

# Consultation on the seat of the Central Division of the future European Patent Court



## Executive Summary

### Abstract

**O**n 18 June 2012, the French industrial property community unveiled, in Paris, the results of the public consultation which it had launched on the organisation of the seat of the future European Patent Court's Central Division, with a view to the possible location of this Division in Paris.

The French organisations representing all those concerned with industrial property<sup>1</sup> (companies, IP specialists, patent attorneys and attorneys-at-law), with the agreement of the French *Institut National de la Propriété Industrielle (INPI)* and the support of Judges in Paris specialised in industrial property, launched, in May 2012, a consultation with the professionals concerned with the seat of the European Patent Court. The decision on its future (and on the location of the Central Division) is to be made before the end of the Danish EU Presidency at the next European Council on 28 and 29 June 2012.

**2 145 persons** from 54 countries and five continents responded, in descending order: Germany (23.7%), France (23.3%) and the UK (13%); they are mainly working as patent attorneys (52.8%), company IP specialists (29%) and attorneys-at-law (11.5%).

The breakdown of the responses by language is 48% in English, 27% in French and 25% in German. They reflect the actual perception of the professionals who have an interest in the functioning of a European Patent Court.

The main legal rules governing the organisation, the jurisdiction and the functioning of this future Court are laid down in the international draft Agreement which could be adopted at the end of June; and the Rules of Procedure which the Court will apply were prepared under the aegis of the European Commission.

The respondents were therefore asked questions on the material organisation of the Central Division.

The questions related to the hearing schedule (hearing days, periods when hearings should not be held) as well as the premises to host this Division.

The respondents expressed their point of view about the proximity of the airport or the city centre, a good public transport network, the proximity of hotels, a railway station with high-speed trains, the size of the city (megalopolis) and the proximity of a business district.

They also expressed their wishes as to the facilities suitable for the efficient functioning of the Central Division, in particular its hearing rooms.

<sup>1</sup> List of the organisations which set up the consultation:

AAPI: Association des Avocats de Propriété Industrielle

ACPI: Association des Conseils en Propriété Industrielle

AFEP: Association Française des Entreprises Privées

AIPPI: French group of the International Association for the Protection of Intellectual Property

APEB: Association des Praticiens Européens des Brevets

ASPI: Association Française des Spécialistes en Propriété Industrielle de l'Industrie

CNCPI: Compagnie Nationale des Conseils en Propriété Industrielle

LES France: Licensing Executives Society France

MEDEF: Mouvement des Entreprises de France

ODA: Ordre des Avocats à la Cour d'Appel de Paris

## I. Introduction

The French entities and associations whose logos appear hereafter have joined together to support the project of the European Union and its Member States to create a unitary patent and a specialised Court having jurisdiction to hear litigation over unitary and European patents.



They represent:

- the companies using these instruments through the **MEDEF**, the **AFEP**, the **CGPME** and their specialists in intellectual property (**ASPI**);
- **Ordre des Avocats à la Cour de Paris** and the attorneys-at-law specialised in intellectual property (**AAPI**);
- patent attorneys (**CNCPI** et **ACPI**);
- Intellectual property associations: the **French group of AIPPI**, **LES France**, the **APEB**, the **AACEIPI**, the **AFPPi**.

In agreement with the **INPI** (*Institut National de la Propriété Industrielle*, French Patent Office) and with the support of all the judges specialised in intellectual property in Paris (*Tribunal de Grande Instance*, *Cour d'Appel* and *Cour de Cassation*), they wished to give professionals the occasion to express their expectations on the material organisation and operation of this Court.

For this purpose, the institute **Premier Cercle™** was appointed by these entities and associations to hold a consultation with industrial property professionals in Europe and around the world. The questionnaire was prepared by professionals for professionals and is intended to draw the attention of the European and national competent authorities to the needs that must be met.

We would like to thank everyone who contributed by responding to the questionnaires so that we might, together and without delay, prepare the future.

## II. Response rates

The consultation was carried out on the basis of three online questionnaires in English, French and German to allow the greatest number of persons to respond.

