

Fordham Intellectual Property Institute – 18th Conference

Session 9C – Obviousness/Inventive Step – Comparative View

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Inventive Step or Out of Step?

Unless and until the political issues surrounding the Community Patent and/or the Community Patents Court can be resolved, patent disputes in Europe will be resolved at a national level. The Patents Courts of the major European States have openly expressed the need for a harmonised approach. Judges' conferences are devoted to this very topic. However the fact is that due to the low degree of procedural harmonization between European States, different verdicts are often reached on the same issues in different Courts. This causes uncertainty for patent holders and challengers alike.

This presentation will compare and contrast the approach to inventive step taken by the English Patents Court and the EPO. It will look at the concerns that the English Judges have expressed in relation to the EPO's problem-and-solution approach and ask whether these concerns are justified and whether the English Courts should adopt this regime or continue to use the Windsurfing/Pozzoli approach.