

IP Summit 2008

Results of the delegates' surveys

○ Introduction

Since its inception in 2004, the **pan-European Intellectual Property Summit** is placing a strong focus on fuelling the debates between institutions, mainly of the EU but also in member states, and representatives from the industry who are the users of the pan-European IP systems.

Until now, the IP Summit has gained broad support from various institutions such as the European Commission, the European Parliament, the World Intellectual Property Organization, the European Patent Office, and the Office for the Harmonization In the Internal Market.

As efficient debates need a framework comprising the appropriate set of tools, Premier Cercle™, the independent organizers of the IP Summit, have decided to add real-time voting capabilities to the arsenal in 2008. This year for the very first time, more than 600 delegates have expressed their opinions in a democratic manner towards EU officials.

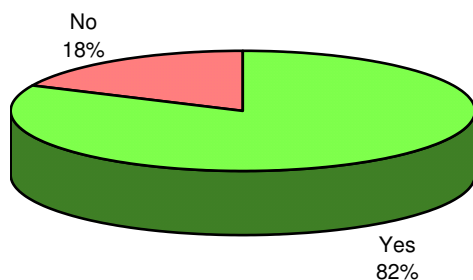
○ Methodology

The votes have been held during the plenary sessions attended by most of the IP Summit delegates. Each participant, using a remote command, has had to press buttons associated with preferred choices, during a limited time after questions and possible answers have been shown on the large screen, and repeated orally. Remote commands could be exchanged between participants, the voting system being completely anonymous.

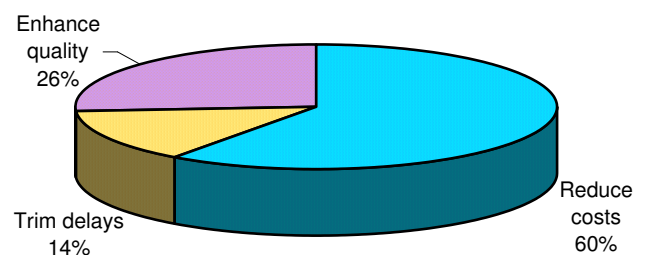
Compiled results of the surveys are shown and commented hereafter in this document.

○ I – The European Patent System

Are you in favour of a rapid implementation of the Community Patent?

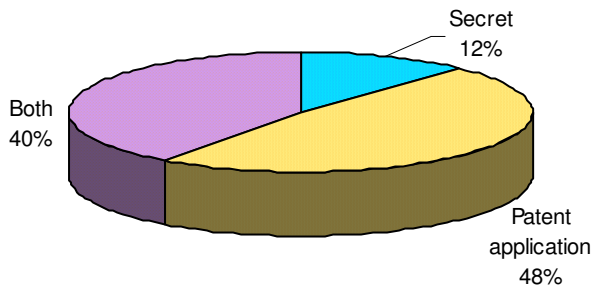


What would you expect the most from the Community Patent?

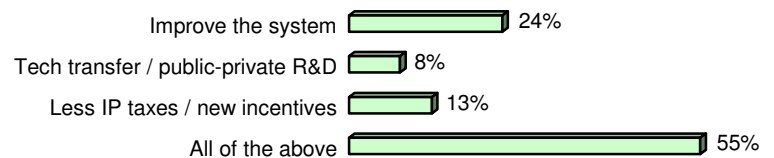


- Although negotiations are "*stalled*" according to French Economics Minister Christine Lagarde in its keynote introduction of the IP Summit, EU Director of Knowledge Economy Margot Fröhlinger said on the next day that the European Commission should work towards a consensus by the end of 2009.
- Unsurprisingly, a large majority (82%) of voters support a rapid implementation of the community patent. Though, 18% of negative answers is still a high figure, but it's unclear if it should be interpreted as a reaction to the word "rapid" or for the whole process in itself.
- The prime reason for replacing current European Patent applications is reducing costs (60%), mainly due to translation fees into principal languages of countries where the patent is to be granted a protection.
- 26% would expect the Community Patent to enhance the quality of the applications, while 14% would prefer delays for granting the patents to be trimmed – with a possible loss on the quality side.

Revolutionary invention: secrecy or patenting?

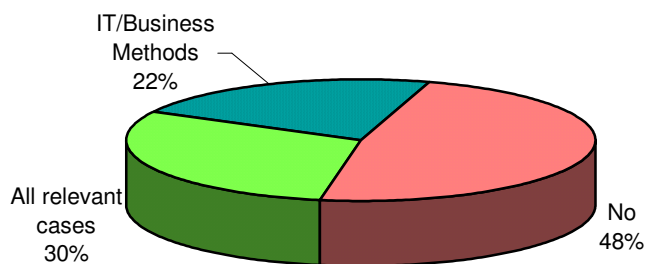


What reform is needed to encourage SMBs to apply for patents?



- Although there is undisputed confidence in the protection granted by patent applications for roughly half of the voters, this factor is somewhat mitigated by the need to keep inventions surrounded by a halo of secrecy. For 40% of respondents, the patent system is not sufficient. For the remaining 12%, it even seems inefficient.
- Small businesses and stand-alone inventors may tend to lean more towards secrecy than patent applications to protect their inventions, in lacking the same means as large companies with cash reserves and well-organized IP departments.
- To help innovative SMBs, the EU Commission and member states may first introduce consensual reforms that deploy new state aids, tax cuts, or that allow for fluidised collaboration between public research and private companies. These steps are considered useful, but secondary compared to the improvement of the IP system in itself. When the cost is already a problem for large companies, it gets even worse for smaller ones. A global package is needed, with a patent reform at the forefront.
- The Association for Competitive Technology (ACT) has released its report based on a survey of IT SMBs during the IP Summit, entitled "*Dreaming of Eutopia*", and available on its website: www.actonline.org

Should new classes of IP Rights, or "special" patents be introduced?



