



Berlin, 29 March 2007

**Speech by
Federal Minister of Justice
Brigitte Zypries, Member of the Bundestag**

**at the opening of the European Patent Conference
organised by the Federal Ministry of Justice and the
Federation of German Industry**

"A Europe of Innovation - Fit for the Future?"

Berlin, 29/30 March 2007

Check against delivery!

Ladies and Gentlemen,

Innovative strength is a key prerequisite both for a successful company and for a successful national economy. Patents are an expression of that innovative strength and that is why I am delighted that we - that is the Federation of German Industry and the German Federal Government - have jointly organised this conference on patent law. I would like to thank you, Mr Thumann, for your friendly words of welcome and I am very pleased that we can be here today in the House of German Business.

On behalf of the German Federal Government I would like to welcome all those who have travelled to Berlin to spend today and tomorrow discussing the future of patent law. I would especially like to welcome Commissioner McCreevy. We are all eagerly awaiting the European Commission's proposals on a Patent Strategy and I am very pleased that you, Mr McCreevy, will be explaining your thoughts to us in person today.

I would also like to welcome our colleagues from the European Parliament and from the German Bundestag. I am pleased to see so many government representatives from the EU Member States as well as representatives from business, administration and the academic world. You are ensuring that we have the right mix of participants that will make for stimulating discussions. A warm welcome to you all.

Ladies and Gentlemen,

"A Europe of Innovation - Fit of the Future?" There is a question mark at the end of the title of our conference, but could we not replace it with an exclamation mark?

Yes, we can be proud of the European patent system. It has been a success story in many respects. The European Patent Office has undergone an impressive development over the course of its 30 year history. It started small and has grown into an institution that is respected all over the world. Its staff are highly qualified and the examinations and grant procedures they carry out are of high quality.

The fact that the number of patents being registered is constantly growing testifies to the undiminished inventive genius present in Europe's workshops and laboratories. Last year alone some 200,000 patents were registered with the EPO. That shows that Europe is turning the fact that it is a knowledge society to its advantage. The Lisbon Strategy requires that of us and as an economic area with few raw material resources it is something we are forced to do.

However pleasing the growing number of patent applications is, the EPO faces a huge challenge in processing those applications. But we can be confident that it will meet that challenge. Where reforms are needed, they are addressed - the decisions of the Administrative Council have showed us that. Underlying that is our common goal of further intensifying co-operation between the EPO and national authorities. Those applying for a patent must be able to trust in the fact that safeguards will remain in place to guarantee the high quality which the EPO and its specialised and excellently qualified examiners provide. An important goal of the debate on the Patent Strategy is therefore to strengthen the EPO as a central European authority for patents.

A Europe of Innovation - Fit for the Future. We need more reforms so that we can confidently and rightfully put an exclamation mark at the end of that sentence. We must make further improvements to the European patent system and create incentives for industry to be innovative. Only then will Europe continue to be successful against its global competitors. To see where these reforms are needed we only have to look at the topics our panels will be dealing with during this conference. I would like to make a few comments regarding the content and what I expect of these discussions.

In a globalised economy, inventions need to be protected - worldwide. Panel I is therefore dedicated to co-operation with countries in Asia, in particular China. It is no secret that we are still very concerned about product piracy. It is therefore especially in the emerging economies that we want to help establish a modern patent system. That is something Germany is already doing: intellectual property rights are the main focus of this year's dialogue between Germany and China on the rule of law. The German and Chinese patent offices last year concluded a new co-operation agreement covering numerous projects. I am delighted to have Mr Yin on this panel as our distinguished guest from the Chinese patent office. I am looking forward to hearing what he will be telling us about efforts undertaken in his country to protect intellectual property.

Before rights can be protected, however, we need inventions and good ideas. The topic of Panel II will therefore be how we can better tap into the creative potential in our universities and research institutions, and how we can further improve the process of transferring inventions to industrial practice. The German EU Presidency will be putting forward an initiative for a charter for the management of intellectual property from public research institutions at a meeting of research ministers. In it we will formulate our idea of close co-operation between public-sector research and private-sector industry.

Panel III will focus on international harmonisation of patent law. We need approximated conditions all over the world or at least in industrialised countries concerning the grant of patents. Europe is showing how flexible it is here, but we also expect others to be willing to compromise, in particular the United States. I therefore very much hope that we will achieve a breakthrough in negotiations with our colleagues in the US before the year is out.

It is important that we improve international conditions for protecting patents - but we must also continue to strengthen innovative companies at home. It is especially small and medium-sized enterprises which have considerable innovative potential. That potential can only be tapped into for the benefit of the entire economy if we support these companies financially and by providing know-how so that they can make use of their industrial property rights. I hope that discussions in Panel IV will help show what still needs to be done in that regard.

Ladies and Gentlemen,

No other topic concerning patents has attracted more attention in the past than the patenting of biotechnology and computer-implemented innovations. A number of questions still remain unanswered in the debate on the conditions for and limits to such patents. Does patent protection promote new technologies or is it more of a hindrance? Do we need to adapt our patenting criteria? These are thought-provoking questions, and we expect especially lively debate in Panel V.

