explosion of cases at the CJEU, for example because of the economic crisis. Economic cases are the longer and the most difficult to handle. Also having 23 languages significantly increases the costs and is time consuming. Further, no new resources have been provided for financing the enlargement and every year around 9/10 judges change, which is also an issue, as there are changes in the personnel in parallel. Coherence and adaptability are also important factors for the working of the CJEU.
  18. Daniel Alge mentioned that the European Commission was interested to hear the proposal of FICPI.
  19. As the meeting reverted again to the unitary patent package, Mr. Forwood said that he is more in favour of arbitration, as proceedings at the UPC could involve cost and time issues. He expects to have at the UPC a number of cases that would be around 40% of the number of trademark cases.
  20. Daniel Alge remembered that all users, also outside the EU, are in favour of specialized IP courts, as they create trust and legal certainty.
  21. Mr. Forwood hoped that in the future also copyright will be handled by specialized courts, as there is no administrative process for copyrights.
  22. Daniel Alge proposed to add similar measures also for Community plant varieties. At any rate, he recalled that FICPI is in favour also of specialized representatives.
  21. Mr. Forwood concluded that plans to add nine judges are under consideration and that the Greek presidency is interested in this project. At any rate, he believed that everything will be postponed after the next elections at the EU Parliament.

Antonio Pizzoli  
*[End of report]*

**Encl. The Reform of the EU Courts (48 pages)**