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### **BDI CONFERENCE A EUROPE OF INNOVATION – FIT FOR THE FUTURE 30 MARCH 2007 – BERLIN**

**ADDRESS BY BUSINESSEUROPE PRESIDENT,  
ERNEST-ANTOINE SEILLIÈRE**

#### **WHAT KIND OF PATENT SYSTEM DOES EUROPEAN BUSINESS NEED?**

Ladies and Gentlemen, I am honoured to be here today in the presence of distinguished guests and intellectual property experts to give you the point of view of BUSINESSEUROPE on what kind of patent system companies in Europe need.

BUSINESSEUROPE represents more than twenty million companies of all sizes. Our members are 39 national industrial and employers' federations from 33 countries. All our federations work together to improve growth and competitiveness in Europe, while seeking to promote the prosperity and development of European companies.

Europe is currently in a good economic upturn: 3% growth in 2006, an outlook for 2007 that remains positive and unemployment currently at its lowest level since 1990 with strong job creation being the most encouraging sign of this upturn. The EU economy will have created more than 8.6 millions new jobs over the period 2006-2008. This bears witness to the ongoing contribution of European companies to a sustained recovery.

Despite the progress made in economic reforms, Europe's economy is still not competitive enough to face globalisation, population ageing and the challenge of the rapid technological growth. It is necessary that Europe focuses its actions on restoring its competitiveness vis-à-vis other regions of the world which are undergoing tremendous developments.

An environment beneficial to innovation is particularly important to drive forward growth and competitiveness. Here Europe unfortunately lags behind the US and Japan. Less than 2% of Europe's GDP is spent on R&D investment, which compares poorly with 2.5% in the USA and more than 3% in Japan. The gap between EU and US R&D spending represents roughly €65 billion per year. Even though the EU has set the ambitious goal of **investing 3% of its GDP for research and innovation by 2010**, progress has remained sluggish and the innovation gap vis-à-vis the US and Japan is still there.



Intellectual property rights play **a major role** in achieving this goal. They stimulate innovation by giving innovators a return on their investment thanks to the exclusive exploitation of their innovation over a certain period of time. They facilitate the spread of technical knowledge through publication of patent applications, allowing research to be pursued by others.

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 into economic growth. As such, intellectual property is an increasingly important asset that must be continually nurtured, protected and stimulated.

It is our firm conviction that intellectual property is not a monopoly of the few but an instrument leading to economic welfare, societal and cultural progress for all.

The World Economic Forum Global (WEF) Competitiveness Report also highlights this link between the protection of intellectual property rights and national competitiveness. The latest report for the period 2006-2007 confirms this by placing countries with strong intellectual property protection systems among the top countries listed in the WEF's growth competitiveness index.

A robust system for stimulating and protecting European innovation will become even more important in a globalised economy, so as to ensure that Europe continues to be a global centre of knowledge, innovation and job creation.

For **BUSINESSEUROPE**, **intellectual property rights including a strong and effective patent system constitute a foundation for Europe's prosperity and competitiveness.**

Companies in Europe make use of the current European patent system as the statistics indicate. According to the statistics of the European Patent Office (EPO), there was a 7.2% increase with around 178,600 European patent applications filed in 2005 in Europe, which is a positive sign on upturn in patenting activity. Of the applications filed last year in the European Patent Office, almost 50% came from European countries which are members of the EPO, 25% from the USA and 17% from Japan.

These figures demonstrate that the current patent system in Europe essentially functions well and that companies make use of it. Nevertheless, **BUSINESSEUROPE** has on more than one occasion highlighted that companies need improvements to the current system in terms of costs and legal certainty regarding enforcement of their rights. More than in any other region in the world, SMEs are the driving force behind innovation in Europe. Addressing these issues is imperative in order to facilitate use of the patent system by SMEs.

This was also one of the main conclusions of the consultation conducted by the European Commission last year on how to improve the patent system in Europe.

During the patent consultation, **BUSINESSEUROPE** once again voiced the key priorities that should be addressed by policy-makers in the framework of the future EU patent strategy.



Priority should be given to improving the current system in Europe in terms of costs and legal certainty.

