

To the members of COREPER I and
COREPER II

22 November 2006

THE SECRETARY GENERAL

Dear Ambassador,

UNICE has been closely involved in the debate regarding the future patent strategy in Europe which kicked off in January 2006 with the Commission consultation.

In the context of this debate, one of the main issues is the litigation issue. UNICE has been informed that France recently presented a proposal regarding the future patent litigation system in Europe.

We appreciate the interest expressed by the French government in this issue which is key for companies. We fully share the point of view of the French government that Europe needs a European litigation system for European patents.

We also agree that there should be a close link between that European litigation system and the Community legal order. A treaty to which both the European Community and EU Member States are a party seems the appropriate way to go.

However, regarding implementation of the above principles, we believe that the proposed European Patent Litigation Agreement (EPLA) offers the right approach.

We therefore believe it extremely important that the Council gives the Commission a clear mandate to participate in negotiations of the European Patent Litigation Agreement (EPLA).

We want to stress that we do not support the proposal presented by the French government to give competence to a Community court for the litigation of European patents.

Such a proposal would deprive the jurisdictional system for European patents of most of its fundamental features as provided by the EPLA, notably:

- its cost-effectiveness and efficiency based on an appropriate language regime;
- the presence of technical judges as part of the judicial panels;
- the possibility for EPLA judges to continue to act as national patent judges when not in session as EPLA judges;

The full participation by the European Commission on behalf of the European Community in the EPLA negotiations would ensure that EPLA has a close link to the Community legal order.

We hope that you will take our arguments into consideration during your upcoming discussions on those issues and we remain at your disposal to discuss them further.

Yours sincerely,



Philippe de Buck