



JURI Members
(see Circulation list)
The European Parliament
Brussels
BELGIUM

26 October 2012

via e-mail

Dear Members of JURI (and substitutes)

Unitary Patent Protection – Articles 6–8 of the proposed Regulation of the European Parliament and Council

The IP Federation represents the views of a wide range of industries operating in the UK, Europe and internationally in intellectual property (IP) matters, both policy and practice, including patents. Its members are listed at the end of this letter.

We are writing to you in connection with the proposal for a Regulation of the European Parliament and of the Council for creating Unitary Patent Protection.

This proposal which is currently before the Legal Affairs Committee of the European Parliament, and is shortly expected to come before the full house, has enormous implications for innovative technology companies both large and small operating in the EU, and also for patent litigation in Europe.

One of the most controversial aspects of the proposed Regulation remains the inclusion of infringement provisions in Articles 6-8, which in June the EU Heads of State suggested deleting - see Council Conclusions, 29 June 2012, EUCO 76/12.

The IP Federation, like many other bodies representing users, is strongly in favour of deleting these Articles from the Regulation because they would otherwise have the effect of extending and slowing down cases, increasing cost and legal uncertainty, and potentially creating divergent jurisprudence for patent law - all of which are highly undesirable for innovation, competition and growth in Europe.

In its Opinion of 9 July 2012, the Legal Service of the European Parliament concluded that deleting these articles would result in an uncertain legal basis for the Regulation. The Legal Service argues that without including substantive infringement provisions in the Regulation the creation of EU IP rights to provide uniform protection throughout the Union is incomplete under Art 118(1) TFEU.

If you take the EP Legal Service's line of thinking to its natural conclusion, then it can similarly be argued that the creation of new EU IP rights providing uniform protection cannot be complete without the existence of a forum in which to enforce the newly created rights.

However, the proposed Regulation does not propose such a forum. A separate Agreement, which is *not an EU instrument*, will be the vehicle for creating a Unified Patent Court (UPC) for the enforcement of unitary patent protection.

The IP Federation is the operating name of the Trade Marks, Patents and Designs Federation
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The Legal Service does not seem to be troubled by the lack of a competent Court established under EU law, implying that the UPC Agreement alone is sufficient to complete the creation of an EU IP right under Art 118(1) TFEU. If the UPC Agreement is sufficient for providing a proper legal basis with respect to the creation of the court, then the same Agreement must also be sufficient with respect to infringement. Otherwise double standards would be at play.

Since the corresponding provisions to Article 6-8 are indeed included in the draft UPC Agreement (as Articles 14(f)-(h)) *we urge you to call for the deletion of Articles 6-8 from the proposed Regulation.*

This would remove a significant political road-block enabling the dossier to continue its legislative passage.

If you would like any more information or background information, the IP Federation is at your disposal.

Yours sincerely

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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.

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