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EU Patent Strategy

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

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Ladies and Gentlemen, the protection of intellectual and industrial property -- copyrights, patents, trademarks or designs -- is at the heart of a knowledge-based economy and central to improving Europe's competitiveness. This is a priority for economic reform: grounded on sound economics, not just legal concepts, and concentrating on solutions that foster innovation and investment in real life.

Finding these solutions requires a delicate balancing act. If we get the legal framework wrong, we run the risk of discouraging investment or distorting competition. We may lose public support and understanding. Walking the IP tightrope is certainly not getting any easier as technology advances. We face a real challenge in explaining why and when IP protection is needed and how to get the balance right.

This is the challenge. It is at the core of your debates at this Conference. How is Europe meeting this challenge?

In the area of industrial property, it is instructive to compare progress on trade marks and patents.

The Community Trade Mark has been in existence for 10 years now. Its success has exceeded all expectations. So far 330,000 Community Trade Marks have been registered. In 2005, the Commission was able to reduce the fees payable for registration and renewal. It was estimated that the reduction of fees would save business between €37 and €40 million a year. In fact, the savings have been much higher. In 2006 alone, current estimates are that industry may save around €55 million because of the 2005 fees discount. This is an excellent example of Community action having a direct and positive impact on the business environment. I pay tribute to Wubbo de Boer and the staff of his office in Alicante for their excellent work.

On patents, the story is a different one.

Everyone agrees that we need to stream-line the existing systems. We need a simpler, more cost-effective system that maintains the highest standards in the quality of patent examination and grant. This was the one clear unequivocal message that came out of the public consultation the Commission held in spring this year. It repeats a message that has been obvious to the Commission for years. And yet Europe has been struggling for more than two decades to agree how to get there.

In September of this year, I set out some ideas on how we might move forward following the results of the public consultation. Responding to the plea made in the consultation, I said that the Commission would come forward with ideas before the end of the year. I said we would look at the options around a Community Patent coupled with the development of EPLA, the European Patent Litigation Agreement. Our initial focus would be on jurisdictional arrangements. I said that the Community Patent and improvements of the current litigation system for European patents should not be mutually exclusive initiatives. Indeed, our aim should be to ensure that they eventually converge.

Since September we have been working hard in the Commission, teasing out the complex legal architecture of how we could proceed on such a basis within a Community framework.

In the meantime, I have the impression that there has almost been a rush to see who could be the "first to file" their ideas on how we might move ahead. Given the impasse until now, I can only welcome any ideas on how we can move forward. But, as you know all too well, EU decision-making procedures do not work in the same way as patent applications. In essence, it is a question of putting forward a credible proposal and gradually building an agreement around it. Not having a number of competing ideas on the table at once.

In view of this, the incoming German Presidency and the Commission believe it is necessary to have further contacts with Member States to try and find a way to bridge the various opinions that have been expressed. Our objective is to work together to prepare the ground for a more fruitful debate and some progress in this long-running saga.

I will not over-dramatise the situation. But I will put it to you straight. If we are not able to find more fertile ground for a proposal over the coming months, then we might as well put our energies to better use.

Those of you who read the FT, will know that I am not optimistic. My own experience is that the patents area is a minefield, fraught with difficulties. But I am a man of my word. When I took up office I said I would make one last attempt to make progress on the patent system, when the time was ripe.

I've been a politician long enough to know that, if there is a will, there is a way. But that is precisely the question. Is there a will to find a solution at EU level in the interests of the overall competitiveness of the EU economy?

Initiatives such as the recently submitted report commissioned by Thierry Breton for the French government on the "Intangible economy" and the Gower Report in the UK show that Member States may be waking up to the challenge. This gives me some hope.

But a good solution will require compromises from all involved. The Commission will play its part in trying to find a workable solution. The next few months will be critical in this respect.

I call on Member States to be active and not "counter-active". Industry must also play its role. What you told us in the consultation must be repeated at home to all those who are involved in the decision-making process in your capitals.

I would like to take this opportunity to remove any lingering doubts there may be that initiatives on the jurisdictional arrangements might have a negative impact on the quality of patents in Europe. This is not the case.

The quality of patents in Europe, particularly in new technology sectors, is of paramount importance to the users of the system. Any initiative aiming at reduction of patenting costs must be accompanied by patent quality enhancing solutions. We must make sure that patent applications are properly searched and examined. Also, any future jurisdictional arrangement must contain safeguards against Community-wide or even larger enforcement of low quality patents, including protection against the destructive practices of "patent trolls", especially dangerous for the ICT industry.

Last, but certainly not least, we must make sure that small and medium enterprises, the backbone of European economy, have access to the patent system, unhindered by complex procedures and high costs. In that respect, we will look carefully into the idea that many SMEs put forward in their contributions: an alternative dispute resolution system, in the form of mediation or arbitration, for certain patent cases.

This is why, above and beyond any Communication on an EU patent strategy on jurisdictional arrangements, we will be producing a further Communication in 2007 on a range of flanking measures in the area of IPR that we need to consider, most of them directed at smaller companies. The Communication will include key issues such as:

- Quality of patents in Europe;
- Patent litigation insurance;
- Alternative dispute resolution schemes;
- General awareness actions on IPR;
- Use of patents including licensing;
- Better management and financial reporting of patents;
- International enforcement of patents.

Our objective is to produce a system that, at all levels -- national, European and Community -- meets the needs of all stakeholders and provides a fair balance between the diverse interests involved.

Ladies and Gentlemen, we are now at a fork in a very long and winding road. The next few months will be critical if we are to make progress. I sincerely hope that there is a "will" and that we will find a "way". But I will not beat about the bush if that proves not to be the case.

Thank you for your attention.