Dundee International Law Society (DILS)

The EU Record in Patent Law

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The current unitary (EU) patent package is at the forefront of patent law debates both in Europe and internationally. With 25 out of 28 Member States having signed the agreement, now is an appropriate time to look at the impact the EU has had in Intellectual Property Law and assess the implications of EU involvement in the current attempts to harmonise European patent law.

The question is asked as to whether the influence of the EU in Patent Law has been beneficial to patents or a method to further integration in the EU? One of the aims of a unitary patent system is to harmonise patent law in order to promote the European patent system to a level that will maintain its global competitiveness. If this is the case, why should the unitary patent be restricted to the EU? Furthermore, not all EU Member States have agreed to the unitary patent package and so in its current form, the unitary patent will not fulfil aims of harmonisation within the internal market. Nevertheless, it has been decided that the unitary patent system will function as an EU patent through a non-EU agreement. The Unified Patent Court Agreement is outside the institutional grasp of the EU, the reason – to limit the influence of the Court of Justice of the European Union, one reason being its record with trademarks.

In this paper, an examination of the encroachment of the EU on Patent Law is undertaken. This is achieved through an analysis of the affect that the implementation of EU Regulations and Directives, and decisions of the CJEU, have had on patents, specifically including; the Directive on Biotechnological Inventions, the Supplementary Protection Certificate Regulations and the attempted Computer-Implemented Inventions Directive, and cases *including Netherlands v European Parliament and Council of the European Union, Oliver Brüstle v Greenpeace, Monsanto Technology v Cefetra, and Medeva v Comptroller General of Patents, Designs and Trade Marks.*

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