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The European patent protection system: problematic issues and development prospects

Formulation of the problem. Establishment of the unitary patent protection system on the territory of the EU is a decisive and quite relevant problematic task for EU Member States for several decades. The enforcement of this task would be an important step towards the development of innovations, attracting investments in Europe and will have a positive impact on the development of the EU common market. Nevertheless, it is difficult to achieve the compromise based on the interests of each European State. Nowadays EU Member States have come to the solution that the unitary patent protection system will be established on the basis of a mechanism of enhanced cooperation.

It is necessary to establish mutually beneficial and stable economic relations between countries for the successful existence and functioning of patent protection on the territory of the Member States considering the weaknesses of the current patent protection system, which was established by the European Patent Convention.

Status of the research topic. The problematic issues of the establishment of the unitary patent protection system on the territory of the EU, its historical development, its essence, the jurisdiction of courts on patent protection disputes has been studied by such scholars as Joseph Straus, Bernhard Jestaedt, Gaurav Jit Singh, Hanns Ullrich, Hennadii Androshchuk, Tetyana Komarova, Ruslan Ennan and others.

The aim of the article. The aim of this article is to define the specifications of the current patent protection system in the EU, to reveal the problematic issues of it and define the principles on which the unitary patent protection system in the EU should be founded.

The main part. The European Union (the EU) is a unique economic and political union of European countries with common aims and values. The Treaty of Lisbon of the 13th of December 2007 sets

out the aims of the European Union, such as to promote peace and the well-being of EU citizens, to offer EU citizens freedom, security and justice, without internal borders, as well as to control external borders, to promote equality and social justice, to establish an economic union, to contribute to the sustainable development, peace and security of the Earth.

Moreover, it was defined the need to establish an internal market, which would work in favor of development of Europe and would be based on balanced economic growth and price stability, on a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological development in European countries [1].

The formation of these common aims began after World War II, when it became obvious that the economic development and prosperity of the European region could not be reached without overall efforts, cooperation and reduction of national borders. The European States committed themselves to harmonization and unification of their legislation for the achievement of the most prosperous results in economic and social spheres.

The harmonization and unification of the legislation of the EU Member States has also covered the sphere of patent protection. The existence of the efficient patent protection system on the territory of the EU considerably influences the extension of innovation, scientific and technological progress and foundation of the common market.

At the current moment patent protection in the European Union is carried out by patents granted by a national patent office of an EU Member State or by European patents granted by the European Patent Organization alternatively. Both options have their own obstacles on the way to creation of a common market of the EU. The intention of EU Member States to establish a unitary patent protection system on the territory of the EU demonstrates the commitment of States to cooperate closely in order to realize the full potential of patent rights.

The system of patent protection on the territory of European states has been actively formed since the 70s of the 20th century and has acquired certain specific features over the decades. These features are related to the unique nature of the European Union as such. In addition, it will be determined by the study which features would contribute to the formation of a system of unitary patent protection, and which, conversely, would be an obstacle and require compromise solutions.

It is extremely important to understand the essence of European integration and the preconditions for harmonization of patent protection legislation to identify the specific features and nature of patent protection in the EU.

There is an opinion that "European integration is the product of the selective pooling of national sovereignty, or ultimate jurisdiction over a body politic, by postwar European nation-states. It has yielded the European Union (the EU) the most successful experiment in international cooperation in modern history. The EU defies traditional conceptions of states as atomized, self-sufficient units that engage in alliances strictly on an ad hoc basis. Only the EU amongst all international organizations has its own system of law, supranational institutions, and currency. It has evolved into a polity in its own right, although an extraordinarily complex and protean one, which sustains more than it supersedes the nation-state in Europe" [2, p. 4924].

Integration should not solely be done through legislation, but through judicial dialogue and cooperation. Expression of common provisions in legislation is just a fixation of a long way of negotiation. Integration is the process, which should embrace also the sphere

of patent protection to achieve the EU common goals.

The concept of "harmonization" characterizes the process of bringing national legislation in accordance with EU law. This process takes place within the European Union territory and obliges the Member States only. EU law broadly defines "harmonization" as the replacement of national policies by a unitary policy of the EU in certain spheres. In the narrow sense, harmonization in EU law is a substantive approximation of national legislation to the standards set by the EU by eliminating differences in national legislation.

