

<b>Title:</b> Unified Patent Court Implementation - Unitary Patent <b>IA No:</b> BISIPO005  <b>Lead department or agency:</b> Department for Business, Innovation and Skills - Intellectual Property Office  <b>Other departments or agencies:</b> Ministry of Justice	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 23/10/2014
	<b>Stage:</b> Final
	<b>Source of intervention:</b> European
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Katherine Evans katherine.evans@ipo.gov.uk	

<b>Summary: Intervention and Options</b>	<b>RPC Opinion: Green</b>
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present	Net cost to business per year (EANCB on	In scope of One-In, Two-Out?	Measure qualifies as
£0m	£0m	£0m	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**

The current system for obtaining and enforcing European patents is fragmented. All European patents granted by the European Patent Office (EPO) are currently implemented as 'bundles' of national patents in each country, each only enforceable within national territories. The Unitary Patent will be a single patent right effective across all participating states. Currently, patenting across Europe is costly, with many administrative burdens including high translation costs. The aim is to provide an alternative for those that want protection across a greater number of European countries with lower administrative costs. We propose some changes to the Patents Act (1977) to cater the Unitary Patent in UK law.

**What are the policy objectives and the intended effects?**

The changes discussed in this Impact Assessment form part of the changes required to bring into effect the Unified Patent Court (UPC) Agreement. The Government's objective is to ensure consistency of UK law with the Unitary Patent and Translation Regulations so as to ensure that businesses do not face uncertainty. Inventors will be able to apply to the European Patent Office for one patent for up to 25 Member States, using one application and one language regime, and then defend that patent in one common court system. UK firms looking for protection across much of Europe will benefit from the combination of the Unitary Patent and the UPC. The UK will benefit from being part of this single market.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1 – Do nothing  
 Option 2 – Make the necessary changes to ensure compliance with the Unitary Patent regulation in national law

Option 2 is the preferred option as it meets the policy objective of ensuring that UK law is compliant with Regulation (EU) No 1257/2012, in order to provide patentees in Europe with another option for obtaining Europe-wide patent protection than is currently available. Setting this out in UK law ensures clarity for businesses.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister: \_\_\_\_\_ Neville-Rolfe \_\_\_\_\_ Date: 18 January 2016

Description: Do nothing

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2014	PV Base Year 2014	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/A
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant</b>	<b>Total Cost (Present Value)</b>	
Low	0		0	0	
High	0		0	0	
Best Estimate	0		0	0	
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
No Change					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant</b>	<b>Total Benefit (Present Value)</b>	
Low	0		0	0	
High	0		0	0	
Best Estimate	0		0	0	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
No Change					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate</b>	3.5%

**BUSINESS ASSESSMENT (Option 1)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of</b>	<b>Measure qualifies</b>
Costs: 0	Benefits: 0	Net: 0	No	N/A

Description: Introduce Unitary Patent

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2014	PV Base Year 2014	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	0	0	0	0
High	0		0	
Best Estimate	0		0	

**Description and scale of key monetised costs by ‘main affected groups’**

We are unable to fully monetise costs at present as key factors such as the renewal fees have yet to be decided. The introduction of the Unitary Patent is a change that is permissive in nature because it allows, but does not force, businesses to do something.

**Other key non-monetised costs by ‘main affected groups’**

The main affected group for this legislative change will be applicants and users of patents. The Unitary Patent will operate in parallel with existing systems, and firms will use it by choice where they anticipate savings in costs or administrative burdens. There may be small changes to processes for the Unitary Patent, we anticipate that adjustment costs to applicants and to patent attorneys should be minimal.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	Zero	7	Zero	Zero
High	Zero		Zero	
Best Estimate	Zero		Zero	

**Description and scale of key monetised benefits by ‘main affected groups’**

The introduction of the Unitary Patent is a change that is permissive in nature because it allows, but does not force, businesses to do something. We expect that business will only use the new system where they lead to net benefits for business.

The analysis in this impact assessment assumes that benefits are at least equal to costs, even though it is not possible to quantify or monetise the benefits.

**Other key non-monetised benefits by ‘main affected groups’**

The Unitary Patent offers potential savings to firms applying for patent protection across several participating countries in translation, administrative and renewal costs. Availability of a patent right which can be used to protect an invention across most of Europe is intended to make it easier for firms to innovate across the single market which may allow firms to maximise their income from licensing. This should stimulate competitiveness and growth.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
We assume that renewal fees will be set at a level to make the Unitary Patent a viable alternative to European bundle patents for firms wishing to patent across much of Europe and that they will be set at a level which is sustainable.		

**BUSINESS ASSESSMENT (Option 2)**

<b>Direct impact on business (Equivalent Annual) £m:</b>	<b>In scope of</b>	<b>Measure qualifies</b>
Costs: 0	No	N/A
Benefits: 0		
Net: 0		

## Evidence Base (for summary sheets)

### **Problem under consideration**

The changes discussed in this Impact Assessment form part of the changes required to bring into effect the Unified Patent Court (UPC) Agreement. The other changes that are required to bring into force the UPC Agreement are covered in separate IAs (BISIPO003 and BISIPO006). The UPC will be a specialised court, set up by an international treaty (the UPC Agreement) signed in February 2013, with jurisdiction to hear disputes on European patents and the new Unitary Patent. Having signed up to the UPC Agreement it is necessary for changes to be made to UK law in order that the Agreement can be ratified. This means that along with changes linked to the introduction of the UPC and associated jurisdictional changes, further changes are needed to UK law to cater for the Unitary Patent.

The system for obtaining Europe wide patent protection is currently time-consuming and burdensome. Applicants can obtain individual national patents from each national patent office. Alternatively, a patent applicant may choose to apply for a 'bundle patent': this is granted by the European Patent Office (EPO) in a single procedure for up to 38 European states, but once granted, are treated as separate national patents, that incur various fees for each country. There are some procedures which are not consistent across Europe – particularly in some administrative processes such as validation and the payment of renewal fees. This puts a financial and administrative burden on those wishing to hold a patent across Europe and makes Europe-wide patent protection more administratively complex and more costly than in other large markets (such as the United States).

Validation and Translation fees - Once the EPO has granted a European patent, the patent holder must meet any requirements to validate the patent in each country in which they wish to protect their invention. In some countries, validation entails payment of a validation fee, a fee for publishing the patent in the national register and a fee for translating some, or all, of the patent. Many patentees choose to hire a patent attorney to help them navigate their way through these processes. Current translation costs to UK businesses seeking protection across Europe (in the 25 participating States) not including agent fees are estimated to be around £20,000<sup>1</sup>.

The European Commission 2011 impact assessment estimates that, "obtaining a patent in 13 Member States today costs 10 times as much as obtaining a patent in the US."<sup>2</sup> They calculate that bundle patents valid in 13 member states costs up to £15,400 whilst patent protection in the US costs £1,500. Up to 40% of the costs for European bundle patents can be attributed to direct and indirect translation costs. The cost in Japan is similar to that in the US, which suggests that obtaining a patent in the current bundle system is relatively expensive compared to similar sized markets internationally.

