

# Advantages and Disadvantages of the Single European Patent

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## Abstract

In February 2013, the European Union successfully completed more than 30 years of negotiations and formally signed an agreement establishing a single European patent. The agreement brought about a more competitive patent law compared with that in the United States and Japan. The agreement resulted in a number of advantages, especially for small and medium-sized enterprises, such as the reduction of costs by as much as 80%, simplification of procedures, and the adoption of the Unified Patent Court. With the new unitary patent, intellectual property will grow in importance. Yet experts warn that the new patent results in new forms of unwanted behavior, such as forum shopping and the emergence of patent trolls. This study presents both sides—the pros and cons—to predict the effects on business and cover the widest possible range of experts, providing their views on the topic.

**Keywords:** Single European patent, single patent court, reduce costs, patent trolls, simplified procedures, forum shopping, European Union

## 1 Introduction

Since signing the European Patent Convention, member states of the European Union (EU) tried to establish a patent system that would have a unitary effect on the entire area of the union and to foster a more competitive patent regime compared to the previous situation. Negotiations were extended (European Patent Office, 2014a). The main issues were language and legal arrangements. After more than 30 years, on February 19, 2013, the EU adopted a third and final part of the EU Patent Package,<sup>1</sup> opening the door to a single European patent. The single patent was accepted by 24 EU member states (exceptions were Spain, Italy, and Portugal), who have been unified in opinion that the creation of unitary patent system is important for the EU's economic development.

Intellectual property, which represents an important part of the patents, has gained importance in recent years and is becoming an indispensable element of successful companies (Baecker, 2007). Intellectual property rights are closely linked to innovations that significantly contribute to competitiveness (Langinier & Giancarlo, 2002). It seems that promoting links (EPO & OHIM, 2013), leading from the research and development (R&D) to new jobs—through innovation, competitive advantage,

<sup>1</sup> Unified Patent Court Agreement (UPC, 2013). In December 2012, member states also adopted the European Parliament and the Council implementing enhanced cooperation in the area of the creation of Unitary Patent protection Regulation (EU No.1257/2012) and Regulation implementing enhanced cooperation in the area of the creation of Unitary Patent protection with regard to the applicable translation arrangements (EU No. 1260/2012).

and economic success—has never been more important than in today's world of increasingly globalized markets and the knowledge-based economy.

One of the main features of the current patent system has been the fragmentation that occurred as a result of bringing the 27 national patents together as one (EESC, 2012); such fragmentation is not known in other major economies, such as Japan, China, and the United States. This disunity has had a significantly negative impact on business and has contributed to:

- a high level of uncertainty and increased complexity of management;
- a high cost of lawsuits in the case of multiple or parallel litigation; and
- economic and legal inconsistencies.

Through centralization, the new unitary patent will not only reduce financial expenditures, but also increase the efficiency and attractiveness of the system (Danguy & Pottelsberghe, 2009).

A single patent provides numerous benefits for individuals—including the ability to achieve unitary patent protection is easier and faster, primarily due to simplified procedures and the reduced costs of obtaining it—as well as member states and the EU, while it represents an important part of the single market. One without the other cannot perform in its optimal form. Of course, we cannot overlook the fact that the new system brings new challenges that those market players will have to face (Hilty & Drexel, 2012), such as increased legal imbalances, the complexity of intellectual property protection, and an increased number of newly established patents in the signatory countries, thereby allowing—according to experts (Pentland & Mukherjee, 2012)—many unwelcome business behaviors, such as forum shopping and the emergence of patent trolls.

The purpose of this research is to describe all the benefits brought about by a single European patent (i.e., reduced costs, simplified procedures, and the adoption of the Unified Patent Court) and the weaknesses and possible forms of unethical business behavior (i.e., forum shopping and patent trolls). The objectives of the research are to define more precisely how patent law will change in the EU, define the advantages and disadvantages brought about by a single patent, and demonstrate how the latter will affect the business operations of companies. The theme is new. A single patent was adopted in February 2013 and did not enter into force. Due to the actuality of the theme, not much material connected with unitary patent is available, despite the emergence of many new possibilities for European companies.