The consultation period began on Friday 4 May at 15:00 hours and ended on Saturday 12 May at 15:00 hours, i.e. lasting eight consecutive full days.

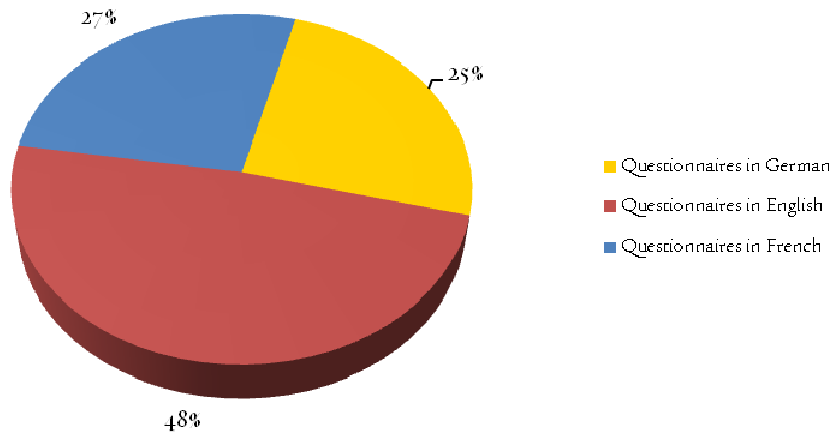
The consultation has run from Friday 4 May at 3 pm to Saturday 12 May at 3 pm, which accounts for 8 full days in a row.

### 2 145 persons responded.

The distribution of the responses is shown below :

- responses to the questionnaires in English : 1,041
- responses to the questionnaires in French : 572
- responses to the questionnaires in German : 532

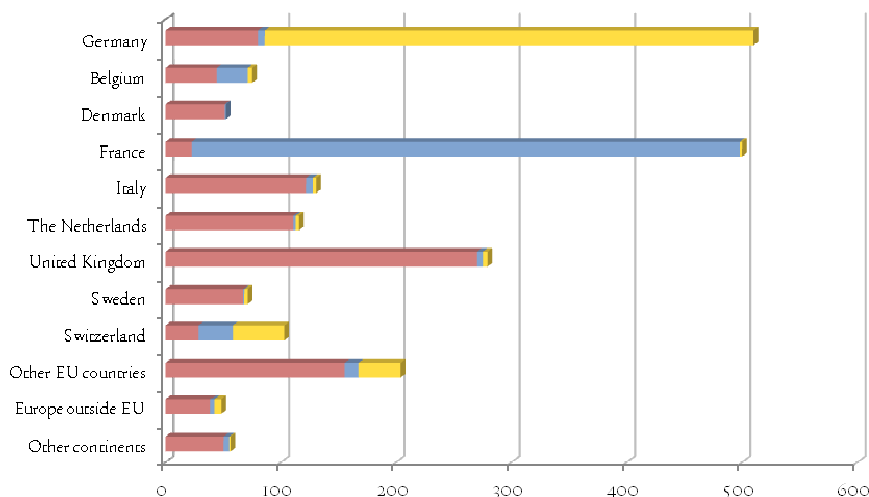
**Fig. II.1.: Responses to the questionnaires**



