



FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN

Resolution of the Executive Committee, Goa, India 17 to 20 March 2024

“The Registration of the Unitary SPC for Medicinal Products must be under the Control of the UPC”

FICPI, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession throughout the world, assembled at its Executive Committee held in Goa, India 17 to 20 March 2024, passed the following resolution:

RECOGNISING that establishing a supplementary protection certificate (SPC) system for European Patents with unitary effect (“Unitary Patents”; “UPs”) as basic patents is essential to complete the UP system;

FURTHER RECOGNISING that the “Proposal for a Regulation [...] on the unitary supplementary certificate for medicinal products [...]” (COM(2023) 222 – final; the draft “UP-SPC Regulation”) drafted by the European Commission (EC) already has many aspects which would successfully provide a useful system for obtaining SPCs on the basis of UPs (“unitary SPCs”);

NOTING that this proposal also already contains necessary improvements over the present situation of SPCs within the EU by overcoming significant hurdles and deficiencies of the current Regulation (EC) No 469/2009 (“SPC Regulation”) for medicinal products and addresses problems which have arisen from the CJEU case law, mainly due to said deficiencies;

FURTHER NOTING that the UP and the UPC were established in the course of the Enhanced Cooperation in the area of the creation of unitary patent protection, authorised by decision 2011/167/EU, for the Participating Member States and are in operation since 1 June 2023;

FURTHER NOTING that the UPC has already explicit and exclusive competence for actions and counterclaims for declaration of invalidity of SPCs (Art. 32 (d) and (e) of the UPC-Agreement), as well as actions for actual or threatened infringements or for declarations of non-infringement of UPs and SPCs;

OBSERVING that establishing a registration procedure for unitary SPCs at the EU Intellectual Property Office (EUIPO) as foreseen in the present draft UP-SPC Regulation is a practical proposal which will function well with the inclusion of experienced SPC examiners from national Patent Offices of the Participating Member States;



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FURTHER OBSERVING that the present proposal for unitary SPCs does not foresee an appropriate system for legal remedies or appeals to decisions taken by the EUIPO with regard to unitary SPCs;

URGES the EU Commission to refine the proposal for the UP-SPC Regulation (COM(2023) 222 – final) by further clarifying the intended improvements and by defining that the UPC is the appeal instance for any decision of the EUIPO concerning the UP-SPCs;

FURTHER URGES the Participating Member States of the European Union to adopt such a refined proposal for the UP-SPC Regulation; and

URGES the Administrative Committee of the UPC to introduce under Art. 87 (2) UPC-Agreement a new exclusive competence under Art. 32 (1) UPC-Agreement to read “(j) actions concerning decisions of the European Union Intellectual Property Office in carrying out the tasks referred to in Regulation (EU) No [the UP-SPC Regulation]”.