Nevertheless, just as important as the question of *what* can be patented is the question of *how* a patent is protected, since it is only worth anything if it can be legally enforced and protected against infringement. To make that possible we need conflict-resolution procedures which must be efficient, swift and cost-effective. Although we have been discussing this issue for a long time now, it will be worth all the effort. That is what the last panel will be looking at.

Ladies and Gentlemen,

In each of these panels we will be discussing individual aspects of European patent policy, but we should not lose sight of our strategic goals. However, if I consider where we are currently in the debate on patent policy, then I would like to see more courage and more determination so that we can really achieve these goals.

Just now Mr Thumann very succinctly summarised what business expects of these reforms: patents must be granted more swiftly, more cost-effectively and they must be of high

technical quality. Patents, once granted, must be protected: effectively, at low cost and without the risk of inconsistent court decisions.

Industry across Europe shares these expectations and I am certain that these reform *goals* are also entirely undisputed among the Member States.

Although the Commission's consultations last spring reaffirmed the broad consensus that exists as regards the goals, only a short while later we are again at a critical fork in the road. Each of us should therefore be very clear about where the two roads will lead us.

One road means reforming our existing system, which is functioning tolerably well. It means improving the patent granting procedure and the patent court system so that above all the users, that is the innovative companies, will benefit. The German EU Presidency is very determined to pursue this course.

But there is another road which some people in Brussels and in some capital cities are considering taking. This alternative strategy sets very different priorities. It is mainly concerned with protecting the interests of national patent offices or with ensuring that their own language remains a language used in the area of technology. If priority is given to such aspects, then all our efforts to introduce reform will be in vain. The tale of woe concerning the Community Patent, which has gone on for decades, is proof of that, and we should be clever enough not to make the same mistake twice. We should learn from our mistakes and do it better this time.

Mr McCreevy,

I was very pleased that you clearly heard the clear messages sent out at those consultations last year. You had announced that the Commission would be making another attempt at the Community Patent and that it was tending towards a uniform European patent court system. The European Patent Litigation Agreement, EPLA, was to create the basis for that. That was the right decision to take and Germany has always signalled its willingness to open up the EPLA for a Community Patent in the future.

Mr McCreevy, I do not wish to anticipate what you have to say to us. But what has been said in the run-up to the forthcoming Communication from the Commission concerning a patent strategy has made me rather sceptical.

I believe that the fact that the Commission did not present its Communication right after the consultations but has waited until now to do so has not made it any easier to find a solution. Of course the Member States and the Council have not always acted entirely correctly either. We began a controversial debate on the patent system under the Finnish Presidency, although at that time the Communication from the Commission had not even been issued and our experts had not yet had a chance to look into the matter.

Nevertheless, I would have liked to see the Commission show a little more courage now. Let's take, for example, uniform European patent jurisdiction. There are two possible solutions: Firstly, the EPLA and, secondly, the idea of transferring national jurisdiction for bundle patents to the European Court of Justice.

Anyone who proposes an "integrated" solution here which aims to combine both approaches would first have to clarify what is actually permissible under Community law and would then have to put forward a concrete, separate third model.

Then, however, one would also have to state clearly how many regional chambers there would be and where they would be located. Then we would have to clarify what rules of procedure would have to be followed, and then a proposal for which languages were to be used in these procedures would have to be made. But none of that has been done, and that is what I mean when I mentioned the lack of courage to put forward concrete solutions.

For me at least it is clear that fragmentation of the existing patent litigation system is not a desirable option. According to the Commission, some 1,400 disputes concerning European patents are dealt with each year, essentially in four countries. We should certainly not aim to have a model in which these cases would be distributed across courts of first instance in all 27 Member States.

The key factor for high-quality patent jurisdiction is the technical qualification of its judges. We have had very good experience of that here in Germany. Engineers, chemists and biologists act as technical judges, ensuring that the decisions are highly accepted by the parties involved. I believe we should pick up on such experience in our current discussions on creating a uniform European jurisdiction.

Ladies and Gentlemen,

Where will discussions take us over the next few months? The German EU Presidency will ensure that the Communication from the Commission will be thoroughly discussed in the

Council Working Group. We cannot afford the reform to fail again. Compromises with a short shelf-life will therefore not be of any help to us. Many of my colleagues in other Member States are of the same opinion.

First it must be examined which solutions are actually legally possible under the EPLA and under Community law. Then we need to know which aspects of the Community Patent and of jurisdiction on patents all the Member States can agree on. Only then will the Council of Ministers be able to debate the issue again, since we need a unanimous decision.

The litmus test for any consensus will therefore be the answer to this question: How does it benefit those affected? Does the solution make things more expensive, more difficult and introduce yet more red tape? If so, we will not go ahead with it. But if we can say "yes, the system will be simpler, will cost less and create more legal certainty", then we will have made a breakthrough.

We have a system for the grant of patents in Europe that needs improving, but it does work. In several countries we have high-quality jurisdiction and close co-operation between the patent authorities. We must build upon that and use that as a basis for creating a uniform European patent system. Only then will Europe remain economically competitive in the long run. Achieving that goal should be worth all the effort it takes. We should together muster all the strength we have and make another attempt to finally achieve our goal.