This paper consists of an introduction followed by the second chapter, in which we present the benefits of the single patent

and define them in detail in the subsections. In the third part, we focus on the weaknesses of the new patent system, what it means for business, and what types of unethical behavior might occur. The fourth section provides key findings.

## 2 Benefits of the Single Patent

The European patent system, as in force to date and only representing a set of national patents (Evropska komisija, 2014a), was significantly more expensive than the system in, for example, the United States (11 times more expensive) or Japan (13 times more expensive), considering only the translation costs and costs of gaining a patent. If we include the costs of 20 years of protection in the equation, the European patent is still almost 9 times more expensive than those in the United States and Japan. However, if we limit the analysis to only patent claims, the differences in financial expenses increase even further (Evropska komisija, 2007). As a result, the EU is behind the other two countries in patent activity. In total, 7.3 million inventions were patented in 2010, including 2 million in the United States and 1.4 million in Japan. Their total value represented almost a half (48%) of all worldwide patents (Komisija evropskih skupnosti 2007).

The EU wanted to create a system that would be more attractive than the existing one (Evropska komisija, 2007). In today's increasingly competitive global economy, it is particularly important that the EU does not lag behind others in the field, which is so crucial for innovations as patent policy (Evropska komisija, 2006). Patents are a driving force for promoting growth, competitiveness, and innovation (Langinier & Giancarlo, 2002). From 2008 to 2010, the industrial sectors in the EU, particularly those dealing with intellectual property, created almost 26% of all jobs, and patents represented 10% of the total value. Many jobs were produced in industries indirectly connected with areas of intellectual property and the supply of goods and services. If we also take into account indirect jobs, the total number increases to more than 35%.

During the same period, IPR-intensive branches (together with patents, this group also includes brands and designer industries) represented 39% of total economic activity—of which patents accounted for 14%—in the EU and took a leading position in the EU's trading activity with the rest of the world outside of its borders. The added value per employee is higher than in other sectors; in the patent sector, the number is even higher at 64% (EPO & OHIM, 2013). Key features of patents, from an economic point of view, are that patents:

- Deal with new knowledge, as already foreseen in the item of product or process innovation, and
- Grant a limited monopoly right to the inventor.

New knowledge enables the production of new products or processes and has great economic value. A patent ensures property rights, positively impacts the promotion of innovation, and can increase the flow of these rights (Langinier & Giancarlo, 2002). The increase in the number of patents is particularly desirable; otherwise, a market system might provide little new knowledge.

Although differences exist between industrial sectors and member states, the overall “patent premium” for member states included in the survey<sup>2</sup> from 1994 to 1996 was 1% of the national GDP. From 2000 to 2002, this number increased to 1.16% of the GDP (WIPO, 2013). The overall economic crisis in 2008 caused a decline in the number of patents (3.6%) in 2009, but the number started to grow again in 2010. The economic recovery in the field of intellectual property was faster and stronger than in other industries. Patents increased by 7.2%, which is much higher than the global GDP growth (5.1%).

A strong connection exists between innovation effectiveness and the use of intellectual property. Countries that are highly efficient in terms of innovation tend to have a higher level of patenting and the use of other rights (e.g., design, model, and trademark rights). Highly patented sectors are also more innovative.

The patent system affects the overall economy. Once a survey or an invention is publicly known, the benefits and advantages are available to the entire economy in a particular industry. Such information leaves little doubt that it was necessary to take action in the EU to provide a simple, high-quality, and cost-effective patent system to provide everything in one place: the start of the process for obtaining patent rights, the granting of patents as post-grant procedures, and inclusion of the legal litigations (Komisija evropskih skupnosti, 2007). A new patent system is attractive for businesses and provides cost reductions, the simplification of procedures for obtaining patents, and a single patent court.