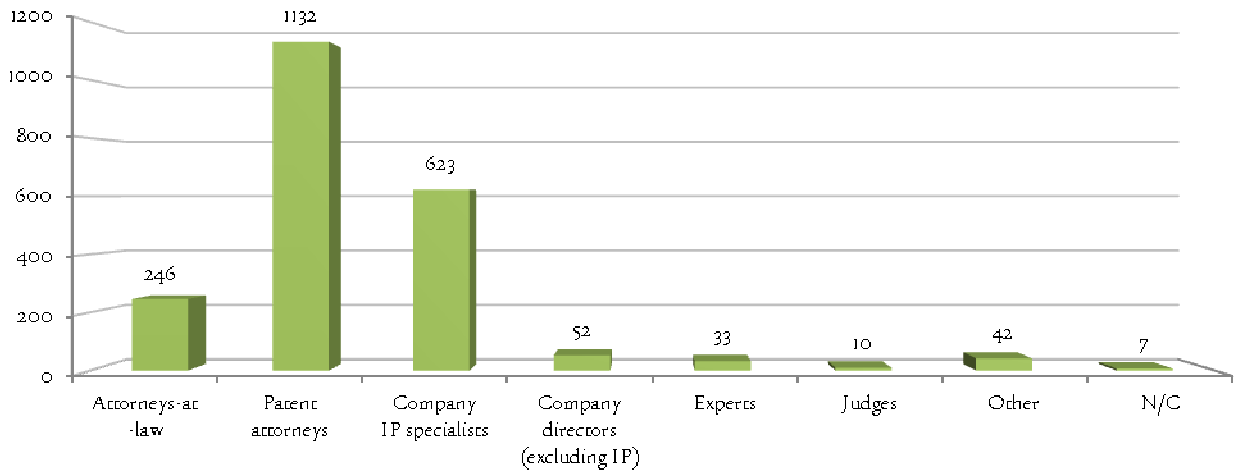
## III. Respondents' profiles

The majority of the respondents are European. Overall, residents of 54 countries responded to the questionnaire. Coming from five continents, the responses add an international dimension to this consultation.

**Fig. III.1.: Responses to the questionnaires by country of residence**



**Fig. III.2.: Professional profiles of the respondents to the consultation**



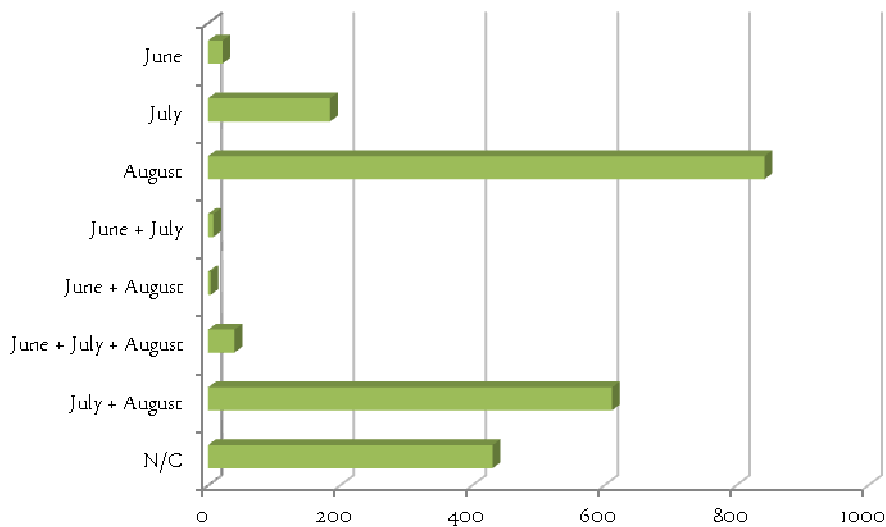
The three most represented professional profile categories among the respondents to the questionnaire are those of patent attorney (52.8%), company IP specialist (29%) and attorney-at-law (11.5%).

## IV. Hearing calendar

### I. Months when the Court should not hold a hearing, except in the case of an emergency

The questionnaire gave the respondents the choice of selecting one or several months of the summer period: June, July and August. It was also possible to not respond to this question, which is translated by the field wording “N/C” in figure IV.I. hereafter:

**Fig. IV.1.: Months when the Court should not hold a hearing, according to the respondents**



The month of August alone represents 39.3% of the wishes expressed by the respondents. This response falls far ahead of the July + August combination (28.5%). July alone is only quoted by 8.6% of the respondents. 20.1% of them refrained from responding to this question.

**2. Festive periods when the Court should not hold a hearing, except in the case of an emergency**

Here too, the questionnaire gave the respondents the choice of selecting one or several festive periods. Only two festive periods were mentioned, Christmas and Easter, but the questionnaire provided the possibility of selecting the box “Other” and writing one or more additional festive period(s).

