

### 3. Common judiciary in the framework of community rights: Baltic perspective

The possibility of a common regional jurisdiction in the Baltic countries is to be addressed, especially when discussing the adjudication of cases regarding community rights<sup>233</sup> as well as European patents. After some recent discussions on this point, the concerns expressed concerning, *first*, a requirement that judges of such a court have a technical education, and, *second*, a language issue that could impose the need to change the national constitution, which currently clearly states that all legal processes must be held in the national language, could be reasonable.

It should be pointed out, however, that the main reason for not establishing a regional specialized court in the Baltic countries is a lack of cases in regard to European patents<sup>234</sup> and, moreover, a modest number of patent cases in Lithuania in general. A modest number of patent cases has been also reported in Latvia and Estonia<sup>235</sup> with a reference to the non-specialization of judges or a lack of qualified judges. This could also be supported by the currently observable fact that the so-called innovation performance in the Baltic countries is still either “catching up” (for Lithuania and Latvia) or “trailing” (for Estonia)<sup>236</sup>.

## V. *IP practitioners and their role in IP enforcement-related processes: professionalism as the key factor*

### 1. Legal representation

A number of local specialists and scholars have correctly stated that professional preparation, experience, and passion for IP cases by IP professionals – patent and trademark attorneys and attorneys-at-law – is an important ‘human’ factor which plays a significant role in the quality and success of IP cases. The professional qualifications<sup>237</sup>, competence and relevant experiences of local patent attorneys and attor-

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233 Community Trade Marks (Council Regulation 40/94/EC); Community Designs (Council Regulation 6/2002/EC).

234 Such concerns and arguments have been expressed in the public discussion held on 11 July, 2007, in Vilnius with regard to an official position of Lithuania related to the patent system in Europe, see more in the *Report of the Council of the European Union Work Group on Intellectual Property (Patents) (2007)*, due to the Commission of the European Communities Communication from the Commission to the European Parliament and the Council on Enhancing the Patent System in Europe, Brussels, 3.4.2007 COM(2007) 165 final. *Note*: see also *refs.* to statistical data in previous section.

235 See *Ibid.*

236 See Annex III, Commission of the European Communities Communication from the Commission to the European Parliament and the Council on Enhancing the Patent System in Europe, Brussels, 3.4.2007 COM(2007) 165 final.

237 See more on the requirements to become a patent and trademark attorney as well as an attorney-at-law in the Baltic countries in *Heath, Dietz et al.*, Enforcement of IPRs in Eastern Europe, pp. 888-890 (for Estonia), pp. 901-902 (for Latvia), pp. 915-916 (for Lithuania).

neys-at-law allow them to provide appropriate legal services in IP infringement cases not only in the national courts, but also worldwide.

As far as *locus standi* of the right holders in judicial practice is concerned<sup>238</sup>, it is observed that in the national courts IP right holders are usually represented by legal representatives, *i.e.* attorneys-at-law or patent attorneys, as defined in the national civil procedural codes. It is mainly due to the fact that, for instance, the Lithuanian CCP requires a party, which wants to be represented in the court, to hire a professional representative<sup>239</sup>. In IP civil proceedings those professional representatives are attorneys-at-law and (or) assistant attorneys-at-law. The Estonian and Latvian civil procedure codes provide more extensive list of representatives in court proceedings who are not necessarily advocates or assistant advocates<sup>240</sup>. On the one hand, such requirement means higher litigation costs; on the other hand, it assures a professional collection of evidence, a preparation of all necessary procedural documents to be submitted to the courts, especially considering the fact that nowadays the national civil procedures are intended to be mainly written, as well as a due presentation of a party during the court hearings.

