

**PROPOSAL FOR A COUNCIL REGULATION ON THE COMMUNITY PATENT
COM (2000) 412 FINAL**

UNICE MESSAGE

UNICE welcomes the fact that the Belgian Presidency has made the Community Patent a priority issue and is currently reflecting on a proposal updating the Common Approach adopted at the Internal Market Council meeting on 31 May 2001.

UNICE would like to take this opportunity to explain further its position as well as to evaluate whether this latest proposal can meet users' expectations and improve the climate for innovation in Europe.

THE COMMISSION PROPOSAL

The Commission proposal of 1 August 2000 was supported by UNICE since it was based on the explicit statement that the Community Patent must be of a unitary character, affordable, guarantee legal certainty and coexist with the present patent systems in Europe. The Commission has set out the essential elements for a system that fulfils these requirements; namely:

1. A unitary Community patent providing incentives for inventors and remedying the current cost-gap vis-à-vis the US and Japanese patents;
2. A reliable jurisdictional system, based on a common court specialised in patent matters and competent to examine infringement and validity of Community patents for the entire Union;
3. An instrument that makes use of the present European Patent system and can coexist with it.

THE BELGIAN COMMON APPROACH

Since the Commission issued its proposal, discussions at Council level have considerably affected the content of this initiative. UNICE feels that there is a substantial risk that the ongoing discussions will lead to a unsatisfactory political compromise which would fall short of meeting users' needs.

The Common Approach proposed by the Belgian Presidency has raised concerns within industry for the following reasons:

1. Translation costs and fees will not be reconcilable with the aim of a Community Patent that is favourable to competitiveness and affordable for small and medium-sized companies;
2. Search and/or examination of patent applications by national patent offices could put at stake the whole European patent system as this would lead to a re-nationalisation of the tasks of the European Patent Office (EPO) in contrast to what was decided at the time of its creation;
3. Substantial progress on the jurisdictional arrangements is lacking: it is paramount for the Community Patent that users can rely on a common court system with decentralised first instances, composed of expert judges, which guarantee high quality decisions within a reasonable timeframe.

USERS' VIEWS

In order to fulfil its purpose of improving the climate for innovation in Europe, the Community Patent regime must comprise the following **essential elements**:

1. **AFFORDABILITY:**

The language regime for the application and grant of Community patents must not exceed the current EPO language system (English, French, German) and as also proposed by the Commission. Translation of claims is not acceptable as this is not adequate for litigation purposes and would not serve the interest of disseminating information to the public.

2. **LEGAL CERTAINTY:**

- The jurisdictional arrangements to be created for Community patents are key to its success and must be clearly outlined before adoption of the proposal;
- The jurisdictional regime should be based on **a common court system** with decentralised first instance chambers;
- The jurisdictional arrangements must be based on expert judges managing cases proactively;
- The procedural language regime must be affordable and allow efficient handling of cases;
- The system must be coordinated with a future common jurisdictional system for disputes concerning European Patents. Users cannot accept two parallel, incompatible and non-harmonised systems for conflicts related to patents granted by the same office, based on largely identical substantive law and covering partly the same territories.

3. **COEXISTENCE WITH EPC:**

- Community Patents must be granted by the EPO;
- **The very large majority of UNICE's members remain opposed to re-nationalisation of the search and/or examination activities of the EPO to national patent offices;**
- If a number of individual national patent offices are entrusted with search and/or even possibly examination tasks by the EPO Administrative Council, it will be an impossible task to implement and enforce adequate systems for quality control and the **unitary** character of the granted patents. This will be particularly true in a situation when the national patent office concerned does not fully meet the objective quality criteria laid down in the PCT;

A compromise involving such a hand-over of work to national patent offices could jeopardise the existing quality and uniformity of the present European Patent system. Such a situation would be a step back towards mutual recognition of nationally granted patents, a principle dismissed when the present European patent system was established.

CONCLUSION

1. UNICE will **not** support creation of a **Community Patent** that does not fulfil the basic requirements of "*unitarity*", quality, affordability, legal certainty and coexistence with the EPC as described above.

If there is not yet consensus throughout the European Union about how to ensure that these principles are respected when creating a Community Patent, **the innovative industry will be better served if efforts to improve the system for patents in Europe are instead focused on measures to reduce the costs for European Patents and to create a common jurisdictional system for such patents.**

In UNICE's view, it would be better to have no Community Patent rather than a bad one.

2. UNICE urges that efforts be maintained to achieve progress on the Community patent without linking it to the creation of a Community Utility Model which would satisfy only a restricted number of Member States and would harm the interests of companies, in particular SMEs.

UNICE calls upon national Governments to ensure that the compromise they reach at the next Internal Market Council Meeting (26 November 2001) does not lead to creation of a Community instrument that fails to respond to the needs of its users and is not propitious to improving the climate for innovation in Europe.