



Ms Hannah Lamb  
Senior Committee Assistant  
European Scrutiny Committee  
7 Millbank  
House of Commons  
London SW1P 3JA

via e-mail: [lambh@parliament.uk](mailto:lambh@parliament.uk)

23 January 2012

Dear Ms Lamb

### **Unitary Patent Regulation and Unified Patent Court Agreement**

The IP Federation represents the views of UK industry in both intellectual property policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed at the end of this letter. It has wide experience of how intellectual property law, including patent litigation, works in practice in the UK, Europe and internationally.

We are aware that on 25 January, your Committee will take evidence from organisations which have already written to you relating to the proposed Unitary Patent and Unified Patent Court. The Federation and its members have been closely involved in discussions of this issue with the Intellectual Property Office.

Because your Committee had previously asked the Minister for industry's views, we had thought it unnecessary to write to you until now. However, in view of the evidence you are taking from other organisations, we feel now is an appropriate time to express our views.

This matter is of great commercial importance to industry in the UK and elsewhere. Completion of the project will enable patents to be enforced or revoked across the territories of all participating Member States in a single action rather than on a country by country basis. A decision of the new court will be effective throughout the world's biggest single market.

The IP Federation is in favour of Unitary Patent Protection, and broadly in favour of a Unified Patent Court which, if properly designed and implemented will bring benefits to users over the current system. However, a system that is not of sufficient quality - one that is prone to give a "flawed" result - will have significant detrimental impacts.

A decision revoking a patent throughout the participating Member States can be of significant impact on the owner of that patent. For a large pharmaceutical company, for example, such decisions in the United States (which

The IP Federation is the operating name of the Trade Marks, Patents and Designs Federation  
Registered Office 5th floor, 63-66 Hatton Garden, London EC1N 8LE

Email: [admin@ipfederation.com](mailto:admin@ipfederation.com) | Tel: 020 72423923 | Fax: 020 72423924 | Web: [www.ipfederation.com](http://www.ipfederation.com)

Limited by guarantee Registered company no: 166772

has a similar market size to that which will be covered by the proposals) have led to drops in share price of in the region of 5%. Many SMEs rely to a significant degree on the existence of one (or a few) patents to maintain their businesses and a flawed decision revoking the patent will have a drastic impact on their businesses.

A decision enforcing a patent will prevent commercial activity throughout the participating Member States. This is of particular significance for many SMEs whose product range can be limited to a single product.

A system that enables a decision and potentially an EU-wide injunction to be issued in advance of any consideration of the validity of the patent in suit will favour non-practising entities (or patent trolls) to the detriment of UK manufacturing companies.

No one can complain about high quality decisions revoking or enforcing a patent, whatever the commercial impact of these decisions might be. However, because of the commercial significance of decisions of the new court, it is of the utmost importance that all reasonable steps should be taken to ensure that systemic inadequacies do not lead to flawed decisions.

However, the Federation is extremely concerned that the current proposals for the draft Regulation and draft Agreement will create a patent system in Europe which is worse than we have today. This is also the consensus view of many companies, judges, lawyers and patent attorneys in the UK and elsewhere.

Our main concerns are:

- Articles 6-8 (defining the rights conferred by a Unitary Patent) should be removed from the draft Regulation.
- The draft Agreement should allow patent owners to initiate infringement proceedings and proceedings for protective and provisional measures before the Central Division.
- The draft Agreement should allow patent applicants to opt out of the jurisdiction of the Unified Court those patents applied for via the EPO (other than unitary patents) during the transitional period.
- The Central Division should not be located such as to encourage delays in the consideration of validity. Our preference would be for the Central Division to be created in London.
- A satisfactory and advanced draft of the Rules of Procedure should be available before signature of the Agreement. These Rules will govern the way the Court operates in practice and will be crucial to achieving satisfactory quality.

So concerned are some of our members about the quality of the proposals that they are already considering or taking steps to avoid having to use the new system, even though this may mean incurring extra costs. It is a sad reflection on the proposals that innovative companies should be seeking to avoid a system whose object is to benefit innovation.

There are many other, more technical, issues which need to be fully addressed before the new system can be considered satisfactory, far less to be best in class. The perceived need to complete this project quickly should not override the need for full consideration of these issues.

We hope that this letter will assist your deliberations and would be happy to provide further assistance or evidence if you wish.

Yours faithfully

James Hayles  
European Patent Attorney  
President, IP Federation

c.c. European Scrutiny Committee  
Lis Partridge, Assistant to the Clerk

[escom@parliament.uk](mailto:escom@parliament.uk)  
[partridgeecg@parliament.uk](mailto:partridgeecg@parliament.uk)



## **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.

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  
Registered Office 5th floor, 63-66 Hatton Garden, London EC1N 8LE

Email: [admin@ipfederation.com](mailto:admin@ipfederation.com) | Tel: 020 72423923 | Fax: 020 72423924 | Web: [www.ipfederation.com](http://www.ipfederation.com)

Limited by guarantee Registered company no: 166772