Renewal fees - Patented inventions are protected for a maximum of twenty years from when the application was first filed. After grant, the patentee is required to pay annual fees for renewing their patent protection in each country they wish to market their invention. Renewal fees vary across Europe but to have protection across all 25 countries that have signed up to the UPC Agreement patent owners would pay £125,000<sup>3</sup> to renew their patent for a maximum of twenty years, compared to the cost of protecting their patented invention in the

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<sup>1</sup> Throughout this IA, any currency conversions are based on €1: £0.83, see Oanda Currency Converter: <http://www.oanda.com/lang/de/> See note 15 for further detail on this cost estimate.

<sup>2</sup> European Commission IA, April 2011, *Impact Assessment Accompanying document to the Proposal for a Regulation of the European Parliament and The Council implementing enhanced cooperation in the area of the creation of Unitary Patent protection*, available at [http://ec.europa.eu/internal\\_market/indprop/docs/patent/sec2011-482-final\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/patent/sec2011-482-final_en.pdf), P. 24

<sup>3</sup> 2009 figures, European Commission IA, April 2011, *ibid*, P. 48

United States for twenty years which is a little under £8,000 (US \$12,600).<sup>4</sup> This may deter firms from obtaining patent protection across the whole of Europe.

### **Background on negotiations**

After decades of negotiations, two EU Regulations were adopted on 17 December 2012 under enhanced cooperation amongst 25 EU Member States (Spain, Italy and Croatia are not currently part of the enhanced cooperation). Regulation EU 1257/2012 “implementing enhanced cooperation in the area of the creation of Unitary Patent protection” (the Unitary Patent Regulation) establishes the Unitary Patent. Regulation EU1260/2012 “implementing enhanced cooperation in the area of the creation of Unitary Patent protection with regard to the applicable translation arrangement” (the Translations Regulation) establishes the language regime for the Unitary Patent.

Separately, the UK Government and 24 other EU Member States signed an intergovernmental Agreement in February 2013 establishing a Unified Patent Court for the settlement of disputes relating to Unitary Patents and European patents. This change is the subject of the BISIPO006 IA.

The entry into force of the UPC Agreement will trigger entry into force of the Unitary Patent and Translations Regulations. The Governments of the 25 participating states made a joint declaration committing to bringing the new system into effect when they signed up to the Agreement in February 2013. In order for the Unitary Patent and Translations Regulations to come into effect, it is necessary for 13 Signatory States to ratify the Agreement of which the UK, France and Germany must be included.

### **Rationale for intervention**

The Government wants the UK to be part of a European patent system that can help innovative companies to get a return on their investment, encouraging further innovation. The Unitary Patent can support this aim by offering a cost-effective option for patentees that want to protect and market their inventions across Europe. Whilst there is a single market for goods and services within the EU, a uniform system does not exist for patents covering these same goods and services.

Currently not many patent holders choose to validate across 25 European states, despite the broad territory and large market that this presents. At the moment, the administrative costs and other fees may act as a disincentive to those considering patenting across multiple European states.

The introduction of the Unitary Patent will remove some of the barriers to Europe wide patent protection mentioned above and simplify the process by which protection can be obtained. There will be a single annual renewal fee which will apply across all participating States. The regulation on the Unitary Patent (Regulation (EU) No 1257/2012)<sup>5</sup> is accompanied by a regulation for translation arrangements (Regulation (EU) No 1260/2012)<sup>6</sup> for the Unitary Patent which will reduce the translation requirements compared to that of European ‘bundle’ patents across 25 states.

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<sup>4</sup> US Patent and Trademark Office fees at <http://www.uspto.gov/web/offices/ac/qs/ope/fee010114.htm#maintain> as of January 2014.

<sup>5</sup> REGULATION (EU) No 1257/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2012 implementing enhanced cooperation in the area of the creation of Unitary Patent protection, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0001:0008:en:PDF>

<sup>6</sup> COUNCIL REGULATION (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of Unitary Patent protection with regard to the applicable translation arrangements, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0089:0092:en:PDF>

The Unitary Patent regulation, and the accompanying Translation Regulation, commence when the UPC Agreement is ratified in 13 of the 25 Signatory States (which must include the UK, France and Germany).

As a signatory to the Agreement, UK law must be in line with the Agreement and compliant with the Regulation before ratification. Because the proposed changes are based upon a European Regulation and the associated international agreement this falls out of scope of One In Two Out.

### **Policy objective**

The Government wishes to simplify the process by which Europe wide patent protection can be obtained and reduce the post-grant costs associated with maintaining protection across much of Europe to an appropriate level.

The Unitary Patent will offer UK patent-holders, that want protection in the 25 European states that have signed up to the Agreement, the choice to take out a patent that is more affordable than at present.

As part of the process, UK law needs to be compliant with the Unitary Patent and Translations Regulations and implement the provisions in the UPC Agreement.

### **Options Considered**

The options considered are:

Option 1 – Do nothing

Option 2 – Make the necessary changes to ensure compliance with the Unitary Patent regulation in national law

Option 2 is the preferred option as it will allow individuals and businesses in the UK to take advantage of the new Unitary Patent and reduce the administrative burdens and financial cost associated with current means of obtaining Europe wide patent protection.

### **Costs and Benefits of the options considered**

#### **Option 1 – Do Nothing**

This is the baseline against which all other options will be compared.

#### **Option 2 – Make the necessary changes to give effect to the Unitary Patent in national law**

#### **Costs and benefits**

Although there are agreed principles on how the Unitary Patent will work, there are some factors which have not yet been agreed upon. We know that the fee structure for the Unitary Patent should cover the costs of administering the patent, and that there is a commitment to consider SMEs where possible. However we are unable to fully monetise costs and benefits at this time for two reasons:

- The costs of renewal fees are unknown at this stage and are being finalised by the participating states.
- At this time, we do not have a clear picture to suggest how many patent owners are likely to take up Unitary Patents and what factors drive this decision.

Given this, we are unable to present definitive savings and have instead estimated potential savings using scenario analysis based on known costs of the existing system. Costs and benefits are presented on a per-patent basis rather than on an aggregated basis as volumes

of demand are largely unknown. EPO research on factors driving patenting decisions is expected to deliver more evidence to inform this analysis going forward. The IPO has also commissioned research to explore factors influencing firms' choice over whether to choose a Unitary Patent over a bundle patent. This includes a survey based qualitative analysis into business views, "Exploring Perspectives of the Unified Patent Court and Unitary Patent Within the Business and Legal Communities"<sup>7</sup> authored by Dr Luke McDonagh, which was published in July 2014. Evidence from this research, as well as other relevant evidence, has been used to assess the costs and benefits of the options considered.

The findings from McDonagh (2014) show that businesses view the level of renewal fee as important when considering whether to choose the Unitary Patent over a bundle patent. There are also different views depending on the industry, for example pharmaceutical companies are more likely to hold patents with coverage across the whole territory, whereas those in the ICT and engineering sectors tend to only select a limited number of states in which to patent, depending on their market. The research has also shown that uptake of the Unitary Patent will be influenced by opinions of the UPC.

### Who will be affected?

This will affect those who may be considering patenting in Europe. At present, the number of states taking part in the Unitary Patent is 25 (for details, please see Annex A). However, currently not many patent holders choose to validate their patent in all of these 25 countries. We would expect that the current costs and administrative burdens, when compared to the advantage given by holding a patent across these countries, may have a bearing on the number of bundles which are held across all 25 states.

