



Mr Leo Varadkar, TD
Tánaiste and Minister for Enterprise, Trade and Employment
By email minister@enterprise.gov.ie

9 February 2022

Re: Unitary Patent Treaty – Unified Patent Court

Dear Tánaiste,

I am writing to you in my capacity as President of the Law Society of Ireland and your capacity as the Minister with responsibility for intellectual property laws, and business laws more generally.

The Law Society of Ireland represents over 11,000 practising solicitors in Ireland, in both law firms and in industry. The Society is concerned with ensuring that Ireland is a jurisdiction that has a strong legal system, which facilitates and supports the people and businesses operating with the full benefit of their property rights, including intellectual property rights. We recognise the benefit that a strong legal system brings to Irish society and the economy as a whole, as well as to the legal profession. A legal system that deals appropriately with intellectual property rights and that is fit for purpose is critical to the success of pharmaceutical, financial, creative and technology industries that develop and commercialise intellectual property, and trade, from Ireland, and that is acknowledged in your own Government's policies.

Ireland has been a signatory to the Agreement on a Unified Patent Court since 2013, however has yet to ratify it. It is the Government's stated policy that Ireland will participate in the unitary patent system, which will facilitate Irish people and Irish businesses securing a single patent which will have legal effect and offer protection across the countries that are part of the unitary patent treaty network, including Ireland.

To fully participate in the unitary patent system, Irish people and businesses should be able to seek protection and recourse in respect of those rights in the Irish legal system. Many of the benefits and efficiencies in the new unitary patent system would be eroded if an Irish person or business holding a unitary patent, was forced to enforce their right in a foreign jurisdiction because there is no ability to do so in Ireland. The Irish Government formed this view in 2015, when it decided that Ireland should have a local division of the Unified Patent Court.

The Law Society joins other industry and business bodies in requesting that the Government progress the establishment of a local division of the Unified Patent Court, in line with its policy, as a matter of priority. Action on this establishment is time sensitive. The Unified Patent Court system will begin dealing with unitary patent cases this year. Ireland will lose competitive advantage and local businesses will be disadvantaged if unitary patent holders cannot enforce their rights in Ireland.

It may be helpful to highlight the issues that arise for any period that Ireland does not host a local division of the Unified Patent Court by using an illustrative use case:

| Use Case Hypothetical Facts | Germany | Ireland |
|--|--|---|
| Entity | German healthcare SME | Irish healthcare SME |
| Right Owned by the Entity | Unitary patent for the German SME's only medical product | Unitary patent for the Irish SME's only medical product |
| Event #1 damaging the business of the Rights Holder | A third party manufactures a product in Germany that breaches the unitary patent held by the German SME | A third party manufactures a product in Ireland that breaches the unitary patent held by the Irish SME |
| Event #2 damaging the business of the Rights Holder | Third party infringer markets the infringing product in Germany in a way that confuses German consumers, diverting sales away from the German SME product towards the infringing product | Third party infringer markets the infringing product in Ireland in a way that confuses Irish consumers, diverting sales away from the Irish SME product towards the infringing product |
| Legal Forum available to Rights holder | German SME can seek infringement relief in German courts for Event #1 and general relief for Event #2 | Irish SME can seek relief and recourse in the Irish courts for Event #2 only, but will have to seek relief and recourse for Event #1 in the relevant central division of the Unified Patent Court (i.e. likely to be France, Netherlands or Italy) |
| Number of lawyers required to help rights holder | One, a German lawyer can help the German SME deal with both Event #1 and Event #2 | Two, an Irish lawyer can help the Irish SME deal with Event #2 but the SME will have to instruct a foreign lawyer to deal with Event #1 |
| Costs to the rights holder trying to stop damage to their business | Costs of taking legal action in Germany. | Costs of taking legal action in Ireland and in a foreign jurisdiction. Additional costs may include language translation costs, costs of travel for those required to prove infringement in Ireland and the cost of instructing lawyers in an additional jurisdiction. |

The Society can provide other use cases, if that is helpful, but I think that this use case illustrates the need to progress the ratification of the Agreement on a Unified Patent Court, and the establishment of the local division of the Unified Patent Court expeditiously.

The Society is aware that there has been some discussion regarding whether Ireland might also consider seeking to replace the United Kingdom in respect of the operation of a central division of the Unified Patent Court. While this is worth exploring, it should

not be confused with or delay the establishment of the local division of the Unified Patent Court.

I understand that ratification of the Agreement on a Unified Patent Court is scheduled to be dealt with by way of Constitutional referendum and acknowledge that in the circumstances it will be challenging to explain why Constitutional reform is necessary and the benefits of Ireland hosting a local division of the Unified Patent Court for the purposes of explaining the question posed in the referendum.

The Society, through its Intellectual Property & Data Protection Law Committee, would like to discuss progression of implementation of the Government's policy on matters concerning unitary patents with you and your officials, including what support the Society could give you in this regard. We invite you to meet with us in the coming weeks to discuss the topics raised in this letter. We appreciate that you have a busy diary, and so invite you to propose a date and time for this meeting. We look forward to hearing from you in this regard.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Michelle Ní Longáin".

Michelle Ní Longáin
President