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DIGITALEUROPE recommendations for the start of the Unified Patent Court



General comments

DIGITALEUROPE represents the digital industry in Europe and many of our members rely on intellectual property rights protection, including patents, for their business operations, research, and development for innovative new technologies.

DIGITALEUROPE has been a key stakeholder in the discussions on the Unitary Patent (UP) and Unified Patent Court (UPC) from the beginning. Following the ratification, we are now keen to see the Court move forward diligently, maintaining the current framework, which includes:

- ▶▶ A single patent covering a large number of EU Member States.
- ▶▶ Reduced fees for maintaining and obtaining EU-wide patent protection.
- ▶▶ A single court which can determine validity and infringement of patents, grant pan-European relief in a timely and cost-effective manner, and which combines the best points of national patent systems.

Following the UK's departure from the EU, some changes may need to be made to the system. We hope that any such necessary changes are resolved quickly and thoughtfully and do not result in any further delay to the implementation or open the system to legal challenge.

We also believe it is important to retain diversity that is embedded throughout the UPC system. First through the hybrid model which combines the best from both the civil and common law traditions and will be unique to Europe. As well as secondly through the diversity brought by the multi-national panels of judges that will review cases.



Central division in the UPCA

It was originally envisaged in the UPC Agreement (UPCA)¹ that London would be one of three venues for the Central Division of the UPC, primarily to deal with pharmaceutical patents. This is set out in Article 7: “7(2) *The central division shall have its seat in Paris, with sections in London and Munich.*” Further, Annex II of the UPC Agreement defines which cases will be handled by which seats.

As stated above, we understand that the departure of the UK from the EU would necessitate now some reconfiguration of the system and allocation of cases. DIGITALEUROPE strongly recommends to handle this in a manner that is both careful, withstands legal scrutiny and would still allow the UPC to take up its functions soon.



Public access to court documents (Rule 262)

Recent media reports suggest that the Administrative Committee may be considering amendments to Rule 262 of the Rules of Procedure to limit or eliminate general public access to court documents, including written pleadings, written evidence, decisions and orders.

The general principle of public access to the legal substance of court documents should normally be maintained. For potential users of the UPC, such as DIGITALEUROPE members, it is vital to be able to closely track the development of case law in order to gain visibility on what to expect from the new system, and to gain the confidence required to actually make use of it. From a broader public policy perspective, general public access is important for future review of the system to be able to benefit from informed and evidence-based perspectives on the operations of the court.



Broader support for the Unitary Patent

DIGITALEUROPE supports the European Commission’s commitment in the IP Action Plan to work together with the European Patent Office (EPO) and Member States to make the unitary patent system operational among the contracting Member States and to encourage the Member States that have not yet engaged to join the new system.



Conclusion

¹ <https://www.unified-patent-court.org/sites/default/files/upc-agreement.pdf>

The Unitary Patent system has the potential to considerably simplify the patenting process in the EU. Together with centralised litigation before the Unified Patent Court, this long-awaited balanced reform can significantly reduce costs and simplify procedures for obtaining, maintaining, and enforcing patent protection in Europe.

Given these benefits, we believe it would be useful to begin an awareness campaign to ensure business, in particular SMEs, are aware of the UP and UPC system when it comes into effect in October. DIGITALEUROPE is happy to lend our support to any such effort.

FOR MORE INFORMATION, PLEASE CONTACT:



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About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE Membership

Corporate Members

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National Trade Associations

Austria: IOÖ

Belgium: AGORIA

Croatia: Croatian Chamber of Economy

Cyprus: CITEA

Czech Republic: AAVIT

Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, SECIMAVI, numeum

Germany: bitkom, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: Infobalt

Luxembourg: APSI

Moldova: ATIC

Netherlands: NLdigital, FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS

Slovakia: ITAS

Slovenia: ICT Association of Slovenia at CCIS

Spain: Adigital, AMETIC

Sweden: TechSverige, Teknikföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform, ECID

Ukraine: IT Ukraine

United Kingdom: techUK