

Written evidence from the Confederation of British Industry (CBI)

Proposals for Unitary Patent and Unified Patents Court

1. The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce. With offices across the UK as well as representation in Brussels, Washington, Beijing and Delhi the CBI communicates the British business voice around the world.

2. Our submission sets out our thoughts on proposals for the Unitary Patent and Patent Court. Our position has been established in consultation with a wide variety of CBI members. In summary:

- The CBI has supported, and continues to support, the development of a properly implemented Unitary Patent and Patent Court. However, proposals at the end of 2011 were of significant concern to IP-rich (and associated) industries in the UK.
- Concerns relate to legal certainty and quality; clarity over the transition process; the location of the proposed central court; and practical issues, principally around cost.
- We welcome the opportunity to appropriately address and resolve these concerns under the Danish Presidency during the first half of 2012.

3. The CBI has consistently expressed support for the development of a high-quality Unitary Patent and accompanying Patent Court, and continues to support the project in principle. In particular, Professor Hargreaves' finding that the establishment of a Unitary Patent could increase UK national income by over £2 billion a year by 2020 is

significant. In the final months of 2011 we voiced concern that the proposals on the table (under the Polish Presidency) were not ready to be progressed, and, if accepted, would create a patent system in Europe which is worse than the one we have at present.

4. We are keen to see momentum for the project continue, but it is important that this momentum is not at the expense of a high quality patent system. CBI members have expressed substantial concern at elements of the current proposals, and it is crucial that these issues are appropriately resolved if this project is to continue with the full support of UK industry behind it.

5. These concerns relate to legal certainty and quality; clarity over the transition process; the location of the proposed central court; and practical issues, principally around cost. In particular, we remain concerned about the following issues:

- It is crucial for the Patent to be credible and workable. Judicial quality and expertise must be ensured across the regional, local and central courts. In particular, to ensure this, we support the deletion of Articles 6–8 from the Patent Regulation. With the Articles included, there is a risk that a two-tier legal system could emerge, with the remit of ECJ Judges potentially expanded to interpret Patent Law, rather than the specialised courts as intended. Therefore, this has the potential to create significant legal uncertainty for IP-rich industries in the UK.
- It would increase business confidence to have an appropriate transition to the new system in place, with clear procedures established before the deal is finalised – particularly the right to bring infringement cases to the central court, which would be reassuring for UK industry.
- The location of the local and central courts is highly important, as the host nations will undoubtedly reflect local custom and practice in their domains. It is therefore crucial that courts are located in different countries, and that the chosen locations reflect the truly European nature of the project, rather than giving one country a competitive advantage.

- Practical issues remain, particularly relating to the cost of implementation and the choice of an appropriate financing model. It is particularly important that the fee regime adopted works for smaller firms, so that SMEs are not disadvantaged by the new system.

6. We believe that with considered discussion on the issues outlined above, it should be possible to reach a final agreement on the Unitary Patent under the Danish Presidency with the support of the UK business community. Regular stakeholder involvement in this process can contribute significantly to achieving this objective, and we will continue to work with the Government in any way we can to achieve that objective.

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