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EUROPEAN PATENT LITIGATION AGREEMENT

A reliable litigation system providing consistent and efficient enforcement of European Patents is key for industry.

UNICE has from the outset consistently supported work on setting up an integrated judicial system, including common rules of procedure and a common court of appeal, for litigating infringement and validity disputes concerning European Patents.

The result of this work – European Patent Litigation Agreement (EPLA) – is not an alternative to the creation of the Community Patent system but rather a first step to improve patent litigation within the European Community. 600 000 European patents are in existence, they will continue to coexist with Community Patents and remain of primary importance for industry. In this respect, it should be considered that the translation regime for Community Patents will lead to a more expensive Community Patent than was originally envisaged. For reasons of costs more companies will continue to use the bundle patent than would have been the case had the Community Patent originally proposed by the Commission come into being.

UNICE understands that the negotiations on the EPLA have reached a critical stage.

In this context, UNICE would like to reiterate its strong support to the EPLA as a means to adapt the present system of European Patents to the needs of industry in a single European market and to avoid the harmful effects of the disparities of current national procedures.

It is therefore necessary for industry to ensure the compatibility of the judicial systems for Community and European Patents.

A deliberate choice was made for the future co-existence of the Community Patent to be granted by the European Patent Office (EPO) and the European bundle Patents to be granted by the same EPO. Without EPLA, this would lead to judicial proceedings with regard to these bundle patents having to be handled by national courts. In fact, this would continue the present practice of disputes being settled differently in different countries in terms of procedures and content. In addition to this, Community Patents would be dealt with under Community jurisdiction. UNICE does not consider such an outcome desirable.

An operational common patent judiciary under EPLA will also be a basis for providing patent judges with the appropriate experience in the start-up phase of the Community Patent judiciary.

It should be clear in the light of the above why European industry attaches such great value to EPLA. It would be an important step forward if bundle patents and Community Patents could be dealt with under the same judicial system. Only then would unambiguous and uniform handling of patent disputes relating to patents granted by the EPO come into effect.

UNICE welcomes the wide support of the work on EPLA among the EU Member States and urges them to take a pro-active stance in successfully concluding the EPLA negotiations.

UNICE urges the European Commission to take a more positive approach towards the work under way for the EPLA. EPLA is neither a competition nor a threat to the Community Patent but only a development under the EPC which, according to the draft Community Patent Regulation itself, will remain available as a choice for applicants. In this context, further development of the EPLA should not be impeded by the European Commission.

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