- Nearly half (48%) of the panel remains conservative with the existing classes of IP rights. This is the common policy adopted on both sides of the Atlantic for ongoing legislation changes. In the US, the recently introduced patent reform is notably dividing sectors with different needs within the industry.
- Remarkably, 52% of the voters now believe that special creations would deserve special rights to be granted. For 22% it only concerns IT-related (software) and business method patents.
- Even more interesting, 30% would not restrict the introduction of new IP classes or "special" patents to IT and business methods. Whatever these voters are thinking of, such important expectations will probably give fuel to additional researches and studies in order to understand more the needs of specific industries, and how their related inventions can be better protected and valued.

○ II – IP Litigation in Europe

Where would you want the single integrated court to be located?



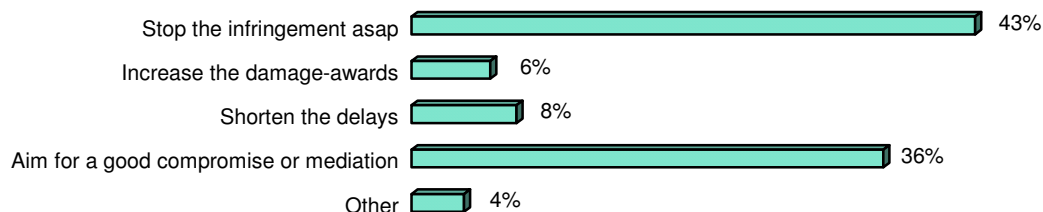
- This isn't the most important question, but possibly one with the most adverse implications in terms of politics for the single integrated patent jurisdiction. The court could be easier to implement than the community patent, according to discussions moderated by Alain Pompidou between French, German and Dutch officials on the first day of the IP Summit. As there is no clear preference for either Paris, London or Munich, maybe it would be advised to work around this part of the debate, at least for now.

Forum Shopping: in cross-border cases, when choice is given, where do you prefer to litigate?



- Germany detach itself as the number one destination amongst those listed for managing litigation issues. A well-funded judicial system, with competent judges, well trained as regards IP and technical matters, bearable delays and rational decisions is preferred to severity and high amounts of damages granted.
- The clear winner is "somewhere else in the EU". Although the majority of these 26% of voters may have chosen their own country of residence, France that doesn't appear on the list could grab some points when it comes to its seizure counterfeit procedures.

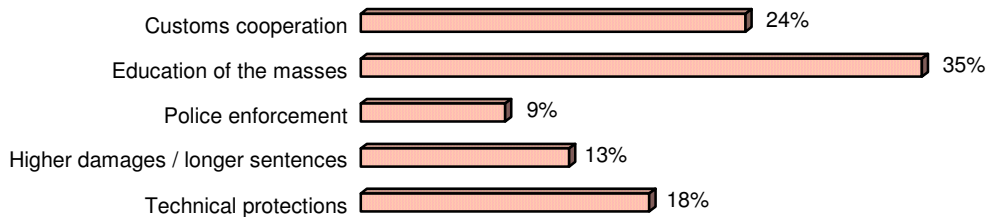
What comes first regarding IP litigation for your company?



- The willingness to stop the infringement asap (43%) is reflecting both the depth of the economic injury to corporations, as well as a sane intent to use judicial systems for their true rational purpose.
- More than a third of voters (36%) prefer to settle their disputes without waiting for the decision of a judge. There are clear advantages to a wise use of alternative dispute resolution, but the infringer must be a valued corporation, which is rarely the case when facing large-scale traffics of counterfeit goods.

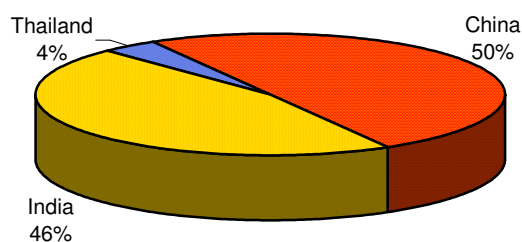
III – The Fight Against Counterfeiting

Everyone understands that an appropriate mix of tools is necessary, but... what is the most efficient weapon against counterfeiters?



- When it comes to the fight against counterfeiting, the audience is making the same analysis as the European Commission. In the first hours of the IP Summit on December 4, Robert Verrue, Director General of Taxation and Customs Union DG, stated that the institutions should *"make sure the degree of awareness of consumers increases considerably"*, notably through large campaigns that could show up soon.
- Customs cooperation comes second in most efficient tools, which is no surprise as it prevents counterfeit goods to reach the market, as compared to police and justice actions, later when the infringement is already committed.
- The surprise is more on the side of technical protections. In the past, for instance, certain DRM solutions were seen as ineffective and even occasionally cumbersome. Such a high result (18%) gives hope to the vendors of these products, many of which prove to be reliable either in preventing, or in establishing the proof of the infringement.

In Asia, what country shows the most significant progress towards IP-friendly practices?



- Of the three countries, voters say that China and India appear to have made significant progresses towards more IP-friendly practices. But there is still a lot left to do to comply with the highest standards.
- Only Thailand gets a small score, possibly due to the lack of common knowledge regarding the condition of IP in this country, or maybe as a result of the recent unstable political situation. In effect, the Thai system is also evolving towards more IP-friendly practices.

Will China succeed in increasing its national IP awareness?

- "Optimistic"*, the word pronounced as a comment to this question during the IP Summit, is clearly the best qualifier for this vote. Although a EU-China summit has just been cancelled, the world's most populated country is undergoing crucial changes also in its traditional conception of counterfeiting and handling of cases. Thus, a Shanghai court has just recently awarded high damages to a western corporation facing Chinese counterfeiters.