Also, the process of harmonization applies to the policy of third states, which are not the EU Member States. It is important for third countries for purpose of building more favorable political and economic relations with the EU to implement *acquis communautaire* in national legislation. It is usually occurring in a process of "voluntary harmonization" of national legislation [3, p. 12].

European integration has not escaped the sphere of patent protection in particular. After World War II, patent law harmonization was considered by the Council of Europe to be one of the three top priorities for Europe's reconstruction, primarily to solidify the functioning of the Internal Market (Article 3(3) TEU) [4, p. 1082].

Also, it was resolved in the Preamble to the Treaty on European Union to mark a new stage in the process of European integration undertaken with the establishment of the European Communities. It was decided to establish a European Union in view of further steps to be taken in order to advance European integration [5].

After the Second World War European states predicted that their economic development had a possibility to recover only in the case of cooperation and unification of efforts. Thus, the creation of a unitary patent protection system was defined as one of the main aims at 1960–1970 years for economic trade growth and emergence of the common market on the territory of the EU.

There were such problems with harmonization of technical and commercial norms which were associated with differences between technical standards and norms in different Member States. Such differences created one of the significant obstacles to development of the common market. Community policy in the field of standardization and technical regulation was to create a common technological environment for all enterprises in order to increase their competitiveness [6, p. 129].

The achievement of the European Union's aims requires the creation of a unitary patent protection system for efficient exploitation and protection of inventions throughout the territory of the European Union. Such a system will create favorable conditions for legal certainty in protection of patent rights, growth of cross border trade and technological progress. The nature of the unification of patent protection was described in numerous propositions and agreements. One of the most structured visions was set out in the Follow-up to the Green Paper on the Community Patent and the Patent System in Europe, where it was stated the main features of a future unitary patent [7, p. 8].

In such a way, it was decided that the nature of the Community patent must be unitary, affordable, it must guarantee legal certainty and coexist with existing patent protection systems. Such features will be discussed later in this research. Moreover, these features will be compared with the principles according to which the patent protection on the territory of the EU currently operates.

Actually, the patent system plays a valuable role in the "promotion of innovation, the dissemination of scientific and technological knowledge, the facilitation of market access and in the foundation of businesses" [8, p. 908].

It is important to note that the legal nature of patent protection in the EU today has its own specific features that must be taken into account when creating a unitary patent protection system. Also, the features, that will be identified later in the research, will contribute to the effective functioning of patent protection in favor of economic development of the EU.

1. The principle of territoriality of patent protection.

The starting point and at the same time the essential regulating principle of intellectual property is the principle of territoriality, according to which the sovereign's power to attribute exclusive rights is limited to its respective territory [9, p. 145].

Respectively it is natural that protection of patent rights is conducted in accordance with the principle of territoriality and patent rights are restricted by the territory of defined sovereign states. However, it can be stated that inventions and patent rights no longer recognize any national borders.

Historically regulation of patent rights was under the national jurisdiction, where national governments grant patents to inventors and provide patent protection to patent owners. At the same time the cooperation between states has developed on the principle of harmonization of legislation and elimination of borders. Thus, the national patent protection systems could be the factor, which isolate the national markets from intentional trade and could lead to obstacles to a free movement of goods and creation of a common market.

Due to a sharp increase in global trade and the "de-territorialization and dematerialization of economic activities", territorial protection is completely inadequate since patent applicants are relying more and more on international law for the protection of their patents [10, p. 15].

Although patent law remains territorial, there have been a number of efforts to harmonize patent law, either procedurally or substantively, throughout Europe and the world. The development of the European Union itself significantly reduces the principle of territoriality.

Nowadays, there are two possibilities to protect patent rights on the territory of the European Union. The inventor has an opportunity to apply for obtaining national or European patents.

National patents suffer from the flaws inherent in a system governed by national laws. Rules governing the granting, existence and rights conferred by such patents differ between countries and have the effect only on the territory of the country in question, creating a complex network of patent protection for the same invention through the territory of the European Union. Moreover, in the case of infringement, the patent proprietor has to enforce his rights before each national court, as there is no mutual recognition of judgments in this area. The multiple procedures and language requirements of each country, particularly the requirement to publish the entire patent in the national language, result in high costs, while differences between national systems give rise to diverging decisions that create legal uncertainty and fragment patent protection in the internal market [11, p. 301].