Currently, the most popular countries for validation of a bundle patent are Germany, France and the UK. We estimate the majority, approximately 90%, of bundle patents are valid in the UK.<sup>8</sup> UK-based applicants for bundle patents follow a similar pattern with Germany, France, the UK and the Netherlands being the most popular countries for validation of UK applications.<sup>9</sup>

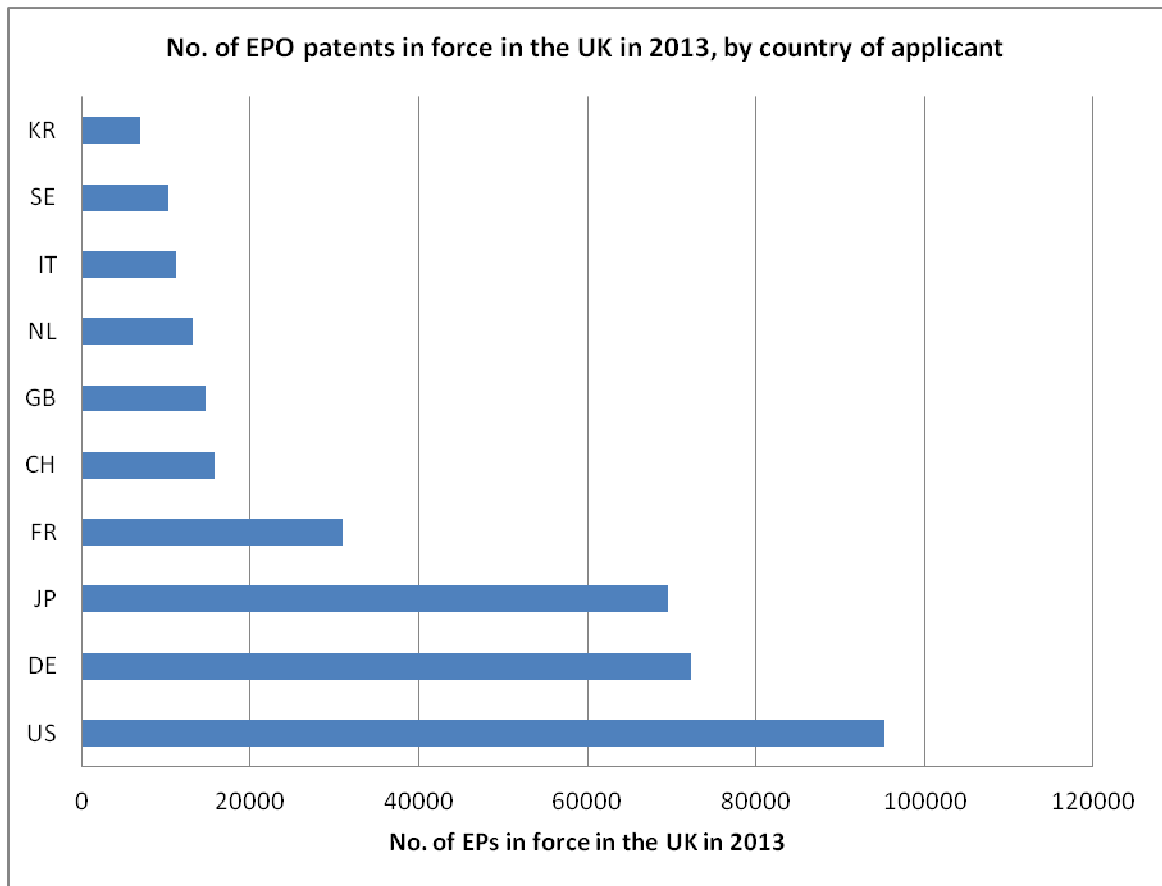
We know that many patents valid in the UK are from outside Europe – as the following chart shows, US and Japanese patent holders account for the first and third, respectively, most common applicant countries.

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<sup>7</sup> McDonagh, L., July 2014. Exploring Perspectives of the Unified Patent Court and Unitary Patent Within the Business and Legal Communities. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/328035/UPC\\_Study.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328035/UPC_Study.pdf) In December 2013 a study was commissioned to examine the perspectives of the with regards to the UPC and UP. Dr McDonagh undertook an empirical study into the different viewpoints shared or otherwise by stakeholders in the legal and business sectors. As part of the study he conducted in-depth interviews with 26 different organisations, in order to gauge their views and concerns on the UPC and UP. The respondents were representative of a wide spectrum of business sectors, though primarily from the ICT sector and Chemicals sector as well as a wide range of differing legal view points. The study also contains a literature review on the current state of patent litigation in Europe and the UPC/UP reforms.

<sup>8</sup> Internal IPO estimates. This based on EPO statistics on patents in force. For patents that were filled in 2007, in the UK 32,514 European patents came into force, whereas in Germany 35,280 patents came into force. Using the assumption that for all European Patents that come into force, they come into force in Germany, we can estimate that 92% of those patents come into force in the UK. 2007 data is used to avoid any potential impacts upon the data from EPO backlogs on more recent filling years.

<sup>9</sup> Data from internal IPO analysis of PATSTAT data of UK based applicants for bundle patents in the 25 member states from 1980 to 2011.



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### Direct and Indirect Costs to business

The Unitary Patent is entirely optional so businesses need not obtain this form of patent unless they choose to do so. Therefore, there should be no additional cost to those seeking patent protection as the current options (EPO bundle patents, national patents) remain available.

A bundle patent can be taken out for any combination of contracting member states of the European Patent Convention (EPC), and as the years progress, a patent holder can choose to cease renewing their patent in some, or all of the countries originally selected. This offers a degree of flexibility to businesses holding a large patent portfolio, and enables them to react to market trends.

Those opting for Unitary Patents cannot choose to cease renewing their patent in individual countries whilst continuing in others, as is currently possible with EPO bundle patents. Some patent holders may see this as a disadvantage due to the lack of ability to maintain the patent only where it is most desirable. However, the Unitary Patent is optional and current means of obtaining multi-country protection are still available, therefore we do not treat this as a burden on business. Businesses will only choose to use the Unitary Patent, and incur its potentially higher, less flexible renewal costs if there are other benefits.

Coverage of the Unitary Patent depends on which states the Unified Patent Court has jurisdiction in at the date the patent is registered for unitary effect. Whilst there are 25 states

<sup>10</sup> Data from internal IPO analysis of PATSTAT data of bundle patents valid in the UK in force in 2013 (excludes pending patents).



signed up to the agreement, it is important to remark that the Unitary Patent cannot come into effect until 13 states have ratified the Unified Patent Court Agreement (to which commencement of the regulation is linked). This will likely mean that in the early years there may be some Unitary Patents which are only valid in 13 states; to gain coverage in further states at this point would mean validating in each of them separately – as with a bundled patent.

Under the Unitary Patent, more patents might be held in countries where bundle patents are not currently validated. This increase in patenting coverage potentially means that some future business activities will infringe Unitary Patents that would not otherwise have infringed because patentees would not have chosen to include that country in their bundle. There is likely to be an increase in the number of patents valid in the UK. However, the impact on the UK will be limited as, according to our estimates, 90% of bundle patents held in Europe include coverage in the UK. However, this increase will depend on the number of applicants favouring a Unitary Patent application over a bundle patent application.

