

This is a feedback from **the Hungarian Industrial Property Protection and Copyright Law Association (MIE), the Hungarian Group of AIPPI, and the Hungarian Chamber of Patent Attorneys** on the Intellectual Property Action Plan of the European Commission (for which feedback is open: 10 July 2020 - 14 August 2020).

MIE is the largest Hungarian professional association for IP specialist lawyers and patent attorneys and it represents the opinion of the Hungarian IP profession as well as that of the clients and employers of its members which are mostly SMEs because the vast majority of the Hungarian owned enterprises are SMEs by the European standard. The Hungarian Group of AIPPI is the Hungarian branch of the International Association for the Protection of Intellectual Property, and is composed of IP specialist lawyers and patent attorneys dedicated to the development and improvement of intellectual property. The Hungarian Chamber of Patent Attorneys is a domestic public body of patent attorneys.

In this short feedback we wish to emphasize that we are of the opinion that the UPCA in its present form cannot be ratified and needs to be renegotiated before putting it into operation. Our main reasons for reopening the UPCA discussion are as follows:

- The present text of the UPCA does not allow its coming into force because one of the three member states in which the highest number of European patents had effect in 2012, the UK has withdrawn its ratification which was a prerequisite of the coming into force of the UPCA.
- The UPCA is not an EU law but an international agreement and still requires such a high degree of sovereignty transfer from its member states which is not allowed by the constitutions of several EU member states including Hungary (the Hungarian Constitutional Court, therefore, forbid the ratification of the UPCA in its present form for Hungary).
- The present UPCA litigation costs and recoverable attorney fees are so high that smaller SMEs (i.e. the vast majority of Hungarian companies) cannot afford to litigate within the framework of the UPCA system even for the protection of their solid and valuable IP right. The same applies to patent revocation costs, making impossible for smaller SMEs to defend themselves against claims based on unfounded patents (worldwide statistics show that every second patent is challengeable).
- The high litigation and revocation costs of the system will most probably involve the appearance of the highly unfavorable patent trolls in the system.
- The UPCA in its present form would result in comparative disadvantages (higher level of costs in view of GDP, increase of non-domestic patents, and for most parties: foreign language and foreign courts) for less developed member states having less European patents/patentees with respect to countries having more European patents/patentees (nominally, per capita or in GDP ratio), resulting in even larger differences in competitiveness among the European countries. Therefore, staying outside of the UPCA is presently a reasonable decision for such European countries; in this position all the benefits of the system can be enjoyed without the comparative disadvantages. Incentives for such countries should be included in the system to make it more attractive to join.

Because of the above obvious drawbacks, we think that the UPCA needs to be thoroughly renegotiated before putting it into operation.