The European patent system shares the same problems. A European patent can be obtained for one or more of 38 European countries that are parties to the Convention on the Grant of European Patents, and that is done in a single granting procedure before the European Patent Office. However, once the European patent is granted, it turns into a bundle of national patents. It has to be validated in each designated country with the payment of a validation fee to the national patent office and often by providing a translation of the patent into the national language. Afterwards, the existence and enforcement of the European patent are again wholly governed by the national laws [11, p. 301].

It is important to note, that the European patents do not create the unitary patent protection system throughout the territory of the European Union. It is only a designation for a bundle of national and territorial patent rights resulting from a facilitated application under the European Patent Convention.

The absence of the European patent with unitary effect means that patents in Europe remain territorially limited and enable strategic patent behavior amongst patent holders [12, p. 2].

The idea to establish unitary patent protection applicable to the entire EU territory inclined several Member States to establish enhanced cooperation in the area of the creation of unitary patent protection. In such a way, the European patents with unitary effect would enjoy unitary protection in the territories of the participating Member States without any validation requirements at national patent offices and applicable translation costs.

The current situation with two types of patent protection hinders innovation and hampers the integration of the internal market, while reduction of borders and establishment of unitary patent protection on the territory of the EU will provide an opportunity for strengthening the position of the EU as a union with an attractive investment climate.

2. Investment climate, competitiveness and fees.

One of the most prominent aims of the EU functioning is the improving of the investment climate. A favorable investment climate is essential within a country's path towards sustainable growth. Attracting investments initiates an economic transformation by boosting the development and competitiveness of the private sector, creating jobs and deepening trade integration. Currently, the complex European patent protection system, its duration and cost, reduces the investment of companies in inventions.

A study, conducted by the independent consulting company "Roland Berger" and presented by the European Patent Office, found that "the total cost of obtaining a standard European patent translated into 21 languages in 2004 was 32,676 euros". On that occasion it is essential to emphasize that the fragmented single market for patents has serious consequences for the competitiveness of Europe in relation to the challenges of the US, Japan and emerging economic powers such as China [13].

The largest intellectual property offices in the world are Chinese, Korean, Japanese and USA offices. They all rely on a single patent office to grant patents and confer rights over the proprietor for the respective territory. These patent systems require patent applications to be filed in the region's official language and are enforced under a single specialized patent system. The lack of these features is precisely what causes the European patent system to be the most complex and costliest amongst the five largest Intellectual Property Offices. The EU patent system is highly fragmented in the post-grant phase, constituting the lion's share of costs, preventing businesses from drawing full strength from the large market (of over 500 million consumers) that the EU represents [12, p. 2].

To apply for a patent within different EU countries, one has to pay the costs for the translation, validation and publication fees to the local patent offices. Even though translation cost adds the most amount to the cost, other procedural red-tape and complexity contribute to the cost as well. All of these are upfront costs that had to be paid, which makes the existing European patent system costly, complex and overall unattractive [12, p. 5].

For instance, the cost for obtaining a patent in the US and in China is 2000 Euro and 600 Euro respectively. At the same time after the grant of European patents the applicable national validation

requirements include translation, publication fees and various formal filing requirements. Where the patent holder fails to observe any of the above, the European patent is deemed to be void ab initio in that State. The fees charged by patent agents add to these costs. Even if the London Agreement reduced the costs of validation requirements in some MS, the overall cost of validation in 3 MS (DE, FR, UK) equals € 680; it reaches € 12 500 in 13 Member States and over € 32 000 if a patent is validated in the whole EU. It is estimated the actual validation costs are around € 193 million per year in the EU. The costs and the complexity of patent protection would be significantly reduced [14, p. 2].

Thus, there is an urgent need to develop a comprehensive innovation policy and efficient patent protection system in the EU to respond to challenges from such economic powers as the US and China. The newly established system of unitary patent protection is expected to bring competitive advantages to business of the participating EU Member States as regards innovation through its cost-effectiveness and legal certainty compared to the existing patent systems.

