Patents and trademarks

When the Community-wide patent system is adopted, applicants will no longer be subject to different legislation and fees. Companies will no longer have to pay renewal fees in each country, while national working requirements will be replaced with the proviso that the Community patent be used in at least one Member State.

These measures have been designed to complement the national systems rather than replace them which means that patentees will have a choice between taking a national patent or a Community patent. Where a company only needs to protect itself in two or three markets, it may be cheaper for it to get national patents in those specific countries rather than a Community patent.

Canadian companies would do well to register their trademarks in each country in which they trade. The EC has not yet adopted a new proposal that would provide for the creation of trademarks valid throughout the EC. The first Council directive aimed at harmonizing EC trademark laws was adopted at the end of 1988. It focused on approximating the terms of the Member States' trademark laws that most directly affect the functioning of the internal EC market. These include giving the owners of trademarks "exclusive rights," permitting them to prevent others from using an identical or similar sign where this use creates the "likelihood of confusion" for consumers. When disputes arise, the laws of Member States apply. (See *Europe 1992 and Intellectual Property Rights*, EAITC, forthcoming).

home country control over the bank's affairs throughout the EC. The bank, in turn, will be free to open branches in other EC countries and to provide services within the range permitted by its EC home country.

The EC will apply the principle of "reciprocity" to banks from non-EC countries. That means that the EC will treat banks from a non-EC country the same way that it treats its own banks as long as that country does not discriminate against EC banks.

Initially, non-EC institutions were concerned that "reciprocity" would mean the EC would insist that its financial institutions abroad be permitted to carry out all the activities they are normally permitted to carry out within the EC; a range greater than is permitted in many countries. Critics warned that "reciprocity" measures of this kind would contribute to building a Fortress Europe. However, the EC did not go this route. Instead, the EC's reciprocity conditions only seek to ensure that EC institutions operating abroad receive the same treatment as local institutions.

Moreover, foreign banks established in the EC prior to 1993 will be considered as EC banks and enjoy the same rights as European banks. Thus, Canadian banks that have already established a subsidiary in the EC, that is a firm with its own corporate identity and function—not just a representative office—are well positioned for the future.

As in banking, the EC Commission intends to establish a single insurance licence that will enable companies legally established in one Member State to offer their full range of products in another Member State. There is, however, still some way to go. Freedom to offer services covering large industrial and commercial risks has been increased through the Second Non-Life Insurance Directive, while the Second Life Insurance Directive enables individuals to go abroad to shop for the best prices and coverage. However, the freedom to go abroad for the best deals in non-life, life insurance and private pension funds will apply to people who buy insurance, not to those who sell it.

Towards Monetary Union

The EC is now moving toward European Monetary Union (EMU). The European Monetary System (EMS), established in March, 1979, represented a major step towards monetary union. Its purpose was to create greater exchange rate stability among European currencies and promote economic integration. It has also contributed to the convergence of economic trends and policies among Member States.

The European Monetary System has three major components: the Exchange Rate Mechanism (ERM), which establishes predominantly fixed-exchange rates between the currencies of the participants;[1] the European Currency Unit (Ecu), which is a currency basket used at the centre of the ERM; and credit facilities which supply credit when necessary to fulfil ERM obligations. Each participating currency in the ERM is given a rate expressed in terms of the Ecu. A currency is then allowed to fluctuate on the market within a range of plus or minus 2.25% of its Ecu rate or, in the case of the British Pound Sterling and the Spanish Peseta, a range of plus or minus 6% of its Ecu rate.

European Monetary Union involves a more fundamental transfer of national sovereignty to the Community level than does the EMS. The first stage involves the elimination of barriers to the flow of capital, the membership

[1] All of the countries presently in the EC except Greece and Portugal participate in the ERM of the EMS.