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BUSINESSEUROPE VIEWS ON KEY ISSUES OF THE PATENT REFORM DEBATE IN EUROPE

BUSINESSEUROPE has consistently voiced the need for a more efficient patent system for Europe, in order for Europe to maintain a pro-competitive climate conducive to innovation.

It has appreciated the significant efforts of the Slovenian and the previous EU presidencies to progress on both a future integrated patent jurisdiction system for Europe and the Community Patent.

These efforts must continue under the French presidency and BUSINESSEUROPE will support all efforts in this direction with a constructive approach.

In this context, BUSINESSEUROPE would like to stress its views on some outstanding issues that are currently on the table.

Regarding the proposed new patent jurisdiction system for Europe, it must bring considerable improvements for companies compared with the current situation and deliver the highest quality, cost-effectiveness, legal certainty and reliability for users.

It is necessary that the European patent jurisdiction is an integrated system with uniform rules of procedure. The new court must be a specialised body, distinct from other existing judicial bodies. The European Court of Justice (ECJ) should be the ultimate authority in interpreting principles of Community law, but for reasons of efficiency, the ECJ's role should be limited to preliminary references on the interpretation of Community legislation.

It is also essential that the European patent court system is comprised at all levels of experienced judges capable of handing down well-reasoned decisions, on both validity and infringement issues. Technically qualified judges should be part of the panels in all divisions and at all instances.

Truly multinational panels including both legally and technically qualified judges experienced in patent litigation are necessary at first instance level at the end of a transitional period to be defined. However, it should remain possible during the transitional period to opt for proceedings before national courts.

BUSINESSEUROPE requests a single language regime for the future patent court system. The language of proceedings in both instances - be it in the central or the local



division - should be the language of the patent. This would also facilitate the communication between the judges.

The proposed “split jurisdiction” of infringement and validity disputes between the central division and local divisions at first instance is no longer necessary if multinational panels with both legally and technically qualified highly experienced judges are set up at all first instance levels and not only in the central division.

The Community Patent is also important to boost Europe’s innovation capacity and must fully meet users’ needs in terms of quality, legal certainty and cost-effectiveness. It is key that the cost level for obtaining and maintaining a Community Patent is accessible for all companies and in particular SMEs. This would allow SMEs to protect their inventions throughout the internal market.

BUSINESSEUROPE supports, in principle, the proposals under discussion for a specialised central service based upon a reliable machine translation program to carry out translations of the patent specifications and claims. It is also essential that these translations will have no legal effect and will be provided for information purposes only. BUSINESSEUROPE will provide more detailed views on the Community Patent proposals as the debate progresses.