3. Translation of patents.

As was mentioned before, the nature of the unification of patent protection was set out in the Follow-up to the Green Paper on the Community Patent and the Patent System in Europe. It was stated that the cost of patents is extremely high and special efforts must be made to reduce it, wherever possible. The most expensive part of the patent protection system is the translation of patent application and its technical specifications with description of invention.

Nowadays obtaining the European patent requires submission of patent application in any national language and in one of the official languages of the EPO (English, French and German) additionally. After the publication of the decision to grant a European patent, the applicant has four months to pay all necessary fees and provide a translation of the technical specifications into the other two official languages. Moreover, applicants should choose a certain number of Contracting States of the European Patent Convention, where it is intended to obtain protection.

Thereafter, the European patent must be validated in selected Contracting States. The procedure of validation involves translation of the patent application into the language of selected Contracting States and paying additional fees, if any, depending on the country. According to the London Treaty, some countries, such as Great Britain, Germany, Liechtenstein, Luxembourg, Monaco, France, Switzerland, have cancelled the requirement for national validation when filing an application in English. In return Denmark, Iceland, the Netherlands, Sweden and Croatia require a translation of technical specifications in the case of an application in English. In fact, the European patent is a "package" of individual national patents of the European Patent Convention member countries. Translation of the patent package is an expensive procedure with different fees depending on the state and its national requirements.

Patent translation is a very specific skill as the translator must not only be fluent in the language that the patent is written and the language of the translation, but the translator must also knowledgeable in the field that the patent is in order to ensure that all necessary elements of the patent specification are contained in the translation [15, p. 3].

It was defined that for the establishment of a unitary patent protection system the language conditions and translation fees should be more attractive to inventors. Various solutions on translation issues in the Green Paper were suggested. The use of a single language for the procedure for granting the patent, without subsequent

translation of the patent once it was granted, was the most radical suggestion among others. Another suggestion was to translate the patent application into all languages of the Member State of the Community.

Proposal made by the European Parliament offers two levels of translation. This involves keeping the linguistic diversity at the level of the filing of the patent application and the granting of the patent and requirement for translation only in case of dispute and initiation of judicial proceedings. Thus, inventors would have an opportunity to apply for a patent in any national language of the Member State of the Community. However, in the event of a dispute, the patent owner would be obliged to submit a translation of the patent package of documents with the technical specifications in the language of the proceedings.

The European Commission stated that the decision of translation issue should be associated with achieving such objectives as facilitation to access to the patent system by all users, ensuring the dissemination of the relevant technical specifications at the most appropriate time and maintaining the cost of the patent at a reasonable level. The solution to the problem of translations must also take account of a vital function of the patent, which is to guarantee exclusive rights enforceable against third parties. It is necessary to emphasize that real legal protection of infringed rights of the patent owner can be obtained only if the patent application meets the established translation requirements [7, p. 8].

Thus, the issue of translation must be resolved by cooperation between States in such a way that language requirements will not be unreasonably expensive and Member States, participating in the unitary patent protection system, will not be discriminated.

The European patent with unitary effect is granted in one of the three official EPO languages. Before the grant, however, the applicant is required to provide translations of the claim into the other two official EPO languages. Nevertheless, the new translation regime will provide for a compensation scheme of all the translations costs if the application of the patent was filed in one of the official languages of the EU other than the official languages used by the EPO and the patent proprietor have their principal place of business within the EU. Moreover, it is planned to introduce free of charge and publicly available high-quality machine translation service, which will promote dissemination of patent information in all languages of the European Union.

4. Sovereignty of the EU States.

Historically, the patent systems were designed to serve political and industrial developmental needs for individual economies. Although beneficial, nations have not found it essential to create international bodies for patent regulation as they fear that such regulatory bodies may lack the framework (political, legal and economical integrity) to maintain sovereignty of patents for each nation [12, p. 18].

Sovereignty of the EU states have an impact on development or, vice versa, delay of integration. There are no provisions in the Treaty on European Union and the Treaty on the Functioning of the European Union, which prescribe cooperation with other regional patent protection systems in order to improve the field of science and technologies and to attract foreign investments.

It is necessary to realize that the political organization of the EU differs significantly from the political organization of the US and China. Specific nature and, at the same time, the difficulties of cooperation of EU states in the sphere of patent protection is reflected in the fact that, despite the geographical proximity of European states, the EU is an accumulation of the independent

states with their own traditions, history, legal systems, economic development and judicial practice.

