



17 June 2011

BUSINESSEUROPE COMMENTS ON COMMISSION PROPOSALS IN THE AREA OF UNITARY PATENT PROTECTION¹

GENERAL COMMENTS

Europe needs a more efficient patent system and this is why BUSINESSEUROPE has consistently been calling for a single EU Patent of high quality, available at reasonable cost, ensuring legal certainty for companies and which promotes a harmonious growth of innovation, particularly for SMEs.

The unreasonably high patenting costs in Europe compared to the US and Japan are unacceptable and burdensome for companies. They represent a hurdle to innovation and competitiveness of European companies.

In this context, BUSINESSEUROPE supports the proposals on the creation of unitary patent protection and the applicable translation arrangements adopted on 13 April 2011 by the Commission.

But this is only one piece of the package and BUSINESSEUROPE urges the Commission and the Presidency to present rapidly proposals on how to move the patent jurisdiction discussions forward, following the opinion of the Court of Justice of the European Union of 8 March 2011. It is essential that the patent jurisdiction is in place when the first European unitary patent is granted.

For the patent jurisdiction, BUSINESSEUROPE supports a solution based on a common patent court, with equal right of defence and access to justice, that users trust, equipped with adequate measures and safeguards to address the concerns of the Court of Justice. BUSINESSEUROPE would strongly oppose any recourse to national courts along the lines of the Community trademark jurisdictional system or the creation of a specialized court attached to the Court of Justice for patent matters.

BUSINESSEUROPE represents the users of the patent system and is willing to remain engaged with the Commission and the Member States in a constructive dialogue with the aim of adopting an instrument that meets users' needs in terms of costs, quality and legal certainty.

¹ CEOE (Confederation of Employers and Industries of Spain) does not share these comments. However is in favour of creating a truly EU Patent based on (i) a single language for filling and prosecuting, (ii) a balanced legal framework in which companies operate with the same competitive advantages, (iii) a non-discriminatory system to promote a harmonious growth of innovation.



SPECIFIC COMMENTS ON THE CONTENT OF THE PROPOSALS

- BUSINESSEUROPE supports that the unitary protection is based on the existing European patent and there is no proposal to amend the European Patent Convention (EPC).
- The level of the renewal fees for the European unitary patent will be key for its affordability.

BUSINESSEUROPE believes that the level should be sufficient to ensure a sustainable operation of the European Patent Office (EPO). At the same time, it has to remain low enough for the European unitary patent to remain competitive with the current European patent for those industrial sectors for which the current average cost corresponds to a limited number of EU countries.

- BUSINESSEUROPE would like to see the provisions relating to substantive law on the effects of patents currently in Chapter II of the Commission proposal on the creation of the unitary patent protection moved to the instrument creating the common court. Subject to the specific comments below, the provisions of Article 3 and Chapter IV (Institutional Provisions) of the proposal should suffice to define the unitary protection.
- It should be make clear that the tasks referred to in Article 12 of the Commission proposal are given by the Member States to the EPO by virtue of the regulation to be adopted and that no separate action is required from Member States.
- BUSINESSEUROPE considers it necessary to include additional provisions regarding the conditions and effects of the licences of right, as currently referred to in Articles 11 and 12 (c) of the Commission proposal, and of their withdrawal.
- BUSINESSEUROPE supports flexibility for granting or obtaining licenses not only for the whole territory but also on a country-by-country basis even under the European unitary patent. Therefore, the word “licensed” in Article 3.2 of the Commission proposals on the unitary patent protection should be deleted.

* * *