

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT UNIFIED PATENT COURT (IMMUNITIES
AND PRIVILEGES) ORDER 2017

Wednesday 29 November 2017

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Sunday 3 December 2017

© Parliamentary Copyright House of Commons 2017

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

- | | |
|---|--|
| † Benyon, Richard (<i>Newbury</i>) (Con) | † Johnson, Joseph (<i>Minister for Universities, Science, Research and Innovation</i>) |
| † Berger, Luciana (<i>Liverpool, Wavertree</i>) (Lab/Co-op) | † Law, Chris (<i>Dundee West</i>) (SNP) |
| † Brereton, Jack (<i>Stoke-on-Trent South</i>) (Con) | † Malhotra, Seema (<i>Feltham and Heston</i>) (Lab/Co-op) |
| Campbell, Mr Ronnie (<i>Blyth Valley</i>) (Lab) | † Robinson, Mary (<i>Cheadle</i>) (Con) |
| † Carden, Dan (<i>Liverpool, Walton</i>) (Lab) | † Tolhurst, Kelly (<i>Rochester and Strood</i>) (Con) |
| † Chalk, Alex (<i>Cheltenham</i>) (Con) | † Tracey, Craig (<i>North Warwickshire</i>) (Con) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | Kenneth Fox, <i>Committee Clerk</i> |
| † Dromey, Jack (<i>Birmingham, Erdington</i>) (Lab) | † attended the Committee |
| † Eagle, Ms Angela (<i>Wallasey</i>) (Lab) | |
| † Goldsmith, Zac (<i>Richmond Park</i>) (Con) | |
| † Harris, Rebecca (<i>Castle Point</i>) (Con) | |

Sixth Delegated Legislation Committee

Wednesday 29 November 2017

[MR ADRIAN BAILEY *in the Chair*]

Draft Unified Patent Court (Immunities and Privileges) Order 2017

2.30 pm

The Minister for Universities, Science, Research and Innovation (Joseph Johnson): I beg to move,

That the Committee has considered the draft Unified Patent Court (Immunities and Privileges) Order 2017.

It is a pleasure to serve under your chairmanship, Mr Bailey. The draft order, which was laid before the House on 26 June, will confer legal status on the unified patent court, as well as providing a limited set of privileges and immunities to the court, its judges and staff. These are necessary to ensure the effective and proper functioning of the court, and were agreed in the international agreement that established the court and its protocol on privileges and immunities.

Why does the unified patent court matter? The current patent system across Europe is fragmented and expensive: businesses must maintain a bundle of patent rights, each covering a single country, and must enforce each patent separately in the national courts of each country, which is costly and burdensome. The unified patent court will offer a way for innovative businesses to enforce or challenge patents in up to 26 European countries with a single court action. The ability to obtain a single judgment is significant and valuable for patent-intensive industries. Independent research shows that approximately a quarter of all patent cases heard in UK courts were litigated between the same parties in other European jurisdictions, so a single unified patent court is welcome. An important division of the court, dealing with disputes in the field of pharmaceuticals and life sciences, will be based here in the UK, cementing our global reputation as a place to resolve commercial legal disputes. British businesses will still be able to choose national patents and litigation in national courts, but will have the option to use the new court structure with all the benefits that I have described.

The draft order is part of the UK's ratification process. It confers legal capacity on the unified patent court and gives effect to the protocol on privileges and immunities. It also provides immunity from legal process for the court, with some exceptions; for its judges, registrar and deputy registrar; and for its representatives and staff, although only in the exercise of their official functions. That immunity can be waived by the UPC.

The judges and staff of the court will be exempt from national taxation on their salaries and from national insurance once the court applies its own equivalent tax and puts in place its own social security and health system, but neither exemption will apply to court staff who are British nationals or permanent UK residents. The draft order also provides that the court is exempt from direct taxation in relation to its official activities, as is the case for other international organisations based here, such as the International Maritime Organisation.

The draft order will confer on the new court and its judges and staff only the privileges and immunities that are necessary for the organisation to conduct its official activities effectively. Those privileges and immunities are in line with those offered to officers of other international organisations of which the UK is already a member. I commend the draft order to the Committee.

2.34 pm

Jack Dromey (Birmingham, Erdington) (Lab): It is a pleasure to serve under your chairmanship, Mr Bailey.

We are a creative nation of entrepreneurs and innovators. In the 19th century, Birmingham and the Black country were known as the workshop of the world, and in modern times we have silicon roundabout about 2 miles away, the golden triangle of London, Oxford and Cambridge, and remarkable innovation from Jaguar Land Rover in the midlands and the north of England. I will never forget travelling with Jaguar Land Rover's chief executive Ralf Speth in his Land Rover and seeing how the company was using its close proximity to a cluster of companies engaged in the games industry to produce the next generation of in-car entertainment systems. Crucial to that was the protection of patents.

I have seen at first hand, and I am sure that many Members have likewise seen, just why it is important that we remain a nation of innovation. In future, we will want to attract the brightest and the best as we leave the European Union, and crucially in that process we need sensible arrangements that protect the interests of Britain. I will come back to that point later.

