

SUMMARY STATEMENT OF INNOVATION

Implementation of the Unified Patent Court Agreement and Unitary Patent Regulation (BISIPO003, BISIPO005, BISIPO006)

Summary of the Policy Measure

The current system for obtaining and enforcing European patents is fragmented. All European patents granted by the European Patent Office (EPO) are today implemented as 'bundles' of national patents in each country, each only enforceable within individual national territories. Because of the nature of the current system for granting patents in Europe there is some inefficiency – especially in administrative burdens and high costs for translations. In addition, any litigation for a European patent takes place at a national level, rather than at European level. This means that, for example, a patentee who needs to enforce their patent in more than one member state must pursue legal proceedings in several different courts, even if the patents are essentially the same.

To tackle this problem, the UK has signed the Unified Patent Court (UPC) Agreement which, once ratified, will also bring into effect the Unitary Patent Regulation. The UPC Agreement creates a single court allowing patent disputes to be decided in a single set of proceedings. The court will be sited in multiple countries, and will follow a single set of Rules of Procedure, ensuring that judges give uniform judgments; it will have its own Court of Appeal.

The Unitary Patent will be a single patent right, effective across all participating states. Inventors will be able to apply to the European Patent Office for one patent covering up to 25 Member States, using one application and one language regime, and then defend that patent in one common court system. The UK will benefit from being part of this single market for patents. It provides an alternative for those that want protection across Europe with lower administrative costs.

We are also adding two new exceptions to infringement. Currently the exceptions to patent infringement in UK patent law do not completely correspond with those in the Unified Patent Court (UPC) Agreement. UK exceptions are more limited than provided for in the Agreement. To leave the exceptions as they are in UK law would create the scenario where a patent in the UK may or may not be considered to have been infringed depending on whether it was a GB patent, a European bundle or a unitary patent. This would create doubt and uncertainty for patent-holders and users of patented products. An amendment to UK law would bring greater uniformity on these specific matters.

Expected Impact of the Policy on Innovation and Growth

The Government wants the UK to be part of a European patent system that helps companies to increase their returns from investment in innovation, encouraging further innovation. By signing up to the UPC and the Unitary Patent it is expected that there would be an increase in innovation in the long term.

Patents offer a time limited exclusive right to commercialise an innovation, giving firms the opportunity to appropriate the returns from their investments in innovation. The potential for these higher financial returns incentivises firms to innovate. The introduction of the Unified Patent Court and the Unitary Patent is expected to increase this incentive by providing a more streamlined and cost effective method of

obtaining Europe-wide patent protection, for those that want to protect their inventions across the Single Market.

The Unitary Patent will allow businesses to obtain a single Unitary Patent with uniform effect in up to 25 different EU countries, instead of obtaining and maintaining a bundle of national patent rights. Whilst the renewal fee levels have yet to be decided, the Unitary Patent fee is expected to lower the cost of Europe-wide patenting both in terms of fees and process costs. This means that the cost of protecting returns to innovation across Europe may be lower. This may increase a firm's return on investment to innovation as the cost of protecting investment in innovation across Europe would be reduced. This could increase the incentive for firms to innovate.

The number of countries that a Unitary Patent will provide protection in (currently up to 25 but at minimum, 13 European states will be part of the Unitary Patent) may mean that they are a more valuable asset than a bundle of patents valid in fewer countries. There may be greater marketing potential for patented products, and greater opportunities for licensing patents. Owning Unitary Patents may improve patent owners' balance sheets and increase the returns to exploiting IP, which may ease access to finance needed to fund R&D, as well as other investments in innovation.

Similarly, the introduction of the UPC is expected to decrease the cost of enforcing patent rights across the UPC signatory states through reducing the need to litigate in multiple countries. As a result, the costs associated with enforcing a firm's patented innovation should decrease, resulting in decreased costs associated with innovation, which again could result in increased investment in innovation.

The UPC and Unitary Patent will create a single market for patents, and for the products and services they protect across Europe. This reduction of internal trade barriers is expected to make Europe more attractive to inward investment which could stimulate more research and development within the UK.

The introduction of two new exceptions to infringement may stimulate innovation in the two specific technology areas which they cover (plant breeding and software). The benefits of introducing these infringement exceptions could help stimulate innovation as researchers should be able to conduct more research activities without the fear of infringement litigation. As of next year, R&D will be capitalised in UK national account and will be shown as part of GDP. Any measure, such as the proposed exceptions, to encourage research in the UK will ultimately impact growth and GDP.

The speed with which the innovation impacts of the policy will be felt will depend on the speed of take up by business. It may take time for businesses to respond to the new incentives. In the short term, direct impacts on innovation in the UK may be small and little change in the level of patenting is anticipated in the UK because the majority of European bundle patents are validated in the UK already.

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