



30 November 2010

**4TH PANEUROPEAN INTELLECTUAL PROPERTY SUMMIT
2 DECEMBER 2010
HOTEL LE PLAZA, BRUSSELS**

**EU PATENT AND UNITARY COURT SYSTEM: HOW TO MEET INDUSTRY
EXPECTATIONS? TACKLING BUSINESS NEEDS IN IP TRADE NEGOTIATIONS**

**ADDRESS BY PHILIPPE DE BUCK,
BUSINESSEUROPE DIRECTOR GENERAL**

Dear President Battistelli,

- Ladies and gentlemen, first of all I would like to thank the organizers for the opportunity to intervene today in front of an audience of distinguished IP specialists.
- In the current economic climate, one of the main BUSINESSEUROPE priorities is more growth for Europe. This will only happen if Europe can boost its innovation capacity and competitiveness.
- However, progress to achieve this has been slow. Europe failed to achieve its Lisbon agenda target of spending 3% of GDP on R&D. The EU2020 strategy has extended this goal for another ten years. The 2009 EU innovation scoreboard shows that even though the EU has improved vis-à-vis US and Japan, there is still a significant gap (-22% with the US and -30% with Japan).
- On the other side, countries like China and India are growing rapidly. For example, China's performance gap vis-à-vis the EU has been reduced by 14%. If China continues with the same speed, in the very near future it will close the gap with the EU.
- Companies need the necessary framework conditions to allow them a return on their investment. A strong, well-functioning and cost-effective patent system is one of the key conditions to stimulate more R&D in Europe.
- However, today in Europe companies face:
 - Unnecessary costs,
 - Double fees and extra charges
 - Multiple litigation costs in several European countries.



- Let me give you some examples:
- For a patent validated in 13 EU Member States validation costs (translation costs as well as fees for patent agents and publication) are more than EUR 12 000. This brings the total costs spent by companies on translations, validations and professional charges to a maximum of approximately EUR 230 million.
- In addition, litigation costs also differ between Member States. 90% of all patenting litigation activity in Europe takes place in Germany, France Netherlands and UK. In Germany costs vary between EUR 50,000 - 90,000. The amounts are similar in France and the Netherlands. In the UK, on the contrary, costs are much higher between EUR 150,000-1,150,000. Moreover, different rules and procedures in these countries increase complexity, encourage legal uncertainty and make the current system unappealing.
- Is this the most suitable environment to boost innovation in Europe? The answer is clearly no.
- Companies need a single **EU Patent** title without unnecessary costs and redundant translations.
- Currently, direct and indirect translation costs can add up to about 40% of the overall costs of patenting in Europe. This means that a European patent validated in 13 countries is more than 10 times more expensive than a patent in the US or Japan.
- In this context, the European Commission presented last July a pragmatic proposal on the language system of the EU Patent, which is supported by the majority of BUSINESSEUROPE member federations, as a compromise position. Still, our Spanish, Italian, Portuguese and Polish federations support an English-only language system for the EU Patent.
- The Commission proposal is built on the existing language system of the European Patent Office (English, French, German). It takes into account the well-established working methods of the European Patent Office (EPO) that will deliver the EU Patent and the patenting practice of companies. Around 48% of all applications coming from Europe are filed in French or German at the EPO.
- One of the key elements of the Commission proposal is the use of machine translations to improve access to patent information for companies and third parties. Information is key for companies to find out what already exists and build on it, keep track on who is doing what and avoid infringing other rights. We support these translations, but they should have no legal effect and be produced only for information purposes. Giving them legal effect would be against the unitary character of the EU Patent and increase legal uncertainty.
- Thanks to the efforts of the Belgian presidency and the European Commission, we are now close to a breakthrough on the EU Patent discussions. However, last month's Competitiveness Council meeting still failed to reach an agreement.



- We have been discussing the patent file for 45 years. It is now time for decisions.
- This is why we urge Member States at the next Competitiveness Council meeting on 10 December to finalise this discussion.
- Besides the language arrangements for the EU Patent, a **common patent jurisdiction system** for Europe is also urgently needed.
- Such a system should be built on multinational panels of experienced judges, including technical judges, with common rules of procedure. A common court system would deliver cost savings of around approximately EUR 220 million for companies.
- Member States have asked the European Court of Justice to deliver its opinion on the court proposals. It is important that work on this issue also resumes shortly.
- Before closing, I would like to say a few words about another key issue that will be discussed during this IP Summit: **the fight against counterfeiting and piracy that affect the whole range of intellectual property rights including trademarks, patents, copyright, designs, geographical indications among others.**
- Increased international trade and investment, globalisation and the emergence of new players such as China and India have created opportunities but also great challenges. In the future, IP-intensive goods and services will provide a competitive edge.
- Knowledge capital should be better protected. Intellectual property rights have no value without adequate protection and enforcement.
- This is crucial for the EU's ability to compete in the global economy.
- EU growth and jobs are harmed when our ideas, brands and products are pirated and counterfeited. Moreover, counterfeit products often place citizens' safety or health at risk.
- European companies need more effective protection and enforcement of their intellectual property rights across foreign markets, especially in emerging economies.
- We are concerned about the discriminatory way in which intellectual property regulation has been used recently by some countries to block European companies. Some examples are the indigenous innovation policy and the patent filing subsidies policy. Such practices go against and violate international intellectual property rules under the WTO TRIPs agreement.
- The EU should address this through its intellectual property dialogues with other countries and regions, as well as through trade negotiations. In negotiating Free



Trade Agreements, the intellectual property rights clauses should as far as possible offer identical levels of protection to that existing in the EU.

- The **Anti-Counterfeiting Trade Agreement (ACTA)** should also help combating counterfeiting and piracy. Once agreed:
 - ACTA should set up high standards of protection and enforcement,
 - improve cooperation,
 - harmonise how we deal with IP theft,
 - address IP theft online and
 - set a positive example for nations aspiring to have strong IP enforcement regimes.

- We welcome the recent adoption of a resolution at the European Parliament on ACTA. We are looking forward to a successful conclusion of the approval process by the European Parliament and Member States once we have a final text.

- Ladies and gentlemen, I would like to thank you for your attention and wish you a fruitful and successful 4th IP Summit.

* * *