



Advancing Industry's View On Intellectual Property Since 1920

Betty Yabrifa  
Department for Constitutional Affairs  
Judicial Policy and Correspondence Division  
3<sup>rd</sup> Floor, Selbourne House  
54-60 Victoria Street  
London SW1E 6QW

Dear Ms Yabrifa

**Focusing judicial resources appropriately - the right judge for the right case**

This Federation has taken note of consultation paper CP25/05. Although much of the paper concerns matters pertaining to general judicial organisation, deployment, training and fee paid judges, in relation to which the Federation is not well qualified to comment, the section of the paper concerned with specialist courts and the related question are of direct interest to us.

The Federation speaks for a large section of innovative UK industry (see our list of members, attached), in relation to intellectual property rights. In protecting their rights or in encountering the rights of others, our member companies regularly have to consider engaging in litigation. It is crucial to them, in view of the specialised law and the often complex technical nature of the cases, that there should be a properly expert and specialised court. At present, there is such a court in the UK at both High Court and County Court level, at least for patents. The specialist Patents Court, part of the High Court, was provided for under the Patents Act 1977, since then under the Supreme Court Act 1981. The specialist Patents County Court was provided for under the Copyright Designs and Patents Act 1988. The two courts have acceptable rules for determining which cases are handled by which court.

At a meeting last March at the Patent Office to discuss "Single Court" proposals from the DCA, attended by this Federation and other organisations representing users, all users were unanimous that the statutory and specialist nature of the Patents Court should be maintained. They were not attracted to mere "ticketing" of judges for intellectual property cases, with no assurance that the specialist nature of the court, currently ensured by statute, would be maintained.

We fully support the recommendation in paragraph 22 of the consultation paper, i.e., that no purpose would be served by changing the existing arrangements for the Patents Court. We agree with the paper when it says that the Patents Court has an international role and that its work should not be disrupted. It is worth adding that this Federation together with the European Employers' Federation, UNICE, and indeed the UK government have urged that

Fifth Floor, 63-66 Hatton Garden, London EC1N 8LE

Tel: 020 7242 3923 Fax: 020 7242 3924

admin@tmpdf.org.uk www.tmpdf.org.uk

there should be specialist courts at European level to deal with European and future Community patents, and pressures have been brought to bear on other countries to establish specialist courts, where they do not already exist, in e.g., implementation of the WTO TRIPS Agreement. The UK's efforts to persuade others to establish specialist courts will be severely compromised if anything is done to disrupt the arrangements we have in the UK.

The reference in paragraph 66 to extending the range of civil specialisms to include intellectual property is not entirely clear. It is our understanding and experience that the judges of the Patents Court do have appropriate specialisms. However, our suggestion would be that all cases in the High Court concerning intellectual property enforcement and validity should be dealt with by the Patents Court (renamed and strengthened if necessary with more specialist judges), rather than that some non-patent cases should, as happens at present, be handled elsewhere in the Chancery division.

Our response to ***Question 6: Do you agree with the proposed exceptions for specialist courts?*** is therefore:

**Yes, we do agree with the proposed exception for the Patents Court,** for the reasons given above.

Yours sincerely

Sheila Draper  
Secretary, TMPDF

Cc: Jeff Watson, UK Patent Office