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European Commissioner for Internal Market and Services

Commission statement - Future action in the field of patents

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

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Mr Chairman, Honourable Members,

Intellectual property rights are at the heart of a knowledge-based economy. Innovation is the key to Europe's prospects of becoming more competitive on a global level. Protection of intellectual property is of crucial importance because IPR not only rewards investment in new products and services but also ensures transfer of technology stimulating further innovation. The recent consultation on the future of the patent system in Europe delivered one simple message: the legal framework should offer an affordable patent protection for all businesses - small and big-, ensure legal certainty and be applied for the benefit of all the players. A solid legal framework is therefore essential. I must repeat this: we need to keep up. Compared to our major trading partners, Europe is losing ground.

The Community Patent remains blocked in the Council. But recognising the economic importance of patents, I felt it was not a good thing to leave the entire patent agenda in limbo. So, earlier early this year, as you know, I launched a broad consultation of all interested parties on future patent policy in Europe.

The consultation has shown that industry favours the Commission's effort to simplify the patent system in Europe and to make it more cost-effective. There are two major issues here, languages – or translation costs - on the one hand and the jurisdictional system on the other hand. There is strong support for the introduction of a Community patent. However, industry is not enamoured of the political compromise reached in the Council in 2003 on the Community patent. It rejects the proposed solutions on both language and the jurisdictional system. Because they don't achieve the cost reductions and simplification of the patent system that industry is calling for.

In parallel, there is a strong call for the improvement of the existing European Patent system, established by the Munich convention, by the successful conclusion of a European Patent Litigation Agreement (EPLA) on jurisdiction and by the ratification and entry into force of the London Agreement on the language regime.

It is interesting to note that no single initiative for the improvement of the EU patent system received the unanimous support from the stakeholders. Different stakeholder highlight different aspects and many suggest that what is needed is a package of different measures which they believe should be implemented in parallel.

I am therefore convinced that we need to take a multi-faceted approach. In order to succeed, we should tackle all the patent issues in one package. This package will have to respond to stakeholders' criticism and needs. We will only succeed if we can demonstrate that what we propose will have added value compared to the *status quo*, in particular on costs of patenting (translation costs) and legal certainty (jurisdictional system).

We are currently working on the options for the way forward and will present them in a communication and action plan which the Commission should adopt before the end of this year.

A key component of this work concerns the jurisdictional issue. At present, although business has a one-stop shop where it can acquire a patent – the EPO – it may find itself defending the patent on several fronts at once. This is because the patents granted by the European Patent Office are in fact a bundle of national patents and can only be enforced by national courts. The possibility of multi-forum litigation concerning one and the same invention, adds cost, of course, but even more importantly it creates uncertainty, as different courts in different countries can deliver diverging interpretations on the same patented invention.

I think we need to tackle this issue as a matter of urgency; the current "patchwork" may prevent patent holders from being able to enforce their rights, and discourages candidates, in particular SMEs looking for efficient and affordable patent protection from using the European patent. Europe is, at present, not able to offer innovative businesses an optimal solution when it comes to protecting their intellectual property. We cannot aspire to be the most competitive economy in the world if we do not find practical workable solutions to patent application and protection.

The Community Patent and the initiatives to improve the European patent – ie the London Protocol on translations and the EPLA – are not mutually exclusive. They both aim for the same goal: a better, cheaper, more reliable patent system. That's why I want to pursue both. We face similar challenges in designing the jurisdictional arrangements for the Community patent: we need to find a unified system which provides judicial independence, gives clarity and reliability to patent users while avoiding both over-centralisation and fragmentation.

In order to achieve this objective, the Community needs to get involved in EPLA. It addresses shared responsibilities between Member States and the Community. It goes without saying that Parliament will have to contribute when the Community will proceed with the required proposals in order to take this issue forward in the near future.

I am aware of some critical voices against the EPLA. Let me just say that I see EPLA as a practical, concrete initiative to bring greater unity in the case-law on patents in Europe. And that – legal certainty – is what our industry, big and small alike, need. There are hundreds of thousands of patents granted by the EPO. Even if we have a Community patent there is a need to streamline the jurisdiction process for EPO granted patents.

It is up to us to get involved in this initiative to ensure that it serves the competitiveness of our economy. I recognise that there are legitimate doubts and concerns – the cost of litigation under the EPLA, the impact of the rules of procedure which we have yet to see, the independence of the EPLA judges from the EPO. But I am convinced the best way to confront these problems is by engaging actively with the process and by securing an outcome which is satisfactory and fair to all concerned and which is in full conformity with EU law.

Of course, neither the Community patent nor EPLA are a panacea. There will always be businesses – the smaller ones – that prefer to deal with their national patent offices or to use business models that do not rely on patents. We need to look at ways in which we can help and support them. And of course we need to ensure that large companies do not abuse their position, either by unfairly exploiting their own patents or by unfairly ignoring the patent rights of others.

The consultation threw up many such issues, for example the possible mediation mechanisms which could precede litigation; the need to create technology markets which would enable business to trade their IPR more successfully and the idea of exchanging best practice between national patent offices, especially when it comes to the special needs of SMEs. I will be responding to all these, in cooperation with my colleagues in the Commission, and therefore intend to propose a comprehensive Strategy.

Chairman, Honourable Members,

Faced with a 21st century global and knowledge-based economy, we need to find a solution to the patent issue – and urgently. I count upon Parliament's support in finding a comprehensive solution to these rather complex issues.

Thank you.