

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT PATENTS (EUROPEAN PATENT WITH UNITARY EFFECT AND UNIFIED PATENT COURT) ORDER 2016

Tuesday 1 March 2016

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 5 March 2016

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
FACILITATE THE PROMPT PUBLICATION OF
THE BOUND VOLUMES OF PROCEEDINGS
IN GENERAL COMMITTEES

© Parliamentary Copyright House of Commons 2016

*This publication may be reproduced under the terms of the Open Parliament licence,
which is published at www.parliament.uk/site-information/copyright/.*

The Committee consisted of the following Members:

Chair: SIR ROGER GALE

- | | |
|---|---|
| † Barclay, Stephen (<i>North East Cambridgeshire</i>) (Con) | † Nicolson, John (<i>East Dunbartonshire</i>) (SNP) |
| † Blackman, Bob (<i>Harrow East</i>) (Con) | † Prentis, Victoria (<i>Banbury</i>) (Con) |
| † Brennan, Kevin (<i>Cardiff West</i>) (Lab) | † Thomas, Derek (<i>St Ives</i>) (Con) |
| † Campbell, Mr Ronnie (<i>Blyth Valley</i>) (Lab) | † Tredinnick, David (<i>Bosworth</i>) (Con) |
| † Heaton-Jones, Peter (<i>North Devon</i>) (Con) | † Vaizey, Mr Edward (<i>Minister for Culture and the Digital Economy</i>) |
| † Jones, Gerald (<i>Merthyr Tydfil and Rhymney</i>) (Lab) | † Warman, Matt (<i>Boston and Skegness</i>) (Con) |
| † Kinnock, Stephen (<i>Aberavon</i>) (Lab) | |
| † McDonagh, Siobhain (<i>Mitcham and Morden</i>) (Lab) | Glenn McKee, <i>Committee Clerk</i> |
| † Mak, Mr Alan (<i>Havant</i>) (Con) | |
| † Morden, Jessica (<i>Newport East</i>) (Lab) | |
| † Murray, Mrs Sheryll (<i>South East Cornwall</i>) (Con) | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 1 March 2016

[SIR ROGER GALE *in the Chair*]

Draft Patents (European Patent with Unitary Effect and Unified Patent Court) Order 2016

2.30 pm

The Minister for Culture and the Digital Economy (Mr Edward Vaizey): I beg to move,

That the Committee has considered the draft Patents (European Patent with Unitary Effect and Unified Patent Court) Order 2016.

It is a pleasure to serve under your chairmanship, Sir Roger. I gather that the title of the order is already trending on Twitter.

It has long been a desire held across Europe—I know that Members will understand the significance when I talk about how important this is to Europe—to create a single patent system that supports innovative businesses and makes it easier for them to obtain and enforce patent protection. Obviously, given the way the debate on Europe is going, the order may only last three months.

The current European patent system is fragmented and expensive. Instead of a single patent covering the whole of Europe, businesses have to maintain a bundle of patent rights, each covering a single country in which they want patent protection. Each patent must be enforced separately in the national court of each country, which can be extremely costly and burdensome.

This Government want the UK to be part of a European patent system that supports growth and provides a cost-effective option for innovative businesses that want to protect and market their inventions across Europe. *[Interruption.]* I see that I have already lost one hon. Member with my unequivocally pro-European remarks. The unitary patent and the unified patent court form a package of European patent reforms that will achieve that ambition.

The unitary patent will give businesses the option to hold a single uniform patent right across all participating European states. The unified patent court will offer a means to enforce a patent across most of the EU single market, making it easier for innovative businesses to enforce patent protection across Europe in a single judgment. The importance of being able to obtain a single judgment that is valid across Europe should not be underestimated. For example, recent independent research shows that about a quarter of all patent cases heard at the UK courts between 2000 and 2008 were also heard in other European jurisdictions with the same litigant and the same defendant. I think it will therefore be clear to hon. Members what duplication we are trying to get rid of.

