

Mr Richard Bruton TD
Minister for Jobs, Enterprise and Innovation
Department of Jobs, Enterprise and Innovation
23 Kildare Street
Dublin 2



2nd January 2014

Dear Minister,

I write in relation to the Unified Patent Court (UPC) Agreement and specifically in regard to the question of forming Local or Regional Divisions of the UPC. The American Chamber naturally appreciates that the Government will require approval by the people in a referendum in 2014 in order to proceed to ratify the agreement. Notwithstanding that, we are of the view that the Government should seriously consider the potential benefits of locating a local court division in Ireland.

Ireland has successfully carved out a niche as a world leading location for high tech industries across the social media, gaming, ICT and life sciences sectors. This has been a remarkable achievement and one that we are aware that the current Government is keen to continue to strengthen. To that end it is imperative that everything possible be done to encourage continued flows of such investment and to maintain the existing base of companies. Such industries are heavily and increasingly reliant on the exploitation of intellectual property (IP) and have cause to expect a high level of protection for their patents, particularly in the life sciences sector.

IP is increasingly regarded as the currency of the 21st century. An effective unitary patents system in Europe has the potential to decrease the costs of obtaining patent protection, increase competitiveness, and support the long-term growth paths of innovative industries in Europe and beyond. In the local context, the American Chamber has highlighted the value of attracting more IP-rich investments to Ireland in a number of submissions and we are keen that a welcoming environment persists here. In that regard it is our view that Ireland should examine the option of establishing a Local Court of First Instance rather than opt to become part of a Regional Division.

Being able to facilitate patent litigation in Ireland should assist in encouraging further investment from firms with large portfolios of patents and also provide greater certainty to innovative indigenous businesses, particularly SMEs. Providing an infrastructure that can help to protect the innovative capacity of companies can potentially prove another valuable selling point for Ireland in attracting mobile FDI, particularly R&D projects. The ease of pursuing litigation in a local court may well provide reassurance to key decision makers in respect of locating such investment. Indeed Ireland's Commercial Court has distinguished itself in handling patent litigation and could be regarded as providing the capacity for a nascent local court of the UPC. It is recognised that Ireland's judiciary and lawyers enjoy an international reputation as having a keen understanding of the importance of IP and the commercial drivers of businesses operating in high tech sectors.

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In practical terms joining the Court of First Instance in a Regional Division, potentially London, could result in a situation in which two litigants based in Ireland must of necessity pursue a case abroad, with all of the associated costs that would entail in terms, not alone of travel and additional legal costs, but also lost time for senior management who are of course drawn away from their core responsibilities. This would be particularly onerous for SMEs.

We appreciate that the Court would be funded by the State and that this will require additional expenditure on an on-going basis. While the State continues to operate under fiscal constraints in the short term, if pursued the local court would be phased in over a seven year period and it is expected under more benign financial circumstances. In addition, as you know the intention is that such a court would become self-funding in the long term. Presumably the costs involved are not material, particularly given the likely use of existing infrastructures. Furthermore, the costs involved are immaterial by comparison to the benefits in having a local patent court continue in Ireland.

Minister, we are aware that the Government is due to consider this issue in the coming weeks and we request that you and your colleagues give serious consideration to the implications of the location of the court and its potential effect on the innovation ecosystem in Ireland.

Yours sincerely,

Brian Cotter
Public Affairs Director

cc Mr Sean Sherlock TD, Minister of State for Research and Innovation
Mr Alan Shatter TD, Minister for Justice, Equality and Defence
Mr John Murphy, Secretary General, Department of Jobs, Enterprise and Innovation