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Protocol

on Privileges and Immunities of the Unified Patent Court

Brussels, 14 December 2016

[The Protocol is not in force]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
January 2017*

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PROTOCOL ON PRIVILEGES AND IMMUNITIES OF THE UNIFIED PATENT COURT

The undersigning Contracting Member States of the Agreement on a Unified Patent Court,

CONSIDERING that the Unified Patent Court has been established by the Agreement on a Unified Patent Court of 19 February 2013 as an international organisation with legal personality in each Contracting Member State;

RECALLING that the Agreement on a Unified Patent Court provides, in Article 37(1), that Contracting Member States hosting the central division of the Court of First Instance or one of its sections, a local or regional division of the Court of First Instance or the Court of Appeal of the Unified Patent Court shall provide facilities and, during the initial seven years, also administrative support staff;

RECALLING that the Statute of the Unified Patent Court provides, in Article 8, that the Protocol on the privileges and immunities of the European Union shall apply to the judges of the Unified Patent Court;

RECALLING that Article 8(4) of the Statute of the Unified Patent Court covers both the privileges and immunities of the judges of the Unified Patent Court and that the application of the Protocol on the privileges and immunities of the European Union to the judges of the Unified Patent Court has been foreseen because of the intrinsic link of the latter with the European patent with unitary effect and cannot create any precedent for the application of that Protocol to other international organizations with regard to the host nation policies of the Contracting Member States;

RECALLING that the Administrative Committee has the competence to set up an internal tax and a social security scheme under the powers of administration which are conferred to it by the Unified Patent Court Agreement;

RECALLING that the Agreement on a Unified Patent Court provides, in Article 4, that the Unified Patent Court shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State;

RECOGNIZING that the Unified Patent Court needs to benefit from privileges and immunities which are necessary for the exercise of its functions;

CONSIDERING that a common approach on how to address issues of privileges and immunities is essential in view of the needs of the Unified Patent Court and of the Contracting Member States;

RECOGNIZING that additional bilateral Headquarter Agreements may be concluded between the Unified Patent Court and Contracting Member States hosting the central division of the Court of First Instance or one of its sections, a local or regional division of the Court of First Instance or the Court of Appeal of the Unified Patent Court.

Have agreed as follows:

ARTICLE 1

Use of Terms

For the purpose of this Protocol:

- a) “Agreement” means the Agreement on a Unified Patent Court of 19 February 2013;
- b) “Statute” means the Statute of the Unified Patent Court as set out in Annex I of the Agreement;
- c) “State Party” means a State party to this Protocol;
- d) “Contracting Member State” means a State party to the Agreement;
- e) “Court” means the Unified Patent Court created by the Agreement;
- f) “Court of Appeal” means the Court of Appeal of the Court;
- g) “The official activities of the Court” means the activities that are necessary for the fulfilment by the Court of the purposes and functions it has been entrusted with in accordance with the provisions of the Agreement;
- h) “Premises of the Court” means land and buildings made available to the Court by the Contracting Member State in accordance with Article 37 of the Agreement and used for the official activities of the Court;
- i) “Judge” means a Judge of the Court.
- j) “Registrar” means the Registrar *and* the Deputy-Registrar of the Court.
- k) “Staff” means all personnel employed by the Court as officials and other servants of the Court except the Judges and the Registrar.

- l) “Family” means, with respect to any person, the spouse and dependent members of the immediate family of such person forming part of such person’s household, as recognised by the hosting Contracting Member State;
- m) “Representatives of the parties” means the lawyers, European patent attorneys or patent attorneys authorised to practice or assist before the Court under Article 48 of the Agreement.

ARTICLE 2

General Provisions on Privileges and Immunities of the Court

The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the exercise of its official activities.

ARTICLE 3

Inviolability of the Premises of the Court

The premises of the Court shall be inviolable, subject to such conditions as may be agreed with the State Party concerned and subject to the responsibility of the State Party hosting the central division of the Court of First Instance or one of its sections, a local or regional division of the Court of First Instance or the Court of Appeal with respect to the facilities that are to be provided by such a State Party.

ARTICLE 4

Inviolability of Archives and Documents

The archives of the Court, and all papers and documents in whatever form belonging to it, held by it or addressed to it shall be inviolable at all times and wherever they may be located.

