



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 November 2012

16220/12

LIMITE

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NOTE

From: Presidency
To: Permanent Representatives Committee
No. prev. doc.: 14963/12 PI 123 CODEC 2385
No. Cion prop.: 9224/11 PI 31 CODEC 671

Subject: Proposal for a Regulation of the European Parliament and of the Council
implementing enhanced cooperation in the area of the creation of unitary patent
protection
= Preparation for the informal trilogue
= Endorsement of the patents package

1. Following informal talks with the European Parliament on how to accommodate the suggestion by the Heads of State or Governments of the participating Member States in June 2012 to delete Articles 6-8 of the above mentioned draft Regulation (UPP Regulation), the Presidency is hereby submitting to delegations the texts set out in the Annex I.
2. Furthermore, in order to enable delegations to have a full picture of the patents package as it stands today, it is pointed out that:
 - a. the draft Regulation on translation arrangements, following legal-linguistic scrutiny, is contained in 18855/11;

- b. the latest consolidated version of the draft UPC agreement is contained in 16222/12;
- c. the updated version of the draft declaration of the contracting Member States concerning the preparations for the coming into operation of the UPC agreement is contained in 16221/12.

Finally, delegations will find in Annex II, as a reminder, the joint statement by the participating Member States concerning the share of distribution of renewal fees for European patents with unitary effect, which had been agreed upon under the Polish presidency and will be entered in the Minutes of the Council that will adopt the UPP Regulation.

3. The Permanent Representatives Committee is invited to:

- a. agree on the suggested solution for the UPP Regulation as set out in Annex I and mandate the Presidency to present it to the European Parliament at a forthcoming trilogue as a possible compromise with a view to a first reading agreement on that Regulation;
- b. endorse the entire package as described above, subject to legal linguistic scrutiny as regards the UPC text.

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Article 5 (new)**Uniform Protection**

- (1) The European patent with unitary effect shall confer on its proprietor the right to prevent any third party from committing acts against which the patent provides protection throughout the territories of the participating Member States in which the patent has unitary effect, subject to applicable limitations.
- (2) The scope of this right and its limitations shall be uniform in all participating Member States in which the patent has unitary effect.
- (3) The acts against which the patent provides protection referred to in paragraph 1 and the applicable limitations shall be those defined by the law applied to European patents with unitary effect in the participating Member State whose national law is applicable to the European patent with unitary effect as an object of property in accordance with Article 10.
- (4) In the report referred to in Article 20(1) the Commission shall evaluate the functioning of the applicable limitations and, where necessary, shall make appropriate proposals.

Recital 9:

"The European patent with unitary effect should confer on its proprietor the right to prevent any third party from committing acts against which the patent provides protection. This should be ensured through the establishment of a Unified Patent Court. In matters not covered by this Regulation or Council Regulation .../... (translation arrangements) the European Patent Convention, the Agreement on a Unified Patent Court, including its provisions defining the scope of the right and its limitations, and national law including rules of private international law shall apply."

Recital 10:

"In the report referred to in Article 20(1) of this regulation the Commission shall evaluate the functioning of the applicable limitations and, where necessary, shall make appropriate proposals, taking account of the contribution of the patent system to innovation and technological progress, the legitimate interests of third parties or overriding interests of society. The Agreement on a Unified Patent Court does not preclude the European Union from exercising its powers in this field."

DRAFT
STATEMENT TO BE ENTERED IN THE MINUTES OF THE COUNCIL
BY THE PARTICIPATING MEMBER STATES
CONCERNING THE SHARE OF DISTRIBUTION OF RENEWAL FEES
FOR EUROPEAN PATENTS WITH UNITARY EFFECT

The participating Member States look forward with confidence to the decisions by the Select Committee, to be set up within the Administrative Council of the European Patent Office, concerning the level of the renewal fees for European patents with unitary effect and the share of distribution of such fees among the participating Member States.

When deciding on the share of distribution of the renewal fees, the representatives of the participating Member States will be guided by the criteria listed in Article 16(2) of the Regulation implementing enhanced cooperation in the area of the creation of unitary patent protection, with the aim of allowing all participating Member States to keep their current renewal fee income while at the same time ensuring that those Member States which currently have a low renewal fee income will significantly increase this income.

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