

Agenda Item 3a: Economic Development & Enterprise SPC 14th Sept 2021

Report in Support of Motion for the Economic Development and Enterprise SPC

Dublin City to host the Local Division of the Unified Patent Court in Dublin

The new unified patent system (including the Unitary Patent and the Unified Patent Court) will create a simpler and more efficient mechanism for obtaining and enforcing patents in Europe. The Unified Patent Court (UPC) is to be established as a single court system for patent litigation and enforcement. Only EU Member States will be allowed to participate.

Contracting member states were free to decide how they will participate in the new structure, including the option to host a specific part of the new court. On 13 November 2014, the Irish Government announced its decision that Ireland would establish a Local Division in Dublin. Progress had been stalled due to Brexit and delays in Germany, which have now been resolved, clearing the way for the Unified Patent Court to proceed across Europe. Government must ratify the Unified Patent Court Agreement (UPCA) allowing Ireland to participate in this new court structure without delay, which will require a referendum.

Benefits of a Local Division in Dublin

Ireland stands to gain significantly through participation in this specialist court, through the timely hosting of a Local Division in Dublin. The benefit of having a Local Division is likely to be more significant for a country like Ireland than for larger countries. Other countries, however, are far more advanced in their preparations for the new IP system. There is an opportunity cost to Ireland of falling even further behind other states in our preparations for it coming into force, as users of the system will decide on their "preferred" fora within the UPC system soon after its launch. If the Irish local division joins the system late, it will be difficult to draw litigation activity away from the UPC courts in other states up and running from the outset. Ibec will shortly publish a comprehensive report on the benefits for Ireland from active and timely participation in the UPC system.

An Irish Local Division would provide specific comfort for enterprise, in particular indigenous SMEs who are increasing their rate of patenting but might not have been exposed to litigation in recent years. Companies finding it necessary to enforce their European patent rights will only have to litigate in one single location. This will provide better access to enforcement for companies that currently cannot afford to litigate in multiple jurisdictions.

Irish companies not only have to continue to diversify their reach across the EU single market and further afield, but they have also to diversify their products and product ranges. These will have to be protected and would benefit from the existence of the unitary patent and the accompanying enforcement mechanism.

Establishing a Local Division that is both well-run and attractive will be key to competing for patent litigation to be heard before the Dublin-based court. Brexit has also raised the profile of IP policy once more. An Irish Local Division, that is English-speaking and rooted in common law tradition, would be attractive to European patent litigation that would have occurred in the UK, as well as being attractive to non-EU FDI. It would bring substantial economic benefits, in line with the economic impact projected for Ireland from the EU-Canada Comprehensive Economic and Trade Agreement (CETA).

Our key competitors for inward investment are far more advanced in their preparations for the new IP system, and as things are currently, others stand to enjoy the benefits that Ireland could (and should) be vying for. It is important that we conclude the ratification process without delay. Government must make an announcement on holding a referendum on the UPCA as a matter of urgency.

A Dublin Local Division has the potential to complement and expand IP activities by Irish firms. It will build on our growing reputation for IP enforcement and position Ireland for global legal services. Enhancing Ireland's position as an IP hub would benefit SMEs, as well as securing further inward investment.

Government should put forward Dublin to host part of the Central Division

The Central Division of the Unified Patent Court is seated in Paris with sections in Munich and a further location to be determined. There was to be a section of the Central Division in London, but the UK's withdrawal from the UPCA has resulted in the section requiring a new location. As a stop-gap solution, it will be temporarily housed

between Paris and Munich. The future location of the London section of the Central Division is undecided. A number of locations are expected to campaign for it.

Governments should also undertake analysis with a view to launching a bid to host the part of the Central Division that was previously designated to be in London. This part of the Central Division is responsible for cases in the chemical, pharmaceutical, medical device, and life sciences sectors. These are key areas for Ireland. Its future location has yet to be decided, and it will be a political decision. It is clear we can put forward a compelling case.

The new system will not wait for us. There is now a short window for us to catch-up. A slow start to implementation will prove costly and prevent us from making the fullest use of the potential of the unified patent system. Government must take prompt action to ensure Ireland does not miss out.