

*****CHECK AGAINST DELIVERY*****

31 January 2006

**HEARING IN THE JURI COMMITTEE OF THE EUROPEAN PARLIAMENT
ON THE “EFFECTIVE PROTECTION OF INTELLECTUAL PROPERTY”
(31 JANUARY 2006)**

SPEAKING NOTES BY KLAUS-DIETER LANGFINGER,
CHAIRMAN OF UNICE’S PATENTS WORKING GROUP

- ❑ One of the most prominent goals of the Lisbon agenda is to develop the EU to be the most competitive knowledge-based economic region in the world by 2010. Intellectual property rights play a major role in achieving this goal by stimulating investments needed to develop and market new innovations, and disseminating technology and other knowledge in socially beneficial ways.
- ❑ Looking forward, as economies develop, the use and value of intellectual capital will gradually replace the value of raw materials as a percentage of capital input toward economic growth. As such, intellectual property is an increasingly important asset that must be continually nurtured, protected and stimulated.
- ❑ The World Economic Forum Global Competitiveness Report indicates a correlation between the protection of intellectual property rights and national competitiveness. In 2004, the 20 countries that were perceived as having the most stringent intellectual property protection were classed among the top 27 in the WEF’s growth competitiveness index. Conversely, the 20 countries perceived as having the weakest intellectual property regimes were ranked among the bottom 36 for growth and competitiveness.
- ❑ Around 178 600 European patent applications were filed in 2004 according to EPO’s statistics. This is a 7% increase compared with the total of 167, 400 applications in 2003 and is also a sign of an upturn in patenting activity throughout Europe and the world. Of the applications filed last year, 42% came from the contracting states of the European Patent Convention, 29% from the USA and 18% from Japan. However, if one compares the EU with Japan and the US, one has to recognise that in these two regions the number of patent filings was more than twice the number of the EPA filings.
- ❑ Is there an explanation? Yes, there is: The EU does not provide for appropriate patent protection with sufficient legal certainty and at affordable cost. Companies in Europe have consistently reiterated the need to further improve the functioning of the European patent system in terms of costs and legal certainty.
- ❑ Despite these clearly addressed deficiencies, we have seen in the last years worrying signals that European policy-makers do not sufficiently take into account the needs of users when debating IP legislation and that intellectual

property does not enjoy the same level of political support in Europe as in the US and Japan.

- Japan, for example has launched a dynamic strategy in the area named “An IP-build Nation”, which is controlled directly by the Japanese prime minister. With this strategy, Japan brings very aggressive tools into use to optimise business exploitation of both private-sector and public-sector R&D investments in order to achieve the highest possible growth and earnings generation.
- By focusing so strongly on intellectual property rights, the Japanese government concentrates on increasing the knowledge content in its exports and on winning a larger share of the global market for technological knowledge.
- In 2003 the U.S. adopted a 21st Century Strategic Plan to address the challenges facing the American patent system in a global context and creating a quality-focused, highly productive, responsive patent granting authority in the U.S. supporting a market-driven intellectual property system for the 21st century.
- Compared with this, let me give you a few recent concrete examples about the situation in Europe:
- You are well aware that Member States of the European Union for decades have been unable to agree on a Community Patent.
- From the very beginning, UNICE asked for a Community Patent with a truly unitary character for the whole territory of the EU. In addition, a useful Community patent has to be affordable and competitive in terms of cost, of high quality, and should make use of and coexist with the present EPO system. Last but not least, the Community Patent should guarantee legal certainty for both infringement and validity issues by providing an appropriate court system.
- Where are we currently? Unfortunately, nowhere. Negotiations are stalemated, no EU presidency seems too eager to touch this issue, Member States are more interested in protecting their own national prerogatives and we still have no appropriate Community Patent.
- European users cannot afford to have a tool that nobody will use and does not meet their needs. We only need a Community Patent that is affordable, of high quality and provide us with the necessary legal certainty as mentioned above – criteria the latest compromise proposed for the Community Patent was far away from achieving.
- In addition to this debate, we recently faced an overwhelming rejection by the European Parliament of the proposed directive on the patentability of computer-implemented inventions.
- An initiative that was launched by the European Commission as a consolidation and clarification exercise of existing patenting practice in Europe became a political debate on the merits of the patent system in general filled with misconceptions.

