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THE SECRETARY GENERAL

Dear Mr Kuwata,

UNICE has been following closely the latest developments in Japan in relation to a number of recent judgements by Japanese courts regarding the issue of “reasonable remuneration” for employees’ inventions.

UNICE understands that the relevant provisions of the Japanese Patent Law (Section 35) are currently under revision in the Japanese Parliament.

In this context, UNICE would like to express its alarm regarding the extremely high level of remuneration awarded by the courts in these cases.

In UNICE’s view, it is essential to promptly and strategically exploit inventions that result from R&D activities, in order to stimulate innovation. Research conducted in companies relies heavily on the inventiveness of employees engaged in R&D activities, who create inventions as part of their professional duties.

It is, nevertheless, common practice that exploitation and commercialisation of inventions are conducted by the companies which have funded the inventions. Under such circumstances, it is necessary to establish an environment in which companies can effectively exploit the rights created by their employees’ inventions, since they bear the burden and risks with a view to strategic exploitation of the results of R&D activities. This also corresponds to the essence of economic activity, namely that the one who takes the risks gains a reasonable return.

UNICE is seriously concerned that the concept of “reasonable remuneration” under Section 35 of the Japanese Patent Law, where remuneration can be claimed up to 10 years following the lapse of a patent, will increase uncertainty in research and development investment activities by companies and will cause companies to bear unforeseeable liability for a long period of time. This could have a serious impact on long-term business management.

Inventions are generally an ordinary and expected part of an employee's job. Employees' remuneration for their inventive ideas should therefore not be regarded as anything exceptional but rather as part of their usual remuneration - possibly as a bonus part. Leaving the amount of remuneration to be granted to the arrangements (including a contract) between companies and the inventors/employees, ensures the necessary balance between the rights of employees who made the invention and employers who supported the employees.

In this context, UNICE considers it necessary to emphasise that if this recent trend continues, European companies will be hesitant to engage in joint R&D activities with Japanese companies. Furthermore, European companies will think twice before establishing R&D bases in Japan.

In recent years, UNICE has been closely monitoring developments at Community level regarding the issue of employees' remuneration for their inventions and in no EU Member State where such schemes exist are such extremely high sums awarded.

We hope that these remarks will constructively contribute to the current debate in Japan regarding reform of the employee invention provisions and we remain at your disposal for any further clarification.

Yours sincerely,

(original signed by)
Philippe de Buck