I am pleased that my right hon. Friend the Prime Minister was personally involved in negotiating the final stages of the agreement in June 2012. As part of

that negotiation, he secured agreement that part of the unified patent court will be in London, thus cementing the UK's global reputation as a place to resolve commercial legal disputes.

I turn briefly to the specifics of what the order will do. It will amend the Patents Act 1977 and will make three key changes. First, it will make clear where the unified patent court will have jurisdiction and where the UK courts will retain jurisdiction, so it will make clear where UK jurisdiction ends and UPC jurisdiction begins. The order will ensure that the 1977 Act correctly accounts for the unitary patent, in particular to recognise the wider territory covered by a unitary patent in comparison with a patent that is valid only in the UK.

Importantly, the order will introduce two exceptions to patent infringement that are provided for in the UPC agreement but do not currently exist in UK law. I will remind the Committee what those two exceptions are. The first allows plant breeders to use patented biological material to create a new plant variety. The second allows the very limited but none the less important use of patented computer programs.

We think that the new court and patent will be ready for business in early 2017. The whole system can come into effect only once 13 countries, including the UK, have ratified the unified patent court agreement. The Prime Minister has called for a clear long-term commitment to boosting competitiveness and driving growth, and for a target to cut the burden on business. The order will contribute to that. The implementation of the unitary patent and the unified patent court are part of that competitiveness boost in the single market, and it is right that we press ahead with actions that will allow the UK to ratify the unified patent court agreement. The order will make the necessary changes to UK law to enable ratification of the agreement, taking us one step closer to achieving the goal of a European patent system that supports innovation and growth. I commend the order to the Committee.

2.35 pm

Kevin Brennan (Cardiff West) (Lab): I know you will understand, Sir Roger, when I say dydd gwyl Dewi Sant hapus—happy St David's day to all members of the Committee, and particularly the three other Opposition members who represent Welsh constituencies.

As ever, we are punching above our weight on European matters in this Committee. *[Interruption.]* Well, the Six Nations is yet to come, as is Euro 2016. The proposals in the draft order have largely been viewed positively, and one would after all think it sensible to have one patent covering 25 European Union countries rather than 25 separate patents in 25 different countries. The difficulties in pursuing patents in potentially, 25 different languages—it may not be that many—with the time, energy and cost involved, would be much simplified by having the unitary patent. As the Minister said, this measure has been in the making since February 2013, when the UK signed the unified patent court agreement, so we have had several years to get to grips with the detail and to try to sort out any administrative problems.

Some questions have been raised about the mechanics of introducing the unitary patent. It will be interesting to hear whether the Minister can help us on any of those questions this afternoon while we have the opportunity

to put them to him. He mentioned that the unified patent court is expected to start in 2017. Does he have any indication in which country the court is likely to be set up and who will adjudicate? Will it be a principal judge or a bench of judges, and what will be the system for appointing and getting rid of judges? Any information he can give the Committee on that will, I am sure, be extremely welcome. What sort of expertise and experience in this complex area of law will be expected of those adjudicating in the patent court? Will there be a way of monitoring the performance of the judges and of the court itself, or any system of performance indicators to judge the success or otherwise of the new court? How much will the administration of the court cost, and how will it be paid for? What will the UK contribution to the cost of the court be?

I know that the Government's impact assessment says that the net cost to businesses will be zero—I presume because it is anticipated that there will be a net saving overall from having the unified patent court system—but is there any indication of what the cost of applying to the court to register patents will be and how that compares to the current cost in the UK? It would be useful to have some indication.

There have been a number of concerns. The Library briefing for our proceedings today included some concerns expressed by the Max Planck Institute for Intellectual Property and Competition Law in Germany about the proposed unitary patent and court. Does the Minister have any information on that, and do the Government have any views on the concerns that have been expressed? It would be useful to the Committee to hear that. Lord Justice Kitchin was also critical of the proposals in a speech in October 2012, highlighting the difficulty for companies having to fight court cases in different locations. Do his comments have any merit?