## 2.1 Reducing costs

The success of a new single patent system is largely based on reducing the costs of obtaining a patent, which will ease business processes, especially for small and medium-sized enterprises. Large companies have the advantage in covering the costs of enforcing patents (especially those incurred as a result of the translation), and they accept it as a price they have to pay if they want to do business in the EU (Riley, 2002). Member states predicted that the total administrative

costs of filling and maintaining a single European patent, including patent office translation and court fees, decreased by 80%. The number was slightly lower initially (around 70%).

Patent costs consist of the following (Evropska komisija, 2013):

	European patent	Single European Patent
Translation	23.375 €	5.610 €
Publication	2.987 €	308 €
Representation	5.750 €	500 €
Total	32.112 €	6.418 €

The largest costs reduction will be a result of the single procedure for granting a patent (EU no. 1260/2012, article 6–7).

Determining and designing annual renewal fees for the patent were especially difficult. Before the single patent was adopted, the Patent Office examined and granted the patent, but the owners had to pay an initial registration fee in each country in which they wanted patent protection (EPK, 2002, Article 141). Of course, fees were not only an initial, one time-cost. Patent holders were required to pay the renewal fees each year in every country in which their patent was valid. These fees represented around 15% of total patent costs (Edmondson, 2013). Many countries also requested several translations and the participation of their lawyers in the proceedings. Such practices meant that obtaining a patent in Europe represented a large financial burden,<sup>3</sup> especially for small and medium-sized enterprises. Indeed, one of the main arguments in favor of the creation of a unitary patent was cost reduction and, consequently, the partial elimination of the financial burden for business (EU no. 1260/2012, Article 5). Patenting in Europe was considerably more expensive than obtaining a patent, for example, in the United States (2000€) or China (600€) (Parreira, 2013), two major competitive markets for the EU.

In the single European patent, fees will be divided, with 50% going to the European Patent Office (EPO), which is responsible for keeping a register of all patents, and the remaining half to national patent offices, which will ratify the treaty (EU no. 1257/2012, Chapter 5, Article 13). EPO is responsible for the management and approval of the unitary patent and will act as a kind of virtual national office in the territory of all the participating EU member states. Renewal fees for the unitary patent will be lower

<sup>3</sup> At a time when the intense negotiation for the creation of a unitary patent began, in 2012, the European Patent Office recorded a record number of patent applications. Patent applications have been made primarily by the most successful European companies in eight of the top 10 technology areas (Edmondson, 2013).

<sup>2</sup> World Intellectual Property Organization - *Highlights on Patents*.

before the product is on the market and in the first years. Such a decision makes sense, as in the first years the product does not bring in a lot of money. Later, after 10 to 12 years, when the product becomes successful and generates higher revenues, fees for the renewal of patent rights will increase (EU no. 1257/2012, Chapter 5, Article 12). The highest level of fees will be from 15 to 20 years after the initial validity of the patent.

The costs of a single patent application and fees for its extension have not been determined (Evropska komisija, 2014a). This area represents one of the most sensitive issues. It is necessary to create a system that will be attractive to applicants for EU patents (EU no. 1257/2012, Chapter 5, Article 12, paragraph 2), which essentially means that costs for a single European patent should not be higher than the costs of three of four national patents<sup>4</sup>; if these costs are higher, especially given the fact that the effect of the unitary patent does not include Spain, Italy, and Portugal, it will be much harder to create a sufficient financial structure that is attractive for future patent holders.

## 2.2 Simplified procedures

Another important advantage of the single European patent is simplifying the procedures for obtaining a patent (EU no. 1257/2012, Article 4). The previous system involved a more complex and time-consuming process for obtaining a patent. Previously, acquiring a patent required submitting a national application for the grant of a patent at the National Patent Office for the protection of intellectual property rights first (Malešević, 2007). Once the office concluded that the application met all the requirements, it published the patent application and granted the patent. The applicant then had two options (EPK, 2002): file a national application with the competent authority of the foreign country, carried out through an agent enrolled in the country's Register of the Office (some countries have similar procedures, as Slovenia, while others—before granting the patent—check if it is innovative, industrially useful, and new), or submit an international application under the Patent Cooperation Treaty (PCT). In the latter case, we could apply (in German, French, English, or Slovenian) to the Slovenian office for a patent for more than 140 PCT member states. If we decide to use Slovenian,

