DIRITTI COMPARATI
Comparare i diritti fondamentali in Europa

PATENTS IN EUROPE, LANGUAGES AND RIGHT OF DEFENCE

Posted on 23 Settembre 2010 by ***Enrico Bonadio***

On 2nd July 2010 ECJ Advocate General, Professor Juliane Kokott, released the much-awaited opinion on the proposed EU patent litigation scheme (the opinion was made available at the end of August: for an unofficial English translation of the opinion click here). She held that the proposal tabled by the Council of the European Union creating a centralized court (which would have exclusive jurisdiction on patent infringement and validity issues and aim to reduce costs in Europe-wide patent-related disputes) violates EU treaties and particularly the right of defence. Now a final decision from the European Court of Justice is awaited.

One relevant incompatibility found by the Advocate General regards language issues. Indeed Professor Kokott held that the proposed linguistic scheme violates the rights of defence, as it is possible that in certain cases a defendant is summoned to appear in the central division of the Court of First Instance where disputes are only heard in English, German and French (see paragraph 121 of the opinion). Accordingly a defendant could be required in certain cases to defend a dispute by using a language (English, German or French) which is neither the language of its country of origin nor that of the state where it carries out its commercial activities (eg

Spanish and Italian defendants). According to the Advocate General, this violates the rights of defence, unless a provision is inserted permitting the central division of the Court of First Instance to derogate from the language rule or allowing the defendant to obtain translations of the procedural documents. AG's opinion has thus highlighted a main obstacle which so far has stopped several attempts to create a Europe-wide and centralized patent litigation system, i.e. that – whatsoever scheme is finally devised - right of defendants to use their own language in the relevant proceedings must always be guaranteed. AG's opinion confirms once again that the right of everyone to use its own language in any judicial proceedings constitutes a very sensitive issue (as far as criminal proceedings are concerned see the recent draft directive on the rights to interpretation and to translation in criminal proceedings as well as Article 6(3) of the European Convention on Human Rights). It should also be noted that the European Commission has recently adopted a multilingualism policy aiming at (i) encouraging language learning and the promotion of linguistic diversity in society, (ii) promoting a healthy multilingual economy and (iii) giving anyone access to EU legislation, procedures and information in their own language. AG's opinion seems to be in line with the above provisions and policy. And it is not unlikely that the European Court of Justice will take a similar stance. It is to be hoped that a workable solution is finally reached, a solution which reconciles an important need with a fundamental right: (i) the need to reduce costs of patent-related litigations in Europe (indeed the proposed centralized litigation scheme aims to overcome the main flaw of the current system, i.e. that companies whose patents are infringed throughout Europe are forced to litigate in each single state, which has made Europe-wide patent enforcement cumbersome and costly), (ii) and the right of all companies and individuals to face litigations by using their own languages. Yet it will not be an easy task.