



Ms Beata Jaczewska
Chair of the Friends of Presidency Group
Director
Polish Ministry of Economy
Plac Trzech Krzyzy 3/5
00-507 Warsaw, Poland

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Dear Ms Jaczewska,

We would like to express our appreciation for your participation at the BUSINESSEUROPE "Patents" Working Group meeting on 19 September 2011 to present the state of play of the work of the Polish presidency on the patent dossier.

BUSINESSEUROPE¹ has consistently voiced the need for a more efficient patent system for Europe. Currently, companies suffer from unreasonably high patenting costs. This is why we have been calling for a single patent title of high quality, available at reasonable cost, ensuring legal certainty for companies and promoting harmonious growth of innovation, particularly for SMEs.

For BUSINESSEUROPE, a common patent jurisdiction system for both European patents and unitary patents for both validity and infringement disputes is needed. It is essential that the patent jurisdiction is in place when the first European unitary patent is granted.

Any new jurisdiction system must, however, bring real improvements for companies compared with the current unacceptable situation of diverse national jurisdiction systems. It must deliver the highest level of quality, cost-effectiveness, efficiency, legal certainty and reliability.

The current version of the draft agreement on a common patent jurisdiction does not meet the requirements of industry. Even though it is important to maintain the political momentum, further fundamental improvements are still needed.

At this stage, we would like to highlight the following key areas for improvements:

The financing of the new jurisdiction system will be key to ensure the necessary cost-effectiveness of the system for the end users, namely companies. Basing its financing only on court fees may easily result in such high fees that the proposed jurisdiction

¹ CEOE (Confederation of Employers and Industries of Spain) does not share this letter. 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.



would be inaccessible to companies and in particular SMEs. This result would be further exacerbated if the language system currently foreseen is also not rationalised. A cost analysis of the proposed new jurisdiction system is urgently needed, particularly since the EU is no longer a party to the agreement.

The agreement lacks clarity regarding complaints covered and parties included in a single suit, in the context of actions in cases of international infringements by national, affiliated companies. Further clarification is needed with respect to the efficient handling of multi-party and cross border aspects of complex litigation.

BUSINESSEUROPE has also consistently called for truly multinational panels including both legally and technically qualified judges highly experienced in patent litigation at the first instance, in order to develop a truly integrated European system as soon as possible. This is why we believe it will be essential to start with the training of judges without delay. In addition, as regional chambers are regarded the solution for truly multinational panels, the draft agreement should include incentives for their creation.

The proposed system would confer exclusive jurisdiction on a new court system with power to render EU-wide decisions on both validity and infringement cases. A new and untested jurisdiction system can be uncertain and risky for companies, especially SMEs. In order to build up confidence in the new system, it is therefore necessary to introduce transitional arrangements at least until the judges of the new court system have obtained the required training and patent litigation experience and an evaluation of the new system has determined that it is functioning satisfactorily.

The same instrument should contain the infringement provisions for all European patents (with and without unitary effect) just like this same instrument contains the validity provisions for all European patents. So, the infringement provisions for the unitary patents should be moved to the draft Agreement on the jurisdiction.

It is also important to progress significantly on the rules of procedure before the jurisdiction system is made operational.

These are not the only areas where further work is needed. There are other issues such as the composition of the panels, the bifurcation of infringement and validity disputes, a broader right for patent owners to bring proceedings for infringement in the central division that have raised concerns within parts of the business community in Europe.

BUSINESSEUROPE looks forward to continue working with the Polish presidency and all Member States towards improving the draft Agreement in a way that will deliver a jurisdiction system which fully meets the needs of companies and Europe's innovation.

Yours sincerely,

Philippe de Buck