

Consultation on potential EU–US trade agreement

Introduction

The Federation represents IP intensive companies in the United Kingdom - a list of members is attached. Our member companies range from large multi-national companies to smaller SMEs, and are extensively involved with IP in Europe and internationally. Not only do our companies own considerable numbers of IP rights, both in Europe and elsewhere, but they are affected by the activities and IP rights of competitors. They may be either plaintiffs or defendants in IP related court actions, here and elsewhere.

The consultation

On 31 July 2012 it was announced that the European Commission had launched a formal [consultation](#) on how to expand EU-US trade and investment. An EU-US trade deal would be the biggest bilateral deal in the world and could add billions to the already significant trade and investment relationship between Europe and the US. Not only would an EU-US deal further open up the transatlantic market, but given both trading blocs make up a third of world trade and over half of global GDP, a deal has the potential to have significant knock-on effects in the development and adoption of international standards.

The questions

The [consultation](#) is open until **27 September 2012** and includes the following questions relating to protection of Intellectual Property Rights:

- 8.1. Are you concerned by problems of protection and enforcement of intellectual property rights in your field of activity?
- 8.2. If you are concerned by problems of protection and enforcement of intellectual property rights, please explain the problems you encounter.
- 8.3. Are you concerned by problems of protection for Geographical Indications or trademarks in your field of activity?
- 8.4. If you are concerned by problems of protection for Geographical Indications or trademarks, please explain the problems you encounter.
- 8.5. If you are concerned by problems of protection and enforcement of intellectual property rights, including Geographical Indications and trademarks, what should be the European Union priorities to address the issues?

IP Federation response

- 8.1. Yes, we are concerned by problems of protection and enforcement of intellectual property rights.
- 8.2. The problems we encounter, and our recommendations on how to address these, are as follows:
 - (A) Compulsory licences - in some territories, it has been suggested that lack of local manufacture is a ground for the issue of a compulsory licence. It should be clarified that the US and the EU do not consider lack of local manufacture to be a permissible ground for issuing a compulsory licence.
 - (B) Injunctions - "patent trolls" use the threat of an injunction as leverage to extract settlement payments. The patent troll's ability to obtain a permanent injunction in a bifurcated system should be limited, until any counterclaim of invalidity has been properly considered. Preliminary injunctions to protect the patentee's market position should be more readily and predictably available.
 - (C) Publication at 18 months - publication of patent applications at 18 months after filing currently does not occur for US-originating inventions when no application has been filed for the same invention abroad. Publication of patent applications at 18 months should be for *all* patent applications (except for classified applications).
 - (D) Patent litigation - legal procedures can sometimes deter parties from bringing or defending patent litigation. Legal procedures should be such that Court, Patent Office and lawyers' fees do not deter parties from bringing or defending *bona fide* patent litigation.

Conclusion

The IP Federation hopes that attention will be given to address the issues discussed above, namely:

- compulsory licences;
- injunctions;
- publication at 18 months; and
- patent litigation.

IP Federation
27 September 2012

IP Federation members 2012

The IP Federation represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below. Its Council also includes representatives of the CBI, and its meetings are attended by IP specialists from three leading law firms. It is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

AGCO Ltd
ARM Ltd
AstraZeneca plc
Babcock International Ltd
BAE Systems plc
BP p.l.c.
British Telecommunications plc
British-American Tobacco Co Ltd
BTG plc
Caterpillar U.K. Ltd
Delphi Corp.
Dyson Technology Ltd
Eli Lilly & Co Ltd
ExxonMobil Chemical Europe Inc
Ford of Europe
Fujitsu Services Ltd
GE Healthcare
GKN plc
GlaxoSmithKline plc
Hewlett-Packard Ltd
IBM UK Ltd
Infineum UK Ltd
Merck Sharp & Dohme Ltd
Microsoft Limited
Nokia UK Ltd
Nucletron Ltd
Pfizer Ltd
Philips Electronics UK Ltd
Pilkington Group Ltd
Procter & Gamble Ltd
Rolls-Royce plc
Shell International Ltd
Smith & Nephew
Syngenta Ltd
The Linde Group
UCB Pharma plc
Unilever plc
Vectura Limited