

The Secretary General

President and Members of the
Competitiveness Council
Justus Lipsius
Wetstraat, 175
1049 Brussels, Belgium

23 September 2011

Subject: Presidency proposal for a Unified Patent Court

To the President and Members of the Competitiveness Council

ICC, the world business organisation, regroups thousands of member companies of all sizes from different sectors and over 120 countries, many of whom apply for and litigate patents in the European Union.

There is currently a great deal of political momentum to create a Unitary Patent for Europe accompanied by a Unified Patent Court. We understand that this topic is on the agenda of the forthcoming Competitiveness Council on 29 September.

ICC has long supported and continues to support the principle of creating a patent which covers the whole of the EU and of a unified court for resolving disputes concerning the infringement and validity of patents granted by the European Patent Office.

We applaud the efforts of the Commission and Member States to achieve these goals.

However, it is a basic requirement that a new patent litigation system for European patents must be significantly better for users than the present one. Companies, both large and small, which rely on patents for protecting their innovations in their daily business, will only benefit from a new patent litigation system if it is of high quality, cost-effective, efficient, and predictable.

The draft Court Agreement now on the table provides a strong foundation, but still needs significant amendment in order to deliver real benefits for business, consumers and the European economy.

Specifically, ICC does not believe that the existing proposals satisfy these requirements in a number of fundamental areas including cost implications particularly for SMEs, language arrangements, premature exclusivity, and the review arrangements. There

The Secretary General

are other issues, such as the composition of the panels, the bifurcation of infringement and validity, that have raised concerns within the business community in some European countries. ICC will engage with the Commission and members of the Council Working Party to set out these concerns in more detail.

We trust that in setting the direction for the project to continue, the Competitiveness Council will recognise that there is still fundamental work to be done on the draft Court Agreement. This dossier is too important for innovation, competition and growth to get it wrong. It has to be right from the outset and it is not yet right.

ICC looks forward to the opportunity to assist the EU institutions to develop a system that meets the requirements of users.

Yours sincerely,



Jean-Guy Carrier