

Note on new Legislative Regime for Protection of Patents in EU

On 11 December 2012 the European Parliament approved the regulations creating the European unitary patent regime. The Council had also approved the legislation. Efforts to create a common patent applicable across all European countries have been made since the 1960s and it has taken decades for the system to come into force. The package comprises:

- Regulation creating a European patent with unitary effect (or 'unitary patent');
- Regulation establishing a language regime applicable to the unitary patent;
- An international agreement among Member States setting up a single and specialised patent jurisdiction (the 'Unified Patent Court').

2. The EC had made a proposal in 2000 to create a Community Patent through a Regulation [now 'EU patent' under the Lisbon Treaty]. The aim was to provide for a single patent title applicable in all Member States. After prolonged negotiations, 25 EU Member States have agreed to the proposal, with Italy and Spain taking an opt-out on the issue of language for filing the unified patent application. The regulation provides for patent application to be filed with the European Patent Office (to be based in Munich) in either English, French or German language. The unitary patent will allow patent protection to be obtained for 25 Member States (all Member States except Italy and Spain) on the basis of a single application and without further administrative formalities, like validation and translation requirements, in the Member States. It is expected that the first EU wide unitary patents could be granted in April 2014.

3. To resolve disputes regarding such unitary patents, a Unified Patent Court (UPC) will be created by an international agreement of the Member States and will be competent to handle disputes concerning both future unitary patents and current "classical" European patents. The UPC will be a single specialised patent court, with local and regional presence around the EU and national courts will not have jurisdiction. The UPC would be based in London, Paris and Munich.

4. The advantages arising out of the unified patent scheme spelt out by the EC are:

- It will create a unitary patent with uniform protection within the territory of the participating 25 Member States;
- The unitary patent will be available on a one-stop shop basis at affordable costs, as it will be centrally granted by the European Patent Office and no further validation requirements need to be fulfilled and applications can be filed in any language;
- It will create a unified and specialised jurisdiction in patent matters for the participating Member States, and thus avoid an unnecessary duplication of litigation cases before the various courts of the various Member States concerned, and enhance legal certainty; and

- It will ensure the dissemination of patent information in all languages of the European Union through high-quality machine translation services which will be available online and free of charge.

5. At present, innovations can be protected through Patents in each individual Member State with protection being restricted to the territory of that Member State. In addition there is a concept of European Patent granted by European Patent Organisation(EPO), an international organisation comprising 38 members (27 EU Member States + 11 other European countries). The Organisation was established in 1973 following the signature of the European Patent Convention (EPC). The EPC provides a single procedure for granting patents in Europe. On the basis of one single patent application processed in one of the three official languages of the EPO (English, French and German), inventors and businesses can obtain a European patent. However, the grant of the European patent is not enough for it to take effect in most Contracting States to the EPC. The patent proprietor must choose the countries in which he/she wishes to have protection and validate the European patent in these states within a short time limit after grant. A number of different validation requirements may apply, such as, the patent owner may have to pay a fee to the national patent office, comply with various formal requirements and provide a translation of the patent to the official language of the State. The new system would thus substantially reduce costs associated with obtaining patents with protection across 25 EU Member States, with no requirement for complying with national Patent authorities for validation of the patent.

6. **With the new legislative regime inventors (both EU and non-EU) and now have 3 options for obtaining patents in EU: the new unitary patent, the European patents (to be validated in the Member States) or national patents (to be filed in all the Member States).**