 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Unified Patent Court Implementation - jurisdiction	
Lead Department/Agency	Department for Business, Innovation and Skills (Intellectual Property Office)	
Stage	Final	
IA number	BISIPO006	
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-2065(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 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)		
<p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>The current system for obtaining and enforcing European patents is fragmented. Any litigation for a European patent takes place at a national level, rather than at European level. This means that, for example, a patentee may own a bundle of separate national patents and, therefore, if he wishes to enforce them, he must pursue legal proceedings in several different courts, even if the patents are essentially the same. In order to resolve this, a single court will be set up under the Unified Patent Court Agreement allowing patent disputes to be decided across Europe in a single set of proceedings. In order to give effect in national law certain changes to the Patents Act (1977) are necessary.</i></p>		
<p>What are the policy objectives and the intended effects?</p> <p><i>The aim is to improve the enforcement of patents across Europe, so that they can be defended in a single court rather than having to be litigated country-by-country which can cause additional cost and delay in preventing infringement. This should make it easier for businesses to exploit patent rights at a European scale. The UK will host divisions of the UPC which should bring wider benefits by increasing the UK's reputation as a centre for litigation. There will also be benefits to innovation through the breaking down of barriers within Europe.</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 1.9.8iii 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 an assessment of the impact on small and micro-businesses. The Department intends to provide guidance explaining the role of the Unified Patent Court (UPC) and court procedures, which should be particularly helpful to small and micro-businesses.

Quality of the analysis and evidence presented in the IA

The UK signed the Unified Patent Court Agreement in February 2013. The agreement creates the UPC, which will be a new patents court common to the participating states. The proposal makes changes to the Patents Act (1977) to give effect to the jurisdiction of the UPC in UK law. The proposal accompanies the introduction of the Unitary Patent (UP), which is the subject of a separate IA (RPC14-BIS-2062). The present proposal permits the enforcement of the UP in a single court, the UPC. Judgments from the UPC will be enforceable in all countries that are parties to the UPC agreement.

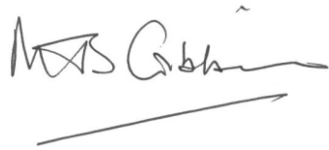
Costs and benefits. The Department explains that there are impacts which it is unable to quantify because it will depend upon decisions being made at the preparatory committee for the UPC. In particular, the preparatory committee will decide on the level of court fees and anticipates launching a consultation on this in Spring 2015. The Department has therefore not been able to provide overall monetised estimates of costs and benefits. However, the Department explains how it has used the 12-week consultation to gather evidence and, in addition, commission further research into various issues that result from the introduction of the UPC. This evidence has been used to assess the likely impacts of the proposal.

The main benefits of the proposal are reduced duplication of legal/court fees and greater consistency and certainty for court users. Under the current system, legal proceedings relating to a European patent could take place in several countries. When the UPC starts operations, patents granted by the European Patent Office will be subject to a single system of litigation covering all of the territories that the patent covers. Under the current system, there can be different outcomes to cases concerning the same patent in different countries. There can also be significant variation in the length of time it takes for a patent case to be heard in different European countries.

On costs, the Department describes how the proposal will result in litigants no longer being able to use the Intellectual Property Enterprise Court and the Intellectual Property Office tribunal. However, the IA shows that this will affect very few firms and, therefore, the impact will be low. Where the relevant division of the UPC is based overseas, the IA also covers the potential migration of cases away from the UK. However, it is expected that the division covering pharmaceuticals and life sciences will be based in London. Based upon the historical number of patent cases by sector, the Department expects that the number of cases coming to the UK will more than offset the number leaving.

Overall, given the information constraints, the Department provides a reasonable assessment of the costs and benefits to business.

Signed

A handwritten signature in black ink, appearing to read 'Michael Gibbons', with a long horizontal line extending from the end of the signature.

Michael Gibbons, Chairman