*Fig. IV.2.: Bank holidays when the Court should not hold a hearing, according to the respondents*

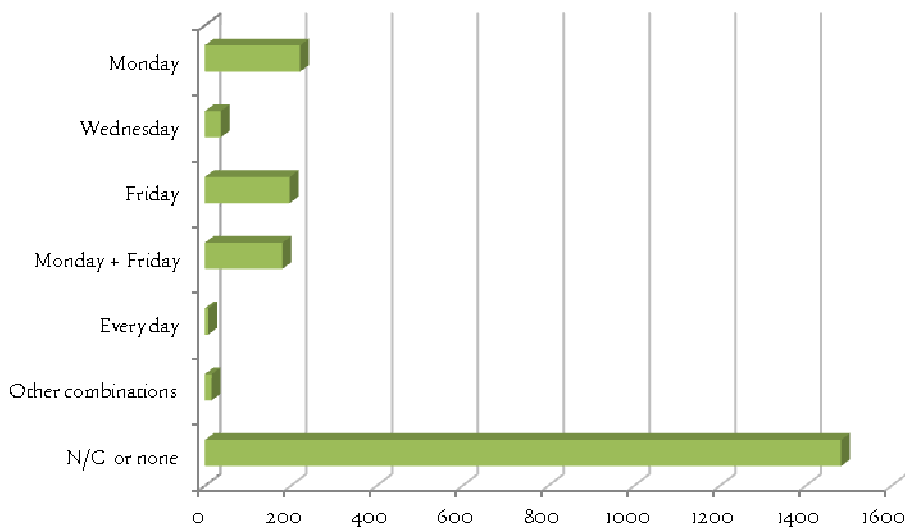


Even though Christmas was chosen by 29% of the respondents, the double choice Christmas + Easter received the largest number of votes (52.6%).

**3. Days of the week when the Court should not hold a hearing, except in the case of an emergency**

The questionnaire gave the respondents the choice of selecting as many days of the week as they wished. It was also possible to not respond to this question, which the majority of the respondents opted to do in the present case.

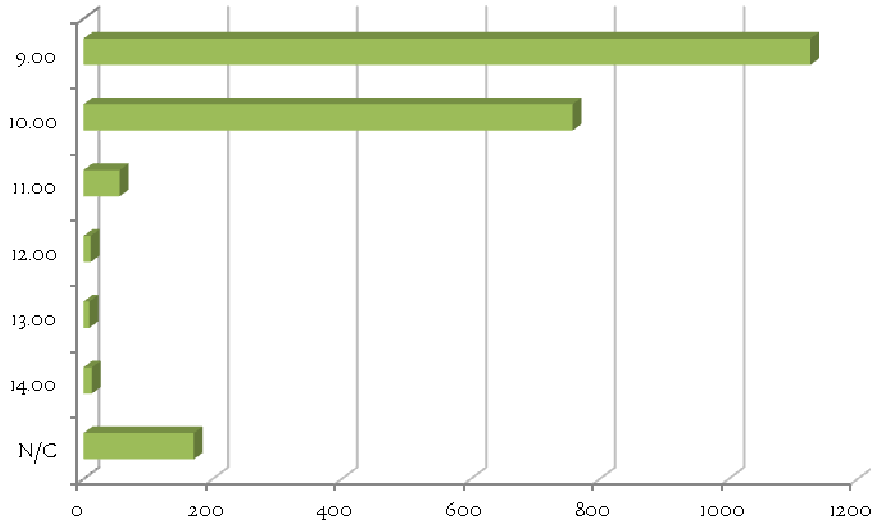
*Fig. IV.3.: Days of the week when the court should not sit, according to participants*



#### 4. The start and end times of the hearings

In this case, the questionnaire required the respondents to select only one box. It was also possible to not respond to this question, which is translated by “N/C” in the graph hereafter.

