

DFH/JPC/mgh/5.1/8/1

9 November 1999

Mr Frits Bolkestein,
Member of the European Commission,
200 rue de la Loi,
C 107 6/58

1049 - BRUXELLES

Dear Sir,

A sound legislative framework for intellectual property protection is crucial to Europe's economies because it promotes innovative activities by firms and helps them market their inventions.

UNICE has therefore consistently called for adoption of high standards in this field and has strongly supported Commission instruments aimed at creating a true Single Market for the protection of these rights.

However, before new rights are introduced at EU level, it is necessary for proposals to be assessed on the basis of a wide strategic and political perspective, and their possible impacts on Europe's competitiveness analysed.

In this context, UNICE is increasingly concerned about the "*utility model*" dossier.

Ever since the Commission started work on this topic in 1995, UNICE has repeatedly expressed concern about the likely negative impact of this initiative on the whole patent system in Europe and its possible harmful effects on SMEs.

The current proposal would introduce a form of intellectual property protection that does not exist across the Atlantic, is being abandoned in Japan, and would be new to many EU countries if adopted as proposed. By doing so, Europe would open its market without reciprocity to its main competitors and risks being flooded, particularly via English-speaking EU countries, with foreign registrations of a right that is not examined, can only be tested through litigation, and can be granted to virtually all new products given the very low level of inventiveness required to qualify for protection.

It is argued that the proposed directive is intended to favour SMEs. UNICE would urge the EU institutions to look behind the deceptive first impression that this right is more flexible and

less burdensome. These advantages will apply to all companies but will mainly be used by those familiar with the intellectual property system, to the disadvantage of SMEs.

The most probable scenario, if the proposed system becomes reality, is that large companies (European, Japanese and American) will protect most products by utility model registration, thereby barring access to those markets for European SMEs.

In UNICE's view, the proposal could end up harming SMEs more than helping them.

A recent survey by one of UNICE's member federations shows that SMEs themselves now realise that they will be disadvantaged in the face of the proliferation of these un-examined rights.

Last but not least, UNICE believes that the proposed instrument could have a negative effect on the whole patent system in Europe because:

- this would lower the threshold for protection of inventions and set up a cheaper, but poor, parallel system;
- this, in turn, could in the long run downgrade European standards of protection, thereby devaluing many years of efforts to provide Europe with appropriate standards of intellectual property protection;
- once again, the position of European firms vis-à-vis their competitors (mainly the USA and Japan) could be severely affected.

In the light of the above comments we would urge you to take the necessary steps to freeze this subject until further thought has been given to the need for and possible negative impact of the proposed instrument.

We would highly appreciate it if we could discuss this subject further with you in the near future.

Yours sincerely,

(original signed by)

Dirk F. Hudig
Secretary General