**First of all, the issue of costs needs to be urgently tackled.**

**Patent costs are extremely high in Europe** compared in particular with the US and Japan. Those high costs make access to the patent system particularly difficult and unappealing for companies, especially SMEs. A European Patent costs on average €32,200 whereas a US patent costs €10,250 and a Japanese patent €5,460. The higher costs in Europe are due to translation costs during processing and validation for those European countries where protection is wanted. No such requirements exist in the US and Japan.

This is highly unacceptable. Europe's policy-makers cannot ignore this situation any longer. The political will to make the European economy more competitive should lead to the removal of unnecessary and disruptive barriers.

BUSINESSEUROPE actively supports efforts to address this through the so-called London Agreement. The London Agreement reduces translation obligations for European patents and consequently translation costs by around 45%. This would bring considerable savings to companies. This Agreement needs to be ratified by eight European countries before it can enter into force, with the ratifications of Germany, France and the UK being an absolute prerequisite. Germany and the UK have completed the ratification. France still needs to do it.

We have appealed to all European countries to ratify this as soon as possible and we will continue to do so. The more countries adhere to this Agreement the more costs can be reduced.

**Secondly, turning from the issue of costs to litigation**, there is no need to repeat to all of you that a reliable litigation system providing consistent and efficient enforcement of European Patents is key for industry.

BUSINESSEUROPE has from the outset consistently and actively supported the setting-up of a common judicial system to litigate patents in Europe with the European Patent Litigation Agreement (EPLA).

A common litigation court system including common rules of procedure and a common court of appeal is key for industry in order to provide consistent and efficient enforcement of patents.

Currently, patent disputes in Europe can be decided differently in the different countries. This leads inevitably to more litigation, higher costs, increased possibility of different decisions on the same subject-matter in different countries, greater legal uncertainty.

Companies need a judicial system that can provide them with simple and transparent procedures, ensure legal certainty and consistency.



We attach great value to EPLA to respond to the needs of companies for legal certainty while avoiding the harmful effects of the current divergent national proceedings and practices in terms of procedures and content.

We strongly believe that governments which have presented different options on how the litigation issue should be resolved need to listen carefully to what companies need.

In addition, **the Community Patent is an important project for the EU.** BUSINESSEUROPE is of the strong conviction that in order for the Community Patent to be effective and attractive, it must meet the needs of companies in terms of quality, cost-effectiveness and legal certainty.

From the very beginning, BUSINESSEUROPE has asked for a Community Patent with a truly unitary character for the whole EU and has supported the one language (English-only) solution for the Community Patent.

**Where are we currently?** Unfortunately, nowhere! After many years of discussions and difficult negotiations, we are still in a stalemate and business does not have the appropriate Community Patent.

BUSINESSEUROPE will continue to support efforts to provide companies with a Community Patent with the above-mentioned features.

**Ladies and Gentlemen, we all agree on what we need for Europe:** a cost-effective patent system that produces high quality patents and gives companies the necessary legal certainty.

**What we are missing right now is the political will of national governments** to provide us with a system that corresponds to those characteristics.

Taking into account what has been outlined one question inevitably has to be asked: **Where can we go from here?**

Business is very much looking forward to the imminent publication by the Commission of its communication on the future patent strategy. The patent strategy should set a clear path towards a solution to the current patent impasse in Europe. It is high time that European policy-makers make clear proposals to help us move forward, taking into account what companies asked for during last year's consultation.

A fully-fledged and consistent patent strategy is a vital need for Europe. The United States has long had such a policy, while Japan recently made this its first priority. As for Europe, we are still far from having a clearly defined and proactive policy in this area.

International cooperation in the patent field is also an important aspect that should be integrated in a future patent strategy in order to strengthen the IPR system and improve the situation for companies in a coordinated approach. BUSINESSEUROPE has set up cooperation platforms with the business communities in the US and Japan to address questions of harmonisation of patent laws but also to combat counterfeiting and piracy and improve the enforcement of our intellectual property rights.



**What is the key message we should voice today to our governments?**

It is high time for EU Member States to take seriously their responsibilities and commitments to competitiveness and innovation and deliver the patent system we all agree Europe needs as set out above.

European business looks forward to rapid progress on this dossier.

We are going to follow progress on this carefully in the following months and we sincerely hope that EU Member States will be able to agree on a desirable instrument.

If this is not the case, we must all seriously consider viable alternatives to move forward: such as allowing a group of Member States to progress more rapidly than others through enhanced cooperation.

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