Nevertheless, there were a lot of attempts to introduce a unitary patent protection system in Europe, which were aimed at protecting the interests of both national and foreign owners of patents. Thus, in the 1960s years the authorities of the counties of Western Europe reached a common understanding, that it is necessary to define uniform rules of patent protection, which would be applied in resolution of disputes for the development of the idea of establishment of the common market. The tendency to destroy borders and cooperation between states for establishment of a common market has developed increasingly.

It was declared by the Preamble to the Treaty on European Union, that the States intend to remove existing obstacles to trade by means of a common commercial policy, whilst Arts. 2 and 3 detailed the means to achieve the goal of closer integration through the approximation of economic policies and laws, elimination of restrictions on import and export of goods.

There is an opinion that attempts to create a unitary patent protection system on the territory of the EU have been unsuccessful as European integration is a complicated process with its big cast of actors (governments, technocrats, unionists, voters) that pursue a range of economic and political goals [12, p. 19].

Essentially what is needed to ensure transparency in the overall process is a unitary patent system whereby patent offices in different corners of the globe will be able to cooperate with each other to speed up the application process as well as ensure the high quality of the patent being issued [16, p. 19].

Nonetheless, the patent system should no longer be conceived in isolation from the economic and industrial reality of which it is a part. In the light of the economic consequences and the impact on the competitiveness of enterprises, it is vital to confront the issue of the unitary patent according to its new priority.

States came to the solution that the unitary patent protection system in the EU should serve for the benefit of economic and trading development of the whole region and closely intertwined with the process of integration in all spheres.

Thereby, one of the characteristics of the patent protection system, which was defined by States as key, is unitary nature. This means that patents should have the same impact throughout the territory of the European Union. It must be able to be issued, acquired, revoked and expire for the EU as a whole. The establishment of a new effective patent protection system must be based on the equality of all participants and the accounting of the sovereign rights and interests of the Member States.

Thus, taking into account, that national patent protection system lead to the isolation of the national markets and to obstacles to the free movement of goods, the EU Member States came to the understanding, that the establishment of the new unitary patent protection system required Member States to relinquish voluntary part of their sovereign authority over patent matters for the betterment of the EU and achievement of common aims.

5. Legal certainty.

The European Patent Convention (EPC) signed in Munich in 1973 established a multinational system for granting patent rights in any of the designated countries participating in the Convention. The European patent, issued by the European Patent Organization, has the same effect and is subject to the same conditions as those granted by a national patent office from an EU Member State. Using the EPC patent grant system is optional; thus, each inventor can choose to use either the EPC patent or directly file a patent application in different national patent offices.

There are several problems regarding the EPC's jurisdictional system. First and foremost is the absence of a unified central court system. Without a unified central court, the patent system will be based on legal uncertainty, juridical insecurity and procedural delay. The enforcement system founded on a State by State basis is very expensive and time consuming. Based on the same facts, different national courts have arrived at opposite conclusions, which causes great uncertainty. The EPC patent jurisdictional system is based on national courts with different legal traditions, which also causes legal uncertainty, juridical insecurity and procedural delay [17, p. 4].

As the conditions for patentability and the effects of patents are in principle determined on a national level, inventions can only be exploited within the entire territory of the European Union by working with various national laws and accepting different levels of protection [18, p. 24].

The national patent systems are well adjudicated, so patent holders know what to expect. And patents are guaranteed to be enforced by national governments which have more teeth within their own borders than international law normally does [15, p. 3].

This means that the Union's patent protection system does not currently have strong mechanisms to protect the rights of the patent owner and the ability to restore rights, conduct litigation and enforce enforcement measures.

The national courts, in turn, offer patent owners more advantageous conditions to obtain patent protection by national judicial systems as it already has been established by case law and precedents. Therefore, patent owners can be more confident in protecting their patent rights under the national system.

The national courts should entrust competence with regard to patents of EU to a unified patent court for Member State. Thus, legal certainty should be guaranteed by unified legal procedures and legal practice throughout the territory of the European Union. Establishment of an intelligible and accessible system of court appeal of patent infringement would be an advantage for attracting innovations on the EU common market and as a consequence for economic development of the entire European region.