### *Direct and Indirect Costs to the Intellectual Property Office (IPO)*

Currently, national patent offices collect annual renewal fees on European bundle patents valid in their territory and remit 50% of the fee revenue to the EPO. Under the Unitary Patent arrangements, the EPO will receive the renewal fees from patent owners. The EPO will retain 50% of the fee revenue and the remaining amount will be distributed to participating States in accordance with distribution arrangements to be agreed. Due to exchange rate fluctuations, whilst the proportion distributed by the EPO to the IPO may remain fixed, the value of the amount received may vary. The level of fees, deduction for administrative costs, costs related to the compensation scheme and the UK share will all affect IPO's income from the EPO. As these provisions have not been finalised, it is not possible to estimate any change in IPO revenue from EPO at this point.

Costs to the IPO of adapting procedures for the Unitary Patent will be limited. Analysis of potential changes required to the office's IT systems show that any changes can be incorporated into the work already set out in the IPO's Corporate Plan 2014/2017 to update the technological infrastructure<sup>11</sup>. Because no separate work is required it is not considered to have a direct cost to the IPO beyond the existing costs already planned and "business as usual" work. If the update to the technological infrastructure is delayed then there is a small risk that there may be additional costs to the office in having to adapt the infrastructure for the Unitary Patent.

### *Direct Benefits*

#### *Benefits to business - reduced translation costs*

The proposed changes to UK legislation do not include any changes specifically relating to the Translation Regulation. However, by introducing the Unitary Patent UK applicants will be able to take advantage of the savings that the Translation Regulation will bring.

When dealing with applications for bundle patents, the EPO has certain translation criteria. The EPO requires that applicants for bundle patents file their patent specification<sup>12</sup> in

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<sup>11</sup> IPO Corporate Plan 2014-2017. Available at Hall, B. H., & Harhoff, D. (2012). Recent research on the economics of patents (No. w17773). National Bureau of Economic Research.

<sup>12</sup> The specification contains all the technical detail of the invention and is made up of 'claims', which define the legal scope of what is protected; the 'description' which describes the invention in detail and commonly also includes some diagrams. The specification is made publicly available.

English, French or German in order for it to be examined (this may be in addition to a copy in their native language). At grant, the EPO publishes the entire specification in one of its official languages (English, French or German) and translations of the claims into the other two official languages. For example, if a specification is filed in English then translations of the claims into French and German will be required. What is published at grant is the specification (description + claims) in English, plus the claims in French and German i.e. the description in English plus the claims in English, French and German. The applicant must provide the EPO with the relevant translations.

However when a bundle patent is validated in the chosen countries patent owners must follow national laws, which in some states requires supplying a translation of the entire specification into the local language. To some extent the administrative burden of translations was reduced by the introduction of the London Agreement<sup>13</sup> in 2008, which sought to reduce the required number of translations for a patent specification. However, not all countries in Europe have signed up to the London Agreement, meaning that there are still places where a translation in to the local language of the whole specification is required (a full list is included in Annex B). Currently, some countries also charge publication fees (a table showing weighted fees charges in each of the 25 countries is available in Annex C)<sup>14</sup>. Exact costs vary depending on the country where validation is sought.

The European Commission Impact Assessment<sup>15</sup> concerning the Unitary Patent and the Translation Regulation estimates that a specialist translator charges approximately €85 (£70) per page. The Commission also identified that the average bundle patent has a specification made up of 20 pages (this includes the patent's claim which averages four pages, 16 pages of text giving the description, including a page with a diagram).

At the moment, if someone were to seek to validate their bundle patent in all 25 states which have accepted the Unitary Patent regulation and paid for translation and publication where required, the total that they would pay around €24,000 (equivalent to around £20,000)<sup>16</sup>.

Under the language arrangements for the Unitary Patent, the translation requirements for a patent specification written in English would be reduced to just translating the claims (on average only 4 pages) into French and German. Using the Commission estimate for specialist translator charges at €85 (£70) per page, British patent owners seeking protection in 25 countries would therefore see their translation costs reduced to €680 (£560)<sup>17</sup> under the Unitary Patent translation arrangements.

This represents a saving of approximately £19,400 against current translation costs for EPO bundle patents validated in all 25 member states. As mentioned above, the average UK owned EPO bundle patent is only validated in 4 countries (UK, France, Germany and the Netherlands) so savings against this baseline are lower – at just under £300<sup>18</sup> per patent.

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<sup>13</sup> The London Agreement came into effect in 2008, and resulted in reduced translation costs for patentees within Europe. However, it was not agreed by all Member States and so its scope has been limited. For more information see the EPO's page on the London Agreement – key points: <http://www.epo.org/law-practice/legal-texts/london-agreement/key-points.html>

<sup>14</sup> Information on publication fees taken from The EPO's National law relating to the EPC September 2013 16th edition, available at [http://documents.epo.org/projects/babylon/eponet.nsf/0/EE1929ACFAA82EC3C125725800374350/\\$File/National\\_law\\_relating\\_to\\_the\\_EPC\\_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/EE1929ACFAA82EC3C125725800374350/$File/National_law_relating_to_the_EPC_en.pdf)

<sup>15</sup> European Commission IA, April 2011, *ibid*

<sup>16</sup> This is based on paying the average translation fee of €85 for 4 pages of claims in 19 countries (€6460), plus 16 pages of description in 11 countries (€14960) (the countries requiring translated claims and translated descriptions are shown in Annex A), plus €2664 which is the total of all publication fees charged in the 25 states (details in Annex B). A summary of these numbers can be found in Annex C.

<sup>17</sup> £560 = 2 times 4 pages at £70 (roughly equivalent to €680)

<sup>18</sup> Current translation cost for UK, France, Germany and the Netherlands of £840 (3 times 4 pages at £70) less proposed £560 = £280

### *Transition costs*

As provided for by Article 6 of the Translation Regulation<sup>19</sup>, there will be a transitional period of six years (potentially rising to 12) during which, if the Unitary Patent specification is written in English, a translation of the full specification is required in another official EU language. Also, as with the rules following transition, the claims are required to be available in English, French and German.

This means that for a UK patent owner the cheapest option would be for the full specification to be translated into either French or German (unless there is a business need for the specification to be translated into a different EU language) – fulfilling the requirement for the specification to be available in another EU language.

Since the specification (description + claims) would have been made available in English and one other official EPO language a UK applicant would then only need to translate an additional four pages of claims into the remaining EPO official language. For example, say a patent specification is available in English, the applicant could provide a translation of the specification (description + claims) into German and an additional translation of the claims into French. This would fulfil the requirements of having the claims published in all three EPO languages, and the need to file a translation of the full specification into another EU language in the transition period.

During the transition period the cost would consist of the translation of all 20 pages of patent specification (into French or German) (roughly £1,400<sup>20</sup>) plus the translation of 4 pages of claims (into whichever of French or German, the specification has not been translated into) (roughly £280). With an overall cost of about £1680, this reduces potential savings per patent validated in 25 countries to about £18,000<sup>21</sup>.

Because many UK patent owners only validate in 4 countries (Germany, France, UK and Netherlands – which are all signatories of the London Agreement), the level of saving will be lower. For a UK applicant filing in English their current costs are simply the translation of 3 sets of claims, which comes to £840 – with no requirement for a translation of the full specification. This cost of £840 is made up of the translation of four pages of claims into French and German to meet EPO requirements, and also a translation of the four pages of claims to meet Dutch national requirements. McDonagh (2014) notes that, “a small number of interviewees argued that the UP offers little cost benefit over the EP in light of the ‘London Agreement’, which reduces EP translation costs”.<sup>22</sup>

There are of course many who patent in more than the 4 most commonly validated states and that do not choose to validate their patent in all 25. Table 1 gives an indication of the two extremes of translation savings for potential Unitary Patent users.

