

October 2007

London Agreement to Come into Force

On 9 October 2007 the French Senate approved the law authorising France's ratification of the London Agreement concerning national translation of European patents. France is expected to ratify the London Agreement in the next few months.

This is a significant development in the current political efforts to streamline the patent granting and enforcement procedures in Europe, as the London Agreement will come into force **four months after the French instrument of ratification has been deposited**.

European patent proprietors will not need to file any translation in a London Agreement country that has English, French or German as a national language, and the translation requirement in the other London Agreement countries will be completely or substantially reduced.

For English-language applicants, therefore, 2008 will certainly see the list of countries, for which no post-grant translation work is required, grow to at least: the United Kingdom, France, Germany, Switzerland/Liechtenstein, Ireland, Monaco, Luxembourg and Malta.

In addition, we expect that the following countries will also be on this list: the Netherlands, Denmark, Iceland, Latvia, Slovenia and Sweden. However, it is possible that local translations of the claims may be required in some or all of these countries.

We see it as inevitable that many other EPC Contracting States will become parties to the London Agreement in the coming years, further reducing the costs of bringing European patents into effect.

Developments will be reported in future Newsletters. In the meantime, your regular contact at Haseltine Lake will be pleased to advise on whether it may be possible to delay grant of any pending application until after the London Agreement has come into force.

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EPO Board of Appeal Clarifies Requirements for Internet Prior Art

In Decision T1134/06, European Patent Office (EPO) Board of Appeal 3.2.04 recently had the opportunity to consider the prior art effects of an internet publication located after the priority date.

The Examining Division had assumed prior availability on the basis of a date mentioned in the material, but had not investigated whether the material appeared on any Internet Archive, or whether there was any independent evidence of its prior availability.

The Board reviewed the case law and Internet Archives, and concluded that the material could not be cited as prior art unless the Examining Division could establish beyond reasonable doubt what was available before the priority date, when it was available, and under what circumstances it was available (Reasons, paragraph 4.1).

The application was remitted to the Examining Division for further examination.

→ <http://legal.european-patent-office.org/dg3/pdf/t061134eu1.pdf>

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More Unclear or Insufficiently Described Parameters Cause Problems for Patentees/Applicants

Continuing our popular series of European patents which have sunk on the treacherous rocks of unclear or insufficiently described parameters (see the October 2005, December 2006 and July 2007 issues of this Newsletter), we offer the following recent examples from Decisions of the EPO Boards of Appeal:

- In Decision **T216/02**, one claimed feature of a sol-gel was a content of "volatilizable materials" in the sol-gel. The patentee provided evidence of an ASTM test method, by which this content could be measured. However, in the test, certain temperatures had to be set by the operator and the choice affected the measured content. With no information in the patent about the correct setting, the invention was insufficiently described and the patent was revoked.

- In Decision **T1341/04**, a method was claimed in which a fat was "undercooled by at least about 4 °C", which meant "cooled to that extent below the melting point of a certain crystalline form of the fat". The art recognised no standard method of measuring this melting point, and none was described in the patent. It was therefore not possible to measure the undercooling. The invention was insufficiently described and the patent was revoked.

- In Decision **T363/05**, the parameter Taber Stiffness was used to define a chewing gum material in the main claim. Evidence was filed in opposition proceedings that a delay before performing the Taber Stiffness test affected the result, but the patent gave no guidance as to what delay was contemplated. Comparative Examples in the patent described a two week delay, but it could not be inferred that the (non-comparative) test required to ensure compliance with the invention should also use a two week delay. With no teaching concerning the intended pre-testing delay, the invention was insufficiently described and the patent was revoked.

→ <http://legal.european-patent-office.org/dg3/pdf/t020216eu1.pdf>; <http://legal.european-patent-office.org/dg3/pdf/t041341eu1.pdf>;
<http://legal.european-patent-office.org/dg3/pdf/t050363eu1.pdf>

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Start Date of EPC2000 is 13 December 2007

The EPO has announced that the start date of EPC2000 will be **13 December 2007**. Please see the April, June and August 2007 editions of this Newsletter, for information about the changes from that date.

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