 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Unified Patent Court implementation – infringement changes	
Lead Department/Agency	Department for Business, Innovation and Skills (Intellectual Property Office)	
Stage	Final	
IA number	BISIPO003	
Origin	International	
Expected date of implementation	6 April 2015 (SNR 9)	
Date submitted to RPC	23 October 2014	
RPC opinion date and reference	3 December 2014	RPC14-BIS-2058(2)
Departmental assessment		
One-in, Two-out status	Out of scope	
Estimate of the equivalent annual net cost to business (EANCB)	N/A	
RPC overall assessment	GREEN	
RPC comments		
<p>The IA is fit for purpose. The Department has been unable to monetise the costs and benefits of the proposal but has provided a reasonable and proportionate assessment, given the limited evidence available. The proposal is out of scope of One-in, Two-out because it implements an international agreement.</p>		
Background (extracted from IA)		
What is the problem under consideration? Why is government intervention necessary?		
<p><i>Currently the exceptions to patent infringement in UK patent law do not completely agree with those in the Unified Patent Court (UPC) Agreement. UK exceptions are more limited than outlined 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 certainty on these specific matters.</i></p>		
What are the policy objectives and the intended effects?		
<p><i>The overall objective is to implement the UPC agreement in such a way as to provide legal certainty surrounding infringement of patents for parties with an interest in the development of plant varieties and computer programs in the UK. This is part of the package of changes relating to the agreement, part of which provides the two additional infringement exceptions (Article 27 of the agreement) to those that currently exist in UK law. The new infringement exceptions will benefit some of those involved in the development of plant varieties and computer programming.</i></p>		

Comments on the robustness of the OITO assessment

The proposal implements an international agreement. It does not implement the agreement early or go beyond minimum requirements. It is, therefore, out of scope of 'One-in, Two-out', in accordance with paragraph 1.9.8 iii of the Better Regulation Framework Manual (July 2103).

Comments on the robustness of the small & micro-business assessment (SaMBA)

The proposal is not of domestic origin and a SaMBA is, therefore, not required. However, the Department has provided a short assessment of the impact on small and micro-businesses. The greater legal certainty (see below) under the proposal may be particularly beneficial to smaller businesses.

Quality of the analysis and evidence presented in the IA

Background. The Department has submitted separate IAs covering the impact of the introduction of the Unitary Patent into UK law (RPC14-BIS-2062) and the jurisdiction of the Unitary Patent Court (RPC14-BIS-2065). Since the changes proposed for infringement provisions cover a distinct part of the Patents Act, and will have a specific set of impacts upon users, the Department has chosen to cover the proposals under a separate impact assessment. There is also a greater degree of choice over how to meet the international requirements.

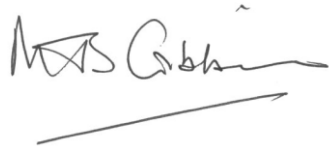
Patent infringement and exceptions. Patent owners have specific exclusive rights to their patented inventions and, if they believe another party is infringing their rights, they are able to take civil action against that third party. This allows patent owners to prevent others from copying their inventions and marketing them without permission. There are defined limitations to the scope of the right of a patent, often referred to as exceptions to infringement. An example of a common exception to patent infringement is the research exception, which permits some experiments on patented inventions. This allows the creation of new knowledge building on existing patented knowledge, without having to compensate the existing patent owner.

Options. Article 27 of the UPC agreement has two infringement exceptions that are additional to those that currently exist in UK law. These exceptions are in the areas of the development of plant varieties and computer programming. The policy objective is, therefore, to reflect these exceptions in UK law. There are two options for this:

- 1) Dual system. This introduces infringement exceptions in UPC agreement to infringement for some patents within UK. This would mean that only patents subject to the jurisdiction of the UPC would be subject to the two new exceptions to infringement.
- 2) Align infringement laws applied to the UK national patents with those of the UPC agreement.

Costs and benefits. The Department explains the considerable efforts it made during consultation to obtain evidence. This did not yield information to enable the monetisation of the costs and benefits of the options. However, the consultation did provide important qualitative evidence, which has informed the assessment. Option 2 is preferred, mainly because it provides greater legal certainty amongst the research community. The two-tier system of option 1 could inhibit research and development of new products in the two technology sectors affected. Overall, the assessment of costs and benefits appears to be reasonable and proportionate.

Signed

A handwritten signature in black ink, appearing to read 'Michael Gibbons', with a long horizontal stroke underneath.

Michael Gibbons, Chairman