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<sup>19</sup> COUNCIL REGULATION (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of Unitary Patent protection with regard to the applicable translation arrangements. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0089:0092:en:PDF>

<sup>20</sup> 20 pages at £70 = £1,400

<sup>21</sup> £20,000-£1,680 = £18320

<sup>22</sup> McDonagh, L., July 2014. Exploring Perspectives of the Unified Patent Court and Unitary Patent Within the Business and Legal Communities. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/328035/UPC\\_Study.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328035/UPC_Study.pdf)

**Table 1: Translation cost savings from the Unitary Patent in transition and final stage**

Coverage	Current Translation Cost	Transitional Period Translation Cost	Saving per patent in Transition	Final Period Translation Cost	Translation saving per patent Final Period
For protection in all 25 states that could participate in the Unitary Patent	£20,000	£1,680	£17,720	£560	£19,440
For protection in the top 4 countries where bundle patents are held (UK, France, Germany and the Netherlands)	£840	£1,680	-£840	£560	£280

In Table 1 above, the savings calculations do not include patent attorney fees, which may be incurred when providing a translation of a patent at validation. It is likely that owners of Unitary Patents will continue to seek patent attorney support when validating their patent and it is not yet known what they would charge. However as fewer translations are required and validation will only be with the EPO, rather than with multiple national offices, patent owners may see additional savings here.

*Benefits to business – savings on renewal fees*

Currently, the other significant costs currently facing patent owners seeking Europe wide protection is the cost of renewing their patent. Renewal fees vary around Europe and are generally progressive i.e. fees for later years are higher than those in earlier years.<sup>23</sup> At the current exchange rate<sup>24</sup>, it costs £10,900 to renew a patent for a maximum term of twenty years in Germany, which is similar to Austria (£10,200) and the Netherlands (£9,200). However, Germany’s fees are more than twice the cost of renewing a patent for its full term in France (£4,700) and more than three times the cost of renewing a patent in Poland (£3,100). At the bottom end, Malta charges less than one fifth of Germany’s price. In the UK, to maintain a patent for the full 20 years the total paid over that time is £3,300<sup>25</sup>.

According to EPO estimates, the median length of time bundle patents are renewed for is approximately 11-15 years from the filing date.<sup>26</sup> Therefore patent owners pay approximately £46,200<sup>27</sup> for patent protection across the 25 countries for this median length of time. Those seeking protection for the maximum of 20 years, would face costs of approximately £125,000<sup>28</sup> for patent protection across the 25 countries. More valuable patents are more likely to be maintained for the maximum length and patent owners will have their own reasons to maintain these rights.

<sup>23</sup>European Commission IA, April 2011, *ibid* P. 48

<sup>24</sup> €1: £0.83, see Oanda Currency Converter: <http://www.oanda.com/lang/de/>

<sup>25</sup>For consistency in international comparisons, the UK fees shown here are as of 2009; the current fee, as of 2013, is £4,550 and can be found at <http://www.ipo.gov.uk/types/patent/p-manage/p-renew.htm>

<sup>26</sup> See EPO National Law Relating to Fees: Payment of Renewal Fees, available at <http://www.epo.org/law-practice/legal-texts/html/natlaw/en/vi/index.htm> for fee levels of EPO member countries except Estonia, which has since introduced the Euro. Their Renewal fees taken from their Patent Office website at [http://www.epa.ee/client/default.asp?wa\\_id=443&wa\\_id\\_key=](http://www.epa.ee/client/default.asp?wa_id=443&wa_id_key=)

<sup>27</sup> Data provided by the EPO to the Select Committee on November 7, 2013

<sup>28</sup> 2009 figures, European Commission IA, April 2011, *ibid*, P. 48

EPO statistics<sup>29</sup> also suggest that the average UK patent owner only validates their patent in 4 of the 25 participating member countries and pays £8,300 per patent in renewal fees for the median number of renewal years. To renew a bundle patent offering protection in the 4 countries most validated in, for a maximum period of 20 years, currently costs £28,000<sup>30</sup>.

**Table 2: Fees for European Bundle Patents(2009)**

Coverage	Length of renewal: 6 years <sup>31</sup>	Length of renewal: 10 years <sup>32</sup>	Length of renewal: 20 years <sup>33</sup>
For protection in all 25 states that are participating in the Unitary Patent	£7,000	£24,000	£125,000
For protection across 90% of the market <sup>34</sup> in the states that are participating in the Unitary Patent	£4,000	£13,000	£75,000
For protection in the top 4 countries where bundle patents are held (UK, France, Germany and the Netherlands)	£800	£4,000	£28,000

Table 2, above, is designed to give an illustration of the level of renewal fees currently faced by those seeking to keep a European bundle patent renewed. As already explained, we cannot give an accurate prediction of the level of renewal fees for the Unitary Patent. When the level of fee has been agreed by the Select Committee we will be able to include a comparator for the Unitary Patent.

The Unitary Patent will not cover the whole territory of the EPC and so will not offer protection for those wishing to patent across the entirety of that territory; any countries additional to the Unitary Patent would form a bundle alongside the Unitary Patent.

Instead, the maximum number of states taking part in the Unitary Patent is 25 (for a list, please see Annex A). However, currently not many patent holders choose to validate their patent in all of these 25 countries. We cannot say for sure, but cost and administrative burdens when compared to the advantage given by holding a patent in this market may have a bearing on the number of bundles which are held across all 25 states. We would not expect the renewal fees for the Unitary Patent to be set at this level, as this would offer no cost-saving over a bundle which also covers the 25 states.

To achieve 90% market coverage (by population, of the 25 states participating in the Unitary Patent) a patent owner would have to patent in 10 states. As illustrated, in order to capture the remaining 10% of the market someone would have to pay considerably more to gain coverage across all 25 states than for just 10.

<sup>29</sup> Data provided by the EPO to the Select Committee on November 7, 2013

<sup>30</sup> 2009 figures, European Commission IA, April 2011, *ibid*, P. 48

<sup>31</sup> 85-96% of bundle patents are maintained in the country of validation for 6 years based on Data provided by the EPO to the Select Committee on November 7, 2013.

<sup>32</sup> 56-79% of bundle patents are maintained in the country of validation for 10 years based on Data provided by the EPO to the Select Committee on November 7, 2013.

<sup>33</sup> 14-21% of bundle patents are maintained in the country of validation for the maximum length of 20 years based on Data provided by the EPO to the Select Committee on November 7, 2013.

<sup>34</sup> By population, as according to 2009 Eurostat population numbers. Available at [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-09-031/EN/KS-QA-09-031-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-09-031/EN/KS-QA-09-031-EN.PDF)

### *What we know about Unitary Patent renewal fees*

The pricing arrangements for the Unitary Patent renewal fees are yet to be decided, and will be set by the Select Committee (a committee of Member State representatives) according to criteria laid down in Article 12 of the regulation. As with renewal fees for EPO bundle patents enforced in the UK, the fees system for Unitary Patents will be progressive over the term of the patent.