<sup>4</sup> According to statistics from the European Commission (EPO Statistic, 2013), until 2013, among all EU member states, only about 2% of European patents—8% in 13 countries or more and 40% in 5 countries—were approved. The remaining half of the patent was valid in only three EU countries. The geographical coverage of European patents, covering on average 5 EU member states, and the costs of patent protection and renewal fees for patents are relatively lower than anticipated fees for a single patent with wider geographical protection.

we must guarantee translation into the three remaining languages within two months (EU no. 1260/2012, Article 10). The process then continued at WIPO in Geneva. Once the process was complete, the applicant must request the grant of a patent at the appropriate authorities of the countries in which he wished to gain protection (European Patent Office, 2014c). For all of these previous procedures, the applicant needed a representative for the various foreign authorities.

With the adoption of the single European patent, these procedures were simplified and shortened. Now, the applicant can submit an application for a single patent at any national office or directly at the EPO. All further processes take place before the EPO, and the applicant can fulfill the requirements himself or through a European patent attorney (European Patent Office, 2014b). The applicant must also pay all maintenance fees.

An important part of the procedures for obtaining a single patent is also the language regime. There are 23 official languages in the EU, and to date the majority of member states have required a translation of patent claims into their own language. Thus, translation costs have traditionally been very expensive and represented a large financial burden for businesses and individuals. Through the process of negotiation, this area was one of the most complicated and lengthiest problems among member states (Roberts & Venner, 2014). Despite all the effort, the language arrangement is still not acceptable for all EU member states; particularly strong opponents are Spain and Italy, which claim the insufficient linguistic regime is one of the main reasons why they did not join unitary patent system.

However, after many negotiations, the signatory countries came to a compromised solution for how patent translations will be arranged. They have decided that applications for patents must be in one of the three official languages: French, German, or English. The application can be filed with the EPO in any other language (EU no. 1260/2012, Article 10), but within two months should be translated into one of the three official languages (EU no. 1260/2012, 7th and Article 12). The official language of the proceedings before the Patent Office is the one in which the application was filed or to which it was translated. Specifications of the single European patent are also published in the official language of the proceedings (EU no. 1260/2012, Article 7) and contain a translation of the patent application into the remaining two official languages.

The long-term or ultimate goal of the unitary patent will begin to be realized only after a 12-year transitional period, when the translation into other languages will no longer be required (EU no. 1260/2012, Articles 12 and 13).

The program, which EPO aims to develop, will be called “Patent Translate” and will be designed to provide users with free online access to information and automated translations of all European patent applications and patents (Kuhnen, 2013). Exclusively, in the event of litigation or at the request of the court (EU no. 1260/2012, Article 8), the patent holder will have to provide “human” translation into an appropriate language.

### 2.3 Unified Patent Court

Prior to February 2013, the competent authorities that decided on the validity and infringement of European patents were National Courts and authorities of the Contracting States of the European Patent Convention (EPC 2002 Rule 5 (2)). In practice, this represented numerous problems, especially when the patentee wanted to enforce a patent in different European countries or when a third party wanted to cancel the validity of the patent. The decentralized legal area resulted in particularly high costs, the high possibility of contradictory decisions, and the lack of legal certainty (Esche, 2013). Patent holders and third parties involved in legal disputes could interpret court decisions in their own way. Processes were long, and no one knew exactly who was responsible for decision making in patent litigation. With the adoption of the Unified Patent Court, participating countries wanted to limit irregularities in the field of patent law and—due to the different national legal systems—prevent participants in litigations from finding loopholes and avoiding legal responsibility.

The Unified Patent Court comprises (UPC, 2013, Chapter 2, Article 6):

- The Court of First Instance,
- The Court of Appeals, and
- Various committees (e.g., Budget Committee, Governing Board).

The Court of First Instance is divided into:

- A central division,
- Local divisions (for each state party), and
- Regional divisions (two or more state parties, only if they prefer to establish a common division) (UPC, 2103, Chapter 2, Article 7).