## 2. Patent and trademark attorneys

During the last decade, along with an increase of IP cases in general and due to the specific educational and training programs organized, *inter alia*, by the national patent offices and other state institutions, the competence and qualification of IP professionals has noticeably increased. However, as may be illustrated by the present numbers of patent attorneys<sup>241</sup> and attorneys specializing in IP in the Baltic countries, this field of legal expertise is not widespread. Although the relatively small Baltic IP market and the modest number of IP cases brought to courts within recent years, especially the ones related to industrial property rights such as patents or designs<sup>242</sup>, do not illustrate a need to have more IP practitioners in the future, some main factors which are deemed to be important for the enforcement of IP rights should be noted.

As far as the formal requirements to become a patent and trademark attorney are concerned, common features in regard to this professional activity for all three Baltic countries can be observed: the candidates must pass an examination and be regis-

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238 See further examination on the implementing legislation regarding *locus standi* in *infra* § 5C.V.

239 Art. 56, the Lithuanian CCP.

240 *E.g.*, pursuant to Art. 218(1)(6) of the Estonian CCP it can be “other persons whose right to act as a contractual representative is provided by law”.

241 There were 57 patent attorneys in Lithuania, 64 patent and trademark attorneys in Latvia, and 54 patent attorneys in Estonia registered in 2008. The list of the currently registered patent and trademark attorneys in the Baltic countries can be found at *Estonian Patent Office Information (2008)*, *Latvian Patent Information (2008)* and *Lithuanian Patent Information (2008)*.

242 See *supra* Fts. from 223 to 225 herein.

tered as patent attorneys in the state registrar<sup>243</sup>. The examination of persons willing to become a patent attorney is considered to be an important legal requirement which ensures an adequate legal representation of clients at the national patent offices and at the national courts. In Estonia and Latvia, patent attorneys are solely eligible to represent clients before the courts, whereas in Lithuania a patent attorney can represent a client before the courts only with the attendance of a lawyer. This is due to the fact that there is no requirement for a patent attorney to have a legal education (*i.e.* a patent attorney is required to have an university diploma of technical, natural or computer sciences, mathematics *or* legal studies), which is required for legal representation<sup>244</sup>, particularly considering the complexity of patent and trademark infringement cases.

In the current context of national enforcement of IP rights and because of the role of the national patent offices, another underlying practical factor should be presented – the activities of patent attorneys as far as the registration of inventions is concerned. According to the national patent laws, the granting of patents in Latvia and Lithuania is based on a simple registration procedure without an examination of the patentability requirements by the patent offices<sup>245</sup>, whereas in Estonia patent applications are subject to the examination of the patentability requirements<sup>246</sup>. This arguably leads to a situation where the Estonian patent attorneys play a more active role while a patent application is being examined at the national patent office, whereas the activities of the Lithuanian and Latvian attorneys are clearly shifted to the opposition procedures and proceedings in patent infringement cases.

## VI. Concluding remarks

The national IP enforcement regulatory framework in the Baltic countries is established on the legislative level and it functions in coordination with the international (such as WIPO, EPO) and European-wide (such as OHIM), institutions working in the field of IP rights. As far as actual enforcement of IP rights is concerned, the effective work of the established (or re-established) national IP enforcement institutions and authorities is crucial. The implementation of the EU Enforcement Directive into the national legislation and the application of the enforcement provisions in practice are tightly linked to the following factors:

*First*, the efficient work of the national bodies which have a legislative power, *i.e.* the national parliaments and governments, namely, the special Copyright Divisions

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243 See in *Heath, Dietz et al.*, Enforcement of IPRs in Eastern Europe, pp. 888-890 (for Estonia), pp. 901-902 (for Latvia), pp. 915-916 (for Lithuania).

244 As a matter of fact, there is a number of attorneys at law specializing in the IP field in the Baltic countries. The information about them can be found on the official websites of the national law offices, the references to which can be found via the websites of the national bar associations.

245 Art. 10(1), the Latvian Patent Law; Art. 19, the Lithuanian Patent Law.

246 Art. 23(1) of the Estonian Patent Law provides that the Patent Office verifies the compliance of the invention with the patentability requirements.