



17 February 2020

### **EUROPEAN BUSINESS URGES FOR THE RAPID ENTRY INTO FORCE OF THE UNITARY PATENT SYSTEM<sup>1</sup>**

BUSINESSEUROPE is the leading advocate for growth and competitiveness at the European level, standing up for all-sized companies in 35 European countries whose national business federations are our direct members.

BUSINESSEUROPE actively supported and provided input into the negotiations on the Agreement on a Unified Patent Court and on the EU Regulations on the Unitary Patent.<sup>2</sup>

In the context of the upcoming decision of the German Constitutional Court that is expected in early 2020 and the new scenarios opened by Brexit, BUSINESSEUROPE would like to recall the importance of the Unitary Patent system for European industry and our expectations regarding the post-Brexit scenarios.

#### **The importance of the Unitary Patent and Unified Patent Court system**

A fully-fledged policy to protect inventions is vital for Europe and its prosperity in the 21st century. It is an essential element of innovation policy in order to promote growth and jobs and strengthen Europe's competitiveness. A robust patent system is required to stimulate and protect innovation to ensure that Europe continues to be a global centre of knowledge, innovation and job creation.

BUSINESSEUROPE considers the European Patent Convention system as the best option to promote the legitimate interest of innovative industries to protect their investments in valuable technical ideas. However, European companies still need to see improvements in the current system in terms of costs reduction when seeking Europe-wide protection and increased legal certainty with a view to enforcement of patent rights.

The Unitary Patent and the Unified Patent Court (UPC) would bring significant improvements in both areas. The reform has been underway and carefully prepared for many years and is now eagerly awaited by Europe's innovative industry. All efforts must be done to enable the new system to start as soon as possible.

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<sup>1</sup> This paper and the positions reflected in it are not supported by the Spanish Confederation of Employers and Industries (CEOE), the Confederation of Industry of the Czech Republic (SPCR) and the Confederação Empresarial de Portugal (CIP).

<sup>2</sup> Regulation (EU) No 1257/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection, and Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.



## **The benefits of the Unitary Patent system**

Unitary Patents will make it possible to get patent protection in up to 26 EU Member States by submitting a single request to the European Patent Office (EPO).

Unitary patent protection will make the existing European system simpler and less expensive for inventors. The EPO will act as a one-stop shop, allowing for a simple registration of a unitary patent. This will end complex validation procedures and drastically limit expensive translation requirements in the participating countries.

No fees will have to be paid for the filing and examination of the request for unitary effect or for registration of a Unitary Patent. In addition, inventors will no longer have to face high costs involved in the national validation of European patents and would benefit from a broader territorial protection for their inventions.

Unitary Patents will not be subject to the currently fragmented renewal fee system. There will be only one procedure, currency and deadline and no obligation to use a representative.

BUSINESSEUROPE would welcome all these benefits as they are intended to help businesses, including Small and Medium-Sized Enterprises (SMEs), to minimise their costs and administrative burdens of patent protection in Europe. As a result, the Unitary Patent system is expected to stimulate research, development and investment in innovation, as well as to help to boost growth and competitiveness in Europe.

## **The benefits of an integrated European patent litigation system**

Patents in Europe are currently enforced at national level. Considerable costs are inflicted on industry - patent owners and competitors alike - due to legal uncertainty and costs for national actions. To operate satisfactorily, industry must be confident that legal certainty can be guaranteed by the jurisdictional system. Businesses have therefore always supported the creation of an efficient European patent court composed of Europe's best patent judges.

Coordination of judicial systems for the existing European patents and the future Unitary Patents is essential for industry in order to enhance consistency and efficiency in the enforcement of patents within Europe. Only then can unambiguous and uniform handling of patent disputes relating to patents granted by the EPO come into effect.

The UPC Agreement and its related Rules of Procedures provide an adequate answer to the above requests and will provide a better framework for all parties involved in patent litigation in Europe. In particular, costs will be reduced as parties will not need to engage in parallel patent litigation in different member states. Diverging decisions from different national courts on infringement and validity of the same patent will cease as the UPC would develop a truly European case-law, thus enhancing legal certainty for all users. Over time, a more efficient and balanced patent litigation system will emerge, to the benefit of both patent proprietors and third parties.

## **Unitary Patent system and Brexit**

Following the ratification of the Unified Patent Court Agreement by the United Kingdom (UK) in April 2018, one of the last necessary steps to make the Unitary Patent a reality has been completed. However, there are some legal and political issues that should be solved in order to allow the UK to be part of the Unitary Patent system after Brexit.



BUSINESSEUROPE would prefer the UK to remain part of the Unitary Patent systems. The inclusion of the UK in UPC and Unitary Patent system will maximise the economic benefit and uptake of the new system by users. If the UK is not included in the Unitary Patent system, then the uptake by users will be impacted, as the effective costs to applicants will risk being higher and there will be fewer benefits. In fact, if the Unitary Patent system did not cover the UK, applicants would have to maintain both their UK patents and their Unitary patents (while bearing the related significant extra costs for registration and renewal fees) to get the same protection.

The inclusion of UK in the UPC Agreement would also enable continental European businesses to litigate in one place and avoid litigation in the UK which is the most expensive system in Europe and is hardly accessible to SMEs.

Therefore, BUSINESSEUROPE urges the European Union and UK to try to solve these pending issues to ensure that the latter still remains a signatory state party of the UPC Agreement and of the Unitary Patent system alike.

### **What does European industry aim for?**

The rapid entry into operation of the Unitary Patent and the UPC would provide a major boost to competitiveness, growth and job creation in Europe and remains a priority for all of our members.

BUSINESSEUROPE's position is that Member States party to the UPC Agreement must complete swiftly all actions necessary for the entry into operation of the Unified Patent Court and the Unitary Patent, preferably including the United Kingdom, so that European users and society can finally fully benefit from the expected economic benefits arising from such system. By harmonising the European system for obtaining and enforcing patents, this will help to unify the variations between national systems and prevent fragmentation.

Our members have taken note of the timetable change, as the original deadline of end of 2017 could not be maintained due to Brexit and the case pending before the German Constitutional Court that have delayed the German ratification. We hope this delay is going to be a short one so the system could become operational in the first quarter of 2021.

BUSINESSEUROPE also calls on the European Commission and signatories of the UPC to continue pushing parties to the UPC Agreement to complete their tasks including the entry into provisional application of some provisions of the UPC Agreement as soon as possible.

Lastly, our members are confident that a solution to allow the United Kingdom to remain part of the ambitious Unitary Patent system can still be achieved in the future relationship.