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16 November 2011

Dear Lady Wilcox

**Location of new Unified Patent Court for Europe – Opportunity for the UK**

The Federation has written to you previously on the matter of European Patent Reform and specifically in connection with the proposed new Unified Patent Court.

On this occasion we wish to address the question of *where* the new European Patent Court will be located and to urge the government to bid for the UK to host the Central Division and/or the Court of Appeal (including the Registry).

So far the debate has focused on the substantive provisions of the Court Agreement, but attention is now also moving towards choosing a location for the key institutions of the new Court. This opens an exciting opportunity for the UK, which hopefully will not be missed.

Time may already be short because, as you will certainly know, there is huge political momentum to conclude the whole European Patent Reform project by June 2012, and so we would urge the government to start immediately to present a case for hosting the key institutions of the new Court here in the UK.

As experienced users of patent court services in the UK and internationally, the IP Federation believes it would be of significant benefit for innovative enterprises in the UK for the Central Division of the new Court in particular to be located in London. Indeed it would seriously disadvantage UK business if the Central Division were located anywhere but the UK. Aside from proximity, some of the main reasons for this are as follows:

- The UK offers world-class specialised courts and legal services in the field of intellectual property. If the key institutions of the new Court were to be located anywhere but the UK it would result in a migration of demand for legal services away from the UK.
- One of the major potential disadvantages of the new Unified Patent Court system is the possibility for so called bifurcation (i.e. split jurisdiction for infringement and validity) because it tends to favour the plaintiff over the defendant, and it is our view that locating the central division in the UK would act as a natural deterrent to bifurcation in practice.

The UK does not host any of the existing European patent and intellectual property institutions. One of the least desirable outcomes would be for the institutions of the new Court to be located in Munich or elsewhere in Germany because the new Court needs to be - and seen to be - remote from the European Patent Office. Furthermore, this would align with the Action Plan recently announced jointly by the

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Ministry of Justice and the Minister for Trade and Investment<sup>1</sup> to promote the UK as a centre of legal excellence both at home and abroad.

We realise that hosting the court in London would incur some cost for the UK public purse at least in the start-up phase. However this would be more than compensated by tax revenues from legal services providers in the UK. In any case, the aim is for the new Court quickly to become self-financing.

Further benefits to the UK may be set out as follows:

- A) Many millions of pounds per year in existing legal service fees are potentially at risk (including the Inland Revenue share of the same) if the Court does not come to the UK, but perhaps an even greater sum of *additional* legal service fees could be available for the successful bidder.
- B) The increased reputation to London as a centre of excellence in patents would attract patent-intensive business.
- C) It would result in further development of a mindset associating the UK with technology-based businesses.
- D) It would be an opportunity to demonstrate UK support of an EU institution that we backed from the outset, believe in, and want to help develop to success.

The new Court will also comprise local and regional divisions. If, as a policy matter, the UK is disposed towards forming a regional division with other Contracting Member States, it may be helpful for the UK to articulate this sooner rather than later, and also to promote the principle that both the Central Division and the Court of Appeal should be hosted preferentially by a Contracting State which does not have its own local division, this acting as an additional incentive for Contracting States to form regional rather than local divisions which is understood to be the goal of the Court project.

We also believe that if the new Unified Patent Court is to meet its aspiration of having a truly European flavour, it is essential that the composition of the panels of judges in both the Central Division and the Court Of Appeal is *truly* multinational, meaning that there must not be more than one judge of the same nationality on any panel. We urge the UK government to fight to uphold this principle.

If you require any more information or would like to discuss further, please let us know.

Yours sincerely

James Hayles  
European Patent Attorney  
President, IP Federation

c.c. Vince Cable, BIS  
Kenneth Clarke, Ministry of Justice  
George Osborne, HMT

Francis Maude, Cabinet Office  
(Lord) Stephen Green, UKTI  
John Alty, IPO

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<sup>1</sup><http://www.justice.gov.uk/downloads/publications/corporate-reports/MoJ/legal-services-action-plan.pdf>



## **IP Federation members 2011**

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  
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British Telecommunications plc  
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