At the heart of turning ideas into commercial practice is protection from poaching, as well as the patent system that has grown up over many years. Such protection is of the highest order including, as the Minister said, both domestic and international mechanisms on the one hand, and immunity, as is proposed by the order, on the other hand.

The European Patent Office was founded in 1977. We signed up to the unified patent court in 2013, together with 25 other member states in the European Union, and the necessary arrangements were finalised shortly after the decision by our country on Brexit. The order seeks to confer necessary legal status as we approach the next stages, for the avoidance of any doubt, and we believe that to be an eminently sensible move, which the Opposition wholeheartedly support.

Finally, it is all the more important that we have such domestic and Europe-wide arrangements at a time of immense uncertainty in our country, to help to reassure creative people and innovators that we are serious about remaining a creative nation of innovators. Dare I say to the Minister that in reaffirming that existing European arrangements should continue to obtain in the future, hopefully that will form a precedent when it comes to next-stage discussions on the single market and the customs union? On those fronts, we will also need sensible arrangements, whereby we will have full access to and will enjoy the benefits of those arrangements that have served this nation well for many years.

2.37 pm

Ms Angela Eagle (Wallasey) (Lab): It is a pleasure to serve with you in the Chair, Mr Bailey; I do not think I have done so for a while.

Will the Minister say a little bit more about how the arrangements will work in future? Clearly, it is a very important and good thing if we can deal with the fragmentation of patents, particularly across the European single market, but his Government are now determined to leave that market. Although this new institution is not an institution of the European Union, we agreed to come on board and become involved in it while we were in the EU, well before the vote to leave had even been thought of, except on the far fringes of the Conservative party, much less the subsequent referendum.

I am interested in the Minister's observations on that, because the court will have to put into place the new unified directive on patents, which the European Union is in the process of putting into law and with which we are associated at the moment. However, we probably will not be if we leave the customs union and the single market at some time in future.

We are in quite an unfortunate situation: just as we are attempting to stop the fragmentation of patent law and requirements, particularly their jurisdiction in the European Union, we are fragmenting ourselves from the institution that is meant to co-ordinate that. If the last few weeks are anything to go by, we are not exactly leaving in good odour—or order—judging by the way things are going at the moment. I suspect that that may have some implications for the way in which such a pragmatic and important issue will be dealt with in future. Will the Minister give us the benefit of his observations on that and its implications?

I also note that there are experts who feel that the UK will need to take several steps to remain within the ambit of this institution after Brexit, including entering into new international agreements with the other signatories of the agreement on the unified patent court. Those signatories will all, of course, remain in the single market and the EU.

We are in the middle of trying to set up this institution, which is what the order is about, just as we are leaving the EU. Does the Minister think that we need to come back to this, and change the law and international agreements so that we can proceed smoothly with what we all agree is a desirable outcome? Would that hold up the implementation of what is a wholly good thing?

I also note that there are some issues in Germany that are holding up the final ratification of the court. Does the Minister feel that events in Germany will assist us in getting the timing right regarding our desire to enter into new international agreements, or does he think that they will slow down this wholly welcome development? If we do need new international agreements to move forward in the event of our coming out of the European Union by 2019, is his Department geared up to negotiate them? Has it done any planning on ensuring that our legal arrangements enable us to go on with, and not disrupt, the setting up of this extremely important institution as we leave the European Union?

Finally, can the Minister give us a definite guarantee? His Government do not believe in the jurisdiction of the European Court, but areas of patent law, particularly in the directives, are currently subject to that jurisdiction. Can the Minister explain to us how on earth we are going to be part of this institution, but not subject to the oversight of the European Court? For the life of me, I cannot work out how that would work.

2.42 pm

Joseph Johnson: I thank the hon. Member for Birmingham, Erdington for supporting the order, and for recognising the role that the court will play in ensuring that we have a system that encourages innovation and protects companies that invest in research and development. Those companies are able to go on and commercialise the discoveries that they make without fear of their hard work and efforts leading to nothing, or being taken advantage of by competitors that have not made those investments in discovery.

I thank the hon. Member for Wallasey for asking some important questions; I will now try to respond to as many as I can. She asked principally about the impact that leaving the EU will have on the operation of the UPC, and what our relationship to the UPC will be after March 2019, when we will be in the process of leaving the EU. To be clear, the UPC itself, as she knows, is not an EU institution, but currently all participating member states are EU member states. Our position is that while the UK remains a member of the EU, we will and should complete all necessary legislation, so that we are in a position to ratify the agreement.

Whatever the UK's future relationship with the unified patent court, we expect that, as the hon. Lady said, we will need to negotiate with our European partners, to reflect the change to the UK's status in relation to the UPC that will take place when we leave the EU. As a Government, we believe that it would be wrong to set out any unilateral positions in advance of the negotiations that we know we are going to have to have, because our efforts will need to be focused on securing the best possible deal for the UK in our negotiations with our European partners.

