Statement by the ESAB on the unitary patent and the Unified Patent Court

The Economic and Scientific Advisory Board* of the European Patent Office addressed the unitary patent and the Unified Patent Court, which are currently being implemented in Europe, as the key topics in its 2013 work programme. To this end the Board commissioned an external study on the economic effects of the unitary patent package, and it organised a two-day workshop in Munich on 3 and 4 December 2013.

The link to the study, carried out by the London-based economics consultancy firm Europe Economics, can be found here: “Economic Analysis of the Unitary Patent and Unified Patent Court”.

The report summarising the views of workshop participants can be found here: “Report Workshops on the unitary patent and the Unified Patent Court”.

The Board agrees with the workshop participants that overall, there is reason for both optimism and for concern about the unitary patent package. With respect to the unitary patent, the most significant benefits include the administrative simplification of patenting in Europe, the potential for saving costs, including validation, translation and post-grant administration costs, and the geographic extension of patent protection. A number of critical decisions have yet to be taken and that will determine how users come to evaluate the unitary patent on a day-to-day basis. First and foremost these relate to the level of the unitary patent renewal fees and the costs related to litigation before the Unified Patent Court. The economic study confirmed that the expected take-up of the unitary patent is clearly dependent on the level of the renewal fees. The Board generally welcomes the UP system, but points out that the additional tier added to the patent system by the unitary patent makes the overall system more complex. Pricing incentives could be used to shape the new system into one in which specific tiers are significantly more attractive to users than others.

An immediate benefit of the Unified Patent Court lies in avoiding multiple patent litigation in different jurisdictions in Europe. The Unified Patent Court Agreement creates one single specialised patent court, operating under one set of rules of proceedings and developing harmonised and consistent jurisprudence throughout the territory of the member states that have signed the Unified Patent Court Agreement. The Board expects that the Unified Patent Court will be composed of highly qualified judges, who would deal quickly and effectively with cases. Another significant benefit of the Unified Patent Court is the reduction in the high cost of enforcement for firms that validate in many or all member states. The main concern is
the uncertainty regarding the future functioning of the Unified Patent Court. There is uncertainty whether the court will function more like the current national courts in Germany or more like the current national courts in the United Kingdom. Also, there was concern amongst some participants that the Unified Patent Court should not become the means by which certain Non-Practising Entities known as “trolls”, currently active in the US patent system, extend their activities to Europe.

As the process of consultation on the rules of procedure of the Unified Patent Court and deliberations on the pricing of the unitary patent and the Unified Patent Court are ongoing, the Board hopes that the workshop report and the economic study will be helpful in further improving the unitary patent package in the interests of all of its future users.

* In 2011, the President of the European Patent Office (EPO) created the Economic and Scientific Advisory Board (ESAB) to address important economic and social issues relating to the patent system and to support the EPO with evidence-based policymaking.