

Response to Balance of Competencies Review

Review of the Internal Market: Free Movement of Goods; including the EU Customs Union and Intellectual Property Rights

This response is made on behalf of Johnson Matthey plc

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Johnson Matthey is a leading British chemical company, FTSE 100 listed, employing 11000 people worldwide and in business since 1817. We have 3500 employees in the UK, with extensive UK manufacturing facilities, and the bulk of our global R&D efforts being carried out in the UK. We also have major manufacturing facilities in other EU and European countries, in the USA, in Asia and in South America and South Africa. The majority of our UK produced products are sold within the European Union with a value in excess of £1 billion of exports. Our R&D efforts are chiefly focussed on the UK, with most of our patentable intellectual property being generated here. All told we employ more than 800 scientists and research workers in the UK.

Response to key questions

We have made no reply to the questions 1-7 regarding the free movement of goods. We take the general stance that we fully support the free movement of goods within the EU, together with the concomitant Customs Union. We further support the general principle of the free movement of goods in other jurisdictions and with any EU trading partners.

Key Questions on Intellectual Property Rights

Question 8: To what extent are specific national rights provided through EU legislation (eg Supplementary Protection Certificates) helpful or unhelpful to your activities as a business in the internal market?

The nature of Johnson Matthey's business is such that Supplementary Protection Certificates are of little interest to us. We have no objection to the concept nor to the provision of specific rights such as this through EU legislation provided sufficient attention is given to how a uniform implementation is to be achieved across all member states. This does not always appear to be the case.

Question 9: To what extent are specific Community-wide rights provided through EU legislation (eg Community Trade Mark, Community Design, Geographic Indicators and Community Plant Variety Rights) helpful or unhelpful to your activities as a business in the internal market?

Again, the nature of JM's business is such that, of the rights listed, only the Community Trade Mark is of interest. JM is the proprietor of a number of CTMs and the CTM system appears to be an efficient and cost-effective way of obtaining trade mark rights that cover the entire EU.

Question 10: To what extent do wider EU rules (eg on free movement of goods) impact helpfully or unhelpfully on the conduct of your business in relation to intellectual property rights?

As JM is a business to business operation, we have not been affected by the conflict between intellectual property rights and the rules relating to free movement of goods and services between the member states in the same way as FMCG and pharmaceutical companies.

Questions 11 & 12: Future challenges and opportunities and other general comments

We appreciate that these responses may not be directly helpful in the context of the Call for Evidence. However, we would like to take this opportunity to comment on the proposals for a Unitary Patent for EU member states ("UP") and for the associated Unified Patents Court ("UPC"). You make reference to these matters in the Call for Evidence but none of the IP questions is directed to them.

The idea of a single patent covering the whole EU is – at least in theory - an attractive idea at both the practical and political levels. As mentioned in the Call for Evidence, it is already possible to obtain a single registration covering the whole EU for other intellectual property rights and these systems are generally regarded as successful. We also recognise that when it comes to enforcement of patent rights, the current position in which separate proceedings are required in each member state with the very real threat that the national Courts involved will come to different conclusions and the associated opportunities for forum shopping is undesirable and not conducive to the efficient functioning of the single internal market.

However, we do not consider that the current proposals for a Unitary Patent and Unified Patents Court, which were signed by the UK earlier this year and which now await ratification will solve these problems for the following reasons:-

1. The so-called Unitary Patent will not, in any event, be a single patent which covers the whole EU because Italy, Spain and Poland have not signed up to the UP/UPC package. We understand that additional member states may drop out over the coming months due to the cost of establishing the UPC. Further, Spain is actively challenging the legitimacy of the proposed arrangements at the Court of Justice of the European Union.
2. Far from reducing the possibilities for forum shopping, the proposed structure of the UPC vastly increases them. Johnson Matthey is not an SME but it is clear to us that the new structure would be challenging for a well-advised multinational to navigate so it certainly will not improve access to justice for SMEs.
3. The proposal is that the UPC should have jurisdiction over all patents granted by the European Patent Office i.e. not just the proposed new UP. However, an opt-out process is provided for existing patents. It appears to be received wisdom that the owners of existing patents will universally exercise the right to opt out of the jurisdiction of the UPC for a variety of reasons including concerns about submitting to the jurisdiction of an untried and untested regime, cost and complexity.

As matters stand at the moment, Johnson Matthey does not expect to use either the UPC or the UP, the former for the reasons outlined above and the latter because we see no benefit in doing so. This is because the nature of JM's business does not require us to obtain patents in all 28 member states.

Indeed, we understand that less than 5% of patent owners do this. On the contrary, it is generally sufficient for us to obtain patents in around 5 EU member states such as the UK, Germany, France, Spain and Poland. Unless the cost of the UP is less than the cost of obtaining protection in 5 countries via the existing European Patent Convention route – which seems unlikely – the UP will not offer us any advantage and we will not use it. Further, the excessive delays in the European Patent Office are already pushing us back towards the national route for obtaining patents. As the EPO is to administer the UP, we expect that its implementation will add to these delays unless there is also to be a significant increase in resources.

As acknowledged above, we agree that the existing regime is not ideal and we can see the arguments in favour of a single patent covering the EU. However, we do not believe the current proposals will achieve the desired result.

Group Director, EHS, Johnson Matthey plc