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Unitary patent protection: a big leap towards innovation for EU companies

The Council today[1] adopted two regulations with a view to implementing enhanced cooperation in the area of the creation of unitary patent protection *(PE-CONS 72/11)* and its translation arrangements *(18855/2/11 REV 2)*.

The lack of a unitary patent protection system has thus far constituted a market barrier for European entrepreneurs to a normal and effective functioning in both the EU internal market and on the world markets.

Unitary patent protection will foster scientific and technological advances and the functioning of the internal market by making access to the patent system easier, less costly and legally secure.

It will also improve the level of patent protection by making it possible to obtain uniform patent protection in the participating member states and eliminate costs and complexity for undertakings throughout the Union, especially for small- and medium-sized enterprises (SMEs).

The new unitary patent model will also encourage EU businesses to increase their innovation activity, thus enhancing their competitiveness. It will also increase the interest for EU companies to protect their inventions across Europe.

The package allowing for the creation of a unitary system of patent protection consists of the two regulations today adopted an international agreement creating a Unified Patent Court.

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[1] The decision was taken without discussion at the Environment Council meeting. It follows an agreement with the European Parliament at first reading.

P R E S S

Rue de la Loi 175 B – 1048 BRUSSELS Tel.: +32 (0)2 281 6319 Fax: +32 (0)2 281 8026
press.office@consilium.europa.eu http://www.consilium.europa.eu/Newsroom

Uniform protection

The regulation creating unitary patent protection will entrust the European Patent Office[1] (EPO) with the task of granting unitary patent titles valid in the 25 member states participating in the enhanced cooperation.

The participating member states will also delegate a number of administrative tasks relating to European patents with unitary effect to the EPO, such as registrations, transfers, publications, reimbursement of translation costs and the collection and distribution of renewal fees *(17503/12 ADD1REV1)*.

The enhanced cooperation is a procedure enshrined in the EU treaty that allows a group of countries to adopt new common rules when EU-wide agreement cannot be reached within a reasonable period of time. All EU member states except Italy and Spain were in favour of the use of enhanced cooperation. The main obstacle to the creation of a unitary patent in all 27 member states is the lack of unanimity on the choice of the language regime.

Access to the unitary patent on the territory of participating member states will also be available to businesses from non-participating member states.

Language regime

The regulation setting out the translation arrangements for European patents benefitting from unitary effect is based on the linguistic regime of the EPO, where the official languages are English, French and German. Those arrangements aim to achieve a balance between the interests of economic operators and the public interest, in terms of the cost of proceedings and the availability of technical information.

In order to facilitate access to unitary patents, in particular for SMEs, applicants will be able to file their patent applications in any official language of the Union.

A system of machine translations of patent applications and specifications into all official languages of the EU is currently under development with a view to promoting the availability of patent information and the dissemination of technological knowledge.

Unified Patent Court

The third element of the package is the Unified Patent Court agreement (UPC), which will be an international agreement among the member states concluded outside the EU institutional framework.

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[1] http://www.epo.org/

The UPC will ensure the uniform applicability of patent law throughout the territories of member states participating in the enhanced cooperation plus Italy. This way the occurrence of multiple court cases with regard to the same patent in different member countries will be avoided. This would also prevent contradictory court rulings on the same issues.

In the first semester of 2013, a diplomatic conference will be held for the signing of the UPC agreement by the participating member states. Once the agreement has been signed, the ratification process by national parliaments will start (at least 13 member states will have to ratify the agreement for it to enter into force). The regulations will apply from the date of entry into force of the agreement.

All the necessary preparatory work (designation of committees, budget, appointment of judges and president, recruitment of staff, facilities, etc.) shall be carried out in a timely manner so as to enable the first registration of a European patent title with unitary effect in spring 2014.

For more information see Factsheet.