

## **No Building for the Unified Patent Court?**

When it was foreseeable at the end of 2011/beginning of 2012 that the establishment of a European Patent Court would be no chimera (any longer), but rather a reality, all big states made great efforts to host the seat of the central chamber, and towns (in Germany) tried to become the seat of local chambers. The advantage for the respective Member State, the respective Federal state and the respective town was generally regarded as considerable.

Now, following the decision in favor of Munich as the seat of a department of the central chamber and a local chamber, the implementation seems to lack the enthusiasm of the efforts employed in the context of the decision of principle.

The arguments or negotiation strategies of the participating countries were quite different in nature. Italy, for example, hinted that it intended to refrain from further legal remedies if the seat of the central chamber is allocated to Milan. France seemed to be confident that claiming the establishment of the central chamber in Paris would be sufficient. In the deliberations of the competent committee of the House of Commons of the United Kingdom, the economic advantages for the UK, London and the British legal profession were emphasized. This benefit was obviously considered so important that the British Prime Minister was able to communicate in a credible manner that he was going to let the entire package fail if London should not be given appropriate consideration.

Germany upheld its position in a less aggressive manner. Germany's efforts in bringing the central chamber to Germany were nevertheless obvious. One of its arguments was, for example, that the existence of the EPO and the German Federal Patent Court suggested a creation of synergy effects in Munich by relocating a further court. At any rate, the German Government, the German judiciary and the German lawyers also made major efforts with regard to the seat of the central chamber.

Independently therefrom, the German Federal states were literally fighting for a seat of a local chamber. The German Government negotiated - specifically for Germany - the possibility of four local chambers per Member State. Even the eastern German states with national patent litigation chambers and which do not have a large number of cases wanted to reserve for themselves the fourth local chamber which had been intended for Munich or Hamburg. Thus, the insistence on a local chamber was there (also in Bavaria) in knowledge of the financial burden. At least in the first years, the personnel costs (except for the compensations of the judge members of staff) and the costs of maintenance of the chambers are borne by the Member State in which the chambers are located. In this regard, the Federal Government funds the costs for the central chamber, and the Federal states fund the costs of their respective local chamber. Also the political risks were known, for example, that, after a lapse of three years and with an average of less than 50 patent infringement cases per year, the number of German judges may drop from two judges to only one (let alone the risk that with a low number of cases, entire local chambers may no longer be necessary).

The advantages which were and are connected with the establishing of chambers are reflected in press releases of the Bavarian Minister of Justice, the competent members of the Bavarian Parliament, but also by other voices. The general praise is based on the hope for more economic activity in the respective region. Whether these hopes are justified will be assessed differently.

London and Paris, however, already see a significant advantage in the mere possibility of exerting influence on the court (cf., for example, the French Senate Proposal No. 97 of October 23, 2013, or the 65<sup>th</sup> Report of the European Scrutiny Committee of the British House of Commons).

Also the funds which are provided are an eloquent example. Paris reckons with rents of € 3 million per year for the central and local chambers - including the running costs (cf. the afore-cited Proposal). If the amount is put in relation to a price of € 80 per square meter, this represents a surface of 3000 square meters which in Paris (for the central and local chambers). Variants of spacious premises such as, e.g., the former Navy Department, are in discussion. In the United Kingdom, the situation does not look any different. There, too, the advantages are highly rated. Local Division and (part of the) Central Division will be located in the Aldgate Tower. "Endless" space is provided for both hearings as well for deliberating parties and attorneys.

### **1. Department of the central chamber at the German Federal Patent Court**

For the Munich department of the central chamber, 9 rooms at the second floor of the German Federal Patent Court in the Cincinnatistraße are envisaged. Three of the rooms are meant for judges, the fourth room is possibly intended for non-judge personnel, the storing of files and the sub-registry of the court (Art. 10 (2) of the Convention on the Unified Patent Court).

There will probably not be a separate entrance. One of the rooms of the German Federal Patent Court is intended to serve as a courtroom.

As far as can be seen, there are, as yet, no plans with regard to the separation of the two courts, also of the respective computer networks, in order to ensure confidentiality.

### **2. Munich local court**

There is still no location for the Munich local chamber. Originally, the building of the former Bayerisches Oberstes Landesgericht (*Bavarian Supreme Court*) was under discussion. However, this plan is no longer relevant. At the moment, an alternative is being looked for. According to rumours, it is not a building, but an office floor which is being looked for.

The local chamber is not meant to be established in the same building as the central chamber.

