

PROPOSAL FOR A REGULATION CREATING A COMMUNITY PATENT

GENERAL MESSAGE

At a time when innovation is acknowledged as a key element of economic and employment growth, the Union of Industrial and Employers' Confederations of Europe (UNICE) very much welcomes the European Commission proposal to create a Community patent, as a step further towards completion of the Internal Market in the field of intellectual property.

The costs and legal uncertainty generated by the lack of an integrated EU patent system are major hurdles standing in the way of innovation in Europe. This means that European innovators, and in particular SMEs, are at a competitive disadvantage as compared with US and Japanese companies on their own markets in terms of patenting costs.

In this context, UNICE welcomes the Commission proposal to create a Community patent, as a unitary title, granted for and valid in the whole territory of the EU. This proposal, whose aim is to create a cost-effective, centrally granted and uniformly litigated Community patent, can boost transformation of European research results and technological and scientific European know-how into commercial success stories.

One of the key aspects of the proposal is the arrangement concerning translation of the Community patent since it will have a direct impact on the cost of the proposed instrument. The Commission proposal, even though not fully in line with UNICE's position, will provide for a considerable reduction in translation costs compared with the existing system. In this context the Commission proposal should be supported. Tampering with this crucial element would jeopardise the objective of adopting an instrument that is cost-effective and can be used by SMEs.

As far as jurisdictional arrangements are concerned, UNICE would like to stress once more that only an integrated Community court at first and second instance comprising judges experienced in the law of patent infringements and validity can guarantee legal certainty by providing unity of law, procedure and case law, and cut down litigation costs. This is one of the key aspects needed to create rightholder confidence in the integrity of the system needed to make it attractive to use. The

current proposal meets potential rightholders' needs in this respect and will reduce substantially the costs linked to the current need to litigate infringement and validity in each member state concerned.

UNICE is well aware that the proposed Community Intellectual Property Court needs to be established by way of an amendment to the EC Treaty. UNICE deeply regrets that the Nice Summit was not able to approve a Treaty change in order to allow creation of such a Community court, which is one of the keys for the success of the Community patent. UNICE hopes that on the basis of the mandate given to the Council, an agreement on creation of a Community Intellectual Property Court will be reached rapidly and that Member States will ensure rapid progress on this dossier.

Last but not least, UNICE welcomes the fact that the European Patent Convention will be the substantive law applicable for grant of the Community Patent and that strong links will be created between the European and the Community patent system.

Adoption of a Community Patent that can encourage innovation was listed by the Lisbon Summit as a deliverable for 2001. UNICE hopes that the EU will now transform the Lisbon declarations into action by supporting this proposal without altering the judicial and translation arrangements. By so doing, they would start building up a system that has the potential to provide European inventors with tools similar to those available to their main competitors in Japan or the USA.

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