The criteria in Article 12 state that the renewal fee must cover the EPO's costs of granting Unitary Patents and of administering the patent. Article 12 of the Unitary Patent Regulation suggests that renewal fees for Unitary Patents shall be set to "reflect the size of the market covered by the patent" and would also be "similar to the average renewal fees for an average European patent", and also "equivalent to the level of the renewal fee to be paid for the average geographical coverage of current European patents"<sup>35</sup>.

### *What kind of impact would renewal fees have on uptake of the Unitary Patent?*

As the Unitary Patent is optional, businesses will use it where the wider protection available and the cost savings over the current system (to maintain protection across much of the EU) make it commercially attractive.

At present, we do not have a clear picture of how costs will influence business behaviour. For some firms that currently seek patent protection across a large number of states, the cost savings from reduced translation requirements could influence their decision to apply for a Unitary Patent (technically - to seek unitary effect of their EP). Additional translations which are required during the transition period will temporarily increase associated costs and this might prove to be a temporary disincentive - where the patent holder is purely motivated by translation cost-savings.

If businesses base their decision (to apply for a Unitary Patent) purely on a cost of renewal fees basis, those currently seeking protection in a limited number of countries may be deterred if the level of fee is greater than the cost of their current bundle. For businesses that typically seek protection across much of the EU, the renewal fees for the Unitary Patent will offer savings over the current system and this could be an incentive to apply for a unitary patent. However, there are many other factors which may influence business behaviours.

A recent study carried out by McDonagh (2014) found that many of those surveyed considered the level of renewal fees to be important, however it was also noted that the level of renewal fee is of less importance for the pharmaceutical sector<sup>36</sup>: The study also found that some businesses will continue to use European bundle patents, particularly as the current system offers greater flexibility over the geographic scope of the patent as firms can let a patent lapse in one territory (or more) and so reduce overall renewal costs whilst retaining protection in their desired markets.

Economic theory suggests that for some firms economies of scale can have a major impact on where a firm chooses to patent. In certain cases, where there are thin profit margins and

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<sup>35</sup>Official Journal of the European Union, REGULATIONS REGULATION (EU) No 1257/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2012 implementing enhanced cooperation in the area of the creation of Unitary Patent protection. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0001:0008:en:PDF>

<sup>37</sup> European Economics, April 2014. Economic Analysis of the Unitary Patent and Unified Patent Court. [http://documents.epo.org/projects/babylon/eponot.nsf/0/E788F9A9A95E6F79C1257CC90055031D/\\$File/economic\\_analysis\\_up\\_and\\_upc\\_04\\_2014\\_en.pdf](http://documents.epo.org/projects/babylon/eponot.nsf/0/E788F9A9A95E6F79C1257CC90055031D/$File/economic_analysis_up_and_upc_04_2014_en.pdf)

large economies of scale, firms will be able to effectively block competition if their potential competitors are unable to access a large enough market segment to justify entry to that market. In a situation where a firm holds patents in those territories which make up the key markets for a product, rivals may find that marketing the firm's product solely to territories without patent coverage is not financially viable: this leaves the patent-holding firm with potential monopoly power, despite not having full geographic patent coverage. Therefore, in certain cases where products require sufficiently large economies of scale to be profitable, firms may not require patent coverage across all potential markets in order to effectively block the entry of competitors.

### *Benefits to business - administrative savings*

The ability to make a single payment to a single source to maintain the patent is likely to represent an advantage to patent holders choosing to renew across multiple states. The removal of some of the current hurdles in some countries will present a saving for those choosing to patent in those countries at the moment. Even simply arranging payment to 25 separate countries' offices incurs an administrative burden. European Economics (2014)<sup>37</sup>, a study commissioned by European Patent Office Economic and Scientific Advisory Board, in discussing expectations for the Unitary Patents states:

“While the reduction of administrative costs for validation work is found to exert a somewhat significant influence on the use of the Unitary Patent for all expected groups of respondents (particularly SMEs), the scale of benefit is generally considered to be lower than that of the other factors [such as translation costs]”.

### **Indirect benefits**

In addition to the direct cost savings to patent owners from the Translation and Unitary Patent regulations, there are potential indirect effects.

### *Potential for better access to finance and more innovation*

As noted by Mateos-Garcia (2014)<sup>38</sup> IP is able to help innovative firms gain access to equity financing “through signaling and by generating income opportunities through licensing and litigation.” This can be particularly important for start ups. Hall & Harhoff (2012) states that patents can be “useful signals to investors that a startup firm has valuable assets even in the absence of a current profit stream”<sup>39</sup>. Unitary Patents may be a more valuable IP asset than a patent bundle that is valid in just four countries. There may be greater marketing potential and greater opportunities for licensing use of the patented product. The broader geographic coverage would make it easier to innovate at scale. Owning Unitary Patents may therefore improve patent owners' balance sheets and increase the value of their assets, which in turn ease access to finance needed to fund R&D. EU wide protection at lower costs may make it easier for smaller innovators to grow, as they do in the US.

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<sup>37</sup> European Economics, April 2014. Economic Analysis of the Unitary Patent and Unified Patent Court. [http://documents.epo.org/projects/babylon/eponot.nsf/0/E788F9A9A95E6F79C1257CC90055031D/\\$File/economic\\_analysis\\_up\\_and\\_upc\\_04\\_2014\\_en.pdf](http://documents.epo.org/projects/babylon/eponot.nsf/0/E788F9A9A95E6F79C1257CC90055031D/$File/economic_analysis_up_and_upc_04_2014_en.pdf)

<sup>38</sup> Mateos-Garcia, J. 2014. Using intellectual property to raise finance for innovation. [https://innovationpolicyplatform.org/sites/default/files/rdf\\_imported\\_documents/Case\\_Study-IP\\_for\\_Financing.pdf](https://innovationpolicyplatform.org/sites/default/files/rdf_imported_documents/Case_Study-IP_for_Financing.pdf)

<sup>39</sup> Hall, B. H., & Harhoff, D. (2012). Recent research on the economics of patents (No. w17773). National Bureau of Economic Research.

Those that are reluctant to patent in Europe because of perceptions of complexity of the system, or costs involved in seeking protection (through translation fees) and maintaining that protection (through the level of renewal fees in comparison to scope of the market) may change their minds. There is the possibility that patent owners from outside of Europe may see holding a Unitary Patent as a reason to increase their investment in the region through either manufacturing of the product, sale of the product or research and development.



## **Impacts on SMEs and micro-entities**

Renewal fees present a greater burden for SMEs and micro-entities than for larger businesses as a proportion of their income. The Unitary Patent regulation recognises this: Article 12 of the Regulation suggests that when setting renewal fees, the situation of SMEs will be taken into account.

The design of the schedule of renewal fees for the Unitary Patent will support SMEs. Fees are to be progressive through the term of protection – meaning that costs in the early years are minimised. This is particularly useful for small businesses as it keeps costs down and provides time for the patent owner to commercialise their invention. If the invention is successful they can choose to continue to pay increasing levels of renewal fees in later years to retain valuable protection across much of Europe. There will be guidance available to SMEs on the introduction of the Unitary Patent.

## **Risks and assumptions**

### *Volumes of EPO bundle patents likely to switch to Unitary Patents*

Our best estimate of the number of EPO bundle patentees likely to switch to Unitary Patents will vary, as it depends on the currently unknown price sensitivity of patent owners and the renewal fees to be agreed. Estimates may need revision as we learn more about how other factors may affect switching decisions. For instance, the Unitary Patent takes away the flexibility to remove countries in later years that the European bundle patent offers and this may mitigate cost advantages to switching to Unitary Patents.

