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EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

OPINION OF ADVOCATES GENERAL
delivered on 2 July 2010¹

Opinion 1/09

Request for an opinion by the
Council of the European Union

“Request for an opinion – European and Community Patents Court – Compatibility with the treaties of a draft Agreement creating a unified patent litigation system – Litigation between individuals related to the validity and/or the enforcement of Community patents – Guarantees for ensuring full application and respect of the primacy of the European Union law – Reference to the European Court of Justice for a preliminary ruling – Remedies in case of breach of the European Union law or in case of failure to comply with the obligation of reference for a preliminary ruling – Language regime – Admissibility of the request for an opinion”

¹– Original language: French

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[...]

3. Conclusion

123. In the light of the foregoing considerations, the Advocates General consider the envisaged Agreement, as it stands at present, as incompatible with the treaties. The reasons for this incompatibility can be summarised as follows:

- The guarantees contained in the draft Agreement for ensuring full application and respect of the primacy of the European Union law by the European and Community Patents Court are insufficient (see paragraphs 78 to 93 of this opinion).
- The remedies available in case of breach of the European Union law by the European and Community Patents Court and in case of failure to comply with its obligation of reference for a preliminary ruling pursuant to Article 48, paragraph 1, of the draft Agreement are insufficient (see paragraphs 104 to 115 of this opinion).
- The language regime before the central division of the European and Community Patents Court might violate the rights of the defence (see paragraphs 121 and 122 of this opinion).
- The draft Agreement, read in the light of all the measures contemplated in matters of patents, does not meet the need to ensure an effective court control and a correct and uniform application of the European Union law in the administrative litigation relating to the grant of Community patents (see paragraphs 68 to 75 of this opinion).

VI – Proposed answer to the request for an opinion

124. For the reasons set out above, the Advocates General propose that the Court answers as follows to the request for an opinion by the Council of the European Union:

“As it stands at present, the envisaged Agreement creating a unified patent litigation system is incompatible with the treaties.”

On behalf of the Advocates General,

Juliane Kokott

Advocate General