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Unified Patents Court – Delays at Parliament

Brian Cordery (Bristows) · Sunday, July 15th, 2012

As has been widely reported in the IP and wider press, a major breakthrough was made at a political level on 29 June 2012 on the long-running EU Unitary Patent and Unified Patents Court dossier. Importantly, the agreement reached included a significant amendment to the previous proposals, whereby provisions would be deleted from the draft Regulation establishing the Unitary Patent and which would, had they been retained, have given the Court of Justice for the European Union increased jurisdiction over patent matters (Articles 6-8 of the draft Regulation). Industry has long objected to any increase in CJEU competence in patent matters and hence welcomed this proposal to delete the provisions. However, as we also reported, this proposal is subject to the approval of the European Parliament, and within days the European Parliament rapporteurs on this dossier indicated their strong disapproval of the removal of these articles both for political and legal reasons and postponed the vote scheduled for 4 July. The relevant Committee of the European Parliament met on 10 July with the benefit of fresh legal advice from the European Parliament Legal Service. This advice apparently declared that the removal of Articles 6-8 would render the arrangements incompatible with the requirements of the TFEU, and hence liable to be struck down by a future legal challenge.

As a result, Parliament will not vote on this issue until after further consideration has been given to the legal advice and its ramifications. Although many commentators will disagree with the European Parliament Legal Service's advice, in practice it is likely to be difficult to persuade MEPs to ignore it and the advice, understood to be similar, from the Commission's Legal Service. Consequently, it is unlikely that there will be any further significant movement on the matter until October, and there is every possibility of a substantial delay in the process, or even complete deadlock if Parliament refuses to endorse an arrangement which it is advised deprives the arrangement of adequate legal basis

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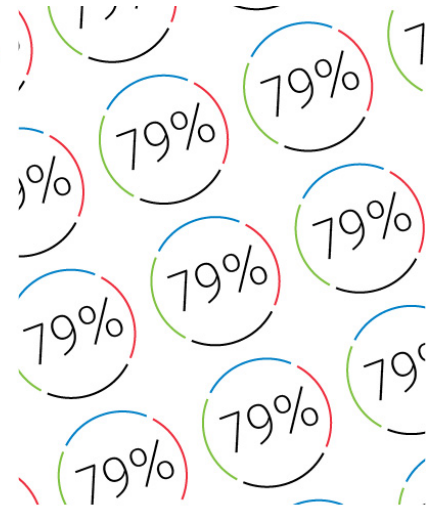
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