Furthermore we acknowledge that the introduction of the Unitary Patent, if reasonably priced, could also increase volumes of European patents beyond current levels i.e. new European patent applications will be filed beyond current levels of EPO bundle patent applications.

### *Level of renewal fees*

Factors that will be taken into account during negotiations on renewal fees include SMEs, the size of the market that the Unitary Patent will cover, the influence the level of fee may have on facilitating innovation and competitiveness in European business, and the sustainability of fees (both application and renewal fees) in terms of ensuring that the EPO maintains a balanced budget.

### *Impact on SMEs and Micro Enterprises*

The Regulation mentions that consideration will be given to SMEs when setting renewal fees. At present details of proposed arrangements are still unknown and any discounts given to SMEs will need to be recuperated through higher fees elsewhere to ensure the change is revenue neutral for the EPO. The levels of discounts awarded to SMEs are therefore likely to affect savings to be made by larger businesses. However it should be reiterated that the Unitary Patent is an additional patent that does not impact upon any existing routes to patenting already available to SMEs. Preliminary estimates suggest that SMEs do not vary greatly in renewal behaviour compared to the general population.<sup>40</sup>

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<sup>40</sup>This is based on comparison between IPO internal analysis and EPO renewal rate estimates. IPO analysis is based upon IPO data and the FAME UK company database. Please note that company sizes are based on 2011 data reported to Companies House. The SME definition used is "enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding 43 million euro. Please note: The analysis is based on matches between IPO and FAME data, IPRs are counted against the firms they have been matched to. This data has not been aggregated up to the domestic ultimate owner level. This analysis does not count corporate structure and considers the firm to be that which owns the IPRs, not the parent of the IPR holder. The matching is for UK firms and does not include foreign firms, businesses or individual applicants.

### **Summary and preferred option**

The preferred option is Option 2. This option adds zero costs on patent owners preferring to use the current system of national patents or EPO bundle patents but potentially delivers up to £19,440 per patent in translation savings after the transition period, and we expect there to be some renewal fee savings for those seeking protection in the 25 member states participating in enhanced cooperation.

The average EPO bundle patent held by UK based owners is however only validated in 4 out of 25 countries, so this is arguably the more appropriate baseline against which to measure savings from switching to Unitary Patents. We estimate that option 2 could deliver almost £300 in translation cost savings per average patent. The renewal fee saving will be similarly limited. The Regulations for the Unitary Patent and the translation arrangements contain provisions to take into account SMEs but details have yet to be negotiated.

### **Direct Costs and Benefits to Business Calculations (following OITO methodology)**

This policy is not in scope of One In Two Out. The changes that will be made to the legislation will implement an International Agreement and enable the associated EU Regulations establishing the Unitary Patent to come into force. The changes we are proposing will only come into effect at the same time as the Agreement and Regulations come into force. The proposed changes therefore do not implement the Regulation early and do not go beyond the minimum requirements of the Agreement and Regulation.

The terms of the Regulations (Regulation (EU) No 1257/2012 and No 1260/2012) mean that they will only come into effect when 13 Signatory States have ratified the Agreement. The UK is one of three Signatory States which must ratify the Agreement in order for it to come into effect.

The changes relating to the introduction of the Unitary Patent are minimal and simply ensure that it is recognised as an Intellectual Property Right within the UK, and that its territory is acknowledged to be different to that of a patent held solely in UK territory.

The Unitary Patent is an option for those seeking patent protection in Europe, and existing patent options remain available (national patents – either granted by the EPO, or by national offices will still be able to be obtained by potential patent owner).

As the legislative changes will be made to implement an European Regulation which is not being implemented early and the changes do not go beyond minimum requirements, these changes are out of scope of One In Two Out.

### **Evaluation**

This proposal is part of an EU Regulation and as such will not be reviewed by UK Government. As noted in Article 16 of the Regulation<sup>41</sup>, the EU Commission will be producing a report on the operation of the Regulation and may make appropriate proposals for amending it. Article 6(4) of the Translation Regulation<sup>42</sup> also requires the Commission to produce a report on the operation of that Regulation.

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<sup>41</sup> REGULATION (EU) No 1257/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2012 implementing enhanced cooperation in the area of the creation of Unitary Patent protection, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0001:0008:en:PDF>

<sup>42</sup> COUNCIL REGULATION (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of Unitary Patent protection with regard to the applicable translation arrangements, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0089:0092:en:PDF>

Annex A – 25 participating states<sup>43</sup>

Member State	Participation in the enhanced cooperation on the Unitary Patent protection	Signature of the Agreement on a Unified Patent Court	Ratification of the Agreement on a Unified Patent Court
 Austria	Yes	19.02.2013 <sup>1</sup>	<u>07/08/2013</u>
 Belgium	Yes	19.02.2013 <sup>1</sup>	06/06/2014
 Bulgaria	Yes	05.03.2013 <sup>1</sup>	
 Croatia	-	-	
 Czech Republic	Yes	19.02.2013 <sup>1</sup>	
 Cyprus	Yes	19.02.2013 <sup>1</sup>	
 Germany	Yes	19.02.2013 <sup>1</sup>	
 Denmark	Yes	19.02.2013 <sup>1</sup>	20/06/2014
 Estonia	Yes	19.02.2013 <sup>1</sup>	
 Greece	Yes	19.02.2013 <sup>1</sup>	
 Finland	Yes	19.02.2013 <sup>1</sup>	
 France	Yes	19.02.2013 <sup>1</sup>	14/03/2014
 Hungary	Yes	19.02.2013 <sup>1</sup>	
 Ireland	Yes	19.02.2013 <sup>1</sup>	
 Italy	-	19.02.2013 <sup>1</sup>	
 Latvia	Yes	19.02.2013 <sup>1</sup>	
 Lithuania	Yes	19.02.2013 <sup>1</sup>	
 Luxembourg	Yes	19.02.2013 <sup>1</sup>	
 Malta	Yes	19.02.2013 <sup>1</sup>	
 The Netherlands	Yes	19.02.2013 <sup>1</sup>	
 Poland	Yes	No	
 Portugal	Yes	19.02.2013 <sup>1</sup>	
 Romania	Yes	19.02.2013 <sup>1</sup>	
 Slovakia	Yes	19.02.2013 <sup>1</sup>	
 Slovenia	Yes	19.02.2013 <sup>1</sup>	
 Spain	-	No	
 Sweden	Yes	19.02.2013 <sup>1</sup>	05/06/2014
 United Kingdom	Yes	19.02.2013 <sup>1</sup>	

<sup>43</sup> According to the European Commission Unitary Patent – ratification process as of March 26, 2014 available at [http://ec.europa.eu/internal\\_market/indprop/patent/ratification/index\\_en.htm](http://ec.europa.eu/internal_market/indprop/patent/ratification/index_en.htm)

## Annex B

Current translation requirements for an EPO patent written in English for validation in other EU states (allowing for take-up of the London Agreement):