Finally—it is a rather obvious question—what would be the effect on all this of a decision to leave the European Union in the forthcoming referendum? In practical terms, would it mean that we would join the system on a temporary basis and then withdraw, or would there be any possibility of maintaining the benefits to business of some kind of unified patent system even if we were no longer a member of the European Union? I would be very grateful if the Minister could give us an idea of the implications of a no vote and a decision to withdraw. How long would it take for there to be an effect on Britain's participation in the new unified European patent court?

Subject to a satisfactory response to my questions by the Minister, I do not intend to divide the Committee today.

2.40 pm

Mr Vaizey: I am extremely grateful for the chance to respond to the hon. Gentleman's points. Let me deal first with the geographical basis of the unified patent court and the costs of the court and of patents. It is important to stress that the court will have a single jurisdiction and a single set of rules of procedure, but it will be spread across different locations.

There will be a court of first instance and a court of appeal. The court of first instance will have a central division, and there will be a number of local and regional divisions that have been set up partly at the

request of individual member states. The central division will be located in Paris—the French won that fight. There will be also specialised central divisions, so although Paris will have the headquarters, Munich will have the specialised mechanical engineering part of the central division, and I am really pleased to say that London will get the bit of the central division specialising in chemistry and life sciences. That is particularly relevant to pharmaceuticals, in which, of course, the UK has a strong record. There will also be local divisions that one can visit to register a patent—one in London, four in Germany—in Munich, Düsseldorf, Hamburg and Mannheim—and one in Stockholm for the Nordic and Baltic region, covering Sweden, Estonia, Latvia and Lithuania. The court of appeal for the unified patent court will be in Luxembourg.

Court fees will be a combination of fixed fees and fees based on the value of a case, so they are likely to range from as little as €100 up to €300,000, but a €300,000 case would be one in which at least €50 million was at stake. Fees will actually be much lower in the unified patent court for small and micro entities than they have previously been. There will also be options for mediation and arbitration.

There are approximately 350,000 patents in force in the UK alone, which goes to show the level of work that the unified patent court will potentially be undertaking. The cost of a patent is also important. It will cost less than €5,000 to renew a patent for the first 10 years. The cumulative cost of maintaining a patent over its full 20-year term will be about €35,000. That compares with a cost at the moment of potentially about €160,000 to have a full patent in the 26 different jurisdictions in which the unified patent court would apply. The renewal fee scale adopted for the unified patent court corresponds to a reduction of about 78% compared with the cost of maintaining protection in 26 states.

Judges will be appointed from across Europe, and they will be experts in patent law. We expect to start the recruitment process soon. Whether the court sits as a single judge or a panel of judges will depend on the case.

I have something that Brexit Ministers cannot see—a brief about the impact of the referendum. It says absolutely nothing, really, so I do not know what people are getting so worked up about. The briefing seems to me to be completely meaningless, so let me busk it. I do not want to get into trouble with the Mayor of London or anyone else, but if we left Europe as a result of the referendum, I suspect it would be a decision for the UK Government whether they wanted to rejoin the European patent court. Of course, we would have to rely on our European partners to decide whether the UK could be a member.

Mr Ronnie Campbell (Blyth Valley) (Lab): They will.

Mr Vaizey: I hear from the Opposition Benches that the deal has already been done, but I will leave it up to hon. Members to decide on the validity of that remark.

Kevin Brennan: There was reference in the Library briefing to a blog from Bristows, the starting point of which is that it will not be possible for a non-EU member state to take part in the proposed unified

[Kevin Brennan]

patent court regime. I presume that, if that is the case, we would not be able to apply to be part of it, and British business and UK plc would lose the benefit of being able to register a single patent.

Mr Vaizey: I am grateful to the hon. Gentleman for his clarification on that point. I think that that was sort of what I was saying: clearly, were we to leave the European Union, we would no longer be members of the unified patent court. It would then be a matter for

the UK Government to ask the European Union whether we could be a member, if we thought that was a good thing. I suspect the European Union would have something to say about that. For people whose lives are dominated by thoughts of having a European patent, it would be a bad thing if we were not a member of the European Union. I hope that that is clear.

Question put and agreed to.

2.46 pm

Committee rose.