

# Kluwer Patent Blog

## SMEs will need IP litigation insurance in Unitary Patent system

Kluwer Patent blogger · Sunday, December 20th, 2015

Will Small and Medium Enterprises (SMEs) profit from the new Unitary Patent (UP) system and the Unified Patent Court (UPC)? Although it was certainly the idea, observers have disputed this and particularly warned that litigation under the new system exposes SMEs to enormous risks. There is now formal recognition they have a point: the European Commission has made clear that SMEs will need an IP litigation insurance.

‘The cost exposure for IP rights and particularly patent litigation is significant, hits SMEs disproportionately hard and acts as a serious deterrent for SMEs to engage in patenting in the first place’, according to the [European Commission \(EC\) Staff Working Document – A Single Market Strategy for Europe](#), which was published jointly with the report [Upgrading the Single Market: more opportunities for people and business](#).

According to the first document, companies that lose a legal dispute under the UPC ‘will have to pay the court fees of the winner (provisionally estimated at a fixed fee of 11.000 euro plus a value based fee of up to 220.000 euro). To this have to be added the winner’s legal costs, which (...) could amount to up to 3 million euro. In addition, the losing party will typically also be required to pay damages.’

‘Such exposure can only be effectively addressed through a functioning IP litigation insurance market’, according to the EC. Currently, this doesn’t exist. However, the Commission thinks that once the Unitary Patent system has started functioning ‘such a market – which did not develop at national level due to the too limited size of the market – could start to grow’.

The EC is considering a series of measures to support the use of intellectual property by SMEs, including ‘facilitating the development and launch of a European commercial IP legal costs insurance market’.

According to the same EC working document, a number of issues regarding the Unitary Patent system still need additional clarification:

‘- coherence between the upcoming Unitary Patent and current EU rules on SPC (discussed in an [earlier blogpost](#));

– the consequences of the rejection of a request for unitary effect, and the revocation of a Unitary Patent due to defeating national prior art and the possible acceptable conditions to convert such a putative Unitary Patent into a bundle of national patents;

- the principle of non-double protection deriving from Unitary Patent and national patents, except in very limited circumstances; and
- possible issues stemming from the obligation to designate all participating Member States for the purpose of obtaining a UP.’

Finally an interesting figure from the report: full implementation of the Unitary Patent could lead to a gain of 0.25 percent in EU GDP, although economic gains for individual Member States could vary.

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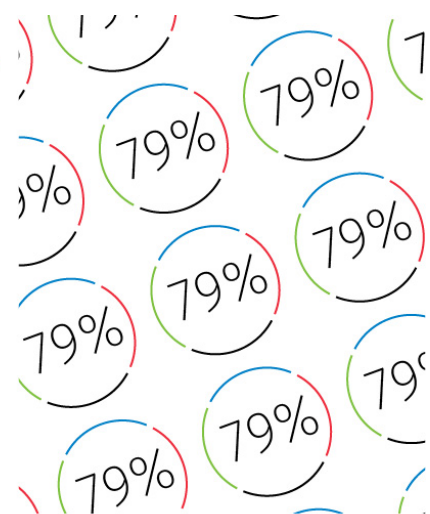
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