



The Rt Hon David Cameron MP, Prime Minister
10 Downing Street
LONDON
SW1A 2AA

16 May 2012

Dear Prime Minister

Re: Proposed Unitary Patent and Unified Patent Court

The IP Federation represents the views of UK industry in intellectual property (IP), both policy and practice, including patents. Its members are listed at the end of this letter, and they have wide practical experience of how IP law and patent litigation works in the UK, Europe and internationally.

We understand that the Unitary Patent and Unified Patent Court proposals are likely to be on the agenda of the Competitiveness Council on 30 May, and may be on the agenda of the June Council. We are also aware of the letter dated 26 April sent to members of the European Council by the President of the Council in which he urges “the necessary sense of compromise” to conclude an issue “of crucial importance for innovation and growth”.

We wrote to you on 5 April 2012 to voice our concerns^{*} with the current package of European proposals for Unitary Patent Protection and a Unified Patent Court in Europe because they will have a fundamental impact on innovation, growth and competition in Europe both for large business and for small companies.

Although we would like to see the Central Division located in London, this is a far less important issue for business than the issues which impact the quality of the system itself. Locating the Central Division in London will only alleviate the consequences of the serious systemic flaws in the proposals to a limited extent.

Many of our concerns are reflected in the recent report of the House of Commons European Scrutiny Committee.

We have always said that the key test of the proposals is that they should create a patent system for Europe which is better than the one we have today. If they do not, they will discourage innovation and impede growth and make it more risky to

^{*} These concerns relate to issues which are widely acknowledged as being important (such as the effect of Articles 6 to 8 of the Unitary Patent Regulation, the possibility of having separate hearings of the issues of infringement and validity (so-called “bifurcation”), the right to bring proceedings for infringement and provisional measures in the Central Division, the transitional provisions, the fact that the proposal will increase rather than decrease forum shopping and the Rules of Procedure). We also have serious concerns about the cumulative impact of other issues arising from, for example, drafting flaws in the proposed legislation, costs and inadequate information as to fee levels, and how it will be guaranteed that there are sufficiently qualified and experienced judges to enable the court to reach decisions of the required quality, reliability and speed.

conduct legitimate business in Europe. As the Hargreaves Review of Intellectual Property and Growth stated, "... a system which is slow, or produces low quality patents or court decisions could have a significant economic downside".

Unfortunately, if there are not significant changes to the proposals, they will clearly create a patent system in Europe which is substantially worse than we have today and particularly bad for European businesses.

Clearly, it would be desirable for more discussions to build on the progress that has been made so far towards a better patent system in Europe. In the light of the clear pressure at political level to conclude the negotiations, we urge the Government to consider urgently what options exist to ensure that changes are made quickly to make the proposals acceptable or, if that cannot be done, how best to ensure that more discussions take place. Those options might include the prospect of withdrawal from Enhanced Co-operation, refusing to accept the agreement creating the court or even declining to consent to the Regulation on Translations (requiring unanimity in Council).

President Van Rompuy is correct; there is a need for compromise but the compromise needs to come from those resisting changes which would make the system better than the one we have today. There can be no reason to agree to a system that will have a significant economic downside and be bad for innovation and growth in Europe.

Yours sincerely

James Hayles
President, IP Federation
Chartered & European Patent Attorney

Copies to:

The Rt Hon Nick Clegg MP
The Rt Hon George Osborne MP
The Rt Hon Kenneth Clarke MP
The Rt Hon Dr Vince Cable MP
Baroness Wilcox
Mr John Alty CB (IPO)
Mr Jon Cunliffe (UK Rep to the EU)
Ms Rachael Bishop (UK Rep to the EU)



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

The IP Federation is the operating name of the Trade Marks, Patents and Designs Federation
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