Jack Dromey: This is an important point for the avoidance of doubt on the part of the innovators and entrepreneurs of our country. Our support for the order is given on the basis that it will be an enduring mechanism now and after we leave the European Union. Is the Minister suggesting that having given legal effect to the order, the situation might change post-Brexit? That will be a source of immense concern to innovators and entrepreneurs in our country.

Joseph Johnson: Through the passage of the order and completing all the necessary legislative steps in Parliament, we want to ensure that we are in a position to ratify the UPC and our membership of it, thus enabling it to come into existence. As the hon. Gentleman and Members know, under the terms of the international treaty, UK ratification is required for the UPC to come into existence, and we want the court to come into existence. We have been supporters of it from the outset, and we think it will play an important role in enabling businesses to enforce their intellectual property rights at the lowest possible cost, or certainly at a much lower cost than many companies find to be the case at the moment. We are supportive of it, and we want to continue to play a facilitating role in setting it up.

After we leave the European Union in March 2019, we understand that we will have to negotiate a new relationship with the UPC. We want to do that as seamlessly as possible so that businesses can continue to take advantage of the provisions that the UPC makes possible. Our expectation is that the long-term relationship we will have to establish after March 2019 will be

[Joseph Johnson]

subject to some negotiation. I and the Government as a whole do not want to go into the detail of exactly what that relationship will be at this point.

Ms Angela Eagle: We all agree that the court should be set up. Because of the delay in Germany it is unlikely to be up and running much before the middle of next year, if things go well with the constitutional court there. That leaves us less than a year to get the institution up and running before we have to have a major renegotiation of our relationship with it.

In response to one of my initial questions, the Minister said that he is not in a position to give us any particular view on that because he, his Department and the whole Government will be much too busy concentrating on the bigger Brexit things. Is he of the view that the court and, much more importantly, our participation in it can continue without the legal changes we will clearly have to negotiate to remain a member once we are outside the European Union?

The Chair: Order. I remind Members that the order is essentially about the privileges of the key figures of the court. While I have allowed the debate to range to other issues around it, it would be helpful if we could focus on the order and if the Minister could relate his reply to the specific issues relevant to the order and the hon. Lady's comments.

Joseph Johnson: Thank you, Mr Bailey, I will try to do that. Returning to the hon. Lady's question, the order is made under the International Organisations Act 1968. It does not relate to EU legislation, nor does it rely on the European Communities Act 1972. The order will therefore not need to be preserved by the EU (Withdrawal) Bill at exit to remain UK law, so it will continue. As the hon. Lady knows, the UPC agreement is an international treaty, not an EU treaty. It will not need to be converted into UK law by the EU (Withdrawal) Bill for it to continue to apply.

To summarise all the points on Brexit, whatever the UK's future relationship with the UPC, we will need to negotiate with our European partners to reflect the change to the UK's status when we leave the EU. We want the court to come into existence. That is why we are facilitating it by putting ourselves in a position where we can ratify it. We understand that there are issues in other countries whose ratification is necessary; we hope that they can be overcome so that this court can come into existence and do the job we all want it to do.

Ms Angela Eagle: The privileges issue is clearly important. We cannot have the court without this order, which is why we all support it, but I hope the Minister will

reassure me that we can continue to use this court with all its privileges if we are out of the European Union. The House of Commons Library note on this issue includes some worrying or at least alarming views from European law experts who say that we will not be able to remain in the court appropriately after Brexit before we have changed the law—we will not be able to just carry on having the court run. That might mean that people in our country cannot have access to its benefits until the Government ensure that they have entered into new legal agreements with the other signatories. Would he confirm that that is the case and say something about whether the order ensures that we will continue to have access to the court's benefits, which we all want, without Parliament having to come back—

The Chair: Order. That is an incredibly long intervention.

Ms Angela Eagle: Well, it is a question.

The Chair: The points have been packaged up as questions. We have the drift of it, so will the Minister now respond?

Joseph Johnson: The hon. Lady has raised the issue of a smooth transition so that there is minimum uncertainty for business about the enforcement of intellectual property rights as we leave the EU. She is right, and the Government are in total agreement. We do not want any cliff edges. We want minimum disruption for businesses, and we want to minimise threats to stability as we develop the deep and special relationship with the rest of the EU that we have set out as our objective for the negotiation. Of course we will take into account the need to protect intellectual property rights as part of the process of considering the options for the UK's intellectual property regime after our exit, but as I have said on a number of occasions, our future relationship with the UPC will be a matter for negotiation. It would not be appropriate for me to set out unilaterally what the UK's position will be in advance of those negotiations.

I will try to conclude again by saying that the Government will continue to work with signatory states to bring the UPC into operation as soon as possible, making it easier for businesses all over the country—in the midlands, in Birmingham, Erdington and elsewhere—to enforce their patents across Europe. I hope the Committee will support the draft order accordingly.

Question put and agreed to.

2.53 pm

Committee rose.