Nowadays there are fears that a Member State can empower a certain judicial body by competence to consider cases of patent disputes. That is why it is important to establish such a mechanism with no threat to national sovereignty of EU member-states. Activity of Unified Patent Court and establishment of unitary patent protection system in the EU per se, should be based on principle of subsidiarity, where inventor or other subject will have the opportunity to choose which system of patent protection is more preferable in each case.

As stated by Philip Soo "a duplicative and internally inconsistent patent system results in legal uncertainty and encourages forum shopping", with all the problems resulting from this situation, especially the fact of the unpredictability of the judicial decisions [19, p. 67].

Forum shopping means the situation, when several persons infringe the patent rights and the patent owner chooses among the States in which the violators live, the State the most advantageous from the point of view of judicial strategy for initiating proceedings. The current judicial litigation of the EPC system leads to the adoption of a forum shopping mechanism whereby the parties will choose as the competent forum the State in which they believe will best serve their objectives.

In the USA, in the 1970s, there was a constant use of forum shopping with its consequential uncertainty and disparity in patent court decisions. This, in turn, caused a reduction in investments in R&D. The creation of the

United States Court of Appeals for the Federal Circuit (CAFC) in 1982 had, as its main justification, the need to ensure consistency, more predictability and confidence in court decisions. With the creation of the CAFC, forum shopping in the USA was reduced and companies began to initiate legal actions in the states where their headquarters were located. As a result of the creation of the CAFC, the value of patents increased, companies invested more in R&D and technological innovation grew in the USA. Before the creation of the CAFC, different interpretations of substantive aspects of patent law and different decisions for similar cases created a lack of consistency and uniformity.

Concerning the EPC patent litigation, initially the Brussels Convention [20] and currently the Brussels Regulation [21], allows the competent court to be one of the following: the court of domicile; in non-contractual matters, the court of the State where the harmful event occurred; if there are several defendants, the court of domicile of any one of them; in the matter of patent registration or validity, the court of the State which granted the patent.

Moreover, 27 EU Member States with different procedural laws will invariably lead to different solutions. In some States infringement and validity cases are tried in separate cases and in different courts while in other States these situations are tried in the same case and court. Germany, for instance, has different courts dealing with infringement and validity issues separately, which can lead to the situation that for the same patent one court decides there has been infringement whereas the other court later invalidates that same patent.

Another problem is that some jurisdictions are not specialized, and the patent cases in those States are tried by courts of general jurisdiction (e.g. Ireland and Latvia); some States have specialized national courts (e.g. the Portuguese Tribunal da Propriedade Intelectual); others have created specialized sections within national or district generalist courts (e.g. the Dutch Rechtbank); and still others have established generalist sections to resolve intellectual property questions (e.g. the Italian Sezioni Specializzate in Materia di Impresa).

The most serious problems of the EPC patent result from the European patent litigation system. An action for an EPC patent must be brought before a national court, with the great possibility that different sentences will emerge, in different States, for the same situation.

Nevertheless, it is important to emphasize that interaction of national courts of EU Member States is carried out in the form of cooperation, which is based on the principle of cooperation of courts, which leads to the harmonization of legal systems of EU Member States with EU law. It is stated in the Article 3 and 4 of the EU Treaty, that pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. From the content of the cited article it is obvious that in this case the representation of Member States is carried out by their public authorities, including national courts that directly implement the provisions of EU law on their sovereign territory [22, p. 281].

Thus, it could be stated, that the national courts of the EU Member States have an obligation to interpret its national legislation in such a way that it does not contradict and is compatible with EU law. The patent protection legislation should be applied coherently and in a uniform manner by national courts of the EU Member States appropriately [22, p. 281].

Mechanism of patent protection and legal proceedings should be uniform and predictable throughout the European Union.

It is interesting to note, that in 2010 one of the problems of creating a new EU patent court was that the members of the European Patent Convention prepared in 2004 a draft agreement establishing the European Patent Court with the competence to resolve disputes related to infringements and the validity of European patents. The same competence should have been given to the EU Patent Court. It was important for each party to cooperate one with each other not to create areas with parallel competence [22, p. 37].