The central division consists of:

- Two legally qualified judges who are citizens of different state parties, and
- One qualified judge with qualifications and experience in the field of concerned technology.

The central division will be chaired by a legally qualified judge (UPC, 2013, Chapter 2, Article 8). The new structure

ensures the neutrality of judges and presence of trained professionals in the patent field (UPC, 2013, Chapter 3, Article 15). With the participation of professional judges qualified for a specific field of technology, linked to patent examples, court proceedings will gain significant weight and knowledge, which to date has often been lacking in legal processes in the field of patents (Pagenberg, 2013). Many times judges have not been adequately trained or did not have enough knowledge to make decisions about the infringement and validity of patents.

Local departments, highlighting the decentralized nature, can be established in any contracting state at its wish or request. The Administrative Committee will make decisions to establish local departments, with each country deciding where the seat of a department will be located (UPC, 2013, Chapter 2, Article 7). A maximum of three additional local divisions can be established in one country for every 100 patents per year (Esche, 2013). For example, in Germany alone, the national courts deal with more than 1,400 cases a year, which means that it might require up to four local departments.

Regional divisions can be set up at the request of two or more signatory countries (UPC, 2013, Chapter 2, Article 7 (5)), who will determine where the seat unit will be. The regional division is designed to be wider, not limited to addressing cases in only one location, but can discuss matters at several locations (Kuhnen, 2013). It would be wrong to say that local and regional divisions have national character, although they will act within national borders. Despite the small scale of operations, they are still internationally formed bodies.

The composition of the Patent Court is expected to deliver more efficient work while dividing responsibilities; the central division will be in charge of the enforcement of patents, and local and regional divisions will address infringements (UPC, 2013, Chapter 6). Patents will be granted faster and legal disputes resolved more quickly. More courts, at the expense of local and regional divisions, also mean a reduction of queues, less burden on judges and, as a result, of course, once again, faster handling of cases (IPO, 2014). For business it is important that, when patent rights have been violated, the disagreement be resolved as quickly as possible so the business processes can continue. It is expected (Komisija evropskih skupnosti, 2007) that the costs of an average case in the Court of First Instance will be reduced by 10% to 45% and from 11% to 43% in the second stage. In big patent cases, savings should be even higher, as these have thus far taken place mostly before the courts in the UK, where the litigation costs are the highest in Europe.

### 3 Weaknesses of the Unitary Patent

Most European Union countries and their European representatives strongly believe in the positive effects and benefits brought about by the European patent with unitary effect (Evropska komisija, 2014c)—namely, a user-friendly, simpler, and cheaper system. On the other hand, professional experts, legal experts, and large enterprises seem to strongly oppose the single patent. Opponents of the EU Patent Package (Hilty & Drexel, 2012) have accused the new regime of insufficiently regulating several aspects of patent law and, to some extent, providing even worse solutions than before.

Like the existing European patent, the single patent is not innovated in any way, especially regarding the conditions for patenting and the definition of exclusivity and its exceptions (Ullrich, 2012). The Chartered Institute of Patent Attorneys (CIPA) strongly criticized the new system, believing that responsible agencies adopted the new European patent reform with excessive haste and put too much hope on the unitary patent system to help the Eurozone recover from economic problems (CIPA, 2013). However, if the EU wants to transform the patent system in such a way to contribute to economic recovery, it is important that changes be properly formatted. Otherwise, the opposite effect can result.

Before the new system is implemented in practice, 13 member states—which must include France, Germany, and England—have to ratify it (Evropska komisija, 2014b). Thus far the requested quota has not been achieved. As a result, its performance and impact on the economy remain unclear.