### **3. Disadvantages**

The reasons for the current reticence in the search of locations are comprehensible. Since the costs for the central chamber are paid by the German Federal Government and the numbers of cases will not be very high at least in the first year, an accommodation in the building of the German Federal Patent Court is the least expensive. The costs of the local chamber do not have to be borne by the German Federal Government. As a consequence, there are no worries about the accommodation of the local chamber. Also the Free State of Bavaria expects a low number of cases. The advantage of a high number of cases is for the benefit of Munich "alone".

Even if the reasons for the stepmotherly treatment of the new court are more than obvious, they are not sufficient. They prompt the citizen and possibly also other competitors to ask with surprise why great efforts were made to establish both chambers in Munich.

Already at the occasion of the introduction of the European patent, Bavaria boasted<sup>1</sup> of its special function in the construction of Europe. The importance which Bavaria, for its part, attributes to the EU is not least expressed by the building of the Bavarian representation in Brussels.

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<sup>1</sup> Cf. Report of the Munich Diplomatic Conference on the introduction of a European patent grant procedure p. 9 (1973)



Inversely, this should also apply to a building of Europe (albeit not the EU) in Bavaria.

The German Federal Government (ultimately, also the local chamber is a matter of the Federal Government) anyway has the obligation to provide international organizations with an adequate residence<sup>2</sup>. There will be no wish to remain behind the other Member States. Even if the next international organization is concerned, the allocating States will consider the quality of the accommodation of other international organizations in Germany.

The department of the central chamber and the local chamber should be in one building.

The judges can exchange experiences more easily and more quickly. The storing of files becomes simpler and less expensive. The connection to the network of the court has to be made only once. Renting a building becomes possible.

The non-judge personnel may work for both chambers. This is less expensive and more flexible specifically in the start-up phase. It also facilitates the recruiting of personnel: It will not be easy to find personnel under national conditions being able to respond to the particular demands of the court, i.e., in particular, to communicate with participants in procedures from all over the world.

Thus, the development of a uniform practice for the conducting of procedures by the non-judge personnel is also obtained.

The accommodation in one single building supports the fact that the court with its two chambers in Munich expresses an identity towards the outside. Allocating the chambers to two different locations makes it easier to continue to speak of “two courts”.

The building should be situated in the inner city area.

At least during the first years, two judges of the patent litigation chambers at the Regional Court of Munich I or the patent litigation senate of the Higher Regional Court will be active half-time in the local chamber in order to work with the “third judge” and the technical judge. The travel times ought not to be too long. Easy reachability of railway station, airport and central hotels is an important aspect for non-resident parties to procedures.

The building should be “prestigious” - You never get a second chance to make a first impression.

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<sup>2</sup> Cf. Münchner Gemeinschaftskommentar zum Europäischen Patentübereinkommen, Art. 6 with reference to the necessity of an adequate building

However unfounded it may be, parties will also compare the appearance of local chambers in Europe when choosing a chamber. The appearance will also - however unfounded it may be - influence the expectations with regard to the quality of jurisdiction. This is true all the more since many persons are sceptic towards the German local chambers, because they fear a referral of nullity-counterclaims to the central chamber. If the image is conveyed that the own state does not support its own chambers, the competence of the chambers will be denied and one will at first orient oneself towards other chambers.

However, this also makes it clear that the first cases are of great importance not only for the court in its entirety, but also for the individual chambers. Foreign parties always enquire for the best legal venue. And they know that it is not because they address a specific law firm that the local court is necessarily the best one for this reason. They request a reasoned decision from their lawyers. Meanwhile, this equally applies to German clients. If the client is "so small" that the travelling activity of their lawyers is a decisive criterion, the client will anyway take recourse to the less expensive national court. Each case which is not dealt with in Munich in the initial phase strengthens the experience of another local chamber and thus the desire of a party to entrust such a "more experienced" local chamber with its case.

This tendency becomes even more important if, in case of a referral of a nullity- counterclaim, the Munich central chamber department were competent. If confidence is also lacking in this case, the party will choose a local chamber which does not make a referral. If the party does not know any practice of the Munich local chamber, it will choose a foreign local chamber.

If there is no confidence in the Munich central chamber department, no foreign party will be inclined to institute infringement proceedings there (provided that there is a legal venue).

#### **4. Conclusion**

If it is desired that the Munich chambers of the Unified Patent Court obtain a lot of cases, not only good judges, but also a good impression will be needed. The latter is not achieved through two separate locations, a "sub-tenancy" at the German Federal Patent Court, or an "office floor" for the local chamber.

If it is desired that the Munich chambers of the Unified Patent Court are entrusted with a lot of cases, its appearance must correspond to that of other chambers or even be superior. Courts do not have to be magnificent buildings overawing people already when they enter the building (as is the case with the main building of the Regional Court of Munich I). However, the building must convey the idea that the state is serious about its court.

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