The agreement on the Unified Patent Court [23], which would be the part of unitary patent protection system, seeks to provide legal certainty for litigation relating to the infringement and validity of patents, by giving the Unified Patent Court exclusive competence in respect of European patents with unitary effect and European patents granted under the provisions of the EPC.

Conclusions.

The process of harmonization of the national patent protection legislation between the European states has been going on for almost half a century. During this time, European states came to a common understanding that it would be able to achieve economic prosperity in the European region only by joining efforts and by policy of integration.

The European patent protection system was established by signing the European Patent Convention in 1973, which became in reality a bundle of national patents in all the States designated in the application, that need to be validated at the national level. This system has no unitary character and legal certainty. The States soon realized that high cost and organizational complexity of the European patent could frustrate the creation of an internal market. The system does not correspond to the tendency of reducing the borders between the countries of the European region.

Shortcomings were reflected in the patent protection system which was established according to the EPC. Three major problems were found: high costs, translation requirements and the absence of a common system of litigation.

The Member States of the European Community sought to create a unitary patent protection system that would enable them to establish a more favorable investment climate, to establish trade without borders between Member States and to create conditions for the EU's economic development.

The intention of the EU Member States is the creation of an efficient unitary patent protection system throughout the territory of the EU, specifically to reduce patent fees, simplify procedures and establish legal certainty. To achieve these aims it is necessary to understand the nature of current patent protection in the European region, to understand its specific and weaknesses and to use these characteristics for establishing an efficient and stable unified patent protection system throughout the territory of the EU.

Naturally the protection of patent rights is conducted in accordance with the principle of territoriality and patent rights are restricted by the territory of defined sovereign states. Nonetheless, due to the harmonization of legislation and elimination of borders the European states should strive for establishment of unitary patent protection on the territory of the EU, which will provide an opportunity for strengthening the position of the EU as a union with an attractive investment climate. In addition, the issue of the cost of the patent must be resolved, as it has a direct impact on attracting investment and competitiveness of the EU.

Also, the EU states should find a compromise on translation policy and take into account the sovereign rights

and interests of each EU Member State in order to prevent discrimination.

One of the most important issues in the creation of the unitary patent protection system is the establishment of an efficient unitary jurisdictional system, which is currently missing. It is important, considering the current judicial litigation of the EPC system, to establish strong legal mechanisms to protect the rights of the patent owner and the ability to restore rights, conduct litigation and enforce enforcement measures.

Thus, having identified the problematic issues of the current system of patent protection in European countries, we can conclude about the specifications that must be taken into account when creating a unitary patent protection system in the European Union.

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Sokolova O. O. The European Patent Protection System: problematic issues and development prospects

The article is devoted to the characteristics of the patent protection system, which was established in accordance with the provisions of the European Patent Convention in 1973 and which currently operates as a regional patent protection system. This system is analyzed in the context of its specific features that can be improved and taken into account when establishing the future unitary patent protection system in the European Union. The essence of harmonization of patent legislation of the EU member states and the importance of this process for the development of the economic potential of the European Union are highlighted. It was emphasized that European countries have been negotiating for a long time on the need to harmonize the patent legislation. However, there are issues that make it difficult to find a common solution. Such issues include uncertainty about the language policy of the patent protection system, as well as the jurisdiction of the courts, which have the competence to hear patent disputes. It is also determined that the principle of territoriality, on which the implementation of patent protection is based, adversely affects the achievement of the goals set by the Member States of the European Union. Thus, the principle of territoriality of patent protection contradicts the formation and development of the common market, attracting investment from other regions of the world and hinders scientific and technological progress in general. In addition, the problem of the lack of a single mechanism for resolving patent disputes was emphasized. States have come to understand that an element of an effective unitary patent protection system is a stable, comprehensive and cost-effective judicial protection procedure. The need for the development of cooperation between the member states of the European Union is states, taking into account the tendency of the 21st century to reduce the borders between the states.

Thus, the article analyzes the characteristics of the European patent protection system and its aspects that need improvement. It is determined that in order to create a new effective unitary patent protection system in the European Union, it is necessary to take into account the specifics of the current regional system.

Key words: patent protection, unification of patent protection, European patent protection system, unitary patent protection, Unified Patent Court.