ARTICLE 5

Immunity of the Court, its Property, Assets and Funds

1. The Court shall enjoy immunity from legal process, except:
 - a. insofar as in any particular case it has expressly waived its immunity;
 - b. as in the event of civil proceedings against it with respect to contractual liability brought by persons others than the Judges, the Registrar or the Staff of the Court;
 - c. as in cases of civil proceedings against it with respect to non-contractual liability except where the claim is based on the performance of the Court's jurisprudence or
 - d. in the case of a civil proceeding brought by a third party for damages resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Court, or in respect of a motor traffic offence involving such a vehicle.
2. The Court shall enjoy immunity from legal process in respect of search, requisition, confiscation, seizure or expropriation of, or any other form of interference with, the property, assets and funds of the Court, wherever located, without the authorisation of the Court.
3. To the extent necessary to exercise its official activities, the property, assets and funds of the Court shall be exempt from restrictions, regulations, controls and moratoria of any nature.

ARTICLE 6

Immunity of Representatives of a State Party

1. Representatives of a State Party shall enjoy, while attending meetings of the Administrative Committee, the Budget Committee and the Advisory Committee immunities from legal process in respect of all acts performed by them in their official capacity, including their words spoken or written. This immunity shall continue to be accorded even after the termination of their mission.
2. Their official papers and documents shall be inviolable.
3. No State Party is obliged to extend the immunities referred to in paragraph 1 and 2 to its own nationals or any person who at the time of taking up his functions with the Court has his permanent residence in that State.

ARTICLE 7

Exemption from Taxes

1. The Court, its property and assets, shall be exempt from all direct taxes.
2. The Court shall
 - a. be exempt from or accorded a refund of value added taxes paid on any substantial purchase of goods and services which are necessary and supplied for the official activities of the Court, subject to the limitations laid down by the host State Party;
 - b. however not be exempt from taxes and dues which amount to charges for public utility services.
3. Goods purchased under such an exemption or reimbursement shall not be sold or otherwise disposed of in that State Party or in another Member State of the European Union, except in accordance with the conditions laid down by the State Party which granted the exemption or reimbursement.
4. Without prejudice to the obligations arising for the State Parties under European Union law and the application of laws and regulations, the conditions and procedure shall be determined by the competent fiscal authorities of each State Party.

ARTICLE 8

Funds and Freedom from Currency Restrictions

The State Parties shall accord the Court the freedom of currency restrictions which is necessary for the exercise of its official activities.

ARTICLE 9

Privileges and Immunities of the Judges and the Registrar

1. The privileges and immunities of the Judges are governed by Article 8 of the Statute and by reference in Article 8 of the Statute by the Protocol on the privileges and immunities of the European Union.
2. Article 8 of the Statute and the Protocol on the privileges and immunities of the European Union shall apply to the Registrar.

3. When applied in accordance with paragraph 1 and 2, only Article 11(b-e) to 14 of the Protocol on the privileges and immunities of the European Union are to be applied in analogy adapted to the specific circumstances of the Court. This means in particular that the Judges and the Registrar shall:

- a. be liable to an internal tax for the benefit of the Court on salaries, wages and emoluments paid to them by the Court;
- b. from the date on which the internal tax under letter (a) is applied, be exempted from national taxation on the salaries, wages and emoluments, paid to them by the Court, but not on pensions and annuities, paid to them by the Court;
- c. from the date on which the Judges and the Registrar are subject to a social security and health scheme established by the Court, with respect to services rendered for the Court, be exempted from all compulsory contributions to national social security and health schemes.

ARTICLE 10

Immunities and Privileges of the Staff

1. The Staff shall be immune from legal process in respect of all acts performed by them in their official capacity, including their words spoken or written. This immunity shall continue to be accorded even after the termination of their employment with the Court.

2. The Staff shall,

- a. be liable to an internal tax for the benefit of the Court on salaries, wages and emoluments paid to them by the Court;
- b. from the date on which the internal tax under letter (a) is applied, be exempted from national taxation on the salaries, wages and emoluments, but not on pensions and annuities, paid to them by the Court; these salaries, wages and emoluments may be taken into account by the State Parties for the purpose of assessing the amount of taxation to be applied to income from other sources;
- c. from the date on which the Staff is subject to a social security and health scheme established by the Court, with respect to services rendered for the Court, be exempted from all compulsory contributions to national social security and health schemes.

3. No State Party is obliged to extend the privileges referred to in paragraph 2 to its own nationals or to a person who immediately prior to the employment by the Court was a resident of that State Party.

