

Minutes of the Specialised Committee on Intellectual Property (IP)

10 October 2022, 11:00 to 12:30 CEST / 10:00 to 11:30 BST (Brussels + Virtual)

1. Opening remarks and adoption of the agenda

The Co-Chairs set out the aims for the meeting, in particular the exchange on the main developments in the area of Intellectual Property in the respective jurisdictions since the previous Specialised Committee on Intellectual Property (IP) took place. The EU underlined its wish to have a positive and stable relationship with the UK, based on the full respect of the agreements concluded, namely the Withdrawal Agreement including the Protocol on Ireland/Northern Ireland and the Trade and Cooperation Agreement (TCA). The UK noted that there are several areas where we share a mutual interest and stated its wish to continue the open dialogue in this meeting, exchanging views across several important areas.

The Co-Chairs adopted the agenda as published.

2. Policy and legislative developments

The UK presented the results of a recent public consultation on Artificial Intelligence and IP. The UK concluded that currently there is no evidence that changes are necessary to the copyright protection on computer-generated works or to the patent laws on AI-devised inventions. However, the UK plans to follow up on the introduction of a new copyright and database exception for text and data mining.

The UK presented an update on its public consultation on its future regime of exhaustion of IP rights in the UK. The UK explained that there was not enough data to make a decision based on its original criteria and, as a result, the decision on the future regime in the UK was deferred to allow further policy development to take place. The EU underlined the importance of the rules on exhaustion of IP rights that affect a number of stakeholders and sectors.

Both parties provided a presentation on the ongoing reviews of the legislation on industrial designs. The UK gave an overview of the UK's public consultation which sought views on a variety of issues from the procedural aspects to the simplification of the system and adaptation to future technologies. The EU noted that their review process is advancing and that the Commission's legislative proposals can be expected before the end of 2023. The EU plans to modernise the existing framework, to improve the accessibility and the affordability of design protection and to harmonise certain aspects, including the design protection for spare parts.

The EU gave a short update on the ongoing assessment of the Supplementary Protection Certificate (SPC) system in the EU and the options that are being considered. The EU plans to publish a legislative proposal with one or a combination of two options - a unitary SPC and/or a centralised procedure for granting of national SPCs - in the first quarter of 2023.

Both sides presented the latest state of play on the respective initiatives in the area of standard-essential patents. The EU is currently working on an impact assessment of different options that would address the transparency, the FRAND (fair, reasonable and non-discriminatory terms) principle as well as the effectiveness of the enforcement. The Commission's proposal should be tabled in the first half of 2023. The UK updated on a recent public consultation which presented divergent views on whether government intervention is necessary. The UK will further reflect and continue assessing whether action is required. Both sides underlined the complexity of the technical issues involved and agreed that exchanges on the technical level could be the most appropriate.

The EU gave a short update on the state of play of the entry into force of the Unitary Patent system (foreseen in early 2023). The UK underlined the importance of this system to their stakeholders.

The EU presented the proposal of the Commission for a new Data Act in the European Strategy for Data which seeks to create a fair data economy by ensuring access to and use of data. Among the measures proposed, the EU referred specifically to the clarification in relation to the sui generis protection for databases. The UK was interested if there would be any further review of the database directive. The EU confirmed that no further review beyond the clarifications in the Data Act is anticipated.

The EU presented a recent proposal of the Commission for an EU-wide title protecting geographical indications for craft and industrial products. While the negotiations between the co-legislators are ongoing, the Commission expects that this legislative act could be adopted in 2023. The EU stated that this Commission proposal was highlighted earlier this year by the EU within the Joint Consultative Working Group under the Protocol on Ireland/Northern Ireland of the Withdrawal Agreement, in light of its view that it considers this is a new act falling within the scope of that Protocol.

3. Exchange on IP enforcement activities

The UK provided an overview of the recently published IP Counter-Infringement Strategy 2022-2027. The Strategy is meant to give an indication of a wide-range of processes and structures needed for effective partnership working at countering IP infringement long-term.

The EU provided an overview of the Commission's Third Country Report and the Counterfeit and Piracy Watch List, published regularly.

Both parties recognised and agreed on the importance and impact of combatting IP infringement in the respective jurisdictions and globally.

4. Any other business

The UK raised two points under this agenda item. EU did not raise any issue under AOB.

The first point concerns the possible Memorandum of Understanding (MoU) between the UKIPO and the EUIPO. The UK noted that the exchanges between the offices on the MoU took place more than one year ago. The UK indicated its interest in concluding this MoU as soon as possible, noting its concerns in respect of future cooperation and collaboration, and asked for the Commission's assistance in this regard. The EU explained that there are no further updates since the Committee meeting in 2021.

The second point concerns an issue of private copying levies. The UK has been recently notified by certain stakeholders that some EU collective management organisations (CMOs) informed the UK right holders that they are no longer eligible for a share of revenues collected under the private copying levy schemes established in some EU Member States. The UK considers that such a right to compensation is covered by the EU-UK TCA and international conventions. Therefore, the UK considers that national treatment applies. The UK would welcome a further informal discussion on this issue. The EU took note of the UK's point.

5. Conclusion

The Co-Chairs acknowledged the fruitful and comprehensive exchange on a number of issues and underlined the common interests in this area. They exchanged views on the next meeting of the Trade Specialised Committee on Intellectual Property. The UK looks forward to hosting the next meeting in a year.

Annex 1: Participants of the second meeting of the Specialised Committee on Intellectual Property.

EU Delegation

- EU Co-chair of the Specialised Committee on Intellectual Property
- European Commission Officials
- Delegation of the European Union to the UK Officials
- Representatives of EU Member States

UK Delegation

- UK Co-chair of the Specialised Committee on Intellectual Property
- UK Government Officials from the IPO and Foreign, Commonwealth & Development Office
- Scottish Government Official
- UK Mission to the European Union Officials

Annex 2: Agenda of the second meeting of the Specialised Committee on Intellectual Property.

1.	Opening remarks
2.	Policy review (policy developments and legislative developments)
3.	Exchange on IP enforcement activities
4.	AOB
5.	Conclusion