



Key trade and IP update 2023: Success for the Federation on long-standing trade IP goals!

Signature of UK's Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) accession protocol in July 2023

The big news in trade and IP this year is that the UK has agreed in principle to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), following the signature of the UK's CPTPP accession protocol on July 16, 2023 in New Zealand. The UK is expected to accede to the CPTPP next year, following Parliamentary scrutiny and completion of the ratification process.

Success for the UK:

IP Federation's close trusted collaborative working with Government, and other key stakeholders

After 5 years or so of sustained strong engagement, hard work and trusted collaboration with UK Government officials (DBT/formerly DIT, IPO) at all levels and other key stakeholders including the Chartered Institute of Patent Attorneys (CIPA), the IP Federation are very pleased to report the recent successful outcome that Government has achieved in relation to intellectual property (IP) aspects of the UK's accession to the CPTPP. The effect of this Agreement is that no inconsistency can arise from the UK's concurrent membership of both the European Patent Convention (EPC) and CPTPP.

The UK is now acceding to CPTPP on terms which do not threaten UK's EPC membership and which promote international harmonisation of patent laws, another long-standing IP Federation goal. As chair of the IP Federation Trade Working Group, I feel incredibly proud and privileged to be part of this remarkable and extensive IP Federation team effort involving so many esteemed colleagues (IP Federation past and present presidents, IP Federation councillors, IP Federation Trade Working Group, solicitor associates, policy advisors/consultants) which has contributed to this successful outcome for UK innovative business and the UK patent profession. To achieve this positive outcome for industry, IP Federation was committed to years of persistent engagement, effort and collaboration with stakeholders. This included having regular monthly IP Federation Council and focussed IP Federation Trade Working Group meetings, and having countless calls and meetings with UK Government officials including the Chief Negotiator, and engaging directly with business and IP organisations and officials in Japan, Canada, Singapore and other CPTPP countries when needed. It's a current stellar example of the deep strength and diversity of thought of the IP Federation in action. It continues to demonstrate what can be achieved together with Government and other key stakeholders in this highly complex political, technical and legal trade policy area of strategic importance, for the benefit of the UK.

IP Federation adopted constructive solutions-based approach: we delivered key messages clearly to Government, supported by hard evidence, and persisted

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Since the Government's launch in 2018 of public consultations on free trade agreement negotiations in regard to the US, Australia, New Zealand and CPTPP accession, the IP Federation raised early on and repeatedly explained clearly to Government when necessary, backed up by hard evidence (including: (1) IP Federation commissioning an opinion from a leading KC and briefing Government in February 2020 with constructive solutions, and (2) providing with CIPA an independent impact assessment of the value of the EPC to the UK economy by renowned ex-Government Chief Economist Tony Clayton – June 2020), why continued membership, clear of any doubt or uncertainty, of the EPC was so vital to the economic prosperity of the UK. In a nutshell, the IP Federation's ongoing concern was that whilst supporting the UK's CPTPP accession, in agreeing terms for UK's accession to CPTPP, the Government should not commit to provisions which were inconsistent with other established international treaties, such as the EPC, which could therefore call its membership of those treaties into question. In particular, provisions in Art 18.38 CPTPP relating to patent grace period are not present in UK patent law or in the EPC. Agreeing to such provisions in the CPTPP would have risked a serious question arising over the UK's membership of the EPC whose very existence could have weakened the IP system and led to a permanent loss of international innovative businesses in the UK.

As noted in previous Reviews, the IP Federation have consistently advocated that the UK should therefore accede to the CPTPP on terms which build on a foundation of preserving the UK's existing high IP standards and international commitments, including under the non-EU European Patent Convention (EPC). Working closely with CIPA, we reinforced our key points in January 2023 at a critical stage of the trade negotiations, by giving evidence to the influential House of Commons International Trade Select Committee (see [published script](#)). Based on feedback, our points were understood by the Select Committee and duly noted by the relevant Government officials. Very recently (September 2023), the IP Federation also made a written submission in response to the influential House of Lords International Agreement Committee Inquiry into the UK's CPTPP accession: call for evidence. So, watch this space!

The agreement mechanism and solution

The mechanism by which the Government's commitment to accede on terms consistent with continued EPC membership has been achieved is through the exchange of side letters between the UK and each of the parties to the CPTPP. These letters state in terms that they "...shall constitute an agreement between our two Governments setting out the agreement reached between the Government of the United Kingdom and the Governments of the Parties to the CPTPP with respect to the application of Art 18.38 (grace period) of the TPP as incorporated into the CPTPP to the United Kingdom..." As such, their binding nature is incontrovertible.

The substance of the letters makes clear that Art 18.38 (grace period) shall only apply to the UK after the EPC (and, as needed, the Strasbourg Patent Convention) has been amended to incorporate provisions which are substantially the same as, and not inconsistent with, Art 18.38 (Grace Period), and UK has brought such amendments into force. In this way, the agreement satisfactorily solves the issue, we believe, by ensuring that no conflicting obligations between the EPC and CPTPP regimes in relation to grace period can arise. Furthermore, the IP Federation welcomes the focus placed in the side letters on the promotion of harmonisation in international fora as the route for seeking a grace period consistent with Art 18.38. As noted in previous submissions, we believe that some IP issues such as the nature and length of the grace period are best addressed in well-established multilateral processes for harmonisation involving, inter alia, the UK, the US and EU member states, that are already addressing issues such as grace period to enhance international harmonisation.

Closing remarks

The IP Federation welcomes the successful outcome the Government has achieved in relation to IP aspects of the UK's accession to the CPTPP. It is critical for the success of the UK's innovative business, and hence economy as a whole, that it continues to bring the same determination to the negotiation of other trade agreements.

The IP Federation very much looks forward to the UK's accession to the CPTPP as having the potential to deliver considerable benefits to businesses in the UK. We are very pleased to have been able to support the Government extensively in the course of the trade negotiations. We were delighted to see the Government remain resolute and robust during tough negotiations to secure accession on terms which successfully deal with the application of Article 18.38 (patent grace period), through the exchange of binding side letters. This result will preserve an efficient route for patent protection in the UK and Europe, and enable the continued success of the UK patent profession, both of which are key elements in delivering an environment for UK innovative companies, both small and large, to prosper.

We were also pleased to see the promotion of harmonisation in international fora as the route for seeking a grace period consistent with Article 18.38. We look forward to continuing to work with the Government as it endeavours to promote harmonisation and the adoption of grace period rules in international fora as set out in the side letters.

Building on this success and the strong trusted relationship that has been built with Government, the IP Federation looks forward to continuing to be able to offer its support to the Government in pursuit of delivery of its future trade policy goals.

Dr Bobby Mukherjee – Chair of IP Federation Trade Working Group
26 September 2023