Country	Claims Translated?	Description Translated?
Austria	No*	Yes
Belgium	No*	Yes
Bulgaria	Yes	Yes
Cyprus	Yes	Yes
Czech Republic	Yes	Yes
Denmark	Yes	No
Estonia	Yes	Yes
Finland	Yes	No
France	Yes	No
Germany	Yes	No
Greece	Yes	Yes
Hungary	Yes	No
Ireland	No	No
Latvia	Yes	No
Lithuania	Yes	No
Luxembourg	No*	No
Malta	No	No
Netherlands	Yes	No
Poland	Yes	Yes
Portugal	Yes	Yes
Romania	Yes	Yes
Slovakia	Yes	Yes
Slovenia	Yes	No
Sweden	Yes	No
United Kingdom	No	No

*\* Austria, Belgium and Luxembourg do not require further translations of the claims into their languages as they will have already been translated into French and German*

## Annex C – Breakdown of Translation and Publication Fees

### Combined Translations and Publication Costs for the Average Bundle Patent

Country	Total Cost (€)	Total Cost (£)
Austria	€1,670	£1,386
Belgium	€1,360	£1,129
Bulgaria	€1,726	£1,432
Cyprus	€1,785	£1,482
Czech Republic	€1,780	£1,478
Denmark	€481	£399
Estonia	€2,050	£1,702
Finland	€690	£573
France	€340	£282
Germany	€340	£282
Greece	€2,050	£1,702
Hungary	€589	£489
Ireland	€35	£29
Latvia	€380	£315
Lithuania	€386	£321
Luxembourg	€0	£0
Malta	€0	£0
Netherlands	€365	£303
Poland	€1,749	£1,452
Portugal	€1,750	£1,453
Romania	€1,800	£1,494
Slovakia	€1,816	£1,507
Slovenia	€440	£365
Sweden	€502	£417
United Kingdom	€0	£0
<b>Total</b>	<b>€24,084</b>	<b>£19,990</b>

#### Description

New patent requires English plus one other full translation (assuming either French or German) plus claims into the remaining EPO language, at least initially

The "average" patent gives each patent a "weighting" based on the % of EPO patents that were validated in that country for 2011 - so Austria 31.7% has a much higher weighting than, say, Poland (18.2% designation) to give an idea of a more "average" patent. This explains why some countries, particularly English language countries, will reflect very low to zero fees.

#### Language notes

Denmark, Sweden and the Netherlands have nominated English for description, therefore requiring translation if the patent is granted in French or German.

Denmark, Latvia, Lithuania, the Netherlands, Slovenia and Sweden require translation of the claims into their official language only (London Agreement)

During transitional phase, any patent in English has to be translated into one other EPO language fully, and the other's claims (in this case France (description) and Germany (claims) were assumed, the figures would be the same either way round).

#### Assumptions

The original patent was written in English

None of these languages are repeat translated

Agent fees not included

This refers to translations at grant only, therefore excluding translations that are requested of the proprietor at the start of legal proceedings

#### Source

Data represents translation and publication costs, weighted by the relative frequency of bundle patents in each country:

Translation costs are assumed at €85 per page, as per the European Commission 2011 Impact Assessment

Publication costs are from National Law relating to the EPC (EPO website):

[http://documents.epo.org/projects/babylon/eponet.nsf/0/EE1929ACFAA82EC3C125725800374350/\\$File/National\\_law\\_relating\\_to\\_the\\_EPC\\_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/EE1929ACFAA82EC3C125725800374350/$File/National_law_relating_to_the_EPC_en.pdf)

Relative frequency of bundle patents validated from EPO website - 2011 statistics. Shows the number of patents with 2006 filing date that came into force as a proportion of the number that came into force in Germany.



## **Glossary**

### **Bundle patent**

One of the national patents created following the grant of a European patent in the current European patent system – one bundle patent for each country designated by the applicant. In UK patent law, this is referred to as a European patent (UK).

### **Claim**

A statement in a patent specification which legally defines the scope of protection for that patent – the area in which third parties cannot operate without infringing the patent.

### **Description**

The part of a patent specification which outlines the technical detail of the invention, to allow a reader to understand that invention and be able to put it into practice.

### **Enhanced cooperation**

A special procedure for a group of Member States within the European Union to make progress on more closely together within the structures of the European Union, in circumstances where not all Member States can agree on how to achieve an objective within the competence of the Union.

### **European Patent Convention (EPC)**

An international agreement, signed in 1973 and substantially revised in 2007, which establishes the European Patent Office and sets out the operation of the European patent system. The Convention presently covers 38 countries, including nations which are not members of the European Union.

### **European Patent Office (EPO)**

An international organization set up under the EPC, which administers the European patent system.

### **Infringement**

When an act is performed without the consent of the patent owner, which is one which is within the exclusive domain of the patent owner, and for which there is no exception.

### **Intellectual Property Enterprise Court**

Formerly the Patents County Court, it is in the Chancery Division of the High Court and deals with disputes relating to intellectual property, particularly those involving small and medium enterprises, where the overall value of the claim is relatively low.

### **Intellectual Property Office (IPO)**

An executive agency of the Department for Business, Innovation & Skills, the IPO is the government body responsible for the national framework of intellectual property rights, comprising patents, designs, trade marks and copyright.

### **The London Agreement**

An agreement associated with the EPC, which came into force in 2008 and relaxes the translation requirements for granted European patents, therefore reducing the associated costs.

### **Opt out**

A provision in the Unified Patent Court Agreement which allows patent holders during the transition period to withdraw their patent (or Supplementary Protection Certificate) from the

jurisdiction of the Unified Patent Court so that they remain in the jurisdiction of the national court for the life of the patent (or SPC), although they can be opted back in at any time.

### **Preparatory Committee**

A group of representatives from the countries signed up to the Unified Patent Court Agreement, charged with setting up the Court, including establishing rules of procedure, identifying facilities, recruiting and training judges and administrative staff, amongst other responsibilities.

### **Renewal fee**

A fee paid to by a patent owner to the patent office or other relevant authority in order for the patent to remain in force.

### **Revocation**

The court or the relevant patent office can deem the patent (or the relevant part) never to have been granted if they are not valid.

### **Select Committee**

A special committee of the EPO Administrative Council, established by the Unitary Patent Regulations, and charged with ensuring the EPO is able to carry out the various tasks given to it under the Unitary Patent Regulation.

### **Specification**

The combination of the description, claims, and associated diagrams.

### **Supplementary Protection Certificates (SPCs)**

These are provided for in European Union Regulations (1, 2) and extend the period of legal protection afforded to medicinal and plant products beyond the life of the patent relating to them for up to 5 years and 6 months.

### **Unified Patent Court**

International court, set up by the Unified Patent Court Agreement, which has exclusive jurisdiction over Unitary Patents when deciding issues of validity, infringement, and revocation.

### **Unified Patent Court Agreement**

Inter-governmental agreement, signed by 25 countries in February 2013, which establishes the Unified Patent Court.

### **Unitary Patent**

A single patent valid in all the countries signed up to the Unitary Patent Regulation; European bundle patents covering the same area are converted into a Unitary Patent after grant, upon request of the patent holder.

### **Unitary Patent Regulation**

European Regulation 1257/2012, which sets out the goals and basic operation of the Unitary Patent, as well as the obligations of Member States signed up to the Regulation.

### **Validity**

An action to determine whether a patent, or specific claims in the patent, should not have been granted because they did not meet the legal requirements at the time. Often used as a defence against infringement, since you cannot infringe a patent that is not valid.