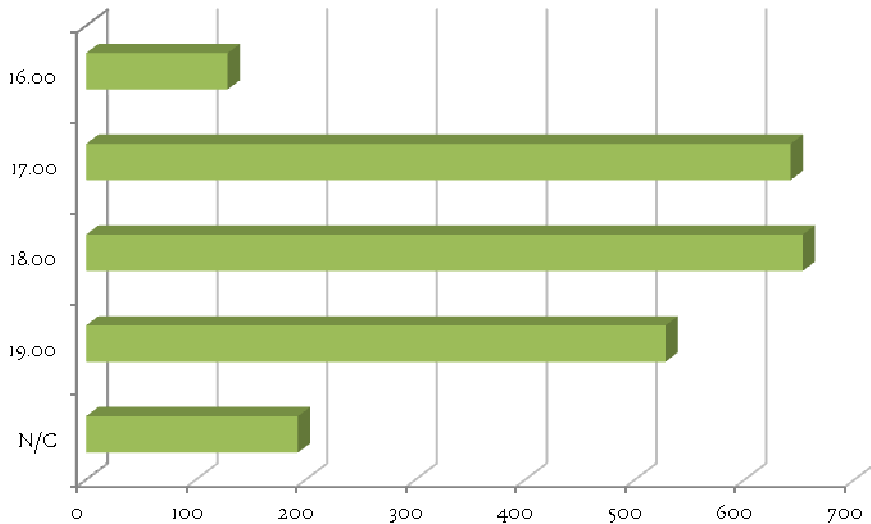
*Fig. IV.4.a.: Start time of the hearings, according to the respondents*



52.5% of the respondents recommend that the Court start at 9.00 hours, 35.3% at 10.00 hours and 2.6% at 11.00 hours.

Similarly, regarding the end time of the hearings, the questionnaire requested that the respondents select only one box. It was also possible to not respond to this question, which is translated again by “N/C”.

*Fig. IV.4.b.: End time of the hearings, according to the respondents*



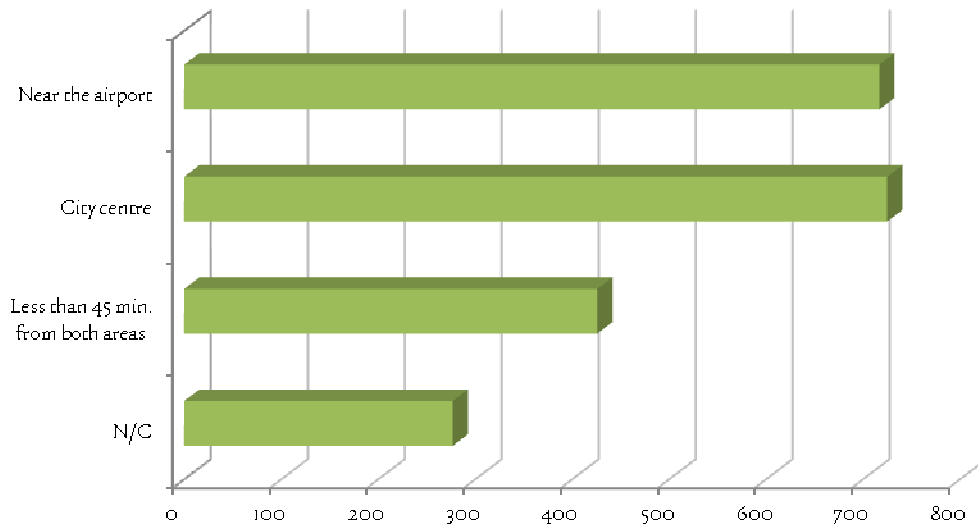
Opinions on the end time of the hearings are more divided. Even if 18.00 hours wins by a narrow margin, 17.00 hours may be a better compromise, notably to allow the persons who do not reside in the country of the Court’s seat or in a neighbouring country to fly home on the same day.

## V. Location constraints

### I. Location constraints for access and stay

The respondents were asked in a closed-choice question to select only one of three proposals. It was also possible to not answer the question. Having selected, the respondents were also invited, if they deemed it useful, to complete the answers with other proposals.

**Fig. V.1.: Location constraints, according to the respondents**



725 respondents (33.8%) answered “Near the airport” and 717 respondents (33.4%) answered “City centre”.

