BDI

EU-Commission: Public Hearing on July 12, 2006
Item 3: Community Patent
Dr. Lothar Steiling

Recht, Wettbewerbspolitik und Versicherung

Ladies and Gentlemen,

First of all, I would like to thank you for giving me the opportunity to present the views of the German Industry Federation (the BDI). The BDI is the umbrella organization representing more than 100,000 small and large private German enterprises with a total of about 8 million employees. German industry stands for more than 24,000 European Patent Applications of the approximately 62,000 Patent Applications in 2004.

According to the Lisbon Agenda of 2000, it was our common goal to become the most competitive economic region in the world by 2010. More than half-way through this ten-year period we are still a long way away from achieving this goal. A great deal of time has been wasted in recent years due to differences of opinion between the Member States which have meanwhile degenerated into political debates and have resulted in the current deadlock.

German industry strongly supports a community patent which would simplify the application of patent law within Europe and which could compete with the US and Japanese systems. However, despite strong joint efforts in recent years, no acceptable consensus has yet been reached. In particular, the common political approach of 2003 did not offer a satisfactory solution and should therefore be abandoned.

The two main problems of the community patent remain those of cost and litigation. Since the litigation system will be dealt with later under item 4 of today's agenda, I would like to concentrate my present comments on the cost aspect.

The requirement for cost reduction should be primarily focussed on reducing the costs of translations. By no means should cost reduction be allowed to result in a decrease in the quality of granted patents.

The language issue continues to be the main problem. Europe will lack competitiveness as long as it does not find a proper solution to this problem. A community patent requiring translations into 21 official languages is simply not feasible. At this stage, the only solution would be a requirement for translations into the three official languages of the EPO.

Translations into 21 languages would not only cause undue expense but also considerable legal uncertainty.

If the translations were required to be legally binding, they would become even more expensive since the services of patent lawyers would be necessary for their preparation. It is hardly surprising that several national attorneys have pleaded in favour of a multiple language regime since this would provide them with a lucrative source of income. Especially in the case of smaller member states with a short patent history and a limited number of patent translators it is questionable as to how such a translation requirement would work in practice. Instead of increasing legal certainty the opposite would be achieved.
It is therefore absolutely essential for only the language in which a patent is granted to be decisive in the event of legal disputes. Otherwise preliminary injunctions would be ineffective or even impossible, since defendants could argue that the claims had been incorrectly translated into their language.

Even if the translations were merely required for informational purposes without being legally binding they would also be too costly. Surveys have shown that industry hardly ever makes use of the opportunity to inspect translated patent specifications. So what is the point of such a multiple language regime?

Such a regime would necessarily increase legal uncertainty. Patent attorneys would have to waste valuable time examining multiple language versions of relevant patents when preparing freedom-to-operate analyses for their clients.

The language problem would unnecessarily weaken the competitiveness of large European companies and make the comprehensive, effective protection of intellectual property almost impossible for small and medium-sized companies. They simply could not cope with such translation requirements.

The time will be ripe for the community patent when a truly uniform affordable and legally certain patent is provided. Until then, the existing EPC offers manageable solutions, even though some improvements still need to be made.