

Intellectual Property / Information Technology Group

# Unitary Patent System

## **Current System**

Under the current patent system, in order to obtain pan European patent protection, an applicant can either file an application to register a patent with each of the Member States through the relevant national patent office or it can file an application with the European Patent Office under the European Patent Convention. European patents issued from the European Patent Office take the form of a bundle of separate national patents for those European Patent Convention countries selected by the patent applicant. There are substantial translation costs involved in the application process. In addition, litigation relating to these patents must generally be brought before the court of the relevant Member State. As there is no single jurisdiction for disputes, any proceedings in relation to European patents may be subject to diverse national laws and procedures.

## **Unitary Patent System**

The Unitary Patent Package consists of a European patent with effect in all the Member States (other than Spain and Italy as they have chosen not to sign up to it), special translation arrangements for the unitary patent and the creation of a Unified Patent Court for all European Patents. Together these measures provide the legal basis for the European Unitary Patent system which has been under discussion at European level since the 1970s. The Regulations in relation to the unitary patent and associated translation arrangements have entered into force and shall apply either from 1 January 2014 or the date of entry into force of the Agreement on the Unified Patent Court, whichever is the later. The Agreement creating the Unified Patent Court needs to be ratified by thirteen contracting states (which must include the UK, France and Germany). Ireland must hold a referendum to ratify the Agreement and this is likely to be held in the Autumn. It is hoped that the system will be in place by April 2014.

## **Effect of the Unitary Patent**

The unitary patent will be a European patent, granted by the European Patent Office under the rules and procedures of the European Patent Convention, which, upon request of the patent proprietor, shall provide uniform protection and shall have equal effect in all the participating Member States. It will be administered and registered by the European Patent Office. Applications will not need to be translated into the languages of all the participating Member States.

## **The Unified Patent Court**

The Unified Patent Court will comprise a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance will be composed of a central division (in Paris with two specialised sections in London and Munich) and several local and regional divisions in the contracting Member States to the Agreement. The Court of Appeal will be located in Luxembourg.

The Court of First Instance will have exclusive jurisdiction over all litigation relating to unitary patents and, subject to transitional provisions, over European patents granted for one or more contracting Member States. Patents granted by national patent offices will remain subject to the national courts of the Member State concerned.

## Conclusion

While the intention of the Unitary Patent system is to make patent protection and enforcement more affordable, it is yet to be seen to what extent businesses will use this system in favour of the existing options. There has been commentary highlighting the disadvantages of the system which may make it less appealing for some businesses. For example, a decision of the Unified Patent Court against the validity of a patent could mean the loss of EU wide patent protection in one fell swoop. In addition, the loss of jurisdiction by the Irish Courts to a centralised European Court in respect of valuable commercial activity carried out here and its impact on Ireland's stated desire to be a knowledge economy remains to be determined.

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