



International Chamber of Commerce

*The world business organization*

## EC Utility Model Proposal

**Response to consultations on the impact of the Community utility model in order to update the Green Paper on the Protection of Utility Models in the Single Market (COM(95)370 final)**

Commission on Intellectual and Industrial Property, 27 November 2001

### Summary

ICC, the world business organisation, says the system for a Community utility model as proposed in the European Commission's consultation Staff Working Paper is not in the interests of world business. In ICC's view, the efforts of the Commission, the European Parliament and the governments of the EU member states would be better spent in gaining the early adoption of a Community patent system with obtaining and maintenance costs and litigation arrangements acceptable to world business.

---

ICC is the world business organization. It is the only representative body that speaks with authority on behalf of both large and small enterprises from all sectors in every parts of the world. Founded in 1919, it represents today thousands of member companies and associations from over 130 countries. ICC's purpose is to promote international trade, investment and the market economy system. It makes rules that govern the conduct of business (eg. Incoterms) across borders and provides essential services, foremost among them being the ICC International Court of Arbitration.

Business leaders and experts drawn from the ICC membership establish the business stance on global issues of importance for business such as intellectual property. Since 1922, ICC policy in this field has been elaborated by its Commission on Intellectual and Industrial Property, which brings together leading intellectual property experts from business and private practice from all over the world. As the world business organization, ICC firmly believes that the protection of intellectual property stimulates international trade and investment, and encourages transfer of technology, which are both essential for economic growth.

ICC has always campaigned for the provision of strong world-wide cost-effective non-discriminatory intellectual property systems as being an essential requirement for the world business community. As part of this campaign, ICC has supported all efforts to harmonize national intellectual property laws because such harmonization is beneficial to world business by for example reducing the cost of obtaining intellectual property rights and then enforcing them against infringers. ICC's campaign has been directed in particular towards the protection of innovative technology by patents and similar rights. This is because ICC firmly believes that companies which do innovate technology should be able to obtain and enforce quickly and cheaply and without aggravation the intellectual property rights protecting such technology but most importantly the potency of the rights so provided should at the same time always be commensurate with the contribution made by the innovation. Further, a third party wishing to commercialise its own technology must be able to determine also quickly and cheaply and without aggravation whether it is free to work that technology as far as intellectual property rights belonging to competitors are concerned. Therefore, any intellectual property system must, if it is to be acceptable to world business, maintain a fair balance between these two factors and so any proposals for changing intellectual property laws in Europe or anywhere else will be carefully scrutinised by ICC. If such changes would result in a country being required to introduce a completely new intellectual property right, ICC will consider most carefully whether such a right would be of overall benefit to the world business community.

In view of the above, ICC was naturally most interested in the European Commission's recent initiative to harmonise national utility model laws throughout the European Union. The ICC issued a Policy Statement ([dated 21 October 1998 Document n° 450/878](#)) which considered whether the Commission's Proposal for a Directive was on balance in the interest of the world business

**International Chamber of Commerce**

38 Cours Albert 1er, 75008 Paris, France

Tel +33 (0)1 49 53 28 28 Fax +33 (0)1 49 53 29 42

E-mail [icc@iccwbo.org](mailto:icc@iccwbo.org) Website [www.iccwbo.org](http://www.iccwbo.org)

community. ICC particularly studied this Directive to see if the utility model system provided by the Directive if adopted satisfies the above-mentioned fair balance test between, on the one hand, the proprietor of a utility model to his or her innovation having a right commensurate with the contribution made by the innovation and, on the other hand, a competitor being free to work its own technology which is sufficiently distinguished from the technology protected by the utility model. In addition, ICC considered whether the introduction of a new intellectual property right in three EU member states (i.e. Luxembourg, Sweden and the UK) would be of overall benefit to the world business community. ICC concluded that the harmonised utility model system envisaged by that Directive did not provide the necessary fair balance between the innovator on the one hand and third parties on the other, and that therefore this system was not in the interests of the world business community. However, ICC did stress that if the system were modified to increase the entry threshold for obtaining the right and/or reducing the potency of the right once obtained, ICC might be able to support a system so modified.

The Commission clearly received comments on the Proposal from, in addition to ICC, many professional and industry bodies interested in intellectual property, and the Economic and Social Committee issued an opinion on it. The European Parliament approved the Proposal subject to 34 amendments being made, and, in response to the Parliament's position, the Commission issued in June 1999 an Amended Proposal for a Directive which the ICC again studied with interest to see whether the lack of fair balance in the earlier Proposal had been corrected. Unfortunately, although the entry level was a little higher, the potency remained the same and the necessary fair balance between entry level and potency was not provided ([see the ICC Policy Statement of 7 October 1999 Document n° 450/878 Rev.](#)). Work on this Directive was suspended in March 2000 because, according to the Commission, a majority of the member states considered that priority should be given to the project to establish a Community patent.

At its Stockholm meeting on 23 and 24 March 2001, the European Council expressed its concern at the lack of progress on the Community patent and the Community utility model and on 31 March the Internal Market Council welcomed the Commission's planned consultation on the possible impact of a Community utility model in legal, practical and economic terms. The Commission's Staff Working Paper including a questionnaire and starting this consultation was issued on 26 July.

ICC will not be answering specifically the questions in the questionnaire but instead would like to comment on the Commission's proposed system for a Community utility model and outlined in section 4 bridging pages 4 and 5 of the Paper. According to this system, a Community utility model would be obtainable for an invention with a level of inventiveness lower than for a patent. The rights conferred by a Community utility model would however be identical to those conferred by a patent. The duration of protection would be ten years from filing.

**ICC's position is the same as with the Directive. The duration of protection is too long and the potency too great for a right obtainable on an invention of such low inventiveness. The necessary fair balance mentioned above is not achieved so ICC believes that the introduction of a Community utility model with the features proposed by the Commission would not be in the interests of world business. Further, ICC suggests that the efforts of the Commission, European Parliament and member state governments would be better spent in gaining early adoption of a Regulation establishing a Community patent system with obtaining and maintenance costs and litigation arrangements acceptable to world business.**

**Document n° 450/936 Rev.**  
27 November 2001