Official registration and maintenance fees are still not well-defined (Weal, 2014).<sup>5</sup> Experts warn that some patent proposals could create an even less sufficient patent system than the existing one (Hilty & Drexel, 2012)—namely, one that is more uncertain, less flexible, and more expensive in terms of both obtaining protection and its execution. Arguments that the new system will be much cheaper for companies are based on rather doubtful assumptions, without reliable evaluations on how high fees for the renewal of patents or judicial proceedings will be (Weal, 2014). These statements are only a comparison between the costs of gaining patent protection in the form of 24 different national patents through the EPO and the acquisition of a patent with unitary effect. The single patent was, without a doubt,

<sup>5</sup> The only indication of the estimated amount of fees is the fairly general statement of the president of the European Patent Office: “Renewal fees will be higher, as many had hoped, but lower than some had fear” (Battistelli, 2013).

the winner, but the question of whether the companies need protection in such a large number of countries has not been raised. Costs will, of course, be much lower in the framework of a unitary patent system than when obtaining 24 separate national patents (Reddie&Grose, 2013). However, when compared with patent fees that the patent holder should pay to acquire patent protection in a smaller number of EU countries, the reduction is called into question. This may result in the reduced flexibility of the unitary patent. In the previous system, the patent holder could decide if he wanted to save money, which rights he wants to abandon, and which to invest more money in (CIPA, 2013). With the unitary patent, the choice is reduced to one: pay in full or lose all rights.

Concerns about the actual performance of the new patent system have not only been raised by experts in this field. Even before the European Parliament adopted the single patent regime via a plenary vote, big names in the business world sent an open letter<sup>6</sup> with a call to reject the text before them. Nokia, Ericsson, and BAE<sup>7</sup> represent some of the most important and largest patent owners (European Patent Office, 2012). All three companies have been united in the opinion that the adopted text will cause more harm than good to European companies. The accepted regulation is supposed to be sufficient, but instead of a better unitary patent system that would help business—much more than the previous one—the currently proposed fails to do so (Macpherson, 2012). The three business giants have expressed concern that the new system will harm competition, innovations, and entrepreneurship in Europe. The damage will be measured not in years, but in decades.

The accepted patent package can bring serious damage to Europe and place it in an unenviable position compared with other nations and commercial markets worldwide. It can create unfavorable conditions for companies doing business in Europe (Lichtenberger, 2012). The regulation will make unethical business behavior much easier. Holders of invalid or weak patents will be able to use the threat of pan-European orders to gain money from legitimate European companies that create and sell products in Europe. Such actions will have negative consequences for both small and large companies with business offices in the

<sup>6</sup> In September 2013, 16 companies from Europe and the United States (including Adidas, Apple, BlackBerry, Google, and Intel) addressed a public letter to the bodies of the European Union to draw attention to different issues of unitary patent—namely, bifurcation and patent trolls (Adidas AG et al., 2013).

<sup>7</sup> According to data from the European Patent Office, in 2011 Ericsson ranked among the top 25 patent holders and Nokia among the top 50. BAE System represents a subsidiary of the General Electric Company and British Aerospace, which were the third largest government parties in the world (European Patent Office, 2012).

EU. Business activities will become much more vulnerable. The patent package in its current form mainly forces European companies to find space for their infrastructure, such as factories and warehouses, somewhere beyond the borders of the EU and discourages them from active investments in companies headquartered outside the EU (European Patent Office, 2012). Such an environment will worsen employment opportunities and economic growth in the contracting states. Those companies that operate or will operate in this environment will face a significantly worse economic position than others.

According to Nokia, Ericsson, and BAE, the EU was not successful in reaching an agreement. The adopted Article<sup>8</sup> of Regulation, which should solve the problem in a complex area of law, did not adequately improve the status quo. The EU created even greater legal uncertainty, instead of reducing it. The groundwork for unfair and unethical business behavior has been laid. The abuse of patents by patent owners will increase (McDonagh, 2014). Many experts—not only the three business giants already mentioned—have warned of the growing potential for manipulation through the judicial system; such behavior is called “forum shopping” (Radcliffe, 2012, p. 6). Forum shopping, a specific concept of private international law, refers to the situation where both the complainant and the defendant have two optional courts in which the specific legal concerns can be addressed. The involved parties, based on their own benefits, decide on a court based on which one they believe is more likely to rule in their favor. This undesirable behavior is eliminated by the rules of civil procedure, but not completely. To draw attention to the danger of forum shopping, it seems, according to the Single Court, which has a common set of legal rules and procedures and a common court of appeal, at best, a bit strange (Johnson, 2013). However, a closer look reveals parallels with the operation of the district courts in the United States and its appeal system, where unwanted conduct is already occurring. There, actors involved in legal proceedings often choose the district court, which they consider to favorably resolve their cases; this often leads to power-sharing battles (Whytock, 2011). It is concerning that the adopted patent system, allows similar consequences: Patent holders will be able to hold their legal disputes before various local or regional central divisions. The possibility of unwanted behavior grows, and its actual manifestation is not so far-fetched anymore.

