

“Soft IP”

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What is “Soft IP”?

- A concept defined in the EPO “Blue Skies” Scenarios Project as being a system with **NO** injunctions available to patent owner.

Here are mechanisms which in theory remove the monopoly right – some of the following, such as compulsory licensing, are going to be less acceptable than others

- **Compulsory licensing – not an appropriate approach**
- **Licenses of right – the soft IP direction**
- **Open source approach - soft IP is compatible**
- **Patent pools – an alternative, as equitable?**
- **Corporate goodwill – a necessary prerequisite**

Applicability of Soft IP regime

It helps avoid the situation of the “Innocent” infringer”

Relevance to CII, a soft IP regime is aimed at:

- **patented technologies that are essential for software interoperability,**
- **evolution of the internet,**
- **essential communications technology**
- **open source software development**

If you would like to view the discussion paper by IBM on Soft IP and the Community Patent, please email jonathan.sage@uk.ibm.com

Community Patent + Soft IP

- **Community patent route will be optional – a voluntary regime – no threat to existing patent system in Europe**
- **Potentially a valuable right with EU wide geographic spread**
- **Applicants, infringers are vulnerable if they cannot understand the language of the patent – soft IP addresses this issue since patented technologies would be available licenses of right**
- **Alternative European (bundle of national patents) and National routes to patents remain**
 - Language of granted national patents remains “as is” subject to London Agreement

Soft IP Community Patent may work like this..

- Applicant applies via EPO in official language
- On grant by the EPO, Applicant chooses:
 - Community Patent endorsed Licenses of Right, or
 - National patents in selected countries
- On grant if selected Community Patent (endorsed LOR) no translations required and single Community Patent with one renewal fee
- If national patents selected translations required and injunctions available before national courts
- May specify on filing if licenses of right (LOR) available.
If endorsed LOR then Community Patent
NB - LOR cannot be revoked

Expected benefits of Soft IP + Community Patent

- **It represents a reasonable cost for Applicants of Community Patent**
- **It removes vulnerability of infringers to injunctions**
 - (National court could grant injunction for failure to pay royalty?)
- **Provides certainty that licenses will be available**
- **Terms and royalty settled by courts, in case of non-agreement**
- **Patent owner may include requirement for reciprocal licensing**
- **Could be alternative to *ex ante* negotiation in Standards Bodies**
- **Standards Bodies could restrict technology adoption to those inventions where LOR available**
- **Optional system, therefore full cost national patents still available**
- **LOR already a known and used system**
- **Maintains sovereignty of national courts being the only courts to grant injunctions**

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