



Unitary Patent Protection Regulation – Articles 6–8

Introduction

The Federation represents IP intensive companies in the United Kingdom - a list of members is attached. Our member companies are extensively involved with IP in Europe and internationally. Not only do our companies own considerable numbers of IP rights, both in Europe and elsewhere, but they are affected by the activities and IP rights of competitors. They may be either plaintiffs or defendants in IP related court actions, here and elsewhere.

The Unitary Patent

The EU unitary patent package was reported to have moved a step closer to final approval this week, when the Legal Affairs Committee approved a mandate to open formal negotiations with national governments to agree to create unitary patent, so as to cut costs for firms and boost the EU's competitiveness.

IP Federation response

The IP Federation broadly supports the initiative to create unitary patent protection in Europe, provided it results in a reliable, high quality, efficient, cost-effective and cost-competitive system compared with the current patent system in Europe, which is functioning reasonably well.

One of the most serious drawbacks in the current version of the proposed Unitary Patent Regulation now before the Legal Affairs Committee of the European Parliament is the unnecessary and potentially very harmful inclusion of infringement provisions in Articles 6-8. These are already present in the Unified Court Agreement, and this is the most appropriate place for them.

Having the definition of infringement in two different pieces of legislation would risk creating potentially divergent jurisprudence in Europe between unitary patent protection and traditional European patents, both granted through exactly the same process by the European Patent Office. That would lead to greater legal uncertainty for our high technology and innovative businesses in the UK.

Other UK business associations have expressed this same view, and moreover the eminent former court of appeal patent judge, the Rt. Hon. Professor Sir Robin Jacob, has recently provided a written legal Opinion supporting this position. This is also the view of other European industry and professional organisations.

On 16 November 2011 Baroness Wilcox, the UK IP minister, wrote to the Polish Presidency asking for Articles 6-8 to be moved from the Unitary Patent Regulation, noting UK industry's strong opposition to the inclusion of infringement in the Regulation.

If Articles 6-8 are left in the Regulation we believe that the whole dossier will have failed to meet its most fundamental objective of delivering a better patent system in Europe.

We believe that Ms Cecilia Wikström MEP is proposing an amendment to delete Articles 6-8 from the Unitary Patent Regulation, and the IP Federation urges MEPs to support that amendment. In any case we urge MEPs to push for the deletion of the infringement provisions in Articles 6-8 from the Unitary Patent Regulation.

Other issues of significant concern

The IP Federation also has concerns about other aspects of both the Regulation and, in particular, the Court Agreement. Several changes to the Court Agreement are needed for the system to be satisfactory.

These include:

1. introducing a right for proceedings for infringement and provisional and protective measure to be brought in the central division;
2. ensuring that the Rules of Procedure which will govern how the Court will operate are on a satisfactory and advanced form before the Agreement is signed; and
3. introducing a right for applicants for European patents (other than patents with unitary effect) to opt out of the new system until it has been proved to be satisfactory in practice.

The IP Federation (in common with others) is very concerned that, in a laudable attempt to retain momentum towards conclusion of this project, inadequate attention has been paid to these (and certain other) issues which really are crucial to ensuring a system of adequate quality. We believe that if these issues are not addressed we risk inadvertently harming, rather than promoting, innovation in the UK and the EU.

Conclusion

The members of the IP Federation request that Articles 6-8 should be removed from the Unitary Patent Regulation. They also urge that full consideration is given to other significant issues to ensure we achieve a better patent system in Europe. We would be happy to discuss these issues with MEPs.

IP Federation
25 November 2011

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
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
QinetiQ Ltd
Rolls-Royce plc
Shell International Ltd
Smith & Nephew
Syngenta Ltd
The Linde Group
UCB Pharma plc
Unilever plc