### 2. Location constraints: expressed satisfaction

More than half (50.6 %) of the respondents to the questionnaires are satisfied with the three proposals stated in the previous question, namely, that the Court be situated :

- near the airport; or
- in the city centre; or
- less than 45 min from both areas.

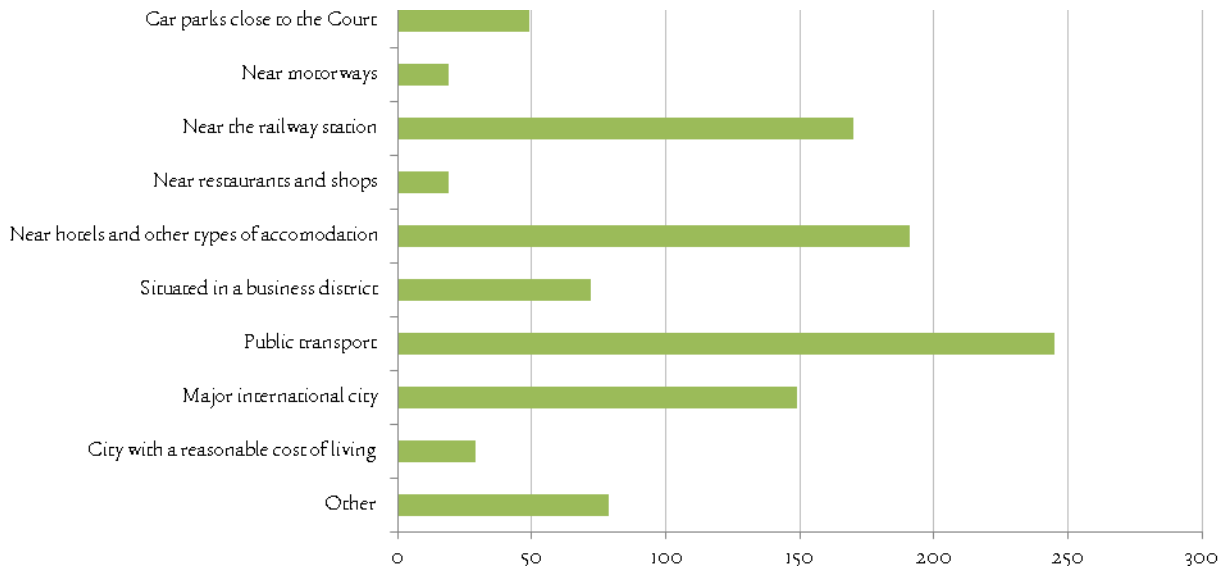
29.4% of the respondents find that this list is incomplete, and 26.5% suggest that additional factors be considered, factors which are closely examined on the next page.

After collecting all the answers and classifying them by analogy based on the themes, it was noted that 1,022 comments were made by the respondents in relation to location constraints.

The proposals shown in graph V.2. were made as free comments by the respondents. Consequently, they are not mutually exclusive.

Therefore, the same person may have wished that the Court be located simultaneously in a business district, with ample choice of public transport, near a train station and near hotels.

**Fig. V.2.: Other location constraints mentioned by the respondents**



**Public transport**

**Near hotels and other types of accommodation**

**Near the railway station**

For a large number of respondents, in particular the English, German, French, Belgian, Dutch and Swiss respondents, the presence of a railway station with high-speed international trains such as the Eurostar, the ICE and the TGV, rather than an international airport, is a decisive factor. 16.6% of the comments insist on the importance of having a railway station within a short distance from the Court, and also high-speed services to foreign countries.

**Major international city**

The persons who expressed this opinion envisioned that the city where the Court will be located would be a large capital city or a megalopolis with one or several airports close by, offering direct international flights worldwide, but also with railway stations providing links abroad. 14.6% of the comments mentioned this point.

**Situated in a business district**

7% of the comments consider that the Court’s location in a business district or nearby is of prime importance. Expectations in this regard concern the presence in the same location of the head offices of international companies, reputable legal firms, in particular in the field of intellectual property, financial specialists, service providers such as translators, and also offices to rent.



