

## European Commission Releases Draft Regulations Governing Unitary Patent Protection

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On 13 April 2011, the European Commission released two draft regulations: a draft regulation of the European Parliament and the Council implementing enhanced cooperation for creation of unitary patent protection, and a draft Council regulation relating to applicable translation arrangements for the unitary patent protection.

The proposed unitary patent right would be valid in 25 of the 27 EU Member States. It is hoped that the outstanding two Member States (Italy and Spain) will in due course join in the enhanced cooperation as well, per the Commission's explicit statement.

Under the Commission's proposals, holders of European patents would be allowed to apply to the European Patent Office (EPO) for unitary patent protection covering the participating 25 Member States. The unitary patent could only lapse, be revoked or be transferred in respect of those 25 Member States as a whole. Applications for the unitary patent right could be submitted in any official language of the European Union. However, the EPO would continue to examine and grant applications in the official languages of the EPO, *i.e.*, English, French and German. Under the proposals there will be a system for reimbursement of the costs related to the translation from the original language to the language of the proceedings of the EPO. When the patent is granted, the claims will be translated into all of the official languages of the EPO.

The key intention behind the proposed unitary patent is cost saving for the patentee. Under the current system of applying for European patents (which comprise, on grant, a "bundle" of national patents), obtaining a European patent designating all 27 EU Member States can cost around EUR 32,000, of which more than two-thirds is translation costs. Under the Commission's proposals, applying for a unitary patent

would cost less than EUR 2,500 during the proposed legislative transition period (which may last up to 12 years), and only EUR 680 thereafter.

The Commission's draft regulations will be sent to the European Parliament and to the Council for adoption.

It should be noted that the Commission's proposals relate only to the nature and effect of the unitary patent *per se*: they do *not* govern the forum in which the unitary patent is to be litigated. On 8 March 2011, the European Court of Justice handed down its opinion (No 1/09) holding that the proposed agreement on the Community Patents Court is not compatible with the provisions of the European Union treaties. While the issues of the nature of the unitary patent and the forum in which it is litigated are legally distinct, they are clearly linked in practical and commercial respects. It remains to be seen how this will affect the commercial utility of the unitary patent in practice.

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