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Discussion Following the Remarks of Professor Hans Smit

Discussion

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QUESTION, Professor King: Thank you, Hans for a superb presentation. I would like to ask you whether in the EEC there is any need for basic conformities of the intellectual property laws between these different countries?

ANSWER, Professor Smit: Of course, the EEC has been working on a community patent law, but it is very hard to come up with one. We have a European Patent Law, but that is not limited to the Common Market. There are about eighteen member countries and it is basically a way of getting patent protection in eighteen different countries at the same time. But a community-wide patent law is in the process of developing and the court has significantly said that, as long as we don't have a uniform law reigning community-wide on those subjects, we have to kind of steer our way through the national laws.

QUESTION, Professor King: I think one thing that Professor Smit did stress is the difference in the EEC in terms of the presence of competition law, which makes a difference in terms of making the EEC different from this situation. I wonder if you have any comments on that?

ANSWER, Professor Smit: The courts have used the competition law to get the result that it wanted because it was easier, but, basically, the courts have also relied on the free movement of goods provisions, which were not well drafted so as to be automatically applicable in the member states. However, the courts made it automatically applicable in the member states, and my notion is that as long as you put that in the U.S.-Canada treaty, you can let the courts reach the same result.

COMMENT, Professor King: That's a very important point. Then, of course, there were differences between different types of intellectual property, too.

ANSWER, Professor Smit: Sure. Some countries have design and model protection and some countries don't. The modalities of protection vary from country to country, also.