## VI. Facilities available on the Division's premises

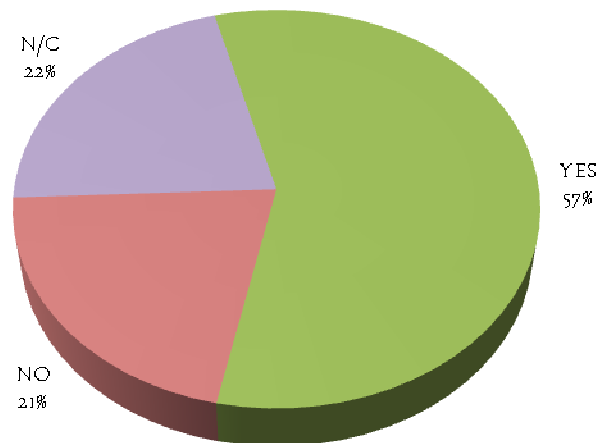
### Facilities available: expressed satisfaction

For reference purposes, the list provided was as follows:

Please indicate whether you think that this list is exhaustive or indicate if other items should be added.

- Cloakroom
- Locker room for luggage
- Waiting room
- WiFi
- Basic law library
- Secretarial services: fast colour printing, fax, hotel, train, airplane and taxi reservations
- War rooms: rooms next to the hearing rooms for meetings with the clients before the hearings, during pauses and after the hearings
- Catering facilities
- Taxi rank

Fig. VI.1 : "Do you think that this list is exhaustive?" answers from the respondents



## VII. Capacity and facilities of the hearing rooms

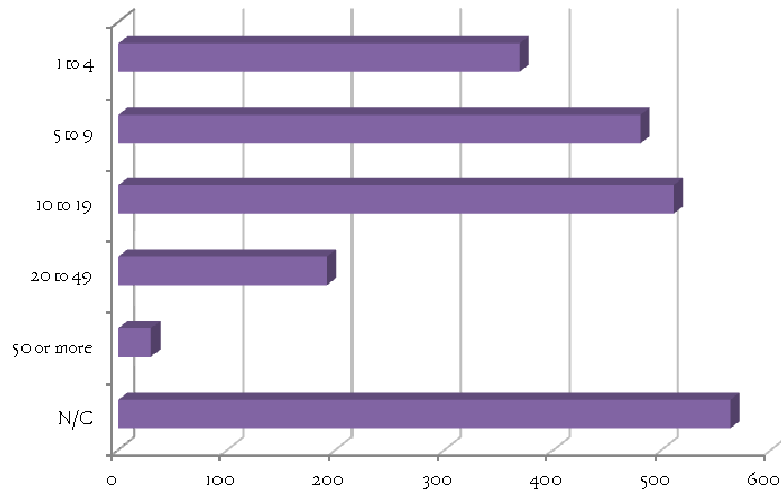
### A. Hearing room capacity

This section of the questionnaire included two questions requesting that respondents enter a number. In principle, a practical experience of patent litigation was required to answer the questions, which explains why approximately 26% of the respondents did not provide an answer.

#### How many party representatives should a hearing room accommodate?

The main answers to this question vary, in descending order, from 10 to 19 (23.8%), from 5 to 9 (22.4%) and from 1 to 4 party representatives (17.2%).

**Fig. VII.1. Number of party representatives which a hearing room can accommodate**



10 to 19 representatives is the most frequently given answer and represents cases of greater importance. 9% of the respondents chose the 20-49 bracket and only 1.4% of them answered more than 50 party representatives.

**B. Hearing room facilities: expressed satisfaction**

For reference purposes, the list provided was as follows:

*Please indicate whether you think that this list is exhaustive or indicate if other items should be added.*

- Desks and microphones for the party representatives
- Electrical sockets for portable computers
- Desk name plates for the parties represented and their counsels
- Screen
- Video projector
- Switch for connecting several portable computers to the video projector
- Speakers (for audio files)
- Paperboard
- Stenographer’s desk
- Simultaneous interpreting booths
- Video conferencing, for hearing a witness or a party representative not present at the hearing

**Fig. VII.2. “Do you think that this list is exhaustive?” responses from the respondents**

