



REGERINGSKANSLIET

10 September 2004

**Ministry for Foreign Affairs
Sweden**

Minister for Industry and Trade

Mr. Pascal Lamy,
Commissioner for Trade
Commission of the European Union
Brussels

Dear Pascal (med bläck),

With this letter I would like to draw your attention to what I believe is a significant asymmetry between the way European citizens are treated in the US legal system compared to the treatment given to US citizens in dealings with the European legal system. I find that unacceptable and hardly consistent with the TRIPs Agreement.

The background - but not the issue here - is a specific case where the Swedish inventor Mr. Lans has had serious trouble protecting his patent rights in the United States.

I would like to follow up on our previous correspondence in 2001 concerning the cost of taking court action and how the threat of being subject to potentially devastating counter-action can deter European inventors and industry from making full use of their rights under the TRIPs Agreement. Mr. Lans' case is just yet an example of how cumbersome and expensive the US legal system can be for European citizens.

I think there is reason to believe that features in the US legal system might be inconsistent with the TRIPs Agreement. According to Article 41.2 of the TRIPs Agreement procedures concerning the enforcement of intellectual property rights must be "fair" and "equitable". If procedures are "unnecessarily complicated or costly" or subject to "unreasonable time-limits or unwarranted delays" a violation of Article 41.2. might be claimed.

During the WTO-review of legislation on enforcement in the United States made in December 1998 the EU, when posing questions, relied on publicly available data which showed that enforcement actions in the US federal courts typically require several years to reach a final judgment and that the costs of such actions often reach US\$1 million or more.

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Against this background I would be very much interested to hear the Commission's view on the issue of consistency with the TRIPs Agreement. Since Article 42.1 of the TRIPs Agreement is quite broad and might be open to interpretations this provision may merit a review within the on-going review process under the TRIPs Agreement.

In this context it would also be very valuable to be informed about the results of the study the Commission undertook in 2001 of the problems faced by EU rightholders in the US and to which you referred in a previous letter.

Is the Commission continuing to act on the issue of administration of patent rights in the dialogue with the US, for example in the framework of the Transatlantic Dialogue? I do believe that continued efforts in this area are needed.

Best regards

Leif Pagrotsky (med bläck)