<sup>8</sup> The infamous Article 5a, which was adopted in order to move the negotiations deadlock and was the result of a compromise among the countries involved in the framework of enhanced cooperation, introduces and specifies uniform protection in this area (European Patent Office, 2014a).

EPO representatives answered that forum shopping is, in terms of costs and efficiency, a welcome result and, to a certain extent, inevitable (Richardson, 2012). They believe that there is a very low possibility that this kind of behavior will occur, but even if it does, the system is designed in such a way that it will repair itself. This will be ensured by the Court of Appeals, which will resolve this matter in the best possible means.

Forum shopping is a serious problem for all users of the Unified Patent Court, especially because of the separation of powers in relation to the infringement or validity of patents—namely, bifurcation (Pinsent Mason, 2013). Google, Samsung, and Apple have expressed concern over the system, where actions against the violation and revocation will be discussed before different courts. Particularly troubling is the possibility that the court may issue an injunction against the importation or exportation of a certain product alleged to infringe on the patent rights of an already established patent, when ultimately the original invention may turn out to have been invalid from the beginning (Roberts & Venner, 2014). Such sharing also allows the potential complications associated with the language in which the trial will take place.

In addition to new arrangements in the legal arena, new challenges are projected to increase in the number of patented inventions in countries. For decades, there has been an explosion of patent applications and adopted patents in the EU, similar to the trend observed in other major patent markets, such as the United States, where this growth is a little more obvious. Despite the 2009 crisis, when the number of new patents was at its lowest point in recent years, the EPO recorded a new record in 2012 (Edmondson, 2013). The exact causes of the increase in patents remain unknown. An indisputable fact is that, due to the increasing number of patents, the European patent system has become a victim of its own success. It has already been overloaded due to mass production, and the single patent system encourages an even greater number of patents because of its low cost and simpler procedures. Thus, the expected consequences are an increased burden on patent offices and, as a result, the adoption of “low quality” patents (Bisthoven, 2013). These types of patents cause the most damage and represent a significant part of patent litigation.

Although weak patents might be highly profitable (Vary, 2012), one should not overlook the fact that we are talking about technologically and economically inappropriate inventions that have little scientific value (Bristhoven, 2013). In the long term, it could have a significantly negative impact on the economic environment. The lack of quality and inability to achieve economic standards will have a

negative impact on two areas essential for the successful operation of enterprises: competitiveness and innovation. They can also have a harmful effect on consumers, especially when we talk about patents in the field of technology for people.

With the adoption of low-quality patents, the possibilities for increasing so-called patent trolls increase (Davis, 2012). Patent trolls do not have their own assets, apart from patents, and are not manufacturing any products; attorneys represent the most important part of the working staff and are the patent holders, even if they do not invest in innovative technologies. These entities do not invest in research and development and do not perform any work on the product subjected to patenting. In other words, they want a shiny pot of gold in exchange for no effort whatsoever.<sup>9</sup> Their business model is quite different from that of other market players (Bristhoven, 2013). The business practice of patent trolls is to wait until someone else develops new industries that lead to the new invention they want to patent, and then reveal that a specific product or service is already patented (and in their possession). They then put unreasonable demands on the disproportionate share they want, based on non-reimbursable aids. Their main activity is to strengthen patents on behalf of various suppliers identified as offenders and force them to pay high licensing fees under the threat of costly legal battles (Pohlman & Optiz, 2013). We are talking about individuals who constantly speculate about the potential value of patents, try to obtain these patents from inventors for a lower price, and remain alert to the bankruptcy of companies or small businesses that do not have their own legal capacity and experience for the protection and effective enforcement of patent rights.