ARTICLE 11

Emblem and Flag

The Court shall be entitled to display its emblem and flag at its premises subject to such conditions as may be agreed with the State Party concerned, on vehicles used for official purposes as well as on its website and documents.

ARTICLE 12

Cooperation with the Authorities of State Parties

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying privileges and immunities under Article 6, 9 and 10 to respect the laws and regulations of the State Party in whose territory they may operate in their official capacity.

2. The Court shall cooperate at all times with the appropriate authorities of State Parties to facilitate the enforcement of their laws and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities referred to in this Protocol.

ARTICLE 13

Purpose and Waiver of Privileges and Immunities Provided for in Article 6, 9 and 10

1. The privileges and immunities provided for in this Protocol are not established for the personal benefit of those persons in whose favour they are granted. Their purpose is solely in the interest of the Court, especially to ensure, in all circumstances, the freedom of action of the Court and the complete independence of the persons concerned.

2. The Presidium of the Court shall have not only the right but also the duty to waive the immunity of Judges, the Registrar and the Staff under Articles 9 and 10, when it considers that such immunity would hinder the normal course of justice, and that it is possible to waive such immunity without prejudicing the interests of the Court. A State Party has the same right regarding its representatives in the Administrative Committee and the Budget Committee (Article 6). The Administrative Committee shall have the same right and obligation regarding the members of the Advisory Committee.

ARTICLE 14

Access, Residence and Departure

Without prejudice to European Union law, the concerned State Party shall take all the necessary steps to facilitate;

- a. the entry into, departure from and residence in its territory of all persons who are performing official duties for the Court, namely the Judges, the Registrar, Staff employed by the Court and staff provided by the State Parties as well as, where persons performing official duties for the Court are based in the State Party and are not nationals or permanent residents of that State Party, dependent members of their families, and
- b. the entry into and departure from its territory of all persons who are called to or summoned by the Court in an official capacity, namely parties, Representatives of parties, interpreters, witnesses and experts before the Court.

ARTICLE 15

Notification

The Registrar shall communicate within one month of the entry into force of this Protocol to all State Parties the names of the Judges, the Registrar and the Staff to whom this Protocol applies. In addition to above, appointment/arrival of any Judge, Registrar or Staff to the Court and any change of circumstances shall be reported as soon as possible and at the latest within one month of the date of the relevant change of circumstance.

ARTICLE 16

Settlement of Disputes

1. The Court shall make provisions for appropriate modes of settlement of disputes involving any person referred to in this Protocol who by reason of his or her official position enjoys immunity or the Court in cases when it enjoys immunity under Article 5, if such immunity has not been waived.
2. All disputes arising out of the interpretation or application of this Protocol shall be referred to an arbitral tribunal unless the parties have agreed to another mode of settlement. If a dispute arises between the Court and a State Party which is not settled by consultation, negotiation or other agreed mode of settlement within three months following a request by one of the parties to the dispute, it shall at the request of either party be referred for final decision to a panel of three arbitrators: one to be chosen by the Court, one to be chosen by the State Party and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators. If either party has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other party, the President of the European Court of Justice shall make such appointment. Should the first two arbitrators fail to agree upon the appointment of the third arbitrator within three months following the appointment of the first two arbitrators the third arbitrator shall be chosen by the President of the European Court of Justice upon the request of the Court or the State Party.

ARTICLE 17

Signature, Ratification, Acceptance, Approval or Accession and Deposition

1. This Protocol shall be open for signature by all Contracting Member States from 29 June 2016 until 29 June 2017 at the Council of the European Union in Brussels.
2. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the General Secretariat of the Council of the European Union, hereinafter referred to as the depositary.
3. After 29 June 2017 this Protocol shall remain open for accession by all Contracting Member States. The instruments of accession shall be deposited with the depositary.

ARTICLE 18

Entry into force

1. This Protocol shall enter into force 30 days after the date on which the last of the four State Parties – France, Germany, Luxemburg and the United Kingdom – has deposited its instrument of ratification, acceptance approval or accession.
2. For each State Party, which deposits its instrument after the date referred to in paragraph 1, this Protocol shall enter into force 30 days after the date of deposit of its instrument of ratification, acceptance, approval or accession.

ARTICLE 19

Provisional Application

A Contracting Member State may at any time notify the depositary that it will apply this Protocol provisionally.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Brussels this 29th of June 2016 in the English, French and German languages, all three texts being equally authentic, in a single copy, which shall be deposited with the depositary who shall transmit a certified true copy to all signatory and acceding States.

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