Future Patent Policy in Europe
Public hearing – July 12, 2006
Debate No. 4 – Jurisdiction

Intervention No.7, on behalf of UNICE
Speaker: Dr. Klaus Dieter Langfinger
Senior Vice President Global Intellectual Property BASF Aktiengesellschaft

Abstract

Ladies and gentlemen,

On behalf of UNICE, the voice of industry in Europe and on behalf of BASF Aktiengesellschaft, The Chemical Company, , I would like to give you the view of Industry relating to future jurisdiction systems .

A reliable litigation system providing consistent and efficient enforcement of patents in Europe is key for all parties involved in IP generation and enforcement. Consistent means in particular that a system is needed which avoids conflicting decisions in different countries in the same case as far as possible. Efficient in this context means that we have to use the existing resources in the best manner as soon as possible and at affordable costs. UNICE as the voice of European industry and representing more than 30 million enterprises including SME as well as international big companies, has repeatedly pointed this out.

Unfortunately, during the discussion of the original concept for a judicial system connected with a community patent, these essential features got somewhere lost. The latest concept based on the common political approach did neither fulfil the needs related to consistency nor the needs related to cost efficiency. Having legally binding versions of the claims in 21 languages combined with a language regime in which the language of the defendant was the mandatory rule for the language of the proceedings neither creates consistency nor is it cost effective, the latter being especially detrimental for SME.

More than five years have passed since the Community in 2000 in Lisbon set itself the goal to become the most competitive economic region by 2010 and also recognised that a unitary patent and litigation system is key for achieving this goal. What did we achieve ? Not very much, I am afraid and we simply cannot afford to lose more time and competitiveness.

However, although the situation is far away from providing an optimistic outlook into the future, we still have the chance to at least try to improve the situation gradually and to get moving. Removing superfluous and costly and thus simply no longer affordable translation requirements in the European Patent Convention by putting into place the London protocol is one necessary and important move – this has been repeatedly expressed earlier today.

In terms of judicial arrangements for patent litigation, there is the European Patent Litigation agreement, which, provides an important step in the right direction. Using the existing and well established and experienced resources in the courts of first instance in various countries would make an immediate start possible without having the difficult and time consuming task of setting up a new court without an existing infrastructure and in particular without a sufficient number of technical judges experienced in patent litigation. The proposed language regime avoids expensive and excessive translations and thus moves us forward on the road of efficiency. A centralized court of second instance would be the ultimate mean to ensure a sufficient degree of harmonization. Thus, overall, EPLA would be a leap towards consistency and efficiency and we all should support the work done by the working group to the best extent. Being an optional agreement, the EPLA would leave it up to an individual decision whether or not to join the agreement, but it is reasonable to assume that over time the benefits of the agreement would become transparent and thus provide an incentive for any member state of the European Patent Organisation, including all the member states of the European Union, to become a member. At this point, EPLA might, based on the experience made, provide a good basis for a sound and acceptable system for a community patent judicial regime applicable to all the member states of the EU. Thereby, the stumbling blocks of today towards a community patent system would be removed through the practical and beneficial

experience made with EPLA. We should recognize that EPLA is not competitive to a community patent regime but instead might help to clear the road to get there !

We also should not forget, that we have more than 700 000 patents granted by the European Patent Office today and those patents are litigated today – and not in 2010 or later ! EPLA would help in this process significantly. Furthermore, due to the coexistence of the European Patent and a future Community Patent we will continue to see European Patents being granted. Since a community patent jurisdiction system could not easily be applied to European Patents granted on the basis of the European Patent Convention, there will be a continuing need for a consistent enforcement system for those patents.

Let me summarize:

If we want to achieve progress towards the goal of the Lisbon agenda, we have to start action today. We already lost more than five years in discussions which did not lead to an acceptable and affordable solution concerning a community patent system. Thus, instead of trying to achieve everything now, let us do important steps into the right direction – London protocol and European Patent Litigation agreement would be such steps and we should all together in a joint action try to do these steps as soon as possible and should stop losing time in discussions on formalities or other issues.

Thank you very much for your attention.