- ❑ In essence, another initiative designed to contribute to Europe's innovativeness failed. Once again, European policy-makers were unable to recognise the needs of innovative companies in Europe and seemed not to understand what IP stands for.
- ❑ In view of this, the existing European patent system remains of key importance for European users and I would like to make a few points regarding two initiatives that should improve its functioning in terms of costs and legal certainty.
- ❑ The Contracting States of the European Patent Organisation agreed in 2000 to sign the London Agreement which is an agreement on the application of Art. 65 of the European Patent Convention. It is designed to decrease translation costs and make European patents more competitive – which is an urgent need taking into account that EPO patents are roughly three times more expensive as in Japan and five times more costly than in the US.
- ❑ The ratification by the United Kingdom, France and Germany is a sine qua non for the London agreement to enter into force. Whereas legislative proceedings have been completed in Germany and in the UK, it remains unclear if and when France will ratify the Agreement.
- ❑ Experience gained through the last 25 years shows that comprehensive translations of the granted European patents are very rarely used while they are a heavy burden for companies seeking to protect their inventions and improve their competitive position. The political will to make the European economy more competitive should lead to the removal of useless barriers.
- ❑ European companies are actively supporting this Agreement that should also contribute favourably to the debate on the establishment of a Community Patent. Accordingly, we have continuously appealed to all Contracting States to ratify the London Agreement as soon as possible.
- ❑ Turning from the issue of cost to litigation, there may be no need to repeat that a reliable litigation system providing consistent and efficient enforcement of European Patents is key for industry.
- ❑ UNICE has from the outset consistently and actively supported 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 with the European Patent Litigation Agreement (EPLA).
- ❑ We attach great value to EPLA. We are encouraged that very recently a group of European judges also expressed their support for EPLA.
- ❑ European patents are of prime importance and will remain vital for companies, independent of any developments in the Community Patent negotiations.
- ❑ For European users, EPLA is a means to adapt the European patent system to the needs of companies for legal certainty while avoiding the harmful effects of the current divergent national proceedings. Without EPLA, judicial proceedings with regard to European patents would be handled by national courts. This

would continue the current practice of disputes being settled differently in different countries in terms of procedures and content.

- 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 would be an important step forward if European Patents and Community Patents could be dealt with under the same judicial system. A coordination of the judicial systems for Community and European Patents is essential for industry in order to enhance consistency and efficiency in the enforcement of patents within the Community and among the EPC Member States. Only then would unambiguous and uniform handling of patent disputes relating to patents granted by the EPO come into effect.
- We do not see EPLA as competition or a threat to the Community Patent. This is why we have consistently urged Member States of the EU to take a proactive stance in successfully concluding the EPLA negotiations, which are unfortunately currently also blocked.
- Taking into account what has been outlined before, two questions inevitably have to be asked: Where can we go from here? Are things as negative as they seem?
- I am not sure if there are easy answers to those questions but we are firmly convinced that one issue should be a key priority:
- Trying to give to intellectual property in Europe the political and societal support it rightfully deserves and which it does not enjoy for the time being.
- We have heard today how the U.S. and Japan address intellectual property. If we want to build a knowledge-based economy, consistent with the priorities of the Lisbon agenda, this is what we should also do in Europe.
- Intellectual property drives innovation and should not be regarded as a monopoly of the few but as a tool leading to economic welfare, societal and cultural progress for all.
- This is a challenging goal and we should all work together based on each other's experiences and best practices in this direction.
- I thank you for your kind attention and look forward to any questions you may want to raise.

* * *