Соколова О. О. Європейська система патентного захисту: проблемні питання та перспективи розвитку

Стаття присвячена характеристиці системи патентного захисту, яка була заснована відповідно до положень Європейської патентної конвенції у 1973 році та яка нині діє як регіональна система патентного захисту. Зазначену систему патентного захисту проаналізовано у контексті тих її специфічних особливостей, які можуть бути вдосконалені та враховані під час встановлення найближчим часом унітарної системи патентного захисту на території Європейського Союзу. Висвітлюється сутність гармонізації патентного законодавства держав-членів ЄС та значення цього процесу для розвитку економічного потенціалу Європейського Союзу. Наголошено на тому, що європейські держави вже тривалий час ведуть перемовини стосовно необхідності гармонізації патентного законодавства держав-членів Європейського Союзу. Проте є питання, що викликають складнощі у віднайденні спільного рішення. Серед таких питань постає невизначеність щодо мовної політики системи патентного захисту, а також щодо юрисдикції судових органів, які наділяються повноваженнями щодо розгляду патентних спорів. Також визначено, що принцип територіальності, на якому ґрунтується здійснення патентного захисту, несприятливим чином впливає на досягнення цілей, які поставлені державами-членами Європейського Союзу. Так, принцип територіальності патентного захисту суперечить становленню та розвитку єдиного ринку, залучення інвестицій з інших регіонів світу та перешкоджає науково-технічному прогресу загалом. Крім того, наголошено на проблемі відсутності єдиного механізму вирішення патентних спорів. Держави прийшли до розуміння того, що елементом ефективної унітарної системи патентного захисту є стабільна, максимально зрозуміла та економічно вигідна процедура судового захисту. Зауважено на необхідності розвитку співробітництва між державами-членами Європейського Союзу з урахуванням тенденції XXI століття до зменшення кордонів між державами. Таким чином, у статті проаналізовано характерні риси Європейської системи патентного захисту та ті її сторони, що потребують вдосконалення. Визначено, що для створення нової ефективної унітарної системи патентного захисту на території Європейського Союзу необхідно врахувати специфіку нинішньої системи.

Ключові слова: патентний захист, уніфікація патентного захисту, Європейська система патентного захисту, унітарний патентний захист, Уніфікований патентний суд.

Соколова Е. А. Европейская система патентной защиты: проблемные вопросы и перспективы развития

Статья посвящена характеристике системы патентной защиты, основанной в соответствии с положениями Европейской патентной конвенции в 1973 году и действующей в настоящее время как региональная система патентной защиты. Указанная система патентной защиты проанализирована в контексте тех специфических особенностей, которые могут быть усовершенствованы и учтены при установлении в ближайшее время унитарной системы патентной защиты на территории Европейского Союза. Рассматривается сущность гармонизации патентного законодательства государств-членов ЕС и значение этого процесса для развития экономического потенциала Европейского Союза. Отмечено, что европейские государства уже долгое время ведут переговоры о необходимости гармонизации патентного законодательства государств-членов Европейского Союза. Однако существуют вопросы, вызывающие сложности в нахождении

общего решения. Среди таких вопросов возникает неопределенность относительно языковой политики системы патентной защиты, а также юрисдикции судебных органов, которые наделяются полномочиями по рассмотрению патентных споров. Также определено, что принцип территориальности, на котором основывается осуществление патентной защиты, неблагоприятно влияет на достижение целей, поставленных государствами-членами Европейского Союза. Так, принцип территориальности патентной защиты противоречит становлению и развитию единого рынка, привлечению инвестиций из других регионов мира и препятствует научно-техническому прогрессу в целом. Кроме того, отмечена проблема отсутствия единого механизма разрешения патентных споров. Государства пришли к пониманию того, что элементом эффективной унитарной системы патентной защиты является стабильная, максимально понятная и экономически выгодная процедура судебной защиты. Отмечена необходимость развития сотрудничества между государствами-членами Европейского Союза с учетом тенденции XXI века к уменьшению границ между государствами. Таким образом, в статье проанализированы характерные черты Европейской системы патентной защиты и ее стороны, требующие усовершенствования. Установлено, что для создания новой эффективной унитарной системы патентной защиты на территории Европейского Союза необходимо учесть специфику нынешней системы.

Ключевые слова: патентная защита, унификация патентной защиты, Европейская система патентной защиты, унитарная патентная защита, Унифицированный патентный суд.