## 4 Conclusion

The European Commission's reports and expert opinions are unanimous in the fact that intellectual property is growing in importance and becoming an increasingly significant part of the economy. An effective system of intellectual property protection brings a positive contribution for business: Companies can protect their inventions and take advantage of all the benefits that protection affords them, transforming patented inventions into money. These so-called cash patents are a lure for potential investors, and they are indicators of the innovative potential of enterprises.

A single patent system undoubtedly carries many benefits for businesses. It reduces the costs of acquiring a patent, simplifies procedures, and regulates the linguistic area in a user-friendlier manner than before. In the past, companies faced a much more difficult decision about the implementation of a European patent, as it represented a major financial challenge. Small and medium-sized enterprises in particular lacked the necessary capital funds. They often remain limited within national borders, and development and innovation brought by operating in international floor were taken from them. It was harder to prevent the exploitation of patents from competitors in countries where they did not hold patent rights. It is particularly important to ease the process of patenting from small and medium-sized enterprises, especially based on experts' findings that lower costs and simplified patent procedures help promote innovation between them and consequently promote economic growth in general.

Another important achievement is certainly a simplification of the procedures. A simpler system would facilitate the work of the company. All application procedures would be resolved in one place, thereby reducing the unnecessary waste of time. The new language regime is expected to reduce financial burdens. The new system is more understandable for users and easier to maneuver. Unnecessary obstacles are removed—obstacles that discourage companies with complex bureaucratic procedures and require valuable time that would otherwise be used more beneficially (e.g., for new research and development in the company).

In addition to the potential benefits, the new legal regulations mean the court's composition will allow neutrality of judicial decisions and greater objectivity, especially with the participation of knowledgeable judges trained in a specific field of technology bound to the patent case. Thus far, judges making decisions in patent litigations have often not been trained adequately or did not have enough knowledge to decide on the objections and the validity of patents. Courts will work faster. The new legal system will bring greater unity in the patent field. Through the establishment of local or regional divisions, the court will be easily accessible to all businesses and individuals who find themselves in a patent dispute.

The new system will certainly create a more business-friendly Europe. The territory of Europe will become economically attractive for all who wish to obtain patent protection.

<sup>9</sup> The impact of patent trolls on the economy is huge. In the USA companies that become victims of patent trolls, had to pay in the total amount over € 23,000.000 in 2011 (Lacavera 2013).

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# Prednosti in slabosti enotnega evropskega patenta

## Izvleček

Evropska unija je februarja 2013 uspešno zaključila več kot tridesetletna pogajanja in uradno podpisala sporazum o uvedbi enotnega evropskega patenta. Sporazum prinaša bolj konkurenčno patentno pravo v primerjavi z ameriškim in japonskim. V dogovoru je predvidena vrsta prednosti, predvsem za mala in srednje velika podjetja. Ključne so: zmanjšanje stroškov za kar 80 %, poenostavitev postopkov in uvedba enotnega patentnega sodišča. Intelektualna lastnina bo z enotnim patentom pridobila pomen. Toda strokovnjaki opozarjajo, da lahko novi patent povzroči nove oblike neželenega vedenja, kot sta izbira najugodnejšega sodišča (ang. *forum shopping*) in pojav patentnih škratov. V raziskavi želim predstaviti predvsem obe plati, prednosti in slabosti, predvideti, kakšne učinke bodo imele na poslovanje podjetij, zajeti čim širši krog strokovnjakov ter prikazati njihove poglede na tematiko.

**Ključne besede:** enotni evropski patent, enotno patentno sodišče, zmanjševanje stroškov, patentni škrti, poenostavljeni postopki, izbira najugodnejšega sodišča, *forum shopping*, Evropska unija