



22 April 2020

THE RAPID ENTRY INTO OPERATION OF THE UNITARY PATENT SYSTEM IS KEY FOR EUROPE¹

BUSINESSEUROPE actively supported and provided input into the negotiations on the EU Patent system, including the Agreement on a Unified Patent Court and the EU Regulations on the Unitary Patent (“Unitary Patent system”).²

BUSINESSEUROPE has also recently recalled these messages and has urged for the rapid entry into operation of the Unitary Patent system.³ Since then, the UK government has announced that it will not participate in this system. In addition, by its decision published on 20 March 2020, the German Federal Constitutional Court has declared that the German law approving the Agreement on a Unified Patent Court (“UPC Agreement”) is null as it has not been approved by the Bundestag with the required two-third majority.

Despite of these developments, BUSINESSEUROPE continues to emphasise that the Unitary Patent project deserves to go ahead without further delay and the necessary steps should be taken in order to allow this system to enter into operation as soon as possible.

First, the Unitary Patent and the Unified Patent Court would bring significant advantages in terms of efficiency and quality when seeking Europe-wide protection and increased legal certainty with a view to enforcement of patent rights. These benefits are intended to help businesses, including Small and Medium-Sized Enterprises (“SMEs”), to minimise the costs and administrative burdens of patent protection in Europe.

Second, even without the United Kingdom, the Unitary Patent system will still cover a large majority of the EU economy and will, therefore, bring considerable

¹ 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).

² 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.

³ See BUSINESSEUROPE position paper “European business urges for the rapid entry into force of the Unitary Patent System” of 17 February 2020, available at https://www.busesseurope.eu/sites/buseur/files/media/position_papers/legal/2020-02-17_unitary_patent_system.pdf



added value compared to the European bundle patent and national patent litigation. As the Unitary Patent system has been created to serve the interest of all European companies, it is of utmost importance that, not later than three years after its entry into force, the European Commission and the EU Member States ensure that the Unitary Patent system is actually used by all European industries, i.e. different sectors and different sizes of enterprises, that it is attractive and that its costs are not a barrier for these users.

Third, BUSINESSEUROPE welcomes that the German Federal government has announced to continue its support for the introduction of the Unitary Patent system and expressed the intention to explore possibilities allowing the rapid ratification of the UPC Agreement.⁴

Fourth, the Unitary Patent system is expected to stimulate research, development and investment in innovation in Europe. Europe needs to rely on a strong R&D supportive and long-term stable framework. This is all the more the case since the Unitary Patent system would as a long term effect strengthen innovative businesses in Europe and thereby generate economic growth, which would certainly be needed for an economic recovery after the current COVID-19 crisis.

Therefore, even under the present challenging circumstances, it is of great interest to European business that the Unitary Patent system is available as soon as possible.

⁴ The press released published by the German Federal Ministry of Justice and Consumer Protection can be accessed by the following webpage: (in German): (https://www.bmju.de/SharedDocs/Pressemitteilungen/DE/2020/032620_Patentreform.html).